

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

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SC Court of Appeals

Civil Action No. 2016-CP-40-07353
Appellate Case No. 2017-000134

Richardson Construction Company, Inc. Appellant,
v.

Richland County, a political subdivision, and
McClam & Associates, Inc. Respondents.

**DOCUMENTS SUPPORTING APPELLANT'S MOTION
FOR TEMPORARY INJUNCTION PENDING APPEAL**

VOLUME 2

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1 State of South Carolina

Court of Common Pleas

2 County of Richland

Fifth Judicial Circuit

3
4 Richardson Construction)
Company, Inc.,)

Transcript of Record

5)
Plaintiff,)

2016-CP-40-07353

6)
vs.)

7)
Richland County, a political)
8 subdivision, and McClam &)
Associates, Inc.,)

9)
Defendants.)
10

11 April 4, 2017

Columbia, South Carolina

12
13 B E F O R E:

14 The Honorable Jean Toal, Judge

15
16 A P P E A R A N C E S:

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Certificate of Reporter

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(No exhibits marked.)

P R O C E E D I N G S

1
2 **THE COURT:** All right. This is a series of motions
3 on my docket, some of which indicate that are resolved and
4 some not, but I have Number 17, Richardson Construction
5 Company against Richland County. It is a motion to dismiss
6 by McClam and Associates. That's your motion, Mr. Peace.

7 **MR. PEACE:** Yes, Your Honor.

8 **THE COURT:** And present also is Ms. McDaniel
9 representing Richland County.

10 **MS. McDANIEL:** Your Honor, Kathleen McDaniel
11 representing Richardson Construction.

12 **THE COURT:** Richardson Construction. Mr. Nicholson
13 represents Richland County.

14 **MR. NICHOLSON:** Yes, ma'am.

15 **THE COURT:** All right. So you've got a motion to
16 dismiss, Mr. Peace. You've got a motion to dismiss amended
17 complaint. That's filed by Richland County.

18 **MR. NICHOLSON:** Yes, ma'am.

19 **THE COURT:** All right. You've got a motion for
20 summary judgment and a motion for temporary injunction.
21 Those have been taken off, right?

22 **MR. NICHOLSON:** Yes, ma'am.

23 **MS. McDANIEL:** Yes, Your Honor.

24 **THE COURT:** All right. A motion for judgment and an
25 affidavit of default -- no.

1 **THE CLERK:** No.

2 **MR. NICHOLSON:** You about gave me a heart attack.

3 **THE COURT:** I didn't mean to do that. Okay. So
4 we've got competing -- you've got two defendants making,
5 one, a motion to dismiss and the other a motion to dismiss
6 amended complaint. So in each of these things the
7 Defendants are going first and then we'll come back to
8 you, Ms. McDaniel, so I'll begin with McClam or with you,
9 Mr. Nicholson?

10 **MR. PEACE:** May it please the Court, Your Honor, Al
11 Peace representing McClam. Certainly Mr. Nicholson and the
12 County have done most of the lifting on this.

13 **THE COURT:** All right. Let's go to -- let's go to
14 Mr. Nicholson then. All right, Mr. Nicholson.

15 **MR. NICHOLSON:** May it please the Court? Your Honor,
16 we're here on a motion to dismiss amended complaint by
17 Richardson Construction against Richland County and McClam
18 Associates. This is Richland County's motion to dismiss
19 the amended complaint.

20 The Court first became somewhat familiar with this
21 matter back in January -- excuse me, December 15th or 16th
22 where were had the TRO, more or less a consent hearing,
23 where Richardson and the County agreed to -- the County
24 agreed not to sign a certain contract until after a motion
25 for a temporary injunction filed by Richardson had been

1 heard and that -- that has occurred.

2 The quick background is this is the Shop Road
3 extension project. This is a protest essentially of the
4 award of a contract to McClam Construction by a -- one of
5 the bidders, Richardson Construction, whose bid was deemed
6 nonresponsive by the County's acting procurement director.
7 There's a timeline in the complaint and there are a lot
8 of extraneous facts out there, but I'll try -- since this
9 is a motion to dismiss I'll try to keep this as succinct
10 -- as succinct as possible.

11 The -- Richardson's position was basically that it
12 should have been awarded -- it should have been awarded
13 the contract because it was the low bidder on the project
14 and it filed a TRO -- it filed the original complaint with
15 one cause of action stating a TRO and a second cause of
16 action stating a temporary injunction and a third cause of
17 action stating a writ of mandamus. The first cause of
18 action, the TRO, this Court heard and she ignored. The
19 second cause of action for a temporary injunction to
20 restrain and enjoin the County from awarding the contract
21 to McClam was heard on December 21st, 2016, by Judge
22 Benjamin and she issued an order the following day denying
23 that motion.

24 That left a writ of mandamus cause of action in
25 the original complaint that was -- it sought to force

1 Richland County to constitute a procurement review panel
2 which exists by virtue of -- as part of the administrative
3 review process in the County's procurement code. It is
4 -- and the Court's read the brief, the Court knows there's
5 a litany of motions --

6 **THE COURT:** I'm -- I am familiar with the fact that
7 the claim was made that -- what I understand this
8 controversy to be is this. Richardson filed a bid. Their
9 bid did not put the right person's name in there as the
10 minority contractor. They put LAD and they should have
11 put somebody else in there. They were, according to them,
12 allowed to correct that inadvertence or minor amendment
13 and so forth and so on with material they said had been
14 generated pre-bid about the real bidder, all right? The
15 County said strict construction of the procurement rules
16 we're going to knock out Richardson as a bidder and we're
17 going to award it to McClam and they awarded it to McClam,
18 all right? Richardson sought a temporary injunction or
19 a TRO from me, y'all resolved that, and then DeAndrea
20 Benjamin heard the motion more fully and she denied the
21 motion for a temporary injunction saying that the County
22 could properly look at its rules and enforce them,
23 particularly in light of the accelerated schedule for this
24 matter that was argued before her, all right?

25 The mandamus, it kind of trails alongside that as

1 of no real consequence except that it raises a troubling
2 issue, Mr. Nicholson. Y'all say well, McClam -- these
3 folks are not gonna be hurt because they've got a
4 procurement procedure within the County and they say that
5 the County has not appointed its procurement review panel,
6 nor has it a procurement review officer, and yet it has
7 all these regulations, I'm quite familiar with them from
8 -- from both my practice days as well as my judging days,
9 and it says those regulations put them there, that y'all
10 argue they can't go into court, they have to go through
11 this administrative procedure, but they say you're, in
12 effect, denying them any legitimate due process because
13 you haven't got these things in effect, so tell me about
14 that.

15 **MR. NICHOLSON:** Your Honor, it's our position that
16 Judge Benjamin has already decided the issue with regard
17 to --

18 **THE COURT:** Judge Benjamin didn't decide the issue of
19 whether -- anything about this procurement director. She
20 merely decided that she was not going to grant a temporary
21 injunction.

22 **MR. NICHOLSON:** Your Honor, I can tell the Court on
23 behalf of the County there is a procurement director for
24 the County named Curt -- Chris Younts, Y-O-U-N-T-S.
25 Director of Procurement.

1 **THE COURT:** All right. And how about the procurement
2 review panel? Is it in existence?

3 **MR. NICHOLSON:** Yes, ma'am, there's --

4 **THE COURT:** Have they been duly appointed by the
5 County?

6 **MR. NICHOLSON:** Three -- three of the five positions
7 have been appointed by the County, Your Honor, and that --

8 **THE COURT:** And how about the other two positions?

9 **MR. NICHOLSON:** They have not been filled yet.

10 **THE COURT:** Why have they not been filled?

11 **MR. NICHOLSON:** They have had difficulty finding
12 people -- as I understand it, they have had difficulty
13 finding people willing to serve.

14 **THE COURT:** Well, you know, that's just not
15 acceptable, Mr. Nicholson. I'm gonna tell you that right
16 now. It doesn't go to anything that's gonna happen with
17 the rest of this hearing, but people depend -- you've got
18 one of the most serious bid controversies that the County
19 has been involved in in a long time. This Jushi plant is
20 a big new investor relocation here, all right, there's an
21 accelerated timetable, and you needlessly -- and I say you,
22 meaning the County, the County needlessly puts in something
23 that could end up being a big legal question about this
24 instead of going ahead and appointing some people to the
25 review panel. Politics or nothing else should interfere

1 with putting some people in there to perform these duties;
2 otherwise, you don't have due process for these people.
3 You've got three out of five. They're gonna argue if they
4 take this -- if they're not given satisfaction in both
5 proceedings, they're gonna be arguing until the cows come
6 home I had to -- I had a burden of persuasion that was
7 impossible to meet because I didn't have a full procurement
8 panel.

9 **MR. NICHOLSON:** Your Honor, it's the County's --

10 **THE COURT:** So why don't I -- I grant their mandamus
11 and require that the County at least not foolishly -- I
12 mean, that's the kind of thing that gets people frustrated
13 with local government is they foolishly complicate with
14 needless legal issues things that ought to be pretty easy
15 to deal with.

16 **MR. NICHOLSON:** Your Honor, it's -- the County
17 believes that the procurement code can be read to mean
18 that as long as we have a quorum --

19 **THE COURT:** Why complicate it by nitpicking and
20 deciding whether or not a quorum is satisfactory? Why not
21 go ahead and have a full panel so that there's no question
22 that these people have got a full due process procedure as
23 is provided in the regulations.

24 **MR. NICHOLSON:** That is certainly a question for
25 County Council.

1 **THE COURT:** Well, if I pass a mandamus, that would
2 solve that problem; would it not?

3 **MR. NICHOLSON:** Yes, ma'am, but we don't have that
4 before you at this point. We have a motion to dismiss.

5 **THE COURT:** Well, you have a motion to dismiss and
6 they've got a competing motion for -- and they've got a
7 competing request for mandamus that's been pending since
8 I heard this matter; am I correct?

9 **MR. NICHOLSON:** Well, yes, the --

10 **THE COURT:** That mandamus they filed right when they
11 started this thing.

12 **MR. NICHOLSON:** Yes. Yes, ma'am, the complaint, and
13 since then we -- our position is that we have enough; that
14 three can decide it. That is legally sufficient.

15 **THE COURT:** I understand your position. You're
16 needlessly complicating this by having to force somebody
17 to absolutely rule here on your, quote unquote, legal
18 position instead of doing what practical, sensible
19 management would say and just going on and appointing the
20 rest of the people to this procurement panel.

21 **MR. NICHOLSON:** Ma'am, I don't know that -- for
22 example, if the County says to Individual A will you fill
23 this position --

24 **THE COURT:** They can go right down the line. I've
25 been in positions of appointment many times, Mr. Nicholson.

1 That argument just really is not a persuasive argument to
2 me. They've got a big procurement controversy pending and
3 in the face of that they want to rely on some legal
4 technicality about quorums instead of going on and
5 filling out the commission that's supposed to hear these
6 procurement controversies. That's foolish.

7 MR. NICHOLSON: Your Honor, I think it's clear that
8 -- and I understand the Court's reading of this and
9 certainly the County will -- will hear what's said loud
10 and clear.

11 THE COURT: We'll -- we'll put that to the side for
12 a moment, but I can tell you that is a foolish, foolish
13 course of action on your client's part and it's typical
14 of what happens sometimes in this county that things that
15 seem very clear and easy to do are getting wrapped around
16 the axel and all kind of legal arguments and proceedings
17 when the practical thing to do would be to simply go on
18 and do the right thing and appoint the panel. You've got
19 people that decline to act. This is a county of hundreds
20 of thousands of people and there's not a limited number
21 of people who could fill these positions.

22 MR. NICHOLSON: Yes, ma'am. Yes, ma'am. I
23 understand. I understand. And I certainly will convey
24 the Court's wise wisdom to the County.

25 THE COURT: Well, I haven't decided yet whether or

1 not to go further than to lecture you a little bit about
2 it and hope that the County takes heed, but you are
3 playing with fire and so are they.

4 MR. NICHOLSON: Yes, ma'am.

5 THE COURT: I might be the one that ends up deciding
6 this, but if you put little things like this into the
7 record, a refusal to do the common sense sensible thing
8 and have at all times a procurement panel in place that's
9 got all the members it needs to have and you complicate
10 something that's already on a tight timetable.

11 MR. NICHOLSON: Yes, ma'am.

12 THE COURT: All right. Motion to dismiss.

13 MR. NICHOLSON: All right. The primary ground for
14 our motion to dismiss is that the Court's exclusive
15 jurisdiction for this entire matter rests with the court
16 of appeals. Your Honor, the -- this matter -- after
17 Judge Benjamin heard this order -- or heard this matter
18 and issued her order, the Plaintiff issued their amended
19 -- an amended complaint and a couple of days later on, I
20 think, January 23rd filed a notice of intent to appeal
21 Judge Benjamin's order. It's our position, Your Honor,
22 that Judge Benjamin's order affected all matters within
23 the case so that this entire matter is in the court of
24 appeals.

25 Your Honor, Appellate Rule 203 and 241(a), which I

1 know you're very familiar with, the appeal does not affect
2 matters -- or, excuse me, matters that are not affected by
3 the appeal are still heard in the court below; however,
4 clearly the TRO cause of action, the first cause of action,
5 is gone, the temporary injunction is the cause of action
6 that was heard, and it was only a temporary injunction so
7 that is, in essence, a final order, Your Honor, because
8 there was no request for a permanent instruction, and I've
9 heard the Court's thought and appreciate the Court's advice
10 on the position on the writ of mandamus, but we do believe
11 that Judge Benjamin in determining that there was an
12 adequate remedy in law did accept the fact --

13 **THE COURT:** What -- what was her -- what did she
14 determine was an adequate remedy of law?

15 **MR. NICHOLSON:** The fact that there is a procurement
16 process included --

17 **THE COURT:** You're exactly right. Just what we've
18 been talking about.

19 **MR. NICHOLSON:** Yes, ma'am. But the arguments were
20 made that there was a three-person procurement panel as
21 opposed to five and she held there was an adequate remedy
22 in law meaning to us that she made a factual determination
23 that a three-person procurement panel was a sufficient
24 panel to go forward; otherwise, she couldn't have made a
25 finding there was an adequate remedy in law.

1 **THE COURT:** And -- and what was her final ruling? She
2 denied the request for a temporary injunction, correct?

3 **MR. NICHOLSON:** Yes, ma'am. Yes, ma'am.

4 **THE COURT:** So she has not taken any action to grant
5 the temporary restraining order, right? She's denied the
6 request.

7 **MR. NICHOLSON:** Yes, ma'am.

8 **THE COURT:** So tell me how that puts all matters in
9 front of the court of appeals.

10 **MR. NICHOLSON:** She -- she denied it, but she made
11 findings of fact as part of that and the County --
12 remember, the County didn't put this thing in court. The
13 County had the protest mechanism through the procurement
14 director and the County didn't appeal it. The Plaintiff
15 appealed this thing.

16 **THE COURT:** Yeah, that's why I can't understand for
17 the life of me why you're advancing the argument that
18 there's no other court but the court of appeals that has
19 jurisdiction to hear this.

20 **MR. NICHOLSON:** Because the -- Richardson appealed
21 it. I mean, I don't know why they appealed it. I mean,
22 if they hadn't appealed it, the procedure would have
23 progressed.

24 **THE COURT:** Yes, but there are plenty of cases in
25 which appeals from the denial of motions are -- ordinarily

1 are not allowed to be taken. Injunctions are one of the
2 few things that is a limited exception in that, but
3 ordinarily the denial of a motion is not appealable and
4 they've taken an appeal. I haven't studied the appeal
5 enough to understand whether or not it is even properly in
6 front of the court or it's dismissible because it's not
7 appealable, but let's assume for the sake of argument it's
8 appealable. What's being appealed is the denial of their
9 request for relief. That means that since their request
10 for relief is denied, all right, this matter goes forward.

11 **MR. NICHOLSON:** Your Honor, our -- our position is
12 that in the denial the judge had to make findings of fact.
13 The judge -- there were --

14 **THE COURT:** Findings of fact -- findings of fact do
15 not -- do not prevent the -- it's the relief that's granted
16 that the court of appeals looks at it and the Supreme Court
17 looks at to see what the ambit of the appeal's impact has
18 on pending litigation. This is the denial of a particular
19 piece of temporary relief and whether there were all kinds
20 of other findings made or not the ruling of the court was
21 to deny a request for a temporary injunction. I frankly
22 don't understand the County's position on this. It would
23 seem to me you would prefer to go forward on the merits and
24 have your arguments with respect to the dismissal of this
25 matter heard on the merits because you've got a very clear

1 legal argument about the authority of the County to require
2 strict adherence and particularly in a matter that has this
3 kind of a timeline. So I don't -- I guess I'm very, very
4 curious as to why you take -- why you are even arguing
5 this.

6 **MR. NICHOLSON:** Your Honor, we --

7 **THE COURT:** I understand when Ms. McDaniel gets up
8 here she may want to argue that, but I don't understand
9 the County's position at all.

10 **MR. NICHOLSON:** We wouldn't be here today if they
11 hadn't filed an action in court and they had instead --

12 **THE COURT:** Well, they filed an action and they're
13 entitled to do that and it would seem to me that the
14 County's approach ought to be what resolves this the
15 quickest if, in fact, you've got a time situation that is
16 affecting what you do.

17 **MR. NICHOLSON:** Your Honor, the process is to file a
18 protest with the procurement director who then issues the
19 decision --

20 **THE COURT:** When did this procurement director get
21 appointed by the way?

22 **MR. NICHOLSON:** The new one just got appointed;
23 however, the prior one, Christy Swofford, whose affidavit
24 was submitted and Judge Benjamin relied on, was the
25 assistant procurement director and her job description

1. stated that she would serve as the procurement director
2. in the event of her superior being absent.

3. **THE COURT:** So it wasn't until after they griped
4. about this thing that y'all even got around to appointing
5. a permanent procurement director; is that correct?

6. **MR. NICHOLSON:** Well, Your Honor, they were -- the
7. procurement the director position was vacant before they
8. -- before this.

9. **THE COURT:** Uh-huh. And it didn't get appointed
10. until after they raised questions about the absence of the
11. procurement director when you argued hey, you can't even
12. come to court because you've got this remedy you've got to
13. exhaust in the County?

14. **MR. NICHOLSON:** Your Honor --

15. **THE COURT:** It's an empty remedy because I don't have
16. a procurement director to appeal to nor do I have a full
17. procurement review committee.

18. **MR. NICHOLSON:** Your Honor, we do have a -- it's just
19. like having a vice president. I mean, we have a -- we
20. have an assistant procurement director who in her job
21. description took the --

22. **THE COURT:** So is your position that -- I mean, is it
23. your position that they can't even -- that they can't be
24. in court because they have to go through the procurement
25. review process? Is that your position?

1 **MR. NICHOLSON:** That's part of it. What they -- it's
2 our position if they dismiss the appeal and stay this
3 complaint they can go through the procurement process on
4 the administrative level like they should. That's really
5 where -- where this is all at. I mean, it's our -- our
6 position they never should have filed anything in court in
7 the first place --

8 **THE COURT:** Well, I understand that.

9 **MR. NICHOLSON:** -- that they should have gone through
10 the administrative process.

11 **THE COURT:** Right.

12 **MR. NICHOLSON:** Then they appealed it. Why they
13 appealed it, I don't know, but --

14 **THE COURT:** Well, I understand very well why they
15 filed the lawsuit because you didn't have a procurement
16 review director as they saw it in place and you didn't have
17 a full procurement review panel. You may not agree with
18 those arguments, but that's the reason that they went
19 forward and I understand their argument in that regard.
20 But we're not gonna get anywhere by just berating them for
21 filing the lawsuit. What you've got to do is tell me what
22 you want done now.

23 **MR. NICHOLSON:** Well, Your Honor, if you fundamentally
24 disagree with our proposition that the judge made findings
25 of facts in denying --

1 **THE COURT:** I don't see where that has anything to do
2 with what we're doing right now. Let's move away from
3 whether the court of appeals appeal, all right, forbids
4 this Court from looking at it. I understand your
5 arguments, Ms. McDaniel I'm sure is gonna make some
6 arguments, but let's move to the merits of the motion to
7 dismiss.

8 **MR. NICHOLSON:** Well, that was our first ground and
9 our primary ground, Your Honor. The next ground was
10 exhaustion of remedies, which is, as I think as the Court
11 pointed out, to go through the administrative process and
12 we would ask the Court to dismiss or stay this matter until
13 a procurement director issues an opinion and assuming they
14 don't like the opinion, they can appeal to the procurement
15 review panel per the statute, the procurement review panel,
16 and we think the quorum -- we think two out of three, a
17 quorum of three, is sufficient under the ordinance to do --
18 to render an opinion and it goes that way. That's the
19 process. It goes through the administrative process. If
20 they don't like that, the statute provides for an appeal to
21 the Court from the decision of the procurement review
22 panel. That's what -- that's where we think this ought to
23 go, so we think this whole court action ought to be stopped
24 and let them go through the procurement review process, but
25 from our standpoint they filed an appeal which stuck us up

1 there in court of appeals land.

2 **THE COURT:** Well, how does the appeal -- if you think
3 the appeal prevents this Court from reviewing this matter,
4 then what effect does it have on the procurement review
5 panel's ability to look at this matter?

6 **MR. NICHOLSON:** Your Honor, the -- what has happened
7 is we have a finding by the judge in her order that
8 essentially upheld the findings of the procurement director
9 and if you look at Page 5 of the judge's order, it says
10 further this court finds the determination of the Richland
11 County procurement director not to waive plaintiff's bid
12 error as rationally based and she goes on and states the
13 determination of such an error does not constitute a
14 nonmaterial error as reasonable in light of bla, bla, bla.
15 Those are on pages 5 and 6 of the order. And it's our
16 position that the Plaintiffs, if they chose to go to court
17 and get a court order, they've got a court order adverse to
18 them which uphold's the County's position. So if they want
19 to continue the court process -- continue the court process
20 on this appeal, but we have an order in our favor. There's
21 really nothing for us to do at the administrative level
22 until and unless they dismiss this appeal because we have
23 an order which we construed as upholding our procurement
24 director's decision.

25 So, I mean, it's kind of a dual box in the sense that

1 if the County goes -- if the County felt it didn't have the
2 jurisdiction because this whole thing was on appeal but we
3 have an order since they decided to file the lawsuit, we
4 didn't file the lawsuit, we didn't file the appeal, they
5 filed the lawsuit and they got an order that in our view
6 bound them and had a determination adverse to them that
7 essentially says that we acted -- that is the County
8 procurement director acted properly which takes all of the
9 wind out of their case.

10 **THE COURT:** All right.

11 **MR. NICHOLSON:** So -- Your Honor, so that froze things
12 on the County's side. So now if -- you know, again, it
13 wasn't our decision to go to court. So the background of
14 this is that they've chosen court and they can go to the
15 appellate court and the appellate court can decide if Judge
16 Benjamin was right or not and decide what her findings were
17 and the findings will be, we think, to uphold the fact that
18 the acting procurement director acted properly at the time
19 and at that point we'll have issues of collateral estoppel
20 and res judicata and that sort of thing involved at the
21 administrative level, but, Your Honor, we believe -- again,
22 if the --

23 **THE COURT:** Where is the procedure in Richland County
24 from your perspective? Judge Benjamin ruled in December
25 that the procurement director had made a ruling and that

1 the matter could now be pursued before the procurement
2 review panel. Like she said that the Plaintiff initially
3 sent its protest letter to the procurement review panel
4 and acting procurement director. On December the 16th
5 they filed a protest to the procurement director, all
6 right? To the present date, the plaintiff has submitted
7 no evidence to demonstrate the procurement director has
8 released a determination of its protest. Now what has
9 happened there? Because on one hand you say that the
10 procurement director made a finding, but on the other
11 hand you say that Judge Benjamin says that they -- the
12 procurement director has not issued a finding, all right?
13 Apparently you've got a limited period of days to do that.
14 What happened there?

15 MR. NICHOLSON: Well, the distinction is the
16 procurement director found their bid nonresponsive --

17 THE COURT: Right.

18 MR. NICHOLSON: -- and that is -- and what Judge
19 Benjamin's holding is, is that the procurement director
20 was proper in --

21 THE COURT: But that was reasonable, right?

22 MR. NICHOLSON: That was reasonable. And so if that
23 -- if that was reasonable, they are -- if they had a
24 nonqualified bid, it's over for them. That's --

25 THE COURT: Do they have any ability to appeal to

1 the procurement director and the procurement review panel
2 in your view?

3 **MR. NICHOLSON:** As long as this matter --

4 **THE COURT:** Because she says they do. She says they
5 just haven't done it.

6 **MR. NICHOLSON:** They -- well, they do because we've
7 got these two different tracks. Again, if they had
8 followed the administrative track, that's what we would be
9 doing, but they went to court instead so now we're in a --
10 were in a legal world of their own creation. They moved
11 for this order, they got -- they got the order, they got
12 an order that was against them, then they appealed it.
13 So they put us in this world, we didn't put them in this
14 world.

15 **THE COURT:** All right.

16 **MR. NICHOLSON:** So that -- I mean, Your Honor, so
17 that's the problem we have here. I mean, you know, I
18 know that they -- I understand the TRO and some of this
19 kind of stuff about -- before to prevent us from awarding
20 a contract before the temporary injunction was heard,
21 but that was heard and the judge decided it and decided
22 directly on point against them and there's a ruling against
23 them, so the County believes that that ruling controls as
24 long as they keep this thing in court.

25 **THE COURT:** All right. I think I understand your

1 position.

2 MR. NICHOLSON: Thank you, ma'am.

3 THE COURT: Anything else you want to say before I
4 turn to Ms. McDaniel? You'll have some time in reply.

5 MR. NICHOLSON: I'll just wait for my reply, ma'am.

6 THE COURT: All right. Ms. McDaniel.

7 MS. McDANIEL: Yes, Your Honor. I've got my things
8 here. May it please the Court?

9 THE COURT: Yes, ma'am.

10 MS. McDANIEL: Your Honor, Kathleen McDaniel for
11 Richardson Construction Company. I believe that on the way
12 over here -- let me first introduce Thomas Larkin. He is
13 the representative of Richardson Construction Company.

14 THE COURT: All right.

15 MS. McDANIEL: On the way over here, I was talking
16 with him about what was gonna happen at this hearing and
17 my question was whether we were going to get wrapped up
18 in technicalities or whether this would be, you know, a
19 hearing about what's really at issue here, and I believe
20 that you have cut to the chase of what we're dealing with.

21 The facts are that Richardson Construction filed a
22 procurement appeal and a procurement protest, so there
23 are actually two separate proceedings pending in
24 Richland County that should have been going through the
25 administrative procedure and the procurement code. And

1 let me make the distinction. I think that the distinction
2 between these two proceedings have kind of been lost and
3 it may be important here.

4 The first is on December -- let me get my timeline.
5 On December 2nd Gerald Seals, who was at that time interim
6 County administrator, wrote a letter to the County Council
7 representing that McClam be awarded the bid. We received a
8 copy of that letter prior to County Council voting as part
9 of the agenda packet for the December 6th County Council
10 meeting. When we saw that, I obviously read through the
11 procurement code and it appeared to me that Section 2-62 --
12 621.4 covered sort of a catchall situation. It's not a
13 protest of the bid solicitation or the contract award and
14 it's not an issue of debarment and it's not a contract
15 dispute. Each of those three situations where you have a
16 concern about the procurement decision those have a very
17 specific administrative procedure that needs to be
18 followed. In this situation, what we're looking at is --
19 let me get to it.

20 MR. NICHOLSON: Your Honor, I've got a copy -- an
21 extra copy of the ordinance if the Court would like it.

22 THE COURT: Sure. That would be very helpful.

23 MS. McDANIEL: Thank you, Ned.

24 THE COURT: All right. Thank you, sir.

25 MS. McDANIEL: All right. So the section that I'm

1 talking about is 2-621.4.

2 THE COURT: All right. 216? I thought you --

3 MS. McDANIEL: 621.4.

4 THE COURT: 621.4. Right.

5 MS. McDANIEL: Yes, Your Honor. All right. And in
6 that section it grants the procurement review panel the
7 authority and the responsibility to provided administrative
8 review of lots of other things and then on the one, two,
9 three, four -- fifth line it says or any other decision
10 policy or procedure arising from a concern of the
11 expenditure of County funds. It was under that
12 administrative procedure that we filed an appeal. We
13 termed it appeal because there really was no other word
14 for it directed to the procurement review panel because
15 there is no stated administrative procedure requiring that
16 type of decision to go first through the director of
17 procurement, so that is still pending. That matter, as I
18 said, was filed on December 6th, 2016.

19 THE COURT: Was that before or after the bid award was
20 made?

21 MS. McDANIEL: That was before, Your Honor. That was
22 the day before.

23 THE COURT: I see. So the first thing you did was to
24 protest or appeal the decision of the interim County
25 administrator?

1 **MS. McDANIEL:** Right, Your Honor. That was the
2 recommendation and that recommendation was based in part
3 on his determination that there could be no correction of
4 minor technicalities in a bid after submittal.

5 **THE COURT:** So he wrote a letter to County Council and
6 in that letter several decisions were discussed?

7 **MS. McDANIEL:** That's correct.

8 **THE COURT:** The decisions that affect you were the
9 decisions to disqualify Richardson as a responsible and
10 responsive bidder because of a mistake that was made in
11 putting in a nonqualified minority contractor, right?

12 **MS. McDANIEL:** That's correct, Your Honor. That's
13 exactly why.

14 **THE COURT:** So that's made and then as a result of
15 that you said the lowest qualified bidder is McClam and I
16 recommend you award McClam, right?

17 **MS. McDANIEL:** That's correct, Your Honor.

18 **THE COURT:** So that's the first thing you -- so he
19 had already made his decision and you were appealing his
20 decision to the review panel, correct?

21 **MS. McDANIEL:** Correct. We were appealing it as best
22 we could because there was no -- no apparent requirement
23 that that decision be first reviewed by the director of
24 procurement. On December 6th the County Council voted to
25 award the contract to McClam and, thereafter, we filed our

1 protest, what you would consider your traditional contract
2 award protest, with the director of procurement. So I
3 believe that subtlety --

4 **THE COURT:** So you've got -- you've got two things
5 going. The first thing was you appealed to County
6 procurement the knocking out of you as a responsible and
7 the responsive bidder and then the next thing you did was
8 to protest the award to McClam. Two different cases,
9 right?

10 **MS. McDANIEL:** That's correct, Your Honor.

11 **THE COURT:** All right.

12 **MS. McDANIEL:** And the first went directly to the
13 procurement review panel and the second went to the
14 director of procurement.

15 **THE COURT:** All right. What happened with those?

16 **MS. McDANIEL:** Your Honor, nothing has happened. This
17 is first that I've heard that a director of procurement has
18 been appointed. I had no idea that that happened. Prior
19 to -- gosh, beginning at the end of November through
20 December, I had been in contact with the County trying to
21 figure out who was on the procurement review panel and at
22 the time that I filed the initial complaint had received
23 no information about the members of the procurement review
24 panel and that's alleged in the complaint and by the time
25 that we filed the amended complaint there, again, had

1 received no information about who the members of that
2 procurement review panel were. So --

3 **THE COURT:** Now the next thing you did was to file
4 something in circuit court, right?

5 **MS. McDANIEL:** That's correct, Your Honor.

6 **THE COURT:** And he says well, if you had only pursued
7 your rights before the procurement panel you wouldn't have
8 had to go to circuit court and that's the way you should
9 have done it and what's your response to that?

10 **MS. McDANIEL:** Your Honor, our response is that we
11 attempted to pursue our rights through the procurement
12 review panel, but it appeared to us that there was none
13 existing to be able to vindicate our rights. Whether we
14 win or lose --

15 **THE COURT:** Did you ask them please schedule a
16 hearing, please tell us who's on the panel, et cetera,
17 et cetera?

18 **MS. McDANIEL:** Well, Your Honor, I certainly did,
19 yes. I don't know that I specifically asked them to
20 schedule a hearing, but I --

21 **THE COURT:** That would be pretty key, wouldn't it?

22 **MS. McDANIEL:** Well, I sent at least one -- I sent
23 multiple e-mails asking who the members of the procurement
24 review panel were.

25 **THE COURT:** What was the response?

1 **MS. McDANIEL:** No response, Your Honor. I eventually
2 had to file a Freedom of Information Act request to get
3 that information and at the time that I received the
4 information from the Freedom of Information Act request
5 there was no -- there was no identity of a director of
6 procurement provided along with that. And, Your Honor,
7 I'm certainly happy to provide the Court with copies of
8 those e-mails --

9 **THE COURT:** Well, what's the bottom line of what they
10 told you? Who's on the procurement review panel?

11 **MS. McDANIEL:** There are specific -- there are three
12 people. There were names of three people that were sent to
13 me. My concern, however, is that it's not only the number
14 of members of the procurement review panel that's required.
15 They also have to meet certain qualifications and if you
16 look at that same 621.4, there are five categories of
17 industry that the members of the procurement review panel
18 must fill, so there's got to be one from the public
19 procurement arena, one from the service industry, one from
20 the construction industry, professional services and the
21 consumer industry.

22 **THE COURT:** And the three that are appointed, what
23 qualifications do they have or do you know?

24 **MS. McDANIEL:** Well, Your Honor, I'd have to go back
25 and look at my documentation, but I believe one person was

1 appointed back in the nineties and there was no information
2 regarding their qualifications. For two of the people
3 there was no information to be found regarding their
4 qualifications and for one person there was an application
5 that was rather vague. So that's an open question as to
6 whether they are actually qualified to be members of the
7 procurement review panel and that's certainly something
8 that would be part and parcel of what I would request from
9 them.

10 **THE COURT:** Okay. So you filed your lawsuit on --

11 **MS. McDANIEL:** We did, Your Honor. And we certainly
12 didn't mean to complicate things, but we did everything
13 that I could to protect my client's interests in this
14 rather large construction project when it appeared that --
15 we wanted to get things stayed so that we could quickly get
16 before the procurement review panel so that, you know,
17 there would be no question down the road if the procurement
18 review panel chose to re-bid the contract to everyone or to
19 re-award it to us because the idea was that if we stayed
20 the signing of the contract temporarily to let the
21 procurement review panel make that decision it would be a
22 lot easier for everybody down the road.

23 **THE COURT:** But Judge Benjamin ruled otherwise.

24 **MS. McDANIEL:** She did. She certainly did and we have
25 appealed that.

1 **THE COURT:** Now what's your position about whether
2 that stays everything in circuit court?

3 **MS. McDANIEL:** Your Honor, my position is that it
4 certainly does not. That our causes of action for mandamus
5 and for violation of due process are still very much alive
6 and that is consistent with Judge Benjamin's subsequent
7 rulings. I filed a Rule 59(e) motion on the original order
8 pointing out several things that had not been considered
9 that I thought she needed to consider. She denied that
10 motion with a Form 4 and on the Form 4 that she issued she
11 or the clerk, I'm not exactly sure who, had stricken the
12 box saying this order ends this case. When I saw that, I
13 said well, actually it doesn't end this case because I
14 still have the writ of mandamus cause of action and
15 violation of due process action. So I filed the 59(e)
16 motion. I loathe to filed a subsequent 59(e), but I wasn't
17 sure how else to handle it, so I filed a 59(e) and a Rule
18 60 motion asking for -- asking essentially is this just an
19 error, a clerical error, that needs to be corrected and in
20 that motion, the basis for my motion, was that the mandamus
21 and the due process violation causes of action were still
22 alive, and that motion was granted. We received an amended
23 Form 4 explaining very clearly that the -- the denial of
24 the 59(e) motion, not the original denial, the temporary
25 injunction, did not end the case, and to me, you know, to

1 the extent that it did not end the case in the circuit
2 court, those causes of action are still alive here. That
3 is it the evidence from the Court's perspective.

4 **THE COURT:** Well, essentially the causes of action
5 that are left are causes of action that all address the
6 authority of the council to make this award or -- I mean,
7 you've got two things that you initially fussed about. One
8 was to declaring that you weren't responsive and the other
9 was awarding to McClam.

10 **MS. McDANIEL:** Correct, Your Honor.

11 **THE COURT:** What -- what is the suit asking now to be
12 reviewed?

13 **MS. McDANIEL:** The lawsuit pending here in this court
14 or the lawsuit pending before the procurement --

15 **THE COURT:** The lawsuit pending here.

16 **MS. McDANIEL:** The lawsuit pending here is asking for
17 this Court to order the administrative process to go
18 forward in Richland County.

19 **THE COURT:** What -- what happens to the appeal?

20 **MS. McDANIEL:** Well, the appeal would continue. You
21 know, obviously we have appealed it. That is of lesser
22 importance --

23 **THE COURT:** And what -- what would be in front of the
24 procurement folks if they reviewed the matter?

25 **MS. McDANIEL:** What would be in front of them would

1 be, you know, the plain vanilla procurement question.

2 THE COURT: Which is?

3 MS. McDANIEL: Whether or not the contract was
4 properly awarded to --

5 THE COURT: McClam.

6 MS. McDANIEL: -- McClam.

7 THE COURT: And whether or not you were improperly
8 disqualified?

9 MS. McDANIEL: Correct.

10 THE COURT: All right. Now what is gonna be the
11 parameter of what's gonna be looked at by the court of
12 appeals in connection with this matter?

13 MS. McDANIEL: The only thing that -- in terms of what
14 the court of appeals is looking at is whether or not the
15 signing of the -- whether or not action by McClam should
16 have been stayed pending a review by the procurement review
17 panel.

18 THE COURT: Whether awarding the contract should be
19 stayed or whether it should now be stayed until --

20 MS. McDANIEL: Correct.

21 THE COURT: -- your procurement hearing is complete?

22 MS. McDANIEL: That's correct, Your Honor. Whether
23 the -- whether the -- whether Judge Benjamin erred --

24 THE COURT: And, of course, Judge Benjamin said that
25 the reason it would not be stayed is because you have an

1 adequate remedy of law in the County proceeding that could
2 go on in parallel.

3 **MS. McDANIEL:** Correct, Your Honor, which has not
4 been going on.

5 **THE COURT:** And you say -- you say it's not going
6 on --

7 **MS. McDANIEL:** Correct.

8 **THE COURT:** -- they don't have a panel that's properly
9 composed under the law and, therefore, you, in effect,
10 don't have any parallel remedy and that's why she was wrong
11 to have not enjoined the contract.

12 **MS. McDANIEL:** That's correct. I mean, that is
13 essentially our argument, Your Honor, but everything that
14 has happened, you know, post her decision in terms of there
15 being no action by Richland County, I don't know if that
16 would really be before the court of appeals. I'd like for
17 it to be, but it certainly -- I don't believe that it would
18 be.

19 **THE COURT:** When you get to the heart of this thing,
20 which is quite apart from the award to McClam, let's put
21 that one aside for a moment, why does not the County have
22 the authority under its own procurement regulations as well
23 as the State procurement regulations, to decide whether or
24 not it is going to exercise its grace and let a bidder
25 amend their bid to correct something or whether it is going

1 to strictly construe what has been sent as the bid and
2 throw them out if their bid as initially submitted does not
3 comply with the requirement? Why doesn't the County have
4 the -- and the procurement director have the absolute
5 ability to do that under the current law?

6 **MS. McDANIEL:** Well, Your Honor, that's certainly an
7 argument of law that we would be making to the procurement
8 review committee.

9 **THE COURT:** Well, that's what -- that's the heart and
10 soul of this thing.

11 **MS. McDANIEL:** Right. And, ultimately, in addition --
12 well, we believe that in other portions of -- well, number
13 one, it's inconsistent with the -- the procedures as they
14 have been used by the Richland -- the Penny Tax Program in
15 the past using certain guidelines I think that probably
16 were taken from the Department of Transportation
17 guidelines.

18 **THE COURT:** Are you arguing that they've given some
19 leeway to other builders in the past and, therefore, you --
20 I don't understand.

21 **MS. McDANIEL:** No, Your Honor. No, Your Honor. I'm
22 not -- I'm not arguing that they necessarily have given
23 anyone any leeway, but they have used guidelines in the
24 past that would have permitted the giving of leeway.

25 **THE COURT:** Well, let's assume for a minute that they

1 are permitted and were permitted when the -- the acting
2 procurement director took the action he took. Let's assume
3 that this, again, was a judgment call for that procurement
4 director to make, that the law allowed the procurement
5 director to construe the requirements, all right, strictly
6 and say hey, if you filed a bid that does not meet our
7 requirements because we're on a tight timeline here and so
8 forth we're going to the next responsive bidder. Your bid
9 can't be awarded on the basis of what it is and we're not
10 gonna delay the process and allow you to amend and invite
11 the other -- the awarded side to protest and so forth and
12 so on. If you don't put something in the bid that is a
13 major thing, and minority contracting is a major thing, if
14 you slip up there whether inadvertently or otherwise,
15 you're out. What -- just because they have the ability to
16 waive the requirements doesn't mean they are required to do
17 that in every case, does it?

18 **MS. McDANIEL:** No, Your Honor, it certainly doesn't
19 require that, but the decision of the County administrator
20 or the decision of the County Council or the decision of
21 the procurement director that's not the final procurement
22 decision of the County. There is the administrative
23 process that must be followed. All of those are, you know,
24 appealable to the procurement review panel.

25 **THE COURT:** Well, I understand all of that, but, I

1 mean, that gets into the award to McClam. We've got two
2 things going on. It really doesn't matter much to you
3 like the award to McClam if you were found to have been
4 nonresponsive, you're out of it.

5 **MS. McDANIEL:** Well, Your Honor, we -- we obviously
6 do not agree with the fact that we're nonresponsive and
7 that's an argument that we would make to the procurement
8 review panel. We would also certainly argue that McClam
9 was nonresponsive and I filed a supplement to our award
10 protest setting forth the reasons why McClam was
11 nonresponsive as well so that the whole thing should be
12 re-bid.

13 **THE COURT:** All right. Why weren't they responsive?

14 **MS. McDANIEL:** They weren't responsive because they --
15 for the minority contracting there's the Disadvantaged
16 Business Enterprise, DBE, and there's also local -- Small
17 Local Business Enterprise percentages that must be awarded
18 to, you know, local folks and they awarded -- they used one
19 contractor for both of those minority contracting awards.
20 So, in effect, one contractor qualified for their DBE and
21 there SLBE.

22 **THE COURT:** Is there something in the rules that says
23 you can't do that?

24 **MS. McDANIEL:** There's not anything in the rules, Your
25 Honor, that says that you can't do that, but through a

1 Freedom of Information Act request I received a copy of an
2 e-mail from the procurement office to the people making
3 this decision saying that you can't do that, that it was
4 not the County's -- that the bidders needed to be told
5 about that, that they couldn't use them for both, and that
6 the person handling the bidding at that point said well,
7 we'll just tell them after the fact once the bid is awarded
8 and we'll fix it later. And I -- I mean, I'm talking about
9 something that I, you know, have an e-mail. I didn't bring
10 that with me, but you asked me the question, so.

11 **THE COURT:** Yeah, I'm asking you the question and they
12 can be uneasy in their seats, but they're gonna get a
13 chance to respond later.

14 **MS. McDANIEL:** Okay. And, you know, I certainly
15 didn't think we would get into that today, but I believe
16 whether or not our arguments before the procurement
17 review panel, you know, satisfy the Court really aren't
18 at issue. The fact is that we should have our day before
19 the procurement review panel to make any and all arguments
20 that we might have.

21 **THE COURT:** Here's how I interpret Judge Benjamin's
22 order. She's ruling primarily on the issue of whether or
23 not McClam should have been permitted to have been awarded
24 the contract and the County go on with McClam and get
25 started with construction and you were trying to stop that

1 with that motion for a temporary injunction and she ruled
2 that that -- that the award was properly made and that
3 they ought to be permitted to go forward and, therefore,
4 she wasn't gonna temporarily enjoin, but she realized
5 there was another issue there; one, the issue of your non
6 -- your qualification and, secondly, perhaps the issue of
7 the non-qualification of McClam and she chose to say that
8 all those other issues could properly be reviewed in the
9 administrative process, that you'd get complete relief if
10 you were found to be right here and, therefore, she saw no
11 reason to stop moving forward with McClam. But she -- when
12 you did your Rule 59 activity afterward she made it clear
13 that this didn't end the controversy, that she had simply
14 not enjoined the award to McClam, everything else was up
15 for grabs and, of course, you've now appealed her decision
16 with that and the court of appeals is, therefore, gonna be
17 able to completely review that and decide whether she was
18 right about that argument.

19 **MS. McDANIEL:** That's correct, Your Honor.

20 **THE COURT:** All right. So really the only thing
21 you've got that you can pursue at this time is what's in
22 front of the County procurement authorities.

23 **MS. McDANIEL:** Yes, Your Honor, and that is -- that
24 is what we want. That's all we want.

25 **THE COURT:** And you're really not asking me at the

1 moment to declare that their process is so defective with
2 due process problems, that even, in effect, there's no
3 due process and you ought not have to go through it, you
4 are asking in the mandamus part of this for some kind of
5 ruling from the court that will allow you to go forward
6 with the procurement part of this, right?

7 **MS. McDANIEL:** That is correct, Your Honor, and
8 that's where --

9 **THE COURT:** So we could call agree with Mr. Nicholson
10 on the first question, which is with regard to the award
11 to McClam, I shouldn't delve into that or touch that
12 because that's in front of the court of appeals now and
13 they're gonna rule on that and decide that, but with
14 respect to the disqualification of Richardson and the
15 ancillary issue of the failure to disqualify McClam,
16 you've got an administrative process you're pursuing on
17 that. The question is whether it's adequate.

18 **MS. McDANIEL:** That's correct, Your Honor. And if
19 we --

20 **THE COURT:** And she made a ruling that it was
21 adequate, then on that basis Nicholson says I can't touch
22 it, but you're asking for something a little bit different
23 which is judge, make it adequate, give me a real forum that
24 I can go to that complies with the regulations of the
25 County.

1 **MS. McDANIEL:** Correct, Your Honor.

2 **THE COURT:** And you're saying in that regard old
3 appointments from 1993 that don't even tell you what slot
4 these people are filling, all right, and the fact that
5 you've got to have people in all five different slots and
6 they haven't done that, all right, is something that really
7 hampers my ability to have a due process review of my
8 procurement request.

9 **MS. McDANIEL:** That's correct. That's it.

10 **THE COURT:** Am I summarizing the thing correctly?

11 **MS. McDANIEL:** You said it a lot better than I did.
12 Yes, Your Honor. Thank you.

13 **THE COURT:** Okay. Tell me if you've got any more to
14 add to this and I'm gonna turn it back to McClam and
15 Nicholson.

16 **MS. McDANIEL:** There's plenty more to add to it, but
17 I don't want to complicate it. I think the main points
18 are set forth, Your Honor.

19 **THE COURT:** All right. The next thing I'm gonna do
20 is I'm going to the gentleman that represents McClam.

21 **MR. PEACE:** May it please the Court, Your Honor?

22 **THE COURT:** Yes, sir.

23 **MR. PEACE:** I'm Alan Peace representing McClam.
24 Judge, we've got a motion to dismiss, too. Ours, I think,
25 is probably a lot more simple than what the Court has --

1 has heard up to this point, but the Plaintiff has four
2 causes of action that the Court's been hearing about this
3 afternoon. One is for the TRO. Well, the first one was
4 for the temporary restraining order that's already been
5 heard and disposed of. The second was -- was the request
6 for the temporary injunction, which was heard and disposed
7 of by Judge Benjamin that's currently under appeal. The
8 third one is the mandamus, the writ of mandamus to the
9 County. And the fourth one is for the violation of the
10 procedural due process.

11 Judge, none of those have anything to do with my
12 client. My client is -- is a general contractor that was
13 declared to be the lowest responsible and responsive bidder
14 on this particular project. The plaintiff is not looking
15 for any relief from me. The only relief that the plaintiff
16 is looking for is from the County. She has full remedy
17 against the County, she has no remedy against me. She's
18 not looking for anything from me.

19 **THE COURT:** Well, she says this much about it, and
20 I'm not sure how to regard this, but she says she's got
21 two administrative matters pending in front of the County
22 right now. One of them involves the disqualification of
23 Richardson, but she says the other one involves her protest
24 of the qualification of the determination that McClam was
25 the qualified bidder and she just kind of briefly touched

1 on that. That certainly doesn't involve anything up here
2 at the present time. I agree with you completely --

3 **MR. PEACE:** That's correct.

4 **THE COURT:** -- because that would have to go through a
5 process and presumably you would be a part of that process,
6 all right, as a third -- interested third party. That's
7 generally the way the procurement protests work. They
8 protest the -- in the protest -- in the procurement review
9 panel process McClam would certainly be allowed to be
10 heard, as well as the County, on the question of whether
11 McClam was regarded as the qualified bidder, but that's for
12 this procurement process.

13 **MR. PEACE:** That's correct, Your Honor.

14 **THE COURT:** And that's your argument?

15 **MR. PEACE:** Yes, your Honor.

16 **THE COURT:** And not for anything that this Court would
17 be involved in at the present time?

18 **MR. PEACE:** Judge, there's no relief that the Court
19 can give the plaintiff based on the allegations in the
20 complaint that is before the Court.

21 **THE COURT:** Well, you don't have any dog in the fight
22 as to whether I should mandamus the County to clean up the
23 procurement process because that doesn't affect you at the
24 moment.

25 **MR. PEACE:** That's correct. To the extent that --

1 that down the line that may affect me, my claim would be
2 dealing with the County, would not be dealing with the
3 plaintiff. To the extent that the plaintiff's relief is
4 denied, the plaintiff has no claim against me, so I'm
5 standing back saying why am I in this lawsuit --

6 THE COURT: I got you.

7 MR. PEACE: -- and so we filed our motion to dismiss.

8 THE COURT: I understand completely.

9 MR. PEACE: Your Honor, if I could make one point of
10 clarification on what counsel was talking about just a few
11 minutes ago as far as my client using --

12 THE COURT: One -- one qualified minority contractor
13 for two different pieces of work?

14 MR. PEACE: Your Honor, there -- there was an addendum
15 to the information to bidders in this case or on this
16 project that specifically allows that and if I knew that
17 was gonna be an issue I would have brought it with me
18 today, but there was --

19 THE COURT: But that would be an issue in the
20 procurement process --

21 MR. PEACE: That's correct.

22 THE COURT: -- because that's the foundation of the
23 position that you should be -- to be viewed, but that's not
24 something in front of me right now.

25 MR. PEACE: That's correct. That's correct.

1 **THE COURT:** I got you.

2 **MR. PEACE:** So the basis of my motion to dismiss on
3 the first two causes of action, they're under appeal, so I
4 shouldn't be involved in that -- or we should not be going
5 forward on that. On the mandamus and the violation of due
6 process -- or actually on all four causes of action, I'm
7 entitled to a motion to dismiss under 12(b)6.

8 **THE COURT:** All right. As to your client?

9 **MR. PEACE:** Yes, ma'am.

10 **THE COURT:** All right. Now, Mr. Nicholson, we'll come
11 back to you.

12 **MR. NICHOLSON:** Thank you, Your Honor.

13 **THE COURT:** Mr. Nicholson, I'm gonna tell you as you
14 make your presentation that I am not hostile at all to the
15 notion that there are certain things that are within the
16 purview of the court of appeals and legitimately up there,
17 and that certainly includes the issue of whether the County
18 should be temporarily restrained or enjoined from allowing
19 McClam to go forward. If any other activities are gonna be
20 taken about that, all right, it's gonna be taken by the
21 court of appeals on a regular appeal or they're gonna file
22 some interim motion up there asking temporarily to enjoin
23 while they see whether the temporary injunction should have
24 been, but that's not something I would hear. I agree with
25 that completely.

1 With respect to matters involving the qualifications
2 of McClam or the disqualifications of Richardson, those
3 are not matters that I would hear on their merits either,
4 all right, to the extent there's been any ruling on them,
5 Judge Benjamin, or it's there for the court of appeals to
6 make a decision, but what she basically said with respect
7 to qualifications of bidders is if you don't like it go
8 through the procurement review process. That's essentially
9 what she said, all right? So now we're back to what is
10 concerning me, which is there ought to be a legitimate
11 process and there's not a legitimate process. It shocks
12 the conscious to have a process that clearly indicates
13 five people qualified on the basis of different expertises
14 and that's what your ordinance very definitely says and
15 yet the County has not done anything of recent years.
16 They've got one person from back in 1993. I don't even
17 know what the terms of these people are. They've got two
18 other people that she can't tell what their qualification
19 category even is. This isn't the way Ned Nicholson
20 operates and this isn't the way the County ought to
21 operate. Help me figure out some way to get them some
22 adequate relief on what they're entitled to pursue. You
23 say go pursue this, but they don't have any framework that
24 is adequate to pursue it right now. Help me out with how
25 we can figure this out, Mr. Nicholson. It will save us a

1 whole lot of heartburn and it will give you the order you
2 really want, which is everything except the nuts and bolts
3 of this process ought to be in the court of appeals right
4 now, and I agree with that. But the nuts and bolts of this
5 process ought not just sit and languish with the County
6 that won't do what it's supposed to do to provide that kind
7 of forum and won't even answer questions until an FOI about
8 who's on the procurement panel. That's not -- that's just
9 not acceptable in fairness.

10 **MR. NICHOLSON:** Yes, ma'am. And I can only say that
11 -- at this point that there are three members and not
12 five. The County's position was that because three members
13 were present and voting shall constitute a quorum was
14 sufficient to mean that the procurement review panel was
15 sufficiently constituted in order to hear appeals when
16 appeals came up.

17 **THE COURT:** Why haven't they set a hearing if they're
18 fully constituted?

19 **MR. NICHOLSON:** Because contrary to what Plaintiff's
20 counsel says the procurement director first has to
21 determine the protest, then --

22 **THE COURT:** Well, why hasn't the procurement director
23 already done that? The protest was filed December the 6th.
24 All right. Y'all emphasize the need to move this matter
25 along. It's April now.

1 **MR. NICHOLSON:** If I could -- if I could step back for
2 a minute, the -- there's no -- the process -- we have a
3 disagreement on the law -- on the ordinance, which is one
4 of the reason I had the ordinance ready for the Court, and
5 that is the specific ordinance on the procurement review
6 panel, 2-621.4 does say what Ms. McDaniel said it said;
7 however -- in Subsection A; however, the more specific
8 ordinance, which is 2-621.1, which is the actual protest
9 statute, clearly states again and again and again in
10 sections A, B, C and E that you go through the director of
11 procurement to protest.

12 **THE COURT:** She's sent something to the director now.

13 **MR. NICHOLSON:** Certainly. Yes, ma'am. But --

14 **THE COURT:** So let's -- let's assume she's done what
15 she's supposed to do about that, why hasn't he moved
16 forward to have any kind of a -- to issue an administrative
17 decision or have a settlement thing per B or anything of
18 that nature?

19 **MR. NICHOLSON:** Because it's the County's
20 interpretation of Judge Benjamin's order that the order
21 held that there was -- they were not -- that Richardson
22 did not -- would not likely have a success on the merits
23 because that the County procurement director's decision was
24 rational and correct.

25 **THE COURT:** But she told -- that's the standard she

1 had to use for the injunction, but she also told them
2 you've got an adequate remedy of law, pursue it, it's a
3 procurement review. Now she can't -- she can make one
4 determination for the purposes you asked her to make,
5 which is don't issue an injunction because they don't --
6 they're not likely to succeed, but she made it clear in
7 that in her 59(e) revised situation that this matter's
8 not dead and she said specifically in her order that they
9 have an adequate remedy in this administrative procurement
10 process.

11 **MR. NICHOLSON:** Yes, ma'am. But we get caught -- the
12 County gets caught in this world of appellate stuff because
13 we -- even in Rule 59 motions, these Rule 59 motions were
14 filed, then the notice of appeal went out, and it's our
15 position that Judge Benjamin didn't have authority --
16 didn't have the jurisdiction to even hear those Rule 59
17 motions at that time. That's a footnote. I mean, it's
18 not an essential matter for --

19 **THE COURT:** How about talk to me about the fact that
20 -- don't talk to me about these procedural bars to review
21 anything. Did Judge Benjamin rule that they had an
22 adequate procedural remedy at the county level?

23 **MR. NICHOLSON:** Yes, ma'am. And not only that, the
24 adequate remedy was also covered in their bid preparation
25 costs not getting the contract.

1 **THE COURT:** Well, that's fine. She ruled that.
2 They're gonna go there. They may dispute the boundaries of
3 it up in the court of appeals, I don't know whether they
4 will or whether they won't, all right, but you're not
5 providing them with an adequate remedy when you don't
6 respond, that the administrator does not give a final
7 ruling, there's no setting of any hearing on this thing,
8 that's not -- just sitting back there being mum and not
9 communicating when the judge said that the remedy to be
10 pursued is before your procurement panel, that's not --
11 I mean, you're putting them in a Catch 22 that I'm not
12 prepared to counter.

13 **MR. NICHOLSON:** Yes, ma'am. I understand and --

14 **THE COURT:** And I don't think any court would be.

15 **MR. NICHOLSON:** -- we understand the situation. The
16 difficulty is, is we still think this could have been
17 resolved without lawsuits.

18 **THE COURT:** Well, that's fine. Don't say that again.
19 They chose another way and now you've got an appeal and
20 that's not going away. All I'm trying to see or to look at
21 is one little slice of this. If I rule with y'all on the
22 question of the court of appeals' jurisdiction of the
23 matters you say they have jurisdiction over, which is
24 primarily whether McClam should have been awarded the
25 contract, they still have the right to pursue whether they

1 should have been knocked out as a bidder and that's what
2 they're trying to pursue in this administrative process,
3 and so far you've not given them any process to pursue it
4 with.

5 **MR. NICHOLSON:** If they would dismiss the appeal --

6 **THE COURT:** No. No, sir. They're not required to do
7 that under the law. No, sir.

8 **MR. NICHOLSON:** Well, our concern was -- and, again,
9 we -- obviously the County's interpretation of appellate
10 jurisdiction and what it touches is different from the
11 Court's and I recognize the Court has more appellate
12 jurisdiction knowledge than -- than the County -- everyone
13 in the county combined, but --

14 **THE COURT:** I could be just as wrong as any other
15 circuit judge you could have got in front of. You folks
16 can look at my papers and see whether I am. Don't worry
17 about it on that basis, Mr. Nicholson. I'm just trying
18 to be practical here and give them some ability to get
19 through an administrative process and out and onto wherever
20 else it takes them, all right, if they do not receive
21 relief and I think they're entitled to do that. I don't
22 think you can box them in because you don't like it that
23 they filed a lawsuit and it shocks my conscious to hear it
24 said oh, we'll give them the administrative process but
25 only if they drop this lawsuit. That's -- there's

1 something that is very, very wrong about that.

2 **MR. NICHOLSON:** Well, that's the issue of
3 jurisdiction. I mean, who really -- I mean, the County
4 can't do ex parte stuff.

5 **THE COURT:** The issue of jurisdiction for you with
6 the court of appeals has to do with the award of the
7 McClam contract and that alone. It has nothing to do with
8 what she's trying to pursue in the county right now, which
9 is the disqualification of Richardson.

10 **MR. NICHOLSON:** I clearly understand.

11 **THE COURT:** And, frankly, we've got a lot procurement
12 law on the books involving the City of Columbia that went
13 all the way around the mulberry bush before the Supreme
14 Court finally gave awards to people who have been
15 improperly, all right, knocked out of the bidding process.
16 We did that just very recently in connection with the
17 Hilton Hotel chain.

18 **MR. NICHOLSON:** Yes, ma'am.

19 **THE COURT:** There are a lot of different ways they
20 can proceed, but you can't just stymie them because you're
21 mad at them for filing a lawsuit and there's nothing in
22 Judge Benjamin's order. In fact, her order not only did
23 not prevent them from going forward with the procurement
24 process -- appellate process, it directs that that is the
25 adequate remedy of law they have.

1 **MR. NICHOLSON:** And, Your Honor, the County would
2 have gone forward with that, but the County -- and I
3 understand you disagree with the County, but the County
4 felt that the order -- the appeal divested everything, the
5 jurisdiction, stopped it, stopped the whole process, and
6 so -- and I understand the Court strongly disagrees with
7 the County's position on that.

8 **THE COURT:** I do. And particularly -- and I find
9 it's disingenuous, to put it mildly, that the argument is
10 made that, all right, everything stops because of this
11 appeal to the court of appeals and yet you also advanced
12 the projection that the only thing they can get is damage
13 awards, they cannot get any review of the contract itself,
14 so you get to go forward with McClam. If that's -- if
15 that is truly your legal position, then it really is very
16 disingenuous to say hey, all right, I say we can go forward
17 with McClam under all circumstances, but they've got an
18 avenue to get damages for the knocking out of them as a
19 responsive bidder and there's nothing in the world about
20 the award to McClam that is interfered with by their
21 pursuing that, so I don't -- I don't get that argument.

22 **MR. NICHOLSON:** I understand your position, Your
23 Honor. If I could just say one thing about the
24 supplemental protest because we are on the record here
25 about this e-mail that Ms. McDaniel mentioned. The whole

1 idea about the -- the same contractor being used as a DBE
2 and SLBE contractor, that was just a -- that was a -- one
3 person in a department that --

4 **THE COURT:** It doesn't make any difference to me
5 whether it was the head of the whole thing or you as the
6 lawyer representing them. It doesn't make any difference.
7 We're not into that today. We're not into McClam and
8 whether they are also disqualified today.

9 **MR. NICHOLSON:** Yes, ma'am.

10 **THE COURT:** We've got an issue about how much this
11 appeal stops and in that connection what I'm trying to
12 look at now is whether it completely stops this litigant
13 from pursuing an administrative remedy for the
14 disqualification of her client. That has not one thing
15 to do with the McClam award, it has not one thing to do
16 whether they should have been disqualified. She may
17 pursue that, too. That's completely different from what
18 I'm asking about. I'm asking about the ability of
19 Richardson Construction Company to at least be able at
20 this time to pursue something the court of appeals can't
21 help them with, which is whether or not they were
22 improperly disqualified as a bidder. There's no record
23 that's been developed on that. They have no ability to
24 get any relief from the court of appeals on that and
25 Judge Benjamin did not rule on that except to say that

1 in connection with injunctions I think they have a low
2 chance of success on the merits. That she had to do
3 because it's part of the determination she has to make
4 about an injunction, but that doesn't prevent -- since
5 she didn't prevent it, didn't enjoin the process, that
6 doesn't prevent the process from going forward because
7 it has nothing to do with what the court of appeals is
8 gonna be faced with which is the award to McClam.

9 **MR. NICHOLSON:** Your Honor, I think we've -- there's
10 nothing much more I can say. The Court disagrees with
11 the County's opinion. Obviously the County respects that.
12 And if the Court feels that way the County would -- at
13 this juncture the Court would dismiss -- or, excuse me,
14 deny the County's motion to dismiss and proceed on. I
15 mean, that's the stage we're at. It's a motion to dismiss
16 by the County. The Court has made it clear the Court's
17 reasoning and opinion and the County very much appreciates
18 the Court letting the County know the Court's opinion and
19 reasoning and the Court's --

20 **THE COURT:** And you say that your motion to dismiss
21 should be granted with respect to each cause of action?
22 There are four. The TRO obviously has been disposed of.

23 **MR. NICHOLSON:** Yes, ma'am. And the temporary
24 injunction.

25 **THE COURT:** The temporary injunction is on appeal

1 and cannot be dealt with any other way.

2 **MR. NICHOLSON:** Yes, ma'am.

3 **THE COURT:** Why should -- I mean, why would we
4 simply hold in abeyance any further action at the circuit
5 court level? Why that -- I mean, why would you dismiss
6 that? Judge Benjamin's already said the suit's gonna
7 stay alive.

8 **MR. NICHOLSON:** Your Honor, I don't know -- again,
9 this is not -- I understand what the Court is saying, but
10 the County's position was it was all wrapped up in the
11 appellate court jurisdiction. The Court has clearly
12 said --

13 **THE COURT:** But what you do with that is not
14 necessarily dismiss a lawsuit. If a lawsuit is on
15 appeal, then you stay any action by the circuit court
16 while it's on appeal and let the circuit court await --
17 you don't dismiss the whole case. What you do is you
18 stay any further proceedings with respect to it.

19 **MR. NICHOLSON:** Well, Your Honor, I don't know
20 that the County would disagree if you stay further
21 proceedings at this level to allow them to go through the
22 administrative process.

23 **THE COURT:** Well, I'm not talking about that right
24 now. I'm talking about the TRO and the temporary
25 injunction, those first two causes of action. Further

1 action by this Court should be stayed because those matters
2 are being appealed, right?

3 MR. NICHOLSON: Yes, ma'am.

4 THE COURT: All right. And then you come to a
5 mandamus and that cause of action request is that a process
6 be provided by the County that includes a full compliment
7 of procurement review panel members that are qualified
8 according to the County's ordinance so she can pursue that
9 matter. That's what her mandamus asked for. Certainly I
10 wouldn't dismiss that mandamus, would I? I would -- you
11 say it should be stayed because Judge Benjamin decided.
12 Ms. McDaniel says that thing is still open, all right?
13 Today I should deny the motion to dismiss that so she can
14 go forward and ask that the request for mandamus be heard
15 in circuit court, right?

16 MR. NICHOLSON: That's what she says. Yes, ma'am.

17 THE COURT: All right. And then the request for a
18 violation of due process, she has a fourth cause of action
19 that addresses that and, again, is -- focuses on the --
20 on deficits in the County's procurement process; does it
21 not?

22 MR. NICHOLSON: Your Honor, the fourth cause of
23 action is pretty much identical to the third cause of
24 action. It's just a due process claim that's been stated.

25 THE COURT: It's a due process. The third is request

1 for a specific kind of relief, mandamus, and the fourth is
2 a request for a finding of constitutional due process,
3 right?

4 MR. NICHOLSON: Yes, ma'am, based on the same facts.

5 THE COURT: Based on the same facts.

6 MR. NICHOLSON: They say no -- no five members and
7 without a procurement director, which is now moot.

8 THE COURT: Surely we wouldn't dismiss that because
9 that hasn't been determined by anybody. Not even Judge
10 Benjamin. She made no determination about that. She
11 simply said they've got an adequate remedy. She hasn't
12 looked at whether the remedy that's being provided has any
13 problems of the type that's been raised in this lawsuit,
14 right?

15 MR. NICHOLSON: It's the County's position --

16 THE COURT: It's the County's process -- y'all didn't
17 try in front of her whether that process is due, did you?

18 MR. NICHOLSON: Well, yeah, there were extensive
19 arguments about -- in front of her about the -- well, not
20 -- about that, for example, there was specific argument
21 about there were three and not five procurement review
22 panel members and it's our position that -- that she heard
23 all of that information and still decided to go with an
24 adequate remedy of law, therefore, reached the additional
25 finding that -- the three must be okay with her to make

1 that finding; otherwise, she wouldn't have made that
2 finding because she would have stated the procurement
3 review panel was not an adequate remedy, so that's --
4 that's where our logic comes from on that.

5 **THE COURT:** All right. Does the court of appeals
6 in your view have a record sufficient to do fairness to
7 both sides in this matter by reviewing exactly what the
8 County has done and what kind of qualifications these
9 people have?

10 **MR. NICHOLSON:** Your Honor, I don't know if the issue
11 of qualification -- actually the issue of qualification
12 of the individual members was not raised either at the
13 hearing nor in any of the pleadings before the Court --
14 any court at any time as far as I'm aware. The issue of
15 the qualifications have not been raised anywhere until
16 today I believe I'm correct in saying.

17 **THE COURT:** All right, sir.

18 **MR. NICHOLSON:** But --

19 **THE COURT:** Not even in the due process part of it?
20 I've not scrutinized it.

21 **MR. NICHOLSON:** We just -- because it relied on the
22 same facts that the third cause of action did, which is the
23 same issue about the procurement review panel and the
24 procurement director, you know, we -- before the court
25 stated there is a procurement director, therefore, mooting

1 that issue and the issue of the composition and sufficiency
2 of numbers of procurement review panel members is the same
3 issue in that cause of action as it is in the third cause
4 of action for mandamus is the way I looked at it, the way
5 I saw it. That being the case, if the third cause of
6 action was tied up in Judge Benjamin's order, then the
7 fourth would be as well, but if the Court does not believe
8 that the third cause of action is tied up in Judge
9 Benjamin's order, then the fourth would not be either.

10 **THE COURT:** Okay. All right.

11 **MR. NICHOLSON:** Nothing further from the County, Your
12 Honor, unless you have some more questions for us.

13 **THE COURT:** No, I'm just concentrating here for a
14 minute.

15 **MS. McDANIEL:** Your Honor, I'm sorry to interrupt your
16 concentration, but may I make one last point --

17 **THE COURT:** Sure.

18 **MS. McDANIEL:** -- just to make sure that this is on
19 the record. At the hearing before Judge Benjamin, the
20 question really was, you know, the temporary injunction,
21 whether or not it would be appropriate to stay the
22 awarding of the contract. The issue of, you know, the
23 number of people on the procurement review panel and their
24 qualifications, that was sort of tangential, and the fact
25 that, you know, the only way that the number three came

1 into being in -- was said in court, there is no actual
2 sworn testimony regarding that. So that was Mr. Nicholson
3 just telling the Court as an attorney and then Larry Smith,
4 who was also the County attorney, telling the Court that
5 there were three. They weren't sworn witnesses.

6 **THE COURT:** Were their names given or their
7 qualifications given or anything like that?

8 **MS. McDANIEL:** No, Your Honor, they were not. I just
9 wanted to make that point clear on the record.

10 **THE COURT:** Okay. Here's what I'm gonna do.
11 Ms. McDaniel, I'm gonna ask you to draw this order, but
12 I want some heavy duty consult with Mr. Richardson and
13 McClam because they're gonna be beneficiary to some of
14 these rulings as well, so I want y'all to get together and
15 look and try to get something that is reflective of what
16 I'm saying here, all right?

17 **MS. McDANIEL:** Okay.

18 **THE COURT:** On the County's motion to dismiss the
19 amended complaint, the County argues that the court of
20 appeals has exclusive jurisdiction to hear all matters
21 that are projected in the amended complaint because of
22 the ruling of Judge Benjamin denying the motion for a
23 temporary injunction. I find that with respect to the
24 first cause of action for a TRO and the second cause of
25 action for a temporary injunction, further action by the

1 circuit court on those two causes of action should be
2 stayed until the court of appeals has made its ruling.

3 With respect to the third and the fourth causes of
4 action for mandamus and for a ruling with regard to alleged
5 violations of due process by the County in the specific
6 configuration of its procurement review process within the
7 County, I find that those matters are not stayed by Judge
8 Benjamin's order -- well, strike that. I find that those
9 causes of action should not be dismissed because they are
10 -- to the extent they made rulings about the legitimacy of
11 the procurement review process, any further action by me
12 about those matters would be stayed, but Judge Benjamin
13 very specifically finds that the government procurement
14 system of the County provides an adequate remedy of law
15 and, therefore, there can be no injunction. She does not
16 review in any way the allegations with respect to the
17 inadequacies of Richland County's process by way of failure
18 to comply with the County Code Section 2-621.1 and 2-621.4
19 in the handling of the procurement protest and appeals of
20 Richardson Construction and the maintenance of membership
21 of the procurement review panel.

22 Therefore, it is my ruling on the merits of these two
23 causes of action, cause of action three and four, that
24 they are not affected by Judge Benjamin's rulings and that
25 before Richardson Construction Company is forced to try to

1 move forward with the administrative procedures at the
2 county level that Richardson will be permitted to litigate
3 at the circuit level the -- whether the process provided
4 is due and whether a mandamus should be issued. Those
5 matters may be pursued in circuit court and they have not
6 been stayed by the appeal of Judge Benjamin's order.
7 Judge Benjamin's order specifically invites and directs
8 Richardson Construction Company to pursue these
9 administrative remedies within the county and provides
10 that the system is -- provides an adequate remedy. What
11 she does not do is look at whether Richland County's
12 specific implementation of this system provides a process
13 that is due.

14 With respect to the McClam Construction Company,
15 McClam Construction Company will be granted a dismissal
16 from this lawsuit on all causes of action. It's not
17 involved in any of the matters. There may be something
18 that may be restructured and presented ultimately that may
19 involve McClam, but McClam is -- well, McClam was involved
20 in the TRO and the temporary injunction, and in that regard
21 those matters are stayed. So McClam is still here with us
22 and that gives it status to pursue as a respondent
23 arguments it may wish to make in the court of appeals, but
24 with respect to causes of action number three and four,
25 mandamus and a violation of a process due -- and failure

1 to give a process that is due, McClam is dismissed as to
2 those two causes of action because it's not alleged at the
3 present time that it is able to have any authority to deal
4 with that in any way, shape and form. That's a County
5 responsibility. They may come back into this matter with
6 respect to that process at some later time, but that time
7 is not now.

8 All right. Am I clear, ladies and gentlemen, about
9 what I'm doing?

10 **MR. NICHOLSON:** Yes, ma'am.

11 **MS. McDANIEL:** Yes, Your Honor.

12 **THE COURT:** I will tell you just for the benefit of
13 your communication with your client that, number one, you
14 may be one of the finest lawyers in South Carolina. I
15 project these things not with anything but great pride in
16 having you in my courtroom as I do have in all these other
17 lawyers, all right? It's simply a frustration with your
18 client and you can't -- you have the client that you have
19 and you're dealt the hand you're dealt and you make the
20 arguments that seem appropriate and you've made them all
21 with dignity and with clarity. So please let me make it
22 clear on the record that I have complete respect for you
23 as a lawyer and the positions you have taken, but I hope
24 you will communicate to your client if they unnecessarily
25 tangle an already fraught situation with big implications

1 for the County financially and otherwise with the way
2 they've handled this procurement process, this is -- this
3 isn't fairness and this isn't what a big county with big
4 responsibilities should do and to send a fine lawyer like
5 you into court to have to take my fussing about a situation
6 they could clear up very easily is something they need to
7 consider very prayerfully and think about because they
8 could by looking at their own code and the technical
9 background requirements they have for people to have
10 membership they could reconstitute this thing and make it
11 a viable and fair procurement review panel and they ought
12 to do that. I don't feel I have the authority to direct
13 that. I thought for a moment about directing that you
14 submit further information about the backgrounds of the
15 people that they do have, but that's just expresses my own
16 frustration and I shouldn't do that. But I do beg you to
17 counsel with them and tell them that fairness at least in
18 the mind of this one judge dictates that they review and
19 repair the procurement process they have, otherwise, they
20 put themselves at peril ultimately.

21 **MR. NICHOLSON:** Thank you, Your Honor. I'll convey
22 exactly your thoughts to the County.

23 **THE COURT:** Thank you, sir. And thanks to all of
24 you. And while it's fresh on your mind, it would be nice,
25 Ms. McDaniel, to get something out quickly --

1 **MS. McDANIEL:** Yes, Your Honor.

2 **THE COURT:** -- and give it to your opposing counsel
3 quickly and that way we can at least get part of this done
4 if we can't dispose however way it was done.

5 **MS. McDANIEL:** Yes, Your Honor. I'll be working on
6 it.

7 **THE COURT:** It's been a real pleasure having you in
8 my courtroom.

9 **MS. McDANIEL:** Thank you, Your Honor.

10 **MR. NICHOLSON:** Thank you, Your Honor.

11 (Whereupon, the proceedings were concluded at
12 4:31 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 4th day of April, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

April 12, 2017

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

RICHLAND COUNTY COUNCIL SOUTH CAROLINA

REGULAR SESSION MEETING

April 4, 2017

6:00 PM

County Council Chambers

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building

CALL TO ORDER

Ms. Dickerson called the meeting to order at approximately 6:00 PM

INVOCATION

The Invocation was led by the Honorable Bill Malinowski

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was the Honorable Bill Malinowski

APPROVAL OF MINUTES

Regular Session: March 21, 2017 – Mr. Manning, moved, seconded by Mr. Malinowski, to approve the minutes as distributed. The vote in favor was unanimous.

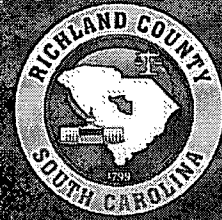
Zoning Public Hearing: March 28, 2017 – Ms. Myers stated the "Call to Order" should reflect Chairwoman Dickerson called the meeting to order.

Mr. Manning moved, seconded by Mr. C. Jackson, to approve the minutes as corrected. The vote in favor was unanimous.

Special Called: March 28, 2017 – Mr. Manning moved, seconded by Mr. Rose, to approve the minutes as distributed.

Mr. Malinowski stated after reviewing the MOU provided to Council on March 24th, and subsequently approved by Council, and the "revised" MOU presented to Council at the Special Called meeting, it appears the approved MOU does not have much in the way of "teeth". He suggested amending the MOU in the future.

Mr. C. Jackson stated he does not disagree with the Mr. Malinowski, but the fact the County has no legal authority over the organization, beyond the 5-mills, and that they are voluntarily executing the MOU the wording is more congenial in the original MOU.



Committee Members Present

Joyce Dickerson, Chair
Bill Malinowski, Vice Chair
Calvin "Chip" Jackson
Norman Jackson
Gwendolyn Davis Kennedy
Paul Livingston
Jim Manning
Yvonne McBride
Dalhi Myers
Greg Pearce
Selh Rose

Others Present:

Gerald Seals
Kimberly Roberts
Michelle Onley
Brandon Madden
Larry Smith
Ismail Ozbek
Beverly Harris
Laura Renwick
Janelle Ellis
Kevin Bronson
Tracy Hegler
Sandra Yudice
Shahid Khan
Daniel Driggers
Dwight Hanna
Tracy Hegler
Cheryl Johnson
Sandra Haynes
Rob Perry
Arthur Braswell
Geo Price
Jocelyn Jennings
Valeria Jackson
Brad Farrar
Quinton Epps
Jeff Ruble
Samuel Selph

The vote was in favor.

ADOPTION OF AGENDA

Mr. Livingston moved, seconded by Ms. Kennedy, to adopt the agenda as published. The vote in favor was unanimous.

PRESENTATION OF RESOLUTIONS

- a. **Resolution honoring Satch Krantz for his years of service to the Riverbanks Zoo** – Mr. Rose presented Mr. Krantz with a resolution in honor of his service to the zoo.
- b. **Resolution to recognize April as Fair Housing Month** – Ms. Dickerson presented resolutions to Mr. Ray Buxton, SC Human Affairs Commission, and Mr. Gilbert Walker, Columbia Housing Authority, in honor of Fair Housing Month.

REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION

Mr. Smith stated the following items were potential Executive Session Items:

- a. **Debriefing Concerning the Management Audit Letter**
- b. **Update on State Legislation**
- c. **Personnel Matters (3)**

CITIZENS' INPUT

(For Items on the Agenda Not Requiring a Public Hearing)

No one signed up to speak.

REPORT OF THE COUNTY ADMINISTRATOR

- a. **Debriefing Concerning the Management Audit Letter** – This item was taken up in Executive Session.

REPORT OF THE CLERK OF COUNCIL

- a. **Reminder: Richland 101 Graduation, April 10, 2017, 6:00 PM, Columbia Museum of Art** – Ms. Onley reminded Council of the upcoming Richland 101 Graduation.
- b. **TASC Elected Official of the Year/Local Award** – Ms. Onley congratulated Chairwoman Dickerson on being awarded the 2017 TASC Elected Official of the Year.

- c. **USC Women's Basketball National Championship Parade Participation** – Ms. Roberts provided Council with details regarding their participation in the USC Women's Basketball National Championship parade.

REPORT OF THE CHAIR

- a. **Personnel Matters (3)** – These items were taken up in Executive Session.

OPEN/CLOSE PUBLIC HEARINGS

- **An Ordinance amending the Fiscal Year 2016-2017 Hospitality Tax Fund Annual Budget to appropriate up to \$200,000 of Hospitality Fund Balance to the SC Military Support Foundation to assist in funding for advertisement and promotion of the 2017 South Carolina Guard Air & Group Expo** – No one signed up to speak.
- **An Ordinance authorizing a deed to Vulcan Lands, Inc. for 72± Acres of Caughman Road North, in Richland County, which is a portion of TMS # 06500-01-001** – Mr. Elliott Botzis spoke in favor of this item.

APPROVAL OF CONSENT ITEMS

- **17-002MA, J. Guadalupe Torres, OI to RS-MD (0.34 Acres), Inland Drive, 06015-01-20 [SECOND READING]**
- **17-004MA, Fremont Nelson, OI to RM-HD (0.5 Acres), 1646 Horseshoe Drive, 17012-01-03 [SECOND READING]**
- **17-005MA, Ryan L. Horton, RU to HI (5 Acres), Screaming Eagle Rd., 31600-02-20 [SECOND READING]**
- **Award of the contract for the Three Creeks Debris Removal Project**
- **An Ordinance Authorizing a deed to Sallie B. W. Roberts for 0.0132± Acres on Cyrus Weston Road, in Richland County, which is a portion of TMS # 32800-01-25 [FIRST READING]**
- **Solid Waste Department: Authorization to Increase Purchase Order Over \$100,000**
- **Solid Waste Department: Award of the Class 2 Solid Waste Disposal Contract**

Mr. Manning moved, seconded by Mr. Pearce, to approve the consent items. The vote in favor was unanimous.

THIRD READING

16-036MA, Jeff Stallings, PDD to GC (20 Acres), 8000 Wilson Boulevard, 14400-01-03 & 14402-03-01 – Ms. Kennedy moved, seconded by Mr. Malinowski, to approve this item.

FOR

Pearce
Rose
C. Jackson
N. Jackson
Malinowski
Dickerson
Livingston
Kennedy
Myers
Manning
McBride

AGAINST

The vote in favor was unanimous.

An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; so as to restructure the departments of the County – Mr. Malinowski moved, seconded by Mr. Livingston, to approve this item.

Mr. Rose made a friendly amendment to not remove the CASA Department from under the Administrator, but to have the CASA attorneys to report directly to the County Attorney.

Mr. Livingston stated he thought the Administrator's recommendation was to not put the CASA attorneys under the County Attorney.

Mr. Seals stated the reason it is set up this way is a result of the discussions with County Council. He stated he has no objection to the CASA attorneys being under the County Attorney.

Mr. Livingston inquired if the attorneys will be making decisions that will hold the County liable in any way or do they only do something on behalf of the children.

Mr. Rose stated anytime a licensed attorney that is representing or giving legal advice under Richland's name they should answer to the County Attorney.

Mr. Livingston inquired if there has been a discussion with the Director of CASA to determine how this will work under her structure.

Mr. Rose stated he has not personally had a discussion.

Mr. Manning moved, seconded by Ms. McBride, to defer this item.

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FOR

Pearce
C. Jackson
Dickerson
Manning
McBride

AGAINST

Rose
N. Jackson
Malinowski
Livingston
Kennedy
Myers

The motion for deferral failed.

Mr. Livingston requested a discussion take place with the Director of CASA.

Mr. Manning stated it concerns him that a major organizational change would take place without at least sharing the proposal with the director.

Ms. Myers stated these changes are to be revisited in 3 months. Council could approve the ordinance as it stands and have a discussion with the director. If any changes need to be made, Council could make those changes in the next 90 days.

Ms. McBride stated she needs clarification regarding "qualification of staff". In one area it says it requires that the "manager shall be a graduate of an accredited college or university..." Her concern is what if at the time of graduation the college was accredited and then when the person applies for a position the college is no longer accredited.

Ms. Dickerson inquired of Mr. Seals if CASA Department will still be under Administration, but the legal part or matters need to go through Mr. Smith.

Mr. Seals responded in the affirmative.

Ms. Dickerson stated the discussion on CASA has not been had in the past. The County Attorney has never informed her that the CASA attorneys needed to be under the County Attorney's supervision.

Mr. Smith stated the motion made by Mr. Rose is not something the County Attorney's Office advocated; however, to the extent Council feels it is appropriate to place the CASA attorneys under the direction of the County Attorney, he will accept the responsibility.

Mr. N. Jackson inquired if Mr. Rose's friendly amendment had been accepted by the maker of the original motion.

It was determined the friendly amendment was not accepted.

Mr. Livingston inquired if the original motion included the Administrator's original recommendation.

Ms. Dickerson responded in the affirmative.

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Mr. Livingston stated he supported the original motion, but he recommends having a conversation with CASA to decide if the ordinance should be amended in the future.

Mr. Seals stated in response to Ms. McBride's inquiry, the plan has always been to consider the super structure as it pertains to department directors and the managers and divisions will be brought back in approximately 3 months. The language Ms. McBride cited pertains to the managers and division heads, which will be reviewed at that time.

Mr. Rose inquired if the motion he proposed were to pass, would Council be able to revisit how things are working in 3 months.

Mr. Seals stated CASA is a division and all divisions are scheduled to come back to County Council in 3-4 months. The idea is for Council to review those in detail.

Ms. Dickerson requested the motion to be restated.

Mr. Rose stated the original motion is to accept what is before Council. He made a substitute motion that moves what is before Council forward, except for the four (4) CASA attorneys positions would report to the County Attorney. Other than that CASA will remain under the County Administrator.

Ms. Myers stated she supports Mr. Rose's concerns, but she would suggest going forward tonight with the original motion out of respect for the CASA Director and to have a conversation with her regarding the proposed changes.

Mr. Rose moved, seconded by Mr. Malinowski, to reconsider the vote on the motion for deferral. The vote was in favor.

Mr. Rose moved, seconded by Mr. Manning, to defer this item until the April 18th Council meeting.

<u>FOR</u>	<u>AGAINST</u>
Pearce	N. Jackson
Rose	Malinowski
C. Jackson	Livingston
Dickerson	Kennedy
Manning	Myers
	McBride

The motion for deferral failed.

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FOR

Pearce
N. Jackson
Malinowski
Dickerson
Livingston
Kennedy
Myers
McBride

AGAINST

Rose
C. Jackson

The vote was in favor of the original motion.

Mr. Livingston suggested immediately having a conversation with the CASA Director and if the discussion is favorable, staff can begin the process to amend the ordinance.

Mr. Manning stated for clarification the changes would require three readings and a public hearing.

Mr. C. Jackson stated for the record, he hopes this does not set the precedence for the way the Council conducts business. If he were a division head and found out after a meeting that he had direct reports moved to another area, he would be very disappointed in the Council.

An Ordinance authorizing deed to the Columbia Automotive Company, LLC for .4312 Acres previously a portion of Terramont Drive, a public road, which was closed by order of the court – Ms. Myers moved, seconded by Mr. N. Jackson, to approve this item.

FOR

Pearce
Rose
C. Jackson
N. Jackson
Malinowski
Dickerson
Livingston
Kennedy
Myers
McBride

AGAINST

The vote in favor was unanimous.

An Ordinance amending the Fiscal Year 2016-2017 Hospitality Tax Fund Annual Budget to appropriate up to \$200,000 of Hospitality Fund Balance to the SC Military Support Foundation to assist in funding for advertisement and promotion of the 2017 South Carolina Guard Air & Ground Expo *{This item was reconsidered at the April 18th Council meeting}* – Ms. Myers moved, seconded by Mr. N. Jackson, to approve this item.

Ms. Myers made a friendly amendment to the ordinance to include aviation fuel in the funding request.

Mr. Livingston inquired if aviation fuel was an appropriate use of Hospitality Tax.

Mr. Seals responded in the affirmative. The aviation fuel is a part of the promotion.

FOR

Pearce
Rose
C. Jackson
N. Jackson
Malinowski
Dickerson
Livingston
Kennedy
Myers
McBride

AGAINST

The vote in favor was unanimous.

SECOND READING

An Ordinance authorizing a deed to Vulcan Lands, Inc. for 72± Acres on Caughman Road North, in Richland County, which is a portion of TMS # 06500-01-01 – Mr. Livingston moved, seconded by Mr. Manning, to approve this item.

Ms. Myers stated there is a change in the original document where the liability has been shifted to the County. She inquired if the County Attorney had reviewed and accepted the changes on p. 218 of the agenda packet.

Mr. Smith stated the terms negotiated by his office and the attorneys from Vulcan are reflected in the document included in the agenda packet.

The vote in favor was unanimous.

REPORT OF THE DEVELOPMENT AND SERVICES COMMITTEE

- a. **Award of the Columbia High/Sandel Elementary Sidewalk** – Mr. Malinowski inquired about the normal procedure for placing sidewalks on roads under the authority of the SCDOT.

Mr. Ozbek stated there are a variety of ways sidewalks can be placed in the SCDOT right-of-way: (1) County Transportation Committee; (2) SCDOT Grants; and (3) Citizen Requests.

Mr. Malinowski further inquired why the SCDOT is not taking on full responsibility for their roads and the County is becoming involved.

Mr. Ozbek stated SCDOT is providing a grant for this particular project. They are not necessarily SCDOT or County roads. They serve the schools and community in this area.

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Mr. Malinowski stated SCDOT is giving the County 60% and we are responsible for the other 40%. In addition, Mr. Malinowski inquired if encroachment permits have been obtained for this project.

Mr. Ozbek responded in the affirmative.

Mr. Livingston moved, seconded by Mr. N. Jackson, to approve this item. The vote in favor was unanimous.

- b. An Ordinance Amending the Richland County Code of Ordinances, Chapter 5, Animals and Fowl [FIRST READING]** – Mr. Rose stated the committee forwarded this item without a recommendation. The ordinance amendment is an effort to further the County's goal of being a "no kill" community.

Ms. Haynes stated the recommendations are as follows: (1) *Community cat diversion program*. This is the trap/neuter/release program wherein feral cats are picked up and released back into the community after they have been spayed or neutered. The cat's ears will be tipped in order to recognize or identify the cat if it is picked up again. (2) *Managed intake process*. Animal Care officers will no longer pick up owner released animals and take them to the shelter. The responsibility will be placed back on the owner.

Mr. Rose moved, seconded by Mr. Livingston, to approve this item.

Mr. Malinowski inquired if the City of Columbia has an ordinance in place that covers the County's proposed recommendations.

Ms. Haynes stated they have a community cat program in place.

Mr. Malinowski inquired if there was a charge for the County to pick up sick or injured owner surrendered animals.

Ms. Haynes stated there is no charge.

Mr. Malinowski requested a definition for "animalia" be placed in the ordinance.

Mr. Malinowski stated Sec. 5-1(1) Dangerous or vicious animal is too ambiguous and in Sec. 5-1(2) a definition for provocation needs to be added.

Mr. Malinowski stated Sec. 5-2 addresses pet licenses, but he believes there is an abundance of non-licensed, possible non-vaccinated, pets in Richland County. He would like to see employees that are in contact with residents during the course of their job duties, to verify any animals they come into contact with are properly licensed.

Mr. Malinowski requested Ms. Haynes bring back the reassessment of fees to Council.

Mr. Malinowski referenced Sec. 5-2(6) and inquired what the additional penalties are if the license is not applied for in a timely manner.

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Mr. Malinowski referenced Sec. 5-3(3): "registration must be accompanied by proper documentation...The Animal Care Director shall make the final decision on whether the documentation is sufficient to meet the requirements of this section." He suggested including in the ordinance an explanation of what proper documentation is.

Mr. Malinowski referenced Sec. 5-4(b) *Scope*. "...shall apply only to healthy free roaming and Community Cats. Well socialized, friendly, or abandoned house pets..." and inquired how someone would know if the pet has been abandoned.

Mr. Malinowski requested clarification if the days given a person to pay the fine, redeem, etc. are business days or calendar days.

Ms. McBride inquired if Animal Care has any data regarding where the majority of the cats are being picked up. She expressed concern with releasing the cats back into the lower income areas.

Ms. Kennedy expressed concern with releasing the animals back into the communities at all. She believes it is a waste of taxpayers' money to pick up an animal and then release them back into the same neighborhoods.

Mr. Rose requested Ms. Haynes to bring back responses to the questions raised during the discussion on this item.

Ms. Kennedy requested some alternatives to be proposed besides the trap/neuter/release program.

Mr. C. Jackson requested the number of cats presently being picked up in the course of a year.

<u>FOR</u>	<u>AGAINST</u>
Pearce	Malinowski
Rose	Kennedy
C. Jackson	Manning
N. Jackson	McBride
Dickerson	
Livingston	
Myers	

The vote was in favor.

- c. **Policy for Monitoring and Distributing County funds to Non-County Entities** – Mr. Rose stated this item is to set internal controls for monitoring the distribution of County funds. The committee forwarded this item to Council with a recommendation for approval. The vote in favor was unanimous.

THE ADMINISTRATION AND FINANCE COMMITTEE

- a. **Solid Waste Department: Award of the contract for a Solid Waste Collection Route Management System** – Mr. Pearce stated the committee recommended awarding the contract to Fleetmind.

Mr. Malinowski stated he received the following response to his question about how much savings the County could expect: "The County should see a return on investment within the first two (2) years." The County plans to spend over \$8 million, so he is curious what the return on investment will be over the six (6) year period.

Mr. Braswell stated there is an initial investment of approximately \$1 million. The annual cost to the County is approximately \$4,900 for operation of the system. The \$9,800 monthly maintenance fee is split with the haulers. The haulers will be responsible for maintaining and replacing any damaged equipment.

Mr. Malinowski stated at \$500,000 per year for 6 years, it would still be \$3 million. And then you have to include the \$1 million initial investment. What is the savings over the 6 year period?

Mr. Braswell stated the annual costs to the County will be approximately \$60,000. He further stated, it is hard to calculate the savings. The County will be able to save in two ways:

(1) The haulers are paid by what is considered a serviceable cart, which means that homeowner is paying for that service. Right now there are carts assigned to houses by certificate of occupancy and if someone leaves the cart would stay there, but no one is paying for that service. The system will give the County a better indication of how many carts are in place and the service is being paid for.

Mr. Malinowski inquired why the carts would be picked up if the service is not being paid for.

Mr. Braswell stated presently the haulers pick up any cart that is beside the road.

The vote was in favor of the committee's recommendation.

- b. **Solicitor's Office: Approval of Victim of Crime Act (VOCA) Special Solicitation Grant** – Mr. Pearce stated the committee recommended approval of the in-kind match of \$134,626. The vote in favor was unanimous.
- c. **An Ordinance Amending the Fiscal Year 2016-2017 General Fund Annual Budget to appropriate Forty Thousand Ninety Dollars (\$40,090) to increase funding to the Board of Voter Registration & Elections Department for the upcoming State House of Representatives District 70 Special Election for Richland and Sumter counties [FIRST READING]** – Mr. Pearce stated the committee recommended approval this item in the amount of \$40,090; however, prior to tonight's meeting Mr. Selph advised him that amount is incorrect.

Mr. Manning inquired as to where the amount approved by the committee came from.

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Mr. Pearce stated the Elections Department provided the amount to the committee at the committee meeting.

Mr. Malinowski stated when the committee received the dollar amount from the Elections Department; he requested the dollar amount be reflected in the documentation provided to Council. In addition, the information reflects Richland County is paying for a special election for Richland and Sumter counties. The State law requires the County only pay for their County's portion of the election costs.

Ms. Dickerson stated she constantly requests when figures are brought before Council that the information provided be accurate. Every time Council votes, there seems to be a problem with the numbers. The committee voted for \$40,000. Until the County Administrator can assure her the numbers are correct, she cannot support anything above \$40,000.

Mr. N. Jackson stated there were two sets of numbers presented at the committee meeting and the committee requested Mr. Selph to provide the correct figure by the Council meeting.

Mr. Selph stated, at the behest of County Council, the Department of Elections and Voter Registration was requested to provide the costs for staff and part-time staff. The budget amendment that was presented at the committee meeting did not include those figures. He accepted full responsibility for the figures being incorrect. The total cost to conduct the three (3) elections is \$87,864.00.

Ms. Myers inquired if the figures include any setoff from what the State will reimburse.

Mr. Selph stated the figure does not include the percentage the State will reimburse, but he does not have the percentage the State will reimburse.

Mr. Malinowski asked for clarification on which counties the funding is to be used for.

Mr. Selph stated the funding is only for Richland County and the documentation will be corrected prior to the next Council meeting.

Mr. Malinowski requested a further breakdown of the election day workers (p. 275 – agenda packet).

Mr. Selph stated the County has approximately 13,900 voters, which will require 48 machines and 57 poll workers for each election.

Mr. Pearce inquired if the item were deferred if it would cause a hardship on the Elections Department.

Mr. Selph stated he does not believe it would.

Mr. Pearce moved to defer this item one meeting to allow the Elections Department an opportunity to distribute accurate information and address the questions of Council.

Mr. Livingston stated this item requires three (3) readings and public hearing; therefore, he suggests proceeding with First Reading.

Mr. Pearce withdrew his motion for deferral.

Mr. Pearce moved, seconded by Mr. Livingston, to give First Reading approval to the item and request Mr. Selph to bring back the additional information requested.

The vote in favor was unanimous.

- d. **Increase Annual Leave for Employees** – Mr. Pearce stated the committee recommended Council approve to increase annual leave for County employees to the following:

0-5 Years = 10 days
5-10 Years = 15 days
10-15 Years = 20 days
15-20 Years = 20 days
20+ Years = 20 days

In addition, to add an additional holiday that is not a designated day but an optional day for County employees.

Mr. N. Jackson stated when the County has to compete with the State, or other entities, the amount of annual leave and/or having to begin accruing vacation time anew hurts in the recruitment efforts for qualified employees.

Mr. N. Jackson made a substitute motion to adopt the State's annual leave policy. The motion dies for lack of a second.

The vote was in favor of the committee's recommendation.

POINT OF PERSONAL PRIVILEGE – Mr. Manning stated Council should take a minute and make sure everyone is clear. We looked at what the City of Columbia did, what the State did, what Lexington did, what other counties did across the State. And what we did tonight was we increased, for those with longevity, the number of days they'll get vacation to spend time with their family doing the things they want to do, above what it has been, up until this point. And we brought more days in, earlier and over the long haul. In addition, Council gave them an extra holiday of their choosing. He felt it was pretty significant what the Council did for employees and future employees of Richland County.

REPORT OF THE ECONOMIC DEVELOPMENT COMMITTEE

- a. **An Ordinance Authorizing the execution and delivery of a fee in lieu of tax agreement by and between Richland County and (Project Feng) (the "Company"); the execution and delivery of**

an infrastructure finance agreement by and between Richland County and the Company; the execution and delivery of such documents as may be necessary to effect the intent of this

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ordinance; and other matters related thereto [FIRST READING BY TITLE ONLY] – Mr. Livingston stated the committee recommended First Reading by Title Only approval of this item. The vote in favor was unanimous.

REPORT OF THE RULES AND APPOINTMENTS COMMITTEE

I. NOTIFICATION OF APPOINTMENTS

- a. **Central Midlands Council of Governments – 2** – Mr. Malinowski stated the committee recommended appointing Ms. Susan Brill to the Central Midlands Council of Governments. The vote in favor was unanimous.
- b. **Airport Commission – 2 (One applicant must reside within one mile of the airport)** – Mr. Malinowski stated the committee recommended appointing Ms. Lindsey Ott and Mr. Timothy Alexander Mousseau. Mr. Mousseau will fulfill the neighborhood resident requirement. The vote in favor was unanimous.
- c. **Business Service Center Appeals Board – 2 (One applicant must be an attorney; the other must be a CPA)** – Mr. Malinowski stated the committee recommended appointing Mr. John F. Hamilton. The vote in favor was unanimous.

REPORT OF THE CLERK'S OFFICE AD HOC COMMITTEE

a. Clerk of Council Office Visits

- 1. **Dates**
- 2. **Transportation**
- 3. **Council Participation**

Ms. Myers stated the committee recommended visiting the Greenville, Spartanburg, York and Charleston County Clerk's Offices. The proposed dates are April 20th and 21st. Mr. Seals agreed to provide transportation for the visits and full Council participation is encouraged. If any Council members would like to attempt, please coordinate with the Clerk's Office.

- b. **Re-advertisement of Clerk of Council Position** – Ms. Myers stated the committee reviewed, in conjunction with the Human Resources Department, the Clerk of Council's scope of duties and the previous advertisement for the position. Proposed changes will be circulated to full Council prior to the position being re-advertised.
- c. **Reconfiguration of Office Space** – Ms. Myers stated there are plans to reconfigure the Chair's office space to provide Council member's with office space in which to work. The plan is for Council members to share the space. Filing cabinets and an additional desk will be added to the room to allow multiple Council members to work. The Chair will move into the smaller Council office to allow for the reconfiguration of the existing office space.

The Administrator's Office will present the proposed reconfiguration to committee and ultimately Council prior to any work beginning.

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In response to Ms. Kennedy's inquiry as to how many Council members utilize office space at the Administration building on a regular basis, Mr. C. Jackson stated he utilizes office space weekly to meet with constituents.

Mr. Pearce expressed concern with reconfiguring the office space since the conference room portion of the room is frequently used due to a shortage in meeting space.

Ms. Myers stated there is not a recommendation to take the conference space away, but to simply add an additional desk and filing space.

Mr. Manning stated the smaller Council office can be reserved through the Clerk's Office, which he does on occasion, to hold meetings with constituents. It is his understanding there will be an office with 2 desks; therefore, both desks may be taken or a Council member could be meeting with a constituent and another Council member could come in to utilize the additional desk. He requested clarification on how this would work for those Council members that meet with their constituents in the Council offices.

Additionally, he stated he felt it was backwards to work on the scope of the Clerk's position description and then go and visit the other Clerk's Offices.

In response to Mr. Manning's concerns regarding the Clerk's office visits, Ms. Dickerson stated the Clerk's Office Ad Hoc Committee wanted to tour the other offices to ensure the Richland County offices are state of the art.

BUDGET AD HOC COMMITTEE

- a. **Midlands Technical College Capital Project Request** – Ms. Myers stated Midlands Technical College needs greater bonding ability in order to build a new Workforce Development facility on the Beltline Campus. They have proposed an additional 0.5 mill and the committee recommended approval of their request to include the additional .05 mill in their budget.

Mr. Malinowski requested information regarding the impact the additional 0.5 mill will have on the taxpayers in Richland County.

Mr. Manning inquired if this is a form of preapproval to get into the budget process. He stated he was somewhat confused with the process compared to how it has worked in the past. There are now organizations coming to a committee of Council to present what they are looking to have in their budget. What does it tell the organization? If the item is not approved does that mean the organization cannot include it in their budget?

Ms. Myers stated the organization is asking to be allowed to present in their formal budget an additional 0.5 mill above the 1.5 mills, which will take them to 2 mills. The 0.5 mill will be used for the Workforce Development building. The issue was could they put the additional millage in the

budget and seek a bond based up on the additional millage. However, it will not be approved until it appears in the complete budget.

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Mr. Rose stated there are items coming out of the Budget Ad Hoc Committee and Council is being asked to take action, but there is no action. The items are simply being forwarded to the budget, which Council would already be taking up. He feels like Council is approving something because this is getting the ball rolling.

<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>
Pearce	Rose	Livingston
C. Jackson	Malinowski	
N. Jackson	Kennedy	
Dickerson		
Myers		
McBride		

The vote was in favor.

- b. **Sheriff's Facility** – Ms. Myers stated the Sheriff's Department is requesting Council approve their purchase of the SCANA Building on Shakespeare Road in the biennial budget process. The building will accommodate the current needs and growth of the Department. The committee recommended approval of this item.

Ms. Kennedy inquired about what services will be consolidated and/or relocated to this facility (i.e. community satellite offices, etc.)

Deputy Chief Cowan responded to Ms. Kennedy's inquiry. He stated the main headquarters and satellite office would stay in their present locations. The laboratory facilities from the main headquarters building would be expanded. The forensic science, crime scene investigations and fleet services would be located in the new facility.

Ms. Myers stated the \$1.3 million is the cost to purchase the building; Phase I and II would follow and be included in the biennial budget process.

Mr. Malinowski inquired if the County receives any funding from SLED for the lab work conducted.

Deputy Chief Cowan stated the Sheriff's Department does not do any lab work for SLED. The lab work conducted is for the benefit of the citizens of Richland County. The lab is able to process crimes expeditiously from vandalism to homicide without having to depend on SLED.

Mr. Malinowski inquired if all of the cases are Richland County cases.

Deputy Chief Cowan stated 90% of the cases are done for Richland County. Any case that is done for another agency is charged a fee for the consumables and personnel.

Mr. Malinowski requested the current annual costs for the evidence storage space.

Deputy Chief Cowan stated the information was provided in a PowerPoint to Council in January, but he can provide a hard copy to Mr. Malinowski.

**Richland County Council
Regular Session Meeting
Tuesday, April 4, 2017
Page Seventeen**

Mr. Malinowski inquired about the current square footage for the services currently being provided.

Deputy Chief Cowan stated the current services utilize 7,800 square feet, plus ten (10) Conex trailers, for a total of approximately 15,000 square. The new facility has approximately 100,000 square feet.

The vote was in favor.

- c. **Council Motion: Imposing a uniform service charge on tax exempt property** – Ms. Myers stated this item was discussed in committee. The committee held this item in committee and requested staff to provide additional information and options.

OTHER ITEMS

A Resolution to appoint and commission Shahid Khan, Charles M. Shugart, Jerry Driggers, Adam Frick, Carla Lamb, Tariq Hussain, Bob Jennings, as Code Enforcement Officers for the proper security, general welfare, and convenience of Richland County – Mr. Pearce moved, seconded by Mr. Livingston, to approve this item. The vote in favor was unanimous.

CITIZENS' INPUT

(Must Pertain to Items Not on the Agenda)

Ms. Sherry Feggins spoke in regarding to her displeasure with how she was treated by Richland County Recreation Commission staff.

Mr. Toney Forrester continued his "story" from the previous Council meetings.

POINT OF PERSONAL PRIVILEGE – Mr. Malinowski recognized that A'ja Wilson's father was in the audience.

EXECUTIVE SESSION

*Council went into Executive Session at approximately 8:12 p.m.
and came out at approximately 8:52 p.m.*

- a. **Debriefing Concerning the Management Audit Letter** – No action was taken.
- b. **Update on State Legislation** – No action was taken.
- c. **Personnel Matters (3)** – No action was taken.

MOTION PERIOD

a. In order not to discriminate, or have the appearance to discriminate, I move that all outside agencies receiving funding through Richland County are subject to the same, or similar, MOU to Richland County Council
Regular Session Meeting
Tuesday, April 4, 2017
Page Eighteen

that of the Richland County Recreation Commission [N. JACKSON and MYERS] – This item was referred to the A&F Committee.

- b. Direct Legal to research what is required to enact a parking ordinance in communities/subdivisions [McBRIDE] – This item was referred to the D&S Committee.
- c. I move to require that all municipal utility service providers must request consent and approval from Richland County Council prior to extending or accepting water and sewer infrastructure within the unincorporated boundaries of Richland County [MALINOWSKI] – This item was referred to the D&S Committee.
- d. Richland County will look into the use of various bond attorneys doing business within Richland County in an effort to spend taxpayer dollars in a more equitable way with the legal profession. [MALINOWSKI] – This item was referred to the A&F Committee.
- e. While Richland County is moving in this direction, for the record I move that Richland County staff review budgets for entities receiving tax dollars to confirm all spending is done to only promote the mission of that entity. Any dollars not spent toward the mission will not be awarded at budget time. [MALINOWSKI] – This item was referred to the A&F Committee.
- f. Resolution recognizing USC Women's Basketball team and MOP A'ja Wilson from Lower Richland Hopkins SC District 11 as National Champions [N. JACKSON] – Mr. Pearce moved, seconded by Mr. Malinowski, to adopt a resolution honoring the USC Women's Basketball team and MOP A'ja Wilson. The vote in favor was unanimous.
- g. Richland County lost millions of dollars by not collecting taxes on (SOB) for the past five years. I move that the Legal Department along with Administration explore recovering the funds from Sexual Oriented Businesses directly or from the former Assistant County Administrator who defied Council's directive and ordering staff not to pursue collection or fines [N. JACKSON] – This item was referred to the A&F Committee.

ADJOURNMENT

The meeting adjourned at approximately 8:58 PM.

Joyce Dickerson, Chair

Richland County Council
Regular Session Meeting
Tuesday, April 4, 2017
Page Nineteen

Bill Malinowski, Vice-Chair

Calvin "Chip" Jackson

Norman Jackson

Gwendolyn Kennedy

Paul Livingston

Jim Manning

Yvonne McBride

Dahli Myers

Greg Pearce

Seth Rose

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council

RICHLAND COUNTY COUNCIL SOUTH CAROLINA

SPECIAL CALLED MEETING

April 13, 2017

5:00 PM

County Council Chambers

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building

CALL TO ORDER

Ms. Dickerson called the meeting to order at approximately 5:00 PM

ADOPTION OF AGENDA

Mr. Manning moved, seconded by Ms. Kennedy, to adopt the agenda as published. The vote in favor was unanimous.

ITEMS FOR ACTIONS

Potential Litigation/Contractual Matter: Updated Management Letter – Mr. N. Jackson moved, seconded by Ms. Kennedy, to go into Executive Session:

EXECUTIVE SESSION

*Council went into Executive Session at approximately 5:01 p.m.
and came out at approximately 6:41 p.m.*

Mr. Pearce moved, seconded by Ms. Myers, to come out of Executive Session.

Mr. N. Jackson moved, seconded by Mr. Pearce, to proceed as discussed in Executive Session. The vote in favor was unanimous.

ADJOURNMENT

The meeting adjourned at approximately 4:58 PM.

Joyce Dickerson, Chair

Bill Malinowski, Vice-Chair

Calvin "Chip" Jackson



Committee Members Present

Joyce Dickerson, Chair
Calvin "Chip" Jackson
Norman Jackson
Gwendolyn Davis Kennedy
Paul Livingston
Jim Manning
Yvonne McBride
Dalhi Myers
Greg Pearce
Seih Rose

Others Present:

Gerald Seals
Kimberly Roberts
Michelle Onley
Brandon Madden
Larry Smith
Beverly Harris
Kevin Bronson
Sandra Yudice

**Richland County Council
Special Called Meeting
Tuesday, April 13, 2017
Page Two**

Norman Jackson

Gwendolyn Davis Kennedy

Paul Livingston

Jim Manning

Yvonne McBride

Dalhi Myers

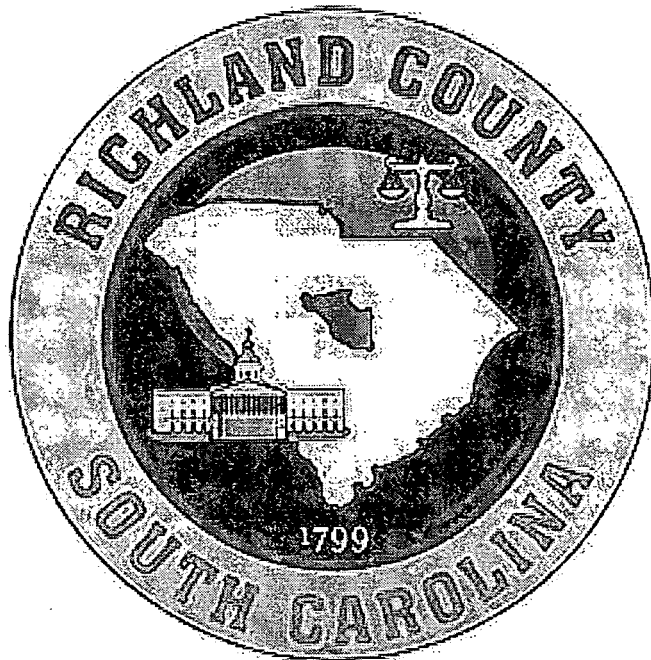
Greg Pearce

Seth Rose

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council

RICHLAND COUNTY

COUNTY COUNCIL AGENDA

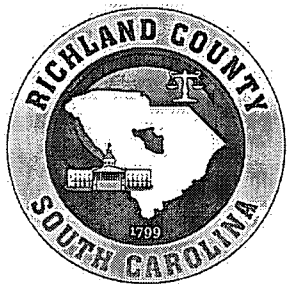
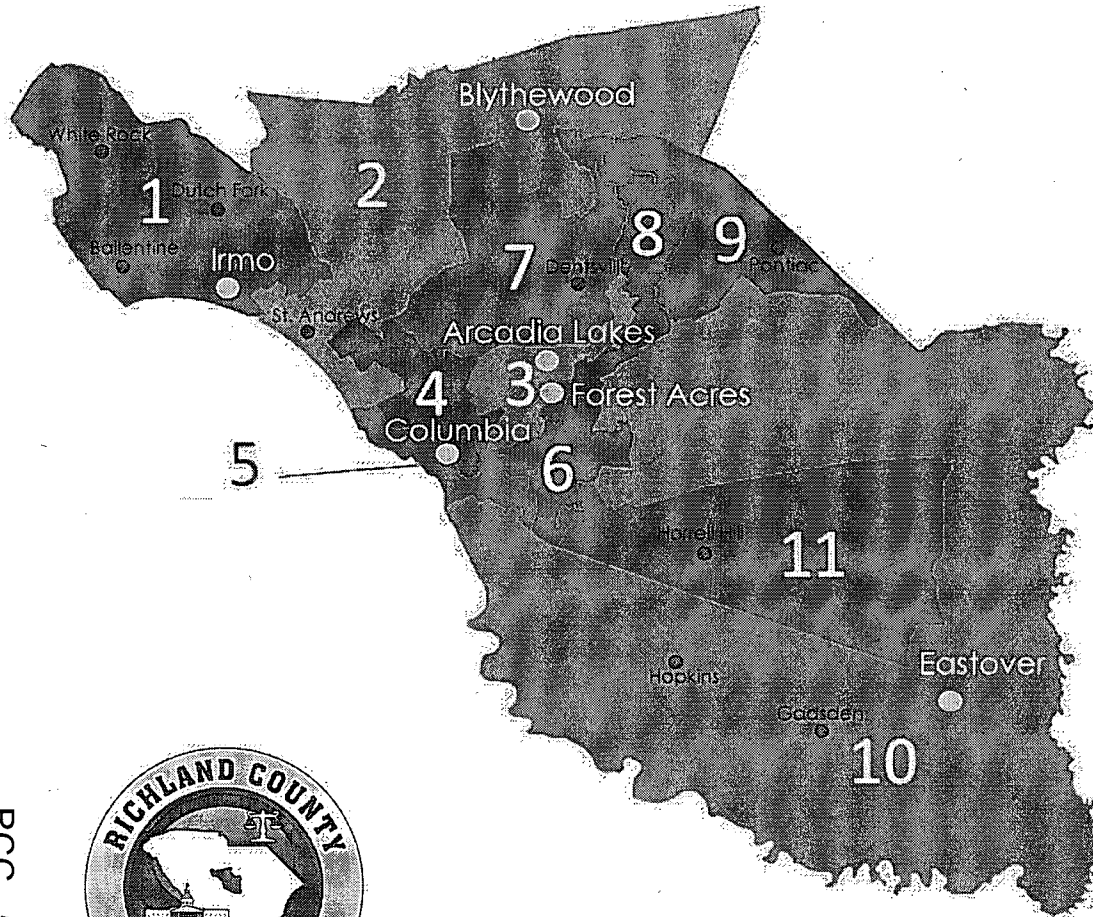


TUESDAY, APRIL 18, 2017

6 P.M.

COUNCIL CHAMBERS

RICHLAND COUNTY COUNCIL 2017-2018



RCC - 552



VICE CHAIR
Bill Malinowski
District 1



CHAIR
Joyce Dickerson
District 2



Yvonne McBride
District 3



Paul Livingston
District 4



Seth Rose
District 5



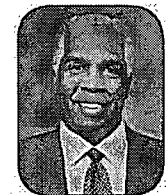
Greg Pearce
District 6



Gwendolyn Kennedy
District 7



Jim Manning
District 8



Calvin "Chip" Jackson
District 9



Dalhi Myers
District 10



Norman Jackson
District 11



Richland County Council

Regular Session
April 18, 2017 – 6:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Joyce Dickerson,
Chair, Richland County Council
2. **INVOCATION** The Honorable Norman Jackson
3. **PLEDGE OF ALLEGIANCE** The Honorable Norman Jackson
4. **APPROVAL OF MINUTES** The Honorable Joyce Dickerson
 - a. Regular Session: April 4, 2017 [PAGES 8-26]
 - b. Special Called Meeting: April 18, 2017 [PAGES 27-28]
5. **ADOPTION OF AGENDA** The Honorable Joyce Dickerson
6. **PRESENTATION OF RESOLUTIONS** The Honorable Joyce Dickerson
 - a. Resolution honoring Kendra Dove's contribution to the CASA organization
 - b. A Proclamation recognizing the Month of May 2017 as Building Safety Month
 - c. A Resolution affirming the week of April 17-21, 2017 as Richland County's National Community Development (CD) Week
7. **REPORT OF THE COUNTY ATTORNEY FOR EXECUTIVE SESSION ITEMS** *Items requiring outside counsel or a consultant. Larry Smith, County Attorney
 - a. Update on Contractual Matters with City of Columbia (3)
 - b. ~~Property Acquisition / Contractual Matter~~

Note: Pursuant to Council Rules, Council will record non-electronic roll call voting for all votes that are not unanimous for second and third reading or one time votes; and which are not merely procedural in nature.

8. **CITIZENS' INPUT**

For Items on the Agenda Not Requiring a Public Hearing

9. **REPORT OF THE COUNTY ADMINISTRATOR**

Gerald Seals, County Administrator

- a. Announcement of the Presentation of the CAFR
- b. Personnel Matter
- c. Property Acquisition/Contractual Matter

10. **REPORT OF THE CLERK OF COUNCIL**

Michelle Onley, Deputy Clerk of Council

- a. REMINDER: Presentation of Recommended Budget by County Administrator and First Reading of County Budget and Millage Ordinance, April 27, 4:00 PM
- b. REMINDER: 2017 Small Business Week Press Conference, May 1, 10:00 AM, Columbia Chamber of Commerce

11. **REPORT OF THE CHAIR**

The Honorable Joyce Dickerson

- a. South Carolina State Budget Bill – H. 3720 Update

12. **OPEN/CLOSE PUBLIC HEARINGS**

The Honorable Joyce Dickerson

- a. In support of the issuance by the South Carolina Job-Economic Development Authority of its Economic Development Revenue Bonds (Hammond School Project) Series 2017, pursuant to the provisions of Title 41, Chapter 43, of the Code of Laws of South Carolina, 1976, as amended, in the aggregate principal amount of not exceeding \$21,000,000

13. **APPROVAL OF CONSENT ITEMS**

The Honorable Joyce Dickerson

- a. 17-002MA
J. Guadalupe Torres
OI to RS-MD (0.34 Acres)
Inland Drive
TMS # 06015-01-20 [THIRD READING] [PAGES 29-30]
- b. 17-004MA
Fremont Nelson
OI to RM-HD (0.5 Acres)
1646 Horseshoe Drive
TMS # 17012-01-03 [THIRD READING] [PAGES 31-32]

- c. 17-005MA
Ryan L. Horton
RU to HI (5 Acres)
Screaming Eagle Rd.
TMS # 31600-02-20 [THIRD READING] [PAGES 33-34]
- d. An Ordinance Authorizing a deed to Sallie B. W. Roberts for 0.0132± Acres on Cyrus Weston Road, in Richland County, which is a portion of TMS # 32800-01-25 [SECOND READING] [PAGES 35-36]

14. **ORDINANCES - THIRD READING**

The Honorable Joyce Dickerson

- a. An Ordinance Authorizing a deed to Vulcan Lands, Inc. for 72± Acres on Caughman Road North, in Richland County, which is a portion of TMS # 06500-01-01 [PAGES 37-69]

15. **ORDINANCES - SECOND READING**

The Honorable Joyce Dickerson

- a. An Ordinance Amending the Richland County Code of Ordinances, Chapter 5, Animals and Fowl [PAGES 70-90]
- b. An Ordinance Amending the Fiscal Year 2016-2017 General Fund Annual Budget to appropriate Eighty Seven Thousand Eight Hundred Sixty Four Dollars (\$87,864) to increase funding to the Board of Voter Registration and Elections Department for the upcoming State House of Representatives District 70 Special Election for Richland County [PAGES 91-100]
- c. An Ordinance Authorizing the execution and delivery of a fee in lieu of tax agreement by and between Richland County and (Project Feng) (the "Company"); the execution and delivery of an infrastructure finance agreement by and between Richland County and the Company; the execution and delivery of such documents as may be necessary to effect the intent of this ordinance; and other matters related thereto [PAGES 101-152]

16. **REPORT OF THE RULES AND APPOINTMENTS COMMITTEE**
Notification of Vacancies:

The Honorable Bill Malinowski

- a. Accommodations Tax Committee – Three (3)
Vacancies (One applicant must have a background in

the Cultural Industry; One applicant must have a background in the Hospitality Industry; the other is an at-large seat)

- b. Hospitality Tax Committee – Three (3) Vacancies (Two applicants must be from the Restaurant Industry; the other is an at-large seat)
- c. Internal Audit Committee – One (1) Vacancy (Applicant must be a CPA)
- d. Business Service Center Appeals Board – One (1) Vacancy (Applicant must be an attorney)
- e. Board of Assessment Appeals – Two (2) Vacancies
- f. Planning Commission – One (1) Vacancy
- g. Central Midlands Council of Governments (CMCOG) – One (1) Vacancy
- h. Building Codes Board of Appeals – One (1) Vacancy (Applicant must be from Architecture Industry)
- i. Employee Grievance Committee – Two (2) Vacancies (Applicants must be a Richland County employee)
- j. Procurement Review Panel – Two (2) Vacancies (One applicant must be from the public procurement arena and one applicant must be from the consumer industry)
- k. Township Auditorium Board – Two (2) Vacancies
- l. River Alliance Board – One (1) Vacancy (Applicant should be prepared to assist with promoting facilities, services or policies that create citizen benefits from our rivers)

Notification of Appointments:

- a. Accommodations Tax Committee - 5
 - 1. David Erbacher [PAGES 153-154]
 - 2. Andy Briggs [PAGES 155-156]
- b. Planning Commission - 3
 - 1. Heather Cairns [PAGES 157-158]

2. Stephen L. Gilchrist [PAGES 159-161]

The Honorable Seth Rose

17. **REPORT OF THE DECKER CENTER AD HOC COMMITTEE**

- a. Designating a "Cultural and Historic Room" in the Decker Center [PAGE 162]

18. **OTHER ITEMS**

The Honorable Joyce Dickerson

- a. In support of the issuance by the South Carolina Job-Economic Development Authority of its Economic Development Revenue Bonds (Hammond School Project) Series 2017, pursuant to the provisions of Title 41, Chapter 43, of the Code of Laws of South Carolina, 1976, as amended, in the aggregate principal amount of not exceeding \$21,000,000 [PAGES 163-165]

19. **SECOND CITIZENS' INPUT**

Must Pertain to Items Not on the Agenda.

20. **SECOND COUNTY ATTORNEY'S REPORT OF EXECUTIVE SESSION ITEMS**

Larry Smith, County Attorney

21. **MOTION PERIOD/ANNOUNCEMENTS**

- a. Reduce funding to State mandated agencies by the percentage cut from the Local Government Fund.

The Honorable Norman Jackson

- b. Review the MOU between the City of Columbia and the Richland County Library and determine what action(s) need to be taken by Richland County in order for the library to be in compliance with needed MOU and the City of Columbia regarding water service, right-of-way and ownership matters as described in the provided information [PAGES 166-174]

The Honorable Bill Malinowski

- c. Resolution thanking the EZ Dock Company for the donation and installation of an \$85,000 dock on the Broad River for the use of the Columbia Rowing Club and others.

The Honorable Greg Pearce
The Honorable Paul Livingston

- d. All business establishments that produce garbage/trash must have a dumpster or their business license will be suspended or revoked. NOTE: There has been a practice of illegal dumping of garbage from restaurants and bars on open land in the unincorporated area.

The Honorable Norman Jackson

especially in the rural communities. Obviously, this practice is by establishments that do not have proper mechanism to process their waste.

(Additional motions may be received by the Clerk of Council's Office up to 24 hours prior to the Council meeting. Such motions will be distributed as "24-Hour Motions" to Council members)

22. **ADJOURN**

RICHLAND COUNTY

COUNTY COUNCIL AGENDA

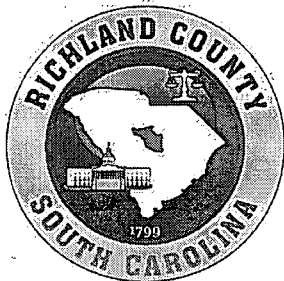
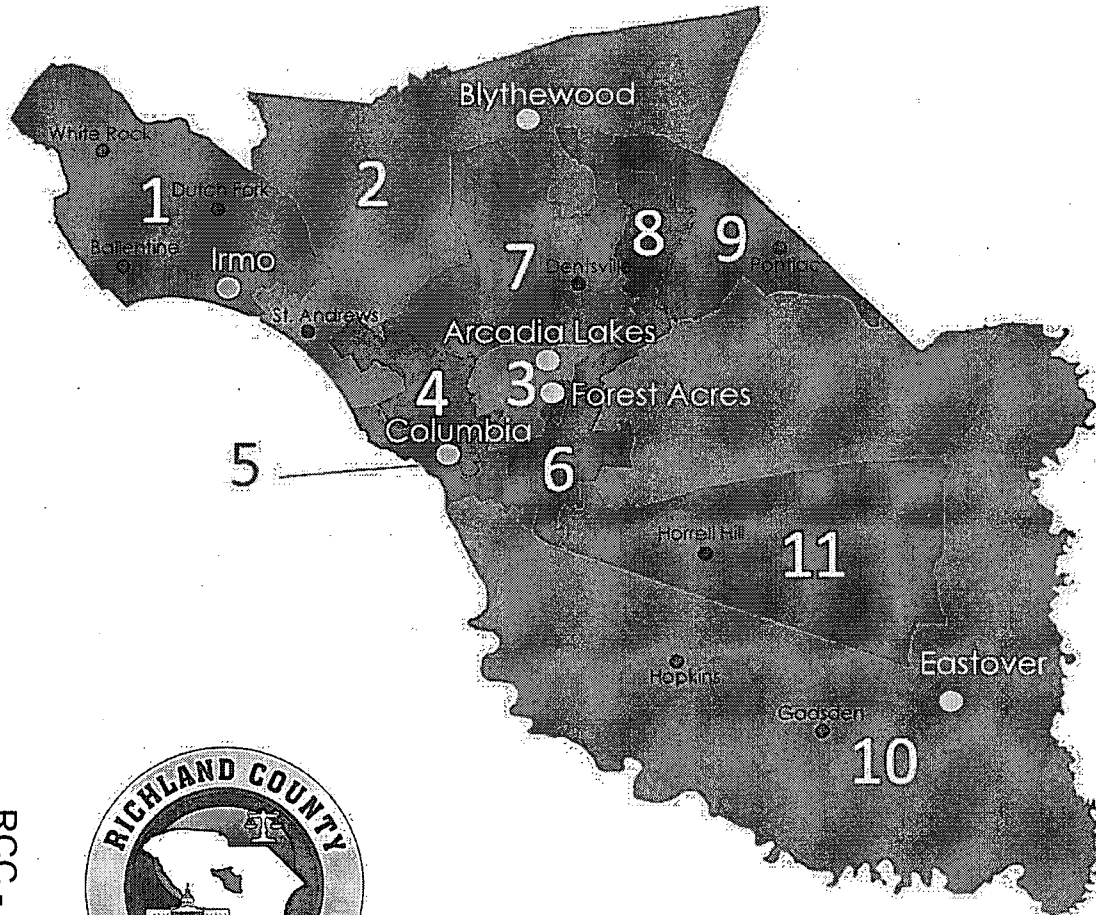


TUESDAY, May 2, 2017

6 P.M.

COUNCIL CHAMBERS

RICHLAND COUNTY COUNCIL 2017-2018



RCC - 560



VICE CHAIR
Bill Malinowski
District 1



CHAIR
Joyce Dickerson
District 2



Yvonne McBride
District 3



Paul Livingston
District 4



Seth Rose
District 5



Greg Pearce
District 6



Gwendolyn Kennedy
District 7



Jim Manning
District 8



Calvin "Chip" Jackson
District 9

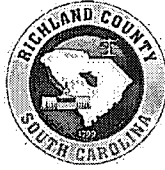


Dalhi Myers
District 10



Norman Jackson
District 11

The Honorable Joyce Dickerson, Chair	County Council District 2
The Honorable Bill Malinowski, Vice Chair	County Council District 1
The Honorable Yvonne McBride	County Council District 3
The Honorable Paul Livingston	County Council District 4
The Honorable Seth Rose	County Council District 5
The Honorable Greg Pearce	County Council District 6
The Honorable Gwendolyn Kennedy	County Council District 7
The Honorable Jim Manning	County Council District 8
The Honorable Calvin "Chip" Jackson	County Council District 9
The Honorable Dalhi Myers	County Council District 10
The Honorable Norman Jackson	County Council District 11



Richland County Council
Regular Session
May 2, 2017 – 6:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Joyce Dickerson,
Chair, Richland County Council
2. **INVOCATION** The Honorable Greg Pearce
3. **PLEDGE OF ALLEGIANCE** The Honorable Greg Pearce
4. **APPROVAL OF MINUTES** The Honorable Joyce Dickerson
 - a. Regular Session: April 18, 2017 [PAGES 7-16]
 - b. Zoning Public Hearing: April 25, 2017 [PAGES 17-18]
 - c. Special Called: April 27, 2017 [PAGES 19-21]
5. **ADOPTION OF AGENDA** The Honorable Joyce Dickerson
6. **REPORT OF THE COUNTY ATTORNEY FOR EXECUTIVE SESSION ITEMS** Larry Smith, County Attorney
*Items requiring outside counsel or a consultant.
 - a. Transportation Matter/Potential Litigation
 - b. Utility/Contractual Matter
 - c. Personnel Matter
 - d. Update on Audit
 - e. Legal Advice: Enforcement of Land Development Code
7. **CITIZENS' INPUT**
For Items on the Agenda Not Requiring a Public Hearing

Note: Pursuant to Council Rules, Council will record non-electronic roll call voting for all votes that are not unanimous for second and third reading or one time votes; and which are not merely procedural in nature.

8. **REPORT OF THE COUNTY ADMINISTRATOR**

Gerald Seals, County Administrator

- a. Richland 101
- b. Personnel Matter
- c. Presentation of the CAFR

9. **REPORT OF THE CLERK OF COUNCIL**

Michelle Onley, Deputy Clerk of
Council

- a. REMINDER: Budget Work Sessions (4:00 – 6:00 PM)
 - 1. May 9 – Special Revenue, Enterprise, and Millage Agencies
 - 2. May 11 - Grants
- b. REMINDER: 2017 Small Business Week Events:
 - 1. May 3 – SBA Salute to Small Business, 8:30 AM, Convention Center
 - 2. May 4 – City of Columbia Small Business Week Conference, 8:30 AM, Convention Center
- c. Public Works Week Luncheon, Wednesday, May 24, 11:30 AM, Public Works Complex – Powell Rd.

10. **REPORT OF THE CHAIR**

The Honorable Joyce Dickerson

11. **OPEN/CLOSE PUBLIC HEARINGS**

The Honorable Joyce Dickerson

- a. An Ordinance Authorizing a deed to Sallie B. W. Roberts for 0.0132± Acres to Cyrus Weston Road, in Richland County, which is a portion of TMS# 32800-01-25
- b. An Ordinance Amending the Richland County Code of Ordinances, Chapter 5, Animals and Fowl
- c. An Ordinance Amending the Fiscal Year 2016-2017 General Fund Annual Budget to appropriate up to Eighty Seven Thousand Eight Hundred Sixty Four Dollars (\$87,864) to increase funding to the Board of Voter Registration and Elections Department for the upcoming State House of Representatives District 70 Special Election for Richland County

12. **APPROVAL OF CONSENT ITEMS**

The Honorable Joyce Dickerson

- a. An Ordinance Authorizing a deed to Sallie B. W. Roberts for 0.0132± Acres on Cyrus Weston Road, in Richland County, which is a portion of TMS # 32800-01-25 [THIRD READING] [PAGES 22-23]
- b. 17-007MA
Cox & Dinkins
RM-HD to GC (0.8 Acres)
Daulton Drive & Barbara Drive
TMS# R17012-02-12 [SECOND READING] [PAGES 24-25]
- c. 17-008MA
Cox & Dinkins
OI to GC (10.33 Acres)
Daulton Drive, Blarney Drive & Barbara Drive
TMS# R17012-02-01 [SECOND READING] [PAGES 26-27]
- d. 17-009MA
Krystal Martin
GC to LI (5 Acres)
10539 Farrow Road
TMS# R17500-02-18 [SECOND READING] [PAGES 28-29]
- e. Award of the Summit Sidewalk 2017 Project [PAGES 30-37]
- f. FY17 – District 8 Hospitality Tax Allocations [PAGES 38-41]

13. **ORDINANCES - THIRD READING**

The Honorable Joyce Dickerson

- a. An Ordinance Amending the Richland County Code of Ordinances, Chapter 5, Animals and Fowl [PAGES 42-62]
- b. An Ordinance Amending the Fiscal Year 2016-2017 General Fund Annual Budget to appropriate up to Eighty Seven Thousand Eight Hundred Sixty Four Dollars (\$87,864) to increase funding to the Board of Voter Registration and Elections Department for the upcoming State House of Representatives District 70 Special Election for Richland County [PAGES 63-72]

14. **ORDINANCES - SECOND READING**

The Honorable Joyce Dickerson

- a. An Ordinance Authorizing the execution and delivery of a fee in lieu of tax agreement by and between Richland County and (Project Feng) (the "Company"); the execution and delivery of an infrastructure finance agreement by and between Richland County and the Company; the execution and delivery of such documents as may be necessary to effect the intent of this ordinance; and other matters related thereto [PAGES 73-124]

15. **REPORT OF THE DEVELOPMENT AND SERVICES COMMITTEE**

The Honorable Seth Rose

- a. Council Motion: Adjust mandated funding for programs and agencies by the percentage reduced by the Local Government Fund [PAGES 125-128]

16. **REPORT OF THE ADMINISTRATION AND FINANCE COMMITTEE**

The Honorable Greg Pearce

- a. Capital Projects: Authorization of Purchase Contract for 7615 Wilson Blvd. [PAGES 129-242]

17. **REPORT OF THE TRANSPORTATION AD HOC COMMITTEE**

The Honorable Jim Manning

- a. 2017 Resurfacing Package I: Construction Contract Award [PAGES 243-259]
- b. 2017 Resurfacing Package J: Construction Contract Award [PAGES 260-274]
- c. 2017 Resurfacing Package K: Construction Contract Award [PAGES 275-289]
- d. 2017 Resurfacing Package M: Construction Contract Award [PAGES 290-302]
- e. Three Rivers Greenway Project: Construction Contract Award [PAGES 303-321]

The Honorable Greg Pearce

18. **REPORT OF THE BLUE RIBBON AD HOC COMMITTEE** [PAGES 322-323]

- a. Mobile Home Replacement Vendor Approval
- b. Business Assistance Program (BAP) RFQ
- c. CDBG-DR Consultancy Services Extension

19. **SECOND CITIZENS' INPUT**

Must Pertain to Richland County Matters Not on the Agenda

20. **SECOND COUNTY ATTORNEY'S REPORT OF
EXECUTIVE SESSION ITEMS**

Larry Smith, County Attorney

21. **MOTION PERIOD/ANNOUNCEMENTS**

- a. Develop an emergency plan with SCDOT to immediately repair Rabbit Run Road and Bitternut Road. Developers' constant neglect to repair the storm drainage system causes dangerous flooding. A school bus almost overturned in the flood this morning (April 24, 2017) on Rabbit Run Road. We cannot afford to endanger the lives of citizens, especially school children because of neglect.

The Honorable Norman Jackson

- b. Council Rule Change: Standing committee meetings will have starting times listed as immediately following the preceding committee meeting, but no later than one hour after the start of the preceding meeting. If the committee meeting(s) have not concluded by the time the Zoning Public Hearing is scheduled to begin, the committee meeting will be recessed until the conclusion of the Zoning Public Hearing. The starting time for the Zoning Public Hearing will be changed from 7:00 PM to 6:00 PM.

The Honorable Bill Malinowski
The Honorable Norman Jackson

- c. It has come to my attention that some Richland County departments employ relatives in the same department in violation of Richland County rules. Direct the Administrator to research this matter, eliminate the problem through transfer, attrition, or dismissal

The Honorable Bill Malinowski

- d. Hangar Leases: In November of last year I made a Motion for the County Legal Department to review the standard Hamilton-Owens Airport hangar lease. Legal has now completed its review, and it is now appropriate for Council to move toward finalizing any revisions or changes to the model agreement. As such, I move that this matter be forwarded to the appropriate committee of Council (A&F?) and then on to full Council to consider the standard lease.

The Honorable Greg Pearce

(Additional motions may be received by the Clerk of Council's Office up to 24 hours prior to the Council meeting. Such motions will be distributed as "24-Hour Motions" to Council members)

22. **ADJOURN**

RICHLAND COUNTY OMBUDSMAN'S OFFICE

2020 Hampton Street Suite 3061
Phone: (803)929-6000

Columbia, SC 29204
Fax: (803)929-6009



March 6, 2017

Ms. Kathleen McDaniel
Callison Tighe & Robinson, LLC
1812 Lincoln St
Columbia, SC 29201
KathleenMcDaniel@callisontighe.com

RE: Freedom of Information Act (FOI) Request

Copy of job descriptions for
Procurement Department Director and
Assistant Director and information
regarding Procurement Review Panel

Dear Ms. McDaniel:

Your request for information pursuant to the Freedom of Information Act, S.C. Code 30-4-10 Ct. seq., concerning the above-referenced matter, was received in the Ombudsman's Office February 7, 2017 and forwarded to the Richland County Procurement Division and the Richland County Clerk of Council's Office for review.

Please find enclosed all non-exempt information regarding the above-mentioned request. Pursuant to 30-4-40(a) redactions of exempt information (i.e. personal information – phone numbers, addresses and email addresses) in this matter have been made. Feel free to contact me at (803) 929-6000 if you have any questions.

In the spirit of excellence,

A handwritten signature in cursive script that reads "Judy A. Carter".

Judy A. Carter / nms
County Ombudsman

cc: County Legal Department
Daniel Driggers, Chief Financial Officer
Michelle Onley, Deputy Clerk of Council

Enclosures

Navisala McAllister

Subject: FW: FOIA request

From: Ombudsman [<mailto:ombudsman@rcgov.us>]
Sent: Tuesday, February 07, 2017 4:50 PM
To: Kathleen McDaniel
Subject: RE: FOIA request

Good Afternoon,

Thank you for contacting the Ombudsman's Office. Your request for information pursuant to the Freedom of Information Act, S.C. Code § 30-4-10 et. seq., was received on **February 7, 2017** and forwarded to the Richland County Procurement Division and the Richland County Clerk of Council for review. Please be advised that, regarding a Freedom of Information Act request, § 30-4-30(b) of the South Carolina Code of laws authorizes a public body to "establish and collect fees not to exceed the actual cost of searching for or making copies of records." Prior to providing pertinent documentation, we will notify you of any fees associated with your request.

Please feel free to contact our office if we may be of further assistance.

In the Spirit of Excellence,

Jessica McDonald

Jessica McDonald
Senior Citizen Response Representative
Richland County Ombudsman's Office
2020 Hampton Street, Suite 3061
Columbia SC, 29204
Phone: (803) 929-6000
TDD: (803)576-2045
Fax: (803) 929-6009 email: ombudsman@rcgov.us

"We must let go of the life we have planned, so as to accept the one that is waiting for us." ~Joseph Campbell

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

From: Kathleen McDaniel [<mailto:KathleenMcDaniel@callisontighe.com>]
Sent: Tuesday, February 07, 2017 1:08 PM
To: Ombudsman
Subject: FOIA request

Dear Ombudsman,

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq. (1976 as amended), I hereby request that you provide to me, for the purpose of inspection or copying, the following documents from Richland County:

- The name of the Director of Procurement for Richland County along with the date on which he or she became the Director of Procurement.
- A copy of the job description for the Director of Procurement and the Assistant Director of Procurement and the dates on which the job descriptions were prepared.
- Names of all current members of the Richland County Procurement Review Panel.
- Dates of appointment by Richland County Council for all current members of the Richland County Procurement Review Panel.
- A copy of the "Application for Service on Richland County Committee, Board, or Commission" submitted to Richland County for each member of the Richland County Procurement Review Panel. If no such documentation exists, a copy of whatever documentation each member of the Procurement Review Panel submitted to Richland County indicating their interest to serve and their qualifications.
- Richland County Code Section 2-621.4 requires the five members of the Procurement Review Panel to come from the following industries:
 - 1 member serving a public procurement arena, preferably at management level with state or local government
 - 1 member representing the service industry
 - 1 member from the construction industry
 - 1 member from professional services
 - 1 member from the consumer industry

Accordingly, for each member of the Richland County Procurement Review Panel, please provide me with documentation indicating which industry he or she represents and his or her occupation within that industry.

Please let me know when these materials will be available for inspection or copying. I agree to pay reasonable reproduction fees as provided by law. However, please contact me first if the requested search, material, or both are expect to cost more than \$200.00. Thank you for your assistance in this matter.

Sincerely,
Kathleen McDaniel

CALLISON  TIGHE

Kathleen McDaniel

Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390

P: 803.404.6900 F: 803.404.6901

Email: KathleenMcDaniel@callisontighe.com

Columbia, SC 29202-1390

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IRS CIRCULAR 230 NOTICE: Any federal 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 any transaction or matter addressed in this communication.



Please consider your environmental responsibility before printing this e-mail.

Navisala McAllister

Subject: FW: FOIA request

From: Navisala McAllister **On Behalf Of** Ombudsman
Sent: Tuesday, February 28, 2017 1:16 PM
To: 'KathleenMcDaniel@callisontighe.com'
Subject: RE: FOIA request

Good Afternoon,

Thank you for the Freedom of Information Act request you submitted to Richland County on February 7, 2017.

As indicated in the correspondence sent to you on February 7, 2017, § 30-4-30(b) of the South Carolina Code authorizes a public body to "establish and collect fees" for providing information pursuant to a Freedom of Information Act request. Accordingly, you will be required to pay a per hour fee for the search time to retrieve all information requested and a per copy fee for copying such records. The Richland County Clerk of Council's Office has determined it will cost approximately **\$76.97** to retrieve documents pertinent to your request and is requiring payment be made before the documents are retrieved. Additionally, a copying fee may be assessed once the documents have been compiled. Upon receipt of all non-exempt documents, we will notify you of the full copying fee and payment will be required prior to making the documents available to you.

If you decide to proceed with your request, as written or as amended, please send an advance payment of **\$76.97** by check payable to "Richland County" to the Richland County Ombudsman's Office at 2020 Hampton Street, Suite 3061, Columbia, SC, 29204. Upon receipt of the advance payment, we will proceed with processing your request.

In the spirit of excellence,

Navisala McAllister
Navisala McAllister

Senior Citizen Response Representative
2020 Hampton Street, Suite 3061
Columbia SC, 29204
Phone: (803) 929-6000
Fax: (803) 929-6009 email: ombudsman@rcgov.us

"Life is for service." -Fred Rogers

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

Richland County

*****CUSTOMER RECEIPT*****

Cashier ID: county\rialessj

Receipt Date: 2/28/2017

Receipt Number: 17119

Fee Code: CR COPIES - CRCOPIES

Amount Due:\$76.97

Payment Amount: \$76.97

Primary Data Context: Miscellaneous receipts

Additional Comments: FOIA

Receipt Totals:

Total Cash Amount:\$0.00

Total Change Amount: \$0.00

Total Check Amount: \$76.97

Total Credit Card Amount: \$0.00

Total Tendered Amount:: \$76.97

Tender Information: Tender Type: CK|Check #113787|Amount \$76.97|Name: CALLISON TIGHE

Tender Type: CK

Tender Amount: \$76.97

Tender Name: CALLISON TIGHE



APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION

Applicant must reside in Richland County.

Name: Allen E. Brown
Home Address: [REDACTED]
Telephone: (home) [REDACTED] (work) [REDACTED]
Office Address: 250 Berryhill Rd., Ste 204
Email Address: allen@preservation.com / [REDACTED]
Educational Background: B.S. - Mgt, MIS, Finance; MBA - Finance Concentration
Professional Background: 12yrs Military Service - (Army Officer - Enlisted), Commercial Loan Officer
Male ☐ Female ☐ Age: 18-25 ☐ 26-50 ☒ Over 50 ☐ Financial Advisor
Name of Committee in which interested: Procurement Review Panel
Reason for interest: Interested in helping develop & implement fair and equitable vendor selection policies, procedures and practices
Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:
See attachment
Presently serve on any County Committee, Board or Commission? _____
Any other information you wish to give? 2004 GACC Young Professional of the Year, LC Graduate
Recommended by Council Member(s): _____
Hours willing to commit each month: 4-8 hours

CONFLICT OF INTEREST POLICY

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all

Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.

Yes _____ No *X*

STATEMENT OF FINANCIAL OR PERSONAL INTERESTS

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes *X* No _____

If so, describe: *Currently serve on Board of Directors of the National Assoc. of Minority Contractors - SC. As a member I personally support and have an interest in growing and creating capacity for historically disadvantaged business enterprises.*

[Signature]
Applicant's Signature

08/26/2015
Date

Return to:
Clerk of Council, Post Office Box 192, Columbia, SC 29202.
For information, call 576-2060.

One form must be submitted for each Committee, Board or Commission on which you wish to serve.

Applications are current for one year.

Staff Use Only	
Date Received: _____	Received by: _____
Date Sent to Council: _____	
Status of Application:	☐ Approved ☐ Denied ☐ On file

I left Columbia in 1991 to join the Armed Forces. A veteran, formerly serving in the United States Army as an "All-American Soldier" in the elite 82nd Airborne Division, Allen, I returned to my native home to attend college at the University of South Carolina, where I received a Commission as a Army Officer upon graduating in 2002 with BS degrees in Finance, Management Science (MIS), Management with a concentration in entrepreneurship, in addition to Sport and Entertainment Management. Later receiving my MBA from Webster University. These experiences have helped to broaden my perspectives as a look for opportunities improve economic inclusion in my community.

Apart from the time I spent serving in the Army, I have spent all of my life living and working in Richland County. Doing so has afforded me the privilege of seeing significant changes occur. From the demolishing of the Saxon Home Projects and building of single family homes in the Reid Street communities, to the removal of trees and building of homes in Northeast Columbia. The roots I have in this community, the first hand knowledge I have gained of what it means to be a resident of Richland County for over 30 years will prove to be beneficial.

Also, as a former commercial lender with South Carolina Community Bank, and BB&T, graduating from Branch Banking and Trust's (BB&T's) Management/Leadership Development Program, I have worked with individuals, church leaders and business owners for over 10 years helping them to maximize and manage their money in the most effective and efficient ways possible. I understand how changes in the economy can create opportunities and place downward pressure on the decisions leaders make when leading their organizations. I am currently the Director of Operations for a local Registered Investment Advisory (RIA) firm servicing over 200 clients with more than \$50 Million Assets Under Management (AUM). In this role I am constantly reviewing and updating our business practices to support our strategic goals in an ever-changing industry and local market.

Tish Garnett

From: Michelle Onley
Sent: Monday, March 06, 2017 4:35 PM
To: Tish Garnett
Subject: RE: Completed FOI Request- Job Descriptions for Procurement Director & Assistant Director and Information Regarding Procurement Review Panel

Tish,

I checked with Kimberly in my office and we do not have a copy of the applications for Boozer and Martin.

From: Tish Garnett
Sent: Monday, March 06, 2017 4:03 PM
To: Ombudsman; Michelle Onley; DWIGHT HANNA; CHRISTY SWOFFORD
Cc: DANIEL DRIGGERS; Julia Dake
Subject: RE: Completed FOI Request- Job Descriptions for Procurement Director & Assistant Director and Information Regarding Procurement Review Panel

To all:

Because I am unsure of which department provided the application for Allen Brown (attached), I am asking all departments: are there no applications existing for the other procurement panelists (Boozer and Martin)?

Thanks,

Tish Garnett
Assistant County Attorney
Richland County Attorney's Office
2020 Hampton Street, Room 4018
PO Box 192
Columbia, South Carolina 29202
(803) 576-2079 (fax) 803-576-2139

GarnettT@rcgov.us

ATTORNEY-CLIENT OR OTHER PRIVILEGED INFORMATION NOT FOR DISSEMINATION BEYOND ORIGINAL ADDRESSEE(S) AND COPIED RECIPIENT(S)

From: Navisala McAllister On Behalf Of Ombudsman
Sent: Wednesday, March 01, 2017 2:02 PM
To: Michelle Onley; DWIGHT HANNA; CHRISTY SWOFFORD
Cc: DANIEL DRIGGERS; Tish Garnett; Julia Dake
Subject: Completed FOI Request- Job Descriptions for Procurement Director & Assistant Director and Information Regarding Procurement Review Panel

Good Afternoon,

PROCUREMENT REVIEW PANEL

The Panel is responsible for providing an administrative review of formal protest decision arising from the solicitation and award of contracts, the debarment or suspension of a person from the consideration for award of a contract, a decision concerning the resolution of a contract or breach of contract controversy, or any other decision, policy or procedure arising from or concerning the expenditure of County funds for the procurement of any supplies, services, or construction procured in accordance with the provisions of the code and regulations. The panel shall be composed of **FIVE MEMBERS WITH NO TERM LIMITS**. Representatives must be:

- One member who serves in a public procurement arena,
- One member who represents the service industry,
- One member who is from the construction industry,
- One member who is from the professional services
- One member who is from the consumer industry.

Appointment Date

Lindsey Dale Boozer (Construction)	September 6, 1994
Allen Brown (Service)	September 15, 2015
Willa Bailey Martin (Professional)	September 9, 2014

Contact:
Christy Swofford
swoffordc@rcgov.us
803-576-2129

PROCUREMENT REVIEW PANEL

The Panel is responsible for providing an administrative review of formal protests of decisions arising from the solicitation and award of contracts, the debarment of suspension of a person from the consideration for award of a contract, a decision concerning the resolution of a contract or breach of contract controversy, or any other decision, policy or procedure arising from or concerning the expenditure of County funds for the procurement of any supplies, services, or construction procured in accordance with the provisions of the code and regulations. The panel shall be composed of **FIVE**

MEMBERS WITH NO TERM LIMITS. Representatives must be:

- One member who serves in a public procurement arena,
- One member who represents the service industry,
- One member who is from the construction industry,
- One member who is from the professional services,
- One member who is from the consumer industry.

Lindsey Dale Boozer

[REDACTED]
[REDACTED]
[REDACTED]

9/6/94

Allen Brown

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

allen@scppreservation.com

9/15/15

Willa Bailey Martin

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9/9/14

(13) DISADVANTAGED BUSINESS ENTERPRISES (DBE) COMMITMENT SHEET

Information must be shown on this sheet as required by the supplemental specifications entitled "Instructions to Bidders - Federal Projects" and "Disadvantaged Business Enterprises (DBE) - Federal Projects" included in this proposal.

(1) FAILURE TO PROVIDE ALL INFORMATION REQUIRED ON THIS FORM MAY RESULT IN THE AWARD BEING MADE TO THE NEXT LOWEST RESPONSIBLE BIDDER.

1 Name & Address of DBE's (Subcontractor or Supplier)	2 Percent	3 Description of Work and Approximate Quantity (show percent when appropriate)			5 Dollar Value
		Item	Qty.	Unit	
TAYLOR BROTHERS - COLUMBIA SC		BORROW DIRT	104800 CY	13%	1,362,504 ⁶
SPC - SIMPSONVILLE SC		CONCRETE CAST IN PLACE	1 LS		432,590 ⁶ 432,590 ⁶

- 1 The designation of Firm A and/or B is not considered acceptable. I hereby certify that this company has communicated with and received quotes from the DBE's listed above and that they are willing to perform the work as listed above and that this company is committed to utilizing the above firm(s) on this contract.
- 2 Percent - show percent of total contract amount committed to each DBE listed.
- 3 All information requested must be included unless item is listed in proposal on a lump sum basis.
- 4 Unit Price - show unit price quoted by DBE.
- 5 Dollar Value - extended amount based on Quantity and Unit Price.
- 6 Applies to lump sum items only.

This form may be reproduced or additional sheets added in order to provide all requested information. I declare under penalty of perjury that the information provided herein is true and correct.

Robert C. McClam
Name

V. President
Title

(15) SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PARTICIPATION SHEET

Small Local Business Enterprises

The BIDDER is encouraged to utilize firms from the COUNTY's SLBE list or firms with the potential to qualify as an SLBE under the COUNTY's ordinance. Information on the COUNTY's SLBE ordinance and firm certification may be found on the COUNTY's website at:

<http://www.richlandonline.com/Government/Departments/BusinessOperations/SmallLocalBusinessEnterprises.aspx>

BIDDER is required to complete the SLBE Identification Forms and submit it with the Proposal. Any SLBE company identified must be certified in accordance with the certification program of the Richland County Government. A listing of currently certified firms can be found on the County's website:

<http://www.richlandonline.com/Portals/0/Departments/Procurement/SLBE/SLBE%20Certified%20Directory%20June%202019,%202015%20Revised%20for%20Website.pdf>

Information must be shown on this sheet and submitted with bid/proposal.

1. Name & Address of SLBE (Subcontractor or Supplier)	SLBE Firm	Scope/Type of Work	2. Estimated Percentage of Total Contract
TAYLOR BROTHERS COLUMBIA SC	YES 5.5%	BORROW DIRT	1,362,504 ⁰⁰

I The designation of Firm A and/or B is not considered acceptable. I hereby certify that this company has communicated with and received quotes from the SLBE's listed above and that they are willing to perform the work as listed above and that this company is committed to utilizing the above firm(s) on this contract.

2 Percent - show percent of total contract amount committed to each SLBE listed.

This form may be reproduced or additional sheets added in order to provide all requested information.

I declare under penalty of perjury that the information provided herein is true and correct.

SWORN to before me this 14th day of SEPT., 2016

MCCLAM & ASSOCIATES, INC
Company

[Signature]
Legal Signature

Notary Public for SC My Commission Expires: September 12, 2017

From: Dale Collier
To: BRENDA PARNELL
Cc: Janet Jones
Subject: Re: Addendum Minutes
Date: Tuesday, September 13, 2016 9:59:22 AM
Attachments: image003.png

Yes ma'am. We'll make clarifications.

Dale

On Sep 13, 2016, at 9:50 AM, BRENDA PARNELL <PARNELLB@rcgov.us> wrote:

Dale,

That is understandable, but contractors need to know SLBE/DBE is either or not both.

Brenda Parnell

Assistant Director

[image003.png](#)

2000 Hampton Street, Suite 3014

Columbia, South Carolina 29204

Office: (803) 576-1544

Fax: (803) 576-1549

Parnellb@rcgov.us

From: Dale Collier [<mailto:dcollier@richlandpenny.com>]

Sent: Tuesday, September 13, 2016 9:48 AM

To: BRENDA PARNELL

Cc: Janet Jones

Subject: Re: Addendum Minutes

Brenda - It's too late to issue an Addendum with bids due tomorrow. The last day for questions from contractors was last Wednesday. I'm giving the same response to late questions from others to avoid protests after bids are taken. We'll have to handle post-bid with the successful contractor.

Dale

On Sep 13, 2016, at 8:41 AM, BRENDA PARNELL <PARNELLB@rcgov.us> wrote:

Sorry, Janet I forgot to put the project....Shop Road Extension Phase I.

Thanks,

Brenda Parnell

Assistant Director

[image001.png](#)

2000 Hampton Street, Suite 3014
Columbia, South Carolina 29204
Office: (803) 576-1544
Fax: (803) 576-1549
Parnellb@rcgov.us

From: Janet Jones [<mailto:jjones@richlandpenny.com>]
Sent: Tuesday, September 13, 2016 8:39 AM
To: BRENDA PARNELL; Dale Collier
Subject: RE: Addendum Minutes

What project?

Janet Jones
Assistant Procurement Manager
201 Arbor Lake Drive | Columbia, SC 29223
T: 1-844-RC PENNY | D: 803-726-6160
www.richlandpenny.com
<image005.png>

From: BRENDA PARNELL [<mailto:PARNELLB@rcgov.us>]
Sent: Monday, September 12, 2016 4:35 PM
To: Dale Collier <dcollier@richlandpenny.com>; Janet Jones
<jjones@richlandpenny.com>
Subject: Addendum Minutes

Dale and Janet
Mr. Collier Taylor called me today about verification of the SLBE and DBE participation.

The Addendum#1: Section -D: Questions and Answers. Please correct on page 17 the 4th questions as it reads " Can subcontractors be included on both SLBE and DBE Participation Forms and be credited toward both percentages? The answer is "NO" The participation is going to be either/or not both.

Also you have OSBO phone number incorrectly 2. DBE/SLBE Participation on page 9. It should be (803) 576-1540.

Regards,

Brenda Parnell

Assistant Director

[image006.png](#)

2000 Hampton Street, Suite 3014

Columbia, South Carolina 29204

Office: (803) 576-1544

Fax: (803) 576-1549

Parnellb@rcgov.us