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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COMMON PLEAS COURT
Appellate Case No.: 2012-208787

J. C. Nicholson, Jr., Circuit Court Judge
Trial Court Case No.: 2008CP1003308

Stephen George Brock, ... Appellant,

v.

Town of Mount Pleasant, ... Respondent.

RECORD ON APPEAL
VOLUME II

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SC Court of Appeals

1 Council"?

2 A. That sounds like what we said.

3 Q. Okay. Now, was there anything in that
4 notice that would lead the public to the
5 information that the clerk of council of the
6 Town of Mount Pleasant had resigned?

7 A. No. I don't think that they needed to
8 know.

9 Q. Are you in charge of deciding what the
10 public needs to know and what the public doesn't
11 need to know?

12 A. I don't think that they need to know why
13 she resigned or when she resigned, etc.

14 Q. Well, would the public have any interest in
15 knowing when -- who might be appointed as the
16 new clerk of Council?

17 A. They would know that when Council made that
18 announcement.

19 Q. They would not have any input on that issue
20 before the appointment was made?

21 A. No, sir.

22 Q. If they had known that that issue was being
23 addressed that night, could they have come to
24 the meeting and expressed an opinion about who
25 should be appointed as clerk of Council, once

1 they found out that the clerk of Council had
2 resigned that day?

3 A. No, sir.

4 Q. They couldn't speak on that issue?

5 A. Oh, they could speak if they were there.

6 Yes, sir.

7 Q. But they wouldn't know about it unless it
8 was on the agenda and announced?

9 A. That's correct.

10 Q. And it wasn't on the agenda that was
11 posted, was it?

12 A. No, sir.

13 Q. It was only on the agenda after the meeting
14 started?

15 A. That's correct.

16 Q. So if a member of the public is interested
17 in the clerk of Council, that member of the
18 public would not know that that person had
19 resigned unless they just happened to be at the
20 meeting? He or she. Is that correct?

21 A. That's correct.

22 Q. And would have no input in any way, shape
23 or form as to who the successor would be,
24 period.

25 A. No, they wouldn't -- they might not even if

1 it was actually on the agenda.

2 Q. Well, don't you think that it is fairly
3 important for the public to know who their
4 public servants are?

5 A. Sure, but I don't think it's necessary for
6 the public to weigh in on who they are going to
7 select. I think that's either for Town Council,
8 in some cases, or the Town Administrator or
9 department heads.

10 Q. So you would agree that the public should
11 have no interest in that or the ---

12 A. I didn't say that they ---

13 Q. --- right to say who ---

14 A. --- shouldn't have an interest in. I not
15 sure that they have a right to say anything
16 about it.

17 Q. Okay. Now, boards and commissions. That
18 night, November the 16th 2007, under personnel
19 matters for executive session, that was amended
20 to be included in the agenda for the first time,
21 it said -- do you agree -- "personnel matters
22 for boards and commissions"?

23 A. As I recall, yes, sir.

24 Q. Is there any way for a member of the public
25 to have any idea whatsoever as to what was going

1 to be considered that night concerning boards
2 and commissions of the Town?

3 A. If they were there, they would know that
4 there was something that was going to be taken
5 up in executive session about boards and
6 commissions. I am not sure that the law
7 requires any further information actually be put
8 out before they go into executive session.

9 Q. Okay. Let's go back just a minute on that.
10 I am a citizen of the Town. I realize that you
11 post an agenda before every meeting.

12 A. Yes, sir.

13 Q. All right. I come and look at the agenda
14 and I'm interested in who is on this board or
15 that commission but I see nothing on the agenda
16 in that regard, so I have no way to know that
17 this issue is coming up. Do I?

18 A. Unless you're there.

19 Q. Well, I wasn't there. I was looking at the
20 agenda. Right?

21 A. Right.

22 Q. Okay. And does the public have any input
23 in the Town of Mount Pleasant as to who serves
24 on boards and who serves on commissions?

25 A. No, sir, it's up to Town Council.

1 Q. All right. Now, what is the issue that
2 night, November the 16th, 2007, that was going to
3 be considered in executive session about boards
4 and commissions?

5 A. Discussion regarding the chairman of the
6 planning commission and his actions that, uh,
7 some members of the Council felt were
8 insubordinate, inappropriate, disloyal.

9 Q. Well, would there be any way for the
10 chairman of the planning commission to know that
11 this action, this discussion would be occurring
12 on that night?

13 A. No. I don't know that there is any
14 requirement that he know that. He might not
15 like it, but I am not sure that there is any
16 requirement of law that says he's got to be
17 notified.

18 Q. Okay. Now, the notice for that meeting did
19 not include the -- the agenda for that meeting
20 did not include any notice that action would be
21 taken on any of this matters; did it?

22 A. No. Oftentimes you go into executive
23 session and you don't know that there is any
24 action taken until you come out of executive
25 session.

1 Q. So ---

2 A. Somebody can make a motion.

3 Q. --- is it correct then that action is often
4 taken by the Town Council on matters that are
5 not announced in advance, even by the agenda?

6 A. I would say that's routine for any city
7 council or town council in South Carolina.

8 Q. How about the one in Mount Pleasant?

9 A. Yes, sir. From time to time there is
10 action after discussion in executive session,
11 Council determines that there is action that
12 needs to be taken for the good of the public and
13 someone may make a motion, someone will second
14 it and there will be a vote of Council.

15 Q. Is that routine operating procedure?

16 A. If there's executive session, I would say
17 probably at least half the time there's an
18 action following the discussion in executive
19 session.

20 Q. So fifty percent of the time -- what you're
21 testifying to is that fifty percent of the time,
22 probably, in the Town of Mount Pleasant the Town
23 Council acts on matters that are discussed in
24 executive Council (sic) without any notice to
25 the public whatsoever that action is going to be

1 taken?

2 A. Well, I think that implied that when you go
3 into executive session that there is going to be
4 action taken, so I think there some reason to
5 believe that some action may be taken.

6 Q. Is it ever -- is it ever stated on the
7 agenda that you know it's implied that we might
8 take action on something that is not on the
9 agenda?

10 A. (No verbal response).

11 Q. How is it implied?

12 A. I am not sure I understood the question.
13 Say that again?

14 Q. It was a little garbled, I agree. Would
15 any -- would a member of the public be able to
16 know that when an agenda is amended to include a
17 discussions about boards and commissions that
18 any action would be taken on that subject?

19 A. They would not necessarily know that.

20 Q. No knowledge?

21 A. There might not be.

22 Q. But don't you agree, Mr. Burdette, that if
23 in this particular case that we're talking about
24 that it said Town Council will discuss the
25 matter of the resignation of the clerk of court

1 (sic) and that we will appoint a new clerk of
2 court (sic), would not that give the public
3 information to which it is entitled?

4 A. I do not believe that they're entitled to
5 that information in that way.

6 Q. All right. And you don't think that,
7 therefore, the Freedom of Information Act
8 requires such notice?

9 A. I don't believe that it is required that
10 you give that specific information.

11 Q. Okay. So before we leave this matter of
12 the agenda, your testimony is that every meeting
13 of the Town Council of the Town of Mount
14 Pleasant, except for when HUGO hit, has been
15 preceded by an agenda. Right?

16 A. Yes, sir.

17 Q. Posted twenty-four hours in advance of the
18 meeting?

19 A. Absolutely, never fails.

20 Q. And are you aware that the Freedom of
21 Information Act requires special notice of all
22 action to be taken by the Council be made
23 available to the press before the meeting? It
24 says "media".

25 A. I think it says something to that effect.

1 Q. What do y'all do to inform the media prior
2 to the meeting of what you're going to be doing
3 at the Council meeting?

4 A. We send it out by e-mail. Before e-mail,
5 we sent it out by hard copy.

6 Q. What did you send?

7 A. What did we send?

8 Q. (No verbal response).

9 A. The agenda.

10 Q. Anything other than the agenda?

11 A. No, sir. The supporting documentation --
12 if there are documents that go with the agenda,
13 we attach those.

14 Q. In the case of the Shem Creek property,
15 the O.K. Tire Store litigation, was the press
16 informed prior to the meeting that night that
17 this issue would be considered?

18 A. No, sir.

19 Q. You knew that it would be considered,
20 though, didn't you?

21 A. We knew about 5:45 that evening that we
22 were going to ask Council to consider someone
23 making a motion to amend the agenda.

24 Q. Was the press informed of that?

25 A. They knew it when Council made the motion.

1 Q. If they were there?

2 A. They were there.

3 Q. But they didn't know it before?

4 A. No, sir.

5 Q. Okay.

6 A. Council didn't know it before.

7 Q. Now, Mr. Burdette, moving to the issue of
8 executive sessions -- excuse me, committees.

9 Committees. Committee meetings that you talked
10 a lot about a while ago?

11 A. Yes, sir.

12 Q. First of all, what is a quorum of Council?

13 A. Five members of Council.

14 Q. Fifty percent plus one?

15 A. Yes, sir.

16 Q. Okay. And was it unusual when you were
17 in the Town of Mount Pleasant for nonmembers
18 of committees to attend committee meetings?

19 A. Not unusual at all.

20 Q. In fact, some Town Council members attended
21 all committee meetings virtually, didn't they?

22 A. I'd say so.

23 Q. On most occasions there would always be a
24 majority of Council present at the committee
25 meetings, wouldn't there?

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1 A. Frequently.

2 Q. Were there ever any committee meetings
3 where there wasn't a quorum of Council?

4 A. Many of them.

5 Q. How many people attended meetings all the
6 time as a matter of course? I realize that ---

7 A. There were probably two members of Council
8 who had much more flexibility and time, that
9 would rarely miss a committee meeting.

10 Q. Who were they?

11 A. Ms. Stokes-Marshall tried to attend pretty
12 much all of the meetings. The mayor was one of
13 the more frequent attendees of the committee
14 meetings.

15 Q. Now, on those occasions, was it ever
16 announced that there were extra members of
17 Council in addition to regular committee members
18 attending?

19 A. No, sir.

20 Q. And they all sat at the same table, at the
21 head of the room?

22 A. Not all the time.

23 Q. Not always?

24 A. (No verbal response).

25 Q. But generally?

1 A. I'd say probably fifty percent of the time
2 that some of them sat up there. It just
3 depended. Some of them would come in late. If
4 they came in late for a meeting, they'd sit on
5 one of the audience chairs if one was available.

6 Q. Okay. And sometimes they would participate
7 in the discussion of the committee, wouldn't
8 they?

9 A. Not without being recognized by the chair,
10 just as any citizen would.

11 Q. Or as any member of the committee would be.
12 Right?

13 A. No, sir. Generally, as I said earlier, --
14 I'd say more "generally." Routinely the
15 committee chair -- the Council member who was
16 not on the committee would raise their hand to
17 be recognized, and routinely the Chair would say
18 'Mr.' or 'Mrs. So-and-So, when I get through
19 hearing from the members of the Committee, I'll
20 be glad to take your question.'

21 Q. Okay. You were in the courtroom today when
22 there was testimony between July of '07 and June
23 of '08 that eighty of the one hundred committee
24 meetings were attended by a quorum of Council.
25 Do you have any quarrel with that?

1 A. That wouldn't surprise me.

2 Q. Wouldn't surprise you at all?

3 A. No.

4 Q. You wouldn't disagree with it?

5 A. No, sir.

6 Q. Okay.

7 A. I'd be pleased if that did happen, matter
8 of fact.

9 Q. All right. Let's talk about the e-mail
10 situation for a few minutes, if we may.

11 A. Yes, sir.

12 Q. The e-mail policy that was adopted in 2010,
13 do you recall that?

14 A. Yes, sir.

15 Q. And it is in evidence?

16 A. Yes, sir.

17 Q. Is that the first e-mail policy that had
18 been adopted by the Town?

19 A. Yes, sir.

20 Q. It was?

21 A. (No verbal response).

22 Q. And that relates entirely to the Town's
23 computer e-mail system, doesn't it?

24 A. That's correct.

25 Q. It has no regulation whatsoever over

1 anyone's private computer, does it?

2 A. Only except where it states that you shall
3 use the Town's computers for public
4 correspondence. So I guess in a way indirectly
5 that it addresses it.

6 Q. All right. Is there any prohibition in
7 that policy that prohibits Town Council people
8 from deleting prior e-mails concerning the
9 public business?

10 A. No, sir.

11 Q. So Town Council members, as was the case,
12 the evidence will show, in 2007 and 2008
13 routinely -- as I subject the evidence shows in
14 Mr. Santos' deposition -- double deleted e-mail?

15 A. I remember in the deposition that we had
16 this discussion. I am still not sure what
17 "double deleted e-mails" means.

18 Q. Well, it's just -- let's just keep it at
19 deleted. Do you understand that?

20 A. Yes, sir, I do.

21 Q. Do you understand what deleting an e-mail
22 is?

23 A. Absolutely.

24 Q. Is there -- was there any prohibition
25 whatsoever in 2007 and 2008 to prevent or

1 prohibit a member of Town Council from deleting
2 e-mails concerning the public's business?

3 A. That was sent on a private computer?

4 Q. Yes, sir.

5 A. I am not certain that in fact it is public
6 information if it was sent on a private
7 computer. I don't think that question has been
8 answered by the Court.

9 Q. Well, let's just assume that based on the
10 e-mails in evidence, that if they're writing one
11 another about public business on private
12 computers, was there any policy in 2007-2008 to
13 prohibit the deletion of those e-mails?

14 A. No, sir. I think anybody had a right to do
15 that.

16 Q. All right. Was there any -- is there any
17 policy in place right now where -- well, up to
18 the time that you left a few weeks ago, to
19 prohibit and prevent members of Town Council
20 from deleting private e-mails about public
21 business?

22 A. No, sir, there is not a policy.

23 Q. Are you aware that in 2005 there was
24 promulgated an e-mail management policy?

25 A. I know generally about it.

1 Q. Well, have you read it?

2 A. Probably, a long time ago. I couldn't
3 possibly tell you what it says.

4 Q. All right. What, if anything, has the Town
5 of Mount Pleasant done to implement the
6 guidelines of the e-mail policies recommended in
7 those guidelines for members of Town Council?

8 A. The 2010 policy.

9 Q. That's all?

10 A. For Town Council.

11 Q. That's all?

12 A. Yes, sir.

13 Q. And we are agreed, are we not, that the
14 March 2010 e-mail policy adopted by the Town
15 relates only to Town computers?

16 A. I believe that is true.

17 Q. It is true. I mean, you think that it's
18 true?

19 A. I think so.

20 Q. Okay. Mr. Burdette, I think you can
21 answer this, because I saw your name on a lot of
22 the e-mails that are in evidence, but is it true
23 that Council members sometimes exchange e-mails
24 about pending matters on private computers?

25 A. In the past?

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1 Q. Well, even now.

2 A. I wouldn't know today.

3 Q. You wouldn't know since you've left?

4 A. No. I wouldn't know even since they were
5 issued Town computers if they did that or not.
6 I don't have that information.

7 Q. You'd have no way of knowing that?

8 A. No, I don't.

9 Q. Okay. Is there any policy or procedure for
10 the Town of Mount Pleasant to permit the
11 destruction of private computer e-mails that are
12 about public business?

13 A. If it's -- I am going to say it my way, and
14 you and you can correct if you need to. If it
15 is sent to the Town of Mount Pleasant, received
16 by the Town of Mount Pleasant, sent on private
17 computers, it's a public document and we manage
18 that document according to our policies and the
19 law of the state of South Carolina.

20 Q. What are the laws of South Carolina that
21 pertain to that?

22 A. In terms of retention, how long retained,
23 etc.

24 Q. Okay.

25 MR. TISDALE: Your Honor, can ---

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION CONTINUED

3 BY MR. TISDALE:

4 Q. Mr. Burdette, what is the -- I think that
5 the evidence shows in this case that there were
6 frequently -- I don't know about always, but
7 often special meetings of Town Council held
8 immediately before regular meetings?

9 A. Almost always.

10 Q. Almost always?

11 A. You know, in the last seventeen years,
12 almost always.

13 Q. Why is it that these special meetings were
14 called right before regular meetings on a
15 routine basis?

16 A. Well, our Council meetings, by ordinance,
17 are set to start at 7:00 o'clock. Often we will
18 have agendas or work to be done that comes out
19 of committees that would take us to 2:00 o'clock
20 in the morning if we didn't start at 5:00 or
21 5:30.

22 Q. Right.

23 A. The only way, without changing the regular
24 time of the Council meeting, which would be a
25 disservice to the public if we changed that

1 regularly, or changed it at all, would be to
2 have special council meetings to deal with some
3 of those issues that were -- that were not
4 automatically established by the ordinance, that
5 they needed to be done in the regular Council
6 meetings, such as planning commission business.

7 Q. Right.

8 A. We never deal with planning commission
9 business at the Council meeting, special Council
10 meetings as ---

11 Q. So these special Council meetings take
12 place before the regular meeting?

13 A. Yes, sir.

14 Q. So would it be that you'd have a special
15 meeting, take care of business at the special
16 meeting, then proceed to a regular meeting ---

17 A. Right.

18 Q. --- and take up matters there and vote in
19 there?

20 A. Yes, sir.

21 Q. Was it ever considered by the Town to do
22 the voting at the regular meetings, not the
23 special meetings?

24 A. No, sir. It was -- the meetings were
25 posted, the agendas were posted, the public

1 received notification.

2 Q. Well, what's the difference, in reality,
3 between a special meeting and the regular
4 meeting? Except that one was a special meeting
5 and one was the regular meeting?

6 A. One you're going to have routinely by
7 ordinance, the other you may not need to have it
8 -- or you may, just depending on the workload.

9 Q. Well, I know the ---

10 A. If we had an easy month and we didn't need
11 to have a special Council meeting, there
12 wouldn't be one called.

13 Q. You said that you routinely always had a
14 special meeting before the regular meeting, why
15 not just call them all regular meetings?

16 A. Because you don't need to meet regularly at
17 5:30 every month.

18 Q. Okay. I am not sure that I understand
19 that, but -- (pause).

20 A. I'm sorry.

21 THE COURT: Let me ask you this. I
22 mean, you're sitting there saying that it's a
23 time issue and that you can't change the regular
24 meetings to earlier because it would be a
25 disservice to the public. But at the same time,

1 you're doing public service at 4:30 or 5:00, or
2 whenever you start the meeting. It doesn't make
3 sense, what you're trying to say.

4 THE WITNESS: Well, the ---

5 THE COURT: I mean, you're saying
6 'hey, we can't change the ordinance to start at
7 5:00 because it's a disservice to the public.'
8 But at the same time you turn around and say
9 'but we have these special meetings every day at
10 5:00 o'clock.' So you're doing business in a
11 special meeting, not the regular meeting.

12 The first part of a regular meeting if you
13 look at your ordinance, is sort of per
14 functionary, approval of the minutes, the pledge
15 of allegiance to the flag, etc., etc. and then
16 your executive session is at the end of the
17 meeting, which is really worthless because
18 you've already had your executive session.

19 THE WITNESS: No, sir, not
20 necessarily.

21 THE COURT: I just don't understand
22 your rationale that you've given about that. It
23 doesn't make sense to this court.

24 THE WITNESS: I'm not ---

25 THE COURT: I mean, you're saying,

1 'Hey, the time is an issue.' Then start the
2 meetings at 4:00 o'clock. Have a real meeting,
3 not a semi-secret meeting and then the public
4 meeting. That's what it appears to this court
5 that you're doing on a routine basis.

6 THE WITNESS: Well, certainly the
7 last thing I want to do is take issue with this
8 court, I assure you, sir. So I don't want
9 anything that I say to be taking issue with the
10 court.

11 THE COURT: Well, I want to under-
12 stand what you're saying.

13 THE WITNESS: All right. If you
14 look at the ordinance that establishes the
15 format for our regular Council meeting, held
16 every second Tuesday at 7:00 o'clock.

17 The real important work, to start with,
18 is what comes out of the planning commission
19 meeting. Typically that's where you are going
20 to get the large amount of public issue/interest,
21 is what comes out of the planning commission.

22 We've always had the meeting at 7:00
23 o'clock on that same Tuesday for almost a
24 generation or so.

25 THE COURT: But you're really not.

1 You're having meetings at 5:00 o'clock.

2 THE WITNESS: But it's not on
3 those matters that the public has come to accept
4 that that's when it will be.

5 THE COURT: But that's not the point.

6 THE WITNESS: Sir, the ---

7 THE COURT: The point is to let the
8 public know what is going to transpire.

9 THE WITNESS: And, we do. We
10 advertise those special meetings just as we do
11 our regular Council meetings. The public is
12 noticed, the press is notified, it's all quite
13 transparent. There is no question about that.

14 THE COURT: Well, it's not
15 transparent with the executive -- when the
16 special meetings are or the executive sessions.
17 That's the only thing that I've seen in the
18 evidence, is that all the executive (sic)
19 sessions start at 5:00.

20 THE WITNESS: Some are executive
21 sessions, without question. I couldn't hear,
22 what you were saying about ---

23 THE COURT: I don't know what
24 percentage is, but -- I mean, -- go ahead. I
25 didn't mean to interrupt you. I just don't

1 follow your rationale. I want to understand it.

2 I'm not trying to take a position prior
3 to reading everything, but I don't understand
4 your -- your position doesn't jive, in my
5 opinion, at this point in time.

6 THE WITNESS: All right, sir.

7 THE COURT: Please explain it.

8 THE WITNESS: Well, I will try.

9 THE COURT: Okay.

10 THE WITNESS: First of all, we're
11 obviously entitled by law to have special Council
12 meetings.

13 THE COURT: Right.

14 THE WITNESS: Period.

15 THE COURT: I don't question that.

16 THE WITNESS: So when you have
17 them, how often you have them, I'm not sure what
18 the issue is with that. If you decide -- if
19 Council decides that in the interests of the
20 public, to do the public's bidding, to have one
21 once every day, they could do it as long as they
22 met the prerequisite requirements.

23 THE COURT: Right.

24 THE WITNESS: And we do that.

25 THE COURT: Okay.

1 THE WITNESS: Town Council
2 believes that it is in the best interest of the
3 public, in doing what the public needs to be
4 done, to often have special Council meetings
5 before regular Council meetings. I certainly
6 mean no disrespect but that is Council's
7 prerogative.

8 THE COURT: Right. Okay.

9 THE WITNESS: Now, for me to try
10 to explain the thinking of nine members of
11 Council, I've been trying to do that for twenty-
12 five years and I just can't do it.

13 THE COURT: I understand. Thank you
14 very much.

15 THE WITNESS: Yes, sir.,

16 MR. TISDALE: Just to follow up on
17 that for just a second.

18 THE COURT: Okay.

19 CROSS EXAMINATION CONTINUED

20 BY MR. TISDALE:

21 Q. Mr. Burdette, why is it that most of the
22 executive sessions, as this record reflects, I
23 think, are held in the special meetings, not in
24 the regular meetings?

25 A. I don't know that I can give you a specific

1 answer to that.

2 Q. All right.

3 A. Different circumstances require different
4 actions of Council.

5 Q. Right.

6 A. The Town Council and Mayor do it, then --
7 as I respectfully said to His Honor, that is the
8 Council's prerogative. They have the right to
9 do that and there's nothing in the law that I
10 can show you or tell you that's different.

11 Q. All right. Let me ask you just briefly
12 about committee meetings again. Don't
13 committees sometimes hold executive sessions?

14 A. On occasions. Not very often.

15 Q. But they do?

16 A. Yes, sir.

17 Q. And do the nonmembers of the committee who
18 are Council members on some occasions, if not
19 all the time, attend those executive sessions?

20 A. Yes, sir.

21 Q. And is it not true that the nonmember of
22 Council -- of the committee -- excuse me. Is
23 it not true that nonmembers of the committee
24 who are Council members in executive sessions
25 participate in the discussion of the executive

1 session?

2 A. Sometimes they do.

3 Q. And so do you, as Town Administrator; don't
4 you?

5 A. Only as much as I'm asked to provide
6 information that is pertinent to the matter
7 before the committee in executive session. If
8 they have questions of me, if I have information
9 to give them. Certainly the attorney takes the
10 lead on such things.

11 Q. Is any member of the public ever allowed to
12 attend the executive sessions of the committees?

13 A. On occasion an attorney representing an
14 interested party that has a stake would be.

15 Q. The executive session?

16 A. Yes, sir.

17 Q. Of the committee?

18 A. That's right.

19 Q. All right. Now, at the time this suit was
20 filed in 2008, you were the Town Administrator;
21 were you not?

22 A. Yes.

23 Q. If a member of Council at that time, the
24 period of this lawsuit, was using a private e-
25 mail account and responded to other members of

1 Council on their private e-mail account(s), and
2 did not include in that e-mail a member of Town
3 staff or a person with a Town e-mail account, --
4 follow me?

5 A. Yes, sir.

6 Q. Would that e-mail have been retained or
7 available for a Freedom of Information Act
8 request is someone made it to the Town?

9 A Not unless the owner of the private
10 computer involved wished to provide it.

11 Q. So if there is communication/correspondence
12 by electronic communication, by e-mail, between
13 members of Council or members of the staff but
14 it did not use the Town system, all private
15 computers, there would be no way for anyone in
16 the public to know what the discussion was about
17 public interest; would there?

18 A. Hypothetically, no, no matter where it was.

19 MR. TISDALE: Your Honor, I think
20 I'm finished.

21 THE COURT: Okay. Thank you very
22 much. Any redirect?

23 MS. CANTWELL: Just very briefly.

24 REDIRECT EXAMINATION

25 BY MS. CANTWELL:

1 Q. Just to clarify, are you aware of any
2 provision of the Freedom of Information Act that
3 addresses who attends executive sessions?

4 A. I am not aware of any.

5 Q. The 2010 policy regarding Council's use of
6 town-provided e-mails (sic), it admonishes the
7 Council to only use Town computers when they are
8 conducting Town business. Correct?

9 A. It does.

10 Q. It's not a suggestion. It's a mandate?

11 A. It says "shall."

12 Q. And that was adopted by the Town Council
13 within the last year or so?

14 A. At the suggestion of the Town attorney.

15 Q. I just want to make sure that I heard this
16 correct. With regard to executive sessions, is
17 it the practice of the Council in your
18 experience -- that the purpose of the executive
19 session is announced before they convene into
20 executive session?

21 A. Absolutely. Mr. Young typically does that
22 with approved reading by the mayor.

23 Q. And has it been your experience that within
24 the discussions within executive session that
25 the -- that that discussion is limited to the

1 purposes for which they are there?

2 A. That's one of the responsibilities of Mr.

3 Young, to remind them of what they are in

4 executive session for, to keep them on that

5 particular subject.

6 Q. So when they come out of executive session,

7 if they take any action, it would only be

8 related to the purposes for which they went into

9 executive session?

10 A. That's absolutely true.

11 Q. The issue of the special meetings before

12 Council -- let's talk about the special meetings

13 where there is an executive session. An

14 executive session, by nature, is confidential,

15 it's closed to the public.

16 A. True.

17 Q. And if you have that session prior to the

18 commencement of general business, the public

19 would not otherwise be allowed to be present

20 during an executive session, so that saves them

21 the hassle of having to sit around and wait; is

22 that correct?

23 A. Certainly that's an added benefit, I guess

24 you could say.

25 Q. And you said something earlier that I

1 thought was interesting about the December 5th
2 meeting of 2007. You said that the press was
3 there.

4 A. Yes, they were.

5 Q. Does the press regularly attend Council
6 meetings?

7 A. I'd say that nine out of ten meetings that
8 they are there.

9 Q. Would that be the print media and
10 electronic media?

11 A. Generally the print media is there most
12 often. If there is an issue that appears to be
13 controversial, then we will often have the
14 television media there.

15 Q. Does the same hold true for committee
16 meetings, that the press is there?

17 A. The same thing as -- you don't see them
18 quite as often at every committee meeting as you
19 would a Council meeting, because there are some
20 things that they don't find very newsworthy,
21 such as approving the purchase of a garbage
22 truck.

23 Q. All right.

24 MS. CANTWELL: Nothing further,
25 Your Honor.

1 MR. TISDALE: Your Honor, at Mr.
2 Burdette's deposition, we filed the original
3 with the Clerk and this is a copy (tendering).
4 Mr. Burdette's deposition, in evidence.

5 THE COURT: Okay. All right. Do
6 you have any other questions, Mr. Tisdale?

7 MR. TISDALE: Nothing.

8 THE COURT: No recross?

9 MR. TISDALE: I don't have any.

10 THE COURT: Mr. Burdette, thank you
11 so much. Have a safe trip to Columbia tomorrow.

12 (OFF RECORD DISCUSSION)

13 THE COURT: Is there anyone else that
14 is going to be presented? Do we need to
15 reconvene tomorrow?

16 MR. TISDALE: Sir?

17 THE COURT: Do we need to reconvene
18 for anything tomorrow?

19 MR. TISDALE: Not at far as I am
20 concerned.

21 MS. CANTWELL: Your Honor, I would
22 move into evidence all the exhibits that the
23 defendant produced.

24 THE COURT: All right.

25 MS. CANTWELL: I don't want to

1 belabor this but there are a number of exhibits
2 that I haven't marked that were never discussed,
3 referred to during either case and I think it
4 would be inappropriate to accept those into
5 evidence because there has been no foundation
6 for what they are.

7 THE COURT: Mark them, take them out.
8 Just give me a list of which ones that you are
9 referring to. Okay.

10 MR. TISDALE: Okay.

11 THE COURT: And while you are sending
12 that letter, address the issue of when
13 government bodies are going into executive
14 session, specifically what type information has
15 to be given. How specific does it have to be
16 when they go into a meeting and when they come
17 out. I want some law on that issue if there is
18 any law on the issue.

19 MR. TISDALE: There is. In fact,
20 the Quality Towing case in this state addresses
21 that with specificity.

22 THE COURT: Okay. Just address that
23 issue if you would.

24 MS. CANTWELL: Would someone
25 refresh my memory on what we're addressing by

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1 letter?

2 THE COURT: I think she's got it all
3 written down, if you'll confer with her okay?

4 MS. CANTWELL: Yes, Your Honor. I
5 will go through the exhibits that we didn't
6 reference and we'll give you a list of those.

7 THE COURT: That will be fine.

8 MR. TISDALE: Your Honor, I also think
9 the issue of executive session is going to be
10 addressed in Robert's Rules of Order, and we'll
11 supplement with the letter that portion of
12 Robert's Rules of Order for your information.

13 THE COURT: Okay. I've got a copy of
14 it.

15 MR. TISDALE: Not on the issue of
16 -- oh, you mean Robert's Rules of Order?

17 THE COURT: Yeah.

18 MR. TISDALE: All right, sir.

19 THE COURT: You can use reference the
20 sections.

21 MR. TISDALE: Thank you.

22 THE COURT: You gave me a copy of it.

23 MR. TISDALE: Not on the issue of
24 executive sessions.

25 THE COURT: Oh, it's not in what you

1 gave me? On executive sessions?

2 MR. TISDALE: No, just on quorums

3 and ---

4 THE COURT: Okay. All right. Thank
5 you very much. I appreciate it.

6 MS. CANTWELL: Your Honor, thank
7 you.

8 MR. TISDALE: Your Honor, we have
9 tried your patience today and we appreciate it.

10 THE COURT: Enjoyed listening to you.
11 Thank you. Have a good day. Thank you very
12 much.

13 (HEARING CONCLUDED)

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Stephen George Brock v Town of Mount Pleasant

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Case No. 08-CP-10-3308

Hearing of January 24, 2011

Before The Honorable J.C. Nicholson, Jr.

1 CERTIFICATE OF REPORTER

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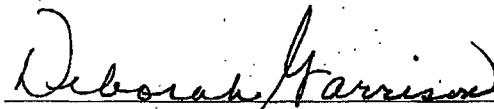
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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable J.C. Nicholson, Jr. On
Jr., on January 24, 2011, as prepared from the
audio recordings captured by Brenda Cooley,
Retired Court Reporter;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

June 28, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
08-CP-10-3308

STEPHEN G. BROCK)
 PLAINTIFF)
 vs.)
TOWN OF MOUNT PLEASANT)
 DEFENDANT)

TRANSCRIPT OF RECORD

January 17, 2012
CHARLESTON, SC

B E F O R E:

THE HONORABLE J.C. NICHOLSON, JUDGE

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

STEPHEN G. BROCK
Pro Se

FRANCES T. CANTWELL, Esq.
Attorney for the Defendant

Transcribed by:
PATRICIA A. DANNER

For

VIVAN H. CROSS
Official Court Reporter

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Witnesses were not called.

1 *THE COURT:* Okay. Let me see who is here. Brock
2 versus the Town of Mount Pleasant, is that correct?

3 *MR. BROCK:* Yes, sir.

4 *THE COURT:* Okay. Mr. Brock?

5 *MR. BROCK:* Yes, sir.

6 *THE COURT:* I read the emails and I have gone back
7 and forth on the letters and as I think I indicated to an
8 email to Ms. Cantwell and Mr. Tisdale, that I was going to
9 hear a Motion for Reconsideration and I think supplemental
10 attorneys fees before I heard his motion. However, I
11 believe you have decided that you wanted to hear that
12 yourself and relieve Mr. Tisdale of further
13 responsibility, is that correct?

14 *MR. BROCK:* That's correct, Your Honor.

15 *THE COURT:* Okay. All right, Mr. Tisdale, I
16 assumed since you have filed a Motion to be Relieved,
17 that's agreeable with you, is that correct?

18 *MR. TISDALE:* That is, in fact, agreeable.

19 *THE COURT:* All right. Ms. Cantwell, I understand
20 from previous communications, you do not have any
21 objections to that, is that correct?

22 *MS. CANTWELL:* That's correct, Your Honor.

23 *THE COURT:* Okay. All right. So, I guess the
24 Motion to be Relieved is a moot issue and I'll sign an
25 order relieving you of counsel?

1 MR. TISDALE: We'll submit an order, Your Honor,
2 right away.

3 THE COURT: Pardon?

4 MR. TISDALE: We'll submit that order to you right
5 away.

6 THE COURT: Okay.

7 MR. TISDALE: You want us to prepare an order?

8 THE COURT: Either that or I can do a short order?

9 MR. TISDALE: Well, do a short order and it will
10 just be one sentence.

11 THE COURT: I'll just do a short form four order?

12 MR. TISDALE: That's agreeable with us, Your Honor.

13 THE COURT: Okay. All right, Mr. Brock, let me
14 explain one thing to you in light of the summary of
15 communications and emails that y'all have been copying me
16 with. I believe I basically arrived at a decision in this
17 case -- if these dates are wrong, please correct me, Ms.
18 Cantwell. In June, okay, an order was not signed until
19 August and let me explain that to you.

20 When the Court reaches a tentative decision, I
21 instruct the attorneys not to tell their clients the
22 results of my decision until a written order has been
23 signed primarily for two reasons, I want it reduced to
24 writing, I may have to modify the proposed order, or I may
25 change my mind. So, it's nothing that Mr. Tisdale did.

1 He was following the instructions of the Court and not
2 revealing to you what basically temporary decision I had
3 made because it's not a final decision until a written
4 order is signed.

5 And, I just wanted to explain that to you. I'm not
6 trying to take up for Mr. Tisdale, I just wanted to
7 explain to you that any delay from June to August was the
8 Court's doing and not your attorney's. Do you have any
9 question about that concept? As a matter of fact, I think
10 the order was changed two or three times before a final
11 version was actually approved by the Court and signed. Do
12 you have any questions about that?

13 MR. BROCK: No, Your Honor, I understand that
14 explanation.

15 THE COURT: You understand it---

16 MR. BROCK: ---I recall---

17 THE COURT: ---pardon---

18 MR. BROCK: ---I recall it was March 22nd, the
19 date.

20 THE COURT: Okay. Whenever the order was signed, I
21 don't recall the exact date. But, I believe there were
22 two or three revisions during that time frame and I had
23 requested of a proposed order.

24 MR. BROCK: Yes, sir.

25 THE COURT: And, that's normal how business is

1 conducted in nonjury motions at least by myself.

2 MR. BROCK: Okay.

3 THE COURT: In other words, I am not going to allow
4 the attorneys to tell their clients until I sign the order
5 because that proposed order may change. That's what it
6 is, it's a proposed order it is not a final order.

7 MR. BROCK: Okay.

8 THE COURT: And, in this particular case it was
9 changed. So, if the clients(sic) don't tell the clients
10 -- the attorneys go tell the clients and then I go change
11 the order then they want to know well, what happened?
12 What happened? Do you understand?

13 MR. BROCK: I understand, yes, sir.

14 THE COURT: Okay. All right. Mr. Tisdale, you're
15 welcome to stay otherwise you're excused?

16 MR. TISDALE: Your Honor, thank you very much, we
17 would like to be excused.

18 THE COURT: That's fine.

19 MR. TISDALE: Thank you.

20 THE COURT: Okay, thank you. All right. I believe
21 that leaves the issue of the Motion to Reconsider, is that
22 correct?

23 MR. BROCK: Sir?

24 THE COURT: The Motion for Reconsideration, is that
25 correct, Mr. Brock?

1 MR. BROCK: Yes, sir.

2 THE COURT: Ms. Cantwell, is that your
3 understanding?

4 MS. CANTWELL: I'm sorry, Your Honor?

5 THE COURT: Is that -- the only thing that is left
6 is the Motion for Reconsideration, is that correct?

7 MS. CANTWELL: Yes, Your Honor, as far as I'm -- as
8 far as I know---

9 MR. BROCK: There was a Motion for Supplemental
10 Fees?

11 MS. CANTWELL: There is a motion -- two motions out
12 there, one for supplemental fess and one reconsideration.

13 MR. BROCK: Okay.

14 THE COURT: Okay. Well, the Supplemental Fees
15 Motion is denied, okay.

16 MS. CANTWELL: Thank you, Your Honor.

17 THE COURT: Now, Mr. Brock, you had indicated you
18 wanted to represent yourself?

19 MR. BROCK: That's correct.

20 THE COURT: And, that's fine. If you want to
21 obtain counsel, I will give you an opportunity to do that.

22 MR. BROCK: I don't believe that's necessary, Your
23 Honor. I have just the one issue to argue regarding the
24 Motion for Reconsideration and that should be pretty
25 simple.

1 THE COURT: Okay. All right, and I'll be glad to
2 hear you?

3 MR. BROCK: Your Honor, while I believe that these
4 paragraphs on the Motion for Reconsideration---

5 THE COURT: Hold on just a second and let me get my
6 motion out, okay.

7 MR. BROCK: Yes, sir.

8 THE COURT: If you don't mind.

9 MR. BROCK: No.

10 THE COURT: All right, I've got the Motion to
11 Amend, with findings of fact and an offer to amend a
12 judgment that was filed on September 1st of last year. If
13 you would direct me. You said you wanted me to look at
14 something in the motion?

15 MR. BROCK: That's correct, Your Honor.

16 THE COURT: Please direct me to where you want me
17 to look at?

18 MR. BROCK: Paragraph (C).

19 THE COURT: Paragraph (C)?

20 MR. BROCK: Yes, sir.

21 THE COURT: Okay. That's on the second page, I
22 believe, is that correct?

23 MR. BROCK: That should be correct, Your Honor.

24 THE COURT: Okay. Is that the only issue you want
25 to refer to?

1 MR. BROCK: It is, sir.

2 THE COURT: Okay. I'll be glad to hear you.

3 MR. BROCK: Thank you, sir. Paragraph (C) of the
4 Motion to Reconsider involves paragraphs twenty-three (23)
5 and twenty-six (26) of---

6 THE COURT: ---of the order?

7 MR. BROCK: ---of the Complaint. I think it's in
8 one and five in the Amended Complaint.

9 THE COURT: All right. Let me find the Complaint
10 so we are on the same page, okay.

11 MR. BROCK: Yes, sir.

12 THE COURT: The first -- all right, that is an
13 Amended Answer, here it is. I got it. All right, are you
14 looking at the Complaint or the Amended Complaint?

15 MR. BROCK: I'm looking at this point, sir, at the
16 Amended Complaint.

17 THE COURT: All right. Let me try the first one.
18 All right, I've got the Amended Complaint, what paragraph
19 are you referring to?

20 MR. BROCK: Paragraphs twenty-three (23) and
21 twenty-six (26).

22 THE COURT: Twenty-three (23)---

23 MR. BROCK: They actually are the same violations
24 on different pages.

25 THE COURT: All right, paragraph twenty-three

1 (23) ---

2 MR. BROCK: ---and, (26).

3 THE COURT: And twenty-six (26) of the Amended
4 Complaint?

5 MR. BROCK: Correct, Your Honor.

6 THE COURT: And, (C) on the Motion for
7 Reconsideration, is that correct?

8 MR. BROCK: Correct, Your Honor.

9 THE COURT: Okay. All right, let me read
10 twenty-three (23) and twenty-six (26) real quick. All
11 right, I'll be glad to hear you.

12 MR. BROCK: Thank you, sir. Specifically questions
13 raised in these two paragraphs in the Amended Complaint
14 are whether matters added to an agenda---

15 THE COURT: Was that the matter, refresh my memory,
16 concerning the purchase of the property?

17 MR. BROCK: No, sir, that was December 5, you ruled
18 on that.

19 THE COURT: Okay, all right.

20 MR. BROCK: The issue here is that there isn't a
21 specific ruling on these two violations alleged in the
22 Complaint specifically whether voting on matters added to
23 an agenda without notice to the public constitutes a
24 violation of the notice provision of sections 30-4-88.
25 You did rule on December 5th. That was a more complicated

1 issue, but you did rule on it after December 15th without
2 a finding on these in the Complaint -- excuse me, in the
3 order at least as I understand it. I'm not trying to
4 interpret the law. I might be barred from the appeal---

5 *THE COURT:* I'm sorry, what?

6 *MR. BROCK:* Without a ruling if I understand this,
7 Your Honor, technically I might be barred from an appeal
8 of the alleged violations of the meeting.

9 *THE COURT:* All right, would you refresh my memory
10 as to factually what was presented to show the violation
11 of the last amendment of the agenda? This was at the
12 regular Town Council Meeting, correct?

13 *MR. BROCK:* The 13th, was the regular Town Council
14 Meeting.

15 *THE COURT:* Okay. On November 13th.

16 *MR. BROCK:* I'm sorry, Your Honor. I beg your
17 pardon, Your Honor, we're talking about special meeting a
18 head of on both the 13th and the 16th a head of---

19 *THE COURT:* You're talking about November 16th, is
20 that correct?

21 *MR. BROCK:* Right, sir, and November 13th.

22 *THE COURT:* November the when?

23 *MR. BROCK:* Thirteenth (13th).

24 *THE COURT:* Thirteenth (13th). All right, tell me
25 factually what occurred in those meetings to sort of

1 refresh my memory because it has been a while?

2 MR. BROCK: On the 16th, items were added to the
3 meeting agenda, personnel matters pertaining to the Clerk
4 of Counsel, and personnel matters relating to Boards of
5 Commission.

6 THE COURT: So, that was Clerk of Counsel?

7 MR. BROCK: Yes, sir.

8 THE COURT: And, what else?

9 MR. BROCK: Personnel matters related to Boards and
10 Commissions.

11 THE COURT: Boards and Commissions.

12 MR. BROCK: Yes.

13 THE COURT: Okay. And, those amendments were made
14 at the last minute, just prior to the meeting, is that
15 correct?

16 MR. BROCK: In discussions in the executive
17 sessions, Your Honor, and coming out of executive sessions
18 they were added as -- they weren't actually added to the
19 agenda, as I recall, they were simply acted on---

20 THE COURT: Were they apart of the agenda to begin
21 with?

22 MR. BROCK: No, sir, they were added items.

23 THE COURT: They were added in the meetings that
24 went in executive sessions to hear it, is that correct?

25 MR. BROCK: Yes, sir.

1 *THE COURT:* All right. What happened on the 13th?

2 *MR. BROCK:* On the 13th, let me---

3 *THE COURT:* Factually I mean?

4 *MR. BROCK:* Okay. Upon returning to open sessions,
5 the matters were discussed in executive sessions but not
6 announced in executive sessions. They were added at the
7 last, an addition to the meeting agenda in both dates---

8 *THE COURT:* What was added on the 13th? You said
9 on the 16th they added the Clerk of Commissions and the
10 Board of Commissions. What was added on the 13th?

11 *MR. BROCK:* Perhaps, I am trying to recall, I think
12 it was -- can I refer to the order one moment. In a
13 moment, Your Honor, I think I can answer that question.

14 *THE COURT:* Okay.

15 *MR. BROCK:* It is detailed there. Now, am I
16 telling you about the 13th and the 16th, Your Honor?
17 Yes, this would be it. The executive sessions announced
18 for purposes---

19 *THE COURT REPORTER:* I'm sorry, can you slow down,
20 please?

21 *MR. BROCK:* I beg you pardon.

22 *THE COURT REPORTER:* Start over.

23 *THE COURT:* Ms. Cantwell, can you help us?

24 *MS. CANTWELL:* I can help you, Your Honor.

25 *THE COURT:* Okay.

1 MS. CANTWELL: If you -- if you refer to your
2 order?

3 THE COURT: That's fine.

4 MS. CANTWELL: On page six.

5 THE COURT: Okay. That's paragraph six?

6 MS. CANTWELL: Page six.

7 THE COURT: Okay.

8 MS. CANTWELL: Footnote twenty-one (21).

9 THE COURT: Okay.

10 MS. CANTWELL: You go into the factual basis giving
11 rise to your rulings and the footnote continues on page
12 twenty-seven (27).

13 THE COURT: Okay. All right. All right, I will be
14 glad to hear you.

15 MR. BROCK: Yes, Your Honor, coming out of
16 executive session we announced purposes, Town Council
17 voted to retain private attorneys for future matter of
18 town's business. These were not a matter on the agenda, I
19 wish I had the -- sorry, I don't have the precise minutes
20 of that meeting, but the allegation is and it was
21 approved, I think, that a matter was added to the meeting
22 agenda. It was not on notice on the meeting agenda and
23 voted on.

24 It is not a question -- we didn't question whether
25 it was appropriately announced for the executive sessions,

1 that wasn't the issue. The issue was, it was not on the
2 meeting agenda; therefore, there was no notice provided to
3 the public of that matter.

4 *THE COURT:* All right, let me ask you this?

5 *MR. BROCK:* Yes, sir.

6 *THE COURT:* And, you may not recall. On the
7 meeting agenda, what do they normally put as far as
8 executive session? Or do they even have executive session
9 on the meeting on those particular days the 16th and 13th?

10 *MR. BROCK:* These special meetings I recall were
11 just executive sessions. I don't recall if it was any
12 published business---

13 *THE COURT:* But they didn't put anything on
14 announced special meeting other than executive session?

15 *MR. BROCK:* As I recall, Your Honor.

16 *THE COURT:* Was this the 5:00 session they always
17 have prior to the regular meeting or was this a special
18 cause?

19 *MR. BROCK:* I believe one of them might have been
20 later. The 13th special meeting preceded a council
21 meeting at 7:00.

22 *THE COURT:* Okay.

23 *MR. BROCK:* It may well have been---

24 *THE COURT:* ---because if I remember correctly,
25 they did that on a routine basis?

1 MR. BROCK: Yes, sir. As you noted in your order.

2 THE COURT: Right.

3 MR. BROCK: But, what happened in each meeting, was
4 that the matter that was added to the meeting agenda and
5 voted on without notice to the public which is the
6 substance of what the argument is on paragraph
7 twenty-three (23) and twenty-six (26). As separate from
8 the other issues the announced purposes, precise purpose,
9 specific purpose, this is just separate from the---

10 THE COURT: ---okay---

11 MR. BROCK: ---which you can tell from paragraph
12 (C) of your order touches on and I think it mentioned the
13 proclivity of town council on those matters as such.

14 THE COURT: So, your position is when they publish
15 the agenda saying hey, this is a special meeting, we are
16 going to have this executive sessions, is that correct?
17 What do you think they should have done at that time as
18 far as notifying the public about the executive sessions?

19 MR. BROCK: They are not executive sessions, Your
20 Honor, what I think should have happened---

21 THE COURT: ---okay---

22 MR. BROCK: ---the agenda should indicate if
23 council is going to take an action. The executive session
24 is not binding, votes are not taken.

25 THE COURT: Right.

1 MR. BROCK: They may come out and not even discuss
2 what happened in executive session. The public isn't
3 disadvantage by discussion it all. When they are
4 disadvantaged is when council comes out and whether it's
5 something in executive session or anything else for that
6 matter, add it to the meeting agenda for a vote without
7 minutes, this is an action item. The discussion has no
8 affect on the public.

9 THE COURT: Right.

10 MR. BROCK: Obviously they can't---

11 THE COURT: Taking action does have an affect.

12 MR. BROCK: Unnoticed affect, Your Honor.

13 THE COURT: So, it's your position that -- I'm
14 trying to understand your position.

15 MR. BROCK: Yes.

16 THE COURT: I am not trying to harass you or
17 anything, okay?

18 MR. BROCK: I understand.

19 THE COURT: So, your position is if they put out an
20 agenda and on their agenda is a special meeting for an
21 executive session, if they are going to take action, the
22 subject matter should be revealed on what action they are
23 going to consider in executive sessions. Is that what
24 you're saying to me?

25 MR. BROCK: That would be my position, Your Honor,

1 for the reason that if you publish an executive session
2 agenda with matters on it for discussion, you presumably
3 know that you might wish to take action on it.

4 *THE COURT:* Right.

5 *MR. BROCK:* And, which published on the agenda
6 which then tells the public, we may take action on this
7 because obviously they don't necessarily have to. There
8 could be a matter on the meeting agenda itself, but they
9 decline to take action on for one reason or another and
10 simply defer to another time. But, it does tell the
11 public something could be voted on at this meeting. So,
12 whereas I might not attend the executive session meeting
13 because nothing is going to happen, if they are enacting
14 on an item that I'm interested in and I am noticed the 24
15 hour advanced notice, I might attend. The public can't
16 know.

17 If they know it's an executive session, I don't see
18 the reason for not having it on the actual meeting agenda.
19 The whole thing is inside this special meeting, the
20 executive session and anything else that might happen.
21 On occasion they do put an action item on there, in these
22 cases they did not, not these action items.

23 *THE COURT:* Okay. Let me ask you this, how do you
24 think that violates the SC Code Section 30-4-88?

25 *MR. BROCK:* They are required to publish an agenda

1 for special meetings, Your Honor, and the agenda should --
2 and the agenda should be the matters before it that maybe
3 voted on. If I might just digress slightly on this
4 because---

5 *THE COURT:* ---certainly---

6 *MR. BROCK:* ---brought up on Court. These special
7 meetings are defined in Robert's Rule of Order which has
8 come up in the Motion for Reconsideration. Robert is very
9 clear, special meeting -- nothing maybe added to the
10 special meeting agenda unless it's an emergency in which
11 they can do that. But, an emergency has to be ratified to
12 the next regular meeting of the body.

13 So, in the one case is obviously Robert's Rule of
14 Order says and under the Court necessarily their rules of
15 order, Town Council's rule of order. My position is that
16 they do not properly notice -- it's not a proper agenda if
17 it doesn't contain an item that any council or the public
18 body plans to act on.

19 *THE COURT:* So, your position is if they are
20 planning on acting on something in executive session, it
21 should be noted on the agenda, if not it doesn't have to
22 be noted, is that?

23 *MR. BROCK:* My point---

24 *THE COURT:* ---are you making that distinction?
25 Are you saying anything that they are going to consider on

1 executive session should be noted on the agenda?

2 MR. BROCK: No, no, only items that might be voted
3 on.

4 THE COURT: Okay. Where a decision maybe made?

5 MR. BROCK: Where a decision maybe made.

6 THE COURT: Let me ask you this question? How is
7 council -- whether it's Mount Pleasant or any governing
8 body, goes into executive session and have a discussion --
9 how can anyone foresee a decision is going to be made? In
10 other words, in the executive session they are going to
11 discuss whatever they are going to discuss. They may have
12 a discussion and they may reach a consensus of an opinion
13 and make a decision. How can anybody foresee that prior
14 to going into executive session? Do you understand what I
15 am saying?

16 MR. BROCK: Yes, sir, they may not, but that is the
17 purpose of having an executive session. If you read there
18 the notes I mentioned, stating a specific purpose---

19 THE COURT: ---right---

20 MR. BROCK: ---discuss and proceed that they
21 believe and all a person believe is that that's all that's
22 going to happen then. The twenty-four (24) notice
23 provision, I don't think it creates an onerous burden. If
24 something comes up in that executive session that doesn't
25 need action, it's hard to -- I don't know that I can say

1 that I have seen that very often if at all. All that
2 council has to do is give twenty-four (24) notice and then
3 vote to act on it.

4 But coming out of executive session, adding an item
5 and voting on it, can't fulfill the purpose of FOIA and
6 that thwarts it.

7 *THE COURT:* I'm sorry what?

8 *MR. BROCK:* It thwarts the purpose of FOIA not to
9 tell citizens of the public what the legislative body is
10 going to do. And one of the -- I think one of the
11 particular reasons and it makes a lot of sense if council
12 can take action by voting. They can't be undone by a
13 later informed public. It doesn't do us any good as the
14 public to learn that council took a vote on something that
15 the only recourse would be either legal action or two
16 years into the election.

17 I think that FOIA means, that you should be advised
18 in advance what the public body is going to do so that you
19 can have a chance to participate in your government and
20 any action. And presumably council would want to hear
21 from citizens on the matters before it rather than just
22 unilaterally and very quickly taking an action.

23 *THE COURT:* That would depend on the subject
24 matter.

25 *MR. BROCK:* I'm sure. I can't go into introducing

1 evidence, but there was a terrific case in Charleston
2 within the last two or three months that well illustrated
3 the point. That something was added to the agenda it was
4 at least one person who took extreme objection to it and
5 didn't know what was happening. And, I am not sure
6 exactly what happened after that with regards -- any
7 subsequent actions, but that did happen. It didn't happen
8 as a result of this case, it was one of those...

9 *THE COURT:* Okay. Anything else?

10 *MR. BROCK:* No, if a decision---

11 *THE COURT:* What you are asking me to do is rule on
12 that issue? Your position is I did not rule on that issue
13 in the other order?

14 *MR. BROCK:* No, sir, you ruled on several around
15 it, but not on those two specific paragraphs.

16 *THE COURT:* Okay.

17 *MR. BROCK:* And, they do go to counts one and five.

18 *THE COURT:* Okay. Thank you very much, Mr. Brock.

19 *MR. BROCK:* Thank you.

20 *THE COURT:* Anything else, I don't mean to be
21 cutting you off because I asked you a lot of questions and
22 I was interrupting you, but I was trying to understand
23 where you were coming from?

24 *MR. BROCK:* No, Your Honor.

25 *THE COURT:* If there is anything else I will be

1 glad to hear you. Now, after I hear Ms. Cantwell, I will
2 give you an opportunity to respond again, okay?

3 MR. BROCK: Thank you, Your Honor.

4 THE COURT: Ms. Cantwell, I will be glad to hear
5 you.

6 MS. CANTWELL: Thank you, Your Honor. I'm a little
7 bit at a disadvantage because---

8 THE COURT: ---pardon---

9 MS. CANTWELL: ---I hate to admit that I didn't
10 bring the Complaint with me so I really didn't---

11 THE COURT: Here, I have got a copy here if you
12 want it? Do you want to take a look at it?

13 MS. CANTWELL: I would if you can just give me a
14 few minutes.

15 THE COURT: Here it is paragraph twenty-three (23)
16 and twenty-six (26). But, I think it's pretty well
17 enumerated -- here, I believe it's twenty-three (23) and
18 twenty-six (26), they were referring to a meeting on
19 November 13th and November 16th, okay.

20 MS. CANTWELL: Okay.

21 THE COURT: All right.

22 MS. CANTWELL: I remember that now. Thank you,
23 Your Honor. I think I will take up the last issue first,
24 an action happened---

25 THE COURT: Let me ask you this up front. Do you

1 think the Court has addressed those two paragraphs --
2 those two meetings, the meetings on the 16th and 13th in
3 it's order?

4 MS. CANTWELL: Yes, sir, and I---

5 THE COURT: ---because if the order needs
6 clarification in addressing those two meetings, I have no
7 problem addressing them clearly?

8 MS. CANTWELL: Well, I think the issue comes down,
9 Judge, the case was tried on whether or not you can add to
10 the -- two really, add items to an executive session and
11 whether or not the announced purposes were consistent with
12 the actions taken.

13 THE COURT: Uh-huh.

14 MS. CANTWELL: And you definitely ruled on the
15 latter one and on the former one the same issue addressed
16 with the December 5th meeting of council where they added
17 an item to the executive agenda.

18 You recognized that that was appropriate. The same
19 reasoning would apply to the November 13th, and the
20 November 16th meeting for this reason, they were special
21 meetings. They were properly noticed. A special meeting
22 requires an agenda. Mount Pleasant could have put on
23 their agenda executive session.

24 There is no requirement in the law that an agenda
25 for executive session be noticed. And, so if Mount

1 Pleasant gives notice of an executive session and puts
2 items on the agenda of what it is and then they are going
3 to be penalized because they can't put something on the
4 agenda that they need to discuss, is sort of counter to
5 it.

6 It seems to me that having noticed the special
7 meeting parameter and saying there is an executive
8 session, the public is on notice that council is going to
9 meet. They can come and hear what they are going into
10 executive session about. Council is not constrained to
11 not take action on something that comes up in executive
12 session because the law forbid them from taking action in
13 executive session.

14 *THE COURT:* Right.

15 *MS. CANTWELL:* They can't know, as you pointed out,
16 they can't know what they are going to do until they hear
17 from all parties concerned. So, I would submit that if
18 you are intending to rule that adding an item to an
19 executive session agenda does not break any precept of the
20 FOIA, I think you've done that with your December -- with
21 the ruling on the December 5th---

22 *THE COURT:* I understand. But my question to you
23 is, should I issue a supplemental order also applying that
24 ruling to the meetings on November 13th and November 16th,
25 just for clarity? Mr. Brock's position is he doesn't

1 think I've ruled on that and he is worried about an
2 appeal. I have no problem issuing a supplemental order
3 and taking the same position of the December meeting with
4 November 13th and 16th because I think that falls with
5 what I have already done, just for clarity. I'm asking
6 you---

7 *MS. CANTWELL:* I want nothing but clarity because I
8 don't want an issue -- if this thing is going anywhere, if
9 it's going up higher, I don't want it to come back on
10 something that we could have fixed here. I think that,
11 you know, when I read -- I'm reading my trial memorandum,
12 but I believe -- let me get to your order---

13 *THE COURT:* All right, let me ask you this.
14 Apparently Mr. Brock's objection is, adding an item to the
15 special meeting and then voting after the discuss in
16 executive session. And, he says the code section 30-4-88,
17 says an agenda has to be published for special meetings.
18 And, in this particular case the only thing they published
19 was the executive session. I mean, doesn't he have a
20 valid point in that? How is the public going to know on
21 that executive sessions what -- unless they put out what
22 they're going to discuss---

23 *MS. CANTWELL:* The Herald Publishing case says you
24 don't -- the press is not entitled right to -- not
25 entitled to know what the topics are in the executive

1 session. They are just entitled to know there is going to
2 be one and they are entitled to know the purposes when
3 they go into it.

4 *THE COURT:* When they go into, right.

5 *MS. CANTWELL:* When they go session. So, it seems
6 to me---

7 *THE COURT:* But, it shouldn't -- why shouldn't they
8 know the purpose of it prior to the meeting rather than
9 having to go to the meeting and hear the purpose? Why
10 shouldn't the purpose be stated in the agenda?

11 *MS. CANTWELL:* Well, I think Mount Pleasant goes
12 the extra mile and does that. But, I don't think the law
13 requires it.

14 *THE COURT:* Uh-huh.

15 *MS. CANTWELL:* But, because they do it, now they
16 are being penalized because they want to bring something
17 else up. If they had not -- if they had just published
18 the special meeting with the agenda being an executive
19 session, there wouldn't -- we would have no argument here.

20 *THE COURT:* Right.

21 *MS. CANTWELL:* So, you know, to the extent that --
22 your order discusses primarily the announced purposes of
23 the executive session because I believe that's what was
24 the tenor of those town -- that count of the Complaint.

25 *THE COURT:* Right.

1 MS. CANTWELL: Now, I am hearing something
2 different that you can't add something to the agenda and I
3 believe in my trial memorandum I addressed that by saying
4 he can't bootstrap that argument on the second and third
5 count. Count one, was that you can't add anything to the
6 agenda and you ruled, yes, you can. This count, was the
7 purposes they announced didn't comport with the action
8 they took. You said, yes, it did.

9 Now I'm hearing they can't add anything on the
10 agenda. Well, you didn't address that specifically
11 because that's not the way it was laid out in the
12 Complaint. Now, if you want to address that with a
13 supplemental order saying that your reasoning for the
14 December 5th applies to November 13th and 16th, I am fine
15 with it. I am just trying to get this case to the finish
16 line, Your Honor.

17 THE COURT: I understand. I understand. Okay,
18 anything else?

19 MS. CANTWELL: No, sir.

20 THE COURT: Mr. Brock, anything you would like to
21 add?

22 MR. BROCK: Very quickly, sir. Let me be clear
23 that I agree absolutely you can add an item in the
24 executive session. If you want to talk about something
25 there is no harm to the public, in fact it helps the

1 public. It is absolutely in their interest to seek legal
2 advise to discuss contracts or things approved for
3 executive session.

4 This is the meeting after the executive session
5 that I'm referring to. Ms. Cantwell made a point, I
6 think, in her return that I think is valid. She made a
7 point that I did not object to the executive session on
8 the night of December 5, 2007. Indeed I did not because
9 the change to the agenda for that meeting that was a
10 special meeting as well was to discuss or obtain legal
11 advice. It was something of that sort. I don't have that
12 citation in front of me.

13 I would have had no reason to object to that.
14 That's precisely what the executive session is for. I
15 didn't stay to the end of the meeting because there were
16 no action items. But, there was an action by them, they
17 came out of executive session to vote to spend \$6 million
18 to settle a lawsuit. I had no idea as an individual --
19 and the newspaper incidentally didn't know it either
20 because the article came out two days later rather than
21 the next day.

22 Your Honor knows -- excuse me, the Complaint knows
23 to reconvene to open session without discussion or debate
24 or notice to the public, Defendant voted to purchase the
25 property and Your Honor did rule on that. You ruled

1 exigent circumstances in that case. These don't have
2 any---

3 *THE COURT:* ---okay---

4 *MR. BROCK:* ---they just sit there with additions
5 to agendas that were voted on without notice. Again, it
6 is about the open meeting following the executive session
7 is the issue.

8 I believe that 30-4-88 refers to agendas and we all
9 know what an agenda is. An agenda is involved and is
10 required. The solution is the one that I have if something
11 comes up in executive session and it could conceivably
12 come up in executive session, a twenty-four (24) hour
13 notice is not very burdensome for public business -- and
14 it wouldn't be that important. If it is that important to
15 be voted on that night, then presumably it is important
16 enough to be voted on twenty-four (24) hours later when
17 the public has the right -- has the opportunity, excuse
18 me, to know what is going to be done.

19 *THE COURT:* Okay. Thank you very much.

20 *MR. BROCK:* Thank you, sir.

21 *MS. CANTWELL:* Your Honor?

22 *THE COURT:* I'm sorry?

23 *MS. CANTWELL:* I'm hearing two things. I'm hearing
24 him saying it's okay to add an item to the agenda, and I'm
25 not---

1 *THE COURT:* ---well, I think---

2 *MS. CANTWELL:* ---then, I'm hearing him say that
3 you can't act on them.

4 *THE COURT:* Well, I think what he -- what his
5 objection is, once they come out of executive session and
6 then if they take action, after their executive session,
7 then they should be noted on the agenda for notice to the
8 public is what he is saying. Now, like I said, I don't
9 know how you could perceive that before you go to the
10 meeting, is my problem with that?

11 *MS. CANTWELL:* In my view, I just wanted---

12 *THE COURT:* I mean, that's my problem on the
13 mechanics of the meeting. How could you possibly go in --
14 and they are not supposed to take a vote, but I am sure
15 you can tell by the discussions at the executive session
16 who is where and what the votes are. You don't have to
17 raise your hand and then you go out and take action and
18 that's his objection. That the public should be aware of
19 the possibility of taking action in the open meeting after
20 the executive session is his objection. That is the way I
21 understand, is that correct, Mr. Brock?

22 *MR. BROCK:* Yes, if I can add one sentence?

23 *THE COURT:* Yes, sir.

24 *MR. BROCK:* If I might. There is an exception in
25 the law. Let's say the discussion in executive session

1 comes up with a really big problem, I mean, a sincerely --
2 an emergency. Nothing would prevent an emergency from
3 being acted on in that open session.

4 *THE COURT:* I understand. We are not talking about
5 emergencies.

6 *MR. BROCK:* And, presumably normal business is just
7 normal business.

8 *THE COURT:* Right. I understand. Now, I don't
9 know if I have addressed that particular issue in my order
10 even with the rationale of the December 5th order. So what
11 I am going to do -- I am not going to find that they
12 violated the FOIA November 13th and November 16th;
13 however, I feel like for clarify for Mr. Brock and
14 whatever action he wants to take after this Court -- after
15 he has reached the finish line in this Court, I don't mind
16 doing a supplemental order and addressing those issues and
17 not finding any violations of FOIA, okay.

18 *MS. CANTWELL:* And---

19 *THE COURT:* And, I understand the issue is taking
20 action after the executive session and open session if
21 you're going to do that, then the public should be made
22 aware. I'm going to take the position that's not required
23 under the law, okay.

24 *MS. CANTWELL:* Thank you.

25 *THE COURT:* And for clarification, I'll put that in

1 the form of an order to clarify for Mr. Brock for whatever
2 action you want to take after you have reached the finish
3 line in this courtroom, okay.

4 MR. BROCK: Yes, sir.

5 THE COURT: Is there anything else that we need to
6 address so we can get this case put to rest?

7 MS. CANTWELL: ---and, I'm happy---

8 THE COURT: ---at least in Circuit Court?

9 MS. CANTWELL: If you would like for me to take a
10 stab at that order and I will share it with Mr. Brock---

11 THE COURT: Yeah, share it with Mr. Brock. Run it
12 by Mr. Brock. I don't need anything elaborate.

13 MS. CANTWELL: Exactly and this will be a two
14 paragraph---

15 THE COURT: Right. And, run it by Mr. Brock and if
16 he has any reasonable changes that you think is necessary
17 fine put them in. If not, how about email me and tell me
18 what are the changes he requested and I'll email you back
19 and say put them in or take them out -- leave them out?

20 MS. CANTWELL: Okay. We'll do that.

21 THE COURT: Without having another hearing, okay?

22 MS. CANTWELL: Yes, sir.

23 THE COURT: Okay.

24 MS. CANTWELL: I am traveling today, but I will try
25 to get this by the weekend.

1 THE COURT: Okay. All right. Thank y'all so very
2 much.

3 MS. CANTWELL: Thank you, Judge.

4 THE COURT: Now, I'm not going to -- we got to be
5 in Columbia at a Bar Meeting Friday, it is a mandatory
6 seminar for all the Judges in the State until Friday, so
7 it would be good---

8 MS. CANTWELL: Try and get it to you Thursday?

9 THE COURT: If you would, please.

10 MS. CANTWELL: Okay, I will.

11 THE COURT: If you would. Now, I'll be back
12 probably Wednesday or Thursday of next week. If you don't
13 get it to me, email me and tell me it's downstairs and
14 I'll run by here and sign it.

15 MS. CANTWELL: Okay, good.

16 THE COURT: Okay.

17 MS. CANTWELL: Fine. Thank you, Your Honor.

18 THE COURT: I'll be back here in Charleston on
19 Wednesday or Thursday of next week after the Bar Meeting,
20 okay.

21 MR. BROCK: Thank you, Your Honor.

22 THE COURT: Thank y'all very much.

23 MS. CANTWELL: Thank you, very much.

24 *****End of transcript of record.*****

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

I, Patricia A. Danner, Official Court Reporter for the ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 17th day of January, 2012.

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

June 6, 2012

Patricia A. Danner

Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) 2008-CP-10-03308

STEPHEN GEORGE BROCK)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
) TOWN OF MOUNT PLEASANT
) DEFENDANT
)

August 22, 2011
Charleston, South Carolina

B E F O R E:

HON. J. C. NICHOLSON, JR., Judge.

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

THOMAS S. TISDALE, ESQ.
Attorney for the PLAINTIFF

FRANCES I. CANTWELL, ESQ.
R. ALLEN YOUNG, ESQ.
Attorneys for the DEFENDANT

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: All right. Is there anything else
2 from the parties before I announce my ruling in the Brock
3 case?

4 MR. TISDALE: Nothing from plaintiff, Your
5 Honor.

6 MS. CANTWELL: Nothing from defendant.

7 THE COURT: Okay. For the record, I've met with
8 the attorneys back in July and told them what my findings
9 were and asked for a proposed order, which is standard
10 within the legal community, and a proposed order was
11 presented from both sides. And I subsequently met with
12 the attorneys a second time and made some changes to the
13 proposed order. And that order was presented and there
14 was a third order presented that corrected some
15 typographical errors.

16 When I first met with the attorneys, I
17 instructed them not to reveal my decision to their clients
18 until I had an opportunity to get an order that the Court
19 was satisfied with and ready to sign, and that was done at
20 my instructions even though they have known the results
21 since July because they were directly ordered not to
22 reveal that to their clients until I had a proposed order
23 which I was satisfied with and to sign.

24 As far as the proposed order is concerned, I
25 think it's clear on the face as to the issues that were

1 proposed by Mr. Brock versus the Town of Mount Pleasant.

2 The Court has found that the Town of Mount
3 Pleasant did violate the FOI statute in two areas,
4 primarily in the standing committee meetings, and I'll
5 read from the order.

6 My holding on this issue is limited to the
7 instance where non-committee members participate in
8 discussion as if they were members of the committee. My
9 holding on this issue does not preclude a council member
10 who is not a member of the committee from participating in
11 meetings so long as his or her participation includes
12 where he physically sits is the same as the general
13 public.

14 I'm restraining the City from having committee
15 meetings and non-members participating, primarily because
16 that constitutes a meeting. If the council wants to
17 publish the council meetings or the committee meetings,
18 publish the agenda and call it a city council meeting,
19 that's fine, but that hasn't been done in the past and in
20 order to continue operating through committees, I'm going
21 to restrain them from non-members of the committee
22 participating in those committee meetings.

23 The second portion of the complaint that the
24 Court ruled on found that the -- and I'll just read from
25 the order. And this is concerning emails.

1 While I decline to hold the town responsible for
2 past actions, as for the future, to assure the proper
3 preservation of all electronic mail pertaining to town
4 business, the Town and its counsel are prohibited and
5 restrained from deleting emails pertaining to town
6 business from public or private computers unless in
7 accordance with the Records Retention Act.

8 Now, as to attorney's fees, is there any
9 argument from either party as to the attorney's fees?

10 MR. TISDALE: Your Honor, we have filed and
11 sealed in case it's ever needed our entire standard
12 billing from our law firm, Nexsen Pruet, on behalf of Mr.
13 Brock and I turn any comments concerning that over to
14 Ms. Cantwell.

15 THE COURT: Okay.

16 MS. CANTWELL: Good morning, Your Honor. May it
17 please the Court.

18 I have had an opportunity to review the billing
19 records of Nexsen Pruet with respect to this matter. I
20 certainly take no issue with the preeminence of counsel,
21 Tommy Tisdale. His name and reputation speaks for itself.

22 I recognize that he did succeed in achieving
23 some results for his client in this matter, but I would
24 hope that you would take into consideration the fact that
25 there is no apparent bad faith on the part of the Town in

1 the conduct of any of its businesses and the issues with
2 respect to amended agendas, announcing executive sessions,
3 email meetings, and records retention policies, this Court
4 all found that the Town has been compliant with the FOIA.

5 And so to the extent that attorney's fees are
6 authorized and since Mr. Tisdale did prevail in part for
7 his client, we would hope that you keep in mind that he
8 only prevailed in part, that the Town has acted in good
9 faith and succeeded on most of the issues in the case.

10 Thank you, Your Honor. That's all I have.

11 THE COURT: Okay. Anything else from the town
12 attorney?

13 MR. YOUNG: Good morning, Your Honor. Always a
14 pleasure.

15 THE COURT: Thank you very much.

16 MR. YOUNG: Thank you for what you've done in
17 this case, but nothing further, Your Honor.

18 THE COURT: Mr. Tisdale, anything you would like
19 to add?

20 MR. TISDALE: Just if Your Honor has any
21 questions.

22 THE COURT: Okay. Thank you so very much.

23 I have reviewed the affidavit presented by
24 Mr. Tisdale and there's a long line of cases referring to
25 the Court's responsibility in finding reasonable

1 attorney's fees. I guess Collins versus Collins, 122
2 S.E.2nd 1961, Blumberg versus Nealco, 427 S.E.2nd 659, and
3 in those cases and other cases they have enumerated the
4 six items that the Court has to address in regards to the
5 attorney's fees.

6 Number one, the nature, extent, and difficulty
7 of the legal services rendered.

8 This case arose in a dispute between plaintiff,
9 who was a resident and citizen of the Town of Mount
10 Pleasant, and the Town of Mount Pleasant concerning FOI
11 violations. The suit resulted in the production of quite
12 a few documents. The volume of documents, the outcome,
13 the results were favorable on behalf of the plaintiff as
14 to two issues raised by the plaintiff concerning violation
15 of the FOI.

16 The time and labor necessarily devoted to the
17 case. There was essentially time devoted to the case.
18 According to the records, there was 358.2 hours devoted to
19 the case by Mr. Tisdale and his staff.

20 I did not go through, Mr. Tisdale, and add up
21 your time versus Denise Larrick's time. I did not break
22 that out. The billing did not break it out, nor did I
23 break it out. So that's the total time of 358.2 was
24 devoted by Denise Larrick as well as Mr. Tisdale.

25 I find that the time devoted was reasonable and

1 necessary. And according to Mr. Tisdale's affidavit in
2 paragraph three, I adopt that as my findings concerning
3 his experience in the area of Freedom of Information and
4 representing the press in the past. And I adopt his
5 findings in his affidavit in paragraph seven concerning
6 novel issues involving FOI and I'm going to --

7 Professional standing in the community.

8 Mr. Tisdale has a very high standard in the community.
9 He's been practicing law for many years and I find that he
10 is an attorney in good professional standing.

11 Contingency of compensation. I find that
12 there's no contingency of compensation. It was a
13 contractual arrangement between the attorney and the
14 plaintiff on a contractual basis for an hourly rate. I
15 find that the hourly rate charged by the defendants
16 according to -- is that in the affidavit, Mr. Tisdale, the
17 normal hourly rate?

18 MR. TISDALE: No, sir, Your Honor. It changes
19 in our law firm from year to year, but it's between \$300
20 and \$400 --

21 THE COURT: Okay.

22 MR. TISDALE: I mean during this period of time.

23 THE COURT: During this period of time between
24 \$300 and \$400?

25 MR. TISDALE: Somewhere between three and four.

1 THE COURT: And that was your customary rate?

2 MR. TISDALE: The customary rate right now is
3 \$400. I think it started at the beginning of this year.

4 THE COURT: Okay. Thank you very much.

5 The Court finds that the customary rate in the
6 community is within the standard that Mr. Tisdale has
7 charged the plaintiff in this case.

8 The beneficial results as Mrs. Cantwell had said
9 were partial, not complete, and the Court did not find any
10 bad faith on the part of the City. Although the Court did
11 find some technical violations on the part of the City,
12 the committee, I think the council members were acting in
13 good faith trying to stay abreast of what was taking place
14 in the committees, not necessarily intentionally violating
15 the FOI.

16 The total charge to the plaintiff by Mr. Tisdale
17 was a grand total of \$107,517.12 as of July 18th, 2011,
18 and Nexsen Pruet has been paid \$66,142.60, leaving an
19 unpaid balance of \$41,374.52..

20 Based upon the previously enumerated findings of
21 fact found by the Court on behalf of Mr. Tisdale's
22 affidavit and the case itself, the Court will award
23 \$42,000 in attorney's fees. That will include any costs
24 which were sustained.

25 Mr. Tisdale, if you would, I'm going to ask you

1 to prepare me a supplemental order incorporating the
2 Court's findings. And if you were to refer to those five
3 elements and the various cases that I have enumerated and
4 the findings, I would be happy -- let me just give you
5 a -- if you would take a look at this.

6 This is an order that was previously done on
7 attorney's fees. If you'll take a look at that. And if
8 you can prepare it along those lines, I certainly would
9 appreciate it.

10 MR. TISDALE: All right, sir.

11 THE COURT: And if you would return that to me,
12 I would appreciate it.

13 MR. TISDALE: I will.

14 THE COURT: And that could be a supplemental
15 order.

16 MR. TISDALE: Supplemental order on attorney's
17 fees only?

18 THE COURT: On attorney's fees only.

19 MR. TISDALE: Okay. Fine. I will do that
20 today.

21 THE COURT: Okay.

22 MR. TISDALE: Now, Your Honor, will you be
23 signing the main order?

24 THE COURT: I'm going to sign the main order.

25 I've written on the main order that a

1 supplemental order will be forthcoming concerning
2 attorney's fees, making the findings of facts required by
3 the law, and the Court retains jurisdiction to sign that
4 supplemental order and made part of the original order.

5 MR. TISDALE: We will prepare this today..

6 THE COURT: Okay. Thank you all so very much.

7 MR. TISDALE: And would you like us to file that
8 order with the clerk or will you do it?

9 THE COURT: I'll do it. If you'll just bring it
10 to me. I'll be in this courtroom.

11 MR. TISDALE: I'm talking about the main order.

12 THE COURT: I'll give it to the clerk.

13 MR. TISDALE: Thank you.

14 THE COURT: I'll file it with the clerk.

15 MR. TISDALE: Thank you.

16 THE COURT: I think both of you have copies of
17 it, right?

18 MR. TISDALE: We do.

19 MS. CANTWELL: Yes, sir.

20 THE COURT: All right. I will file that with
21 the clerk. And I have handwritten in the order about the
22 attorney's fees order.

23 MR. TISDALE: All right, sir.

24 THE COURT: Thank you all very much.

25 MS. CANTWELL: Thank you, Your Honor.

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MR. YOUNG: Thank you, Your Honor.

(The proceedings were concluded.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF CHARLESTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Charleston County, South Carolina, on the 22nd day of
15 August, 2011.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 May 31, 2012

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

STEPHEN GEORGE BROCK,

Plaintiff,

vs.

CASE NO. 08-CP-10-3308

TOWN OF MOUNT PLEASANT,

Defendant.

DEPOSITION OF: ROBERT M. BURDETTE

DATE: April 28, 2010

TIME: 1:10 p.m.

LOCATION: The Town of Mount Pleasant
100 Ann Edwards Lane
Mt. Pleasant, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: PATRICIA T. MORRISON,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Complaint that I want to ask you about today.

2 A. Yes, sir.

3 Q. So let me begin. First of all, before

4 I do that: What are your duties as town

5 administrator?

6 A. I am to advice council on any matter

7 that they or I deem appropriate. I am to prepare a

8 budget for consideration and ultimate approval by

9 council and then to execute that budget. I am to

10 supervise all department managers of the town of

11 Mt. Pleasant on a day-to-day basis.

12 I, according to the ordinance, work

13 with the mayor to assist him with his agenda or her

14 agenda; facilitate the formulation of agendas with

15 committee chairs on standing committees of council;

16 assist the mayor with formulation of the council

17 agenda; provide information to the public as

18 required and needed, et cetera.

19 Q. Now, Mt. Pleasant has an

20 administrator/mayor type form of government, does

21 it not?

22 A. Technically it is a strong council,

23 weak mayor form of government with a town

24 administrator.

25 The town administrator's duties are

1 spelled out for the most part by ordinance, the
2 authority that I have and the responsibilities.

3 Q. By town ordinance?

4 A. By town ordinance, yes, sir.

5 Q. But it's unlike, say, the city of
6 Charleston where the mayor is a full-time
7 executive. You, as administrator, have many of
8 those responsibilities?

9 A. I'm typically responsible for the
10 day-to-day operation of the town of Mt. Pleasant.

11 Q. And the mayor is a part-time position;
12 is that correct?

13 A. That's correct.

14 Q. How many members are there on the
15 Mt. Pleasant council?

16 A. Counting the mayor, there are nine.

17 Q. And is the mayor a regular voting
18 member of council?

19 A. Yes, sir, he is.

20 Q. Has that number been the case ever
21 since you've been with the town?

22 A. Yes, sir.

23 Q. Nine members of council, one of whom is
24 the mayor?

25 A. That's correct.

1 Q. Now, has the town of Mt. Pleasant been
2 a party in any other FOIA, Freedom of Information
3 Act, litigation since you've been administrator?

4 A. Litigation? I'm trying to remember.
5 Actually gone to court?

6 Q. Well, no, just the subject of a
7 lawsuit.

8 A. I don't think a suit has ever been
9 filed against us. I know that we've had attorney
10 inquiries. I cannot remember a suit actually being
11 filed over that, but I could be mistaken.

12 Q. You don't recall?

13 A. I don't recall.

14 Q. And the town, I would imagine, gets
15 fairly frequent Freedom of Information requests.

16 A. Oh, yes, sir.

17 Q. Are you responsible for responding to
18 those?

19 A. I would say it's certainly -- between
20 Mr. Young and I we have primary responsibility for
21 receiving and then making sure that those responses
22 are rendered in accordance with the law.

23 We will oftentimes delegate the actual
24 gathering of the information to a department
25 manager or to some other personnel staff, but

1 typically it will come back and I will hand it to
2 Mr. Young and Mr. Young will actually send it out
3 to the appropriate party under his signature.

4 Q. Mr. Young being Alan Young?

5 A. Alan Young, our town attorney.

6 Q. And he is a full-time employee of the
7 town?

8 A. Yes, sir. That's correct.

9 Q. Now, let me begin by asking you about
10 some of the allegations in the Complaint. I call
11 your particular attention to December 5th, 2007 --
12 and I'll put it in context -- when the town was,
13 I think, in a dispute with someone about some
14 ownership of some property on Shem Creek. Do you
15 recall that?

16 A. Yes, sir. Mr. Mark Mason.

17 Q. Who is a lawyer in the town?

18 A. Yes, sir.

19 Q. And also happened to be one of the
20 owners of some property that the town ended up
21 acquiring; is that right?

22 A. That's correct.

23 Q. Describe the property that was involved
24 in that controversy.

25 A. There is approximately a 1-acre piece

1 of highland that abuts the marshes of Shem Creek
2 along with a section of dock that ran from near
3 that property out to the mouth of Shem Creek and
4 there was a small hummock of highland connected to
5 the highland by the walkway dock, and then it also
6 included 30 or 40 acres of marsh.

7 Q. Did the town acquire that property?

8 A. Yes, sir, we did.

9 Q. And when did the town acquire it?

10 A. Approximately that December time frame
11 of the year which you just mentioned. I can't
12 exactly say what date the actual deed was executed
13 and transferred.

14 Q. Well, if you need to look at any kind
15 of documents or anything to confirm it, we can do
16 that. It's not questions to test your memory.

17 A. Sure.

18 Q. But my understanding is that the
19 meeting at which the purchase of that property, the
20 one acre, was approved by the council was on
21 December 5th, '07. Does that sound about right?

22 A. Yes, but I'll have to say that they --
23 in a subsequent meeting they actually voted
24 formally, as I recall, to expend the funds, and
25 that's from my memory.

1 Q. Right.

2 A. But they did have a discussion that
3 night in executive session regarding the purchase
4 of that property. As I recall, Mr. Young was
5 authorized to take an offer back to the property
6 owner.

7 Q. Was the acquisition of the property
8 approved that night by town council?

9 A. I think the -- I'm not trying to mince
10 words, but I want to make sure I tell you as
11 exactly as I can.

12 Q. Of course.

13 A. Of course, all this is executive
14 session, so we don't keep notes of that.

15 As I recall, Mr. Young was authorized
16 to go back to the property owner and execute the
17 decision to purchase the property with the
18 understanding that it would have to come back to be
19 voted on by council at a later date.

20 Q. How much money did the council decide
21 to approve/authorize for the acquisition of the
22 property?

23 A. \$6 million.

24 Q. On December the 5th, '07?

25 A. That was what was discussed in

1 executive session, is that the owner of the
2 property would be willing to accept an offer of
3 \$6 million.

4 Q. And did the town agree to proceed on
5 that basis?

6 A. Yes, sir.

7 Q. To acquire the property for \$6 million?

8 A. Yes, sir; subject to a final vote of
9 council at a later date.

10 Q. Now, you said, I think, that you were
11 responsible for preparing the agenda.

12 A. Assisting the mayor. He has the
13 authority to actually approve -- or she to approve
14 the agenda. I gather all the information and
15 actions that should be raised to council's level
16 from the committee level. We have a department
17 managers meeting and we query department manage
18 as to anything that they think needs to be on the
19 agenda for action, and surely discuss it all with
20 the mayor.

21 We have until 4:30 on Thursday
22 preceding the council meeting that any member of
23 council can request -- actually "request" is not
24 the right word; to actually say: I want an item
25 put on the agenda, and any member of council can

1 have that item on the agenda.

2 Q. Thursday?

3 A. The Thursday prior to the Tuesday
4 council meeting.

5 So I assemble all that and take it to
6 the mayor and say: This is what we've got. The
7 mayor blesses it.

8 Q. And what are the requirements of the
9 Freedom of Information Act with regard to posting
10 agendas to notify the public of what is going to be
11 on it?

12 A. My understanding is that for a regular
13 member of council there is no requirement to have
14 an agenda posted.

15 Q. What now?

16 A. For a regular meeting of council there
17 is no requirement to have an agenda posted, is my
18 understanding, although we do that. I can't think
19 of a time that I've failed to post an agenda for a
20 regular member meeting of council, because I don't
21 think we're required to.

22 Q. I want to read you part of the law and
23 see if you would agree with it or disagree with it.
24 I'm reading from Section 30-4-80 South Carolina
25 Code of Laws.

1 A. I see that. Which paragraph?

2 Q. The first paragraph, A.

3 Well, let's just read it from the
4 beginning. "All public bodies except as provided
5 in Subsections B and C of this section must give
6 written public notice of their regular meetings at
7 the beginning of each calendar year."

8 Now, you would do that because you have
9 one every -- how often do you have meetings?

10 A. Once a month. It is scheduled by
11 ordinance, the time and place.

12 Q. Tuesday?

13 A. Yes, sir. The second Tuesday of each
14 month.

15 Q. "The notice must include the dates,
16 times and places of such meetings." You do that,
17 don't you?

18 A. The clerk of council does that.

19 Q. That's what I mean. The town does it?

20 A. The town does it.

21 Q. "Agenda, if any, for regularly
22 scheduled meetings" -- and you do have an agenda
23 for regularly scheduled meetings, don't you?

24 A. Yes, sir.

25 Q. -- "must be posted on a bulletin board

1 of the office or meeting place of the public body"
 2 -- the public body would be the town of
 3 Mt. Pleasant, wouldn't it?

4 A. Yes, sir.

5 Q. -- "at least 24 hours prior to such
 6 meetings."

7 A. And we do that.

8 Q. But there is no discretion there in
 9 what we've read, is there? It doesn't say that the
 10 agenda must be posted?

11 A. It does say that.

12 Q. Now, it goes on to say -- and read with
 13 me, Mac -- "all public bodies must post on such
 14 bulletin board public notice for any called,
 15 special or rescheduled meetings."

16 A. Yes, sir. We do that as well.

17 Q. You do that as well?

18 A. Yes, sir.

19 Q. Now, the agenda that you say you post
 20 -- do you see anything in this that makes any of
 21 this discretionary?

22 A. No, sir.

23 Q. So would you agree that the law that we
 24 just read based on your interpretation requires the
 25 town of Mt. Pleasant to post the agenda for every

1 meeting, special or regular or rescheduled, on the
2 bulletin board here at the town hall?

3 A. The only exception: It doesn't apply
4 to the case you're talking about here. I think
5 there is some language about emergency meetings in
6 times of disaster, but other than that I would
7 agree with what you're saying.

8 Q. And the meeting we're talking about on
9 December 5th, '07 was not an emergency meeting, was
10 it?

11 A. No, sir.

12 Q. It was not?

13 A. No, sir.

14 Q. So that would not be involved?

15 A. That's correct.

16 Q. Now, would you agree, Mr. Burdette --
17 Mac -- that the purpose of posting an agenda on the
18 bulletin board as required by law would be to
19 inform the public as to what the town council is
20 going to consider at the meeting?

21 A. Yes, sir.

22 Q. And would that enable members of the
23 public to attend the meeting to become informed
24 about the issues that are going to be considered by
25 town council?

1 A. It would certainly be one means of
2 notifying them so they could attend.

3 Q. Are there any other means that the town
4 uses to notify?

5 A. Post them in the newspaper.

6 Q. Agenda items?

7 A. Well, no. We notify the press of
8 meetings, and it's online on our Web site.

9 Q. Now, coming specifically to the 12/5/07
10 meeting, was there anything on the agenda for that
11 meeting that would have informed the public that
12 town council would consider the acquisition of the
13 Shem Creek property, one acre, for \$6 million?

14 A. No, sir.

15 Q. There was not?

16 A. Not to my knowledge. Not to my memory

17 Q. So given that posting of the agenda as
18 required by law to inform the public, would you
19 agree that the public was not informed that on
20 December the 5th, 2007 the town was going to
21 consider spending \$6 million for a piece of
22 property?

23 A. I would have to say the public did not
24 know that that would be discussed that night.

25 Q. How long before the meeting on

1 December 5th, '07 did you know that that item would
2 be an agenda item?

3 A. The last I recall, it was probably late
4 afternoon, in the 4:00 to 5 o'clock time frame.

5 Q. Who made the decision to go forward
6 with it even though the public had no information
7 that it would be considered?

8 A. As I recall -- it's been a while --
9 Mr. Young let me know about developments regarding
10 the sale/purchase of the property in question. He
11 came to me, I went to the mayor, and the mayor
12 said: We will see if council will add it to the
13 agenda.

14 Q. Was there any discussion as to whether
15 or not that would be a violation of the Freedom of
16 Information Act not to inform the public of that
17 action?

18 A. No, sir. I don't believe that it's a
19 violation to add an item to the agenda. I don't
20 think there is anything that precludes us from
21 doing that.

22 Q. You can add anything to the agenda, but
23 if you did less than 24 hours before the meeting it
24 would violate the Freedom of Information Act,
25 wouldn't it?

1 A. In my opinion --

2 MS. CANTWELL: Object to form.

3 BY MR. TISDALE:

4 Q. In your opinion what?

5 A. In my opinion I don't think it violates
6 the Freedom of Information Act.

7 Q. Why?

8 A. I don't think there is anything in the
9 Act that precludes town council from voting to add
10 items to the agenda.

11 Q. Even though it's not posted by
12 requirement of law?

13 A. Right. I have not found anything or
14 seen anything in the law that says you cannot add
15 an item to the agenda.

16 Q. So as town administrator it would be
17 your position, then, that irrespective of anything
18 in the Freedom of Information Act that requires an
19 agenda to be posted, that that agenda is
20 meaningless --

21 A. No, sir.

22 Q. -- if town council decides to change
23 it?

24 A. No, sir. I think we posted the agenda
25 and I think that various and sundry matters can

1 come up that would necessitate council adding an
2 item to the agenda. It could be something as a
3 member of council preparing for a vote on a zoning
4 issue saying: I'm not prepared to vote on this
5 unless I can talk to Mr. Young in executive session
6 on a legal matter. I would like to add that to the
7 agenda to go into executive session to discuss the
8 legal matter before I'm willing to vote.

9 Q. Without belaboring or beating a dead
10 horse, am I correct to understand that your
11 position is if an agenda is posted in accordance
12 with the Freedom of Information Act, there is
13 nothing wrong with changing it at the last minute
14 if other matters need to be addressed?

15 A. I believe that's correct, yes, sir.
16 I do not see a problem with that. I have not been
17 made aware of anything in the state law that
18 preclude the council from adding an item to the
19 agenda.

20 Q. And so is that what happened in this
21 case, that town council decided to authorize the
22 purchase of \$6 million worth of property even
23 though it wasn't on the agenda?

24 A. Yes, sir, subject, again, to a
25 subsequent meeting where council would vote to

1 ratify if everything worked out in terms of the
2 legal discussion between Mr. Young and Mr. Marl
3 Mason.

4 Q. Was there any public hearing about the
5 town's acquisition of this property --

6 A. No, sir.

7 Q. -- before the vote?

8 A. Not to my recall, no, sir.

9 Q. So the \$6 million purchase was made
10 without any public input; is that correct?

11 A. No, sir, I wouldn't say that. This was
12 -- the discussions of buying the property was
13 discussed prior to this meeting on several
14 occasions, and there was a great deal of media
15 attention to the issue of buying the property. So
16 I think the general public was fairly well aware of
17 what council was considering.

18 Q. Did the town give notice and conduct a
19 public hearing?

20 A. No, sir. They are not required to.

21 Q. I didn't -- I understand that.

22 A. Yes, sir.

23 Q. And you do agree, then, that a matter
24 of the acquisition of the property was not on the
25 agenda for the December 5th, 2007 meeting?

1 A. It was not on the original agenda.

2 Q. And it was considered in executive
3 session by council?

4 A. After a vote of council to add the item
5 to the agenda.

6 Q. And the acquisition was authorized --
7 Mr. Young authorized it -- and it was purchased?

8 A. After a subsequent vote.

9 Q. Another vote?

10 A. Yes, sir.

11 Q. Before the subsequent vote was taken
12 was there a public hearing regarding the matter?

13 A. No, sir, but we always have a public
14 comment period before every council meeting tha
15 anyone could speak if they wished.

16 Q. Now, I think you said this matter was
17 taken up in executive session --

18 A. Yes, sir.

19 Q. -- on December 5th. Were all members
20 of council present?

21 A. I don't recall, but I would imagine so.
22 But I can't absolutely tell you that.

23 Q. Were you present?

24 A. Yes, I was.

25 Q. Was Mr. Young present?

1 A. Yes, he was.

2 Q. Was anyone else in the executive
3 session?

4 A. My deputy town administrator may have
5 been there and our administrator services director,
6 Mr. Potts, may have been there.

7 Q. What are their names?

8 A. Mr. Eric DeMoura, D-e-M-O-U-R-A. He's
9 the deputy town administrator for the town of
10 Mt. Pleasant. And Mr. Charles Potts, P-O-T-T-S, is
11 the Director of Administrative Services, which
12 includes our finance division.

13 Q. Anyone else?

14 A. Not to my recollection.

15 Q. Now, Mr. Bardette, I call your
16 attention and ask you about a meeting on November
17 the 16th, '07, a few weeks before the Shem Creek
18 matter. I wanted to ask you whether or not you
19 recall that the agenda for the meeting was amended
20 to include an executive session concerning
21 "personnel matters related to boards and
22 commissions?"

23 A. I don't remember. If you've got
24 something I could look at, it may help me.

25 Q. All right.

1 A. I want you to understand that we have a
2 lot of meetings.

3 Q. Go ahead. This is a special meeting of
4 council on November 16, '07.

5 A. I don't recall it personally, but I
6 would assume this is a correct representation of
7 what occurred that night.

8 Q. This came out of your Web site.

9 A. Yes, sir. So I assume it's correct.
10 I have no reason to believe it's not.

11 MS. CANTWELL: Can we for the record
12 mark that.

13 (PLF. EXH. BURDETTE 3, 11/16/07 Specia
14 Town Council minutes, marked for identification.)

15 BY MR. TISDALE:

16 Q. This Exhibit 3, would you agree, does
17 come from the town Web site?

18 A. Yes, sir. It appears to be.

19 Q. And I gather that the minutes of
20 council meetings are put on the Web site.

21 A. Yes, sir.

22 Q. And this would be one of them?

23 A. Yes, sir.

24 Q. Exhibit 3.

25 A. Yes, sir.

1 Q. And you see about the third paragraph
2 down I think it says: Mr. Bustos -- he was a
3 member of council, wasn't it?

4 A. Yes.

5 Q. -- made a motion to add personnel
6 matters relating to the boards and commissions.

7 A. Yes, sir.

8 Q. And was the public given any notice by
9 way of the posting of an agenda that this
10 particular matter would be on the agenda?

11 A. I don't know what the agenda was for
12 that. Do you have a copy of the agenda? Forgive
13 me for not remembering.

14 Q. I don't think I do, but can we agree
15 that this says that a member of council made a
16 motion -- Mr. Bustos made a motion to amend the
17 agenda.

18 A. That is what it says, and I assume that
19 it was an amendment to the initial agenda.

20 Q. Which would mean, would it not, Mac,
21 that the public did not have the benefit of knowing
22 by way of a posted agenda as required by the
23 Freedom of Information Act that this matter would
24 be considered?

25 A. Well, they would not have known that

1 this item was going to be discussed by council.
2 I'm not going to say it was a violation of the
3 Freedom of Information Act.

4 Q. No. That would be up to the court.

5 A. Yes, sir.

6 Q. But if the Freedom of Information Act
7 requires that agenda be posted with the items to be
8 considered by council listed on it, we can agree
9 this matter was not on it, was it?

10 A. That item was not on the agenda,
11 according to this.

12 Q. And do you recall what the personnel
13 matters related to boards and commissions was that
14 was considered in executive session on this
15 occasion?

16 A. Not offhand I do not.

17 Q. The next paragraph says that: Mayor
18 Hallman indicated a motion was needed to adjourn
19 the executive session regarding legal advice
20 pertaining to the OK Tire property litigation and
21 to discuss other personnel matters as mentioned.
22 Do you see that?

23 A. I do, sir.

24 Q. Was the OK Tire property the Shem Creek
25 situation that we have talked about earlier?

1 A. That is correct. Mr. Mason's property.

2 Q. The \$6 million property?

3 A. Yes, sir.

4 Q. And what was the other personnel
5 matters as mentioned that Mayor Hallman referred
6 to?

7 A. Clearly one is regarding the clerk of
8 council. As I recall, I believe our clerk of
9 council had resigned, retired, and we discussed the
10 process of how we were move forward. And the other
11 is -- that's it. I don't recall.

12 Q. Was the public given any notice of that
13 discussion on the agenda by way of the posting of
14 an agenda?

15 A. No, sir, not to my knowledge.

16 Q. So would you agree whatever, Mac, was
17 discussed under Mr. Bustos' motion concerning
18 boards and commissions and whatever was discussed
19 that had to do with the clerk of council was not
20 posted on the agenda?

21 A. That's correct. I believe that.

22 Q. Now, when the executive session was
23 announced that we've just been talking about --

24 A. Okay.

25 Q. -- was it announced for public purposes

1 of those attending the council meeting what either
2 one of those matters involved?

3 A. Just what was read. I presume what is
4 on this document is what was read to the public.

5 Q. You don't recall anything else?

6 A. Oh, no, sir, I don't recall.

7 Q. And you have said today that you don't
8 remember what discussion the boards and commission
9 issue was about.

10 A. Not specifically. I don't know.

11 Q. And the public didn't know because it
12 wasn't announced; is that correct?

13 A. They would have known -- anyone that
14 was sitting there at the time would have known what
15 was -- the discussion of the boards and
16 commissions, yes.

17 Q. And no more?

18 A. That's right.

19 Q. And you have no recollection of what
20 the actual discussion was?

21 A. No, sir.

22 Q. With regard to the clerk of council's
23 thing, that's the personnel matter?

24 A. Say that again, sir.

25 Q. The second thing on there that Sidney

1 Hallman said right after Mr. Bustos's motion.

2 A. It would be those two --

3 Q. Well, what is the second issue?

4 I don't have my sheet before me right now.

5 A. Well, one would be the clerk of
6 council. I presume the other has got to do with
7 personnel matters regarding boards and commissions
8 those two.

9 Q. Let's talk about the clerk of council
10 for a minute.

11 A. Yes, sir.

12 Q. What does it say?

13 A. It says: Mr. Burdette asked that
14 council to amend the agenda to include personnel
15 matters pertaining to the clerk of council.

16 Q. Was there anything else said about what
17 it pertained to other than that?

18 A. No, sir, I don't believe so. Not
19 according to this.

20 Q. And so do you recall specifically what
21 was considered concerning the clerk of council?

22 A. My recollection is our clerk had
23 decided to retire and it was to notify council and
24 to discuss recommendation to appoint.

25 Q. Was an appointment agreed upon?

1 A. I don't recall. There may have been a
2 subsequent meeting. I don't recall.

3 Q. Well, was there a new clerk of council
4 ultimately appointed?

5 A. Oh, yes, sir. I can't tell you exactly
6 how soon it happened after that, but shortly.

7 Q. Was the public informed that a new
8 clerk of council would be appointed?

9 A. Not at this particular meeting.
10 I can't tell you if it occurred at the next meeting
11 or not.

12 Q. But we're in agreement, then, that
13 neither one of those items was listed on the agenda
14 that was posted the day before?

15 A. I'll agree with that.

16 Q. You'll agree with that. And if the
17 FOIA required such a posting to be made, you agree
18 the law was not followed if I'm right?

19 A. The way you asked me the question --

20 Q. I'm not asking you to interpret the
21 law.

22 A. I understand. Ask it again.

23 Q. If the FOIA -- and we've already cited
24 that section -- requires that agenda items be
25 posted 24 hours before a council meeting, are we in

1 agreement that those two items were not posted?

2 A. They were not posted. **ROA Page 475**

3 Q. As shown on Exhibit 3?

4 A. No.

5 Q. And was an emergency involved in either
6 one of those issues?

7 A. No, sir, no emergency.

8 Q. No emergency.

9 Now, there was another executive
10 session, Mr. Burdette, on November 13th, 2007.

11 A. What day of the week? Does that show?

12 DENISE LeCLERC: Tuesday, November
13 13th.

14 THE WITNESS: Regular council.

15 BY MR. TISDALE:

16 Q. But we read a while ago it didn't
17 matter whether it was special or regular --

18 A. It might help my memory.

19 Q. -- unless it was an emergency.

20 A. I think in terms of days of the week
21 and . . .

22 Q. You think in terms of days of the week?

23 A. When it comes to council, and sometimes
24 they run together. You can only imagine how many
25 meetings we have around here.

1 (PLF. EXH. BURDETTE 4, 11/13/2007
2 Special Meeting minutes, marked for
3 identification.)

4 BY MR. TISDALE:

5 Q. This minute from your Web site -- it
6 says it's a special meeting.

7 A. Yes, sir.

8 Q. November 13th, 2007.

9 A. And we typically have a special town
10 council meeting typically before the regular
11 council meeting each month.

12 Q. Why is that?

13 A. Just a lot of business sometimes that
14 needs to be conducted that may take lengthy periods
15 of time to discuss, and we often will do that at a
16 special council meeting before our regular council
17 meeting.

18 Q. Is the public given notice of the
19 special meeting?

20 A. Yes, sir.

21 Q. Is the agenda for the special meeting
22 posted as well as an agenda for the regular
23 meeting?

24 A. I can't recall a time when that did not
25 occur.

1 Q. Do you post two agendas?

2 A. Yes, sir. There will be two.

3 Q. One for a special meeting and one for a
4 regular meeting?

5 A. Yes, sir.

6 Q. Whether they occur at the same time,
7 one following the other?

8 A. Well, not at the same time. The
9 special one would precede the regular.

10 Q. But the same date?

11 A. Yes.

12 Q. And the special one comes first and
13 then the regular one?

14 A. Right.

15 Q. What time are the regular meetings
16 normally held?

17 A. Regular is 7 o'clock.

18 Q. What time do the special meetings take
19 place?

20 A. It just depends on how much is to be
21 dealt with. It could be Mr. Young may have a very
22 complicated legal matter that has just popped up on
23 the radar screen that he may say: I'm going to
24 need at least an hour with council. You know, some
25 seem to be more complicated than others. Maybe

1 that's just his talent to make some seem easier
2 than others.

3 Q. Look at this Exhibit 4 for a minute.
4 It says here that you indicated: Staff would like
5 to ask council to go into executive session to
6 discuss legal and contractual matters pertaining to
7 properties near Shem Creek.

8 A. Yes, sir.

9 Q. And also to discuss personnel matters
10 pertaining to appointments to boards and
11 commissions.

12 A. Yes, sir.

13 Q. What was involved in those two matters?

14 A. Now, I think it was boards and
15 commissions. Since this was the night of a council
16 meeting, my guess is it was -- as they usually do,
17 they will appoint new members to boards and
18 commissions at our regular council meeting, and
19 that appears on the council agenda. But they will
20 typically at a special council meeting -- before
21 that they will go into executive session and
22 discuss those applications that they receive for
23 those various positions.

24 My guess is that's what that was about
25 because that's what we -- that's the typical

ROA Page 479
1 operating procedure, but I can't tell you exactly
2 which boards or commission members appointment
3 seats or anything else that evolved that night.
4 But that's my guess because that is typically what
5 happens.

6 Q. Did the agenda indicate that these
7 matters would be presented and considered by
8 council in executive session that night?

9 A. I presume it was. I don't have the
10 agenda in front of me, but I presume so. It
11 doesn't look like it was amended to add them.
12 Typically that's what we do.

13 If we have an item for the special
14 council meeting -- in this case about boards and
15 commissions -- that will state that on the agenda.

16 Q. Look at the next item. It says:
17 Mr. Gawrych made a motion to amend the agenda to
18 add as Item C legal advice pertaining to ordinance
19 07060.

20 A. Yes, sir.

21 Q. What did that involve, do you recall?

22 A. I have no idea at this point. I would
23 have to look that up.

24 Q. Do you recall that it was at this
25 meeting that the town council authorized in

1 executive session the hiring of private counsel?

2 A. I don't recall.

3 Q. You don't?

4 A. No, sir.

5 Q. That the town council could retain

6 private counsel for all current and future

7 lawsuits? You don't recall that that was

8 considered at that meeting?

9 A. No, sir.

10 Q. Well, if it was considered -- and we'll

11 look at the records to see, but if it was

12 considered, was the public given any notice that

13 that would be considered?

14 A. I don't have the agenda in front of me,

15 so I can't tell you that for certain, but since it

16 says -- if it's related to the amendment by

17 Mr. Gawrych, then they would not have known that

18 But I don't have the agenda, so I can't say for

19 sure that there wasn't something on the agenda in

20 that regard.

21 Q. Let me ask you if you have any

22 recollection of this, Mr. Burdette.

23 At that meeting on November 13th, 2007

24 did Mr. Bustos, to your recollection, make a motion

25 to authorize the mayor and members of council to

1 obtain their own attorneys:

2 A. I don't recall it, but I read it and I

3 presume that that is what happened that night.

4 Q. You would not take issue with it?

5 A. No, sir, I couldn't, based on the
6 evidence, the exhibit.

7 Q. And you remember that issue coming up,
8 do you not? whether it's that date or some other
9 time.

10 A. Vaguely.

11 Q. And why was council authorizing
12 individual attorneys?

13 A. I don't know. I don't remember.

14 Q. You don't?

15 A. No, sir. Mr. Young regularly comes
16 before council about legal matters and say he would
17 like to retain the services of so and so to assist
18 him in a particular legal matter. So it could have
19 been just about anything.

20 Q. Did the town authorize members of
21 council to retain individual lawyers to represent
22 them?

23 A. That night?

24 Q. That night or any other time.

25 A. Oh, they have before.

1 Q. With the bills and statements for
2 services to be reviewed by Mr. Young before the
3 town paid it?

4 A. I don't recall that being said or what
5 that was about. Typically I've never heard them
6 make that kind of authorization before. I think
7 it's pretty much obvious that Mr. Young is going to
8 review any bills for any attorney fees that the
9 town incurs.

10 Q. Let me back up a minute. Leave off the
11 reviewing of the statements by Mr. Young.

12 Is it true that the town council did in
13 executive session, even on November 13th or some
14 other occasion, authorize members of council to
15 retain individual lawyers?

16 A. They did not authorize it in executive
17 session because you can't vote in executive
18 session. They probably, based on this, discussed
19 it in executive session, and having come out of
20 executive session as a motion and a vote at that
21 point.

22 Q. Was that considered as a part of the
23 November 13th, '07 meeting where the agenda had
24 been amended to take up that issue?

25 A. May I refresh --

1 Q. Certainly.

2 A. This is Exhibit 4. "Mr. Gawrych made a
3 motion to amend the agenda to add Item C, legal
4 advise pertaining to the ordinance 07060 pertaining
5 to the comprehensive plan, and add as Item D legal
6 advice pertaining to an opinion from the Attorney
7 General concerning the planning commission."

8 I can't begin to tell you what exactly
9 that was about.

10 Q. Well, with regard to the part
11 concerning the Attorney General's opinion, that had
12 to do with Mr. Brock requesting an opinion from the
13 Attorney General about the comprehensive plan,
14 didn't it?

15 A. If that's what it is, I remember that.

16 Q. Isn't that what it says?

17 A. I don't think it mentions Mr. Brock's
18 name. It says: Made a motion to authorize the
19 mayor and members of council to obtain their
20 individual attorneys for all lawsuits now and in
21 the future, yes, sir. If that's what it was about
22 -- if that's true, then I recall that.

23 Q. Well, Mr. Brock was the only one who
24 asked the Attorney General for an opinion about the
25 comprehensive amendment, wasn't he?

1 A. He may have been in this instance, but
2 I'm sure we've had other Attorney General opinions
3 that have come before executive session for
4 discussion. I don't remember them all.

5 Q. I am talking about the one on the
6 comprehensive plan.

7 A. Mr. Brock, as I recall, did seek an
8 Attorney General's opinion regarding the
9 comprehensive plan. If this is when it was
10 discussed in executive session, I do not recall
11 that one way or the other.

12 Q. But in any case, whatever was discussed
13 subject to that motion in executive session was not
14 an agenda item posted in the public announcement of
15 the meeting the day before, was it?

16 A. If it was an amendment to the agenda,
17 I would agree with that.

18 Q. Well, it says it was an amendment.

19 A. Exactly. That's what it says.

20 Q. Mr. Burdette, before we get off this
21 thing about agenda items, my understanding, then,
22 is that whatever the FOIA says that we've read
23 earlier about posting the agenda 24 hours before
24 the meeting -- right? Is that a required act?

25 A. If there is an agenda it should be

1 posted 24 hours in advance.

2 Q. And we all agree that you have an
3 agenda that you post before every meeting, special
4 and regular.

5 A. Yes, sir. I would say that is almost
6 without exception. I can't remember a time when w
7 did not do that.

8 Q. And your position is that irrespective
9 of that posting of the agenda, whether or not it's
10 required by the FOIA -- we'll let the court decide
11 that -- there is no reason that Mt. Pleasant town
12 council can't amend that agenda by adding items or
13 taking items off any time it wants to.

14 A. I believe that council has the
15 authority to add items to the agenda.

16 Q. Without regard to the posting
17 requirement?

18 A. I believe that, yes, sir.

19 Q. And do you have -- I know you're not a
20 lawyer, and I'm not asking for a legal opinion, but
21 is there any authority you have for that other than
22 your belief?

23 A. Discussions with our town attorney.

24 Q. Mr. Young?

25 A. And also other city managers,

1 Q. But would you quarrel with the
2 allegation or disagree with the allegation that
3 between those two dates, July 2nd, 2007 to June 30
4 of 2008, if there were a hundred committee meetings
5 that 80 of those meetings were attended by five or
6 more members of town council?

7 A. It wouldn't surprise me.

8 Q. So you would not disagree?

9 A. No, sir. I couldn't argue with that.
10 I would have to have some evidence to -- it
11 wouldn't surprise me.

12 Q. So far as you're concerned, that would
13 be normal conduct for the town council in committee
14 meetings?

15 A. The word "normal" -- it's not
16 unexpected that that will happen. If that means
17 "normal," then okay.

18 Q. If that's what the record shows, it
19 wouldn't surprise you?

20 A. No, sir. It's possible. We have a
21 very involved council.

22 Q. Mac, I have what has been marked as
23 Exhibit 2, a resolution that is entitled "R.10031,
24 A Resolution Adopting A Policy For Elected
25 Officials' Use of Town Computers and E-Mail

1 Accounts."

2 A. Yes, sir.

3 Q. When was that adopted by town council?

4 A. Well, it was recently. I can't give
5 you the exact date. It looks like here it was
6 signed, sealed and delivered on this 10th day of
7 March 2010. So recently.

8 Q. And what led to the adoption of that
9 resolution? What was the reason for it?

10 A. I have to give you a little bit of
11 history, if I may.

12 Q. Please.

13 A. Last year either a council member or
14 Mayor Pro Tem Smith suggested that we start to
15 become more paperless. We have killed a lot of
16 trees around here. And the best way to do that is
17 to try to eliminate a lot of the paper
18 communication between the town and council,
19 particularly when you look at the size of agendas
20 and supporting documents that go with agendas, be
21 they committee or be they council meetings; that we
22 go paperless as many other cities have done and
23 acquire computers for council, assign those
24 computers to council, laptop computers, and that we
25 place all agenda items and supporting documents on

1 those computers to become more paperless.

2 In doing so I believe -- I think

3 Mr. Young raised the issue that we ought to do our
4 best to communicate, such as emails, with council
5 through their publicly owned computer that has been
6 assigned to them.

7 We have policies for all town employees
8 on how they may use town computers. It's in the
9 personnel manual. The personnel manual doesn't
10 apply to council. But in discussing the matter
11 with other cities around the state, the municipal
12 association, it was advised that we have a policy
13 so it's very clear what council could use their
14 computer for so that some council member wouldn't
15 inadvertently start doing business on a town
16 computer and have someone question that, creating
17 an embarrassment or even some charge of some kind

18 So council agreed that Mr. Young ought
19 to develop a policy that they would consider
20 through resolution that would govern their use of
21 computers. I think that's pretty accurate.

22 Q. Town computers?

23 A. Town-owned computers assigned to each
24 member of council.

25 Q. Does the town of Mt. Pleasant have any

1 policy in place that regulates the use of email
2 correspondence, electronic correspondence by
3 members of town council other than that resolution

4 A. Not to my knowledge, no, sir.

5 Q. Does the town of Mt. Pleasant have any
6 policy in place to regulate the retention or
7 disposal of private and personal email
8 correspondence related to town business as required
9 by Section 30-1-10 of the code of laws of South
10 Carolina, which is commonly known as the Public
11 Records Act?

12 A. We accept the policies of the Archives
13 and History and maintain our records and comply
14 with that state regulation.

15 Q. Do you have any policy in place for
16 members of town council to follow in accordance
17 with the Public Records Act that requires members
18 of town council to retain copies of email
19 correspondence or electronic correspondence related
20 to town business?

21 A. Particularly related specifically to
22 council? I don't know of one. Other than what may
23 be contained in here I don't know of one.

24 Q. So there is no town policy except what
25 is in the resolution --

1 A. Pertaining specifically to council?

2 Q. -- as shown on Exhibit 2?

3 A. I think it's goes without saying that
4 it's an official document, public document. They
5 are supposed to comply with the state regulations.

6 Q. Let me put it this way or ask the
7 question another way.

8 Is Mr. Santos still a member of
9 council?

10 A. No, he's not.

11 Q. Is Mr. Gawrych still a member?

12 A. Yes.

13 Q. If Mr. Gawrych writes an email to
14 another member of council concerning a matter that
15 council is considering, does the town have any
16 policy in place that requires Mr. Gawrych to retain
17 that email correspondence?

18 A. I think it's retained in the public
19 computer we issued to him.

20 Q. No. I'm talking about on his private
21 computer.

22 A. No. There is no policy that I know of
23 in that regard. Whether or not state laws of any
24 kind apply to the use of public computers, I would
25 have no knowledge about how that --

1 Q. Private computer?

2 A. Private computer. I don't have any
3 knowledge of how that would apply. I don't know.
4 Does that answer your question?

5 Q. Let me ask you this question another
6 way.

7 If Mr. Gawrych -- I'm just using him as
8 an example.

9 A. Sure.

10 Q. I'm not making any personal allegations
11 about whether he retains his emails or not.

12 If Mr. Gawrych writes Miss Williams an
13 email using a personal, private email account,
14 paulgawrych@aol.com, on his own computer concerni
15 a matter pending before town council, is there any
16 policy requirement of the town that he retain in
17 accordance with that policy a copy of that email?

18 A. Other than the fact that we subscribe
19 to the regulations of Archives and History.

20 Now, whether or not that applies to
21 emails sent to private computers, I don't know. If
22 the court or some authority says that it does
23 apply, then I would say that the policy exists
24 because we subscribe to the regulations of Archives
25 and History.

1 Q. Well, are you familiar with the
2 regulations of Archives and History?

3 A. In general. Chapter and versus, no,
4 sir, I could not . . .

5 Q. Are you able to say whether or not the
6 email that I just described from Mr. Gawrych to
7 Mayor Swails --

8 A. I don't know. I don't know if anybody
9 knows that.

10 Q. It is a public document.

11 A. I don't know if anybody knows the
12 answer to that question.

13 Q. Somebody does.

14 A. I think a lot of people speculate and a
15 lot of people could give opinions.

16 I guess I have not seen -- and this has
17 been -- city managers talk about these kind of
18 things often, and I think that is an open question.

19 Q. Is an email from Paul Gawrych -- using
20 him as an example, hypothetically.

21 If he writes an email concerning a
22 pending matter before town council to Mayor Swail
23 on his private computer, is that a public document?

24 A. I don't know.

25 Q. You don't know?

1 A. I do not know. I don't have an opinion
2 about it. It is an interesting question, that I
3 think this whole information age raises lots of new
4 questions that probably at some point are going to
5 have to be litigated and some court is going to
6 have to decide.

7 Q. Do members of town council, to your
8 knowledge, have private email accounts?

9 A. I hear from them by email regularly,
10 but I would say by and large -- I don't recall
11 having gotten an email message from any member c
12 council since we've issued them computers that did
13 not come from their public computer.

14 Q. When did you issue those computers?

15 A. I'm going to say February, late
16 February.

17 Q. 2010?

18 A. Yes, sir. Within the last couple of
19 months.

20 Q. And there was no such resolution that
21 existed before?

22 A. No, sir, not to my knowledge.

23 Q. And there was no policy before that
24 resolution concerning the use of email?

25 A. Other than whatever -- the

1 interpretation of the Freedom of Information Act
2 and any requirement of Archives and History, if it
3 applies.

4 Q. Are you saying that most of the email
5 correspondence you get from council members now is
6 on their town issued computers?

7 A. I would say almost exclusively.
8 I can't say absolutely certain that I haven't
9 gotten one from somebody on a trip, a vacation, and
10 had their personal computer and they sent me
11 something; but if it comes in to me, it goes to a
12 public computer system, and there is no question in
13 my mind it becomes a public document. No question
14 about that. If it comes in to town hall, it's a
15 public document. I don't care who sends it or
16 where it came from.

17 Q. But it would not be such going to a
18 constituent, would it?

19 A. Or to another council member on a
20 private computer. If it went through his public
21 computer, again, I would have to say absolutely
22 it's a public document.

23 Q. But going from Mr. Swails on a private
24 account to --

25 A. To another council member? I don't

1 know the answer. I think it is an interesting
2 question.

3 Q. Well, the town of Mt. Pleasant as of
4 now does not acknowledge that that is a public
5 document, do they?

6 A. Private, no, sir. We don't acknowledge
7 that it is or it isn't.

8 Q. And you don't have any policy about
9 private accounts, email public business?

10 A. We urge them to use their public
11 computer.

12 Q. But if they don't do you have any
13 policy on that?

14 A. No, sir. There is no policy.

15 Q. So if a member of council for whatever
16 reason wants to carry on a private conversation by
17 email with another member of council to a private
18 computer account, there is nothing policy-wise that
19 controls that, is there?

20 A. No, sir, nor do I know that there
21 should be.

22 Q. And have you read Mr. Santos's
23 deposition in this particular case?

24 A. I have not.

25 Q. And you were not present at his

1 deposition?

2 A. No, sir, I was not.

3 Q. Is there any policy of the town
4 concerning the deletion of emails?

5 A. Other than what is in here, and I can't
6 recall if that is covered in here or not. I don't
7 know of one.

8 Q. How about look at it and see --

9 A. Sure. I will be glad to.

10 Q. -- if there is anything about the
11 deletion of emails.

12 MS. CANTWELL: Talking about Exhibit 2.

13 A. "Even though an item has been deleted,
14 an official cannot retrieve it. This does not mean
15 that the town cannot do so. It is also possible to
16 generate a report of every internet connection made
17 by each user and how much time was spent in each
18 connection."

19 It doesn't say that they can't delete
20 something, but it also states that we certainly --
21 probably with our pretty brilliant technicians we
22 can probably retrieve it if we needed to.

23 Q. What does the resolution say about the
24 deletion of emails, if anything?

25 A. That's all that I can see.

1 Q. I know, but I didn't follow you. You
2 were talking kind of fast there.

3 A. The only reference that I see to
4 deletion of anything is Paragraph 2-B, and it says:
5 The town has the capacity to examine the computer
6 usage of individual officials in detail, as they do
7 town employees. Even though the item has been
8 deleted and the official cannot retrieve it, this
9 does not mean that the town cannot do so.

10 That doesn't prohibit the council
11 member, as I read it, from deleting something. It
12 just puts them on notice that should they delete
13 something, either purposefully or accidentally, our
14 technicians can probably still retrieve it. And it
15 is possible to generate a report of their every
16 internet connection made by each user and how much
17 time was spent in each connection.

18 Q. Mac, is there any policy of the town of
19 Mt. Pleasant -- policy, ordinance, what have you --
20 that prohibits a member of town council from
21 deleting --

22 A. None that I know of.

23 Q. -- any email?

24 A. None that I know of.

25 Q. Whether it's on a private computer,

1 private account, or town issued computer.

2 A. I know of no policy.

3 Q. No policy that prevents deletion?

4 A. Prohibits?

5 Q. Prohibits deletion.

6 A. No, sir; I know of none.

7 Q. Has the town addressed or is there any
8 policy along the same lines that prevents the
9 double deletion of any email in a private account
10 or on a public computer?

11 A. Forgive me. I don't know what "double
12 deletion" means.

13 Q. Well, that's well known in the
14 industry.

15 A. And I'm going to tell you I don't even
16 use a computer. Do you believe that?

17 Q. No.

18 A. Do you want me to prove it? I do not
19 use a computer. My secretary does all my computer
20 work. I write her handwritten notes. I give them
21 to her and she --

22 Q. You're making some admissions now that
23 she's putting in the record.

24 A. That's fine.

25 I do not use a computer. I am a

1 throwback to the Dark Ages. I love the telephone
2 and I love written communication.

3 Q. Well, email is written, isn't it?

4 A. No, sir. It's not written. It's a
5 message --

6 Q. So not only does the town not have a
7 policy against deletion and double deletion, you
8 don't know what double deletion means?

9 A. I do not know what double deletion
10 means. I could swear on a stack of Bibles. And I
11 don't care what it means.

12 Q. Do you want me to explain that?

13 A. I don't care what it means.

14 Q. Am I correct that the only policy that
15 the town of Mt. Pleasant has concerning the use and
16 management of email, electronic communication, is
17 contained in the resolution which is Exhibit 2?

18 A. That is probably correct. I don't know
19 of another policy. I know that I frustrated you
20 and flustered you.

21 Q. No, you have not.

22 A. I'm perfectly comfortable with my
23 existence. We don't have voice mail here either.

24 (Short recess taken.)

25

1 BY MR. TISDALE:

2 Q. I just want to talk to you for a few
3 minutes about a special meeting of town council on
4 November 16th, '07, and this is one where
5 Mr. Bustos made a motion the amend the agenda to
6 add personnel matters relating to boards and
7 commissions, seconded by Mr. Gawrych, and all
8 present were in favor.

9 A. Yes, sir.

10 Q. And then the last item there on the
11 last paragraph of these minutes of the special
12 meeting, it says: Mr. Bustos made a motion to
13 authorize the attorney to prepare a letter as
14 discussed in executive session in reference to the
15 personnel actions regarding boards and commissions
16 seconded by Mr. Gawrych. All present were in
17 favor. Do you see that?

18 A. I do see that.

19 Q. I just happened to notice that it says
20 the meeting adjourned at 12:55 p.m. And so that
21 meant that this particular town council meeting,
22 special meeting -- it says in the first paragraph
23 it was at noon; isn't that right?

24 A. That's correct.

25 Q. So on this particular day you had a

1 special meeting at noon, and I presume, then,
2 followed by a regular meeting that evening.

3 A. I don't know -- I don't think this
4 would have been a council meeting night. The 16th
5 would have been too late in the month. This was
6 just a special council meeting by itself.

7 Q. But do you give regular notice by
8 posting agendas of all the special meetings,
9 including this one?

10 A. As a rule, yes.

11 Q. What do you mean "as a rule?"

12 A. I can't tell you in the last 35 years
13 that we missed not posting an agenda, but I can't
14 recall one in my 25 years here where we did not put
15 an agenda up for a special council meeting.

16 Q. So that's standard practice?

17 A. Yes, sir.

18 Q. Mac, on this particular occasion the
19 letter that Mr. Bustos made a motion to authorize
20 had to do with asking Steve Brock to resign --

21 A. I do recall that.

22 Q. -- as chair of the planning commission;
23 isn't that right?

24 A. Now, I'm searching memory bank here a
25 little bit. I don't recall Mr. Young being

1 directed to write a letter for Mayor Hallman that
 2 was to ask Mr. Brock to resign specifically but was
 3 to suggest that he think about his role on the
 4 planning commission in relation to his
 5 disagreements with council, et cetera, et cetera.

6 Q. Suggesting that he consider resigning?

7 A. But I don't recall it said: I want you
 8 to resign. I don't recall that to be said.

9 Q. But regardless of the language -- and
 10 we have it somewhere here -- it was at least to ask
 11 him to consider the possibility?

12 A. It had to do with Mr. Brock's service
 13 on the planning commission.

14 Q. And suggesting that he consider
 15 changing his role by perhaps resigning?

16 A. Yes, I guess. I think that's right.
 17 Okay. I'm okay with the statement, the best I can
 18 recall.

19 Q. We just don't want to get in an
 20 argument about it.

21 A. Right.

22 Q. But it had to do with the service of
 23 the planning commission?

24 A. As I recall that, yes, sir.

25 Q. And whatever the letter says, it says;

1 is that right?

2 A. That's right. And there should be a
3 record of that.

4 Q. Now, there is no doubt that Mr. Brock
5 was on the planning commission at that time; isn't
6 that correct?

7 A. I think that's correct. Yes, sir.
8 I'm sure it is. It doesn't make sense that he
9 wouldn't be. I can't tell you what day he left the
10 planning commission.

11 Q. No point in asking him to consider
12 resigning if he wasn't on it.

13 A. That wouldn't make any sense at all,
14 would it?

15 Q. No.

16 Listen to this question. At the time
17 that this was coming up before the special meeting
18 was there any disciplinary process underway to
19 remove Mr. Brock from the planning commission?

20 A. I don't recall one.

21 Now, I can't tell you that I would be
22 privy to any conversation between Councilman X and
23 Councilman Y. I wouldn't be. But there was no
24 process. There was no intentional process to
25 remove anybody from the planning commission,

1 including Mr. Brock, that I know of.

2 Q. At that time?

3 A. At that time.

4 Q. Before y'all sent it through as it
5 relates to Mr. Brock.

6 A. That's correct.

7 Q. To your knowledge, in your role as town
8 administrator had Mr. Brock done anything wrong --
9 had he violated rules or guidelines in his job on
10 the planning commission?

11 A. Well, there aren't any rules.

12 Q. Well, had he violated any rules or
13 guidelines?

14 A. A rule -- again, I'm not trying to pick
15 words with you, but a rule implies that there is
16 something written down that says you will do this
17 according to this.

18 You know, there are no rules as such
19 written down that I know of, but there may be
20 standards of conduct that are not necessarily
21 written down that a council has, I think, the right
22 to judge in relation to any of their appointees.
23 Had he violated those? I can't answer that
24 question. I'm not in council's head.

25 Q. To your knowledge, as town

1 administrator had Mr. Brock done anything wrong --
 2 had he violated any rules or guidelines or
 3 standards of conduct in his job on the planning
 4 commission?

5 A. No rules, no guidelines. I cannot
 6 answer the question about standards of conduct
 7 because I think that may rest with individual
 8 council members.

9 Q. But you know of none?

10 A. No, sir.

11 Q. Are disciplinary actions allowed to be
 12 discussed privately in executive sessions?

13 A. Yes, sir.

14 Q. They are.

15 A. I believe the Freedom of Information
 16 Act allows you to do that.

17 Q. Are we in agreement that there was no
 18 disciplinary action being considered officially for
 19 consideration by council concerning Mr. Brock's
 20 conduct?

21 A. I cannot recall exactly what was
 22 discussed in that executive session that particular
 23 night, but it certainly was matters of concern with
 24 town council about, quote, standards of conduct.

25 Q. There was?

1 A. Yes, sir.

2 Q. What was the problem?

3 A. I don't know that I can answer that
4 question since it was in executive session. I
5 don't want to -- I want to make sure I -- I don't
6 know what I can tell you. If it's in executive
7 session, I'm not sure I can divulge it.

8 Q. Well, you have been telling us stuff
9 about executive session.

10 A. Not specifically. I'm not going to
11 tell you what X might have said about somebody.
12 I'm not trying to dodge you, but I don't want to do
13 anything wrong either.

14 Q. Do you want to consult with
15 Ms. Cantwell about that? Because we might have to
16 get a judge to authorize you to --

17 A. May I?

18 Q. Of course.

19 (Short recess taken.)

20 BY MR. TISDALE:

21 Q. I think I had asked you with regard to
22 the executive session which was the subject of this
23 meeting on November 16th, 2007 concerning
24 Mr. Brock.

25 What was the problem concerning

1 Mr. Brock's behavior regarding the planning
2 commission?

3 A. As I can recall -- and I certainly
4 can't recall specifics, certain things that might
5 have been said in executive session, but some
6 number of council members -- I couldn't tell you if
7 it was five, six, seven, eight or nine.

8 Some number of council members were
9 concerned about several things, several issues
10 regarding Mr. Brock, including but not necessarily
11 limited to, as I recall, questioning council's
12 authority, talking to the press while being a
13 member of commission and maybe even chairman.
14 I can't recall whether he was chairman at that time
15 or not.

16 Let's see. What else did council --

17 Q. Did they ask you for AG's opinion?

18 A. That would fit under the questioning of
19 council's authority, but I wouldn't say asking for
20 the Attorney General's opinion necessarily was as
21 much of a concern as just the whole issue of
22 questioning council's authority. That seemed to be
23 the central theme of the concern.

24 Q. And was there any action before or
25 after the executive session on that occasion to

1 remove Mr. Brock from his position on the plannin
2 commission?

3 A. The only action that I recall taken was
4 what is in the minutes that you've provided us,
5 No. 2, and the subsequent letter that was prepared
6 for the mayor's signature.

7 MS. CANTWELL: For the record, it's
8 Exhibit 3.

9 MR. TISDALE: The minutes.

10 THE WITNESS: That is the only action
11 before or after that I recall.

12 BY MR. TISDALE:

13 Q. So as a result of that executive
14 session, in the executive session and outside the
15 executive session following it, the only action
16 taken was to authorize the letter be prepared for
17 the mayor's consideration?

18 A. That's the only one I know of.

19 Q. Asking Mr. Brock to consider his
20 position on --

21 A. That's the only action I recall.

22 Q. So under what authority, if you know,
23 was this a proper subject for an executive session
24 of council?

25 A. Conduct of an appointed member of a

1 board or commission.

2 Q. Is that a part of the law?

3 A. I believe that it's a personnel matter

4 that can be discussed in executive session, and it

5 may be also a legal matter pertaining to the

6 conduct for a planning commission and what is

7 conduct that could be addressed by town council.

8 I think that was discussed with

9 Mr. Young, what is -- if there was any

10 consideration of taking any kind of action, how do

11 you do it? Who does it? What are the rules?

12 Q. So is it your position as town

13 administrator that Mr. Brock would be considered,

14 quote, personnel, end quote?

15 A. Yes, sir.

16 Q. You think that applies to people who

17 serve on boards and commissions?

18 A. Yes, sir.

19 Q. And it's not limited to employees?

20 A. No, sir. That's the way we've always

21 taken it since I've been here with the town, and

22 that same rule is used when council is considering

23 appointing new members to planning commissions or

24 any other board or commission as they discuss their

25 applications in executive session, because

1 obviously things could come up that would be
2 embarrassing to an applicant.

3 Q. But the only reason that this matter
4 was sent to executive session was because of
5 council's concerns about Mr. Brock's service on the
6 planning commission?

7 A. At least some members of council's
8 concern. I could not tell you how many. Obviously
9 there was a motion made.

10 Q. Were the contents of the letter
11 discussed in executive session?

12 A. I don't recall how that was broached.
13 I think probably it was something in the order of:
14 We think he's overstepped himself in this regard
15 and we don't need to be at war with the planning
16 commission chairman; and if he can't feel like he
17 can work with us, then maybe it would be best if he
18 would step down.

19 Q. And that was to be the subject of the
20 letter?

21 A. Yes, sir.

22 Q. Did council members see the letter
23 before it was sent to Mr. Brock?

24 A. I don't think so.

25 Now, did he mayor show it to some

1 member of council before that? I couldn't tell
2 you.

3 Q. But it was prepared by the town
4 attorney, Mr. Young?

5 A. As I recall.

6 Q. And I gather from what you just said
7 that council didn't --

8 A. No. The mayor may have altered that
9 letter, for all I know.

10 Q. I understand. But council, then, from
11 what you are telling us, to your knowledge, did not
12 approve the letter after it was written and before
13 it was sent?

14 A. They approved the general subject
15 matter of the letter.

16 Q. I mean the written letter.

17 A. No, sir. No, sir. Not to my knowledge
18 they did not.

19 Q. I think I understood what you said
20 about the Shem Creek purchase at the meeting on
21 December 5th, 2007.

22 Did you say -- and tell me if this is
23 wrong -- authorized Mr. Young to settle the lawsuit
24 that Mr. Mason had brought against the town, one of
25 the owners of the property, by offering \$6 million

1 for the property?

2 A. As I recall --

3 Q. Among other things.

4 A. As I recall, the way it transpired late
5 that afternoon Mr. Mason, Mark Mason, said: I'm
6 willing to accept -- blank -- within 24 hours.

7 Q. Which included \$6 million for the
8 property?

9 A. In 24 hours. And council at that time
10 said basically: Go forward and if -- I think they
11 may have put some caveats and parameters on it.
12 I don't recall exactly what those may have been.
13 Go back and get with him; and if he's willing to
14 accept it under whatever circumstances, then we are
15 okay with it and it will be ratified by council at
16 another meeting.

17 Q. So then I think you have answered my
18 question that it was simply decided on that
19 occasion in the executive session to allow
20 Mr. Young to go settle the case on the basis that
21 was outlined.

22 A. Yes, sir. Again, with the fact that it
23 would have to come back to council for a final
24 vote.

25 Q. For ratification?

1 A. Yes, sir.

2 Q. But the case was settled with Mr. Mason
3 before council ratified it?

4 A. Council could have always backed out at
5 a later date.

6 Q. And got another suit from Mr. Mason.

7 A. Obviously.

8 Q. But Mr. Young was authorized to settle
9 the lawsuit on the basis --

10 A. Certainly, but something could have
11 gone wrong with that.

12 Q. But it didn't, did it?

13 A. No, it did not.

14 MR. TISDALE: I don't think I have any
15 more questions today.

16 EXAMINATION

17 BY MS. CANTWELL:

18 Q. Talking about the December 5th, 2007
19 meeting, the minutes of which you have not seen -

20 MR. TISDALE: How do you know that?

21 A. Well, I saw them back then.

22 Q. You have not seen them today, have you?

23 A. No.

24 Q. So with respect to any actions that
25 happened there, the minutes of that meeting would

1 reflect what occurred, would it not?

2 A. In as much as it wasn't conducted in
3 executive session.

4 Q. Right.

5 A. Yes.

6 Q. But whatever Allen Young was authorized
7 to do or not authorized to do --

8 A. It's not verbatim, but our minutes are
9 certainly more expansive than what you find in most
10 municipalities.

11 Q. And that would hold true for the
12 minutes of all the meetings that we have discussed
13 today, the November 16, '07 minutes, which is
14 Exhibit 3, and the November 13, '07 minutes, which
15 are Exhibit 4?

16 A. Yes; I agree with that.

17 MR. TISDALE: Are you saying that the
18 minutes speak for themselves?

19 MS. CANTWELL: I'm saying the minutes
20 speak for themselves.

21 BY MS. CANTWELL:

22 Q. You agree with that?

23 A. Yes.

24 Q. They are the official record of the
25 council meetings?

1 A. They are the official record of
2 council.

3 Q. With regard to executive sessions, just
4 to set the record straight -- because I know that
5 words have a tendency to bleed over onto one
6 another -- are any decisions ever made in executive
7 session?

8 A. No, ma'am.

9 Q. When a council member who is not a
10 member of a committee -- on the occasions when that
11 person or persons would be present at a committee
12 meeting, would the nonmembers ever vote on any
13 action that the committee make might?

14 A. Never.

15 Q. Do they ever make any motions?

16 A. Never.

17 Q. When they attended -- if they went into
18 executive session, were any decisions ever made?

19 A. No, ma'am.

20 Q. Did they ever participate in any
21 decisions?

22 A. No.

23 Q. The town had ordinances -- you correct
24 me if I'm wrong -- that set out rules of procedure
25 for council meetings?

1 A. That's correct.

2 Q. And does it have set up what the order
3 of business is?

4 A. It does.

5 Q. And is that what your agendas are based
6 on?

7 A. That is correct.

8 Q. And those rules of procedure also set
9 forth the conditions under which an agenda can be
10 amended?

11 A. That's correct. These are regular
12 council meetings we are talking about?

13 Q. That's right. And all of those
14 ordinances are available to the public?

15 A. That's correct.

16 Q. The November 16 meeting that we were
17 discussing where a letter was generated that went
18 to Mr. Brock, the contents of that letter speak for
19 themselves?

20 A. I think so.

21 Q. Despite how they have been
22 characterized here as to whether he had been asked
23 to resign or not resign, whatever the letter says,
24 it says?

25 A. Yes.

1 Q. Let me just ask you about Exhibit 2.
 2 Mac, you were asked by Mr. Tisdale
 3 about what the policies -- or if a policy existed
 4 in the town with respect to the use of computers by
 5 town council, and I want to ask you if you would
 6 take Exhibit 2 and turn to the last page in
 7 Paragraph 3 of Exhibit A to the resolution that
 8 council adopted on March the 10th of this year.
 9 How about taking a look at that.

10 A. Sure. May I read it?

11 Q. Yes, you can.

12 A. "When electronically communicating with
 13 town employees, officials, constituents or any
 14 other persons concerning matters related to town
 15 business, officials shall use the town-provided
 16 computer. Town business includes any ongoing or
 17 new issue over which town elected officials have
 18 supervision, control, jurisdiction or advisory
 19 power."

20 Q. So is it not correct to say that the
 21 town has a policy that was adopted by the council
 22 that says "town officials" -- would you agree with
 23 me that includes a council member?

24 A. In my opinion it would include council
 25 members, and this is a policy. The word "shall" is

1 very clear.

2 Q. And they shall communicate how?

3 A. Using the town-provided computer.

4 Q. Mr. Tisdale also asked you about

5 whether or not there was a policy that governed --

6 he was using "deletion of emails."

7 I'm going to ask you to take a look at

8 Paragraph 4 of --

9 A. Can I read it aloud?

10 Q. Yes, you can.

11 A. "All electronic communications

12 originating on an official's town-provided computer

13 and all electronic communication received from

14 sources other than a town computer, along with all

15 responses made by the official thereto, shall be

16 retained on the computer unless otherwise directed

17 by the clerk of council.

18 "With respect to the stated, the clerk

19 of council is hereby charged with the

20 responsibility of archiving electronic

21 communications of the mayor and council members in

22 accordance with applicable law."

23 Q. Paragraph 4, would you agree with me

24 that directs that any communication coming in to

25 the town-provided computer -- and whether it's from

1 the town or any other source -- and any responses
2 made by the official, they are retained on the
3 computer, are they not?

4 A. Shall be retained on the computer.

5 Yes; I would agree that's what that means.

6 Q. And given that language, do you have an
7 opinion as to whether or not the town has a policy
8 with respect to deleting emails by officials from
9 town computers?

10 A. Yes; I believe we have a policy.

11 Q. I think you said this before, but I
12 want to make sure that I've got it on the record.

13 Notwithstanding the town computers,
14 anything that comes in to the town, whether it
15 comes to Allen's office or your office or the
16 planning department, regardless of the source, that
17 stays on the town computer?

18 A. It should. I have no reason why it
19 would be deleted.

20 Q. You could retrieve it?

21 A. Yes; I believe we could.

22 Q. And the records retention policy that
23 the town adheres to, is that promulgated by the
24 Department of Archives?

25 A. That's correct.

1 Q. And that would include email?

2 A. That's correct.

3 Q. The policy that the town has adhered to
4 with respect to the state act, that was standard
5 procedure -- and again, you might want to quibble
6 with my use of the word "standard," but that was a
7 policy in effect in the town even prior to March 10
8 of this year when council adopted Resolution
9 R.10031, which is Exhibit 2.

10 A. That is the procedure of the town
11 following state act.

12 Q. How long has that been a procedure of
13 the town?

14 A. Gosh, you know, I do know that they
15 have changed -- modified some of the acts, the
16 laws, at state level over the last 25 years.
17 I couldn't possibly tell you when those
18 changes/amendments occurred, but when they did
19 occur we've always been notified by the Archives
20 and History. They do come down and do inspections
21 on rare occasions, but I couldn't tell you when
22 that happened. But we're put on notification when
23 those changes come down, and it's passed up to all
24 the departments so everybody knows what the new
25 requirements are.

Joseph Bustos March 26, 2009

Page 1

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON Case No.08-CP-10-3308

2
3 STEPHEN GEORGE BROCK,
4 Plaintiff,

5 vs.

6 TOWN OF MOUNT PLEASANT
7 Defendant.

8

9 DEPOSITION OF: JOSEPH BUSTOS

10 DATE: March 26, 2009

11 TIME: 10:00 a.m.

12 LOCATION: Town of Mt. Pleasant Municipal Complex

100 Ann Edwards Lane

13 Mt. Pleasant, SC 29464

14

15 TAKEN BY: Counsel for the Plaintiff

16 REPORTED BY: Roxanne M. Easterwood, RPR

17

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Joseph Bustos March 26, 2009

Page 14

1 A I don't keep it.

2 Q What do you do with it?

3 A I delete it.

4 Q You do?

5 A Sure.

6 Q First of all, let me go back. You said
7 Jmbustos@comcast.net?

8 A Correct.

9 Q That is your personal e-mail address that
10 you use for all purposes so far as you know?

11 A Correct.

12 Q Now, with regard to e-mail that you send
13 and receive concerning business of the Town of Mount
14 Pleasant, does that come through the Comcast
15 account?

16 A Yes.

17 Q What is the policy of the Town of Mount
18 Pleasant -- I'm asking you now as a member of the
19 town council.

20 What is the policy of the Town of Mount
21 Pleasant concerning the retention of e-mail
22 correspondence concerning town business?

23 A As far as I know, if it comes into town
24 hall it's saved.

25 Q I'm asking you about e-mail that comes to

Joseph Bustos March 26, 2009

Page 15

1 you at the address you have given us concerning town
2 business. What is the policy of the Town of Mount
3 Pleasant concerning that e-mail correspondence?

4 A As far as I know, there is no policy.

5 Q There is no policy. What is your own
6 policy or your own practice, I should say,
7 concerning the retention of e-mail that comes to you
8 concerning town business?

9 A I treat it like any of my other e-mail.
10 If it gets to be too much, I delete it.

11 Q Do you delete it on any regular basis or
12 simply at random?

13 A Well, I delete it -- if I read it and it
14 doesn't require an answer, I delete it. Once it's
15 deleted, then periodically the computer on its own
16 deletes it, empties the delete folder.

17 Q Do you double delete any of the e-mail
18 correspondence you get?

19 A Do I double delete it?..

20 Q Uh-huh.

21 A Not that I know of.

22 Q How often is e-mail retained on your
23 computer before it deletes automatically?

24 A How often? I don't understand the
25 question.

Q Good. Let me try to clarify it. When you get an e-mail concerning town business -- I'm not interested in asking you about any personal e-mail, but all of my questions unless I specify otherwise relate to e-mail concerning town business as relating to your membership on council.

When you get an e-mail concerning town business, you sometimes delete it after a period of time, and if it requires no response you delete it immediately; is that what you said?

A I said I delete it if I read -- if I read and it requires no response, I delete it. Otherwise, I generally delete it, period.

Q I think you also said that your computer or the e-mail service, I didn't understand which, automatically deletes all e-mail after a period of time. Is that what I understood?

A Yeah. I don't know whether it's the computer or the service, but that's correct. Periodically the delete box is emptied, whoever empties it.

MS. CANTWELL: Can I ask a question for my personal clarification? When you say e-mail related to town business, do you mean that a citizen would send or the town would send or the council members

Santos, Gary - Vol. I

March 23, 2009

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Case No.08-CP-10-3308

STEPHEN GEORGE BROCK,

Plaintiff,

vs.

TOWN OF MOUNT PLEASANT

Defendant.

DEPOSITION OF: GARY SANTOS

DATE: March 23, 2009

TIME: 10:00 a.m.

LOCATION: Town of Mt. Pleasant Municipal Complex
100 Ann Edwards Lane
Mt. Pleasant, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Roxanne M. Easterwood, RPR

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1 I remember.

2 Q That comes under our agreement about the
3 dates. We can verify it and will verify it. Do you
4 recall that being considered?

5 A Yes, sir.

6 Q Are you aware or did you and others
7 have -- members of council have e-mail
8 communications concerning that?

9 A I don't recall that, no, sir.

10 Q You don't recall it. Now, you've already
11 testified I think that as far as you know all e-mail
12 communications about town business occurs on private
13 e-mail accounts between council members?

14 A Yes, sir, their private ones. Yes, sir.

15 Q Nobody to your knowledge has public Mount
16 Pleasant issued e-mail accounts?

17 A No, sir. I mean, I can only speak for
18 myself. I don't know that anybody else has Town of
19 Mount Pleasant e-mails.

20 Q To your knowledge, do other council
21 members use private e-mails as well?

22 A To my knowledge, yes, sir.

23 Q To your knowledge, is there any policy
24 about how e-mail communications concerning public
25 business is to be conducted?

1 A No, sir.

2 Q Is e-mail communications between members
3 of council on pending matters free in open
4 communication?

5 A You know --

6 Q Are there any restrictions on it?

7 A I would say as long as there's not a
8 quorum or quorum is reached, I would say yeah.

9 Q How would quorum be reached in an e-mail
10 situation?

11 A I don't know. Like I said, I'm not
12 technologically advanced. I couldn't tell you.

13 Q Well, do members of council engage in
14 e-mail communication about pending matters?

15 A I'm sure they do, yes, sir.

16 Q Is it your belief -- and I think you said
17 this -- that as long as a quorum of council is not
18 involved in an e-mail conversation communication,
19 that it would be legal and within the town policy?

20 A I would assume that, yes, sir.

21 Q What would be wrong with it if in your
22 opinion there was a quorum involved in it?

23 A Well, I mean, it would appear that -- you
24 know, I'm just trying to think of how I could word
25 this. I don't think there's any time there should

1 be a quorum of councils meeting like that.

2 But I don't know -- as I said, I'm not up
3 on the law as to what constitutes a quorum on
4 e-mail, so I don't feel like I'm able to comment on
5 that. I don't know what creates a quorum.

6 Q I think we said that a quorum for council
7 having a meeting would be five, right?

8 A Right. Yes, sir.

9 Q That's five out of nine?

10 A Right.

11 Q What you're saying is you don't know how
12 that quorum would be defined in an e-mail scenario?

13 A Yes, sir.

14 Q But if -- and I don't know whether this
15 occurred, but if -- there might be some evidence of
16 it. I don't know.

17 But if five members of council
18 communicated together in an e-mail correspondence
19 about a pending matter, that would be violative of
20 the law, would it not, your understanding of it?

21 A My understanding, yes, sir. If it was
22 proven to be a legal quorum, I would say yes, sir.

23 Q Does staff ever engage with members of
24 council in e-mail correspondence concerning pending
25 matters?

1 A Yes, sir.

2 Q Who are those staff people that would be
3 involved?

4 A Could be any number of them. Our
5 administrator.

6 Q Mr. Burdette?

7 A Yes. Our attorney. It could be any
8 number of them.

9 Q But you don't -- you say you don't have
10 copies of any e-mails concerning council business
11 right now?

12 A No, sir.

13 Q Even in the last 30 days?

14 A Oh, within the last 30 days, I'm sure
15 they're still in there.

16 Q You do?

17 A I imagine. I mean, I have a job and a
18 life.

19 MS. CANTWELL: I think the subpoena talked
20 about this lawsuit.

21 MR. TISDALE: I'm don't want to argue
22 about it. That's something that you and I can work
23 out. But I would think that maybe in this
24 context -- we can talk about it later -- that maybe
25 his e-mails, if it demonstrates a pattern of more

1 than five people conducting e-mail correspondence,
2 it does relate to this lawsuit.

3 MS. CANTWELL: I guess we needed to
4 discuss it, because when you say communicating, I
5 mean, it's one thing to receive an e-mail; it's
6 another thing to be responding and correspondence.

7 MR. TISDALE: Of course you would have to
8 look at it to make that determination.

9 BY MR. TISDALE:

10 Q Here's what I'm going to suggest, is that
11 don't let anymore of your e-mails expire until
12 Ms. Cantwell and I can talk about this, and go ahead
13 and print out ones that talk about town business
14 that you have on your machine.

15 MS. CANTWELL: That are not from your
16 lawyer.

17 BY MR. TISDALE:

18 Q That are not from your lawyer. If there
19 are other people from the lawyer — better print
20 them all out, including from the lawyer.

21 MR. TISDALE: And you can decide as to
22 whether or not there's a privilege. How is that?

23 MS. CANTWELL: That's fine.

24 THE WITNESS: I'll do that.

25 MR. TISDALE: We'll take a look at those.

1 I just don't want anymore to get deleted while we
2 get this straight.

3 BY MR. TISDALE:

4 Q How is that?

5 A I'll do it as soon as possible. I have no
6 control over AOL deleting them. That's the thing.
7 I'm not that advanced, as I said, with e-mail to
8 know how to stop that. So I'll print them out as
9 soon as I get the opportunity.

10 Q Let me ask you this -- I use AOL, too. I
11 know that AOL has -- and you might not do this, but
12 I'm just asking you. AOL has a way to save those
13 e-mails by putting them into various files.

14 A I don't do that.

15 Q You don't?

16 A No, sir. Like I said, I'm not that
17 advanced on that kind of stuff.

18 Q I wish I wasn't.

19 A Believe me, there were some that I wish
20 had been saved that disappeared.

21 MR. TISDALE: I'm going to ask y'all to
22 ask the other witnesses to not be destroying any
23 e-mails until we get this issue settled a little
24 bit.

25 MS. CANTWELL: I'm not aware of that going

1 on.

2 MR. TISDALE: I'm not suggesting it is.
3 But I mean, he says his automatically expire. I
4 didn't know that mine automatically expired. I try
5 to delete mine, the ones that I don't want, and save
6 the ones that I want to save.

7 But I would think -- we can talk about
8 this later. But I would think that it would be a
9 good idea to be saving e-mails concerning public
10 business, but that's not my business to be saying.

11 THE WITNESS: I know that any e-mails that
12 I need that have been generated by the town or
13 whatever I can always get. I mean, I can always
14 come to them if I need them by our clerk of council
15 or whoever.

16 BY MR. TISDALE:

17 Q You think the corporate council saves all
18 e-mails?

19 A I hope so. Any time I've ever needed
20 something, it's been able to be produced. I can't
21 speak to that. You have to ask him.

22 MR. TISDALE: Well, we'll ask him for the
23 e-mail correspondence as well as you.

24 BY MR. TISDALE:

25 Q Do you have in your possession or know of

1 any e-mail correspondence between you and Mr. Bustos
2 concerning Mr. Brock's attorney general's opinion?

3 A I had one, but I believe that's one of the
4 ones that was deleted out of the AOL once it passed
5 a certain date.

6 Q But you think town council -- I mean, the
7 lawyer for the town, Mr. Young, would keep copies of
8 all of those e-mails?

9 A If he was copied on it. You would have to
10 ask him, but I do remember the e-mail. I just -- it
11 deleted them. That's one of the ones I wish I had
12 kept.

13 Q What did the e-mail say?

14 A It was just an e-mail about wanting to
15 have two council meetings a month to avoid having
16 committee meetings, and it was his opinion that he
17 wanted to do that and that he said that basically
18 all we need was five council members to have a
19 quorum to be able to have those meetings.

20 Q In other words, do away with committees?

21 A Yes, sir.

22 Q And have two council meetings a month
23 instead?

24 A Yes, sir.

25 Q And that would avoid the problem of having

1 de facto council meetings at committee meetings?

2 A Yes, sir.

3 Q Which you recognized as a problem?

4 A Yes, sir.

5 MR. TISDALE: I'll mark this particular
6 document as Exhibit Number 3.

7 (Plaintiff EXH. # 3, e-mail
8 string between Paul Gawrych and council
9 members, marked for identification.)

10 BY MR. TISDALE:

11 Q This Exhibit 3, does this e-mail concern
12 business of the Town of Mount Pleasant?

13 A Yes, sir, it appears it is.

14 Q Who is it from?

15 A Paul Gawrych.

16 Q To?

17 A Looks like council members, the mayor.

18 Q To Mac Burdette?

19 A To Mac Burdette.

20 Q But it also copies council members,
21 doesn't it?

22 A Yes, sir.

23 Q Does it copy over five council members?

24 A Yes, sir.

25 Q That's the kind of e-mail correspondence

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT

WHEREAS, the Town of Mount Pleasant ("Town") initiated condemnation proceedings in a case entitled *Town of Mount Pleasant v. Shem Creek II, LLC*, Case Number 2007-CP-10-4881 (the "Condemnation Suit");

WHEREAS, Shem Creek II, LLC, SCHC, LLC, Shem Creek Office Condos, LLC, Shem Creek Office Condos Property Owner's Association, Rhoda M. Mason, The Mason Law Firm, P.A., CGGS, LLC and Phillip W. Smith General Contractor, Inc. ("Landowners") challenged the Town's right to condemn and raised other claims in a case entitled *Shem Creek II, LLC et al. vs. Town of Mount Pleasant, et al.*, Case Number 4760 (the "Lawsuit"); and,

WHEREAS, the Town, the Mayor and members of Council as parties of the first part, and the Landowners as parties of the second part, have agreed to settle all claims which have been raised or which could have been raised in the said lawsuits, or otherwise existing between them, upon the terms and conditions set forth below.

FOR AND IN CONSIDERATION of the mutual promises of the parties hereto it is agreed as follows:

- (1) The Recitals hereinabove set forth are true and correct and incorporated herein.
- (2) This Settlement Agreement has been executed by Landowners and if not executed by the Mayor on behalf of the Town and delivered to Landowners' counsel by Thursday, December 6, 2007 at 5:00 p.m. it shall be of no force and effect. In the event that this Settlement Agreement shall not be consummated by a closing of the sale of the below referenced properties (the "Property") on or before December 18, 2007, for any reason, it shall be of no force or effect, and, pursuant to Rule



408 of the South Carolina Rules of Evidence it shall not be admissible as evidence or for any purpose in the pending legal actions as it constitutes an offer to settle or compromise pending litigation.

(3) In order to settle the pending Condemnation Suit involving the OK Tire Store property (T.M.S. #517-11-00-006 and T.M.S. #517-11-00-015) Landowners agree to accept and Town agrees to pay Landowners the sum of SIX MILLION AND NO/100 (\$6,000,000) DOLLARS to purchase the OK Tire Store property (T.M.S. #517-11-00-006 and T.M.S. #517-11-00-015) and the Bailey Docks (T.M.S. #517-11-00-003) under the following terms and conditions:

(A) Town shall pay the Landowners the sum of SIX MILLION AND NO/100 (\$6,000,000) DOLLARS, by certified funds, at a closing to take place on Tuesday, December 18, 2007, with time being of the essence.

(B) Once the Mayor on behalf of the Town executes this Settlement Agreement the Rule 30 (b) (6) deposition of the Town and the deposition of Thomas F. Hartnett scheduled for December 13, 2007 shall be cancelled pending the scheduled closing. If, for any reason, the scheduled closing does not take place on December 18, 2007, the court hearing set for Wednesday, December 19, 2007 shall proceed as scheduled.

(C) Landowners shall convey title to the said properties to Town by general warranty deed, in fee simple absolute, free and clear of all liens, easements or encumbrances, except:

- (1) The transformer easements granted to SCE&G at the request of the Town of Mt. Pleasant for its underground utility project.
- (2) All marsh land shall be conveyed by limited warranty deed and in addition,

Page 536

if requested by the Town, by a quitclaim deed.

- (3) The Bailey Dock property is subject to an easement granted to Gary D. Long relating to his dock walkway from his lot on Bayview Drive.
- (4) The rights of any owners of docks currently existing across the marsh from the Bayview Subdivision.
- (5) The rights set forth in the Memorandum of Agreement recorded September 21, 2005 in Book A 555 at Pages 387 through 398 shall be cancelled of record.

(D) Landowners shall convey the subject properties to the Town "as is" without any warranties or representations relating to the condition of the land, its improvements, or otherwise. The only warranty shall be as to title as set forth above. If the Town believes there is any defect in the title to the Property, or any condition of the Property which makes the property undesirable to the Town, it need not close this transaction and this Settlement Agreement shall be of no force or effect.

(E) Deed stamps shall be handled as in a condemnation action (no deed stamps), or Town shall pay them. Landowners shall pay their own attorney's fees. Town shall pay its own attorney's fees. Landowners shall pay the outstanding bills related to Landowners FOIA requests. All other closing costs shall be paid or prorated by the respective parties in the manner as is customary for a transaction of this kind.

(4) At Closing, the parties shall execute stipulations of dismissal with prejudice for the Condemnation Suit and the Lawsuit.

*many
pws*

(5) The parties hereto shall execute standard general mutual releases of all claims at Closing.

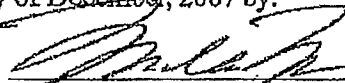
(6) This Settlement Agreement is not an admission of liability by the Town or by the Landowners, and shall not be construed as such, nor is it an admission by Landowner as to their opinion of the value of the property being conveyed.

(7) The parties who have executed this Settlement Agreement represent they have full authority to enter into the same.

(8) This is the entire agreement of the parties, and there are no agreements, representations or warranties other than as set forth herein.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal as of December 5, 2007.

AGREED this 5th day of December, 2007 by:

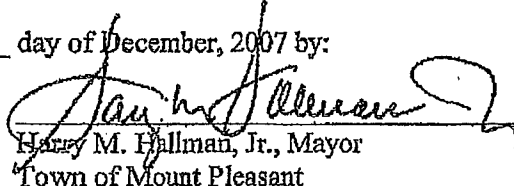


Mark A. Mason, individually, and as attorney for:
Shem Creek II, LLC
SCHC, LLC
Shem Creek Office Condos, LLC
Shem Creek Office Condos Property Owner's Association, Inc.
Rhoda M. Mason
The Mason Law Firm, P.A.
CGGS, LLC



Phillip W. Smith, Individually and as President of
Phillip W. Smith General Contractor, Inc.

AGREED this 6th day of December, 2007 by:



Harry M. Hallman, Jr., Mayor
Town of Mount Pleasant

man
plw 5

MOUNT PLEASANT SPECIAL TOWN COUNCIL
AGENDA

Wednesday, December 5, 2007

6:30 p.m.

Wando High School Performing Arts Center
1000 Warrior Way – Mount Pleasant, SC 29466

- I. PRAYER
- II. PLEDGE
- III. COMPLIANCE WITH FREEDOM OF INFORMATION ACT
- IV. APPROVAL OF AGENDA
- V. AWARDS & PRESENTATIONS
 - A. Recognition of Wando High School State Championships
 - B. Employee Years of Service
 - C. RoadWise Presentation - JDB
- VI. APPROVAL OF MINUTES AND FINANCIAL STATEMENT
- VII. CORRESPONDENCE AND PUBLIC STATEMENTS
- VIII. PLANNING – Mr. Ford
 - A. NEW BUSINESS
 1. Request approval of update to an Impact Assessment, with Sketch Plan, for Dunes West Commercial Development Center for an approximate 20 acre tract located at the corner of Highway 41 and Harper's Ferry Way.
 - B. OLD BUSINESS
 1. *Final Reading:* An ordinance to rezone from R-2, Low-Density Residential District, to AB, Areawide Business District, an approximately 1.8 acre portion of a larger 6.4 acre tract, being a portion of the property known as the Seacoast Christian Community Church (Ord. No. 07075) *Revisions to Seacoast Church Expansion Impact Assessment and Sketch Plan to indicate removal of such portion of land.*
 2. *Final Reading:* An ordinance to adopt the Town of Mount Pleasant Transportation Capital Improvement Plan FY 2007-2030 (Ord. No. 07076)
- IX. COMMITTEE REPORTS
 - A. Accommodations Tax Advisory Committee – Mr. Kruger Smith
 1. Report



**MOUNT PLEASANT SPECIAL TOWN COUNCIL
AGENDA**

- B. Annexation Committee – Mr. Nick Collins
 - 1. Report
- C. Bids & Purchases Committee – Mr. Joe Bustos
 - 1. Report
- D. Economic Development Committee – Mr. Paul Gawrych
 - 1. Report
- E. Finance Committee – Mr. Billy Swails
 - 1. Recommendation to transfer property to the Mount Pleasant Waterworks (See Council New Business, Item (XII.E))
 - 2. Recommend approval of the Central Electric Transmission Line plan
 - 3. Report
- F. Fire Committee – Mr. Ken Glasson
 - 1. Report
- G. Personnel Committee – Mr. Kruger Smith
 - 1. Report
- H. Planning Committee – Ms. Thomasena Stokes-Marshall
 - 1. Request for revised/update easement – Mill Street/Shem Creek Marina, LLC 30 feet correction (See Council New Business, Item XII.F)
 - 2. Building Permit Allocation Program Annual Review
 - 3. Report
- I. Police, Legal & Judicial Committee – Mayor Harry Hallman
 - 1. Charleston County Consolidated Dispatch System request for approval
 - 2. Report
- J. Public Services Committee – Mr. Kruger Smith
 - 1. Report
- K. Recreation Committee – Mr. Gary Santos
 - 1. Report
- L. Transportation Committee – Mayor Harry Hallman
 - 1. Road Access transfer Oakland/GenPhar
 - 2. Report
- M. Waterworks Commission – Mr. Billy Swails
 - 1. Report
- N. Water Supply Committee – Mr. Billy Swails
 - 1. Report

MOUNT PLEASANT SPECIAL TOWN COUNCIL
AGENDA

X. ADMINISTRATOR'S REPORT – Mr. Burdette

A. Vacancies

1. Planning Commission – Seat #4, a four year term expires February 2008
2. Pride Committee – Seat #3, a four year term expires January, 2008

XI. OLD BUSINESS – Council

- A. *Final Reading:* An ordinance authorizing three separate general utility easements to the Mount Pleasant Waterworks (Ord. No. 07074)
- B. Discussion regarding a Referendum for Mayor and Town Council Term Extensions. Referendum Question: *Should the current Mayor and Town Council Members of Mount Pleasant extend their terms for approximately 14 months in order to move the Town of Mount Pleasant's Municipal Elections from even years to odd years in order to encourage greater voter participation?*

XII. NEW BUSINESS – Council

- A. Approve the receipt of title to three parcels of property from Park West Development, Inc., to the Town of Mount Pleasant, and to authorize the Town Administrator to execute the deeds with the terms thereon, including but not limited to the half cent sales tax requirements.
- B. *First Reading:* An ordinance to amend the Projected Revenues for the Town of Mount Pleasant from \$92,908,407 to \$91,555,541 to meet appropriations for the fiscal year commencing July 1, 2007, and ending June 30, 2008 (Ord. 07078)
- C. *First Reading:* An ordinance to amend General Fund Appropriations from \$53,745,302 to \$53,702,657 to meet the expenditures of the Town of Mount Pleasant for the fiscal year commencing July 1, 2007, and ending June 30, 2008 (Ord. 07079)
- D. *First Reading:* An ordinance to amend Appropriations from certain Special Revenue Funds from \$35,147,226 to \$35,055,856 to meet the expenditures of the Town of Mount Pleasant for the fiscal year commencing July 1, 2007, and ending June 30, 2008 (Ord. 07080)
- E. *First Reading:* An ordinance authorizing the transfer of title to an approximately .042 acre parcel of land located on Whipple Road to the Mount Pleasant Waterworks (Ord. 07081)

MOUNT PLEASANT SPECIAL TOWN COUNCIL
AGENDA

- F. *First Reading:* An ordinance amending and restating easements previously granted to Shem Creek Marina, LLC over *a portion* of property known as Mill Street (Ord. No. 07082)
- G. Motion to cancel the regularly scheduled Town Council meeting on Tuesday, December 11, 2007
- H. **EXECUTIVE SESSION**
 - (1) Legal Advice pertaining to Mathis Ferry Road Project (DEPAUL) relative to PBS&J
 - (2) Legal Advice pertaining to an EEOC complaint relative to a firefighter applicant (Personnel matter)
 - (2) Personnel Matters pertaining to (1) Personnel action regarding the Planning Commission; and (2) Appointments to Boards & Commissions
- I. Appointments to Boards and Commissions
 - 1. Board of Zoning Appeals – Seats #3 & #4, both four year terms, expiring January 2008.
 - 2. Design Review Board – Seat#3 a four year “State Licensed Architect” seat expires January 2008.
 - 3. Old Village – Historic District Commission – Seats #3, #4, & #5 all two year terms expire January 2008
 - 4. Workforce Housing Advisory Committee – Seats #4 “Provider of Workforce Housing” *does not need to be a Town resident*; #5 “Real Estate Professional”; #6 Residential Home Building Representative” and #10 “At Large”

SPECIAL TOWN COUNCIL MEETING

DECEMBER 5, 2007

Mayor Hallman called the meeting to order at 6:30 p.m. In attendance were Council members Thomasena Stokes-Marshall, Joe Bustos, Billy Swails, Ken Glasson, Nick Collins, Gary Santos, and Paul Gawrych. Absent from the meeting was Kruger Smith. Staff members in attendance were Mac Burdette, Allen Young, Eric DeMoura, Charlie Potts, Chief Harry Sewell, Chief Herb Williams, Jody Peele, Ted Summerford and Joel Ford.

Mr. Summerford offered the prayer, followed by the pledge of allegiance lead by Mayor Hallman.

The Wando High School Symphonic Band played the National Anthem.

Mayor Hallman gave welcoming remarks. He thanked Ms. Lucy Beckham and the Wando High School Administration for allowing the Town to hold their Council meeting at Wando High School.

The Wando High School Symphonic Band played a Christmas melody, followed by a performance given by the Wando High Boys Quartet.

Following the musical performances Mayor Hallman and Town Council honored the following teams/groups for wining 2007 South Carolina State Championships:

Wando High School Band

Boys and Girls Swim Team

Girl Tennis

Boys Cross-country

Mr. Lucy Beckham along with the Band Director and team coaches made brief comments.

Following all presentations Mayor Hallman called for a recess at 7:10 pm.

The meeting reconvened at 7:30 pm.

Mr. Young certified that the Town is in compliance with the FOIA.

Mayor Hallman called for approval of the agenda.

Mr. Bustos made a motion to amend the agenda by adding under Item H Executive Session, an item to receive legal advice pertaining to the OK Tire Store Litigation; seconded by Mr. Gawrych. All present were in favor.

Mr. Bustos made a motion to amend the agenda by deferring item H.3 under Executive Session, until the January Town Council meeting; seconded by Mr. Glasson.

Mr. Swails asked if there was any reason why this issue could not be entirely eliminated.

Mr. Bustos stated that he preferred deferring the item until next month.

Mayor Hallman called for the vote.

The motion carried with a vote of 6-2 with Mr. Swails and Mayor Hallman opposing.

Mr. Gawrych made a motion to approve the amended agenda; seconded by Mr. Collins. All present were in favor.

AWARDS AND PRESENTATIONS

Mr. Burdette along with Mayor Hallman, Chief Williams, and Mr. Glasson recognized Louis Bayles for 20 years of service to the Town of Mount Pleasant Fire Department.

Mayor Hallman indicated that members from the Roadwise Group would be making a presentation to the Town.

Mr. Jim Fisher with TranSystem provided Council with an update regarding the Johnnie Dodds Boulevard Redevelopment Plan.

Following the presentation Council held discussions.

APPROVAL OF MINUTES AND FINANCIAL STATEMENT

Mr. Gawrych moved for approval of the minutes and financial statement; seconded by Mr. Bustos. All present were in favor.

CORRESPONDENCE AND PUBLIC STATEMENTS

Mr. Burdette indicate several individual had signed into speak most of who wished to speak when the item appeared on the agenda. Mr. Burdette called upon Mr. Steve Brock who had signed into speak at the beginning of the meeting.

Mr. Steve Brock indicated he would defer his comments.

PLANNING – Mr. Ford**NEW BUSINESS**

Mr. Ford indicated that the first item was to request approval of an update to an Impact Assessment with Sketch Plan, for Dunes West Commercial Development Center for an approximate 20 acre tract located at the corner of Highway 41 and Harper's Ferry Way. Mr. Ford indicated that he received a request from the applicant to have this request withdrawn from the agenda. The recommendation from the Committee was to accept the withdrawal.

Mr. Santos made a motion to withdraw the item as described by staff; seconded by Ms. Stokes-Marshall. All present were in favor.

OLD BUSINESS

Mr. Ford indicated the first item was final reading of an ordinance to rezone from R-2, Low-Density Residential District, to AB, Areawide Business District, an approximately 1.8 acre portion of a larger 6.4 acre tract, being a portion of the property known as the Seacoast Christian Community Church (Ord. No. 07075)

Mr. Gawrych moved for approval of final reading; seconded by Mr. Glasson. The motion carried with a vote of 7 to 1 with Ms. Stokes-Marshall opposing. Mr. Burdette read FINAL READING BY TITLE ONLY.

The second item was final reading of an ordinance to adopt the Town of Mount Pleasant Transportation Capital Improvement Plan FY 2007-2030 (Ord. No. 07076).

Mr. Collins moved for approval of final reading; seconded by Ms. Stokes-Marshall. The motion carried with a vote of 7 to 1 with Mr. Bustos opposing. Mr. Burdette read FINAL READING BY TITLE ONLY.

COMMITTEE REPORTS**Accommodations Tax Advisory Committee – Mr. Kruger Smith**

No report.

Annexation Committee – Mr. Nick Collins

No report.

Bids & Purchases Committee – Mr. Joe Bustos

Mr. Collins indicated the Committee authorized staff to purchase a (4) Wheel Loader with attachments from Blanchard Machinery Company in the amount of \$120,385. The purchase price is within the budget of \$122,269 for this replacement loader. In other business, the Committee authorized staff to purchase a replacement dump truck from Carolina International Truck Center in the amount of \$107,594.95. The purchase price is within budget of \$112,000 for this replacement dump truck.

Economic Development Committee – Mr. Paul Gawrych

No report.

Finance Committee – Mr. Billy Swails

Mr. Swails stated the Committee received suggested mid-year budget changes from Staff, and after review and discussion, is recommending the Mid-Year Budget changes to Council for approval. The amending ordinances that will accomplish the changes are listed under Council New Business as Items # B- Projected Revenues, # C- Expenditures, and # D- Special Revenues. At its October meeting, the Committee received a request from Mount Pleasant Waterworks to transfer a small parcel of property owned by the Town and touching the rear of the Mount Pleasant Waterworks pump station on Whipple road. The

property is needed to expand the pump station. The Committee has reviewed the requested transfer with staff and recommends the transfer without charge to Mount Pleasant Waterworks. The ordinance that will accomplish the transfer of this parcel of property is listed under Council New Business as Item XII E. Mr. Swails reported the Committee received a presentation from Central Electric and Berkeley Electric representatives regarding a transmission line to be constructed along Highway 17 to supply power from the Hamlin Substation on Porcher's Bluff Road to the Berkeley Coop Commonwealth Substation. Mr. Swails indicated Mr. Jack Villeponteaux was in attendance to provide Council with a presentation.

Mr. Gawrych stated that the president of the Charleston National HOA was in attendance as well. He suggested that Council allow Mr. Villeponteaux time to meet with the HOA and take this item up in January.

Mr. Burdette stated that the Town could assist with setting up a public presentation in the north area if they would like for the Town to do so. Staff received a number of calls from the public at large. Mr. Burdette had suggested to Council that they set up some type of presentation in the north area to allow residents time to come and see the information because it is very compelling.

Mr. Swails indicated he would like to see that take place.

Mr. Gawrych made a motion to defer this item to the Finance Committee meeting in January; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Swails continued stating that the Committee also received information regarding the Hidden Pines Redevelopment Plan and agrees in concept with a suggested land swap involving five (5) lots in exchange for nearby Town property. The Committee has requested an appraisal be accomplished to determine property value prior to a final recommendation to Council.

Fire Committee – Mr. Ken Glasson

Mr. Glasson reported on Sunday, November 25, 2007 that the Mount Pleasant Fire Department ran its 5,000th emergency call for the year. This is first time in the history of the Mount Pleasant Fire Department that they have now exceed 5,000 emergency calls in one year and the projections are that the Fire Department will most likely reach 5,500 before the year concludes.

Personnel Committee – Mr. Kruger Smith

No report.

Planning Committee – Ms. Thomasena Stokes-Marshall

Ms. Stokes-Marshall indicated the Planning Committee reviewed a request for revised/update easement – Mill Street/Shem Creek Marina, LLC 30 feet correction (See Council New Business, Item XII.F) for amending an existing easement document in order to make corrections. The Planning committee recommended approval.

The Committee reviewed the Building Permit Allocation Program and discussed the possibility of suspending the program. The Planning Committee directed staff to draft language and finding of fact regarding a possible suspension of the program so that it can be reviewed and discussed.

Mr. Burdette stated that Mr. Ford is available to discuss this item this evening... He added that staff is requesting permission from Council to take an ordinance that would support suspension to the Planning Commission and back to the Committee and then Council.

Mr. Ford indicated the findings of fact that staff felt was most important as to why the Town might consider suspending the building permit allocation are as follows:

- The Town established the permit system out of a necessity to address a problem with the growth rate. It was created in the 1990's. Following the

annual review in 2005 the program was extended until 2010. The 2005 annual review demonstrated that the Town had successfully achieved many of its capital improvement projects and therefore provided some additional modifications to the program.

- It appears that with the decline of the national economy and the success of the Town's Capital Improvement program that the Permit Allocation Program can be suspended.
- The program will be monitored on a semi-annual basis which will allow re-adoption in the event the construction accelerates above the three percent growth rate between now and 2010 which is the program's current termination date.
- This will prove helpful to Town citizens trying to obtain building permits by eliminating the current inconveniences posed by the quarterly schedule and requirements while still maintaining the viability of the program, if the reimplementatation is warranted by the year 2010.

Mr. Ford indicated that this is the intent of what staff would take forward as a modification to the current ordinance to the Planning Commission at a January public hearing.

Ms. Stokes-Marshall made a motion to accept staff's recommendation to make adjustments to the existing building permit allocation program to suspend it with the provisions as stated by staff until the year 2010; seconded by Mr. Swails.

Mr. Young asked if this was a motion for staff to prepare the necessary paperwork.

Mr. Burdette indicated that this does not mean Council is suspending the program, but to set the process in motion for it to be reviewed by the Planning Commission, Public Hearing, back to Committee and then back to Council for final decision.

Ms. Stokes-Marshall concurred.

Mayor Hallman called for the vote. *All present were in favor.*

Ms. Stokes-Marshall indicated as an update for the Building Permit Allocation program there were 13 single-family applications received for the first quarter of 2008, there are 189 permits remaining for quarter one and 762 permits remaining for 2008. There are a total of 429 multi-family and townhouses permits remaining through 2010.

Police, Legal & Judicial Committee – Mayor Harry Hallman

Mr. Burdette indicated that the first item to report on was the Charleston County Consolidated Dispatch System.

Mayor Hallman indicated the Committee voted to recommend that Council agree to join with other governments in Charleston County to create a consolidated emergency communications center for dispatching emergency Police, Fire, EMS and Public Works services. The Committee included in the motion that participation in signing this referendum agreement be conditional upon the government board seat being granted as a seat for the Isle of Palms, Sullivan's Island and Folly Beach. Those municipalities will share that seat on a rotating basis. They are the only municipalities in the communications program that have full-time Police and Fire Departments who are not represented by a seat on the board.

Mr. Burdette indicated that Chief Sewell informed him that the Committee did accept that recommendation.

Mayor Hallman made a motion to submit the Committee's recommendation to full Council for consideration; seconded by Mr. Gawrych. All present were in favor.

Mr. Burdette stated this may be one of the most significant events in recent Charleston County history where everyone preaches about consolidation. He stated the Town is putting that in place and he feels this will serve the citizens well.

Public Services Committee – Mr. Kruger Smith

Mr. Collins reported that the first item of business during the Committee meeting was recognition of an employee for five years of service. Staff informed the Committee that the Town had received a letter addressing three individuals and their concern relative to the time they have taken to spend on their participatory projects. After review of the capital projects and activity reports from 2003, staff advised the Committee that this particular participatory project could possibly be scheduled after the first of the year. Prior to beginning this project an updated cost estimate will be needed to provide and reflect any increases in material.

Individuals involved agreed. The Committee directed staff to move forward with the participatory project in January provided there are no public problems that come up as emergencies and could interfere.

Staff advised the Committee of a cooperative effort between the Town of Mount Pleasant, Mount Pleasant Waterworks and the Sweetgrass Basket makers to establish a sweetgrass planting area on Mount Pleasant Waterworks' property. The Public Service's responsibility would consist of removal of vegetation along the ponds embankment. The Committee authorized staff to coordinate the scheduling of the project with Mount Pleasant Waterworks and to complete the project prior to the end of 2008.

Recreation Committee – Mr. Gary Santos

Mr. Santos reported the following:

- Columbia Marionettes Puppet Show was held Friday, November 30th. Over 200 children attended. We added a second show because the first one filled up.

- Becky's Puppet Show will perform the Nutcracker on Friday, December 7th. Two shows are scheduled.
- Twelve teams from the Charleston County area will be participating in the Cheerleading Competition at Old Wando on December 8th beginning at 10am. Wando High School cheerleaders will perform and help spot.
- A Volunteer Appreciation dinner for all MPRD coaches and volunteers at Alhambra Hall was held on November 28th with 175 in attendance.
- MPRD hosted several SCAP Sub-District, District and Lower State games in soccer and football throughout November.
- We have 6 teams in the SCAP Soccer State Championship this weekend at Patriots Point.
- We have 3 football teams that have advanced to the SCAP Football State Championship this weekend at West Ashley High School.
- The Cross Country team will be heading to Nationals in Lawrence, Kansas, this weekend. Thirty-two individual runners will be attending.

Transportation Committee – Mayor Harry Hallman

Mr. Burdette reported in March 2004 the developer of Oakland Plantation deeded to the Town of Mount Pleasant a .337 acre tract of land. This tract of land was established for the purpose of providing access to the GenPhar property. The access extends from Porcher Bluff to the north side of the GenPhar property. Federal and State grant requirements related to construction of access to GenPhar require that the development have an access to a public road. Since at that time South Morgan Point Road had not been completed, access was provided by plat and deed from Porcher's Bluff Road. Now that South Morgan's Point Road is complete and the legal access is provided via that road, Oakland is requesting to transfer this strip of land totaling .3337 acres back to Oakland Development. The

Committee concurred with this request and does recommend that Council transfer the property back to Oakland.

Mr. Gawrych moved for approval of the item as stated by the administrator; seconded by Mr. Collins. All present were in favor.

Mr. Young stated that if he may add to the record, since this does involve a deed transfer, state law would require an ordinance to be accomplished. He stated that he would assume that Council would want this at the January Council meeting.

Mayor Hallman responded in the affirmative.

Waterworks Commission – Mr. Billy Swails

Mr. Swails indicated that a meeting was held on the 19th and prior to that there was a workshop on re-use. They will be preparing a re-use action plan that will be discussed during the next Commission meeting on December 9th. He stated that when they expand the Rifle Range wastewater facility, they will be technologies that will include treatment to potable water standards.

Water Supply Committee – Mr. Billy Swails

No Report.

Mayor Hallman indicated prior to going into the Administrator's report he would like to make a few remarks. There has been significant concern about the voter turnout in Mount Pleasant. Many people are working on this issue. Mayor Hallman stated he just wanted to observe when looking out at the attendance to one of the most important meetings the Town has ever had in this area and there are only about 25 people present in a Town of over 62,000.

ADMINISTRATOR'S REPORT – Mr. Burdette

Mr. Burdette announced the following vacancies:

Planning Commission – Seat #4, a four year term expires February 2008

Pride Committee – Seat #3, a four year term expires January, 2008

OLD BUSINESS – Council

Mr. Burdette indicated the first item was final reading of an ordinance authorizing three separate general utility easements to the Mount Pleasant Waterworks (Ord. No. 07074).

Mr. Gawrych moved for approval of final reading; seconded by Mr. Santos. All present were in favor. Mr. Burdette read FINAL READING BY TITLE ONLY.

Mr. Burdette indicated the next item was discussion regarding a Referendum for Mayor and Town Council Term Extensions. Mr. Burdette stated the following referendum question has been proposed - *Should the current Mayor and Town Council Members of Mount Pleasant extend their terms for approximately 14 months in order to move the Town of Mount Pleasant's Municipal Election from even years to odd years in order to encourage greater voter participation?*

Mr. Santos indicated the Town Attorney provided Council a copy of the resolution R.07121. A Resolution authorizing an Advisory Referendum pursuant to a special election. Mr. Santos read the following referendum into the record:

Whereas, Mount Pleasant Town Council acknowledges that there is a reason for concern relative to low voter turn out at municipal elections; and

Whereas the South Carolina Municipal Association shares the same concerns statewide and, as a result, has been encouraging municipalities across the state for a number of years to change their election dates to the first Tuesday following the first Monday in November in odd numbered years; and

Whereas, locally the Charleston County Election Commission also shares the same concern about low voter turnout county wide and, as a result, has been encouraging municipalities in Charleston County to change their election dates to the first Tuesday following the first Monday in November in odd numbered years; and

Whereas, Mount Pleasant Town Council has recognized the desirability of changing the municipal election date as stated, and further that the same may require all current officeholders on Council to extend their terms for fourteen (14) months; and

Whereas, pursuant to the inherent powers of a municipality in addition to its statutory authority under Section 5-7-30 of the South Carolina Code of Laws, Mount Pleasant Town Council has the authority to conduct advisory referenda; and

Whereas, Mount Pleasant Town Council desires to conduct a referendum on the stated issue of changing its municipal election date and thereby extending the terms of all current councilmembers for 14 months.

NOW, THEREFORE BE IT RESOLVED that the Mayor and Councilmembers of the Municipality of Mount Pleasant, in Council assembled, do hereby authorize the following advisory Referendum to be presented to the voters of Mount Pleasant at a special election to be held Tuesday, March 18, 2008:

Should the current Mayor and Town Council Members of Mount Pleasant extend their terms for approximately 14 months in order to move the Town of Mount Pleasant's Municipal Elections from even years in September to odd years in November, in order to encourage greater voter participation?

 Yes

 No

**THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY
UPON ITS ADOPTION.**

Mr. Santos stated that based on a significant amount of discussion that goes back as far as June 10th whereas Mr. Gawrych said that he would like to continue to discuss the possibility of using a poster; Mr. Santos indicated he would like to hold a public hearing and Mayor Hallman stated he feels they should do both. Mr. Santos stated that Mayor Hallman stated that those who speak usually feel strongly one way or the other, but there are a lot of other citizens who would like to be heard. Mr. Santos stated that based on the November 13th Council meeting, page 28, Ms. Stokes-Marshall stated she feels the most appropriate and fair way to hear and allow the residents to voice their opinion or concerns is to have referendum and stated that to tell citizens there is no other way to change this process other than extending terms, is the easy way out and reiterated she is purely here for the residents and if they want to the right to make that choice she does not see what is wrong with allowing them to do so.

*Mr. Santos made a motion to approve Resolution R. 07121 as stated;
seconded by Mr. Gawrych.*

Mayor Hallman indicated there were some individuals who signed in to speak on this matter.

Mr. George Freeman – 2151 Rifle Range Road- stated he was in attendance not to say he is against this but he is against not being able to vote. He stated he has no problem with the Town going to odd years and no problem with voting in November. The only problem he has is as a citizen he has not been given the opportunity to vote on this issue. He stated he does not understand what the rush behind this matter is. The Town has been talking about this for years and he does not see a problem with waiting for another two years. He suggested the town can have the elections in 2008 and have a referendum on there for the citizens to vote as to whether they want this as part of this system in the Town of Mount Pleasant.

Mr. Santos informed Mr. Freeman that the Town Attorney advised that State Law does not allow Town Council to change this themselves, it has to be done by the legislators if they want to change to odd years. The idea of the referendum is to get the voters consensus on what they would like to do as far as extending Council's terms to odd years. He stated that this is the only way they can do this unless the legislators change stated law. Mr. Santos asked Mr. Young if that was correct.

Mr. Young responded in the affirmative.

Ms. Carol Benson – 1536 Cypress Point Drive – represented the League of Women Voters – reading the following into the record “Since our founding in 1920 the League of Women Voters has worked to promote the values and processes of representative government. We support protecting and enhancing voting rights for all Americans, ensuring opportunities for citizen participation and working for open and accountable representative and responsive government at the local, state, and national levels. Unfortunately, government in many ways is becoming less transparent at a time when citizens feel that the greater accountabilities are needed. The opportunity for the general public to express their collective view through the voting process is our greatest assurance that they will be shaping their government. The League of Women voters of the Charleston area support moving municipal elections to November of the odd years. However, the league does not support Council voting to extend their terms of office. We believe those who will serve extended terms should be elected by citizens with a full understanding of Council members expanded tenures. We encourage the Mount Pleasant Town Council and the State of South Carolina to pursue and adopt such measures that will ensure the right of voters to have the final say, not only in who serves the community but for how long as well.”

Mr. John Bigler – 15 Leeann Lane, Mt. Pleasant - stated he feels strongly that the terms should not be extended in this manner. He stated 14 months is a significant amount of time and to extend terms without alternative choices being presented in a normal election is not the proper way to do this. He stated he does have some questions about the legality even with the referendum. He added there are alternatives and feels that the terms could be shortened or lengthened in a future election.

Mr. Young asked if he could clarify one point with Councilmember Santos – just an offering or clarification on Mr. Santos' question. He asked if it could be a slightly bit clearer if they could add after even years *in September* and after the words odd years *in November*. He stated that the even year in September, he stated that he thinks they are trying to get the words to weigh in on the odd years in the November election. He stated that he feels it would be helpful to add those months. He asked if this is something Mr. Santos would consider and asked if it could be part of the resolution.

Mr. Santos amended his motion to include Mr. Young's suggested changes.

Mayor Hallman stated he has understood from Mr. Young for sometime that some Council is going to have to change if the Town is going to move the election forward. He asked if he was correct.

Mr. Young responded in the affirmative. He stated that if it is the goal to move the town's election which is currently in September of the even years to a November election in the odd years, the only way this has been researched and verified by the State Attorney General and many other municipalities have done this, is for the Council to extend or shorten their terms. He stated that currently the town has extended their terms. He stated that he believes Mr. Santos is asking the voters to weigh in through a referendum as to whether they agree with that action

or not. The only other way this could be accomplished would be to get the State Legislature to change State Law to provide some other method to do this.

Mr. Burdette indicated the second would also need to amend his second.

Mr. Gawrych amended his second.

Mr. Bustos stated he tried to get the vote rescinded that approved this extension and he feels this is a way to get the voters involved with what is becoming a very emotional issue about extending their own terms. He indicated that personally he does not feel that Council should extend their own terms and has been very clear about this. Mr. Bustos stated that what he would like to see is for Council to approve this referendum, but in the interim when the legislature goes back into session in January, that the Town gets them to address this issue. He stated the legislature is going to have to clarify this because at some point this will present a problem. He stated that the referendum is a good step, but is not the end of the process.

Mr. Collins asked if this was already in place and asked if Council already voted on this and put this in place six months ago.

Mr. Burdette stated that Council has established at this point that the election would be moved to November odd years.

Mr. Collins asked that in order for an ordinance to be approved or passed, there needs to be three readings.

Mr. Burdette stated there needs to be two. Mr. Young clarified that the State of South Carolina requires three, but the Town of Mount Pleasant follows the two-rule.

Mr. Collins stated that the agenda is posted on the website for the public to see and has been on the agenda and was even on the agenda since 2003. He stated he feels the Town needs to move on with this and vote "no" for the referendum.

Ms. Stokes-Marshall indicated her understanding of what Mr. Young is saying is that changes can be made through the legislature. She asked in reference to the referendum -- if the referendum was placed on the ballot for the next election giving the residents the right to vote, is there a need for Town Council to make a decision at this point and time. She stated what she is hearing from the residents is that they are not opposed to the odd year election, but what they are opposed to is the current Council members voting to extend their own terms and the citizens are not in agreement with that. The citizens feel that they should be given the right to weigh in on this. Ms. Stokes-Marshall indicated as she has mentioned before that is her only regret. She feels the citizens should have had the opportunity to weigh in. Ms. Stokes-Marshall stated the Town has been dealing with this issue for at least four to five years. This did not start in the past two years. Ms. Stokes-Marshall asked if it would make a big difference if the Town were to wait until the next election.

Mr. Young clarified that Council has already acted and changed the rules. He stated that the only legal way to change the election under current state law is by Council calling on their implied or inherent authority, which is a recognized in the law, and to either extend the terms or shorten the terms. Mr. Young stated that this is the only legal way that has been recognized and others that he has consulted with. He stated that he understands her concern about letting the public weigh in. He stated that under the current law the only way the public can weigh in, in a process, is through a referendum and that would be an advisory referendum where council could gauge the temperature of their electorate, but stated this is somewhat of a separate process. He stated that this is the only way he is aware of the public weighing in other than attending meetings and otherwise.

Ms. Stokes-Marshall asked whose choice it is as to whether this should be a lengthening or shortening process.

Mr. Young stated that would be a choice made by Council. He stated that the problem is that council cannot have an election and a referendum at an election time to vote to have a term of anything other than two or four years; there is a statute on this. He stated that this is an impediment of using the process that Ms. Stokes-Marshall is suggesting at this point of letting the public make that decision. He stated that this is the impediment under current law.

Mr. Burdette stated that as it stands now – there will be no election in September of 2008.

Mr. Gawrych indicated he seconded Mr. Santos's motion and he agrees with Mayor Hallman, but stated that this issue needs to be put to rest. He stated he feels this should be determined by the residents not Council. He stated he sees no harm in holding an advisory referendum.

Mr. Glasson asked if an advisory referendum was non-binding. Mr. Glasson also asked if this is voted yes or no, will it affect the election in 2009.

Mr. Young stated that it would not necessarily affect the current rules. He stated that it would be up to council; if it comes in one way it would be left as is, and if the voters were against that, council would have a decision to make.

Mr. Glasson asked if it would change anything tonight. Mr. Young stated that if he understands his question correctly, no it would not change anything.

Mayor Hallman asked for a roll call. *Mr. Gawrych, Mr. Glasson, Mr. Santos, Ms. Stokes-Marshall and Mr. Bustos were in favor. Mr. Swails, Mr. Collins and Mayor Hallman were opposed. The motion carried with a vote of 5-3*

Mr. Burdette indicated the referendum would be held on March 18, 2008. Mr. Burdette stated that in January when second reading is done on the budget, he stated that an amendment would need to be done to add funding for the referendum, as well as contact Ms. Marilyn Bowers of the Election Commission to schedule the referendum.

Mr. Gawrych asked that in the event there are any other questions to be placed on this referendum, what is the time limit for submitting those questions.

Mr. Young indicated that the requirement is to have public notice placed 90 days from the date of the notice in the paper to the election. He added that in order to be entirely clear, Council needs to remember that this must be done soon enough, so if Council decides to change the current regulations, that there is another 90 days after this to change get back to the next election, which is September. He stated that this is a very tight window.

Mr. Burdette stated that the Election Commission stated that they could not conduct an election, which would be a referendum except during the month of March, because of the primaries coming up.

Mr. Young stated that March is the month that would work in this tight schedule.

Mr. Burdette indicated if Council would like to add any other questions to the referendum Council would have to vote by resolution to add those questions, 90 days prior to the 18th of March.

Mr. Young added Council would also need to allow time to arrange notice with the newspaper.

Mayor Hallman stated that Councilman Kruger Smith has been on this Council for many years, has been involved in the election process for many years and has done an excellent job. He added that Mr. Smith had to be out of town tonight for this meeting. He stated that when Mr. Smith returns, how can this issue be raised again.

Mr. Young indicated that there is a procedural way to do this which would be in a separate meeting. He stated that an appropriate motion would be to rescind the action taken tonight. He indicated if notice was given in advance, it would only require a majority vote.

Mayor Hallman notified Council he would be raising this issue again at next month's council meeting.

NEW BUSINESS – Council

Mr. Burdette stated that if council recalls, there were two gifts of land from Park West; both near the airport. He stated that the town received a grant from the half-cent sales tax Green Space Program to purchase property adjacent to the town's recreation facility land in Carolina Park. He stated that the deeds are prepared and ready to sign; however Council needs to consider passing the following: Approve the receipt of title to three parcels of property from Park West Development, Inc., to the Town of Mount Pleasant, and to authorize the Town Administrator to execute the deeds with the terms thereon, including but not limited to the half cent sales tax requirements.

Mr. Young indicated a motion would be needed to complete those transactions.

Mr. Bustos indicated that on a separate matter he also wanted to give notice on a motion to rescind the vote moving the election and if successful everything will be back to zero and the process can begin again.

Mr. Gawrych made a motion to approve item XII.A under New Business; seconded by Mr. Swails. All present were in favor.

Mr. Burdette indicated that items B, C and D are regarding the mid-year budget adjustments.

B. *First Reading:* An ordinance to amend the Projected Revenues for the Town of Mount Pleasant from \$92,908,407 to \$91,555,541 to meet appropriations for the fiscal year commencing July 1, 2007, and ending June 30, 2008 (Ord. 07078)

C. *First Reading:* An ordinance to amend General Fund Appropriations from \$53,745,302 to \$53,702,657 to meet the expenditures of the Town

of Mount Pleasant for the fiscal year commencing July 1, 2007, and ending June 30, 2008 (Ord. 07079)

D. *First Reading:* An ordinance to amend Appropriations from certain Special Revenue Funds from \$35,147,226 to \$35,055,856 to meet the expenditures of the Town of Mount Pleasant for the fiscal year commencing July 1, 2007, and ending June 30, 2008 (Ord. 07080)

Mr. Gawrych made a motion to approve items XII B, C, and D; seconded by Mr. Swails. All present were in favor. Mr. Burdette read FIRST READING BY TITLE ONLY.

Mr. Burdette indicated the next item was consideration of an ordinance authorizing the transfer of title to an approximately .042 acre parcel of land located on Whipple Road to the Mount Pleasant Waterworks (Ord. 07081).

Mr. Santos moved for approval of first reading; seconded by Ms. Stokes-Marshall. All present were in favor. Mr. Burdette read FIRST READING BY TITLE ONLY.

Mr. Burdette indicated the next item was consideration of an ordinance amending and restating easements previously granted to Shem Creek Marina, LLC over a portion of property known as Mill Street (Ord. No. 07082).

Ms. Stokes-Marshall moved for approval of first reading; seconded by Mr. Bustos. All present were in favor. Mr. Burdette read FIRST READING BY TITLE ONLY.

Mr. Burdette indicated the next item was consideration of a motion to cancel the regularly scheduled Town Council meeting on Tuesday, December 11, 2007.

Mr. Gawrych made a motion to cancel the regularly scheduled Town Council meeting on Tuesday, December 11, 2007; seconded by Mr. Bustos. All present were in favor.

Mr. Burdette asked Council to consider adjourning into executive to discuss the following items:

- **Legal Advice** pertaining to Mathis Ferry Road Project (DEPAUL) relative to PBS&J
- **Legal Advice** pertaining to an EEOC complaint relative to a firefighter applicant (Personnel matter)
- **Personnel Matters** pertaining to Appointments to Boards & Commissions
- **Legal Advice** regarding the settlement of legal issues and purchase of property know as the OK Tire Store and other properties.

Mr. Young clarified that this would be legal advice on OK Tire property litigation.

Mr. Santos made a motion to adjourn into executive session; seconded by Mr. Gawrych. All present were in favor.

The meeting adjourned into executive session at 9:25 PM.

The meeting reconvened at 10:03 PM.

Mayor Hallman declared that Council was out of executive session and indicated no votes or action was taken.

Mr. Burdette indicated the first order of business would be in reference to the matter pertaining to the EEOC complaint.

Mr. Swails made a motion to approve the settlement agreement with the firefighter applicant to increase the amount of money from \$15,000 to \$18,000; seconded by Mr. Gawrych. All present were in favor.

Ms. Stokes-Marshall made a motion to appoint Lawrence Courtney to a four year term on seat #3 on the Design Review Board; seconded by Mr. Bustos. All present were in favor.

Mr. Bustos made a motion to appoint Carol Burns to seat #3, Catherine Rhea to seat #4, and Admiral Albert Baciocco to seat #5 on the Old Village Historic District Commission; seconded by Mr. Gawrych. All present were in favor.

Ms. Stokes-Marshall made a motion to appoint Patricia Goss to seat #4, Debra Whitfield to seat #5, Steve Wray to seat #6, and Richard Walo to Seat #10 on the Workforce Housing Advisory Committee; seconded by Mr. Santos. All present were in favor.

Mr. Bustos made a motion to approve the settlement agreement discussed in executive session pertaining to the OK Tire Store property condemnation lawsuits and authorize Mayor Hallman to execute the agreement; seconded by Mr. Gawrych. All present were in favor.

Mr. Swails made a motion to authorize the Town Administrator to transfer an additional \$3 million into the water access property acquisition project for a total project budget amount of \$6 million; transferred funds would come from the various TIF projects as described on page 49 of the mid-year budget book; seconded by Mr. Gawrych. All present were in favor.

With there being no further business to discuss the meeting adjourned at 10:07 pm.

Mac Burdette

From: Mark A. Mason [mark@masonlawfirm.com]
Sent: Thursday, December 06, 2007 11:29 AM
To: Mac Burdette
Cc: Allen Young
Subject: RE: Note from Mark

Mac and Allen,

Thank you for your kind note. Phillip and I are also glad we have settled the matter. Phillip is unavailable today and perhaps it would be best to have a ceremonial signing and handshakes on the day of the closing. We are certainly open to that. Phillip and I hope we can resume what we have always regarded as being a positive and professional relationship. After all, we are soon to be neighbors. Phillip and I are excited about seeing the Town's vision for this area come to fruition.

Best wishes,

Mark A. Mason, Esquire

THE MASON LAW FIRM, P.A.

Tidewatch Centre on Shem Creek

465 W. Coleman Boulevard, Suite 302

Mount Pleasant, South Carolina 29464

Telephone: (843) 884-1444

Direct Fax: (843) 284-6032

E-mail: mark@masonlawfirm.com <<mailto:mark@masonlawfirm.com>>

Website: www.masonlawfirm.com <<http://www.masonlawfirm.com>>

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Thursday, December 06, 2007 11:11 AM
To: Mark A. Mason
Cc: Allen Young
Subject:

Mark,

We're very pleased to have settled the matter pertaining to the purchase of property at Shem Creek. While we've certainly had our differences, we would like to make this a positive arrangement from both the Town's perspective and your perspective. To that end, would you and Mr. Smith consider coming over to Town Hall this afternoon for a ceremonial



signing, some hand shakes? Please let me know as soon as you can, either by email or phone call.

Thank you for your consideration.

Mac

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Thursday, December 06, 2007 1:03 PM
To: Mac Burdette; 'B. Swails'; 'Billy Swails'; 'Gary Santos'; 'Joseph M. Bustos, Jr.'; 'Ken Glasson'; 'Kruger Smith'; Mayor Hallman; 'Nick Collins'; 'Thomasena Stokes-Marshall'
Cc: Allen Young
Subject: RE:

Fine with me as this gives us more time to plan a grand celebration for the whole Town to enjoy as what we did last night has not even begun to set in with any of us or the public!

PSG

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Thursday, December 06, 2007 12:26 PM
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Allen Young
Subject:

Mayor Hallman and Town Council,

Mr. Mason responded in a most positive manner. He asked that we consider a ceremony after the closing on December 18 because Mr. Smith is out of town. Mayor Hallman is OK. Are y'all? I'll check with Allen about possible time.

Mac



Councilmember Kruger Smith
May 3, 2007

Post & Courier article, "Violation of Public Meeting Law Alleged"

Smith said there is nothing that precludes him from attending a council committee meeting and participating in discussions, even though he is not a voting member of the committee.

"It's whether you are participating as if you were a member of that committee. It depends on how you conduct the meeting. It's not that there are six people from the Council there," he said.

Smith and others attend council committee meetings because it's where much of the business of council is done, and it's a way to stay educated on the issues that will be coming to Town Council.

"It behooves every council member to be at every committee meeting," he said.

At the Police, Judicial and Legal Committee meeting, Smith, Stokes-Marshall, and Swails sat at the table with committee members Hallman, Glasson and Gawrych. "We just sit there because the chairs are more comfortable," Smith said.

Councilmembers Billy Swails and Thomasena Stokes-Marshall
October 9, 2007 Town Council Meeting

(Regarding council members attending committee meetings of which they are not a member...)

"Ms. Stokes-Marshall stated the matter of Council members attending a Council meeting and her position has been and will always be that the Committee meeting is where one finds out what is going on. She stated if one does not attend Committee meetings they do not get the essence of the subject, the topic, the information or the dynamics between who the players are. She stated she attends all Committee meetings because she wants to know what goes on and wants to be informed so that she is capable of making an informed and intelligent decision."

"(Mr. Swails) stated that he attends all the meetings, so he also attends the executive sessions."

PLAINTIFF'S
EXHIBIT

**TOWN COUNCIL MEETING
TUESDAY, OCTOBER 09, 2007**

Mayor Hallman called the meeting to order at 7:00 p.m. In attendance were Council members Thomasena Stokes-Marshall, Gary Santos, Paul Gawrych, Billy Swails, Nick Collins, Joe Bustos and Kruger Smith. Absent from the meeting was Council member Ken Glasson.

Staff members in attendance were Mac Burdette, Allen Young, Jan Crates, Ted Summerford, Chief Harry Sewell, Chief Herb Williams, Jody Peele, Sally Phipps, and Joel Ford.

Mr. Smith offered the prayer, followed by the pledge of allegiance.

Mr. Young certified that the Town was in compliance with the FOIA.

Mr. Smith made a motion to amend the agenda; item IX.G.1 which currently reads adoption of Wellness program, should be changed to "approve the Health Insurance program as recommended by the Personnel Committee for FY 2008-2009". Additionally, under item XI.G., add appointments to Boards and Commissions as item XI.G.1 Planning Commission Seat Number Two; 2. Open Space Foundation seats 4, 8, 9, 10, and 11; and 3. Workforce Housing Seat number 7; seconded by Mr. Gawrych. All present were in favor.

Mr. Gawrych made a motion to approve the amended agenda; seconded by Mr. Smith. All present were in favor.

AWARDS & PRESENTATIONS

Mr. Ford indicated this was *A Public Hearing* to consider a proposed amendment to the Carolina Park Development Agreement pertaining to a request for increases in the maximum allowed building height on Tract CPI-8 from the current limitation of 50 feet to an allowance of 88 feet for Roper-St. Francis Mount Pleasant Hospital and 74 feet for two medical office buildings. Copies of the amendment document are available for public inspection at the Town of Mount Pleasant Municipal Complex, 100 Ann Edwards Lane, Mount Pleasant, South Carolina during normal business hours. *A second public*

hearing on the same matter will be conducted on Tuesday, November 13, 2007, at the regularly scheduled 7:00 PM town council meeting.

Mayor Hallman asked if there was anyone in the audience who wished to comment on this public hearing. Hearing none the public hearing was closed.

Mr. Burdette along with Mr. Ford and Ms. Stokes-Marshall recognized Ms. Linda Lancaster for 22 years of services.

Mr. Burdette along with Mr. Summerford, Mr. Johnnie Cribb and Mr. Santos recognized Mr. Trip Boyd as employee of the month.

Mr. Burdette along with Chief Williams recognized Lieutenant Rick Porzia as co-employee of the month.

Mr. Burdette indicated each year the Town has participated in the Trident United Way campaign. For a few years this was not very well organized until Mrs. Martine Wolfe-Miller came along. He indicated Mrs. Wolfe-Miller has been coordinating this event for 5 years and has done a great job. Currently the Town employees have raised \$22,000.

Mr. Chris Kerrigan, Director for Trident United Way, thanked Mayor and Town Council for their time and dedication. He thanked Mrs. Wolfe-Miller for her hard work. He stated not only are the Mount Pleasant employees the best at what they do but are the most generous. He thanked the Town for great leadership and for all they do.

Mayor Hallman presented David Barnard, Cathy Remington and Amy Boyd from Habitat for Humanity with a proclamation proclaiming October as Habitat for Humanity month.

APPROVAL OF MINUTES AND FINANCIAL STATEMENT

Mr. Smith moved for approval of the minutes and financial statement; seconded by Mr. Gawrych. All present were in favor.

CORRESPONDENCE AND PUBLIC STATEMENTS

Mr. Ed George – 1805 Ventura Villas – expressed concern with the number of voters who are uninformed about who they are voting for. He stated he does support any

legitimate effort to increase the turnout of informed votes, but to claim that extended terms to achieve this is not politically motivated, is hard to believe. He stated that the reason why is because only politicians would write a law that permits increasing terms but not shorting them. He asked if this Council or powers-to-be who want to change the election date made any effort to find alternatives and stated that he does not believe they have, but instead found comfort in the existing law. Since this last came up in Mount Pleasant two elections have come and gone. Mr. George stated that one member of Council was quoted saying "it is what it is", and said in his opinion, "yes it is and frankly it stinks". He stated our country is suffering from a dreadful malady of what he calls the three "P's" of politics - power, pension and perpetual reelection. The only cure is term limits.

PLANNING – Mr. Ford

NEW BUSINESS

Mr. Ford indicated the first item was consideration an ordinance to amend the Carolina Park Planned Development District Ordinance No. 04050, pertaining to height limit in Tract CPI-8 (Ord. 07070). Mr. Ford indicated a public hearing was held earlier this evening. Following the Planning Commission public hearing they did recommend to Town Council approval of this request. The Planning Committee is recommending deferral of this item to allow the applicants to meet with area homeowners and associations.

Mr. Burdette indicated one individual signed in to speak regarding this matter.

Mr. Peter DiNicola – representative for Roper Hospital – stated Roper looks forward to the opportunity to help serve the healthcare needs of the Mount Pleasant Community. He noted that their project is through the schematic design process and as part of that process they looked at a 20 year time horizon. He stated that with the architect, they used state of the art modeling and simulation based on current demographics for this region to project the best way to expand that hospital in the future to meet the growing health care needs of the community. He indicated that is part of

where the height variance request comes from. Mr. DiNicola stated that they have commenced meeting with nearby residents of local homeowners associations and will continue with those meetings prior to going before the Planning Committee again next month.

Mr. Santos indicated that the height was also discussed as it relates to the aviation authority. He indicated Mr. Pat Waters was in attendance and Mr. Santos wondered if it would please Council to have Mr. Waters offer his opinion on what he thinks.

Mr. Pat Waters – indicated the assigned altitude for the downwind lay is 1,000 feet. He stated if everyone is flying in accordance with the rules they will pass sufficiently over the hospital, as no one flies at 80 feet. Mr. Waters stated he does not feel there is a problem with the requested height. The biggest fear that exists at the airport is the large towers. He added that 80 feet is not going to be anything excessive.

Mr. Burdette reiterated the Planning Committee recommended deferral of this item. This item would return to the Planning Committee in November with information brought back from the hospital.

Mr. Santos made a motion to defer this item back to the Planning Committee during their November Committee and back to Council at the November Council meeting as mentioned by staff; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Ford indicated the second item was consideration of an ordinance to amend Subparagraphs four (4) and five (5) of Paragraph B of Section 156.031 of Chapter 156 of the Mount Pleasant Code of Ordinances, pertaining to the procedure for Zoning amendments or changes (Ord. 07062). Mr. Ford indicated there were some ambiguities in the way the current ordinance is written. Following the Planning Commissions review of this item they felt there may be items that come before them that merit more time and consideration. At the Planning Committee's last meeting, they committee agreed. He stated they felt like there was needed clarity in the definition. Mr. Ford indicated Mr. Young offered a memo to Council that explains the rational. He added the way the ordinance will read is that once a public hearing begins the Planning Commission must

close that public hearing no later than 30 days. Once the public hearing is closed they have an additional 30 days to make their report to Town Council. Mr. Ford indicated this does not exempt the Commission from having special meetings within the 60 day period if they feel it is necessary to consider.

Mr. Young clarified the Town is not varying at all from the State statute. The state requirements are still in place; this is just a clarification. Mr. Young indicated the change made a definite beginning and ending so that the Town can clarify when the 30 days begins and ends. He added that this also addresses public hearings and how they can be extended and not extended for only a reasonable period of time.

Mr. Bustos moved for approval of first reading; seconded by Ms. Stokes-Marshall.

Mr. Santos indicated he would be voting against this item because he feels the Planning Commission has done an excellent job in the past and does not feel the Town needs to start putting restrictions on the Planning Commission. He feels Council should allow the Commission to do the job they were appointed to.

Mayor Hallman called for the vote. *The motion carried with a vote of 7-1 with Mr. Santos opposing.* Mr. Burdette read **FIRST READING BY TITLE ONLY.**

Mr. Ford indicated the next item was consideration of an ordinance to amend Mount Pleasant ordinance No. 04049, providing for a fourth amendment to the Carolina Park Development Agreement (Ord. 07072). Mr. Ford indicated this item had been recommended for deferral.

Mr. Smith moved for deferral of this item for up to 30 days; seconded by Mr. Swails.

Mr. Burdette indicated since the development agreement was opened it offered the Town an opportunity to talk about some issues that the Town was concerned about. Staff has held several meetings with representatives from Carolina Park and they have now proposed a municipal improvement district, not unlike what was done at Patriots Point to help pay for a number of improvements. Staff will use this next 30 days to take a look at

their proposal so that staff can provide Council information and any recommendations staff feels would be valid pertaining to their proposal.

Mr. Ford indicated the item that pertains to access will be discussed under old business.

Mayor Hallman called for the vote. *All present were in favor.*

Mr. Ford indicated the next item was consideration of an ordinance to amend various provisions of Chapter 156 of the Mount Pleasant Code of Ordinances, pertaining to the Commercial Corridor Overlay District and the Commercial Development Design Review Board (Ord. 07071). Mr. Ford indicated staff has been working on this proposal for several months. The Planning Commission worked very thoroughly on this item and sent it back to the Planning Committee. The Planning Committee has been reviewing this item for the last couple of months. The Committee has recommended adoption of this item.

Mr. Swails moved for approval; seconded by Mr. Gawrych. The motion carried with of 7-1 with Mr. Bustos opposing. Mr. Burdette read *FIRST READING BY TITLE ONLY.*

OLD BUSINESS

Mr. Ford indicated the first item was final reading of an ordinance to amend §156.003 of Chapter 156 (Zoning Code) of the Mount Pleasant Code of Ordinances, pertaining to implementation of the Comprehensive Plan (Ord. No. 07060).

Mr. Gawrych moved for approval of final reading; seconded by Mr. Collins.

Mr. Bustos question the following statement "all planning elements of the comprehensive plan must be in expression of the Planning Commissions recommendations to Town Council". He asked exactly what that meant.

Mr. Ford indicated this means the Planning Commission is going to give a recommendation anytime there is a change and they must express those recommendations in terms of these item that are spelled out. Mr. Ford indicated that he does not see this as a problem and stated that felt what Mr. Bustos was worried about was - "is this a way

that the Planning Commission could manage to get Council to adopt an ordinance that Council can only do what they say Council must do." Mr. Ford stated he sees where Mr. Bustos is coming from but does necessarily read it in that manner.

Mr. Bustos stated that it seems if Town Council wants to do something with the comprehensive plan, which they do regularly, whatever Council does has to be an expression of the Planning Commission's recommendation. He stated that this is confusing. Mr. Bustos stated that in section E it states "the Planning Commission in the execution of responsibility and duty to create policies or procedures to facilitate the planning elements of the comprehensive plan". He asked if the Town was at the point of asking the Planning Commission to develop all of these policies and procedures and said that he thought Planning did that.

Mr. Ford indicated the Planning Commission is charged with developing, reviewing and recommending ultimately to Town Council the various elements of the comprehensive plan, so he feels that is consistent.

Mr. Bustos stated they have taken something that was one paragraph and turned it into two pages. He indicated he is a little concerned that this was made harder than it should be. Mr. Bustos stated he hopes nothing in the wording takes away Council's flexibility to deal with planning issues as it sees fit.

Mr. Young indicated this item was drafted and went through review. He stated he does think this is trying to echo the theme of the state statute that Mr. Ford pointed out.

Mr. Bustos stated he finds this very confusing and added that he is concerned.

Mr. Burdette asked Mr. Ford what the impetus was behind doing this.

Mr. Ford indicated this was initiated by the Planning Commission. They felt the Town had guidelines when there are zoning amendments and those have become considerations -- almost like findings and facts -- that go along with the motions and yet some rezoning requests are consist with the comprehensive plan and some are not. The Town is changing the land use map. There are no guidelines for the Planning Commission as to the findings and facts that would accompany the motion. Mr. Ford

stated that they were trying to clarify that and agrees that this document is wordy but was initiated by the Planning Commission. Mr. Ford indicated this item was held for one month at the Committee level. He added first reading had been completed.

Mr. Bustos stated he thinks if the Planning Commission needs to have their role or parts of their role clarified and they have taken the initiative to do that, that is fine but he feels it needs to be very clear. He stated that as Mr. Ford mentioned this can be made a little clearer and was not exactly sure who wrote the document.

Mr. Young mentioned that he reviewed this document but did not write it.

Mr. Ford indicated it was a joint effort by Planning Commission members. They did go through the proper process by holding a formal public hearing, having staff review the document, and then bringing it to the Committee.

Mr. Bustos stated that there was a motion on the floor but he would like to see the document go back so they can clarify some of the information because what the document states and what the intent might be may be different.

Mr. Gawrych withdrew his motion; Mr. Collins withdrew his second.

Mr. Bustos made a motion to refer the ordinance back to the Planning Commission for clarification of paragraphs B, C, E number one; seconded by Ms. Stokes-Marshall.

Mr. Burdette asked if Mr. Bustos' intention was for this item to go back to the Planning Commission or go straight back to Town Council.

Mr. Bustos indicated because this was second reading it would come back to Town Council.

Mr. Gawrych asked Mr. Bustos to explain what he means by stating the Planning Commission needs to clarify. He wants to make sure the Planning Commission members understand what is being asked of them.

Mr. Bustos stated the point he is trying to make is that this should be worded in such a way that it does not take away the flexibility of Council and does not bind the Council to a recommendation or an expression that the Planning Commission may have had. He stated from time to time the Commission and Council sees things differently so

he does not feel Council should be bound. Mr. Bustos stated that this does not mean the Commission's recommendations are not good and timely but feels this is confusing. Mr. Bustos asked Mr. Brock if he understood what was being said.

Mr. Brock mentioned what Mr. Bustos read out was copied directly from the State Statute.

Mr. Bustos stated he feels this item needs to be deferred and Mr. Young needs to review it a little more closely.

Mr. Gawrych stated that Council needs to reach complete clarity through the state statute on the complete set up of a Planning Commission and that his confusion is with the Town following the state statute correctly or not.

Mr. Bustos amended his motion to include that the ordinance be reviewed by legal counsel; Ms. Stokes-Marshall amended her second.

Mr. Young asked if the ordinance was to go back to the Planning Commission.

Ms. Stokes-Marshall clarified the request is to have this item go back to the Planning Commission and added that they are also requesting to have legal counsel review the existing comprehensive plan in terms of the language so that Council can have a better understanding of the interpretation.

Mr. Gawrych stated he feels everyone needs to make sure they are adhering to the law as it was passed down to all the municipalities and feels the Planning Commission is only trying to do what they think is right.

Mr. Young asked if there was a time frame for this matter to come back to Town Council.

Mr. Bustos amended his motion to indicate that the item return to Council within 60 days; Ms. Stokes-Marshall amended her second.

Mayor Hallman called for the vote. *The motion carried with a vote of 7-1 with Mr. Santos opposing.*

Mr. Ford indicated the next item was final reading of an ordinance to amend Mount Pleasant ordinance no. 04049 providing for a third amendment to the

Development Agreement between Carolina Park Associates, LLC and the Town of Mount Pleasant (Ord. No. 07058). Mr. Ford indicated this item was deferred from the September Council meeting.

Mr. Gawrych asked where this would go.

Mr. Burdette stated if Council decides to create a municipal improvement district and make it part of the development agreement it does not need to go back to the Planning Commission.

Mr. Burdette indicated that this item relates more to a budget/administrative issue so it would not go to Planning Commission.

Mr. Ford stated that one change may be if they incorporate the MID language into the development agreement, they would have to go through two public hearings.

Mr. Young added if it becomes a requirement of the development agreement it would have to go back through the process.

Mr. Burdette stated that he would suggest Council do this if they decide a MID is the way to go.

Mr. Gawrych moved for deferral of Ordinance 07058 until the November Council meeting; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Ford indicated the third item was final reading of an ordinance providing for a second amendment to PD, Planned Development District; pertaining to access to US Highway 17 North relative to property known as *Carolina Park* (Ord. No. 07059).

Ms. Stokes-Marshall made a motion to defer this item until November Town Council meeting; seconded by Mr. Collins. All present were in favor.

Mr. Ford indicated the fourth item was final reading of an ordinance providing for the annexation of a parcel of land comprising approximately 0.86 acres located on Cawley Road near Mazzy Lane, bearing TMS No. 558-00-00-073 (Ord. No. 07065).

Mr. Bustos moved for approval of final reading; seconded by Mr. Swails. All present were in favor. Mr. Burdette read *FINAL READING BY TITLE ONLY.*

Mr. Ford indicated the next item was final reading of an ordinance to zone AB, Areawide Business District, a parcel of land comprising approximately 0.86 acres located on the Southwest side of Cawley Road near Mazzy Lane, bearing TMS NO. 558-00-00-073 (Ord. No. 07066).

Mr. Smith moved for approval of final reading; seconded by Mr. Gawrych. All present were in favor. Mr. Burdette read FINAL READING BY TITLE ONLY.

Mr. Ford indicated the sixth item was final reading of an ordinance providing for the annexation of a parcel of land comprising approximately 10.06 acres located on the east side of Lieben Road, approximately 2150 feet from the intersection of US Highway 17 North, bearing TMS 614-00-00-025 (Ord. No. 07067).

Mr. Gawrych moved for approval of final reading; seconded by Mr. Collins. All present were in favor. Mr. Burdette read FINAL READING BY TITLE ONLY.

Mr. Ford indicated that item seven was final reading of an ordinance to zone R-3, Medium-Density Residential District, an approximately 9.4 acre portion of a 10.06 lot located on the east side of Lieben Road, approximately 2150 feet from the intersection of US Highway 17 North, bearing TMS 614-00-00-025 (Ord. No. 07068).

Mr. Bustos moved for approval of final reading; seconded by Mr. Swails. All present were in favor. Mr. Burdette read FINAL READING BY TITLE ONLY.

Mr. Ford indicated the eighth item was final reading of an ordinance to amend subparagraph 12 of paragraph A of Section 150.002 of Chapter 150 of the Mount Pleasant Code of Ordinances, pertaining to *Reinspection Fees* (Ord. No. 07063).

Mr. Santos moved for approval of final reading; seconded by Ms. Stokes-Marshall. The motion carried with a vote of 4-3 with Mr. Bustos, Mr. Swails, and Mr. Gawrych opposing. Mr. Burdette read FINAL READING BY TITLE ONLY.

COMMITTEE REPORTS

Accommodations Tax Advisory Committee – Mr. Kruger Smith

No report.

Annexation Committee – Mr. Nick Collins

Mr. Collins indicated the Committee received a presentation from Mr. Burdette regarding the proposed annexation plan and strategy. The written document identifies certain areas and the priority of the types of property that should be considered for annexation and the efforts of the annexation coordinator.

Mr. Collins made a motion to adopt the proposed annexation plan and strategy as presented by staff and set forth in the written document with the same title and that it be formally included in the Town's comprehensive plan at its next scheduled update; seconded by Mr. Smith. All present were in favor.

Mr. Collins added the Committee also entertained a request from Mr. Burdette to consider directing the Town's legal counsel to officially look into the legality of the Town putting together an Environmental Protection Grant program that would be added to the annexation coordinator's tool box. Mr. Burdette stated that many of the contiguous businesses contacted by the Town for annexation indicated they would be interested in joining the Town if the Town could help with the provision of the water and sewer services. Mr. Burdette proposed exploring a joint effort with Mount Pleasant Waterworks to provide grants to offset the cost of the connection as an enticement for annexation. MPW would benefit from expanding their customer base.

Mr. Collins made a motion to direct legal counsel in concert with Mount Pleasant Waterworks legal counsel to research the legal ramifications of establishing such a grant; seconded by Ms. Stokes-Marshall. All present were in favor.

Bids & Purchases Committee – Mr. Joe Bustos

Mr. Bustos stated that the Committee awarded a bid to purchase a Triple Combination Pumper Truck for the Fire Department in the amount of \$399,650.81 to Ferrara Fire Apparatus. The bid is within our budget and includes accessory equipment, delivery charges, and taxes. The Committee also awarded a bid for the purchase of a Scow Body Sanitation Truck to Hughes Motors, Inc. in the amount of \$104,792. The bid was within our budget, with delivery expected in 140 days.

Economic Development Committee – Mr. Paul Gawrych

Mr. Gawrych indicated no action items were taken during the meeting. He added there will be an official ribbon cutting on October 17th for Mediterranean Shipping. Mr. Gawrych added Thomas and Hutton signed a contract to move on the piece of property and will be staying in the Town of Mount Pleasant. Mr. Gawrych added the Committee also discussed property in the vicinity of US17 and Laing Middle for Economic Development.

Finance Committee – Mr. Billy Swails

Mr. Swails indicated there was a recommendation to amend the Smoking Ordinance by removing the application fee requirements contained in the ordinance. Town Council has already approved the refund of application fees already collected and the suspension of further application fee collections until such time as the Smoking Ordinance can be amended. Council will further act on this recommendation by considering *First Reading* of an ordinance amending the Smoking Ordinance as listed under Council New Business as Item # A.

Mr. Swails indicated that the second item was a recommendation to accept a donation of land from Park West. The Park West developers wish to donate a 200 ft. strip of property that shares a boundary line and is about 15 acres in size. The Committee has reviewed the donation request and recommends acceptance of the donation.

Mr. Swails made a motion that Council accepts the donation of land as reviewed and recommended by Committee; seconded by Mr. Gawrych. All present were in favor.

Mr. Swails indicated the next item was recommendation to transfer a 36.5 ft. x 50 ft. parcel of property owned by the Town. Mount Pleasant Waterworks is seeking the transfer of a small parcel of property owned by the Town and touching the rear of their pump station on Whipple Road. The property is needed to expand the pump station. The Committee has reviewed the requested transfer with staff and recommends the transfer without charge to Mount Pleasant Waterworks.

PAGE 1

My name is Steve Brock. In 2010, I filed a lawsuit against the Town of Mount Pleasant, alleging violations of the South Carolina Comprehensive Planning Enabling Act, the South Carolina Freedom of Information Act, the Mount Pleasant Zoning Code, and the I'On Planned Development Ordinance. A good part of what is included here is in the complaint of the suit. The relief requested of the Court includes voiding the Amendment which would have no effect on homes built or title. The suit was struck in January in the hope that the issues could be resolved with the Town outside the courtroom. The Rules of Civil Procedure allowed re-filing the lawsuit if a settlement cannot be reached. What follows is a more complete history of the events contained in the complaint of that lawsuit, supported by more than 100 exhibits.

What you should know about "Phase 11"**Background**

In late 2009, the Town of Mount Pleasant initiated an amendment (the Amendment) to the I'On Planned Development Ordinance. The Amendment was presented to the citizens of Mt. Pleasant as a routine process to "*confirm what has been built on the ground*". That was not its true purpose. In fact, nothing in the Amendment is what it seemed. Every part of it was intended give the color of law to a host of violations of the I'On PD Ordinance.

To understand the actual purpose of the Amendment, it helps to know what the law requires for amendment of a zoning ordinance such as the I'On Planned Development Ordinance (the I'On PD Ordinance).

The South Carolina Comprehensive Planning Act (Title 6, Chapter 29, SC Code of Laws) and the Mt. Pleasant Zoning Code (§156.031 Mt. Pleasant Land Use Regulations) require that changes to zoning ordinances - including changes to a planned development ordinance - are subject to public notice and public hearings at the local planning commission before the change takes place.

The I'On PD Ordinance provided for a maximum of 759 lots over the 243 acres of I'On. The I'On Technical Plan illustrated those 759 lots covering the entirety of the property designated for residential development. The 1997 I'On Technical Plan (the term was later changed to "sketch plan") was produced by the I'On Company, not the Town. It was a legal requirement to achieve planned development zoning. The I'On Technical Plan was adopted by the I'On PD Ordinance. As with the I'On Code, the I'On Technical Plan was subject to enforcement by the Town.

Mr. Swails made a motion authorize the transfer of this parcel to Mount Pleasant Waterworks; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Swails stated the next item was a recommendation to accept a cash payment in-lieu of property donation. The Market at Oakland had previously committed to the donation of a parcel of property for community use and is requesting the Town accept a \$250,000 payment in-lieu of the promised property. The Committee reviewed the request and recommends acceptance of the \$250,000 instead of property.

Mr. Swails made a motion to accept the offer of \$250,000 and further, that the \$250,000 be earmarked for the Senior Center; seconded by Mr. Gawrych.

Mr. Burdette stated in order for the Town to bring the Senior Center project in under budget the Town cut about \$90,000 of various improvements that staff did not feel were absolutely essential to the operation of the project. As Mr. Summerford suggested in his correspondence this could offer an opportunity to put those items back into the budget. Mr. Burdette stated staff will need to know relatively soon if Council wished to do that because there is a contract to start building the center.

Ms. Stokes-Marshall asked if there was any reason why that determination could not be made during this time.

Mayor Hallman indicated a motion would be needed.

Mayor Hallman called for the vote. *All present were in favor.*

Ms. Stokes-Marshall made a motion to appropriate the \$250,000 to replace the items that were removed from the Senior Citizen Center because of the insufficient revenue and that the additional \$155,000 be used toward the furnishing; seconded by Mr. Santos.

Ms. Stokes-Marshall stated staff has been working very hard to put together the sponsorship program for the Senior Center. She stated she does not want Council to disregard those efforts and cast aside that sponsorship program. She stated she feels the program is very good and would allow other entities and businesses to become involved in the center and support the need for it.

Mayor Hallman called for the vote. *All present were in favor.*

Fire Committee – Mr. Ken Glasson

No report.

Personnel Committee – Mr. Kruger Smith

Mr. Smith indicated that the Committee annually reviews the Town's Health Insurance Benefit Program. In preparation for marketing our reinsurance coverage for the next plan year and providing information to our employees for re-enrollment or "open enrollment," the Committee has worked with staff and our consultant to evaluate our program. The Committee received information regarding a need to increase our health insurance premiums by 9.8% for the upcoming plan year, and while the Committee does recommend increasing the overall plan premium by 9.8% it further recommends that the determination regarding how much of the premium increase will be paid by employees be deferred and taken up during the budget process in March or April. In addition, the Committee recommends the following benefit changes to our Health Plan effective February 1, 2008:

1. Move the Plan Year from February 1st to a July 1st start.
2. Lower the generic drug co-pay from \$8 to \$5 and increase the co-pay for preferred brand name drugs that have generic alternatives from \$35 to \$60.
3. Increase the Flexible Spending Account maximum to \$2,000 from \$1,500.
4. Eliminate the \$10 annual membership to the Town Gym.
5. Review market options for Long Term Disability carrier and move from a pre-tax mandatory benefit to a post-tax voluntary benefit.
6. Increase COBRA premiums to bring in line with industry standard of 102% of premium.

Mr. Smith moved that Council approve the above recommendations of the Committee as stated; seconded by Mr. Gawrych.

Mr. Burdette added the Flex account and the Long-term disability are both costs to employees only; the Town does not contribute to either one of those.

Mayor Hallman called for the vote. *All present were in favor.*

Mr. Smith reported in other business. The Committee received a detailed presentation regarding strategy and an implementation schedule for the Town's Wellness Program. Members of the Town's Employee Wellness Committee were introduced and estimated Health Plan savings of \$3,472,622 over a seven year period due to wellness program were discussed. A Wellness Program information sheet has been included in Council's agenda packet. The Committee declined to make recommendations to Council regarding two requests to name facilities, preferring instead to place the naming requests before the full Council for consideration.

Lastly, the Committee received a finding from the Employee Grievance Committee and has forwarded the finding to the Council in accordance with the Town's personnel policy.

Planning Committee – Ms. Thomasena Stokes-Marshall

Ms. Stokes-Marshall reported there are 460 single-family permits remaining for the year. Council will continue to accept applications for fourth quarter permits until October 31st. In addition there are a total of 433 multi-family and townhouse permits remaining through 2010. Twenty-two low income permits have been allocated so far this year. Ms. Stokes-Marshall added the Committee directed staff to study the possibility of suspending the building permit allocation program and to discuss such with the Town Attorney. This matter will be reviewed by staff for the Committee as part of the annual review of the program in December.

The Committee discussed the preliminary recommendations provided by the Workforce Housing Advisory Committee. The Committee directed staff to analyze the recommendations and provide feed back for discussions at the November Planning Committee meetings. The Committee discussed that the Workforce Housing Committee

create a model program for workforce housing to include a component for Workforce Housing specifically for Town employees.

Ms. Stokes-Marshall added the fourth item was discussion of naming Hungryneck Boulevard Phase II. Staff recommended that Council determine a new name for Phase II of Hungryneck Boulevard for emergency 911 purposes. Staff will ask Council to submit suggestions and pass those along to the Personnel Committee for consideration.

Police, Legal & Judicial Committee – Mayor Harry Hallman

No Report

Public Services Committee – Mr. Kruger Smith

Mr. Smith reported staff introduced a new NPDES coordinator to the Committee. Mr. Richard Chinnis comes to the Town with a wealth of experience in this field. Also, staff recognized employees for years of service and provided the Committee with general information concerning the ongoing discussion of a garbage transfer station. Staff informed the Committee that there is funding in the current budget to research the operational aspects of a transfer station. The Committee authorized staff to contract with an engineering firm to research time management issues and compile cost estimates relative to taking garbage to the Bees Ferry Landfill instead of the incinerator. The staff was directed to report back to the Committee with studies to follow.

Recreation Committee – Mr. Gary Santos

Mr. Santos stated that the Recreation Committee did not meet; however he did have a report. On Saturday, September 22nd there were two swim meets held at the Park West pool. The first meet was a developmental swim meet with 120 swimmers, the second meet was the high school region 7AAAAA hosted by Wando. There were seven high schools present with approximately 125 swimmers. The Tennis Extravaganza was held on October 6th at the Mugsy Kerry Tennis center on Whipple Road. Games and skills were set up on various courts. The Fire Department cooked hotdogs and hamburgers for approximately 75 participants. There were six adult teams with a total of 96 participants at the kickoff for the kickball season. The Lowcountry Baseball league

began September 17th with 15 total teams from Mount Pleasant. **ROA Page 589**
50 teams versus 8 teams in 1999. The Diamond Warriors hosted the USSSA Tournament
on September 14-16. The Lowcountry Volleyball league is underway with 41 teams.
The Town hosted the Half Rubber World Series on September 22nd.

Mr. Gawrych stated he has been to games at the new gym at Park West several
times and wanted to commend staff stating it is an outstanding facility.

Transportation Committee – Mayor Harry Hallman

Mr. Burdette indicated the first item was a request for consideration of an impact
fee credit for Laurel Road. He noted Council has to approve any impact fee credit
requests. The Town's transportation plan calls for a parallel frontage road to US
Highway from approximately Highway 41 to Park West Boulevard. Portions of this
frontage road have been constructed by commercial entrance on a previously dedicated
right of way in front of Ivy Hall Subdivision. Additionally, this road way has been
identified as an impact fee eligible project. As a result Palmetto Heritage Bank has
proposed to construct another segment of this frontage road and receive a credit on their
transportation impact fee for doing so. The Committee agreed with the request and has
recommended to Town Council that they approve the impact fee credit.

*Mr. Santos moved for approval; seconded by Ms. Stokes-Marshall. All present
were in favor.*

Mr. Burdette indicated there was a request for approval to authorize staff to
continue the Laurel Road frontage system design. This involves approximately one half
miles of roadway and only two land owners which are Laurel Hill and First Baptist
Church. The Committee agreed this would be a good time to pursue the frontage road
system and they recommended that Council authorize staff to begin that design.

*Mr. Gawrych moved for approval as stated by the administrator; seconded by Ms.
Stokes-Marshall. All present were in favor.*

Mr. Burdette gave a brief report regarding the proposed SC Highway 41 Bridge
Replacement over the Wando River. He stated that Council took a position early on that

in order to protect the water quality of the upper reaches of the Wando, which is one of the most pristine in the state of South Carolina, that everyone try to hold the bridge to somewhere in the 20-25 foot range because it would minimize the interest of marina construction in that area in the future. That was agreed upon by Berkeley County Council as well and was forwarded to SCDOT. Mr. Burdette added in the last week the Town received a letter from SCDOT, which was after Mayor Hallman had written several times to SCDOT asking about the status of the Highway 41 bridge project. SCDOT has now proposed advancing the project with a proposed 35 foot vertical clearance. SCDOT feels this compromise will allow the project to move forward to final design and also feels funding will be available to construct the project in the very near future and have asked for Town Council's concurrence on this project. Mr. Burdette stated one suggestion he thought might be worth considering is doing a survey with all the citizens of Mount Pleasant who live in the Highway 41 corridor and north of Highway 41 regarding the position of 25 feet versus 35 feet. Mr. Burdette stated his guess would be that the Town will have a great deal of support from the public about trying to maintain the quality of the upper Wando River. Mr. Burdette indicated that it may be time to enlist the assistance of the Coastal Conservation League. He stated that it appears that SCDOT is going to "put up a white flag" to the Coastguard. The Coastguard is concerned about three or four sailboats that are currently docked up the Wando River and stated that he was not sure exactly how many of those boats are operable. He stated that he feels SCDOT is concerned that if they build a low span bridge they may find there will be some legal action from those boats owners. Mr. Burdette stated this was being brought to Council for information and there is no timeframe set for the Town to get back with SCDOT but he feels they would probably like a response sooner than later. He stated SCDOT is asking for the Town Council to change their position.

Mr. Santos stated he is against the Town changing their position and feels the Town should proceed with what was stated earlier.

Mr. Gawrych stated this project has been talked about for six years and Town Council has been clear as a group about the height of that bridge. Mr. Gawrych stated that it would be worth the legal issues to put the bridge at 25 feet.

Ms. Stokes-Marshall asked if the letter from SCDOT indicated that they wanted to go to 35 feet.

Mr. Burdette stated that is what SCDOT is proposing and SCDOT is trying to find a compromise. The Coastguard has made it clear that they are not going to sign off on a project that is less than 55 feet. Mr. Burdette stated he does not think it is within SCDOT's perceived purview to worry about the water quality of the Wando River. They are worried about building roads and bridges and are trying to move the project forward. Mr. Burdette stated they are trying to find out where the Town stands and if the Town decides they are holding firm at 25 feet then they will send it back to the Coastguard. Mr. Burdette stated the end result may very well be that a bridge is not constructed.

Mr. Smith made a motion for Mayor Hallman to write another letter to SCDOT and tell them that the Town's position is unchanged and the Council unanimously supports maintaining the 25 feet height; seconded by Mr. Gawrych. All present were in favor.

Mr. Burdette asked if Council had any issues with staff working up a plan to do a survey of citizens in that area to get some grass root support and contact some environmental organizations to enlist their assistance.

Mr. Santos stated the former local Coastguard Sector Commander agreed with the Town on the 25 feet recommendation.

Mr. Gawrych stated if by way of the action taken earlier regarding the TIF funds does that approve the \$3 million to be applied to US Highway 17.

Mr. Burdette responded in the affirmative.

Mr. Gawrych stated he has had some very positive discussions with Mr. McKeown and Mr. Schweers members of Charleston County Council, and they have a full understanding of what the Town would like to do and how they can help. He added they

will be meeting this month with their full Council to discuss more funding that is available through the half cent sales tax and the strategy is that they are looking at a half million dollars a year for six years, which would total \$3 million to be applied to US 17 North which would take us in the \$12 million range.

Waterworks Commission – Mr. Billy Swails

No report.

Water Supply Committee – Mr. Billy Swails

No report.

ADMINISTRATOR'S REPORT – Mr. Burdette

Mr. Burdette announced the following vacancies:

ATAC – seat #7 “Hospitality” 2 year term expires 11/07

Pride Committee, seat #1 – a 4 year term which expired September 2007.

NEW BUSINESS – Council

Mr. Burdette indicated the first item was consideration of an ordinance to amend paragraph B of Section 138.12 of Chapter 138 of the Mount Pleasant Code of Ordinances, pertaining to *deleting the \$100 waiver filing fee requirement* (Ord. 07073).

Mr. Santos moved for approval; seconded by Mr. Santos. All present were in favor. Mr. Burdette read *FIRST READING BY TITLE ONLY.*

Mr. Burdette indicated that according to Police Chief Sewell, the Town has had no violations of the ordinance thus far.

Mr. Burdette indicated that the second item was a recommendation for approval to rename East Lansing to “Walter Miller Street”. He stated this was a very short section of Lansing Drive and was recommended by Mr. Swails. Mr. Burdette stated this is a state street so it would have to be cleared by the state.

Mr. Swails made a motion to approve the renaming of East Lansing to “Walter Miller Street”; seconded by Mr. Gawrych. All present were in favor.

Mr. Burdette stated that there are approximately three addresses that would need to be changed.

Mr. Burdette indicated that the next item was a motion to rescind/repeal the ordinance moving the municipal election from September 2008 until November 2009. Mr. Burdette stated Mr. Bustos asked that this item be placed on the agenda and indicated that there were five individuals signed in to speak on this matter.

Ms. Pat Endel – 969 Casseque Province – stated she is in favor of moving the election as long as it is an odd year so that local issues are not competing with state and federal issues. She stated that holding the elections on the first Tuesday after the first Monday in November gives people a consistency and believes this is absolutely something that must be decided by referendum. Ms. Endel stated she believes that citizens have the right to be heard on this issue. Citizens vote for specific candidates and they vote for specific terms of services. She stated the Town Council should not unilaterally extend their terms even if it is done for the right reason. She stated the constitution allows every eligible citizen the right to know who they are voting for and how long they will serve. Ms. Endel stated she does believe the Town is doing the right thing the wrong way. She stated that what she thinks is not important and what Town Council thinks should not be important either; but what the voters and citizens of the Town of Mount Pleasant think is what should be important. Ms. Endel stated she would strongly recommend that Council follow Mayor Summey's lead and where they have achieved exactly what the Town is trying to achieve; having a referendum, and not unilaterally and arbitrarily extending terms of office. She asked that Council allow the voters of Mount Pleasant to determine how long their elected officials should serve.

Marilyn Bowers – Executive Director for Board of Elections and Voter Registration of Charleston County – stated she wanted to provide some updated facts. She stated if Town Council rescinds and goes back to September of the even year the voters in Mount Pleasant will be asked to vote in January, in June, possibly twice, in September and then again in November. She added if Council decides to stay with the 2009 November date, the Town will join Awendaw, Charleston, Isle of Palms, McClellanville, North Charleston, Ravenel and Seabrook Island - voting one day in

November. She stated Pickens County extended their terms in 1999 and their turn out increased from 2001 with 11% to 25% in the 2005 elections. The longest terms extended were from April of the even year to November of the odd year. All municipalities in Greenville County established November of the odd year prior to 1994 except for the City of Greenville; they joined the group in 1994 and the turnout ranges from 12% to 25% depending on the races. For Orangeburg County, 15 of their 17 municipalities extended terms between 1995 and 1997. Their extension of terms went anywhere from one month to 18 months. Beaufort County is also in the process of making changes. Six of the eight municipalities in Horry County have moved their date with an average of 12 month extensions and the seventh is voting in December to join the group. In Lexington 12 of the 16 municipalities have moved to November of the odd year, the four others are moving in the same direction. Ms. Bowers continued review of what other municipalities have done. Ms. Bowers stated some justification for retaining the Town's dates in November is better media coverage and because municipalities who have done this love it. Ms. Bowers requested that Council continue to move forward and consider the voice that citizens have not called to complain about the ordinance as a vote of support.

Sy Rosenthal – 1146 Waterfront Drive – stated during the last year or so discussions have been held lamenting the lack of voter turn out to local elections here in Mount Pleasant as well as the adjoining communities. Being proactive and recognizing the poor turnout for elections that take place at any other time than the recognized November election date, the Town of Mount Pleasant has sought to rectify the situation by rescheduling future elections to the universally accepted November date. One election date for all elections saves voter time, public funds and most importantly increases the voter turn out and involvement. All of the above are indisputable facts. In order to reschedule all Town elections to a November date, it requires that some Council members and even the Mayoral term, be extended by an additional 15 or so months. He stated apparently there are some individuals who for some reason would rather maintain the status quo in lieu of responsive good government where a more divergent and increase

voter turn out would ensure that candidates are truly elected by the majority of the voting public, and not a hand full of supporters who turn out on mass with narrow and localized views of what the election is all about and who is their favorite son. Mr. Rosenthal stated that holding the elections during the well established November date is an end that definitely justifies the means. He stated that once all local elections have been established to a standard November election date there will be a significant increase in the voter turn out from all areas of Mount Pleasant. This means that the elected officials and any specific issues requiring voter approval will more adequately reflect what the majority of the citizens of Mount Pleasant want in their government and in its policies. He stated the November date is good government and should be left alone.

Anne Jett Owens – 1419 Diamond Boulevard – stated she is vehemently opposed to the changing of the municipal elections from September 2008 to November 2009. She stated she was appalled and dismayed at Council's audacity to extend their terms of office without the approval of the people who put them in office. She stated she has been voting for 35 years; 20 years as a poll worker. She stated she has never seen what is being proposed. Ms. Owens added this also sets a bad precedent for any other election in the future. Ms. Owens stated her suggestion is that Council holds the next election in September 2008 with the acknowledgment that the office will extend until November 2010 at which point the municipal elections will be held every two years on the even years. Holding the election along with the National, State, County and School Board is physically responsible and encourages local voter turn out. It will also be easier to employ poll workers.

Carole Bensen – 1536 Cypress Point – stated she has never heard of elected officials extending their term. She stated doing this without the consent of the citizens is a violation of her rights as a citizen. She added that she has heard a gentleman say that "the ends justify the means" and as far as her understanding of the Constitution it was written to be assured that the ends do not justify the means and that the means are as fair and equitable as the ends. Tonight began with a prayer for the soldiers who are fighting

to protect this Country and the citizen's rights. The vote to extend terms without a vote by citizens of Mount Pleasant goes against everything they are fighting for. She asked that Council investigate alternatives that will give the citizens of Mount Pleasant the right to vote and that Council honor the soldiers and citizens.

Mr. Bustos stated that he asked for this item to be put on the agenda because he wanted to make a motion to rescind the ordinance moving the municipal elections from September 2008 until November 2009. He stated that the discussion tonight has been very good and has proven the point that there are feelings out there that at least warrant a public hearing. Mr. Bustos indicated that the data provided by Ms. Bowers was never provided before. He stated that there was discussion about no public hearings, and it was mentioned that there were public meetings and committee meetings; however, if they were held at 8:30 or 10:00 a.m. -- for those who work for a living they were not able to attend. The Town put the minutes from the two meetings on the website and the only minutes were from November, 2005 and one this year in February, 2006. Mr. Bustos indicated the citizens of Mount Pleasant could not read those minutes. He added that regarding everyone who spoke this evening, they each had their own opinions, but one thing they had in common was that the citizens of Mount Pleasant deserve to have a say in what goes on with their government. Mr. Bustos read quotes written by Ms. Bennett. Mr. Bustos stated he feels there are other ideas and people who have weighed in and expressed opinions. He feels the Town should go back and look at this and make sure that what the Town is doing is based on data and giving the voters the fundamental right to participate in their government.

Mr. Bustos made a motion to rescind the ordinance that moved the municipal election from September 2008 to November 2009. Mayor Hallman indicated that the motion failed for lack of a second.

Mr. Santos stated he voted against extending the terms but does agree with what everyone has said -- it is better to move the election to 2009. He added that he does not feel anyone in attendance disagrees with that but feels the big problem is Council

extending their own terms. Mr. Santos indicated he takes issue with extending his own term because he was hired by the citizens and they are the only individuals who can extend his term. Mr. Santos stated that he contacted the Wando Community Education leaders and asked them if they would sponsor a public meeting at the new Wando High School to serve that area of town and at the old Wando High School to serve the other area of Town. He suggested moving forward with these meetings and allowing the citizens to come out and talk to Council. If the citizens are so inclined to allow Council to continue forward then Council will move on, if not then Council can come back and make motions. Mr. Santos stated that he is not ready to change and feels the citizens do need the opportunity to be heard.

Mayor Hallman stated he respects everyone's thoughts but this matter has been going on for five years. He stated that there comes a time when Council has to have enough courage to stand up and vote.

Mr. Smith stated that as far back as 1995 the SC Municipal Association approved a policy to consolidate the dates of the municipal elections all over the state. This issue was started by the State Election Commission. They asked all County Election Commissions to speak with their respective counties regarding consolidating on the second Tuesday after the first Monday in November of the odd year. He stated they chose the odd year because that is the only year they could handle all municipalities together and stated that they informed the Committee that they would not even consider operating the Town's election on an even year. The Committee has looked at every conceivable method for changing the Town's election date to meet the requirement. The SC Attorney General has issued a number of opinions clearly evidencing the fact that the only legal process for a municipality to transition to a different election date is by way of a hold over in office until the new date; thereby extending serving Council members' terms for a period of time. The SC Attorney General has also clearly stated on a number of occasions that setting elections in advance for a period other than two or four years, phasing it in, is illegal. Mr. Smith stated the Town has looked at every opportunity and

the only fair opportunity the Town could come to so that every Council members and the Mayor were treated exactly the same was to follow the procedure followed by municipalities all over the state and county. Mr. Smith stated he feels the Town did the right thing at the right time and for the right reasons and feels this will be beneficial for the citizens. Mr. Smith indicated that in the past, Council has voted to pay themselves increases and there has never been a public hearing on that.

Mayor Hallman stated he appreciates everyone's concern on the election and he did not want anyone leaving tonight thinking someone needed the extra money. Council works very hard. He added that the Town had a budget of approximately \$100 million and a public hearing was held and not one person attended that hearing.

Mr. Smith suggested for the Council members who have a true passion for this, they can resign at the end of their term to show how they feel. He stated that he did that in 1990.

Mr. Santos stated that he is aware that he does not need Council's permission to hold a public meeting. He stated that it has been done before concerning another matter. He stated that he is going to move forward with a public meeting just so he knows it is ok for him to extend his term.

Mr. Bustos indicated he appreciates Mr. Smith's remarks and stated that there are several public hearings held for the budget. He stated that he does not want anyone to think that the Town did not have public hearings on the budget which contained all pay raises for everyone. He added Council is not authorized to take a pay raise until after the election so that the voters decide who is elected to take the raise.

Mr. Gawrych questioned the legal process for changing the election.

Mr. Young indicated he has requested an opinion from the SC Attorney General for the Town of Mount Pleasant and has consistently been advised that what we call the "phase in" – in other cities, there have been elections where they have phased it in. He stated that there is a state statute 515-40 that prohibits any term to be set by a Council for other than two or four years. He added they cannot phase in from an even year to an odd

year without violating the two or four year provision. Mr. Young stated the only way for this to be done legally is the way that Town Council is doing now and the way this has been reported by Ms. Bowers. In the past numerous cities all over the state have done this and here has been no legal challenge.

Ms. Stokes-Marshall stated the only regret she has with making this change is that they did not allow for a public hearing. She does agree that the Town should have allowed input from the public.

Mr. Burdette indicated the next item is an update on ordinance change that was proposed requiring identification of developers and consultants.

Mr. Young indicated he does have some legal concerns and questions that would be helpful for him to review if Council deems this appropriate. He stated that he has some questions to move him in the right direction:

1. What type of applicant would be affected? Is this across the board for only zoning areas or does it include every area?
2. If this is just in the zoning areas does it apply to rezoning, development agreements, plat approvals and encroachment permits?
3. He stated that he was concerned about enforcement. He asked if the consultant or representative fails to provide the information will they be denied access at least to the zoning statutory process. He stated that he is very concerned about this.
4. What is the purpose of knowing all the consultants and the use of this information? Mr. Young stated that he is confused about this.

Mr. Young stated that he is concerned about due process; that everyone is entitled to access and fair process, such as statutory procedures and process involved. He added he is concerned about denying someone completely, access to a statutory process, which at this time brings about a concern of abusive process. Mr. Young stated finally he is concerned about knowing the purpose and use of this information because the Town

always has to have reasonable and rational basis for any type of regulation. Mr. Young requested some feed back on those issues.

Mayor Hallman asked if all of Council was in agreement with allowing Mr. Young more time to review this matter.

Ms. Stokes-Marshall asked if this was requiring identification of developers and consultants. Mr. Young responded in the affirmative.

Ms. Stokes-Marshall asked if this was in response to the LLC issue.

Mr. Young indicated that he is not on that track, he is just responding to the general request that Council consider some type of regulation requiring applicants to provide information about who their consultants and representatives are. He stated that this is the general question he is dealing with. Mr. Young added he would like to know the specifics and to evaluate it legally, which is the reason he would like to know the specifics. He stated that he has tried to point out some of his present concerns related to the questions asked.

Mr. Bustos stated that just as they do at the state, they have regulations that require the identifications of lobbyist. He stated that lobbyists are not required to register at the municipal level. Mr. Bustos feels the Town should identify those consultants and representatives – something that mirrors the identifications of lobbyists in Columbia and their relationship with legislators - the Town should have some system to identify and note who these consultants are.

Mr. Young stated he would check into that matter.

Mr. Burdette stated that Mr. Young is asking Council for guidance, therefore, Mr. Young could perhaps put some of his questions in writing to Council and they could respond:

Mr. Burdette indicated the next item was requested by Mr. Bustos regarding Committee Executive Session reports.

Mr. Bustos asked Council if they read Mr. Young's reply to his request. Council members responded in the affirmative.

Mr. Bustos stated he asked a question regarding the Committees that have executive sessions where some Council members do not attend all of the Committee meetings. He stated that from time to time people say it is an illegal council meeting. He suggested when these executive sessions happen since there are no minutes taken and stated that there are votes that happen, and those who did not attend that committee meeting may not be privy to some of the information that the Committee received during that executive session. Mr. Bustos stated that he asked Mr. Young what safe guards there were and Mr. Young stated that "perhaps a directive by Town Council by way of an ordinance or resolution could address a specific process/procedure on this subject and therewith ensure compliance". Mr. Bustos stated he feels it would be very easy to place somewhere in the operating rules that if a committee has an executive session that happens prior to the Council meeting that Council be filled in on those details. He stated that he does not attend all the Committee meetings, so he does not know if he has received all the information.

Mr. Bustos made a motion to request that Mr. Young review the possibility of the matter just discussed. Mayor Hallman indicated the motion failed for lack of a second.

Mr. Santos stated that the law says if there is any meeting anyone can attend, even Council members, but business cannot be conducted unless it is advertised as a Council meeting and if there is a quorum of Council. He stated that council members can attend any meeting as long as only the committee discusses the business. He stated that it is when five council members discuss the business that has been advertised as a committee meeting, which then makes it a quorum for a council meeting and becomes a violation of the FOI (Freedom of Information) Act.

Mr. Young clarified that when Mr. Santos refers to a quorum he is referring to the quorum of Council not the quorum of Committee. Mr. Santos responded in the affirmative. He stated Mr. Santos stated that is a legitimate and legal position to take and one that is supported by the Attorney General.

Ms. Stokes-Marshall stated the matter of Council members attending a Council meeting and her position has been and will always be that the Committee meeting is where one finds out what is going on. She stated if one does not attend Committee meetings they do not get the essence of the subject, the topic, the information or the dynamics between who the players are. She stated she attends all Committee meetings because she wants to know what goes on and wants to be informed so that she is capable of making an informed and intelligent decision.

Mr. Santos stated no one is arguing that, it is when a member is not on that particular Committee and they attend and constitute a quorum when asking questions and participating, that is illegal. A Council member being in the audience and listening to what is going is not a violation of the Freedom of Information Act. A Council member getting involved and contributing to the business creates a quorum if they are the fifth person and that is a violation of the FOI.

Ms. Stokes-Marshall asked Mr. Santos if she attended a committee meeting and there are four, five or six others in attendance and she has a question about something that she does not understand -- because she is not a member of that Committee she is not suppose to interact or ask questions.

Mayor Hallman indicated this item is not on the agenda and should not be discussed.

Mr. Bustos stated he understands what Mr. Santos is saying but he is not talking about during the normal conduct of the Committee meeting where everyone can physically see five or more members of Council in attendance. He stated that what he is referring to is when the door is closed and everyone leaves and committee members are in executive session; four people are in attendance and they discuss something, and at the Council meeting when the other five are present -- they were never told about what was discussed in executive session. He stated that those four council members have a better understanding of the topic than the other five because they were privy to information that

the others were not. Mr. Bustos stated that what he is saying is to ask Mr. Young to come up with a mechanism to inform all other Council members.

Mayor Hallman reiterated the motion failed for lack of a second.

Mr. Bustos stated he feels it would be good to have everyone on the same page.

Mr. Swails stated he now understands what Mr. Bustos was asking for and agrees. He stated that he attends all the meetings so he also attends the executive sessions.

Mr. Gawrych suggested he understands what Mr. Bustos is saying as well but he cannot think of one time in all of his years of serving on Council where something was discussed at the Committee level in executive session that required an action and was not brought to full Council and discussed in executive session. He suggested Mr. Bustos is correct, a committee may have discussed something in executive session but it did not warrant an action item outside of that committee, so that part is not being shared with full Council. Mr. Gawrych indicated that anything Council votes on that is an action item from the Committee comes to Council in executive session, if it was an executive session item at the Committee level.

Mr. Bustos stated that lastly – and Mr. Young has reviewed this several times – but the authority of committees and each year this must be reviewed, which is re-stated in the memorandum from Mr. Young.

Mr. Burdette indicated the next item was appointments to Boards and Commissions.

Ms. Stokes-Marshall made a motion to appoint Ms. Cheryl Woods-Flowers to seat number two on the Planning Commission; seconded by Mr. Collins. All present were in favor.

Ms. Stokes-Marshall made a motion to appoint Mr. Clayton Taylor to seat number four on the Open Space Foundation, Mr. Arthur Pinckney to seat number eight, Theodore "Teddy" Manos to seat number nine, Frances Orsimarsi to seat number ten and Karen McNamara to seat number 11; seconded by Mr. Swails. All present were in favor.

Mr. Bustos made a motion to appoint Mr. Richard J. Curran to fill seat number seven on the Workforce Housing Advisory Committee; seconded by Ms. Stokes-Marshall. All present were in favor.

OLD BUSINESS – Council

Mr. Burdette indicated the next item was final reading of an ordinance authorizing the granting of cross access, parking and drainage easements to East Cooper Community Hospital, Inc. (Ord. 07069).

Mr. Gawrych moved for approval of final reading; seconded by Ms. Stokes-Marshall. All present were in favor. Mr. Burdette read FINAL READING BY TITLE ONLY.

With no further business to be discussed the meeting adjourned at 9:32 pm.

TOWN OF MOUNT PLEASANT
MEETING NOTICE
SPECIAL TOWN COUNCIL MEETING

Tuesday October 9, 2007

5:00 PM

Council Chambers

Municipal Complex • 100 Ann Edwards Lane • Mount Pleasant, SC

- I. Approval of TIF Priorities
- II. Presentation by Charleston County School District and Glick-Boehm regarding the new Moultrie Middle School and Farmers Market Pavilion
- III. EXECUTIVE SESSION
 - A. Legal and Contractual Matters
 - (1) Shem Creek
 - (2) Proposed project near Six Mile Road and US 17
 - B. Economic Development Prospect pertaining to property in the vicinity of Wando Business Park
 - C. Personnel Matters pertaining to:
 - (1) Town Employee Grievance Hearing
 - (2) Appointments to Boards & Commissions:
 - (a) Planning Commission
 - (b) Open Space Foundation
 - (c) Workforce Housing Advisory Committee



October 9, 2007 (Special Town Council)

**SPECIAL TOWN COUNCIL MEETING
TUESDAY, OCTOBER 9, 2007**

Mayor Hallman called the meeting to order at 5:00 p.m. In attendance were Council members Kruger Smith, Paul Gawrych, Billy Swails, Gary Santos, Thomasena Stokes-Marshall, Nick Collins and Joe Bustos. Mr. Glasson arrived at 5:10 pm.

Staff members in attendance were Mac Burdette, Allen Young, Sally Phipps, Jan Crates, Jody Peele, Chief Herb Williams, and Joel Ford.

Mr. Burdette indicated staff is requesting that Council add two items to the Special Town Council meeting agenda. He noted both items were to be added under executive session. The first item is for legal consideration regarding the Buist Lawsuit settlement and the second would be contractual matters regarding property acquisition for property in the vicinity of town hall.

Mr. Swails made a motion to amend the agenda as described by the administrator; seconded by Mr. Gawrych. All present were in favor.

Mr. Burdette indicated the first item for consideration was approval of the TIF priorities. He stated the priority list was sent to Council some time back. He indicated the priority list came from Council's rankings. Mr. Burdette indicated staff is asking for Council to consider approving this priority list. Following the approval of the list staff will take the projects, with the estimated costs, and attempt to fit them in the nine year program of "pay as you go." Mr. Burdette stated staff will have to come back to Council with the final plan and some of the projects may have to be moved around in order to make them work, as with some of the projects, the value is greater than what the Town anticipates taking in, in any given TIF year. Mr. Burdette stated that he would like to see if Council approves the priority list so that staff can come back to Council one more time with it superimposed over the nine year election that is anticipated from the TIF program.

Mr. Collins made a motion to proceed as described by the Town Administrator; seconded by Mr. Smith.

Mr. Bustos asked if this would be for construction only, not maintenance.

Mr. Burdette stated that TIF funding cannot be used to fund operations or maintenance. He stated that it can be used for design and construction management.

Mr. Bustos stated in building these facilities at some point there is going to be a cost to maintain them. He asked for staff to think about this and include where staff sees the maintenance money coming from.

Mr. Burdette stated that is a valid consideration. He stated staff has previously discussed with Council the cost of maintaining the Waterfront Park, which is

approximately \$200,000 a year in operations and maintenance. Mr. Burdette indicated for the projects that are going to be owned and operated by the Town there is going to be a cost.

Mayor Hallman called for the vote. All present were in favor.

Mr. Burdette indicated the next item was a presentation by Charleston County School District and architects regarding the new Moultrie Middle School and Farmers Market Pavilion. Mr. Burdette stated staff requested that this group come and make a presentation to Council tonight to give them a better idea of what the new school is going to look like. He stated he feels the public is going to be incredibly excited about this new Moultrie Middle School. Mr. Burdette indicated staff has seen, since starting with the Coleman Boulevard Committee that Moultrie Middle School is going to be the anchor for the Coleman Boulevard Redevelopment Plan. Along with that the school district is working with the Town to have a permanent Farmer's Market on that site. The market area is not only going to serve the Town of Mount Pleasant for a Farmer's Market but it is also going to be an outdoor teaching laboratory for the children at Moultrie Middle. Mr. Burdette stated this is one more example of how the Town of Mount Pleasant and Charleston County School District should be considered a model for cooperation. Mr. Burdette introduced Mr. Bill Lewis of the CCSD, Mr. Rick Holt from Southern Management, Mr. Myles Glick.

Mr. Bill Lewis also introduced Andrew Wilson, Ed Strack and Larry Jordan. He thanked Council for this opportunity. Mr. Lewis stated the CCSD and Southern Management provided Council with a handout of the presentation. Mr. John Sullivan, project architect, reviewed a detailed presentation with the Council. He discussed the details of the new Moultrie Middle as well as the Farmers Market site.

Mr. Burdette stated the Town would like to try to control the entry points for the Farmers Market. He noted no matter how much parking is provided in the rear people are going to park across the street. He stated the Town would like to encourage those individuals to use the cross walks that will be put in as part of the Coleman Boulevard Redevelopment Plan. He stated the plan is to have something like a simulated rod iron fence along the front that will have certain entry points so people cannot enter where ever they would like. He added the fence can also serve when the children are using that area during breaks. Mr. Burdette stated the Town is going to be heavily involved in the entry points along the street area.

Mr. Gawrych asked when the School District intended to have children in the building.

Mr. Lewis stated the goal is for August 2009.

Mr. Gawrych asked if there were any plan for a new district office.

Mr. Lewis indicated currently there are no plans; however added that once this project is complete they will be looking at some master planning. He stated a

great deal has to do with where the revenue for that will come from.

Mayor Hallman asked if there were any additional questions.

Mr. Burdette stated staff feels this is going to be a wonderful anchor for Coleman Boulevard.

Mr. Burdette indicated that the next few items on the agenda needed to be discussed in executive session. He noted those items were legal matters pertaining to the Buist lawsuit, contractual matters pertaining to property acquisition in the vicinity of Town Hall, legal and contractual matters concerning Shem Creek property, a proposed project near Six Mile Road and US 17, an economic development prospect and some personnel matters pertaining to a employee grievance and appointments to Boards and Commissions.

Ms. Stokes-Marshall made a motion to adjourn into executive session for the reasons as stated by the Administrator; seconded by Mr. Gawrych.

Mr. Young stated that by way of clarification for the record, that Item III.A.1, Shem Creek, just to clarify that it is property – Shem Creek property.

Mayor Hallman called for the vote. All present were in favor.

The meeting adjourned into executive session at 5:35 pm.

The meeting reconvened at 6:35 pm. Note: Mr. Glasson departed Executive Session at 6:25 pm.

Mayor Hallman indicated no votes or action was taken during executive session.

Mr. Swails made a motion to authorize the Town Attorney to respond to the request to reimburse legal fees to the Town as discussed in executive session; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Gawrych made a motion to approve the letter of intent subject to legal review as discussed in executive session concerning the Thomas and Hutton building on Houston Northcutt; seconded by Mr. Swails. All present were in favor.

Mr. Bustos made a motion with regard to the Shem Creek property to authorize the Town Attorney to make a final offer and if not accepted to pursue formal legal action as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

Mr. Gawrych made a motion to agree in concept to a property exchange in the vicinity of US Highway 17 and Laing with legal review and analysis of the value of properties in question; seconded by Mr. Swails.

Mr. Young stated that by way of clarification, this does not bind Council to anything; it is simply a process.

Mayor Hallman called for the vote. All present were in favor.

Mr. Collins made a motion to offer economic development incentives for the purpose of obtaining and encouraging a business in the Wando Business Park as discussed in executive session; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Smith made a motion that Council sustain the recommendation for the Town Grievance hearing and the actions of the department managers and the Town Administrator as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

With no further business to be discussed the meeting adjourned at 6:40 pm.

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THE

October 9, 2007 (Special Town Council)

**SPECIAL TOWN COUNCIL MEETING
TUESDAY, OCTOBER 9, 2007**

Mayor Hallman called the meeting to order at 5:00 p.m. In attendance were Council members Kruger Smith, Paul Gawrych, Billy Swalls, Gary Santos, Thomasena Stokes-Marshall, Nick Collins and Joe Bustos. Mr. Glasson arrived at 5:10 pm.

Staff members in attendance were Mac Burdette, Allen Young, Sally Phipps, Jan Crates, Jody Peele, Chief Herb Williams, and Joel Ford.

Mr. Burdette indicated staff is requesting that Council add two items to the Special Town Council meeting agenda. He noted both items were to be added under executive session. The first item is for legal consideration regarding the Bulst Lawsuit settlement and the second would be contractual matters regarding property acquisition for property in the vicinity of town hall.

Mr. Swails made a motion to amend the agenda as described by the administrator; seconded by Mr. Gawrych. All present were in favor.

Mr. Burdette indicated the first item for consideration was approval of the TIF priorities. He stated the priority list was sent to Council some time back. He indicated the priority list came from Council's rankings. Mr. Burdette indicated staff is asking for Council to consider approving this priority list. Following the approval of the list staff will take the projects, with the estimated costs, and attempt to fit them in the nine year program of "pay as you go." Mr. Burdette stated staff will have to come back to Council with the final plan and some of the projects may have to be moved around in order to make them work, as with some of the projects, the value is greater than what the Town anticipates taking in, in any given TIF year. Mr. Burdette stated that he would like to see if Council approves the priority list so that staff can come back to Council one more time with it superimposed over the nine year election that is anticipated from the TIF program.

Mr. Collins made a motion to proceed as described by the Town Administrator; seconded by Mr. Smith.

Mr. Bustos asked if this would be for construction only, not maintenance.

Mr. Burdette stated that TIF funding cannot be used to fund operations or maintenance. He stated that it can be used for design and construction management.

Mr. Bustos stated in building these facilities at some point there is going to be a cost to maintain them. He asked for staff to think about this and include where staff sees the maintenance money coming from.

Mr. Burdette stated that is a valid consideration. He stated staff has previously discussed with Council the cost of maintaining the Waterfront Park, which is approximately \$200,000 a year in operations and maintenance. Mr. Burdette indicated for the projects that are going to be owned and operated by the Town there is going to be a cost.

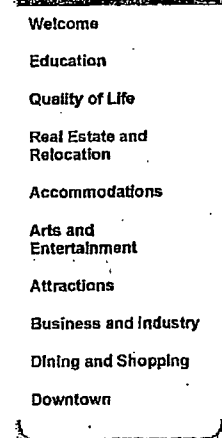
Mayor Hallman called for the vote. All present were in favor.

Mr. Burdette indicated the next item was a presentation by Charleston County School District and architects regarding the new Moultrie Middle School and Farmers Market Pavillion. Mr. Burdette stated staff requested that this group come and make a presentation to Council tonight to give them a better idea of what the new school is going to look like. He stated he feels the public is going to be incredibly excited about this new Moultrie Middle School. Mr. Burdette indicated staff has seen, since starting with the Coleman Boulevard Committee that Moultrie Middle School is going to be the anchor for the Coleman Boulevard Redevelopment Plan. Along with that the school district is working with the Town to have a permanent Farmer's Market on that site. The market area is not only going to serve the Town of Mount Pleasant for a Farmer's Market but it is also going to be an outdoor teaching laboratory for the children at Moultrie Middle. Mr. Burdette stated this is one more example of how the Town of Mount Pleasant and Charleston County School District should be considered a model for cooperation. Mr. Burdette introduced Mr. Bill Lewis of the CCSD, Mr. Rick Holt from Southern Management, Mr. Myles Glick.

- Committees of Council
- ➤ Annexation
- ➤ Bids and Purchases
- ➤ Budget
- ➤ Economic Development
- ➤ Finance
- ➤ Fire
- ➤ Personnel

- COMMITTEES AT A GLANCE!
- FMAB, 1/18
- Planning Commission, 1/19
- DRB, 1/26 (no meeting)
- BOZA, 1/31

- Planning Commission
- Historical Commission
- Board of Zoning Appeals
- Constr. Board of Adjustments
- Design Review Board
- Old Village Historic District
- Accommodations Tax Advisory
- Pride Committee



Welcome

Education

Quality of Life

Real Estate and Relocation

Accommodations

Arts and Entertainment

Attractions

Business and Industry

Dining and Shopping

Downtown

Mr. Bill Lewis also introduced Andrew Wilson, Ed Strack and Larry Jordan. He thanked Council for this opportunity. Mr. Lewis stated the CCSD and Southern Management provided Council with a handout of the presentation. Mr. John Sullivan, project architect, reviewed a detailed presentation with the Council. He discussed the details of the new Moultrie Middle as well as the Farmers Market site.

Mr. Burdette stated the Town would like to try to control the entry points for the Farmers Market. He noted no matter how much parking is provided in the rear people are going to park across the street. He stated the Town would like to encourage those individuals to use the cross walks that will be put in as part of the Coleman Boulevard Redevelopment Plan. He stated the plan is to have something like a simulated rod iron fence along the front that will have certain entry points so people cannot enter where ever they would like. He added the fence can also serve when the children are using that area during breaks. Mr. Burdette stated the Town is going to be heavily involved in the entry points along the street area.

Mr. Gawrych asked when the School District intended to have children in the building.

Mr. Lewis stated the goal is for August 2009.

Mr. Gawrych asked if there were any plan for a new district office.

Mr. Lewis indicated currently there are no plans; however added that once this project is complete they will be looking at some master planning. He stated a great deal has to do with where the revenue for that will come from.

Mayor Hallman asked if there were any additional questions.

Mr. Burdette stated staff feels this is going to be a wonderful anchor for Coleman Boulevard.

Mr. Burdette indicated that the next few items on the agenda needed to be discussed in executive session. He noted those items were legal matters pertaining to the Bulst lawsuit, contractual matters pertaining to property acquisition in the vicinity of Town Hall, legal and contractual matters concerning Shem Creek property, a proposed project near Six Mile Road and US 17, an economic development prospect and some personnel matters pertaining to a employee grievance and appointments to Boards and Commissions.

Ms. Stokes-Marshall made a motion to adjourn into executive session for the reasons as stated by the Administrator; seconded by Mr. Gawrych.

Mr. Young stated that by way of clarification for the record, that Item III.A.1, Shem Creek, just to clarify that it is property - Shem Creek property.

Mayor Hallman called for the vote. All present were in favor.

The meeting adjourned into executive session at 5:35 pm.

The meeting reconvened at 6:35 pm. Note: Mr. Glasson departed Executive Session at 6:25 pm.

Mayor Hallman indicated no votes or action was taken during executive session.

Mr. Swails made a motion to authorize the Town Attorney to respond to the request to reimburse legal fees to the Town as discussed in executive session; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Gawrych made a motion to approve the letter of Intent subject to legal review as discussed in executive session concerning the Thomas and Hutton building on Houston Northcull; seconded by Mr. Swails. All present were in favor.

Mr. Bustos made a motion with regard to the Shem Creek property to authorize the Town Attorney to make a final offer and if not accepted to pursue formal legal action as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

Mr. Gawrych made a motion to agree in concept to a property exchange in the vicinity of US Highway 17 and Laing with legal review and analysis of the value of properties in question; seconded by Mr. Swails.

Mr. Young stated that by way of clarification, this does not bind Council to anything; it is simply a process.

Mayor Hallman called for the vote. All present were in favor.

Mr. Collins made a motion to offer economic development incentives for the purpose of obtaining and encouraging a business in the Wando Business Park as

discussed in executive session; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Smith made a motion that Council sustain the recommendation for the Town Grievance hearing and the actions of the department managers and the Town Administrator as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

With no further business to be discussed the meeting adjourned at 6:40 pm.

More Minutes

[December 5, 2007 \(Special Meeting\) • More>>](#)
[November 16, 2007 \(Special Meeting\) • More>>](#)
[November 13, 2007 \(Special Meeting\) • More>>](#)
[NOVEMBER 13, 2007 • More>>](#)
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[September 5, 2007 \(Special Meeting\) • More>>](#)
[August 20, 2007 • More>>](#)

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TOWN OF MOUNT PLEASANT
MEETING NOTICE
SPECIAL TOWN COUNCIL MEETING

Tuesday August 14, 2007

5:30 PM

Council Chambers

Municipal Complex · 100 Ann Edwards Lane · Mount Pleasant, SC

I. EXECUTIVE SESSION

A. Legal and Contractual Matters

1. Property Acquisition
2. SCE&G Right-of Way

B. Legal Advice regarding pending cases

C. Personnel Matters

1. Duties of Town Administrator, Legal Counsel and Board & Commissions
2. Appointments to Boards & Commissions
 - (a) Commercial Development Design Review Board
 - (b) Open Space Foundation



August 14, 2007 (Special Meeting)

**SPECIAL TOWN COUNCIL MEETING
TUESDAY, AUGUST 14, 2007**

Mayor Hallman called the meeting to order at 5:30 p.m. In attendance were Council members Kruger Smith, Joe Bustos, Paul Gawrych, Thomasena Stokes-Marshall, Billy Swails, Gary Santos, Nick Collins and Ken Glasson. Staff members in attendance were Mac Burdette, Eric DeMoura, Allen Young, Charlie Potts, Levica Kirvin, and Joel Ford.

Mr. Burdette indicated the agenda called for Council to go into executive sessions. He indicated Council would be discussing legal and contractual matters associated with property acquisition which is related to recreation leisure services associated with Shem Creek and other areas, as well as SCE&G right of way. He added Council will also receive legal advice regarding pending cases.

Mr. Young stated those cases include Save Snee Farm vs. JKM Holdings and Save Hungryneck Corridor vs. Town of Mount Pleasant. He added the remaining legal matters are regarding legal issues with possible litigation regarding Olde Park drainage issue and Dunes West Boulevard repair issues.

Mr. Burdette added that also being discussed in executive session are personnel matters regarding the duties of the Town Administrator, Legal Counsel and Board & Commissions as well as appointments to Boards & Commissions. He added staff would also like to suggest that Council add to the executive session agenda discussion with legal counsel in reference to legal representation regarding possible pending legal cases.

Mr. Young indicated that would be legal advice.

Mr. Santos made a motion to add to the agenda legal advice as described by the Town Administrator for executive session; seconded by Mr. Collins. All present were in favor.

The meeting adjourned into executive session 5:33 p.m.
The meeting reconvened at 7:06 p.m.

Mayor Hallman indicated no votes or action were taken during executive session.

Mr. Gawrych indicated pertaining to legal and contractual matters concerning property acquisition he would like to make a motion.

Mr. Gawrych made a motion to direct legal counsel to move forward with negotiating a piece of property as discussed in executive session; seconded by Ms. Stokes-Marshall. All present were in favor.

Ms. Stokes-Marshall made a motion to direct legal counsel to proceed with legal and contractual matters in reference to property acquisition and right of way as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

Mr. Bustos made a motion to authorize legal counsel to proceed as discussed in executive session pertaining to Dunes West Boulevard and Olde Park and to proceed with litigation if necessary; seconded by Mr. Gawrych. All present were in favor.

Mr. Young recommended the following motion relative to the item that was added to the agenda – legal advice concerning legal representation for Council members. He recommended that the motion be to authorize approval of payment for individual attorneys for Town Council members relative to current activities related their official position saving and accepting any court finding of type of illegal activity and additionally the fee statement for these attorneys to be received and reviewed by the Town Attorney and the Town Administrator through the normal process.

Mr. Collins moved for approval of the motion as recommended by legal counsel; seconded by Mr. Santos. All present were in favor. Mr. Burdette indicated all items of the special Council agenda were not completed. There still needs to be appointments to boards and commissions. He suggested Council consider recessing the special Council meeting to be reconvened at the conclusion of tonight's regular Council meetings.

Ms. Stokes-Marshall made a motion to recess; seconded by Mr. Bustos. All present were in favor.

The meeting recessed at 7:10 p.m.

Ms. Stokes-Marshall made a motion to reconvene the Special Town Council meeting; seconded by Mr. Gawrych. All present were in favor.

The Special Town Council Meeting reconvened at 8:45 pm.

Ms. Stokes-Marshall made a motion to adjourn into executive session; seconded by Mr. Swails. All present were in favor.

The special Council meeting adjourned into executive session at 8:46 pm.

The special Council meeting reconvened at 8:58 pm.

Mayor Hallman indicated no votes or action was taken.

Mr. Santos made a motion to adjourn the Special Town Council meeting; seconded by Mr. Collins. All present were in favor.

There being no further business to discuss, the special Council meeting adjourned at 8:58 pm.

Sunday January 16, 2011 1:39 PM

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Office of the Mayor

August 14, 2007 (Special Meeting)

Town Council

SPECIAL TOWN COUNCIL MEETING
TUESDAY, AUGUST 14, 2007

Departments

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Development
& TourismEmergency
Preparedness

Jobs

Online Registration

Online Stormwater
Payments

Online Auction

Water Quality

Commercial
Projects

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Town Minutes

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Town Meetings

- COMMITTEES AT A GLANCE!
- EMAB, 1/18
- Planning Commission, 1/19
- DRB, 1/26 (no meeting)
- BOZA, 1/31

Boards and Commissions

- Planning Commission
- Historical Commission
- Board of Zoning Appeals
- Constr. Board of Adjustments
- Design Review Board
- Old Village Historic District
- Accommodations Tax Advisory
- Pride Committee



Welcome

Education

Quality of Life

Real Estate and
Relocation

Accommodations

Arts and
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Attractions

Business and Industry

Dining and Shopping

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More Minutes

OCTOBER 9, 2007 - [More>>](#)
September 11, 2007 (Special Meeting) - [More>>](#)
SEPTEMBER 11, 2007 - [More>>](#)
September 5, 2007 (Special Meeting) - [More>>](#)
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AUGUST 14, 2007 - [More>>](#)
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July 18, 2007 (RETREAT) - [More>>](#)
June 19, 2007 (Special Town Council) - [More>>](#)

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From: Prentiss Findlay [mailto:pfindlay@postandcourier.com]
Sent: Saturday, December 08, 2007 12:41 PM
To: Mac Burdette
Subject: RE: FOIA

Mac

The FOIA says agendas are published at least 24 hours in advance. I can't know and the public can't know what's happening at meetings when agendas are amended during the meeting. Based on the agenda for the meeting last Wednesday, I told my editor that either 14-month term extensions or Steve Brock was the story. When I get to the meeting, I find out that Council is voting to purchase 43 acres on Shem Creek.

The FOIA doesn't say whether agendas can or can't be amended. Allen Young and Jay Bender offered different opinions, which were in the story.

The response I provided Mr. Bustos was from Managing Editor Steve Mullins, who has 30 years experience in the news business. I respect his opinion and disagree that it is balderdash.

Mac Burdette

From: Mac Burdette
Sent: Monday, December 10, 2007 10:25 AM
To: Prentiss Findlay
Subject: RE: FOIA

Prentiss,

I'll tell you why it was balderdash. The Post and Courier accused the Town of violating the FOI Act. You admit that there is no statute that prohibits Town Council from amending the agenda. You know we met the letter of the law by publishing the agenda 24 hours in advance of the meeting. Show us the statute section that states we cannot amend an agenda. As far as Mr. Bender is concerned, if a government entity said it was nighttime one minute after midnight, he would proclaim that we were wrong. He has no accountability to anyone that I know of. He can state whatever he wishes and y'all will print it as the Gospel. That's why your response, in my opinion, was balderdash. Just because you can print it doesn't mean it's right.

Strong letter to follow!

Mac Burdette



From: Billy Swails [billy.swails.cw5r@statefarm.com]
Sent: Thursday, January 18, 2007 8:59 AM
To: Mac Burdette
Cc: Joe Bustos; Paul Gawrych
Subject: FW: DRB

It's both and something needs to be done NOW.

Billy Swails, Agent
Office 843.884.5149
Fax 843.881.0091

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

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Wednesday, January 17, 2007 1:29 PM
To: B. Swails ; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; K. Glasson ; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Subject: RE: DRB

Mayor Hallman and Town Council,
I am meeting with hospital representatives very soon to discuss issues pertaining to their project. If there are staff issues, we'll deal with it. If it's DRB issues, I'll pass them on to Council

Mac

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

From: Joe Bustos [mailto:jmbustos@comcast.net]
Sent: Wednesday, January 17, 2007 9:02 AM
To: Mayor Hallman; Tommie Stokes-Marshall; Paul Gawrych; Nick Collins ; Kruger Smith ; Ken Glasson; Gary Santos; Billy Swails
Cc: Mac Burdette
Subject: DRB

I can not begin to tell you how embarrassing it is to once again hear in public the stories of how rude our DRB is to applicants. Especially, to out of town applicants who come to our town to try to do business and represent their clients. While I understand there may be differences of opinion, I can not understand rudeness. Dr. Langley gave a presentation to the 88 Club this morning and this set of circumstances came out during the question and answer period. I have known Dr. Langley since grade school and believe him completely. This is a shameful commentary for Mount Pleasant.

I know we had once looked at disbanding the DRB and having this function

done by staff. Is this still possible? I would like to ask that this topic be placed on the appropriate committee's agenda. If no committee is appropriate then please place it on the council agenda for Feb.

Joe

From: Joe Bustos [jmbustos@comcast.net]
Sent: Thursday, January 18, 2007 9:36 AM
To: Billy Swails; Mac Burdette
Cc: Paul Gawrych
Subject: Re: DRB

I think Billy is correct on this one. We need to be treating people better.

Joe

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

From: "Billy Swails" <billy.swails.cw5r@statefarm.com>
To: "Mac Burdette" <mburdette@townofmountpleasant.com>
Cc: "Joe Bustos" <jmbustos@comcast.net>; "Paul Gawrych" <pgawrych@bellsouth.net>
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*only 2
council
members
responded
to original
E-mail*

Nancy Dispenza

From: Joe Bustos [jmbustos@comcast.net]
Sent: Friday, March 02, 2007 3 16 PM
To: Mac Burdette; Paul Gawrych, Billy Swails cw5r@statefarm.com; Gary Santos; Ken Glasson, kruger.smith@comcast.net, Mayor Hallman, Nick Collins ; Thomasena Stokes-Marshall
Cc: Joel Ford; Christiane Farrell
Subject: Re. Proposed Changes to CDRB

To all,

Well, he seems to think this was initiated by staff. It was not, I initiated the request and if he wishes to call me that is fine. I still believe this is a good course to follow. Obviously his feelings are hurt but we must continue with deciding what will be best for the town overall. Unfortunately, the planning commission seems to have the same feelings that no one not even town council should have the nerve to disagree with their recommendations. C'est la vie.

Joe

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

From: Mac Burdette
To: Paul Gawrych ; Billy.Swails.cw5r@statefarm.com ; Gary Santos ; Joseph M. Bustos, Jr. ; Ken Glasson ; kruger.smith@comcast.net ; Mayor Hallman ; Nick Collins ; Thomasena Stokes-Marshall
Cc: Joel Ford ; Christiane Farrell
Sent: Friday, March 02, 2007 2:48 PM
Subject: RE: Proposed Changes to CDRB

Mayor Hallman and Town Council,

Regarding Mr. Lycke's email. First, no decision has been made by Council. Council instructed staff to put together an ordinance that, if adopted, would implement new procedures. This ordinance will go the Planning Commission and the Planning Committee and back to Council before any changes are made.
Mac

From: Paul Gawrych [mailto:pgawrych@bellsouth.net]
Sent: Friday, March 02, 2007 8:52 AM
To: Billy.Swails.cw5r@statefarm.com; Gary Santos; Glasson, Kenneth; Joseph M. Bustos, Jr.; Ken Glasson; kruger.smith@comcast.net; Mayor Hallman; Nick Collins ; Thomasena Stokes-Marshall
Cc: Mac Burdette
Subject: FW: Proposed Changes to CDRB

Morning to all:

The below is a self explanatory letter from David Lycke. "David was just appointed to the DRB recently and is the vice chair.

He called me yesterday as we know each other, with some concerns and questions concerning the pending changes to DRB. For what it is worth, he and the other DRB members were caught by surprise on the potential changes. He had some thoughts on all of it and I asked him to put it all in an email. Please find his thoughts below and he knows that I am forwarding this to all of you.

I am passing this along as information, please feel free to contact him direct if you desire.

Thanks and I hope all have a great weekend.

PSG

From: David L.Lycke [mailto:dlycke@hlainc.com]
Sent: Thursday, March 01, 2007 11:35 AM

10 23 2007

to: Paul Gawrych
Subject: Proposed Changes to CDRB

ROA Page 624

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Paul,

I was both surprised and disheartened to hear of the proposal to reconfigure the DRB as an appellant body. My surprise relates to the fact that this decision was made over three weeks ago and my fellow board members and myself only heard about it at last night's hearing. In fact, I had a message from a reporter nearly three hours prior to receiving notice of Town Council's decision.

I am disheartened because I think this is a dangerous and totally inappropriate direction for the town to take. As you know, I am a new member on this board. You are also aware, however, that as a designer and development consultant, I have been coming before the DRB since its inception. It is from this perspective, as well as being an 18 year resident of Mount Pleasant that I can speak with more experience. Simply stated, I believe that every project that I have seen go before the board has come out better than when it started, resulting in a more beautiful cohesive town image for the citizens of Mount Pleasant. Yes, I have personally experienced frustrations at times...this happens with every board that I have ever been before. However, the recent processes that have been incorporated into our DRB, such as the DRB Committee for smaller issues, consent approvals for those who follow the rules, have made this the most user friendly body of its kind in the area. I think the current make up of board members are reasonable people, with no personal agendas except that they are interested in the image and continued beauty of their town.

I think there are several obvious and fatal flaws to this proposal. First and foremost, the elimination of the DRB will remove the opportunity for public input to the design process that ultimately determines how our town looks as it continues to grow. Mount Pleasant is in the middle of several significant studies that will set the pattern of growth and ultimate image of the town. Rightly so, citizens are involved in crafting the design guidelines for both the Johnnie Dodds Blvd and Coleman Blvd corridor. Shouldn't citizens be involved in overseeing how these guidelines are carried out? I see that as a significant role of the DRB. And, as design professional and resident, that is the very reason why I volunteered to serve on the board.

Secondly, as so many of us know, perception is reality when it comes to the citizenry. By placing both the power and the burden to render design decisions solely on the staff, the perception of possible back room deals will be very real. There will be no check and balance in place under the proposed changes. I know that the board is often blamed for anything and everything associated with the approval process. However, anyone who has sat in on those meetings will realize that the board often serves as a temper to the staff's opinions. I have seen many times, as an applicant and more recently as a board member, where the board renders a "more lenient" decision than the staff may desire. Therefore, disbanding the board may actually create the opposite of the "desired" effect.

I'm sure that there would be some appeal to the staff with their new found power to render design decisions. However, I truly believe it will be as much a burden as well. In short order, every applicant will know that any undesirable decision the staff makes can be appealed to several bodies. I can assure you that these applicants will exercise that appeal process and go straight to the Zoning Administrator or who ever ends up first in line in the appeals process. I'm sure that they will be approaching Council members as well.

In conclusion, I strongly oppose the proposal to reestablish the DRB as an appellant body. The DRB has been an important component of the process that has made Mount Pleasant the desirable successful town that it is today. I believe the consequences, both real and perceived, will heavily outweigh any intended benefit to the town. I appreciate your time and consideration. Please feel free to call me to discuss this critical issue further.

Sincerely,

David L. Lycke, ASLA,
Vice Chair Mount Pleasant DRB

Vice President, Director of Landscape Architecture

HLA INC

29 Leinbach Drive, Building A
Charleston, South Carolina 29407
(843) 763.1166
(843) 763 1909 Fax
dlycke@hla-inc.com

10/23/2007

ROA Page 624

Nancy Dispenza

From: Joe Bustos [jimbustos@comcast.net]
Sent: Friday, July 20, 2007 10:18 AM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

Mac,

I believe that this, like any development plan that comes to the planning commission, cannot be held for more than the time it takes to have the public hearing and make a recommendation. I believe the rule is that if they have not acted within 30 days after the hearing it is automatically sent forward. Additionally, I believe Allen should take a look at this continuance of public hearings nonsense. I think that is a stretch of the rules that has been done for sometime. It is time to clean-up these delay tactics of some of our boards and commissions.

oe

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

From: Mac Burdette
To: Joe Bustos; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Sent: Friday, July 20, 2007 9:47 AM
Subject: RE: Proposed Design Review Changes

The only answer I can give, they can delay as long as Council allows them to.
 Mac

From: Joe Bustos [mailto:jimbustos@comcast.net]
Sent: Thursday, July 19, 2007 3:55 PM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

Mac,

Again I ask; How long can they keep sticking this in their pocket and delaying? This was a council initiative that was in response to applicants feeling they were unduly delayed. Here we see a prime example of what they mean concerning some town boards and commissions.

Joe

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

From: Mac Burdette
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Sent: Thursday, July 19, 2007 3:38 PM
Subject: Proposed Design Review Changes

Mayor Hallman and Town Council,
 The Planning Commission decided to defer action on the DRB reform proposal. There doesn't seem to be much support for our proposal by the Planning Commission.
 Mac

10/20/2007

From: Joe Bustos [jmbustos@comcast.net]
Sent: Friday, July 20, 2007 10:53 AM
To: Joel Ford; Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

I think this should be the standard for all items in front of the commission. The DRB issue needs to move on.
Joe

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

From: Joel Ford
To: Joe Bustos; Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Eric DeMoura; Christiane Farrell
Sent: Friday, July 20, 2007 10:36 AM
Subject: RE: Proposed Design Review Changes

Once the public hearing has been closed they have 30 days...if the Commission refuses to act it shall be deemed approved (Section 156.031(B)(5)).....jpf

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

From: Joe Bustos [mailto:jmbustos@comcast.net]
Sent: Friday, July 20, 2007 10:18 AM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
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Sent: Thursday, July 19, 2007 3:55 PM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

10/20/2007

From: Billy Swails [billy.swails@cw5r.statefarm.com]
Sent: Friday, July 20, 2007 10:11 AM
To: Joe Bustos, tsm111@comcast.net, Paul Gawrych, kglasson@finsvcs.com
Cc: kglasson@finsvcs.com, ncollins56@yahoo.com, Gary Santos ISS-Charleston, Mac Burdette
Subject: FW: Proposed Design Review Changes

Folks, one appointed board will not take away anything from another appointed board. That's our job. We tried but it should be on the planning committee agenda. And again, we are just hoping this speeds the process up and then if needed they can hear the appeal and not a court of law.

Billy Swails, Agent
 Office 843.884.5149
 Fax 843.881.0091

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Friday, July 20, 2007 9:47 AM
To: Joe Bustos; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: RE: Proposed Design Review Changes

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Subject: Re: Proposed Design Review Changes

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From: Mac Burdette
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Sent: Thursday, July 19, 2007 3:38 PM
Subject: Proposed Design Review Changes

Mayor Hallman and Town Council.

The Planning Commission decided to defer action on the DRB reform proposal. There doesn't seem to be much support for our proposal by the Planning Commission.

Mac

10/20/2007

TOWN OF MOUNT PLEASANT



LEGAL DEPARTMENT
100 Ann Edwards Lane
Post Office Box 745
Mount Pleasant, SC 29465

SOUTH CAROLINA

TELEPHONE
Area Code (843)
849-2020
FAX
388-1078

February 12, 2008

BY FAX (881-9362) AND MAIL

Stephen G. Brock
34 Hopetown Road
Mount Pleasant, SC 29464

RE: January 23rd Letter

Dear Steve:

I am writing in response to your January 23rd letter. While it is not my intention to address every issue raised by you, I do believe that it is appropriate for me to respond to what appears to be your principal concern.

Please know that no removal action has been initiated against you by Town Council. At the same time, however, it is true that Town Council did recently express certain concerns to you about your conduct on the Planning Commission in a letter dated November 20, 2007. As such, please recognize that Town Council is charged with an ongoing responsibility of overseeing the conduct of all of its board and commission members. In other words, the conduct of each member is continuously subject to review by Council throughout his or her term. Also, ultimately, if at any time the conduct of a board or commission member rises to the level of there being cause for removal, Town Council has the requisite authority to act.

Accordingly, I trust that this information is responsive and helpful. If there is anything further, please do not hesitate to contact me.

Most sincerely yours,

R. Allen Young
Town Attorney

RAY/pem

PLAINTIFF'S
EXHIBIT

14

TOWN OF MOUNT PLEASANT
MEETING NOTICE
SPECIAL TOWN COUNCIL MEETING

Friday November 16, 2007
12:00 PM

Council Chambers
Municipal Complex • 100 Ann Edwards Lane • Mount Pleasant, SC

I. EXECUTIVE SESSION

A. Legal Advice pertaining to OK Tire property litigation

II. Adjourn

Town of Mount Pleasant



Saturday December 08, 2007 10:31 AM

Home Site



Site Search

Office of the Mayor

November 16, 2007 (Special Meeting)

Town Council

SPECIAL TOWN COUNCIL
NOVEMBER 16, 2007

Departments

Economic

Development

Visitors Center

Emergency

Preparedness

Photo Gallery

Jobs

Online Registration

Online Auction

Water Quality

CPR on the Web

Mayor Hallman called the meeting to order at 12:00 noon. Council members in attendance were Thomasena Stokes-Marshall, Gary Santos, Nick Collins, Paul Gawrych, Ken Glasson, Billy Swails, Kruger Smith and Joe Bustos. Staff members present were Mac Burdette, Allen Young, Charlie Potts, and Joel Ford.

Mr. Burdette asked that Council amend the agenda to include personnel matters pertaining to the Clerk of Council.

Mr. Santos made a motion to amend the agenda as stated by the administrator; seconded by Mr. Collins. All present were in favor.

Mr. Bustos made a motion to amend the agenda to add personnel matters relating to the Boards and Commissions; seconded by Mr. Gawrych. All present were in favor.

Mayor Hallman indicated a motion was needed to adjourn into executive session regarding legal advice pertaining to the OK Tire property litigation and to discuss other personnel matters as mentioned.

Mr. Young clarified that this was an executive session regarding all three matters mentioned.

Mayor Hallman made a motion to adjourn into executive session; seconded by Mr. Gawrych. All present were in favor.

The meeting adjourned into executive session at 12:04 p.m.

The meeting reconvened at 12:53 p.m.

Mayor Hallman indicated no action or votes were taken during executive session.

Mr. Glasson made a motion to adjust the position requirements and compensation for the Clerk of Council as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

Mr. Bustos made a motion to reject the offer that was tendered in reference to the Shem Creek property and OK Tire Store property litigation; seconded by Mr. Swails. All present were in favor.

Mr. Bustos made a motion to authorize the attorney to prepare a letter as discussed in executive session in reference to the personnel actions regarding boards and commissions; seconded by Mr. Gawrych. All present were in favor.

The meeting adjourned at 12:55 p.m.

August 14, 2007 (Special Meeting)

**SPECIAL TOWN COUNCIL MEETING
TUESDAY, AUGUST 14, 2007**

Mayor Hallman called the meeting to order at 5:30 p.m. In attendance were Council members Kruger Smith, Joe Bustos, Paul Gawrych, Thomasena Stokes-Marshall, Billy Swails, Gary Santos, Nick Collins and Ken Glasson. Staff members in attendance were Mac Burdette, Eric DeMoura, Allen Young, Charlie Potts, Levica Kirvin, and Joel Ford.

Mr. Burdette indicated the agenda called for Council to go into executive sessions. He indicated Council would be discussing legal and contractual matters associated with property acquisition which is related to recreation leisure services associated with Shem Creek and other areas, as well as SCE&G right of way. He added Council will also receive legal advice regarding pending cases.

Mr. Young stated those cases include Save Snee Farm vs. JKM Holdings and Save Hungryneck Corridor vs. Town of Mount Pleasant. He added the remaining legal matters are regarding legal issues with possible litigation regarding Olde Park drainage issue and Dunes West Boulevard repair issues.

Mr. Burdette added that also being discussed in executive session are personnel matters regarding the duties of the Town Administrator, Legal Counsel and Board & Commissions as well as appointments to Boards & Commissions. He added staff would also like to suggest that Council add to the executive session agenda discussion with legal counsel in reference to legal representation regarding possible pending legal cases.

Mr. Young indicated that would be legal advice.

Mr. Santos made a motion to add to the agenda legal advice as described by the Town Administrator for executive session; seconded by Mr. Collins. All present were in favor.

The meeting adjourned into executive session 5:33 p.m.
The meeting reconvened at 7:06 p.m.

Mayor Hallman indicated no votes or action were taken during executive session.

Mr. Gawrych indicated pertaining to legal and contractual matters concerning property acquisition he would like to make a motion.

Mr. Gawrych made a motion to direct legal counsel to move forward with negotiating a piece of property as discussed in executive session; seconded by Ms. Stokes-Marshall. All present were in favor.

Ms. Stokes-Marshall made a motion to direct legal counsel to proceed with legal and contractual matters in reference to property acquisition and right of way as discussed in executive session; seconded by Mr. Gawrych. All present were in favor.

Mr. Bustos made a motion to authorize legal counsel to proceed as discussed in executive session pertaining to Dunes West Boulevard and Olde Park and to proceed with litigation if necessary; seconded by Mr. Gawrych. All present were in favor.

Mr. Young recommended the following motion relative to the item that was added to the agenda – legal advice concerning legal representation for Council members. He recommended that the motion be to authorize approval of payment for individual attorneys for Town Council members relative to current activities related their official position saving and accepting any court finding of type of illegal activity and additionally the fee statement for these attorneys to be received and reviewed by the Town Attorney and the Town Administrator through the normal process.



Mr. Collins moved for approval of the motion as recommended by legal counsel; seconded by Mr. Santos. All present were in favor.

Mr. Burdette indicated all items of the special Council agenda were not completed. There still needs to be appointments to boards and commissions. He suggested Council consider recessing the special Council meeting to be reconvened at the conclusion of tonight's regular Council meetings.

Ms. Stokes-Marshall made a motion to recess; seconded by Mr. Bustos. All present were in favor.

The meeting recessed at 7:10 p.m.

Ms. Stokes-Marshall made a motion to reconvene the Special Town Council meeting; seconded by Mr. Gawrych. All present were in favor.

The Special Town Council Meeting reconvened at 8:45 pm.

Ms. Stokes-Marshall made a motion to adjourn into executive session; seconded by Mr. Swails. All present were in favor.

The special Council meeting adjourned into executive session at 8:46 pm.

The special Council meeting reconvened at 8:58 pm.

Mayor Hallman indicated no votes or action was taken.

Mr. Santos made a motion to adjourn the Special Town Council meeting; seconded by Mr. Collins. All present were in favor.

There being no further business to discuss, the special Council meeting adjourned at 8:58 pm.

More Minutes

OCTOBER 9, 2007 • [More>>](#)
September 11, 2007 (Special Meeting) • [More>>](#)
SEPTEMBER 11, 2007 • [More>>](#)
September 5, 2007 (Special Meeting) • [More>>](#)
August 20, 2007 • [More>>](#)
AUGUST 14, 2007 • [More>>](#)
July 10, 2007 (Special Town Council) • [More>>](#)
JULY 10, 2007 • [More>>](#)
July 18, 2007 (RETREAT) • [More>>](#)
June 19, 2007 (Special Town Council) • [More>>](#)

TOWN OF MOUNT PLEASANT
MEETING NOTICE
SPECIAL TOWN COUNCIL MEETING

Tuesday, November 13, 2007
5:45 PM

Council Chambers
Municipal Complex • 100 Ann Edwards Lane • Mount Pleasant, SC

I. EXECUTIVE SESSION

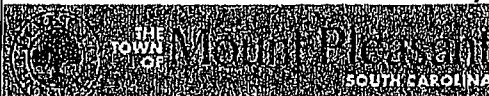
- A. Legal and Contractual Matters pertaining to properties near Shem Creek
- B. Personnel Matters – Appointments to Boards & Commissions
 - 1. Workforce Housing Advisory Committee
 - 2. Pride Committee
 - 3. Accommodations Tax Advisory Committee

SEE ADDITIONS
"C" + "D"



Saturday January 22, 2011 2:42 PM

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Site Search

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PUBLIC INFO

ANNOUNCEMENTS

CODE

FAQS

TRANSLATE

HOME

Office of the Mayor

November 13, 2007 (Special Meeting)

Town Council

SPECIAL TOWN COUNCIL MEETING
TUESDAY, NOVEMBER 13, 2007

Departments

Mayor Hallman called the meeting to order at 5:45 p.m. In attendance were Council members Kruger Smith, Gary Santos, Nick Collins, Paul Gawrych, Joe Bustos, Thomasena Stokes-Marshall, Billy Swails, and Ken Glasson.

Community
Development
& Tourism

Staff members in attendance were Mac Burdette, Eric DeMoura, Allen Young, Chief Sewell, Chief Williams, Jody Peele, Joel Ford, Charlie Potts and Sally Phipps.

Emergency
Preparedness

Mr. Burdette indicated staff would like to ask Council to go into executive session to discuss legal and contractual matters pertaining to properties near Shem Creek and to also discuss personnel matters pertaining to appointments to Boards and Commissions.

Jobs

Online Registration

Online Stormwater
Payments

Online Auction

Water Quality

Commercial
Projects

Mr. Gawrych made a motion to amend the agenda to add as item C legal advice pertaining to Ordinance 07060 pertaining to the comprehensive plan and add as item D would be legal advice pertaining to an opinion from the Attorney General concerning the Planning Commission; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Santos moved to adjourn into executive session; seconded by Mr. Gawrych. All present were in favor.

The meeting adjourned into executive session at 5:51 p.m.
The meeting reconvened at 6:55 pm.

Mayor Hallman indicated no action or votes were taken during executive session.

Mr. Gawrych made a motion to direct the Town Attorney to move forward with the discussions as discussed in executive session pertaining to a piece of property on Shem Creek; seconded by Ms. Stokes-Marshall. All present were in favor.

Mr. Bustos made a motion to authorize the Mayor and members of Council to obtain their individual attorneys for all lawsuits now and in the future with all fee statements to be reviewed by the Town Attorney; seconded by Mr. Gawrych.

Mr. Young clarified that this relates to all lawsuits related to Town business.

All present were in favor.

With no further business to be discussed the meeting adjourned at 6:56 pm.

More Minutes

January 8, 2008 (Special Meeting) - [More>>](#)
JANUARY 8, 2008 - [More>>](#)
December 17, 2007 (Special Town Council) - [More>>](#)
December 5, 2007 (Special Meeting) - [More>>](#)
November 16, 2007 (Special Meeting) - [More>>](#)
NOVEMBER 13, 2007 - [More>>](#)
October 23, 2007 (Special Town Council) - [More>>](#)
October 9, 2007 (Special Town Council) - [More>>](#)
OCTOBER 9, 2007 - [More>>](#)
September 11, 2007 (Special Meeting) - [More>>](#)

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Town Minutes

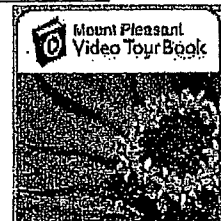
- [Committees of Council](#)
- [Annexation](#)
- [Bids and Purchases](#)
- [Budget](#)
- [Economic Development](#)
- [Finance](#)
- [Fire](#)
- [Personnel](#)

Town Meetings

- [COMMITTEES AT A GLANCE](#)
- [Planning Commission, 1/19](#)
- [DRB, 1/26 \(no meeting\)](#)
- [BOZA, 1/31](#)

Boards and Commissions

- [Planning Commission](#)
- [Historical Commission](#)
- [Board of Zoning Appeals](#)
- [Constr. Board of Adjustments](#)
- [Design Review Board](#)
- [Old Village Historic District](#)
- [Accommodations Tax Advisory](#)
- [Pride Committee](#)



- Welcome
- Education
- Quality of Life
- Real Estate and Relocation
- Accommodations
- Arts and Entertainment
- Attractions
- Business and Industry
- Dining and Shopping
- Downtown

Mac Burdette

From: Trisha Marr
Sent: Thursday, November 15, 2007 10:44 AM
To: Mayor Hallman; Mac Burdette; 'jmbustos@comcast.net'; 'ncollins56@yahoo.com'; 'pgawrych@bellsouth.net'; 'billy.swails.cw5r@statefarm.com'; 'pbs1@comcast.net'; 'santosgk@aol.com'; 'kruger.smith@comcast.net'; 'tsm111@comcast.net'; 'kglasson@hotmail.com'; 'kglasson@finsvcs.com'
Subject: Proposed Settlement Agreement - OK Tire Property Condemnation

Please be advised that a proposed Settlement Agreement was received on this date from attorney Mark Mason, relative to the pending OK Tire condemnation action. The same has been placed in your mailbox for your review.

A response by Friday, November 30th, is requested.

Allen



(MTP-FOIA, 11-5-07) 04218

TOWN OF MOUNT PLEASANT



TELEPHONE
Area Code (843)
849-2020
FAX
888-1078

LEGAL DEPARTMENT
100 Ann Edwards Lane
Post Office Box 745
Mount Pleasant, SC 29465

SOUTH CAROLINA

MEMORANDUM

TO: CHARLIE POTTS
DIRECTOR OF ADMINISTRATIVE SERVICES

FROM: R. ALLEN YOUNG
TOWN ATTORNEY

DATE: OCTOBER 3, 2007

RE: REQUEST FOR FUNDS
\$2,285,000.00
MARK MASON / OK TIRE PROPERTY

I am hereby requesting a check in the amount of \$2,285,000.00 on or before October 10, 2007 payable to the Charleston County Clerk of Court. These funds will be posted with the Clerk as part of a condemnation action to be filed relative to property known as the OK Tire Property.

If you have any questions or concerns, please do not hesitate to contact me.

RAY/pem



TOWN OF MOUNT PLEASANT
2001 TIF

1083

P.O. BOX 745
MT. PLEASANT, SC 29465

DATE 10/5/07

87-448/639 SC
2961PAY
TO THE
ORDER OF

CHARLESTON COUNTY CLERK OF COURT

\$ 2,285,000.00

TWO MILLION TWO HUNDRED EIGHTY-FIVE THOUSAND AND 00/100****

DOLLARS

Bank of America.

ACH R/T 053904483



FOR PO# 200802044

[Signature]
Jan B. Crates

⑈001083⑈ ⑆053904483⑆ 000775655560⑈

Purchase Order

Town Of Mount Pleasant

100 Ann Edwards

MT PLEASANT, SC 29464

Original

ROA Page 638

PO Number: 200802044

Issued To: 1480

CHARLESTON COUNTY CLERK OF COURT
100 BROAD STREET STE 106

CHARLESTON SC 29401

FOB : SHIPPING POINT

Date: 10/04/07

Required: 10/04/07

Ship Via: Best Method

Ship To:

Administrative Services
100 Ann Edwards LN

MT PLEASANT SC 29464

Terms: Net 30

Special Instructions: GIVE CHECK TO PAT LINDSTROM-RUSHIIIIII

Quantity UOM Asset Item Description

Unit Price

Extended

Inventory #

EA

MARK MASON/OK TIRE PROPERTY/CONDEMNATION ACTION
BE FILED RELATIVE TO PROPERTY KNOWN AS THE OK TIRE
PROPERTY

\$2,285,000.0000

\$2,285,000.00

Sub Total

\$2,285,000.00

Total Tax

\$0.00

Total

\$2,285,000.00

Account Number

Type

Account Description

Amount

303-41900-7100

E

LAND ACQUISITION

\$2,285,000.00

Total

\$2,285,000.00

(MTF-FOIA, 11-1-07) 02297

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE
MANNER REQUIRED BY THE LOCAL GOVERNMENT
BUDGET AND FISCAL CONTROL ACT.THIS DOCUMENT IS GOVERNED BY THE
PROVISIONS OF NCGS, CHAPTER 25 UNIFORM
COMMERCIAL CODE ARTICLE 2, SALES.**ROA Page 638**

**AN APPRAISAL OF TWO PARCELS OF LAND
CONSISTING OF .76 ACRES OF HIGHLAND
AND 45.52 ACRES OF MARSH AND
RELATED DOCK IMPROVEMENTS
LOCATED AT 469 COLEMAN BLVD,
AND THE NORTH SIDE OF SHEM CREEK
IN THE TOWN OF MOUNT PLEASANT,
CHARLESTON COUNTY, SOUTH CAROLINA**

AS OF

**AS IS - OCTOBER 31, 2008
AS PROPOSED - OCTOBER 31, 2009**

PREPARED FOR

**MS. JULIE HENSLEY, RLA, ASLA
DIRECTOR, PLANNING AND DEVELOPMENT
CHARLESTON COUNTY PARK AND RECREATION COMMISSION
861 RIVERLAND DRIVE
CHARLESTON S.C. 29412-3107**

BY

**G. HAMMOND BAMBERG III, SRA, MAI
ATLANTIC APPRAISALS, LLC**



Atlantic
ppraisals, LLC
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December 11, 2008

Ms. Julie Hensley, RLA, ASLA
Director, Planning and Development
Charleston County Park and Recreation Commission
861 Riverland Drive
Charleston S.C. 29412-3107

Re: An Appraisal of Two Parcels of Land Consisting of .76 Acres of Highland and 45.52 Acres of Marsh and Related Dock Improvements Located AT 469 Coleman Blvd and the North side of Shem Creek in The Town of Mount Pleasant, Charleston County S.C.

Dear Ms. Hensley:

Pursuant to your request for an appraisal of the above referenced property, I have inspected the property and researched the market for comparable market data. The purpose of this was to aid me in the preparation of the attached report as to the market value of the property "as is and as proposed" for your internal purposes, as it relates to the possible acquisition of a partial interest in the property.

The 45.52 acre marsh parcel is currently improved with old existing commercial fixed docks which have historically been utilized for Shrimp Boat and Fishing Boat dockage. These existing docks are nearing the end of their economic life and are in fair condition at best.

In order to determine whether these existing dock structures have any contributory market value, I have utilized and income analysis. An investigation of other similar dockage along Shem Creek reveals that the economic rent for these docks is in the \$4.00 to \$5.00 per linear foot per month range. Utilizing a rate of \$4.50/lf and effective length of 664 feet, an occupancy rate of 80%, and expenses of 20%, the estimated net operating income from these structures is approximately \$22,948. Comparing this figure with the estimated value of this marsh tract of \$686,000, the indicated overall rate of the income to the land value is 3.345%. Obviously, this income stream is sufficient to support only a portion of the land value. Based on this analysis, I have concluded that the existing improvements do not have any contributory value over and above the land value.

Ms. Julie Hensley

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The existing docks are considered to be an interim use, until such time, if any, that the property can be developed to a higher and better use.

The value "as proposed" reflects a proposed new dock system which will be good to very good quality, comparable to modern marinas in the area. This dock system which will have a fixed walkway accessing floating boat docks with full utilities. The actual boat dockage on Shem Creek will be approximately 1,175 feet in length. These will be wide docks which will allow access via golf type carts.

The reader should note that the appraiser was not furnished with any plans or specifications on the proposed improvements. A verbal representation of the improvements was given to the appraiser in a meeting on Friday November 7, 2008, between the appraiser, representatives of the County PRT, and Town of Mount Pleasant officials including Town Administrator Mac Burdette.

This appraisal "as proposed" is based on the "Specific Assumptions" that the proposed improvements will be similar to that described in the above referenced meeting, and that there is a reasonable understanding between the parties regarding the design and scope of the project.

After due consideration of all of the factors involved as outlined in the attached report, I am of the opinion that the market value of the subject property, "as is" as of October 31, 2008 was:

THREE MILLION THREE THOUSAND DOLLARS

(\$3,003,000)

v/ new dock

I am further of the opinion the market value of the property "as proposed" and assuming completion and a stabilized occupancy level, as of October 31, 2009, will be:

8090

FOUR MILLION ONE HUNDRED AND THIRTY EIGHT THOUSAND DOLLARS

(\$4,138,000)

I hereby certify that to the best of my knowledge and belief, the statements and opinions contained in this report are full, true and correct, and that this appraisal is subject to the attached Certification, Underlying Assumptions, and General Limiting Conditions.

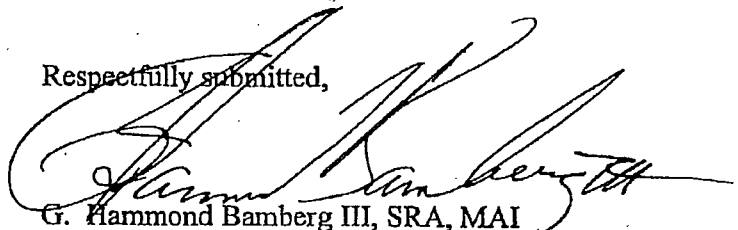
Ms. Julie Hensley

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Thank you for the opportunity of providing this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact me. Your attention is invited to the attached report which details pertinent data, reasoning and analyses used to arrive at my value conclusions.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "G. Hammond Bamberg III", is written over the typed name and title.

G. Hammond Bamberg III, SRA, MAI
State Certified General Real Estate Appraiser
Certification No. CG282

GHB

File No. 08-0469 GHB

Mac Burdette

From: Mark A. Mason [mark@masonlawfirm.com]
Sent: Thursday, December 06, 2007 11:29 AM
To: Mac Burdette
Cc: Allen Young
Subject: RE: Note from Mark

Mac and Allen,

Thank you for your kind note. Phillip and I are also glad we have settled the matter. Phillip is unavailable today and perhaps it would be best to have a ceremonial signing and handshakes on the day of the closing. We are certainly open to that. Phillip and I hope we can resume what we have always regarded as being a positive and professional relationship. After all, we are soon to be neighbors. Phillip and I are excited about seeing the Town's vision for this area come to fruition.

Best wishes,

Mark A. Mason, Esquire

THE MASON LAW FIRM, P.A.

Tidewatch Centre on Shem Creek

465 W. Coleman Boulevard, Suite 302

Mount Pleasant, South Carolina 29464

Telephone: (843) 884-1444

Direct Fax: (843) 284-6032

E-mail: mark@masonlawfirm.com <<mailto:mark@masonlawfirm.com>>

Website: www.masonlawfirm.com <<http://www.masonlawfirm.com>>

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Thursday, December 06, 2007 11:11 AM
To: Mark A. Mason
Cc: Allen Young
Subject:

Mark,

We're very pleased to have settled the matter pertaining to the purchase of property at Shem Creek. While we've certainly had our differences, we would like to make this a positive arrangement from both the Town's perspective and your perspective. To that end, would you and Mr. Smith consider coming over to Town Hall this afternoon for a ceremonial



signing, some hand shakes? Please let me know as soon as you can, either by email or phone call.

() Thank you for your consideration.

Mac

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Thursday, December 06, 2007 1:03 PM
To: Mac Burdette; 'B. Swails'; 'Billy Swails'; 'Gary Santos'; 'Joseph M. Bustos, Jr.'; 'Ken Glasson'; 'Kruger Smith'; Mayor Hallman; 'Nick Collins'; 'Thomasena Stokes-Marshall'
Cc: Allen Young
Subject: RE:

Fine with me as this gives us more time to plan a grand celebration for the whole Town to enjoy as what we did last night has not even begun to set in with any of us or the public!

PSG

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Thursday, December 06, 2007 12:26 PM
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Allen Young
Subject:

Mayor Hallman and Town Council,

Mr. Mason responded in a most positive manner. He asked that we consider a ceremony after the closing on December 18 because Mr. Smith is out of town. Mayor Hallman is OK. Are y'all? I'll check with Allen about possible time.

Mac

ELECTRONIC RECORDS MANAGEMENT GUIDELINES

E-MAIL MANAGEMENT

Summary

An electronic mail message or "e-mail" consists of a digitally stored message and any attached digital documents transferred between computer users. State and local governments use e-mail for a variety of tasks such as sending and receiving internal and external correspondence, distributing memos, circulating drafts, disseminating directives, transferring official documents, and supporting various business processes of the organization. Although few public agencies currently manage e-mail as records, both statute and case law make clear that e-mail must be included in your overall records management strategy.

E-mail documents that hold information about the day-to-day operation of state and local government must be easy to locate, those that hold information of long term or permanent value must be adequately protected, and those of transitory value must be deleted when no longer needed. Allowing e-mail to be managed by personal preference or routine systems back-ups and administrative procedures that treat all e-mail alike can result in serious legal, operational, and public relations risks. By establishing policies, applying records management procedures, and training users, you can create an environment that promotes successful management of e-mail records.

Legal Framework

For more information on the legal framework you must consider when managing e-mail, refer to *Records Management in an Electronic Environment* in the Electronic Records Management Guidelines and Appendix A6 of the *Trustworthy Information Systems Handbook*. Also review the requirements of the:

- ◆ South Carolina Public Records Act [PRA] (*Code of Laws of South Carolina, 1976*, Section 30-1-10 through 30-1-140, as amended) available at www.scstatehouse.org/code/t30c001.htm, which supports government accountability by mandating the use of retention schedules to manage records of South Carolina public entities. This law governs the management of all records created by agencies or entities supported in whole or in part by public funds in South Carolina. Section

30-1-70 establishes your responsibility to protect the records you create and to make them available for easy use. The act does not discriminate between media types. Therefore, records created or formatted electronically are covered under the act.

- ◆ South Carolina Uniform Electronic Transactions Act [UETA] (*Code of Laws of South Carolina, 1976*, Section 26-6-10 through 26-6-210), enacted in 2004, facilitates electronic commerce and electronic government services by legally placing electronic records and signatures on equal footing with their paper counterparts. UETA officially repeals the 1998 South Carolina Electronic Commerce Act (*Code of Laws of South Carolina, 1976*, Section 26-5-310 through 26-5-370). The purpose of UETA is to establish policy relating to the use of electronic communications and records in contractual transactions. This law does not require the use of electronic records and signatures but allows for them where agreed upon by all involved parties. While technology neutral, the law stipulates that all such records and signatures must remain trustworthy and accessible for later reference as required by law. Along a similar vein, the federal Electronic Signatures in Global and National Commerce (E-Sign) Act [U.S. Public Law 106-229] also encourages the use of electronic documents and signatures, although it goes further to provide some guidelines regarding standards and formats. For more information on UETA see Appendices A6 and A7 of the *Trustworthy Information Systems Handbook*.
- ◆ South Carolina Freedom of Information Act [FOIA] (*Code of Laws of South Carolina, 1976*, Section 30-4-10 through 30-4-165) supports government accountability by ensuring the right of citizens to inspect or copy public records. The establishment of fees, formal public notification, and restrictions limiting public disclosure of certain records is covered.

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Additional Legal Considerations

Within the context of these laws, you should also consider:

- ◆ *The ramifications of the Armstrong litigation.* In *Armstrong v. Executive Office of the President* (1 F.3d 1274 [DC Cir 1993]), a federal court found in favor of a group of researchers and nonprofit organizations who wanted to prevent the destruction of e-mail records created during the Reagan administration. The court determined that federal government agency e-mail messages, depending on content, are public records and that complete metadata must be captured and retained with the e-mail record. Although a federal decision, this litigation has strongly influenced government agencies at all levels. Other agencies are now paying closer attention to their e-mail records management practices, including the capture of metadata.
- ◆ *Legal discovery.* When developing your policy, balance your legal and operational requirements with the risk of being engaged in legal discovery. You must meet all government requirements for managing your e-mail records, but you should also be able to respond to discovery in an affordable, efficient, and practical way. Bear in mind that many courts have upheld discovery requests for e-mail records. For more information on the discovery of electronic records, refer to Appendix A7 of the *Trustworthy Information Systems Handbook*.
- ◆ *The Health Insurance Portability & Accountability Act of 1996 [HIPAA]* (Public Law 104-191) which establishes security and privacy standards for health information. The Act protects the confidentiality and integrity of "individually identifiable health information," past, present or future. Visit the South Carolina HIPAA website at www.hipaa.state.sc.us/ for additional information.

What is electronic mail?

E-mail is a confusing term because it can refer to both the system and the messages in the system. Furthermore, it can also be used to describe the action of sending or receiving a message. Here are some basic facts about e-mail to help clarify the process:

- ◆ E-mail is the exchange of computer stored information through a network. It relies on software applications and protocols (rules) to compose, transmit, receive, and manage e-mail messages.
- ◆ Users create and manage e-mail through e-mail accounts. Internet online services such as Yahoo

and Google provide public accounts available to anyone. Private e-mail accounts, such as a work account, are limited to employees or individuals associated with an organization.

- ◆ Software applications, called e-mail clients, are used to compose, send, receive display and manage e-mail messages. The applications may be text or graphics based. Both proprietary and open source e-mail clients are available. They include Microsoft Outlook, Lotus Notes, Thunderbird, Pine, and Eudora. Internet sites such as MSN, Yahoo, and Google also provide e-mail capability using their software applications.
- ◆ Dedicated servers, known as e-mail servers, are often used to route and store large volumes of e-mail.
- ◆ Depending on your agency's specific arrangement, e-mail servers can be housed internally in your agency and managed by your IT staff or housed and managed by others at a separate facility.
- ◆ Transactional information is information about an e-mail message. This metadata can include the name of the sender and all recipients, the date and time the message was created and sent. It may also include information on the systems and software applications used to create and transmit the message. Transactional information may not always be visible in every application but it is a vital part of every message and steps must be taken to preserve it.

Other electronic messaging systems

In addition to e-mail, there are other electronic messaging systems available to most organizations. Two popular systems are voice mail and instant messaging. A message created and managed in these systems may also be considered a record. Therefore, organizations should review all messaging systems in use and include any records covered under the existing records retention and disposition process. Work with your records management staff to develop new schedules where needed. For additional information on retention schedules, see the guideline *Records Management in an Electronic Environment*.

Voice mail

Voice mail is a highly sophisticated, computerized system for receiving, recording, saving, and managing voice messages. Although telephone-

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based voice mail is well-established in many organizations and used for important public business, it has rarely been managed as a record.

Recent technological advances that blur the distinction between e-mail and voice mail could make it easier to capture and manage audio records. New services including those utilizing Voice over Internet Protocol (VoIP) are capable of delivering messages as audio files via e-mail. Therefore, voice mail messages saved as e-mail can be managed along with other e-mail relating to the same topic.

Instant messaging

Instant messaging (IM) is a service that permits individuals to quickly exchange electronic messages with selected others in an informal manner that mimics conversation. Instant messaging differs from ordinary e-mail in the immediacy of the message exchange that makes a continued exchange simpler than sending e-mail back and forth. Most exchanges are text-only, however, some services allow voice messaging and file sharing.

Designating e-mail as public records

Determining value and retention

The value of e-mail

Not all e-mail requires the same level of control. Although identification of e-mail records relating to the activities of public organizations will always be subjective, certain categories of records will typically be important to identify and manage. These include:

- ◆ Policies and directives
- ◆ Work schedules and assignments
- ◆ Drafts of documents circulated for approval or comment
- ◆ Any document that initiates, authorizes, or completes a business transaction
- ◆ Final reports or recommendations
- ◆ Correspondence, memos, or messages about agency or local government business
- ◆ Agendas and minutes of meetings

Declaring e-mail messages as records

Retention and disposition

Under the terms of the South Carolina Public Records Act, the South Carolina Department of Archives and History [SCDAH] administers South Carolina's program for the retention and disposition of public records. When thinking about e-mail records and retention schedules, it is important to remember that retention periods are based not on the method by which a record is created but rather

on the legal, fiscal, administrative, or historical value of the information contained in the record. The application of record retention schedules does not change because a record is received or sent electronically.

Official copies

The official copy is the record copy — the document that constitutes the record of a business transaction.

Convenience copies

Convenience copies are duplicates of the record copy and have only temporary value. They can be disposed of at any time without authorization and should never be kept longer than the record copy.

Scheduling records

You must prepare record retention schedules in accordance with the Public Records Act to retain or dispose of all official copies of e-mail records relating to government business.

Other records

Transitory and personal messages that do not support government business as well as convenience or duplicate copies of e-mail records should be deleted from personal mailboxes when no longer needed. These include copies or extracts of documents distributed or received for reference — listserv or bulletin board posts, personal messages, announcements unrelated to official business, and announcements of social events like retirement parties or holiday celebrations. These materials consume disk space, erode the efficiency of the system, and, if kept, could be subject to freedom of information requests and discoverable in legal proceedings.

Retention periods

Generally, records transmitted through e-mail systems will have the same retention periods as records in other formats. E-mail letters and memos, for example, will be retained and disposed of according to the retention periods established for various types of correspondence. Many e-mail messages will be part of a distinct record series. Those messages should be retained and disposed of according to the retention period established for that series. You should use existing schedules to manage e-mail that has direct paper counterparts.

The SCDAH has issued several general record schedules for many types of records, common to state and local government, including

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correspondence. Records having no significance beyond their initial use should be destroyed, according to an approved retention schedule, when no longer needed for reference. Keep in mind that simply deleting a message may not remove it completely from the storage media. Utility programs are available to permanently remove electronic messages and eliminate the possibility of recovery.

Consult your records management staff or the SCDAH for advice on applying general record schedules.

Responsibility for retention

You must determine who is responsible for retention of the official copy. The chart below provides examples of the most common situations.

Who is Responsible for Maintaining E-mail?	
Message sent from outside the agency:	Message sent from inside the agency:
Retained by the person who receives e-mail	Sender is responsible for maintaining if the message is complete and un-altered
Exception: If the person receiving the message is not authorized to respond to the e-mail and forwards the message to someone else, the person receiving the forwarded message is responsible for maintaining it.	Exception: If message is altered (responded to, edited, attachments added), the receiver is responsible for maintaining it. Keep in mind; if there are multiple replies between two or more people to the same message, only the final message needs to be saved PROVIDING that all of the replies are included in the final message.

For additional information about retention and disposition, refer to the guideline, *Records Management in an Electronic Environment*.

Goals for successful e-mail management

Although your agency will develop unique procedures that meet your specific operational and legal requirements, bear in mind the following goals for an e-mail record. An e-mail record should be:

- ◆ **Complete.** E-mail records should completely document the transaction. For example, you cannot save the text without the sender information. Complete e-mail records must include all of the following elements, as applicable:
 - Recipient(s)
 - Sender
 - Time sent
 - Text
 - Date sent
 - Subject lines should clearly describe the contents of the message (e.g., the subject line "Correction" is inadequate. "Correction to Tourism Board Minutes 2005March15" provides a better description).
 - Attachments should be included in full (not just indicated by file name).
 - List members e-mailed using distribution lists. If an e-mail record simply lists the group name in the recipient field, the recipients must be identifiable. For example, the distribution list "HR" (a distribution list for all the members of the human resources department) should be documented so that each member of the list is named.
- Directory of e-mail addresses and the corresponding staff member names (e.g., jado25@myorg.net is Jane Doe). This connects an e-mail address listed in an e-mail record to a person.
- ◆ **Accurate.** The contents of the e-mail record should accurately reflect the transaction.
- ◆ **Accessible.** Some e-mail records must be accessible to the public and some should not depending on the content of the record and as determined by FOIA and HIPAA. All e-mail records, like other electronic records, should be reasonably accessible for the purposes of legal discovery.
- ◆ **Manageable.** E-mail records should be easy for staff members to manage as part of the daily workflow and records management practices. Because staff members will implement and use the e-mail records management policy, procedures should be straightforward.
- ◆ **Secure.** The e-mail record should reside in a secure system that controls access, storage, retrieval, alteration, and deletion. This is particularly important in controlling access to confidential e-mail records as determined by FOIA and HIPAA. E-mail records present unique

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security concerns, because e-mail messages are:

- Easily manipulated or deleted in the system
- Easily captured and read by unintended persons
- Easily forwarded and misdirected by mistake

Information technology departments rely on backup copies of data to replace information lost due to a catastrophic event. Although essential for disaster planning, backups are not an efficient or acceptable way to consistently manage important agency e-mail records. Adoption and oversight of an appropriate and secure recordkeeping system as described in this chapter and the *Trustworthy Recordkeeping Systems Handbook* is recommended.

Developing E-mail Policy

E-mail Policy Components

You should establish policies to guide users on questions of acceptable use, the management and retention of official copies, privacy, and access. All users should understand these policies and be able to apply them. The components of an e-mail retention policy should include information on:

Acceptable use

Written policies should be established for the use of e-mail in the same way they are established for the use of the telephone, fax machine, and postal mail.

Access

Because government e-mail can be defined as a public record, e-mail policies must comply with the state's Freedom of Information Act and Public Records Act. FOIA gives the public the right to access records, but it also limits access to some information considered personal or private. Custodians of public records must make their records available for public inspection provided that the information is not exempt from disclosure as determined by FOIA and HIPAA.

Privacy

Your policy should make it clear that although you attempt to provide security, e-mail messages sent or received are not private. They may be accessed and monitored by others, may be released to the public under provisions of FOIA, and may be subject to discovery proceedings in legal actions. Because computers can store messages at multiple locations within the system, even messages a user has

deleted may be recoverable and used in a legal action.

Staff roles and responsibilities

Your policy should clearly define the roles and responsibilities that managers, network administrators, technical staff, records management staff, support staff, and users will have in the management of e-mail. It should clearly communicate whether the sender or the receiver should save e-mail records. The policy should guide staff members in determining which e-mail messages are records and outline a procedure for grouping e-mails into records series with a records retention schedule for each series.

Management and retention

Because the Public Records Act requires custodians to protect their records and to work with the SCDAH to establish retention periods, your policy should describe how and where you will maintain the official copies of your e-mail and provide for their management, protection, and retention for as long as they have administrative, legal, fiscal, or research value. For information on maintaining authentic and reliable records see the *Trustworthy Information Systems Handbook*.

Filing and maintenance

Only the official copy of those e-mail records that relate to agency or local government business functions need to be filed and maintained in a recordkeeping system. Additional copies, transitory communications, and personal messages can simply be deleted from the e-mail system when no longer needed. Include procedures for organizing, storing, maintaining, accessing, and disposing of e-mail records. Your policy should define how users are to manage their accounts including the regular removal of personal and transitory messages from their mail boxes.

Document Policy

Establish a procedure for documenting your e-mail records policy. On an on-going basis, from initial development onward, document the development of your e-mail records management policy, the policy itself, and changes to the policy. Include a description of the software and hardware in use, any training provided to staff, staff member responsibilities, and records retention schedules.

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Steps for better e-mail policy development

Use the following steps to guide you as you develop your e-mail records management policy:

1. Draft the policy and process with the input of stakeholders.
2. Allow stakeholders to review before finalizing the policy.
3. Implement the policy for staff members on a planned schedule and test the procedures.
4. Train the staff members on the new procedures. (Training is especially important because you must rely on staff members to ensure the integrity of the procedures.)
5. Document the policy.

Training for Staff Members

To ensure an effective system, you must provide user training and support. Your users should know how to identify the official copies of e-mail records. They should also know how to use the software to manage, protect, and provide access to the records. Your training and documentation should provide guidelines that staff members can follow to answer questions in the course of their work. Possible questions include:

- ◆ Is this e-mail an official record? Is this e-mail message administrative or personal (e.g., "Thursday staff meeting to start an hour late." or "Let's do lunch!")?
- ◆ Does this e-mail message have long-term or permanent significance (e.g., "New policy finalized.")? Does this e-mail message document a transaction or operations function (e.g., a process, a decision, or a discussion)?
- ◆ Is this e-mail record public or confidential as set forth by FOIA or HIPAA?
- ◆ What metadata must I capture when I save this e-mail record?
- ◆ To which records series does this e-mail record belong?
- ◆ Should I save the complete e-mail record, including attachments and group list names?
- ◆ Could this e-mail message be required as evidence in a legal action?

Preserving e-mail

You can use one of four methods to file and maintain your official copies of e-mail records:

- ◆ establish an electronic filing process
- ◆ maintain them in an electronic document management system
- ◆ print and file them in a manual system

- ◆ use a mix of manual and electronic systems and processes

Each method has its advantages and disadvantages; each requires a different degree of technical support; all require supervision and management. In making your selection, be sure that:

- ◆ it meets the needs of users
- ◆ it complies with all recordkeeping requirements.
- ◆ you have the tools, written policies and procedures
- ◆ users understand the policies and procedures, are familiar with the tools, and can apply all three consistently to all records

Option 1: Electronic filing

This method requires the establishment of an electronic filing process using a secure shared network server. The filing process should be used to collect and store related electronic records including, but not limited to, e-mail. A single employee or small group of employees should be appointed to oversee the process and system including the establishment of naming protocol and file structure. They should also be responsible for assigning access privileges to the system including delegation of privileges to add, delete or edit specific files and records. For suggestions on establishing naming conventions see the Electronic Records Management guideline *File Naming*.

Keep in mind that e-mail systems are not recordkeeping systems and messages should only be stored temporarily within an e-mail system. Retaining important e-mail within the e-mail system disconnects it from other related information and makes it susceptible to loss through regular system purges. If not immediately relocated to a separate electronic filing system, important messages should be removed from the e-mail client's "inbox" and grouped into clearly named folders using the e-mail client software. Folders should later be exported to the electronic filing system.

Advantages. You retain the ability to easily search for, retrieve, or retransmit messages electronically. You may also retain important information related to the distribution of the e-mail. Depending on the filing arrangement used, it may be an effective way to integrate similar records that are created and received in electronic form.

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Disadvantages. The process requires active participation of all e-mail users. If not consistently and accurately managed, records are difficult to locate. Unless all records are in electronic format, you will also have to coordinate filing systems for records in both paper and electronic formats. Requires the use of a separate secure shared drive controlled by a limited number of employees to protect official copies from unauthorized access and prevent storage of duplicate copies.

Option 2: Electronic Document Management System

You can store, access, and manage e-mail messages and other electronic records in an Electronic Document Management System (EDMS).

Advantages. If the EDMS is secure and properly maintained, authorized users will enjoy consistently easy access to organizational records.

Disadvantages. Agencies must invest in an Electronic Document Management System [EDMS] that includes a records management application to support both operational and recordkeeping requirements. Unless all records are in electronic format, you will also have to coordinate filing systems for records in both paper and electronic formats. To maintain an electronic system for managing e-mail and other records, you must adopt standard practices to define documents, establish directories, and develop naming conventions for files. These standards are critical to access, retrieve, and share electronic records effectively. In addition, if you maintain records with lengthy retention periods solely in electronic systems, you will need to plan for the possibility of conversion and migration as hardware and software become obsolete. Technical and financial constraints may preclude some organizations from immediately investing in electronic recordkeeping for e-mail. However, you should consider an electronic solution when you update and redesign your systems. For more information on EDMSs, see the *Electronic Document Management Systems* guideline.

Option 3: Manual system

You can print your e-mail records and file the paper copies in a manual system.

Advantages. This method is easy to implement especially if you already have a well-designed filing system. It is also an effective way to integrate records that are created and received in both paper and electronic form.

Disadvantages. You lose the ability to easily search for, retrieve, or retransmit messages electronically if you print and then delete them. You may also lose

important information related to the distribution of the e-mail. Furthermore, documents can be misfiled when users are responsible for printing, routing, and filing their own messages and this option consumes a great amount of paper and storage space. When choosing this method, you may want to print and file all information on addresses, recipients, distribution, transmission, and receipt of important e-mail documents.

Option 4: A mix of manual and electronic systems

Even when the goal is to install an electronic recordkeeping system for all records, most offices will have a transition period during which they will have to maintain records in both electronic and paper formats. When maintaining a mix of systems, you should make them as parallel as possible. Use similar file structures, naming conventions, and classifications for both systems, so the names of computer directories and subdirectories will mirror the names of your manual file cabinets, drawers, and folders.

Advantages. Records can be maintained in a way that best suits the existing recordkeeping environment and technological means of your organization.

Disadvantages. Most of the disadvantages of the other options are inherited. Multiple systems add extra complexity to implementation and can complicate records management. Furthermore, an indexing system is required to link the hardcopy and electronic materials.

Suggestions for better e-mail management

Policy

- ◆ Gather staff member input and support to ensure compliance with your e-mail management policy.
- ◆ Integrate your e-mail management policy with your overall electronic records management strategy. Review your policy and determine if you meet your legal and operational requirements.
- ◆ Determine ways to encourage staff member compliance so that policy is widely used and accepted, but causes minimal disruption to the daily operation.
- ◆ Determine the best way to train staff members. Decide how accountable staff members should be for compliance.

MORE →

South Carolina Department of Archives & History
www.state.sc.us/scdah/erg/erg.htm

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Records Management

- ◆ Decide which e-mail messages are official records.
- ◆ Consider what elements of an e-mail record are needed for a complete understanding of the transaction.
- ◆ Determine the appropriate organization for long-term storage and access of e-mail records (e.g., project, department, function) and establish the appropriate records series and records retention schedules.
- ◆ Choose a storage medium to retrieve and dispose of e-mail.
- ◆ Decide how your e-mail retention strategy will coordinate with other records management procedures and systems (e.g., store all project-related e-mail with the other project documentation). Determine how records in other formats will be indexed.
- ◆ Determine the type and amount of documentation needed for the process.

Annotated List of Resources

Primary Resources

Ginn, M.L. *Guideline for Managing E-mail*. Prairie Village, KS: ARMA International, 2000.

Topics covered in this overview of e-mail management include organizational issues (e.g., legal, operational, governmental), creation and use of e-mail, and management of e-mail as a record (including filing, classification, backup, and disaster recovery).

South Carolina Department of Archives and History. *Trustworthy Information Systems Handbook*. Version 1, July 2004.

www.state.sc.us/scdah/erg/tis.htm

This handbook provides an overview for all stakeholders involved in government electronic records management. Topics center around ensuring accountability to elected officials and citizens by developing systems that create reliable and authentic information and records. The handbook outlines the characteristics that define trustworthy information, offers a methodology for ensuring trustworthiness, and provides a series of worksheets and tools for evaluating and refining system design and documentation.

National Electronic Commerce Coordinating Committee. *Managing E-Mail*. December 2002.

www.ec3.org/Downloads/2002/managing_email.pdf

This guide tackles the perennial problem of e-mail management in a practical manner, offering model policies for use and retention, as well as a model user manual. While the policies acknowledge that e-mail is a record that should be managed on the basis of its content, the underlying assumption is that most e-mail has only transient value, and three retention periods (immediate destruction, limited retention, and archival retention) are proposed. A guide to implementing the models is also included.

Wallace, D.A. *Recordkeeping and Electronic Mail Policy: The State of Thought and the State of the Practice*. Proceedings of the Annual Meeting of the Society of American Archivists, September 3, 1998, Orlando, FL. Arlington, VA: Barry Associates; 1998:1-23.

www.mybestdocs.com/

This paper summarizes the issues surrounding e-mail policies and records management strategies. The paper describes e-mail records management policy elements and discusses the tasks and key concerns associated with the development of an e-mail records management policy.

Additional Resources

Utah State Archives and Records Services: Electronic Records

www.archives.state.ut.us/recmanag/electronic.htm

Visit this web site for links to the e-mail policies of a number of states in the United States, as well as links to additional web resources for records management.

Kentucky Department of Libraries and Archives. *Guidelines for Managing E-mail in Kentucky Government*

www.kdla.ky.gov/recmanagement/EmailGuidelines.pdf

Detailed guideline on the proper management of e-mail for government entities in Kentucky. Includes decision trees for determining e-mail retention and responsibility.

§ 30.22 SPECIAL AND ADJOURNED MEETINGS.

The Mayor shall, whenever in his or her judgment the good of the municipality requires it, summon special meetings of the Council, although any meeting may stand adjourned to a more distant day. The Mayor shall call special meetings when requested in writing so to do by any three Councilmembers.

('81 Code, § 30.17)

§ 30.23 NOTICE OF MEETINGS.

The Clerk of Council shall give notice to all members of the Council of all regular and special meetings.

('81 Code, § 30.18)

§ 30.24 ATTENDANCE AT MEETINGS.

It shall be the duty of the Mayor and the Councilmembers to attend all regular meetings of the Council and, when notified, to attend all extra or special meetings called pursuant to this subchapter. For failure to attend any meeting they shall, unless excused by the Council, be subject to such fine as the Council may impose.

('81 Code, § 30.19)

§ 30.25 PRESIDING OFFICER; QUORUM.

Immediately at the hour appointed for meeting of the Council, the Mayor shall take the chair, and if a quorum be present, shall proceed with the business of Council. A majority of the members of Council shall constitute a quorum.

('81 Code, § 30.20)

§ 30.26 PRESERVATION OF ORDER.

It shall be the duty of the chair at all meetings of the Council to preserve order inviolate, and on the first appearance of disorder, whether in language or action in a member, to call him or her to order.

('81 Code, § 30.21)

§ 30.27 SERGEANT AT ARMS.

The Chief of Police shall maintain a roster of members of the Police Department so that one police officer shall attend each regular meeting of the Council, and each special meeting thereof unless otherwise provided by the Mayor or Councilmembers calling such special meeting. The police officer so in attendance at any meeting of the Council shall act as sergeant at arms to the Council, and he or she shall maintain order at such meeting and execute the orders of the Council as given by the presiding officer.

('81 Code, § 30.22)

§ 30.28 COUNCIL MINUTES.

The Clerk of Council or designee shall attend all meetings of the Council and keep minutes of the proceedings of the Council. The Clerk shall write such minutes out in a book to be known as *The Minutes of Meetings of the Town Council of Mount Pleasant, S.C.* It shall also be the responsibility of the Clerk of Council, or his or her designee, to maintain records on all town committees, boards, and commissions.

('81 Code, § 30.23) (Am. Ord. passed 3-9-93)

§ 30.29 ORDER OF BUSINESS.

(A) The order of the proceedings of the Council shall be as follows:

(1) Prayer.

(2) Pledge of Allegiance to the Flag.

Town of Mt. Pleasant



000423

(3) Compliance with the Freedom of Information Act.

(4) Presentations and awards.

(5) Approval of the minutes of the last Council meeting.

(6) Approval of the financial report.

(7) Correspondence and public statements.

(8) Introduction of new planning business.

(9) Old planning business.

(10) Reports from standing committees.

(11) Reports from special committees.

(12) Administrator's report.

(13) Ordinances already in possession of the Council shall be taken up for a final reading.

(14) Introduction of ordinances and resolutions.

(15) Miscellaneous business not included in any of the preceding orders.

(16) Executive session (when applicable).

(17) Adjournment.

(B) The chair shall allow a deviation from the foregoing order of business only by majority consent of all members present.

(C) Meetings shall be conducted in accordance with Robert's Rules of Order, unless otherwise adopted by Council.

('81 Code, § 30.24) (Am. Ord. passed 10-11-88)

§ 30.30 PERSONAL INTEREST OF MEMBERS.

No member of the Council shall vote on any question of a private nature, in the event of which he or she is personally or pecuniarily interested.

('81 Code, § 30.31)

§ 30.31 VOTING BY MAYOR; TIE VOTES.

The Mayor shall vote in all cases, except when personally interested, or shall be excused, his or her name being called last in the call of the "yeas" and "nays." If with, his or her vote, the Council shall be equally divided, the question shall be declared in the negative.

('81 Code, § 30.32)

§ 30.32 APPEALS FROM DECISION OF CHAIR.

In all cases where an appeal is made from the decision of the chair, the chairman shall refer the question to the Council, and the final decision shall be determined by majority vote.

('81 Code, § 30.33)

§ 30.33 EXECUTIVE SESSION.

(A) *Meetings which may be closed.* The Town Council may hold an executive session (a meeting closed to the public) for one or more of the following reasons, in accordance with S.C. Code § 30-4-70:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body; provided, however, that if an adversary hearing involving the employee is held such employee shall have the right to demand that the hearing be conducted publicly.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the town in other adversary situations involving the assertion against the town of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations or criminal misconduct.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the municipality.

(B) An executive session (or closed meeting) of the Town Council may be called by the Mayor or a majority of the Council members; provided, however, prior to going into executive session the Council shall vote in public on the questions and when such vote is favorable the Chair shall announce the specific purposes of the executive session. No formal action (a recorded vote committing the Council to a specific course of action) may be taken in executive session. No vote may be taken in executive session. ('81 Code, § 30.39) (Ord. passed 10-11-88)

§ 30.34 RULES OF ORDER.

(A) *Parliamentary authority.* Robert's Rules of Order (newly revised) shall govern all proceedings except as provided by law or this section. The Town Attorney shall act as parliamentarian. Decisions of the Chair may be appealed in accordance with § 30.32.

(B) *Agenda.* All matters will be placed in the Town Council agenda for regular monthly meetings if submitted by any Councilmember in writing to the Town Administrator by 4:30 p.m. on the Thursday prior to the scheduled Council meeting. All matters will be placed on special Town Council agendas if submitted by any Councilmember in writing to the Town Administrator at least 48 hours before the same. Additional items may be added to a Council agenda after the stated times, only through a motion approved by a majority of Council to amend the agenda at the time of the meeting.

(C) *Public comments to Council.*

(1) *Non-agenda items.* Any citizen of the town wishing to address Council on a matter not on the agenda may sign-in prior to the Council meeting. Up to 30 minutes will be allocated for citizens to address Council, and the Chairperson shall allow from one minute to three minutes per speaker as deemed appropriate; provided, however, this period may be extended by a majority vote of Town Council.

(2) *Council agenda items.* Any person wishing to speak on a matter on the Council agenda may sign-in prior to the Council meeting. Any such person may elect to speak prior to agenda issues being discussed or delay his/her comments until the matter is discussed pursuant to the set agenda. Normally, up to three minutes will be allowed for each speaker.

(3) *Follow-up/questions/comments.* Councilmembers may respond to those persons speaking to Council by addressing questions to speakers through the Chair.

(D) *Recognition of speakers.* In order to speak, a Councilmember or staff member must be recognized by the Chair. A member should raise his/her hand and be recognized before speaking. If more than one hand is raised, the Chair shall decide the order of speakers. Provided, however, that the member introducing the matter shall have the first opportunity to speak following a "second" if one is required.

(E) *Councilmembers speaking.*

(1) A Councilmember, upon recognition by the Chair, shall have the floor until he/she relinquishes it.

(2) Each Councilmember who wishes to speak will be afforded the utmost opportunity.

(3) No Councilmember shall interrupt while another is speaking, except where otherwise provided in the rules.

(F) *Manner of voting.* All votes taken by Council shall be by voice vote or roll call, at the direction of the Chair or upon request by any Councilmember. Votes for election to a position on

Council shall be by secret ballot. The reasons for a member's vote may be stated once the vote is called, or a member may state the reasons for his/her decision on the question during the discussion of the motion. Town Council will allow absent members to listen by telephone but will not allow participation and voting by telephone. The latter rules shall also apply to committee meetings.

(G) *Public attendance.* In accordance with state law, the public is entitled to attend all public meetings, including those of Council, and no person may be removed from public meetings for any reason except willful disruption of the meeting. (Ord. 06001, passed 2-15-06)

ORDINANCES AND RESOLUTIONS

§ 30.45 ORDINANCES.

(A) It shall be the duty of the Council to pass, from time to time, such ordinances as in its judgment shall best promote the interest of the citizens and property holders of the municipality.

(B) All ordinances shall read: "Be it ordained by the Mayor and Councilmembers of the Municipality of Mount Pleasant, in Council assembled." ('81 Code, § 30.34)

§ 30.46 PROCEDURE FOR ENACTMENT OF TOWN ORDINANCES.

(A) *Form and procedures.* Every proposed town ordinance shall be introduced in writing and in the form required for final adoption. (See §§ 30.50 and 30.51). All ordinances shall be read two times on two separate days with at least six days between each reading.

(B) *First reading.* The first reading of a town ordinance shall be for information and no amendments shall then be in order. Ordinances shall be read by title only.

(C) *Second reading.* The second reading of an ordinance shall be by title only and shall be for the purpose of passing the same to have the full force of law. Amendments and privileged motions are appropriate at this time and shall be made prior to second reading.

(D) *Signing, sealing, and delivering.* After an ordinance shall have received its second reading, it shall be signed by the Mayor and Clerk of Council, affixed with the seal of the municipality of the town and placed in the Town's Book of Ordinances by the Clerk of Council.

('81 Code, § 30.35) (Am. Ord. passed 5-9-89; Am. Ord. 94003, passed 2-8-94; Am. Ord. 01002, passed 1-31-01)

§ 30.47 EMERGENCY ORDINANCES.

Notwithstanding the provisions of § 30.46, an ordinance may be introduced, read two times, and engrossed and ratified as an ordinance at one meeting of the Council by affirmative vote of seven members of the Council on a finding that conditions of emergency exist which require immediate enactment of such ordinance, and the facts which constitute such conditions of emergency shall be stated clearly in the ordinance as it is enacted. Emergency ordinances shall expire automatically as of the sixty-first day following the enactment.

('81 Code, § 30.36)

Statutory reference:

Emergency ordinances, see S.C. Code

§ 5-7-250

§ 30.48 ORDINANCE BOOK; AMENDING AND REPEALING ORDINANCES.

(A) The book in which the ordinances are engrossed shall be known as the *Ordinances of the Town of Mount Pleasant, S.C.*

(B) The Clerk of Council shall write on the first page of every ordinance that has been amended or repealed the words "amended" or "repealed," as the case may be. The amended or repealed sections of the

CHAPTER 39: PUBLIC RECORDS

Section

- 39.01 Definitions
- 39.02 Importance of town public records
- 39.03 Purpose of the town public records program
- 39.04 Objectives of the town public records program
- 39.05 Town Records Custodian
- 39.06 Town Records Manager
- 39.07 Department Records Custodians/Records Coordinators
- 39.08 Town employees
- 39.09 Town Council

§ 39.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ARCHIVES. The State Department of Archives and History.

DEPARTMENT MANAGER. Includes the town department heads and the Clerk of Council.

PUBLIC RECORD. Includes all books, papers, maps, photographs, cards, tapes, recordings, information stored on magnetic media, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the town.
(’81 Code, § 39.01) (Ord. passed 3-9-93)

§ 39.02 IMPORTANCE OF TOWN PUBLIC RECORDS.

Records are vital to the administration of the government of the town. Records contain the information that allows the town government to function, providing officials with necessary information for administering and monitoring programs. Records document the delivery of services, show the legal responsibilities of the government, and prove that statutes and ordinances have been carried out, thereby protecting the rights of citizens. In addition, records give evidence on taxation and on the management and expenditure of public funds. Records also document the historical development of the town and are an important cultural asset. Without good records, the town cannot render good public services.
(’81 Code, § 39.02) (Ord. passed 3-9-93)

§ 39.03 PURPOSE OF THE TOWN PUBLIC RECORDS PROGRAM.

The Town Public Records Program is established to systematically manage public records of the town to achieve economy of operation, ready access to information, and promote overall efficiency in the town government. The town records management program will ensure the systematic creation, proper filing, maintenance, use, and periodic legal disposition of our government records. This program also documents town compliance with municipality requirements pursuant to state statute.
(’81 Code, § 39.03) (Ord. passed 3-9-93)

Town of Mt. Pleasant

§ 39.04 OBJECTIVES OF THE TOWN PUBLIC RECORDS PROGRAM.

The Town Public Records Program objectives are to:

(A) Facilitate the creation of accurate, complete, and readily available records;

(B) Prevent creation of unnecessary records;

(C) Save the taxpayers money through efficient use of administrative staff, storage media, and equipment;

(D) Minimize time spent in researching and locating information;

(E) Ensure the systematic legal disposition of records that are no longer needed; and

(F) Identify and preserve archival records.
(81 Code, § 39.04) (Ord. passed 3-9-93)

§ 39.05 TOWN RECORDS CUSTODIAN.

The Director of Administrative Services shall be the overall legal custodian of the public records of the town and shall be responsible for carrying out the duties and responsibilities of the Town's Public Records Program pursuant to this chapter and S.C. Code Chapter 1, Title 30, 1976, as amended. The Records Custodian shall appoint in writing a Town Records Manager to act on his or her behalf in carrying out program responsibilities as specified hereinbelow.

(81 Code, §§ 31.32; 39.05) (Ord. passed 3-9-93)

§ 39.06 TOWN RECORDS MANAGER.

The Town Records Manager shall administer the Town Public Records Program of the town and his or her duties shall include the following:

(A) Pursuant to state statute and town ordinance, establish and develop standards, procedures, techniques, and schedules for the proper and efficient management of town records:

(B) Communicate and coordinate with the archives as the liaison for the town.

(C) Assist Department Managers and Records Coordinators in records surveys, schedule development and approval, training, and recordkeeping activities.

(D) Monitor and recommend improvements in use of space, equipment, supplies, computer-aided records management, off-site storage, and security of town records.

(E) Prepare and update a Records Manual as approved upon motion of Town Council detailing public records policy and procedure of the town.
(81 Code, § 39.06) (Ord. passed 3-9-93)

§ 39.07 DEPARTMENT RECORDS CUSTODIANS/RECORDS COORDINATORS.

Department managers shall be Records Custodians for all public records within their department. It shall be their responsibility to:

(A) Implement, maintain, and direct a public records management program within their respective departments in cooperation with the Town Records Manager; and

(B) Appoint a Department Records Coordinator to work with the Town Records Manager in administering the department public records program.
(81 Code, § 39.07) (Ord. passed 3-9-93)

§ 39.08 TOWN EMPLOYEES.

All town employees shall abide by the requirements of this chapter and the policies and procedures adopted hereto in addition to all other applicable state and federal regulations pertaining to public records management. All information received, created, compiled, and filed by employees or officials of the town is official record material and is the property of the town. Unlawful use, disclosure,

removal, defacement, or destruction of town records is prohibited and subjects the offender to disciplinary action in accordance with the Personnel Manual of the town.

('81 Code, § 39.08) (Ord. passed 3-9-93)

§ 39.09 TOWN COUNCIL.

The Town Council shall review all records retention and disposition schedules for the town for approval or disapproval and any changes thereto as required. The Town Records Custodian shall sign all approved schedules as the Council designates.

('81 Code, § 39.09) (Ord. passed 3-9-93)

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
 Sent: Tuesday, November 13, 2007 10:47 AM
 To: Mac Burdette; 'Joe Bustos'
 Cc: Mayor Hallman; 'Thomasena Stokes-Marshall'; 'Kruger Smith'; 'Gary Santos'; 'Billy Swails'; 'B. Swails'; 'Nick Collins'; 'Ken Glasson'
 Subject: RE:

No jumping of conclusions here and it is important that we all stick together; this is not about staff vs. Council. I will be looking to you Mac tonight (and encourage the rest the gang) to have a definitive response and plan as to how to address this issue immediately as I stated in my earlier email. Let us nail it down and put it to bed. We can then take care of the circus act.

Thanks - PSG

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
 Sent: Tuesday, November 13, 2007 10:13 AM
 To: Joe Bustos
 Cc: Mayor Hallman; Thomasena Stokes-Marshall; Kruger Smith; Gary Santos; Billy Swails; B. Swails; Nick Collins; Ken Glasson; Paul S. Gawrych
 Subject: RE:

No, I don't agree with Mr. Brock, and personally do not appreciate that he would solicit the Attorney General's office without going through our Town Attorney. But he can and he did. I still haven't seen the question he posed to the Attorney General. But Allen is infinitely more qualified to speak to the central question than I. I didn't appreciate your suggestion that if Mr. Brock were correct, it was an indictment of Mr. Young and our Planning Department. As far as it being an indictment of me, I'll take whatever responsibility needs to be assigned to me by Town Council should Mr. Brock's position be confirmed. Allen and the Planning Department don't deserve even the threat of an "indictment". They work too hard and too sincerely to serve this town for that to even be suggested. Interpretation of law can be handed out like Halloween candy, even if handed down by an Attorney General's opinion. We shouldn't, in my opinion, jump to a conclusion. Staff takes the responsibility of advising Council very, very seriously. It is rare when our advice is not borne out by results. Nevertheless, we are not infallible. If Council finds that they were not advised correctly, I hope you will assign responsibility to me and not other members of staff. You need a staff that is confident so that they feel comfortable challenging the envelope, as they are often asked to do, without fear of repercussions. If they work in fear, they will logically become very conservative with their advice and their willingness to strive for innovative opportunities.

Mac

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

From: Joe Bustos [mailto:jmbustos@comcast.net]
 Sent: Friday, November 09, 2007 5:06 PM
 To: Mac Burdette
 Cc: Mayor Hallman; Thomasena Stokes-Marshall; Kruger Smith; Paul S. Gawrych; Gary Santos; Billy Swails; B. Swails; Ken Glasson; Nick Collins
 Subject: Re:



PLTF 0013

(MTP-FOIA, 11-5-07) 01170

Prentiss Findlay

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

From: Paul Gawrych [mailto:pgawrych@bellsouth.net]

Sent: Tuesday, December 04, 2007 10:44 AM

To: 'Prentiss Findlay'

Cc: 'Billy Swalls'; 'Gary Santos ISS-Charleston'; 'Joe Bustos'; 'Ken Glasson'; 'Nick Collins'; tsm111@comcast.net; 'Mac Burdette'; 'Mayor Hallman'

Subject: Newspaper Articles

Prentiss,

I see by reading the paper this morning that you kept your word and did another article on Town Council and a member of the Planning Commission. Your (or your Editor's) headline was most unfortunate as our Council meeting tomorrow night is not a session and we will not be focusing on anything other than Town Business, but more importantly, we will be focusing on what we do best, we will be honoring all of our students and athletes of Wando High School. That's right, we have moved our meeting time and place to Wando High to recognize all of the State Champions to date this year from the School and I hope the Thursday morning edition of your paper will cover this wonderful evening by placing the story on the front page. Yes, the front page as this is the kind of stuff we do here in Mt. Pleasant and we do it well.

I know you are a reporter for the paper and I know you have editors that direct things to an extent and I know all too well the power of the pen, but I also know this; you and your paper have a responsibility to the community in which you publish to and that is to report the news, support the community and show leadership. Case in point, yesterday the Town had committee meetings all day long and you showed up after half of the meetings were over with. Sometimes you cannot make them all and this is understandable but you should at least look into what is taking place and you will see an incredible amount of positive work for our citizens taking place. As a matter of fact, you will not find any other City or Town in this State that gets done what our elected officials and staff gets done every month.

What you also missed from these meetings is a glimpse of what takes place every day here in our Town which results in us being a destination that is high on the lists of many citizens to live and raise their families, higher than any other in the State. Why you ask, we have the best public schools in the State and one main reason for that is the involvement the Town takes in every public school in this Town. We have an outstanding Police Force and one that is committed to not losing the streets. Go ask any lawyer that has to try a case here in our Town and they will tell you our Court system is a dream compared to others nearby. We have the number one recreation department in the State several years running now and we have taken the bull by the horns with regards to building roads by getting into the road building business several years ago, the proof of that is all over Town. Our planning staff is second to none and they are to be congratulated for implementing and managing a controversial growth management plan, one like no other in the Nation for the past seven years. Our Public Services department is heads above any other in the State, go ask any citizen about their trash and garbage pickup or for that matter, go take a look at any recreation field or facility and its condition. Take a look at our Fire department and the rating and accreditation it has obtained, none in this State compare for our size and population. All of these departments along with our administrative folks do all that they do every day and this Town has not seen a tax increase in at least 15 years that I know of and I am sure it is longer than that.

PLTF 0029

So in closing let me first say I do thank you for covering the Town of Mt. Pleasant for the Post and Courier as past reporters failed to get to know this Town, something I believe you are working on and care about. Come tomorrow night and take in what we are really doing and then in turn share it with the entire Tri-County area in the Thursday paper. It is great stuff and it also contagious. The majority of our citizens are not interested in any circus shows or soap operas that are printed in the paper; they are very interested in roads, transportation and most definitely their schools. Tomorrow night we will discuss roads and several of them, we will also be honoring our students and I hope to see you there and more importantly, I hope to read about it Thursday morning on the front page.

Thanks for all that you do and please feel free to run this up the line to any editor you think would want to see this.

Paul S. Gawrych

FOIA

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Friday, December 07, 2007 9:41 AM
To: Mac Burdette
Cc: Joel Ford; Allen Young; Christiane Farrell; 'B. Swails'; 'Nick Collins'; 'Thomasena Stokes-Marshall'; 'Joseph M. Bustos, Jr.'; 'Gary Santos'; 'Ken Glasson'; 'Billy Swalls'; Mayor Hallman; 'Kruger Smith'
Subject: RE: Planning Commission recommendations

Thanks much for the info Mac.

I appreciate the info and I know you are just letting us know, but I have never thought of it in terms of percentages and will not in the future. The commission does do a great job and I read all of their minutes as they are most helpful in one way or another. It is unfortunate that the Chair continues to provide the wrong information in the paper, especially the part about Council not recognizing the commission. It must be some ploy to gain support or sympathy and he sure has full support of a very unfortunate newspaper, none the less we just need to press on and for what it is worth, I did ask the chair of the commission to stay out of the paper.

MORE IMPORTANTLY THOUGH, we have not put the item of the Attorney Generals opinion to bed yet with regard to our comp. plan and what the law states. I know other things have been happening (great things), but I ask again that all that can be done, even hiring out help, (attorneys that specialize in this) so we can put all of this behind us and start off 2008 on a positive step.

Thanks and to all, have a great weekend.....see you at the parade.

PSG

PS - by the way, this JAY BENDER guy, how is he held accountable and to whom.

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Thursday, December 06, 2007 4:30 PM
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Allen Young; Christiane Farrell
Subject: Planning Commission recommendations

Mayor Hallman and Town Council,

I believe the Chairman of the Planning Commission appeared to suggest recently that Council does not support the Planning Commission. If there is concern, our records do not show that to be the case. Of some 80 actions before both the Planning Commission and Council since January 2006, Town Council approved the recommendations of the Planning

PLTF 0032

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

From: Emily Shearer

To: Joe Bustos ; kglasson@hotmail.com ; pgawrych@bellsouth.net ; ncollins56@yahoo.com ; kruger.smith@comcast.net ; santosgk@aol.com ; billy.swails.cw5r@statefarm.com ; bashe@townofmountpleasant.com

Sent: Monday, December 03, 2007 2:31 PM

Subject: RE: Steve Brock

Mr. Bustos,

Your reply is exactly what I am referring to. You seem very emotional to make a good solid judgment. Perhaps you should have recused yourself from voting. I am referencng your letters to the Moultrie News. Were you out to get Mr. Miller? Sounds like it.... I do not know Mr Miller or what his motives are. He is not an elected official.

My concern is about how such a development in a critical crossroads area surrounded by an otherwise pristine environment was ever approved without the full backing of the planning commission. Why did you vote for this development?

Emily Shearer

From: jmbustos@comcast.net

To: kglasson@hotmail.com; sheareremily@hotmail.com; tsm111@comcast.net; pgawrych@bellsouth.net; ncollins56@yahoo.com; kruger.smith@comcast.net; santosgk@aol.com; billy.swails.cw5r@statefarm.com; bashe@townofmountpleasant.com

Subject: Re: Steve Brock

Date: Mon, 3 Dec 2007 12:39:38 -0500

Ms Shearer,

Thank you for your email and your concern. Let me assure you that Mr. Brock has not blown any whistle but more appropriately has had the whistle blown on him and his relation with Mr. Bob Miller who has tried to influence council for years. If you were to search the archives of the Post and Courier you would find many of the things Mr. Brock and Mr. Miller have done for years. Mr. Brock's close association with Mr. Miller has been ongoing during that time. Actually I have been unhappy with Mr. Brock and brought this forward months before he sought this opinion which he claims muddles the water surrounding development. His dislike for the Central Mount Pleasant started only after his friend Mr. Miller was rebuffed by the developer. He is not standing up for the ordinary citizen of this town but is trying to use our system to help a friend. Unfortunately the Post and Courier has not chosen to report the entire matter. I called the FBI to look into Mr. Miller's actions and his associates. To my knowledge this has not been completed. If you have an allegation of impropriety, I suggest you come forward and give the details of what you may know. If you imply that blindly listening to any appointed commission and not using our own common sense is the best course; suffice it to say I disagree.

Joe Bustos

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

From: Barbara Ashe

To: Billy Swails ; Gary Santos ; Joe Bustos ; Ken Glasson ; Kruger Smith ; Nick Collins ; Paul Gawrych ; tsm111@comcast.net

Sent: Monday, December 03, 2007 11:48 AM

Subject: FW: Steve Brock

From: Emily Shearer [mailto:sheareremily@hotmail.com]

12/4/2007

Barbara Ashe

From: Emily Shearer [sheareremily@hotmail.com]
 Sent: Tuesday, December 04, 2007 1:45 PM
 To: Joe Bustos; kglasson@hotmail.com; pgawrych@bellsouth.net; ncollins56@yahoo.com;
 kruger.smith@comcast.net; santasgk@aol.com; billy.swalls.cw5r@statefarm.com; Barbara Ashe;
 tsm111@comcast.net
 Subject: RE: Steve Brock

Mr. Bustos,

I am not satisfied with your reasoning on the Central Mt. Pleasant development vote.

First, I am not interested in Mr. Miller. I assume that this sort of "buying of votes" is standard in politics, though, I do not approve of such access to elected officials. However, I doubt this is the first time town officials have been "influenced", and I doubt it will be the last. This is not just a problem locally, but also a flaw within democratic process.

Secondly, Mr. Miller et al, whoever they are, are not my immediate concern. What does concern me is that a thin majority of council members approved this project, while rejected by the planning commission. It sounds to this "arm chair referee" that the reasons for rejecting this development by the planning commission was more justified than your reason to vote for it.

Thirdly, I do not understand how this particular project could be so easily transferred to the county? I understand the county issues, water and sewer concerns, etc., but it would seem to me to be the lesser of 2 evils. Do I remember correctly, sir, that you had some sort of tie to the Carolina Park Development?

My forth concern is about all these closed-door meetings. Mr. Brock should not be held to standards that are different from those of the mayor and council. If I were in any of your shoes, I would choose carefully before being the first to "cast a stone".

Emily Shearer

From: jmbustos@comcast.net
 To: sheareremily@hotmail.com
 Subject: Re: Steve Brock
 Date: Mon, 3 Dec 2007 15:34:25 -0500

Ms Shearer,

Yes I did. I felt this development was too large to be done in the county without town input to zoning and follow-on approvals as to design and density. Had we not entered into a development agreement and negotiated a number of things downward it would have been done in the county without the town's input. Then it would have been just more tax base for the county and to their standards not ours. Obviously you missed the broohaha when Mr. Miller said he raised money for several elected members in return for their promise to vote with the mayor for two years. Where I come from, a native of Mount Pleasant, that is buying votes

Joe Bustos

4/2007

Mac Burdette

From: Joe Bustos [jmbustos@comcast.net]
Sent: Friday, December 07, 2007 12:41 PM
To: Mayor Hallman; Tommie Stokes-Marshall; Paul Gawrych; 'Nick Collins'; Kruger Smith; Ken Glasson; Billy Swalls; Gary Santos
Cc: Mac Burdette; Allen Young
Subject: Fw: FOIA



2004 Text of South
Carolina's

FYI, I intend to ask for an apology in the newspaper.

Joe

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

From: "Prentiss Findlay" <pfindlay@postandcourier.com>
To: "Joe Bustos" <jmbustos@comcast.net>
Sent: Friday, December 07, 2007 12:28 PM
Subject: RE: FOIA

> Joe,
>
> I'm not a lawyer and as such rely on the judgement of Jay Bender, South
> Carolina Press Association attorney who was quoted in the article.
>
> However, after looking at the law, Section 30 4 80 seems relevant to the
> issue.
>
> The article was not about you individually. It was about Council as a
> public
> body.
>
> I'm sorry if I've offended you. I really didn't intend for this to turn
> into
> something adversarial. Council has accomplished a great thing with the
> Shem
> Creek Issue. I do think it's fair, though, to raise the issue of advance
> public knowledge of what's going on when \$6 million is being spent on a
> project of such public interest.
>
> Hope this is responsive.
>
>
> Sincerely,
>
> Prentiss Findlay
>
>
>
>

PLTF 0044

From: Prentiss Findlay [mailto:pfindlay@postandcourier.com]
Sent: Monday, December 10, 2007 12:16 PM
To: Mac Burdette
Subject: RE: FOIA

Mac, The FOIA doesn't say "can" or "can't" about amending agendas at the last minute. It seems to me that it's something that the Legislature or the AG should clear up.

From: Mac Burdette
Sent: Monday, December 10, 2007 4:49 PM
To: 'Prentiss Findlay'
Subject: RE: FOIA

Prentiss,

First of all, the Attorney General's opinion is just that, "an opinion". It does not carry weight of law. If the Post and Courier thinks it needs clarity, then litigate or ask the General Assembly to change FOI. Good luck on the latter. But it would be great if the Post and Courier admitted that we did not violate FOIA.

Mac Burdette

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Monday, December 10, 2007 4:50 PM
To: B. Swalls ; Billy Swalls ; Gary Santos ; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Subject: FW: FOIA .

Mayor Hallman and Town Council,

FYI

Mac

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Mac Burdette

Mac Burdette

From: Joe Bustos [jmbustos@comcast.net]
Sent: Monday, December 10, 2007 5:31 PM
To: Mac Burdette; B. Swalls; Billy Swalls; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Subject: Re: FOIA

If they can not determine whether amendments are or are not allowed they took a chance letting the editor decide it wasn't allowed. I am beginning to believe Bender did not even give them an opinion. They just ran with the editor's interpretation

Joe

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

From: Mac Burdette <mailto:mburdette@townofmountpleasant.com>
To: B. Swalls <mailto:pbs1@comcast.net>; Billy Swalls <mailto:Billy.Swalls.cw5r@statefarm.com>; Gary Santos <mailto:santosgk@aol.com>; Joseph M. Bustos, Jr. <mailto:jmbustos@comcast.net>; Ken Glasson <mailto:Kglasson@hotmail.com>; Kruger Smith <mailto:kruger.smith@comcast.net>; Mayor Hallman <mailto:hhallman@townofmountpleasant.com>; Nick Collins <mailto:Ncollins56@yahoo.com>; Paul S. Gawrych <mailto:pgawrych@bellsouth.net>; Thomasena Stokes-Marshall <mailto:tsm111@comcast.net>
Sent: Monday, December 10, 2007 4:50 PM
Subject: FW: FOIA

Mayor Hallman and Town Council,

FYI

Mac

Mac Burdette

From: Joe Bustos [jmbustos@comcast.net]
Sent: Monday, December 10, 2007 5:38 PM
To: Prentiss Findlay
Cc: Mac Burdette
Subject: Fw: FOIA

Mr. Findlay,

I want to see Mr. Bender's written opinion on this. I am sure the Post and Courier requested his opinion in writing before saying someone violated the law. I am also beginning to think only your editor Mr. Mullins passed any opinion. You also wrote a story about a vote of confidence on Mr. Brock. I was the one that put the personnel action on the agenda and I never said any such thing to you. I never mentioned Mr. Brock nor a vote of confidence.

Joe Bustos

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Tuesday, December 11, 2007 8:35 AM
To: 'Prentiss Findlay'
Cc: Mac Burdette; 'Gary Santos'; 'B. Swails'; Mayor Hallman; 'Billy Swails'; 'Joseph M. Bustos, Jr.'; 'Kruger Smith'; 'Thomasena Stokes-Marshall'; 'Nick Collins'; 'Ken Glasson'
Subject: RE: FOIA

Prentiss,

You know unfortunately there are many people out there standing knee deep in water and dying of thirst, I do not want you to be one.

PSG

Mac Burdette

From: Trisha Marr
Sent: Friday, December 14, 2007 10:44 AM
To: Mayor Hallman; 'mbustos@comcast.net'; 'ncollins56@yahoo.com'; 'pgawrych@bellsouth.net'; 'billy.swails.cw5r@statefarm.com'; 'pbs1@comcast.net'; 'santosgk@aol.com'; 'kruger.smlth@comcast.net'; 'tsm111@comcast.net'; 'kglasson@hotmail.com'; 'kglasson@finsvcs.com'; Mac Burdette
Subject: Recommendation for Meeting - OK Tire property matter

Please know that there is a confidential memo in your mailbox recommending a very brief Special Council meeting on Monday or Tuesday Noon at the latest, to confirm your previous action on the record with public notice being provided in advance. The reason for same is to avoid problems with our title insurance company so that we can obtain full coverage on the Shem Creek property.

Our Clerk of Council is in the process of attempting to contact you by telephone concerning this matter.

If you have any questions, please feel free to contact me.

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Monday, December 17, 2007 10:45 AM
To: 'Prentiss Findlay'
Cc: Mac Burdette
Subject: RE: Article

This is an Allen Young "abundance of caution" thing I guess.....I will get brought up to speed at the meeting. I will be happy to explain all I know after the meeting because I have several friends out there thoroughly confused over what their Town is buying after reading the paper.

PSG

From: Prentiss Findlay [mailto:pfindlay@postandcourier.com]
Sent: Monday, December 17, 2007 10:39 AM
To: Paul Gawrych
Subject: RE: Article

Thanks, Paul.

Why is Shem Creek purchase being approved again today? Is this about the Freedom of Information Act 24-hour notice issue?

Prentiss Findlay

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

From: Paul Gawrych [mailto:pgawrych@bellsouth.net]
Sent: Monday, December 17, 2007 10:30 AM
To: 'Prentiss Findlay'
Cc: 'Billy Swalls'; 'Gary Santos ISS-Charleston'; 'Joseph M. Bustos, Jr.'; 'Nick Collins'; 'Mac Burdette'; 'Ken Glasson'; 'Thomasena Stokes-Marshall'; 'Mayor Hallman'; 'Kruger Smith'; 'sullyk'
Subject: Article

Morning Prentiss,

I see that after almost two weeks of quiet in the paper you managed to get a hold a council member to comment on the same non-news issue concerning a member of the planning commission. This stuff is old and not news worthy. but then again, I do not work in the news business so my opinion and yours seem to differ. I understand you need to do what you need to do and your editors I guess, feel the same way. As for news that our citizens are truly interested in, you may want to pick up last weeks Moultrie News and on the front page you will find a detailed article on the progress of US 17 North and the funding process. This article was so news worthy; it triggered a phone call from the district engineer with the DOT district office here in the tri-county area. He was impressed with the amount of money

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
 Sent: Tuesday, November 13, 2007 10:47 AM
 To: Mac Burdette; 'Joe Bustos'
 Cc: Mayor Hallman; 'Thomasena Stokes-Marshall'; 'Kruger Smith'; 'Gary Santos'; 'Billy Swails'; 'B. Swails'; 'Nick Collins'; 'Ken Glasson'
 Subject: RE:

No jumping of conclusions here and it is important that we all stick together; this is not about staff vs. Council. I will be looking to you Mac tonight (and encourage the rest the gang) to have a definitive response and plan as to how to address this issue immediately as I stated in my earlier email. Let us nail it down and put it to bed. We can then take care of the circus act.

Thanks - PSG

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
 Sent: Tuesday, November 13, 2007 10:13 AM
 To: Joe Bustos
 Cc: Mayor Hallman; Thomasena Stokes-Marshall; Kruger Smith; Gary Santos; Billy Swails; B. Swails; Nick Collins; Ken Glasson; Paul S. Gawrych
 Subject: RE:

No, I don't agree with Mr. Brock, and personally do not appreciate that he would solicit the Attorney General's office without going through our Town Attorney. But he can and he did. I still haven't seen the question he posed to the Attorney General. But Allen is infinitely more qualified to speak to the central question than I. I didn't appreciate your suggestion that if Mr. Brock were correct, it was an indictment of Mr. Young and our Planning Department. As far as it being an indictment of me, I'll take whatever responsibility needs to be assigned to me by Town Council should Mr. Brock's position be confirmed. Allen and the Planning Department don't deserve even the threat of an "indictment". They work too hard and too sincerely to serve this town for that to even be suggested. Interpretation of law can be handed out like Halloween candy, even if handed down by an Attorney General's opinion. We shouldn't, in my opinion, jump to a conclusion. Staff takes the responsibility of advising Council very, very seriously. It is rare when our advice is not borne out by results. Nevertheless, we are not infallible. If Council finds that they were not advised correctly, I hope you will assign responsibility to me and not other members of staff. You need a staff that is confident so that they feel comfortable challenging the envelope, as they are often asked to do, without fear of repercussions. If they work in fear, they will logically become very conservative with their advice and their willingness to strive for innovative opportunities.

Mac

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

From: Joe Bustos [mailto:jbustos@comcast.net]
 Sent: Friday, November 09, 2007 5:06 PM
 To: Mac Burdette
 Cc: Mayor Hallman; Thomasena Stokes-Marshall; Kruger Smith; Paul S. Gawrych; Gary Santos; Billy Swails; B. Swails; Ken Glasson; Nick Collins
 Subject: Re:



PLTF 0013

(MTP-FOIA, 11-5-07)04170

Prentiss Findlay

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

From: Paul Gawrych [mailto:pgawrych@bellsouth.net]

Sent: Tuesday, December 04, 2007 10:44 AM

To: 'Prentiss Findlay'

Cc: 'Billy Swalls'; 'Gary Santos ISS-Charleston'; 'Joe Bustos'; 'Ken Glasson'; 'Nick Collins'; tsm111@comcast.net; 'Mac Burdette'; 'Mayor Hallman'

Subject: Newspaper Articles

Prentiss,

I see by reading the paper this morning that you kept your word and did another article on Town Council and a member of the Planning Commission. Your (or your Editor's) headline was most unfortunate as our Council meeting tomorrow night is not a session and we will not be focusing on anything other than Town Business, but more importantly, we will be focusing on what we do best, we will be honoring all of our students and athletes of Wando High School. That's right, we have moved our meeting time and place to Wando High to recognize all of the State Champions to date this year from the School and I hope the Thursday morning edition of your paper will cover this wonderful evening by placing the story on the front page. Yes, the front page as this is the kind of stuff we do here in Mt. Pleasant and we do it well.

I know you are a reporter for the paper and I know you have editors that direct things to an extent and I know all too well the power of the pen, but I also know this; you and your paper have a responsibility to the community in which you publish to and that is to report the news, support the community and show leadership. Case in point, yesterday the Town had committee meetings all day long and you showed up after half of the meetings were over with. Sometimes you cannot make them all and this is understandable but you should at least look into what is taking place and you will see an incredible amount of positive work for our citizens taking place. As a matter of fact, you will not find any other City or Town in this State that gets done what our elected officials and staff gets done every month.

What you also missed from these meetings is a glimpse of what takes place every day here in our Town which results in us being a destination that is high on the lists of many citizens to live and raise their families, higher than any other in the State. Why you ask, we have the best public schools in the State and one main reason for that is the involvement the Town takes in every public school in this Town. We have an outstanding Police Force and one that is committed to not losing the streets. Go ask any lawyer that has to try a case here in our Town and they will tell you our Court system is a dream compared to others nearby. We have the number one recreation department in the State several years running now and we have taken the bull by the horns with regards to building roads by getting into the road building business several years ago, the proof of that is all over Town. Our planning staff is second to none and they are to be congratulated for implementing and managing a controversial growth management plan, one like no other in the Nation for the past seven years. Our Public Services department is heads above any other in the State, go ask any citizen about their trash and garbage pickup or for that matter, go take a look at any recreation field or facility and its condition. Take a look at our Fire department and the rating and accreditation it has obtained, none in this State compare for our size and population. All of these departments along with our administrative folks do all that they do every day and this Town has not seen a tax increase in at least 15 years that I know of and I am sure it is longer than that.

So in closing let me first say I do, thank you for covering the Town of Mt. Pleasant for the Post and Courier as past reporters failed to get to know this Town, something I believe you are working on and care about. Come tomorrow night and take in what we are really doing and then in turn share it with the entire Tri-County area in the Thursday paper, it is great stuff and it also contagious. The majority of our citizens are not interested in any circus shows or soap operas that are printed in the paper; they are very interested in roads, transportation and most definitely their schools. Tomorrow night we will discuss roads and several of them, we will also be honoring our students and I hope to see you there and more importantly, I hope to read about it Thursday morning on the front page.

Thanks for all that you do and please feel free to run this up the line to any editor you think would want to see this.

Paul S. Gawrych

FOIA

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Friday, December 07, 2007 9:41 AM
To: Mac Burdette
Cc: Joel Ford; Allen Young; Christlane Farrell; 'B. Swails'; 'Nick Collins'; Thomasena Stokes-Marshall'; 'Joseph M. Bustos, Jr.'; 'Gary Santos'; 'Ken Glasson'; 'Billy Swails'; Mayor Hallman; 'Kruger Smith'
Subject: RE: Planning Commission recommendations

Thanks much for the info Mac.

I appreciate the info and I know you are just letting us know, but I have never thought of it in terms of percentages and will not in the future. The commission does do a great job and I read all of their minutes as they are most helpful in one way or another. It is unfortunate that the Chair continues to provide the wrong information in the paper, especially the part about Council not recognizing the commission. It must be some ploy to gain support or sympathy and he sure has full support of a very unfortunate newspaper, none the less we just need to press on and for what it is worth, I did ask the chair of the commission to stay out of the paper.

MORE IMPORTANTLY THOUGH, we have not put the item of the Attorney Generals opinion to bed yet with regard to our comp. plan and what the law states. I know other things have been happening (great things), but I ask again that all that can be done, even hiring out help, (attorneys that specialize in this) so we can put all of this behind us and start off 2008 on a positive step.

Thanks and to all, have a great weekend.....see you at the parade.

PSG

PS -- by the way, this JAY BENDER guy, how is he held accountable and to whom.

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Thursday, December 06, 2007 4:30 PM
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Allen Young; Christlane Farrell
Subject: Planning Commission recommendations

Mayor Hallman and Town Council,

I believe the Chairman of the Planning Commission appeared to suggest recently that Council does not support the Planning Commission. If there is concern, our records do not show that to be the case. Of some 80 actions before both the Planning Commission and Council since January 2006, Town Council approved the recommendations of the Planning

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

From: Emily Shearer

To: Joe Bustos ; kglasson@hotmail.com ; pgawrych@bellsouth.net ; ncollins56@yahoo.com ; kruger.smith@comcast.net ; santosgk@aol.com ; billy swails cw5r@statefarm.com ; bashe@townofmountpleasant.com

Sent: Monday, December 03, 2007 2:31 PM

Subject: RE: Steve Brock

Mr. Bustos,

Your reply is exactly what I am referring to. You seem very emotional to make a good solid judgment. Perhaps you should have recused yourself from voting. I am referencing your letters to the Moultrie News. Were you out to get Mr. Miller? Sounds like it.... I do not know Mr Miller or what his motives are. He is not an elected official.

My concern is about how such a development in a critical crossroads area surrounded by an otherwise pristine environment was ever approved without the full backing of the planning commission. Why did you vote for this development?

Emily Shearer

From: jmbustos@comcast.net

To: kglasson@hotmail.com; sheareremily@hotmail.com; tsm111@comcast.net; pgawrych@bellsouth.net; ncollins56@yahoo.com; kruger.smith@comcast.net; santosgk@aol.com; billy.swails.cw5r@statefarm.com; bashe@townofmountpleasant.com

Subject: Re: Steve Brock

Date: Mon, 3 Dec 2007 12:39:38 -0500

Ma Shearer,

Thank you for your email and your concern. Let me assure you that Mr. Brock has not blown any whistle but more appropriately has had the whistle blown on him and his relation with Mr. Bob Miller who has tried to influence council for years. If you were to search the archives of the Post and Courier you would find many of the things Mr. Brock and Mr. Miller have done for years. Mr. Brock's close association with Mr. Miller has been ongoing during that time. Actually I have been unhappy with Mr. Brock and brought this forward months before he sought this opinion which he claims muddles the water surrounding development. His dislike for the Central Mount Pleasant started only after his friend Mr. Miller was rebuffed by the developer. He is not standing up for the ordinary citizen of this town but is trying to use our system to help a friend. Unfortunately the Post and Courier has not chosen to report the entire matter. I called the FBI to look into Mr. Miller's actions and his associates. To my knowledge this has not been completed. If you have an allegation of impropriety, I suggest you come forward and give the details of what you may know. If you imply that blindly listening to any appointed commission and not using our own common sense is the best course; suffice it to say I disagree.

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

From: Barbara Ashe

To: Billy Swails ; Gary Santos ; Joe Bustos ; Ken Glasson ; Kruger Smith ; Nick Collins ; Paul Gawrych ; tsm111@comcast.net

Sent: Monday, December 03, 2007 11:48 AM

Subject: FW: Steve Brock

From: Emily Shearer [mailto:sheareremily@hotmail.com]

12/4/2007

Barbara Ashe

From: Emily Shearer [sheareremily@hotmail.com]

Sent: Tuesday, December 04, 2007 1:45 PM

To: Joe Bustos; kglasson@hotmail.com; pgawrych@bellsouth.net; ncollins56@yahoo.com; kruger.smith@comcast.net; santosgk@aol.com; billy.swalls.cw5r@statefarm.com; Barbara Ashe; tsm111@comcast.net

Subject: RE: Steve Brock

Mr. Bustos,

I am not satisfied with your reasoning on the Central Mt. Pleasant development vote.

First, I am not interested in Mr. Miller. I assume that this sort of "buying of votes" is standard in politics, though, I do not approve of such access to elected officials. However, I doubt this is the first time town officials have been "influenced", and I doubt it will be the last. This is not just a problem locally, but also a flaw within democratic process.

Secondly, Mr. Miller et al, whoever they are, are not my immediate concern. What does concern me is that a thin majority of council members approved this project, while rejected by the planning commission. It sounds to this "arm chair referee" that the reasons for rejecting this development by the planning commission was more justified than your reason to vote for it.

Thirdly, I do not understand how this particular project could be so easily transferred to the county? I understand the county issues, water and sewer concerns, etc., but it would seem to me to be the lesser of 2 evils. Do I remember correctly, sir, that you had some sort of tie to the Carolina Park Development?

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Emily Shearer

From: jmbustos@comcast.net

To: sheareremily@hotmail.com

Subject: Re: Steve Brock

Date: Mon, 3 Dec 2007 15:34:25 -0500

Ms Shearer,

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Joe Bustos

4/2007

Mac Burdette

From: Paul Gawrych (pgawrych@bellsouth.net)
 Sent: Friday, December 07, 2007 9:41 AM
 To: Mac Burdette
 Cc: Joel Ford; Allen Young; Christiane Farrell; 'B Swails'; 'Nick Collins'; 'Thomasena Stokes-Marshall'; 'Joseph M. Bustos, Jr.'; 'Gary Santos'; 'Ken Glasson'; 'Billy Swails'; Mayor Hallman; 'Kruger Smith'
 Subject: RE: Planning Commission recommendations

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Sent: Friday, December 07, 2007 12:41 PM
To: Mayor Hallman; Tommie Stokes-Marshall; Paul Gawrych; 'Nick Collins'; Kruger Smith; Ken Glasson; Billy Swails; Gary Santos
Cc: Mac Burdette; Allen Young
Subject: Fw: FOIA



2004 Text of South
Carolina's

FYI, I intend to ask for an apology in the newspaper.

Joe

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

From: "Prentiss Findlay" <pfindlay@postandcourier.com>
To: "Joe Bustos" <jmbustos@comcast.net>
Sent: Friday, December 07, 2007 12:28 PM
Subject: RE: FOIA

> Joe,
>
> I'm not a lawyer and as such rely on the judgement of Jay Bender, South
> Carolina Press Association attorney who was quoted in the article.
>
> However, after looking at the law, Section 30 4 80 seems relevant to the
> issue.
>
> The article was not about you individually. It was about Council as a
> public
> body.
>
> I'm sorry if I've offended you. I really didn't intend for this to turn
> into
> something adversarial. Council has accomplished a great thing with the
> Sherm
> Creek issue. I do think it's fair, though, to raise the issue of advance
> public knowledge of what's going on when \$6 million is being spent on a
> project of such public interest.
>
> Hope this is responsive.
>
>
> Sincerely,
>
> Prentiss Findlay
>
>
>
>

PLTF 0044

From: Prentiss Findlay [mailto:pfindlay@postandcourier.com]
Sent: Monday, December 10, 2007 12:16 PM
To: Mac Burdette
Subject: RE: FOIA

Mac, The FOIA doesn't say "can" or "can't" about amending agendas at the last minute. It seems to me that it's something that the Legislature or the AG should clear up.

From: Mac Burdette
Sent: Monday, December 10, 2007 4:49 PM
To: 'Prentiss Findlay'
Subject: RE: FOIA

Prentiss,

First of all, the Attorney General's opinion is just that, "an opinion". It does not carry weight of law. If the Post and Courier thinks it needs clarity, then litigate or ask the General Assembly to change FOI. Good luck on the latter. But it would be great if the Post and Courier admitted that we did not violate FOIA.

Mac Burdette

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Monday, December 10, 2007 4:50 PM
To: B. Swails ; Billy Swails ; Gary Santos ; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Subject: FW: FOIA

Mayor Hallman and Town Council,

FYI

Mac

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Sent: Monday, December 10, 2007 4:49 PM
To: 'Prentiss Findlay'
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Mac Burdette

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Sent: Monday, December 10, 2007 4:49 PM
To: 'Prentiss Findlay'
Subject: RE: FOIA

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Mac Burdette

Mac Burdette

From: Joe Bustos [jmbustos@comcast.net]
Sent: Monday, December 10, 2007 5:31 PM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Subject: Re: FOIA

If they can not determine whether amendments are or are not allowed they took a chance letting the editor decide it wasn't allowed. I am beginning to believe Bender did not even give them an opinion. They just ran with the editor's interpretation

Joe

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

From: Mac Burdette <mailto:mburdette@townofmountpleasant.com>
To: B. Swails <mailto:pbs1@comcast.net>; Billy Swails <mailto:Billy.Swails.cw5r@statefarm.com>; Gary Santos <mailto:santosgk@aol.com>; Joseph M. Bustos, Jr. <mailto:jmbustos@comcast.net>; Ken Glasson <mailto:Kglasson@hotmail.com>; Kruger Smith <mailto:kruger.smith@comcast.net>; Mayor Hallman <mailto:hhallman@townofmountpleasant.com>; Nick Collins <mailto:Ncollins56@yahoo.com>; Paul S. Gawrych <mailto:pgawrych@bellsouth.net>; Thomasena Stokes-Marshall <mailto:t-sm111@comcast.net>
Sent: Monday, December 10, 2007 4:50 PM
Subject: FW: FOIA

Mayor Hallman and Town Council,

FYI

Mac

Mac Burdette

From: Joe Bustos [jmbustos@comcast.net]
Sent: Monday, December 10, 2007 5:38 PM
To: Prentiss Findlay
Cc: Mac Burdette
Subject: Fw: FOIA

Mr. Findlay,

I want to see Mr. Bender's written opinion on this. I am sure the Post and Courier requested his opinion in writing before saying someone violated the law. I am also beginning to think only your editor Mr. Mullins passed any opinion. You also wrote a story about a vote of confidence on Mr. Brock. I was the one that put the personnel action on the agenda and I never said any such thing to you. I never mentioned Mr. Brock nor a vote of confidence.

Joe Bustos

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Tuesday, December 11, 2007 8:35 AM
To: 'Prentiss Findlay'
Cc: Mac Burdette; 'Gary Santos'; 'B. Swalls'; Mayor Hallman; 'Billy Swalls'; 'Joseph M. Bustos, Jr.'; 'Kruger Smith'; 'Thomasena Stokes-Marshall'; 'Nick Collins'; 'Ken Glasson'
Subject: RE: FOIA

Prentiss,

You know unfortunately there are many people out there standing knee deep in water and dying of thirst, I do not want you to be one.

PSG

Mac Burdette

From: Trisha Marr
Sent: Friday, December 14, 2007 10:44 AM
To: Mayor Hallman; 'jmbustos@comcast.net'; 'ncollins56@yahoo.com'; 'pgawrych@bellsouth.net'; 'billy.swalls.cw5r@statefarm.com'; 'pbs1@comcast.net'; 'santosgk@aol.com'; 'kruger.smith@comcast.net'; 'tsm111@comcast.net'; 'kglasson@hotmail.com'; 'kglasson@finsvcs.com'; Mac Burdette
Subject: Recommendation for Meeting - OK Tire property matter

Please know that there is a confidential memo in your mailbox recommending a very brief Special Council meeting on Monday or Tuesday Noon at the latest, to confirm your previous action on the record with public notice being provided in advance. The reason for same is to avoid problems with our title insurance company so that we can obtain full coverage on the Sherm Creek property.

Our Clerk of Council is in the process of attempting to contact you by telephone concerning this matter.

If you have any questions, please feel free to contact me.

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
Sent: Monday, December 17, 2007 10:45 AM
To: 'Prentiss Findlay'
Cc: Mac Burdette
Subject: RE: Article

This is an Allen Young "abundance of caution" thing I guess.....I will get brought up to speed at the meeting. I will be happy to explain all I know after the meeting because I have several friends out there thoroughly confused over what their Town is buying after reading the paper.

PSG

From: Prentiss Findlay [mailto:pfindlay@postandcourier.com]
Sent: Monday, December 17, 2007 10:39 AM
To: Paul Gawrych
Subject: RE: Article

Thanks, Paul.

Why is Shem Creek purchase being approved again today? Is this about the Freedom of Information Act 24-hour notice issue?

Prentiss Findlay

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

From: Paul Gawrych [mailto:pgawrych@bellsouth.net]
Sent: Monday, December 17, 2007 10:30 AM
To: 'Prentiss Findlay'
Cc: 'Billy Swalls'; 'Gary Santos ISS-Charleston'; 'Joseph M. Bustos, Jr.'; 'Nick Collins'; 'Mac Burdette'; 'Ken Glasson'; 'Thomasena Stokes-Marshall'; 'Mayor Hallman'; 'Kruger Smith'; 'sullyk'
Subject: Article

Morning Prentiss,

I see that after almost two weeks of quiet in the paper you managed to get a hold a council member to comment on the same non-news issue concerning a member of the planning commission. This stuff is old and not news worthy, but then again, I do not work in the news business so my opinion and yours seem to differ. I understand you need to do what you need to do and your editors I guess, feel the same way. As for news that our citizens are truly interested in, you may want to pick up last weeks Moultrie News and on the front page you will find a detailed article on the progress of US 17 North and the funding process. This article was so news worthy; it triggered a phone call from the district engineer with the DOT district office here in the tri-county area. He was impressed with the amount of money

Mac Burdette

From: Paul Gawrych [pgawrych@bellsouth.net]
 Sent: Monday, December 17, 2007 10:30 AM
 To: 'Prentiss Findlay'
 Cc: 'Billy Swails'; 'Gary Santos ISS-Charleston'; 'Joseph M. Bustos, Jr.'; 'Nick Collins'; Mac Burdette; 'Ken Glasson'; 'Thomasena Stokes-Marshall'; Mayor Hallman; 'Kruger Smith'; 'sullyk'
 Subject: Article

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Again, this is no attempt to ridicule you or your articles, we just disagree. I would like to offer to you for 2008 some items that are news worthy and I say that based on the questions I have received from citizens in the last two weeks with all of the social functions going on with Christmas. These are just a sample and by no means do they represent all that could be covered in the news.

Sample questions to me recently:

What is the latest on US 17 North and when do you think it will start and be finished?

What is the latest on JDB and when will this project start? What will it look like?

I saw the other day that the State Infrastructure Board approved all of the money for the 526/US 17 interchange, what does that mean and when will that happened?

What is the deal with the half cent sales tax, it has been in place now for several years, where is the money and the construction?

Do you know if and when Mt. Pleasant will build a new swimming pool?

When is the track going to be finished?

When will I really start to see things taking place with the Coleman Blvd. project?

What are you hearing from the School District about a new high school and when will it start?

When and where is a new grocery store coming to the North end of Town?

Why did Roper Hospital buy a piece of property too small for their plans and what are they going to do about it?

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When and where is a new grocery store coming to the North end of Town?

Why did Roper Hospital buy a piece of property too small for their plans and what are they going to do about it?

What is the latest with the power lines in Town and why can't we have them all underground?

What really took place with Sherr Creek as the paper has me confused?

Why did you build Hungryneck phase 2 in phases and when is the other phase going to start?

Is there a bike path on the new Whipple road project and if so, is it attached or is it separate from the road?

What are you doing about a dog park?

Why are there so many businesses on US 17 heading north above JDB in the County and not in the Town? Why don't you just annex them?

Why do people put out so many signs all over the road on the weekends and how can we stop this?

Does the County and the Town have the same rules for signage?

Where are you guys going to put a new boat landing, we need one bad?

What is the latest with the power lines in Town and why can't we have them all underground?

What really took place with Shem Creek as the paper has me confused?

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Does the County and the Town have the same rules for signage?

Where are you guys going to put a new boat landing, we need one bad?

The above is just a sample of some questions I have heard over the past two weeks and again, they are not all, but I would definitely consider them all to be news worthy. So again, spend some more time over here on the Pleasant side of the river, I want you to get a complete sense of what is going on. Remember, we have plenty of free parking.

If I do not talk with again, have a Merry Christmas to you and yours.

Paul S. Gawrych

Nancy Dispenza

From: Joe Bustos [jbustos@comcast.net]
Sent: Wednesday, January 17, 2007 9:02 AM
To: Mayor Haliman, Tommie Stokes-Marshall, Paul Gawrych, Nick Collins, Kruger Smith, Ken Glasson, Gary Santos, Billy Swails
Cc: Mac Burdette
Subject: DRB

I can not begin to tell you how embarrassing it is to once again hear in public the stories of how rude our DRB is to applicants. Especially, to out of town applicants who come to our town to try to do business and represent their clients. While I understand there may be differences of opinion, I can not understand rudeness. Dr. Langley gave a presentation to the 88 Club this morning and this set of circumstances came out during the question and answer period. I have known Dr. Langley since grade school and believe him completely. This is a shameful commentary for Mount Pleasant.

I know we had once looked at disbanding the DRB and having this function done by staff. Is this still possible? I would like to ask that this topic be placed on the appropriate committee's agenda. If no committee is appropriate then please place it on the council agenda for Feb.

Joe

Nancy Dispenza

From: Joe Bustos [jmbustos@comcast.net]
Sent: Thursday, January 18, 2007 9:36 AM
To: Billy Swails, Mac Burdette
Cc: Paul Gawrych
Subject: Re: DRB

2

I think Billy is correct on this one. We need to be treating people better.
Joe

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

From: "Billy Swails" <billy.swails.cw5r@statefarm.com>
To: "Mac Burdette" <mburdette@townofmountpleasant.com>
Cc: "Joe Bustos" <jmbustos@comcast.net>; "Paul Gawrych" <pgawrych@bellsouth.net>
Sent: Thursday, January 18, 2007 8:59 AM
Subject: FW: DRB

It's both and something needs to be done NOW.

Billy Swails, Agent
Office 843.884.5149
Fax 843.881.0091

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

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Wednesday, January 17, 2007 1:29 PM
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; K. Glasson; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Subject: RE: DRB

Mayor Hallman and Town Council,
I am meeting with hospital representatives very soon to discuss issues pertaining to their project. If there are staff issues, we'll deal with it. If it's DRB issues, I'll pass them on to Council

Mac

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

From: Joe Bustos [mailto:jmbustos@comcast.net]
Sent: Wednesday, January 17, 2007 9:02 AM
To: Mayor Hallman; Tommie Stokes-Marshall; Paul Gawrych; Nick Collins; Kruger Smith; Ken Glasson; Gary Santos; Billy Swails
Cc: Mac Burdette
Subject: DRB

I can not begin to tell you how embarrassing it is to once again hear in public the stories of how rude our DRB is to applicants. Especially, to

Nancy Dispenza

From: Paul Gawrych [pgawrych@bellsouth.net]
 Sent: Friday, March 02, 2007 8:52 AM
 To: Billy Swails cw5r@statefarm.com; Gary Santos, Glasson, Kenneth; Joseph M. Bustos, Jr., Ken Glasson; kruger.smith@comcast.net; Mayor Hallman, 'Nick Collins'; Thomasena Stokes-Marshall
 Cc: Mac Burdette
 Subject: FW: Proposed Changes to CDRB

Morning to all

The below is a self explanatory letter from David Lycke. David was just appointed to the DRB recently and is the vice chair. He called me yesterday as we know each other with some concerns and questions concerning the pending changes to DRB. For what it is worth, he and the other DRB members were caught by surprise on the potential changes. He had some thoughts on all of it and I asked him to put it all in an email. Please find his thoughts below and he knows that I am forwarding this to all of you

I am passing this along as information, please feel free to contact him direct if you desire.

Thanks and I hope all have a great weekend.

PSG

From: David L. Lycke [mailto:dlycke@hlainc.com]
 Sent: Thursday, March 01, 2007 11:35 AM
 To: 'Paul Gawrych'
 Subject: Proposed Changes to CDRB

Paul,

I was both surprised and disheartened to hear of the proposal to reconfigure the DRB as an appellant body. My surprise relates to the fact that this decision was made over three weeks ago and my fellow board members and myself only heard about it at last night's hearing. In fact, I had a message from a reporter nearly three hours prior to receiving notice of Town Council's decision.

I am disheartened because I think this is a dangerous and totally inappropriate direction for the town to take. As you know, I am a new member on this board. You are also aware, however, that as a designer and development consultant, I have been coming before the DRB since its inception. It is from this perspective, as well as being an 18 year resident of Mount Pleasant, that I can speak with more experience. Simply stated, I believe that every project that I have seen go before the board has come out better than when it started, resulting in a more beautiful cohesive town image for the citizens of Mount Pleasant. Yes, I have personally experienced frustrations at times...this happens with every board that I have ever been before. However, the recent processes that have been incorporated into our DRB, such as the DRB Committee for smaller issues, consent approvals for those who follow the rules, have made this the most user friendly body of its kind in the area. I think the current make up of board members are reasonable people, with no personal agendas except that they are interested in the image and continued beauty of their town.

I think there are several obvious and fatal flaws to this proposal. First and foremost, the elimination of the DRB will remove the opportunity for public input to the design process that ultimately determines how our town looks as it continues to grow. Mount Pleasant is in the middle of several significant study's that will set the pattern of growth and ultimate image of the town. Rightly so, citizens are involved in crafting the design guidelines for both the Johnnie Dodds Blvd and Coleman Blvd corridors. Shouldn't citizens be involved in overseeing how these guidelines are carried out? I see that as a significant role of the DRB. And, as design professional and resident, that is the very reason why I volunteered to serve on the board.

Secondly, as so many of us know, perception is reality when it comes to the citizenry. By placing both the power and the burden to render design decisions solely on the staff, the perception of possible back room deals will be very real. There will be no check and balance in place under the proposed changes. I know that the board is often blamed for anything and everything associated with the approval process. However, anyone who has sat in on those meetings will realize that the board often serves as a temper to the staff's opinions. I have seen many times, as an applicant and more recently as a board member,

10/23/2007

Nancy Dispenza

From: pgawrych@bellsouth.net
 Sent: Monday, March 05, 2007 7:51 AM
 To: Joe Bustos; Mac Burdette; Billy Swails cw5r@statefarm.com, Gary Santos, Ken Glasson, kruger.smith@comcast.net; Mayor Hallman; Nick Collins ; Thomasena Stokes-Marshall
 Cc: Joel Ford; Christiane Farrell
 Subject: Re: Re. Proposed Changes to CDRB

Thanks Joe,

As stated, I was/am simply passing it along as information and a courtesy to David.

PSG

>
 > From: "Joe Bustos" <jmbustos@comcast.net>
 > Date: 2007/03/02 Fri PM 03:15:37 EST
 > To: "Mac Burdette" <mburdette@townofmountpleasant.com>,
 > "Paul Gawrych" <pgawrych@bellsouth.net>,
 > <Billy.Swails.cw5r@statefarm.com>,
 > "Gary Santos" <Gary.Santos@ISS-Shipping.com>,
 > "Ken Glasson" <kglasson@hotmail.com>,
 > <kruger.smith@comcast.net>,
 > "Mayor Hallman" <hhallman@townofmountpleasant.com>,
 > "Nick Collins" <Ncollins56@yahoo.com>,
 > "Thomasena Stokes-Marshall" <tsm111@comcast.net>
 > CC: "Joel Ford" <plandir@townofmountpleasant.com>,
 > "Christiane Farrell" <cfarrell@townofmountpleasant.com>
 > Subject: Re: Proposed Changes to CDRB
 >
 > To all,
 >
 > Well, he seems to think this was initiated by staff. It was not, I initiated the request and if he wishes to call me that is fine. I still believe this is a good course to follow. Obviously his feelings are hurt but we must continue with deciding what will be best for the town overall. Unfortunately, the planning commission seems to have the same feelings that no one not even town council should have the nerve to disagree with their recommendations. C'est la vie.
 >
 > Joe
 > ----- Original Message -----
 > From: Mac Burdette
 > To: Paul Gawrych ; Billy Swails.cw5r@statefarm.com ; Gary Santos ; Joseph M. Bustos, Jr. ; Ken Glasson ; kruger.smith@comcast.net ; Mayor Hallman ; Nick Collins ; Thomasena Stokes-Marshall
 > Cc: Joel Ford ; Christiane Farrell
 > Sent: Friday, March 02, 2007 2:48 PM
 > Subject: RE: Proposed Changes to CDRB
 >
 >
 > Mayor Hallman and Town Council,
 >
 > Regarding Mr. Lycke's email. First, no decision has been made by Council. Council instructed staff to put together an ordinance that, if adopted, would implement new procedures. This ordinance will go the Planning Commission and the Planning Committee and back to Council before any changes are made.
 >
 > Mac

PLTF 0065

Nancy Dispenza

From: Joe Bustos [jbustos@comcast.net]
 Sent: Thursday, July 19, 2007 3:55 PM
 To: Mac Burdette, B. Swails, Billy Swails, Gary Santos, Ken Glasson, Kruger Smith, Mayor Hallman, Nick Collins, Paul S. Gawrych, Thomasena Stokes-Marshall
 Cc: Joel Ford, Eric DeMoura, Christiane Farrell
 Subject: Re: Proposed Design Review Changes

Mac,

Again I ask: How long can they keep sticking this in their pocket and delaying? This was a council initiative that was in response to applicants feeling they were unduly delayed. Here we see a prime example of what they mean concerning some town boards and commissions.

Joe

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

From: Mac Burdette
 To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
 Cc: Joel Ford; Eric DeMoura; Christiane Farrell
 Sent: Thursday, July 19, 2007 3:38 PM
 Subject: Proposed Design Review Changes

Mayor Hallman and Town Council,

The Planning Commission decided to defer action on the DRB reform proposal. There doesn't seem to be much support for our proposal by the Planning Commission.

Mac

MEMO

To: Mac Burdette
 From: Christiane Farrell
 Date: July 19, 2007
 Re: Proposed Design Review Changes

At the Planning Commission meeting Wednesday, July 18th, the Commission held a public hearing regarding the proposed changes to the design review process. As you are aware the Commission opened a public hearing on this matter at their June meeting. They continued the hearing until July so that staff would have the opportunity to receive input from local design professionals on the proposed guidelines.

Per your request, I am providing a synopsis of the discussion from the public hearing, keeping in mind that the Planning Commission has not made any findings of fact and that this synopsis is my general understanding of some of the concerns related to the proposed changes.

First, in reference to the proposed guidelines, I think the public and the Commission recognize the effort and consideration that have gone into the drafting of the proposed guidelines and many see merit in some of the changes including the formatting, the illustrations, etc. The concern generally seems to be with some of the text itself. In an effort to remove subjectivity, staff often used phrases such as "shall not be allowed" or "shall be required". Concern was expressed that this limits flexibility.

Second, there was discussion about changing the role of the board to become a board of appeals and providing for staff level approvals of projects. Concern was expressed with the proposed. A suggestion was made

10/20/2007

Nancy Dispenza

From: Billy Swails [billy.swails@statefarm.com]
Sent: Friday, July 20, 2007 10:11 AM
To: Joe Bustos, lsm111@comcast.net, Paul Gawrych, kglasson@finsvcs.com
Cc: kglasson@finsvcs.com, ncollins56@yahoo.com, Gary Santos (SS-Charleston), Mac Burdette
Subject: FW: Proposed Design Review Changes

Folks, one appointed board will not take away anything from another appointed board. That's our job. We tried but it should be on the planning committee agenda. And again, we are just hoping this speeds the process up and then if needed they can hear the appeal and not a court of law.

Billy Swails, Agent
Office 843.884.5149
Fax 843.881.0091

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Friday, July 20, 2007 9:47 AM
To: Joe Bustos; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: RE: Proposed Design Review Changes

The only answer I can give, they can delay as long as Council allows them to.
Mac

From: Joe Bustos [mailto:jmbustos@comcast.net]
Sent: Thursday, July 19, 2007 3:55 PM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

Mac,

Again I ask: How long can they keep sticking this in their pocket and delaying? This was a council initiative that was in response to applicants feeling they were unduly delayed. Here we see a prime example of what they mean concerning some town boards and commissions.

Joe

----- Original Message -----
From: Mac Burdette
To: B. Swails; Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Sent: Thursday, July 19, 2007 3:38 PM
Subject: Proposed Design Review Changes

Mayor Hallman and Town Council.
The Planning Commission decided to defer action on the DRB reform proposal. There doesn't seem to be much support for our proposal by the Planning Commission.
Mac

01/20/2007

PLTF 0084

Nancy Dispenza

From: Joe Bustos [jmbustos@comcast.net]
 Sent: Friday, July 20, 2007 10:18 AM
 To: Mac Burdette, B. Swails, Billy Swails; Gary Santos, Ken Glasson, Kruger Smith, Mayor Hallman, Nick Collins, Paul S. Gawrych, Thomasena Stokes-Marshall
 Cc: Joel Ford, Eric DeMoura, Christiane Farrell
 Subject: Re: Proposed Design Review Changes

Mac,

I believe that this, like any development plan that comes to the planning commission, cannot be held for more than the time it takes to have the public hearing and make a recommendation. I believe the rule is that if they have not acted within 30 days after the hearing it is automatically sent forward. Additionally, I believe Allen should take a look at this continuance of public hearings nonsense. I think that is a stretch of the rules that has been done for sometime. It is time to clean-up these delay tactics of some of our boards and commissions.

Joe

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

From: Mac Burdette
 To: Joe Bustos; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
 Cc: Joel Ford; Eric DeMoura; Christiane Farrell
 Sent: Friday, July 20, 2007 9:47 AM
 Subject: RE: Proposed Design Review Changes

The only answer I can give, they can delay as long as Council allows them to.
 Mac

From: Joe Bustos [mailto:jmbustos@comcast.net]
 Sent: Thursday, July 19, 2007 3:55 PM
 To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
 Cc: Joel Ford; Eric DeMoura; Christiane Farrell
 Subject: Re: Proposed Design Review Changes

Mac,

Again I ask: How long can they keep sticking this in their pocket and delaying? This was a council initiative that was in response to applicants feeling they were unduly delayed. Here we see a prime example of what they mean concerning some town boards and commissions.

Joe

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

From: Mac Burdette
 To: B. Swails, Billy Swails; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; Kruger Smith; Mayor Hallman, Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
 Cc: Joel Ford; Eric DeMoura; Christiane Farrell
 Sent: Thursday, July 19, 2007 3:38 PM
 Subject: Proposed Design Review Changes

Mayor Hallman and Town Council.

The Planning Commission decided to defer action on the DRB reform proposal. There doesn't seem to be much support for our proposal by the Planning Commission.

Mac

10/20/2007

Nancy Dispenza

From: Joe Bustos [jbustos@comcast.net]
 Sent: Friday, March 02, 2007 3:16 PM
 To: Mac Burdette; Paul Gawrych; Billy Swails cw5r@statefarm.com; Gary Santos; Ken Glasson; kruger.smith@comcast.net; Mayor Hallman; Nick Collins; Thomasena Stokes-Marshall
 Cc: Joel Ford; Christiane Farrell
 Subject: Re: Proposed Changes to CDRB

To all,

Well, he seems to think this was initiated by staff. It was not, I initiated the request and if he wishes to call me that is fine. I still believe this is a good course to follow. Obviously his feelings are hurt but we must continue with deciding what will be best for the town overall. Unfortunately, the planning commission seems to have the same feelings that no one not even town council should have the nerve to disagree with their recommendations. C'est la vie.

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From: Mac Burdette
 To: Paul Gawrych; Billy Swails, cw5r@statefarm.com; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson; kruger.smith@comcast.net; Mayor Hallman; Nick Collins; Thomasena Stokes-Marshall
 Cc: Joel Ford; Christiane Farrell
 Sent: Friday, March 02, 2007 2:48 PM
 Subject: RE: Proposed Changes to CDRB

Mayor Hallman and Town Council,
 Regarding Mr. Lycke's email. First, no decision has been made by Council. Council instructed staff to put together an ordinance that, if adopted, would implement new procedures. This ordinance will go to the Planning Commission and the Planning Committee and back to Council before any changes are made.
 Mac

From: Paul Gawrych [mailto:pgawrych@bellsouth.net]
 Sent: Friday, March 02, 2007 8:52 AM
 To: Billy Swails, cw5r@statefarm.com; Gary Santos; Glasson, Kenneth; Joseph M. Bustos, Jr.; Ken Glasson; kruger.smith@comcast.net; Mayor Hallman; 'Nick Collins'; Thomasena Stokes-Marshall
 Cc: Mac Burdette
 Subject: FW: Proposed Changes to CDRB

Morning to all:

The below is a self explanatory letter from David Lycke. David was just appointed to the DRB recently and is the vice chair.

He called me yesterday as we know each other with some concerns and questions concerning the pending changes to DRB. For what it is worth, he and the other DRB members were caught by surprise on the potential changes. He had some thoughts on all of it and I asked him to put it all in an email. Please find his thoughts below and he knows that I am forwarding this to all of you.

I am passing this along as information, please feel free to contact him direct if you desire.

Thanks and I hope all have a great weekend

PSG

From: David L. Lycke [mailto:dlycke@hlainc.com]
 Sent: Thursday, March 01, 2007 11:35 AM

10/23/2007

PLTF 0104

Nancy Dispenza

13

From: Joe Bustos [jmbustos@comcast.net]
Sent: Friday, July 20, 2007 10:53 AM
To: Joel Ford; Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

I think this should be the standard for all items in front of the commission. The DRB issue needs to move on
 Joe

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

From: Joel Ford
To: Joe Bustos; Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Eric DeMoura; Christiane Farrell
Sent: Friday, July 20, 2007 10:36 AM
Subject: RE: Proposed Design Review Changes

Once the public hearing has been closed they have 30 days...if the Commission refuses to act it shall be deemed approved
 (Section 156.031(B)(5)).....jpf

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

From: Joe Bustos [mailto:jmbustos@comcast.net]
Sent: Friday, July 20, 2007 10:18 AM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

Mac,

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From: Mac Burdette
To: Joe Bustos; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Sent: Friday, July 20, 2007 9:47 AM
Subject: RE: Proposed Design Review Changes

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Sent: Thursday, July 19, 2007 3:55 PM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

10/20/2007

PLTF 0086

Nancy Dispenza

From: pgawrych@bellsouth.net
 Sent: Monday, March 05, 2007 7:51 AM
 To: Joe Bustos; Mac Burdette; Billy.Swails.cw5r@statefarm.com; Gary Santos; Ken Glasson; kruger.smith@comcast.net; Mayor Hallman; Nick Collins ; Thomasena Stokes-Marshall
 Cc: Joel Ford; Christiane Farrell
 Subject: Re: Re: Proposed Changes to CDRB

Thanks Joe,

As stated, I was/am simply passing it along as information and a courtesy to David.

PSG

>
 > From: "Joe Bustos" <jmbustos@comcast.net>
 > Date: 2007/03/02 Fri PM 03:15:37 EST
 > To: "Mac Burdette" <mburdette@townofmountpleasant.com>,
 > "Paul Gawrych" <pgawrych@bellsouth.net>,
 > <Billy.Swails.cw5r@statefarm.com>,
 > "Gary Santos" <Gary.Santos@ISS-Shipping.com>,
 > "Ken Glasson" <kglasson@hotmail.com>,
 > <kruger.smith@comcast.net>,
 > "Mayor Hallman" <hhallman@townofmountpleasant.com>,
 > "Nick Collins" <Ncollins56@yahoo.com>,
 > "Thomasena Stokes-Marshall" <tsm111@comcast.net>
 > CC: "Joel Ford" <plandir@townofmountpleasant.com>,
 > "Christiane Farrell" <cfarrell@townofmountpleasant.com>
 > Subject: Re: Proposed Changes to CDRB
 >
 > To all,
 >
 > Well, he seems to think this was initiated by staff. It was not, I initiated the request and if he wishes to call me that is fine. I still believe this is a good course to follow. Obviously his feelings are hurt but we must continue with deciding what will be best for the town overall. Unfortunately, the planning commission seems to have the same feelings that no one not even town council should have the nerve to disagree with their recommendations. C'est la vie.

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 > Joe
 > ----- Original Message -----
 > From: Mac Burdette
 > To: Paul Gawrych ; Billy.Swails.cw5r@statefarm.com ; Gary Santos ; Joseph M. Bustos, Jr. ; Ken Glasson ; kruger.smith@comcast.net ; Mayor Hallman ; Nick Collins ; Thomasena Stokes-Marshall
 > Cc: Joel Ford ; Christiane Farrell
 > Sent: Friday, March 02, 2007 2:48 PM
 > Subject: RE: Proposed Changes to CDRB

> Mayor Hallman and Town Council,

> Regarding Mr. Lycke's email, First, no decision has been made by Council. Council instructed staff to put together an ordinance that, if adopted, would implement new procedures. This ordinance will go the Planning Commission and the Planning Committee and back to Council before any changes are made.

> Mac



> I was both surprised and disheartened to hear of the proposal to reconfigure the DRB as an appellant body. My surprise relates to the fact that this decision was made over three weeks ago and my fellow board members and myself only heard about it at last night's hearing. In fact, I had a message from a reporter nearly three hours prior to receiving notice of Town Council's decision.

> I am disheartened because I think this is a dangerous and totally inappropriate direction for the town to take. As you know, I am a new member on this board. You are also aware, however, that as a designer and development consultant, I have been coming before the DRB since its inception. It is from this perspective, as well as being an 18 year resident of Mount Pleasant, that I can speak with more experience. Simply stated, I believe that every project that I have seen go before the board has come out better than when it started, resulting in a more beautiful cohesive town image for the citizens of Mount Pleasant. Yes, I have personally experienced frustrations at times...this happens with every board that I have ever been before. However, the recent processes that have been incorporated into our DRB, such as the DRB Committee for smaller issues, consent approvals for those who follow the rules, have made this the most user friendly body of its kind in the area. I think the current make up of board members are reasonable people, with no personal agendas except that they are interested in the image and continued beauty of their town.

> I think there are several obvious and fatal flaws to this proposal. First and foremost, the elimination of the DRB will remove the opportunity for public input to the design process that ultimately determines how our town looks as it continues to grow. Mount Pleasant is in the middle of several significant study's that will set the pattern of growth and ultimate image of the town. Rightly so, citizens are involved in crafting the design guidelines for both the Johnnie Dodds Blvd and Coleman Blvd corridors. Shouldn't citizens be involved in overseeing how these guidelines are carried out? I see that as a significant role of the DRB. And, as design professional and resident, that is the very reason why I volunteered to serve on the board.

> Secondly, as so many of us know, perception IS reality when it comes to the citizenry. By placing both the power and the burden to render design decisions solely on the staff, the perception of possible back room deals will be very real. There will be no check and balance in place under the proposed changes. I know that the board is often blamed for anything and everything associated with the approval process. However, anyone who has sat in on those meetings will realize that the board often serves as a temper to the staff's opinions. I have seen many times, as an applicant and more recently as a board member, where the board renders a "more lenient" decision than the staff may desire. Therefore, disbanding the board may actually create the opposite of the "desired" effect.

> I'm sure that there would be some appeal to the staff with their new found power to render design decisions. However, I truly believe it will be as much a burden as well. In short order, every applicant will know that any undesirable decision the staff makes can be appealed to several bodies. I can assure you that these applicants will exercise that appeal process and go straight to the Zoning Administrator or who ever ends up first in line in the appeals process. I'm sure that they will be approaching Council members as well.

> In conclusion, I strongly oppose the proposal to reestablish the DRB as an appellant body. The DRB has been a important component of the process that has made Mount Pleasant the desirable successful town that it is today. I believe the consequences, both real and perceived, will heavily outweigh any intended benefit to the town. I appreciate your time and consideration. Please feel free to call me to discuss this critical issue

further.

Sincerely,

David L. Lycke, ASLA,

Vice Chair Mount Pleasant DRB

Vice President, Director of Landscape Architecture

HLA INC

29 Leinbach Drive, Building A

Charleston, South Carolina 29407

(843) 763.1166

(843) 763.1909 Fax

dlycke@hlainc.com

Nancy Dispenza

From: Nancy Dispenza
Sent: Thursday, April 26, 2007 11:22 AM
To: B. Swalls ; Billy Swalls ; Gary Santos; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Mac Burdette
Subject: Committee agendas - May 2007 Committee meetings
Attachments: Committee agendas May 2007.doc

Mayor Hallman and Town Council,
Attached are agendas the May Committee meetings, which will be held on Monday April 30 and Tuesday May 1.
We'll have your Committee books ready for you tomorrow.
Nancy

000310

6/24/2008

Nancy Dispenza

From: Mac Burdette
Sent: Friday, June 22, 2007 1:56 PM
To: B. Swalls ; Billy Swalls ; 'Gary Santos'; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; 'Mayor Hallman'; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Subject: FW: DRB

Mayor Hallman and Town Council,
FYI.
Mac

From: Joel Ford
Sent: Friday, June 22, 2007 12:21 PM
To: 'jmbustos@comcast.net'
Cc: Mac Burdette; Christiane Farrell
Subject: DRB

The Planning Comm. deferred these amendments based on architects comments that our design guidelines would remove some flexibility or creativity from the design process. They wish for staff to set up a meeting or meetings w/ various folks from the "design community" to discuss options. This should not be a problem. They wish for us to notify the Commission of these meetings, which may be a problem if several members decide to attend (quorum issues/ micromanagement issues). We are ready and able...We will keep you updated next week....I would prefer to meet w/ 4 or 5 architects/landscape architects at a time and do it during the day (lunch) ...and do it two days...nothing extended beyond that. Let me know if you disagree or have other thoughts.....jpf

000341

6/24/2008

Nancy Dispenza

From: Mac Burdette

Sent: Tuesday, June 26, 2007 3:50 PM

To: Christiane Farrell

Cc: B. Swalls ; Billy Swalls ; 'Gary Santos'; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; 'Mayor Hallman'; Nick Collins ; Thomasena Stokes-Marshall

Subject: design guidelines meetings

Christiane,

Thanks.

Mac

From: Christiane Farrell

Sent: Tuesday, June 26, 2007 3:18 PM

To: Mac Burdette

Cc: Joel Ford

Subject: design guidelines meetings

Mac- Joel may have already updated you. Staff has arranged two meetings to review the proposed commercial design guidelines. One meeting will be with 5 architects to review the architecture guidelines. The other will be with 5 landscape architects to review the site guidelines. These meetings will be this Thursday and Friday for the purpose of reviewing the design guidelines.

Christiane Farrell

Planning and Engineering Division Chief

Town Of Mount Pleasant

(843)884-1229

000343

6/24/2008

ROA Page 704

Nancy Dispenza

From: Mac Burdette
Sent: Tuesday, July 10, 2007 4:03 PM
To: B. Swalls ; Billy Swalls ; 'Gary Santos'; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; 'Mayor Hallman'; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Eric DeMoura; Joel Ford; Christiane Farrell; Allen Young; Myles Stemplin
Subject: Design Standards for Commercial Buildings

Mayor Hallman and Town Council,

Not unexpectedly, there is some opposition to our proposal to reform design standards for commercial buildings and the process for review and approval of commercial buildings. The Planning Commission, in fact, deferred action to allow architects and landscape architects time to meet with staff on design standards.

I respectfully remind everyone that our goals are as follows:

1. To create an administrative appeals process for applicants who submit plans.
2. To maintain a high standard for commercial architecture
3. To streamline the review and approval process so that we:
 - A. are more business friendly for commercial investors;
 - B. level the playing field with competing jurisdictions;
 - C. create an ordinance that is less subjective in its requirements and is understandable for applicants.

To accomplish these goals, our proposal incorporates the following:

1. Making the DRB an appellant body for all commercial projects affected by our design guidelines. If an applicant disagrees with staff's position, to include a review by senior staff, the decision can be appealed to the DRB.
2. Staff will be responsible for review and approval of all commercial projects (subject to an appeal discussed above), based upon applicable ordinances.
3. A new ordinance would be adopted that makes design criterion more objective. We do not wish to eliminate creative architectural design, but we do believe much of the subjectivity can be removed.
4. We will retain the services of two contract architects on as need basis to assist staff with review of complicated projects.
5. We will have two submittal periods each month where up to 16 applications can be reviewed.
6. A staff project coordinator will be employed by the Planning Department to track all commercial applications. This person will serve as a liaison between staff and the applicant and/or his agents. The project coordinator will report issues to the applicant and to the Department Director and meet to resolve issues. A contact log will be maintained for each project to document submittals and scheduling deadlines so that we can track progress throughout the process.
7. If issues cannot be resolved, the questions will initially be referred to the Department Director or Deputy Director to try and resolve the matter.
8. The project coordinator will also coordinate with staff responsible for stormwater review, fire code approval, and building permit approvals in an effort to keep projects moving through our system. Compliance will be required, but we don't want to delay any project unnecessarily.

We believe this system will work in reference to all of our goals. Can there be politics in this system? I

6/24/2008

think less than when you have an appointed board who are not necessarily familiar in the sense of following ordinances, or policies, and who are not equipped to look at all relevant issues to the approval of new investments in Mount Pleasant. If we don't do a good job, I'm sure Council will hear of it.

I have prepared this review in case you receive questions from the public.

Mac

6/24/2008

Nancy Dispenza

From: Joe Bustos [jbustos@comcast.net]
Sent: Wednesday, July 11, 2007 2:51 PM
To: Mac Burdette
Subject: Re: Design Standards for Commercial Buildings

Mac,

I don't think the planning commission should have been able to stick this in their pocket to delay things. How long can they hold it?

Joe

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

From: Mac Burdette
To: B. Swails ; Billy Swails ; Gary Santos ; Joseph M. Bustos, Jr. ; Ken Glasson ; Kruger Smith ; Mayor Hallman ; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Eric DeMoura ; Joel Ford ; Christiane Farrell ; Allen Young ; Myles Stemplin
Sent: Tuesday, July 10, 2007 4:02 PM
Subject: Design Standards for Commercial Buildings

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6/24/2008

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Mac

000356

6/24/2008

Nancy Dispenza

From: Mac Burdette
Sent: Wednesday, July 11, 2007 3:30 PM
To: 'Joe Bustos'
Cc: Christiane Farrell
Subject: RE: Design Standards for Commercial Buildings

Joe,
Good question. Don't know, but I'll ask.
Mac

From: Joe Bustos [mailto:jmbustos@comcast.net]
Sent: Wednesday, July 11, 2007 2:51 PM
To: Mac Burdette
Subject: Re: Design Standards for Commercial Buildings

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From: Mac Burdette
To: B. Swails ; Billy Swails ; Gary Santos ; Joseph M. Bustos, Jr. ; Ken Glasson ; Kruger Smith ; Mayor Hallman ; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
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6/24/2008

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I have prepared this review in case you receive questions from the public.

Mac

000358

Nancy Dispenza

From: Christiane Farrell
Sent: Wednesday, July 11, 2007 3:51 PM
To: Mac Burdette
Subject: RE: Design Standards for Commercial Buildings

Mac- I think the time we had to review the guidelines with the design professionals has been useful. I hope the design professionals will think so as well. All involved in that process were very helpful and in turn, we have tried to be very responsive. Where we did not make suggested changes to the guidelines as proposed by design professionals, we provided a response to them individually to justify leaving the text as we drafted it. I think we have done what we can with respect to the deferral for the purpose of addressing the guidelines. Conceivably, the Commission could continue the public hearing again but I'm not sure what the purpose of any other deferrals would be.
 Christiane

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

From: Mac Burdette
Sent: Wednesday, July 11, 2007 3:30 PM
To: Joe Bustos
Cc: Christiane Farrell
Subject: RE: Design Standards for Commercial Buildings

Joe,
 Good question. Don't know, but I'll ask.
 Mac

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6/24/2008

ROA Page 711

000353

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6. A staff project coordinator will be employed by the Planning Department to track all commercial applications. This person will serve as a liaison between staff and the applicant and/or his agents. The project coordinator will report issues to the applicant and to the Department Director and meet to resolve issues. A contact log will be maintained for each project to document submittals and scheduling deadlines so that we can track progress throughout the process.
7. If issues cannot be resolved, the questions will initially be referred to the Department Director or Deputy Director to try and resolve the matter.
8. The project coordinator will also coordinate with staff responsible for stormwater review, fire code approval, and building permit approvals in an effort to keep projects moving through our system. Compliance will be required, but we don't want to delay any project unnecessarily.

We believe this system will work in reference to all of our goals. Can there be politics in this system? I think less than when you have an appointed board who are not necessarily familiar in the sense of following ordinances, or policies, and who are not equipped to look at all relevant issues to the approval of new investments in Mount Pleasant. If we don't do a good job, I'm sure Council will hear of it.

I have prepared this review in case you receive questions from the public.

Mac

000360

Nancy Dispenza

From: Mac Burdette

Sent: Wednesday, July 11, 2007 4:00 PM

To: B. Swails ; Billy Swails ; 'Gary Santos'; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; 'Mayor Hallman'; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall

Subject: Design Standards for Commercial Buildings

Mayor Hallman and Town Council,
As a matter of information.
Mac

From: Christiane Farrell

Sent: Wednesday, July 11, 2007 3:51 PM

To: Mac Burdette

Subject: RE: Design Standards for Commercial Buildings

Mac- I think the time we had to review the guidelines with the design professionals has been useful. I hope the design professionals will think so as well. All involved in that process were very helpful and in turn, we have tried to be very responsive. Where we did not make suggested changes to the guidelines as proposed by design professionals, we provided a response to them individually to justify leaving the text as we drafted it. I think we have done what we can with respect to the deferral for the purpose of addressing the guidelines. Conceivably, the Commission could continue the public hearing again but I'm not sure what the purpose of any other deferrals would be.
Christiane

000361

6/24/2008

ROA Page 713

Nancy Dispenza

From: Mac Burdette
Sent: Thursday, July 19, 2007 3:38 PM
To: B. Swails ; Billy Swails ; 'Gary Santos'; Joseph M. Bustos, Jr.; Ken Glasson ; Kruger Smith ; 'Mayor Hallman'; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Proposed Design Review Changes

Mayor Hallman and Town Council,
The Planning Commission decided to defer action on the DRB reform proposal. There doesn't seem to be much support for our proposal by the Planning Commission.
Mac

MEMO

To: Mac Burdette
From: Christiane Farrell
Date: July 19, 2007
Re: Proposed Design Review Changes

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Per your request, I am providing a synopsis of the discussion from the public hearing, keeping in mind that the Planning Commission has not made any findings of fact and that this synopsis is my general understanding of some of the concerns related to the proposed changes.

First, in reference to the proposed guidelines, I think the public and the Commission recognize the effort and consideration that have gone into the drafting of the proposed guidelines and many see merit in some of the changes including the formatting, the illustrations, etc. The concern generally seems to be with some of the text itself. In an effort to remove subjectivity, staff often used phrases such as "shall not be allowed" or "shall be required". Concern was expressed that this limits flexibility.

Second, there was discussion about changing the role of the board to become a board of appeals and providing for staff level approvals of projects. Concern was expressed with the proposed. A suggestion was made that there could be a two tract (dual) process with the general thought that a developer could elect to either go through staff approval under a certain set of guidelines or that an applicant could have the option of going before the board for consideration of certain elements not otherwise provided within the guidelines. Along these same lines, some concern was expressed regarding the ability to have public input into review of a project.

Finally, there was discussion of process in general including the building plan review process, etc. I think most understand that the new project coordinator position is the first step towards addressing the process as this individual will shepherd applicants through the process.

The concerns mentioned above were expressed rather unanimously by the public and Commissioners. At the end of the discussion regarding this item, the Commission discussed recommendations for changes to the proposed. Ultimately, the Commission unanimously voted to continue this hearing until August but in the interim to hold a special meeting solely to discuss this item in reference to some of the things mentioned above.

Cc: Joel Ford

6/24/2008

Nancy Dispenza

From: Joe Bustos [jbustos@comcast.net]
 Sent: Thursday, July 19, 2007 3:55 PM
 To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
 Cc: Joel Ford; Eric DeMoura; Christiane Farrell
 Subject: Re: Proposed Design Review Changes

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Again I ask: How long can they keep sticking this in their pocket and delaying? This was a council initiative that was in response to applicants feeling they were unduly delayed. Here we see a prime example of what they mean concerning some town boards and commissions.

Joe

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6/24/2008

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Cc: Joel Ford

Nancy Dispenza

From: Mac Burdette
Sent: Friday, July 20, 2007 9:47 AM
To: 'Joe Bustos'; B. Swalls ; Billy Swails ; Gary Santos; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: RE: Proposed Design Review Changes

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Cc: Joel Ford

000379

Nancy Dispenza

From: Billy Swails [billy.swails.cw5r@statefarm.com]
Sent: Friday, July 20, 2007 10:11 AM
To: Joe Bustos; tsm111@comcast.net; Paul Gawrych; kglasson@finsvcs.com
Cc: kglasson@finsvcs.com; ncollins56@yahoo.com; Gary Santos ISS-Charleston; Mac Burdette
Subject: FW: Proposed Design Review Changes

Folks, one appointed board will not take away anything from another appointed board. That's our job. We tried but it should be on the planning committee agenda. And again, we are just hoping this speeds the process up and then if needed they can hear the appeal and not a court of law.

Billy Swails, Agent
 Office 843.884.5149
 Fax 843.881.0091

From: Mac Burdette [mailto:mburdette@townofmountpleasant.com]
Sent: Friday, July 20, 2007 9:47 AM
To: Joe Bustos; B. Swails ; Billy Swails; Gary Santos; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: RE: Proposed Design Review Changes

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Cc: Joel Ford ; Eric DeMoura ; Christiane Farrell
Sent: Thursday, July 19, 2007 3:38 PM
Subject: Proposed Design Review Changes

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6/24/2008

ROA Page 719

000380

Nancy Dispenza

From: Joe Bustos [jmbustos@comcast.net]
Sent: Friday, July 20, 2007 10:18 AM
To: Mac Burdette; B. Swails; Billy Swails; Gary Santos; Ken Glasson; Kruger Smith; Mayor Hallman; Nick Collins; Paul S. Gawrych; Thomasena Stokes-Marshall
Cc: Joel Ford; Eric DeMoura; Christiane Farrell
Subject: Re: Proposed Design Review Changes

Mac,

I believe that this, like any development plan that comes to the planning commission, cannot be held for more than the time it takes to have the public hearing and make a recommendation. I believe the rule is that if they have not acted within 30 days after the hearing it is automatically sent forward. Additionally, I believe Allen should take a look at this continuance of public hearings nonsense. I think that is a stretch of the rules that has been done for sometime. It is time to clean-up these delay tactics of some of our boards and commissions.

Joe

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6/24/2008

Nancy Dispenza

From: Joel Ford
Sent: Friday, July 20, 2007 10:36 AM
To: 'Joe Bustos'; Mac Burdette; B. Swails ; Billy Swalls ; Gary Santos; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
Cc: Eric DeMoura; Christiane Farrell
Subject: RE: Proposed Design Review Changes

Once the public hearing has been closed they have 30 days...If the Commission refuses to act it shall be deemed approved (Section 156.031(B) (5).....jpf

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

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Sent: Friday, July 20, 2007 10:18 AM
To: Mac Burdette; B. Swails ; Billy Swalls ; Gary Santos; Ken Glasson ; Kruger Smith ; Mayor Hallman; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
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Joe

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From: Mac Burdette

000384

6/24/2008

ROA Page 721

To: B. Swalls ; Billy Swalls ; Gary Santos ; Joseph M. Bustos, Jr. ; Ken Glasson ; Kruger Smith ; Mayor Hallman ; Nick Collins ; Paul S. Gawrych ; Thomasena Stokes-Marshall
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Cc: Joel Ford

RESOLUTION NO. R.10031

STATE OF SOUTH CAROLINA	)	A RESOLUTION ADOPTING A POLICY
	)	FOR ELECTED OFFICIALS' USE OF
COUNTY OF CHARLESTON	)	TOWN COMPUTERS AND E-MAIL
	)	ACCOUNTS
TOWN OF MOUNT PLEASANT	)	

WHEREAS, the Town of Mount Pleasant provides the Mayor and each Member of Town Council a computer and an e-mail account through the Town's internet service provider to assist these officials in accessing Town records and/or personnel so as to be able to provide more effective constituent service; and

WHEREAS, Mount Pleasant Town Council *hereby finds* that it is in the public interest that a policy be adopted to establish the parameters of the appropriate use of Town computers and e-mail accounts by elected officials; and

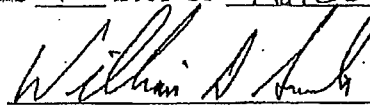
WHEREAS, Mount Pleasant Town council *hereby further finds* that the Policy identified in the document entitled "The Town of Mount Pleasant Policy on Elected Officials' Use of Computers and E-Mail Accounts," a copy of which is attached hereto and incorporated herein as Exhibit A, is fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Councilmembers of the Municipality of Mount Pleasant, in Council assembled, that the Policy as identified in Exhibit A hereto, shall be and is herewith adopted as the policy governing elected officials' use of Town computers and e-mail.

THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ITS ADOPTION.

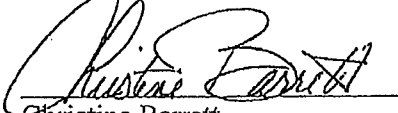


SIGNED, SEALED AND DELIVERED THIS 10 DAY OF March, 2010.



William D. Swails, Mayor
Town of Mount Pleasant

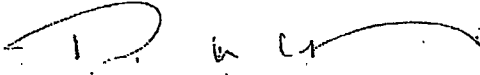
ATTEST:



Christine Barrett
Clerk of Council

March 10, 2010

APPROVED AS TO FORM:



R. Allen Young
Town Attorney

EXHIBIT A
R.10031

THE TOWN OF MOUNT PLEASANT
POLICY ON ELECTED OFFICIALS'

USE OF TOWN COMPUTERS AND E-MAIL ACCOUNTS

1. The Town provides the Mayor and each member of Town Council a laptop computer and Town e-mail account. The purpose of providing such access to the Town's computer system is to assist its elected officials in accessing electronic data and personnel of the Town so as to facilitate improved constituent service, to provide a uniform means by which the Mayor and Council may be contacted and to establish a uniform procedure for electronic communication by elected officials in matters of Town business.

2. Consistent with the Town's policy applicable to personnel, the use of Town computers and e-mail accounts are restricted to Town business. Incidental use of the computer for personal reasons, such as responding to family inquiry or making a private appointment, is permitted, but such use should be limited to the greatest feasible extent. The following uses are prohibited:

- a. accessing material the Town considers pornographic, or to transmit or knowingly accept receipt of such material or other material that could cast the Town in a light of contributing to a hostile work environment in that the material demeans individuals on the basis of race, sex, age, national origin, disability or other similar distinction; and
- b. purchasing goods or services, even if charged to the official's personal credit card.

The Town has the capacity to examine the computer usage of individual officials in detail. Even though the item has been "deleted" and the official cannot retrieve it, this does not

mean that the Town cannot do so. It is also possible to generate a report of every Internet connection made by each user and of how much time was spent in each connection.

3. When electronically communicating with Town employees, officials, constituents or any other persons concerning matters related to Town business, officials shall use the Town-provided computer. Town business includes any ongoing or new issue over which the Town's elected officials have supervision, control, jurisdiction or advisory power.

4. All electronic communications *originating* on an official's Town-provided computer *and* all electronic communications received from sources other than a Town computer, along with all responses made by the official thereto, shall be retained on the computer, unless otherwise directed by the Clerk of Council. With respect to the stated, the Clerk of Council is hereby charged with the responsibility of archiving electronic communications of the Mayor and Councilmembers in accordance with applicable law.

()
removal, defacement, or destruction of town records is prohibited and subjects the offender to disciplinary action in accordance with the Personnel Manual of the town.

('81 Code, § 39.08) (Ord. passed 3-9-93)

§ 39.09 TOWN COUNCIL.

()
The Town Council shall review all records retention and disposition schedules for the town for approval or disapproval and any changes thereto as required. The Town Records Custodian shall sign all approved schedules as the Council designates.

('81 Code, § 39.09) (Ord. passed 3-9-93)

**TOWN OF MOUNT PLEASANT
MEETING NOTICE**

SPECIAL TOWN COUNCIL MEETING
Monday, December 17, 2007
12:30 PM

Council Chambers
Municipal Complex · 100 Ann Edwards Lane · Mount Pleasant, SC

- I. Authorization and/or confirmation of the Settlement Agreement pertaining to the OK Tire property lawsuits, specifically including the purchase of the Shem Creek property for \$6,000,000.00 (OK Tire and the Bailey Docks)
- II. Amendment to FY 2007/2008 Budget regarding purchase of property on Shem Creek
- III. Adjourn

Town of Mount Pleasant
100 Ann Edwards Lane · PO Box 745 · Mount Pleasant, SC 29465
Tel: (843) 884-8517 · Fax: (843) 849-2060

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COMMON PLEAS COURT
Appellate Case No.: 2012-208787 — — — — —

J. C. Nicholson, Jr., Circuit Court Judge
Trial Court Case No.: 2008CP1003308

Stephen George Brock, ... Appellant,

v.

Town of Mount Pleasant, ... Respondent.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter.

I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court's Order 2007-08-13-02.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29609
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COMMON PLEAS COURT
Appellate Case No.: 2012-208787

J. C. Nicholson, Jr., Circuit Court Judge
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Stephen George Brock, ... Appellant,

v.

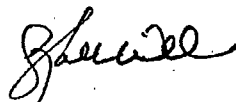
Town of Mount Pleasant, ... Respondent.

CERTIFICATE OF SERVICE

I certify that I have on the 18th day of December, 2013, served the Record on Appeal and Certificate of Counsel on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as follows:

James J. Hinchey, Jr.
Jessica S. Jubick
Hinchey Murray & Pagliarini, LLC
#18 North Adgers Wharf
Charleston, SC 29401

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29609
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COMMON PLEAS COURT
Appellate Case No.: 2012-208787

J. C. Nicholson, Jr., Circuit Court Judge
Trial Court Case No.: 2008CP1003308

RECEIVED
DEC 23 2013
SC Court of Appeals

Stephen George Brock, ... Appellant,

v.

Town of Mount Pleasant, ... Respondent.

CERTIFICATE OF SERVICE

I certify that I have on the 18th day of December, 2013, served the Record on Appeal and Certificate of Counsel on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as follows:

James J. Hinchey, Jr.
Jessica S. Jubick
Hinchey Murray & Pagliarini, LLC
#18 North Adgers Wharf
Charleston, SC 29401

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29609
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COMMON PLEAS COURT
Appellate Case No.: 2012-208787

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SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge
Trial Court Case No.: 2008CP1003308

Stephen George Brock, ... Appellant,

v.

Town of Mount Pleasant, ... Respondent.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter.

I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court's Order 2007-08-13-02.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29609
(864) 282-1292
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Counsel for Appellant

2013-12-23 10:00:00

I certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter.

I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court's Order 2007-08-13-02.

J. FALKNER WILKES

Attorney at Law

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December 18, 2013

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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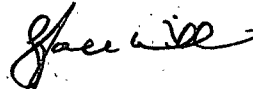
SC Court of Appeals

Re: Stephen George Brock, Appellant v. Town of Mount Pleasant, Respondent
Case No.: 2008-CP-10-3308; Appellate Tracking No.: 2012-20878

Dear Ms. Kitchings,

Enclosed please find the original Certificate of Counsel and Certificate of Service for the Record on Appeal in this case.

Respectfully submitted,



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c.

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