

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ... Respondents,

v.

Horry County, ... Appellant.

**RESPONDENTS' REPLY AND MEMORANDUM IN SUPPORT OF
MOTION FOR THE COURT TO TAKE JUDICIAL NOTICE**

Pursuant to Rule 240, SCACR, Respondent City of Myrtle Beach, for Itself and a Class of Similarly Situated Plaintiffs ("City"), submits this reply and memorandum to the return of Appellant Horry County ("County") to the City's motion for this Court to take judicial notice of two indisputable facts: the County's cancellation of the financial participation agreement with the South Carolina Department of Transportation ("SCDOT") for funding of the proposed Interstate Highway 73 project ("I-73 Project") and its rejection of a settlement agreement in principle reached by the parties' authorized representatives in mediation which would have provided funding for the I-73 Project. For the reasons set forth below and in the City's motion and supporting memorandum, this Court should take judicial notice of these two undisputed facts that bear directly on the matters currently pending before this Court.

INTRODUCTION

The County does not dispute that these facts generally may be judicially noticed. Neither does the County submit that they are incorrect or somehow in contention. It therefore has conceded any of those arguments, and these facts are properly noticed under *Masters v. Rogers Development Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984). Instead, the County narrowly argues that the City's motion should be denied because these facts are irrelevant under Rule 402, SCRE, and their admission violates Rule 408, SCRE. The County is wrong on both accounts. As to the former, the County strains credulity in asserting that the actions taken by its governing body, after briefing in this Court was completed and actions which directly undercut the factual and legal justification the County advanced to this Court on appeal, is not relevant to the Court's consideration. As to the latter, the County's suggestion that the City has somehow run afoul of Rule 408, SCRE, by advising this Court of the public statements and actions of the County's governing body, is curious, but ultimately incorrect in both concept and application of the Rule. Because the facts to be judicially noticed directly contradict positions taken by the County in this appeal, are public statements made by elected officials during open meetings, the County's arguments in opposition are without merit. This Court should grant the City's motion.

LAW/ANALYSIS

I. The City Will Move the Circuit Court, Not This Court, for Leave to Amend the Complaint.

The County, for reasons unknown, believes that the City is asking this Court to grant the City leave to amend its complaint. Indeed, the County dedicates an entire section of its return to arguing that *this Court* should deny a motion to amend the complaint that the City has not even filed, and suggests that this Court should pre-emptively prohibit the circuit court from entertaining motions which are within its exclusive jurisdiction and well beyond this Court's

appellate jurisdiction.¹ See Return at 9 (arguing that “[t]he City’s proposed amendment is futile and should be denied,” and that “[l]eave to amend [the City’s] complaint should be denied for at least three reasons.”). The County’s request is improper and bizarre in the extreme, and represents extraordinary misapprehension of both the City’s request for appellate judicial notice and the posture of the case before the Court in this appeal.

In actuality, the City’s motion indicated the City would move the *circuit court* for leave to amend and supplement its complaint. Motion at 7 n. 7 (“[T]he City intends to submit a motion to the lower court to lift its stay so that it may present to the Court an amended and supplemental complaint under Rule 15, SCRCP.”) (emphasis supplied). The City now advises this Court that it has since moved the circuit court to lift its stay so the City can, *inter alia*, submit its motion to amend and supplement the complaint. Attached hereto as Reply Exhibit A is a copy of the City’s Notice of Motion and Second Motion to Lift Stay filed on January 28, 2020, which includes as an exhibit the City’s Motion to Amend and Supplement Complaint and Supporting Memorandum. The proposed Amended and Supplemental Complaint is attached as an exhibit to the Motion to Amend and Supplement.² Because the proposed amendment is within the exclusive jurisdiction of and will come before the circuit court and not this Court, the County’s request that this Court pre-emptively deny the City’s motion to amend (which still has not been

¹ The only issue before the Court is the County’s appeal from the circuit court’s grant of the City’s motion for preliminary injunction. The merits of the underlying complaint have not even been briefed, much less decided.

² Both the City’s filed Notice of Motion and Second Motion to Lift Stay, as well as the proposed Motion to Amend and Supplement Complaint and Supporting Memorandum (which was filed as an exhibit to motion to lift the stay), included more exhibits than just the proposed Amended and Supplemental Complaint; however, in order to preserve judicial resources and because most of those exhibits are already before the Court in the Record on Appeal or are otherwise not directly relevant to the within motion to take judicial notice, those additional exhibits that have been filed with the circuit court are excluded from this filing. Should the Court desire to review those additional exhibits, the City will be happy to provide them.

filed) and discussion on futility and other averments with respect to the City's proposed amended and supplemental complaint are improper and inapposite.

To the extent the Court is disposed to consider the County's arguments in this regard, the City briefly responds as follows: (1) the relief sought and the further bases for it—*i.e.*, that the fee is invalid county-wide because it is not a uniform service charge under *Brown v. Horry County*, 308 S.C. 180, 417 S.E.2d 565 (1992), and *C.R. Campbell Construction Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437 (1997), in view of the County's actions abandoning the I-73 Project and because County Council failed to give Ordinance 105-96 the requisite three readings—supplement and do not conflict with the argument that fee is invalid within the municipalities for lack of consent; (2) the City has standing because it has paid the illegal fee³ and if the fee is invalid within the municipalities on these grounds it is necessarily invalid county-wide; and (3) as explained in more detail below, the uses identified in S.C. Code Ann. § 6-1-530 upon which the County relies are for hospitality *taxes* and not a uniform service charge like the fee at issue here. The County advances no meritorious reason why the proposed

³ The City makes these allegations in Paragraphs 1, 11-12, and 37 of the Amended and Supplemental Complaint. This pleading is attached as Exhibit A to the Motion to Supplement and Amend Complaint and Supporting Memorandum, which itself is Exhibit 1 to the Second Motion to Lift Stay attached hereto as Exhibit A. The County's mischaracterization of the City's case stems from its misapprehension, be it negligent or willful, of the class component of this lawsuit. The County continues to assert that this case should be viewed as some type of territorial dispute between the City and County, and that the City is hereby attempting to recoup all of the fees collected within its corporate limits for its own use. It is not. The City is a payer of the Hospitality Fee, just like any member of the proposed class, to the extent that it has been charged the 1.5% uniform service charge on the City's purchases of accommodations, food and beverage, amusements, and rental cars. Thus, the County's assertion that the City somehow lacks standing to seek the invalidation of the Hospitality Fee on these additional grounds is a further demonstration of the County's misapprehension of the underlying claim. The City's standing is derived from the injury it has suffered due to the payment of that fee when the County lacked legal authorization to impose it, regardless of where the fee was imposed.

Amended and Supplemental Complaint is improper, even if such a request were properly before this Court, which it is not.

II. The County's Cancellation of the SCDOT Contract Directly Contradicts and Refutes Statements Made by the County to this Court in Its Briefing.

The crux of the County's argument here is that it believes the cancellation of the SCDOT financial participation agreement is not relevant to whether municipal consent is required to impose the Hospitality Fee within the municipalities' corporate limits. As explained below, the County's argument perpetuates a continued misapprehension and oversimplification of the City's claims in this case. But regardless, this evidence is patently relevant to issues raised by both the County and the City in this appeal.

"Generally, all relevant evidence is admissible." *State v. Pittman*, 373 S.C. 527, 578, 647 S.E.2d 144, 170 (2007). Relevant evidence is that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would without the evidence." Rule 401, SCRE. Evidence is relevant so long as it assists the decision-maker "in arriving at the truth of an issue." *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). In this appeal, the County contends that the City has not demonstrated a likelihood of success on the merits with respect to the injunction it obtained preventing future collections of the Hospitality Fee. This requires the City to "present[] a reasonable question as to the existence" of a right to relief. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009), *modified on other grounds by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010). That is the lens through which relevance must be gauged. This frame of reference is important. Contrary to the County's assertion, the "key question" in this appeal is not "whether municipal consent is necessary for the County to collect the Hospitality Fee within the municipalities"—a decision on merits. *See*

Return at 6. It is whether the City has presented a reasonable question as to the existence of a right to relief.

Even more fundamentally, however, the County's characterization of the declaratory and injunctive relief sought by the City in this case is incorrect. In short, the County conflates a basis for relief advanced by the City with the ultimate declaration that it seeks. To be clear, the declaration sought by the City is that the Hospitality Fee is invalid. *One* of the legal grounds upon which the City has sought such a declaration is that a County may not unilaterally impose a uniform service charge within the corporate limits of a municipality without its consent, and because the consent provided by the City and the other affected municipalities in Horry County was expressly limited to twenty years and to projects under the RIDE plan, the County's unilateral attempt to extend the duration of the Hospitality Fee and expand its uses without the municipalities' consent was improper and invalidates the uniform service charge. Another legal ground advanced by the City is that, under the express holdings of this Court in *Brown* and *C.R. Campbell*, a uniform service charge may only be imposed for a specific project and purpose, and a governmental entity may not unilaterally change the purpose or duration of the fee beyond the life of the specific project for which the fee was initiated. The facts that the City seeks to allege through amendment and supplementation of the complaint are not made in support of new or additional declarations, but rather new factual grounds and bases for the declaration it seeks that the Hospitality Fee is invalid. Namely, those additional grounds assert that the County has removed any identified purpose for the imposition of the Hospitality Fee by terminating its funding commitment for the I-73 Project (even assuming that the addition of the I-73 Project was proper in the first instance, which the City disputes), and that the Hospitality Fee did not receive the requisite three readings at its initiation in 1996 and is therefore void *ab initio*.

Further, it was the County, not the City, which opened the door to this issue by repeatedly advising this Court that its justification for the Hospitality Fee continuing to be a valid uniform service charge is that it had re-dedicated Hospitality Fee revenues to the I-73 Project. It did so in its Statement of the Case: “Not long after the last of the three amendments to the Hospitality Fee, the County adopted two resolutions declaring its intention for how part of the 1.5 percent piece of the Hospitality Fee would be used: construction of I-73.”⁴ Final Brief of Appellant at 6. The County repeated this line in its argument at least three more times. *E.g., id.* at 19 (“Most recently, on July 24, 2018, the County adopted Resolution 84-18, which provided that the revenue from the Hospitality Fee would be used to fund construction of I-73”); *id.* at 21 (“The County has never used the funds from the Hospitality Fee for an improper purpose. Initially, the County used the funds for the roads contemplated by the RIDE Report. Most recently, the County proposed to use the funds for I-73 and approved police, fire protection, and emergency medical services.”); *id.* at 20-21 (“That the County would adopt new uses makes sense. Eventually the projects in the RIDE Report were completed, but that does not mean tourism-related needs disappeared. As the County grows, new needs emerge. Those needs, however, are similar to the needs identified in the RIDE Report. For instance, just as the RIDE Report was concerned about promoting tourism in Horry County, (R. pp. 57, 80), the current uses of the revenue are also tourism-related and involve roads, including I-73, (R. p. 205).”). The County’s reply emphasized that “the Hospitality Fee has always been connected to a service” and it is “being used for certain, specified services [*e.g.*, I-73], as *Brown* requires” Final Reply Brief of Appellant at 8.

⁴ It bears emphasizing that the County filed its final brief containing this the statement, by which the County is bound under Rule 208(b)(1)(C), SCACR, on the same day it voted to cancel the SCDOT financial participation agreement that would have spent these funds on I-73.

These statements form an essential part of the County's cornerstone "power" argument on appeal: the County had the power to change the use of Hospitality Fee revenues from the completed RIDE projects to the I-73 Project, and this new use does not conflict with State law. By the County's own briefing, the re-dedication of funds to the I-73 Project is highly relevant to this appeal. If it were not, the County would not keep repeating it. The factual basis for this argument is two resolutions the County adopted calling for Hospitality Fee revenues to be spent on the I-73 Project. *E.g.*, (**R. pp.224-31**) (amending County resolution R-82-18 to dedicate at least \$23 Million in Hospitality Fee revenues annually to I-73); (**R. pp.535-36**) (County resolution R-36-19 proposing to dedicate \$18 Million in Hospitality Fee revenues annually to I-73). The County's recent abandonment of those efforts is directly relevant to whether the City has stated a reasonable question as to whether there exists a valid project and purpose for which the County may continue to impose this uniform service charge and collect these revenues. *See C.R. Campbell*, 325 S.C. at ___, 481 S.E.2d at 438 (holding that a uniform service charge is valid only if, *inter alia*, "the revenue generated is used only for *the specific improvement contemplated*" and that "the revenue generated by the fee does not exceed the cost of *the improvement*") (emphasis added).

To be sure, the City disagrees with the County's legal analysis that it had the ability to unilaterally change the project and purpose of the Hospitality Fee. As is particularly relevant here, the City argued in its briefing that the Hospitality Fee currently fails the test to be a uniform service charge enunciated in *Brown* and *C.R. Campbell*. Final Brief of Respondent at 23-24. The City further alleged below that the amendments to the Hospitality Fee giving rise to this lawsuit did not create a valid uniform service charge and improperly sought to expand the permitted uses of the Hospitality Fee. (**R. pp.48-49.**) The County's stated desire to use these

funds on the I-73 Project, a non-RIDE project, is and always has been a central part this case. The fact that the County Council backtracked and cancelled the sole contract whereby it would spend these funds on the I-73 Project is undeniably probative of whether the City has shown a reasonable question as to the existence of a right to relief.

Relatedly and further underscoring the County's failure to understand the law governing this case, the County submits that "as long as the revenue from the Hospitality Fee is used for a purpose approved by the General Assembly, the Hospitality Fee is valid." Return at 8. The County cites S.C. Code Ann. § 6-1-530 in support of this proposition. This section only applies to "revenue generated by the local accommodations *tax*." S.C. Code Ann. § 6-1-530(A) (emphasis added). The Hospitality Fee is *not* a local accommodations tax; it is a uniform service charge. The circuit court so found (**R. p.19**), and the County has not challenged this finding on appeal.⁵ "A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge." *Brown*, 308 S.C. at 185, 417 S.E.2d at 568 (1992). In *C.R. Campbell*, a follow-up case to *Brown* that was also authored by Justice Moore, the Supreme Court clarified the standard by which a uniform service charge would be deemed lawfully imposed, one element of which in particular is that "the revenue generated is used only for the specific improvement contemplated." 325 S.C. at ___, 481 S.E.2d at 438. "Simply put, the statutes do not allow these revenues to be treated as a slush fund." *Azar v. City of Columbia*, 414 S.C. 307, 317, 778 S.E.2d 315, 320 (2015). The only "specific improvement contemplated" to be funded by the Hospitality Fee under Ordinance 105-96 was the RIDE program. Having completed and paid for those

⁵ This is for good reason. If the Hospitality Fee were a tax, the 1.5% charge on prepared food and beverage within the municipalities would be unlawful under S.C. Code Ann. § 6-1-720. The charge imposed on rental cars and admissions likewise would be unlawful because no statutory authority exists for a tax by the County on same.

projects, the specific improvement contemplated by Ordinance 105-96 no longer exists. The County improperly attempted to extend the life of the uniform service charge by re-dedicating funds to the I-73 Project, and this Court must be allowed to take notice that, since final briefs have been submitted to the Court wherein the County relies on the funding of the I-73 Project for the validity of its continued imposition of the Hospitality Fee, its governing body took formal and public action to cancel the financial participation agreement by which it would have done so.

III. The County's Rejection of the Settlement Agreement in Principle Further Supports the County's Abandonment of I-73.

The County further mischaracterizes the purpose of the City asking this Court to take judicial notice of the County's rejection of the settlement agreement in principle. To be clear, the City is not asking this Court to simply take judicial notice of that fact. It is asking this Court to take judicial notice of the County Council's public statements and formal action rejecting an agreement that would have provided funding for the I-73 Project, thereby further contradicting positions the County has taken in this appeal. Viewing the City's motion in the proper light dismantles the County's opposition.

A. Rule 408, SCRE, does not apply to the public statements and actions of County Council on December 16, 2019.

As a threshold matter, the County argues that Rule 408, SCRE, bars consideration of the County's "requirement that all municipalities in the County agree to the settlement" and of the County's rejection of the settlement agreement in principle. (Return at 3-4.) Its invocation of Rule 408 is particularly sophistic and must be rejected.

On April 2, 2019, County Council unanimously voted to reject the City's proposed Rule 408 agreement that would have covered settlement negotiations in this matter.⁶ See Reply Exhibit B, Minutes of County Council Meeting held April 2, 2019, at p.3. One member of County Council later ignored the advice of the County Attorney and publicly revealed details of the proposed settlement agreement in principle, which at the time was protected by the ADR Rules, saying that "the cat was out of the bag so far as to what the deal was," the County Attorney should "not shut him up," "[i]t was intended to be a class and that way they could rape the taxpayers," "[i]f they want to say he was in contempt" for revealing details of the proposal then "he was in contempt," and "[p]ut [me] in jail." See Reply Exhibit C, Minutes of Horry County Council Meeting held November 5, 2019, at pp. 11-12. The County previously openly eschewed the very protections it now seeks.⁷

Regardless, Rule 408 on its face does not apply to the December 16, 2019, County Council minutes. The rule requires that a statement must have been "made in compromise negotiations." These minutes are not compromise negotiations. They reflect public statements made by elected officials outside of executive session and the mediation to their constituents and the press, not the City, and official actions taken by a legislative body pursuant to S.C. Code Ann. § 4-9-25. They are public records, posted on the County's website, that are subject to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, *et seq.* The County's cited policy

⁶ Prior to this vote, the Chairman of County Council stated he was "not comfortable with the idea of negotiating the distribution of public funds in private," he "do[es] not think it is good for the citizens of our county," and he "personally ha[s] a problem with the idea of dealing behind closed doors." (R. p.1015.) One council member responded, "Mr. Chairman please don't sign that ridiculous agreement. It's a joke...who do they think they are?" (R. p.1014.) Of course, these statements evince an inability (or simple unwillingness) to recognize that funds collected unlawfully from the public are not public funds, but belong to those from whom they were collected.

⁷ This is not the first time in this case that the County has tried to hide behind Rule 408 to shield its public actions from review. *E.g.*, (R. p.991.)

concerns about encouraging frank discussions on “the most sensitive issues in a case” to foster settlement are inapposite to these public statements and votes. *See* Return at 4. The suggestion that the County can cloak in secrecy the public actions of its governing board which directly impact the legal questions in this case and appeal, simply because they occurred in the context of the public action taken and comments made by the governing body to reject a settlement agreement in principle defies logic and common sense. Had the County wanted to shield these statements and actions from disclosure, County Council could have either taken no action on the settlement agreement in principle or voted on it without open debate, saving all commentary for executive session. It chose otherwise and should not be permitted to shield the effect of that decision from judicial notice.

Furthermore, the City is not using the December 16 minutes to “prove liability for or invalidity of the claim or its amount.” Rule 408, SCRE. Rule 408 expressly allows this evidence to be used for other purposes. The City is using them to demonstrate that the factual bases relied upon by the County to support its argument on the continued validity of the Hospitality Fee no longer exist. The City cited this Court’s recent decision in *Winrose Homeowners Assoc., Inc. & Regime Solutions, LLC v. Hale*, Op. No. 27934, (S.C. Sup. Ct. filed December 18, 2019) (Shearouse Adv. Sh. No. 49, at 14, 22 n. 10) to demonstrate that this evidence is admissible to show that the County is manipulating legal proceedings by failing to bring these facts to the Court’s attention. Motion at 2 n. 1. The County does not address *Winrose* or this argument and it should therefore be deemed to have been accepted by the County. Finally, Rule 408 “does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.” Because these are publicly-available statements subject to disclosure laws, they are otherwise discoverable. Even accepting the County’s flawed

argument that these are compromise negotiations, Rule 408 therefore does not require their exclusion.

B. The County's rejection of the settlement agreement in principle is relevant to the County's continued repudiation of the I-73 Project.

Aside from making the observation and noting the irony of the fact, the City did not argue that the County's requirement of unanimity amongst the municipalities to settle this matter constitutes an inconsistent position that should be noticed.⁸ Rather, the City's argument was that the rejection for contrived reasons of the settlement agreement in principle providing funding for the I-73 Project constitutes further proof that the Hospitality Fee no longer is a valid uniform service charge under *Brown* and *C.R. Campbell*. Motion at 6-7. The County does not dispute that the rejection of the settlement agreement in principle is pertinent to that argument. For the reasons explained above in Part II, the County's voluntary abandonment of the I-73 Project is relevant to this appeal.

IV. The County's Return Is Riddled with Factual and Legal Errors.

Throughout its Return, the County makes repeated false or misleading statements of fact that are unsupported by a citation to the Record on Appeal or by a separate exhibit as required by Rule 240(c)(3), SCACR. These false, misleading, and unsupported factual assertions include:

- "The City's motion to take judicial notice seeks to inject settlement discussions . . . into this appeal." Return at 1. "Following the circuit court's injunction (which is the subject of this appeal), the City and the County engaged in ongoing settlement discussions. These settlement discussions occurred at the direction of the circuit court and upon urgings from the executive and legislative branches of government." Return at 2.

⁸ Though, as explained in Part IV, *infra*, the need for unanimity at the settlement stage is a strawman and an artificial barrier the County erected in order to avoid settling this case on terms that provide funding for I-73.

As explained above, the City asks the Court to take judicial notice of the duly approved meeting minutes of a public body, not confidential settlement negotiations. Furthermore, the parties were not engaged in “settlement discussions.” It was a Court-ordered mediation that the County staunchly opposed. **(R. pp.27, 1505-06.)** Perhaps presaging what would come, the County requested that the circuit court not require mediation pending appeal because “[m]ediation cannot be productive given the current posture of this case,” “it would prove to be nothing more than a charade and a drain of precious time and resources,” and “[t]here is no way for a meaningful settlement dialogue to occur in this posture.” **(R. pp.1505-06.)** The City disagreed and desired to mediate the case. **(R. p.1505.)** Unfortunately, the County followed through on its predictions despite the best efforts of the City.

- “As settlement discussions broke down, the City wrote to the County and threatened to file this motion, unless the County agreed to its settlement demands.” Return at 2.

The County attaches no such letter. Nor could it, as all communications were through or in the presence of the mediator, not via letters authored by the City and sent to the County, and were made prior to the declaration of an impasse by the mediator on January 27, 2020. The City also did not make “settlement demands” on the County. Instead, the City reacted to information from the mediator that the County’s authorized representative wanted to continue mediation (even after County Council rejected the settlement agreement in principle) but was unwilling to put any proposals in a signed, written document.

- “When the City filed this lawsuit and obtained the injunction, the funding source for [the I-73] project disappeared, and the County was forced to cancel the participation agreement.” Return at 3. The County reiterates this line later in its Return: “When the City filed this lawsuit and obtained the injunction, the funding source for this project

disappeared. The County was thus forced to cancel the participation agreement because of the lawsuit filed by the City.” Return at 8.

This is demonstrably false. The City filed the underlying complaint on March 20, 2019. (R. p.54.) By orders dated June 21 and July 10, 2019, the circuit court properly enjoined the County’s collection of the Hospitality Fee *pendente lite*. (R. pp.6-24.) On August 28, 2019, County Council voted to *extend* the participation agreement’s deadline to submit the first annual work plan to December 31, 2019. See Reply Exhibit D, Minutes of County Council Meeting held August 28, 2019, at p.1. County Council then unanimously voted to give the municipalities 90 days to “become parties to this agreement with SCDOT” or Horry County would *then* have, in its view, “no choice but to end the agreement with SCDOT because Horry County could not go it alone on I-73.” *Id.* On November 15, 2019—still within this 90-day period—the City and the County signed a settlement agreement in principle that would have provided municipal funding for I-73 so that the County would not have to “go it alone.” Four days later and five months after the circuit court enjoined the County’s collection of the Hospitality Fee, the County nevertheless *voluntarily* cancelled the participation agreement. See Motion Exhibit A. One month later and six months after the circuit court entered its injunction, the County rejected the settlement agreement in principle that would have provided the needed funding. See Motion Exhibit B. Any suggestion that the City or this lawsuit “forced” the County’s cancellation of the financial participation agreement with SCDOT is **at best** specious.

- “Therefore, without unanimous consent from all of the municipalities, it would be imprudent for the County to settle because settling would not accomplish the obvious goal of bringing this litigation to an end. Put another way, if less than all of the

municipalities agreed to the settlement, then the County would still theoretically be exposed to litigation from those nonconsenting municipalities.” Return at 5.

This is nothing more than the County continuing to (at best) ignore or (at worst) misrepresent the status of the municipalities in this case. As discussed, *supra* n.2, the City brought this proposed class action simply as a payer of the challenged fee. **(R. pp.37-41.)** The other municipalities are part of this case as potential class members who have paid the fee, just like potentially millions of other people. *See* **(R. p.38)** (setting forth the proposed class definition). Unanimity of class members is not required to settle a class action, and any objecting municipality (or any other class member for that matter) would be bound by the release if the settlement were approved by the circuit court. *See Cowden Enters., Inc. v. E. Coast Millwork Distribs.*, 363 S.C. 540, 545, 611 S.E.2d 259, 261 (Ct. App. 2005); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847 (1999) (observing that in a mandatory class action “objectors to the collectivism . . . have no inherent right to abstain” and that “[t]he legal rights of absent class members (which in a case like this one would include claimants who by definition may be unidentifiable when the class is certified) are resolved regardless of their consent or, in a class with objectors, their express wish to the contrary”); *Berry v. Schulman*, 807 F.3d 600, 616 (4th Cir. 2015) (“Releases, of course, are a standard feature of class action settlements. Indeed, the release of claims that form the basis of litigation is the *raison d’être* of any settlement In class action settlements, parties may not only release the very claims raised in their cases, but also claims arising out of the ‘identical factual predicate.’”) (citation omitted). This protection is why the class action device is particularly beneficial to the County, as much as it may publicly

refuse to admit it.⁹ The City submits that the County's requirement for municipal unanimity simply is a manufactured excuse to avoid supporting the I-73 Project.

- "From a factual perspective, the City tries to stigmatize the County's cancellation of the participation agreement as nefarious." Return at 8.

The County cites nothing to support this statement. That is because there is nothing to cite. At no point did the City "stigmatize" the cancellation as "nefarious." It is not nefarious; it is the natural result of the lack of support for the I-73 Project among the members of County Council.

- "Prior to this lawsuit, the County dedicated a portion of the revenue it collected from the Hospitality Fee to Interstate 73." Return at 8.

Even if this assertion were true, that does not make this action legal.¹⁰ The Hospitality Fee was restricted by its terms to RIDE projects. The I-73 Project is not a RIDE project.¹¹ The County had no ability to unilaterally re-dedicate those funds by resolution. In any event, this assertion proves too much: a specific improvement that the County claims it would use the money for is no longer being funded.

⁹ Ironically, it is only if a class is not certified that the County would face liability to those who did not sign a settlement agreement. This liability would not be limited to non-consenting municipalities. Every single person who has paid the illegal fee potentially could turn around and sue the County, either individually or through another class action. The County's continued denunciation of the class action procedure is as mystifying as it is meritless.

¹⁰ The County adopted a number of resolutions indicating its intent to utilize revenues from the Hospitality Fee for purposes other than the RIDE Report's comprehensive road plan, including to fund general police power obligations of the County. (**R. pp.476-502.**) But this intent was never acted upon by the adoption of any ordinance.

¹¹ Neither Ordinance 105-96 which, by its plain language, was limited to the road projects specifically enumerated in the RIDE report, nor the RIDE report itself, contemplated the I-73 project identified by the County for receipt of the Hospitality Fee revenues on a going forward basis. (**R. pp.56-105.**)

- “Indeed, the City’s lawsuit has placed a cloud of doubt over the Interstate 73 project.”

Return at 8.

Before and during this litigation, the City has pledged support for the I-73 Project. (**R. pp.996, 1001, 1012.**) In December 2019, the City and four other Horry County municipalities committed to provide the funding the County required for the I-73 Project by publicly approving the settlement agreement in principle. The County responded by rejecting the agreement on manufactured grounds. The only cloud of doubt over the I-73 Project was placed there by the County acting alone.

- “At bottom, this threat to file an amended complaint appears to be nothing but a bullying tactic designed to force the County into settling this case now.” Return at 10.

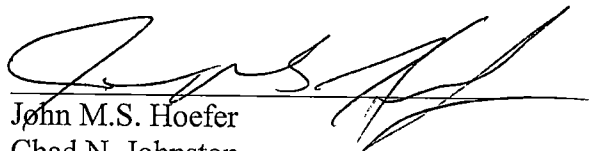
The City filed in the court below its pending motion to lift the stay, and thereby enable it to move to amend and supplement the complaint to provide a further basis upon which to seek relief in view of documents produced in discovery and subsequent actions and statements of County Council; this action was taken in fulfilment of its fiduciary duty as the putative class representative. *See Premium Inv. Corp. v. Green*, 283 S.C. 464, 469, 324 S.E.2d 72, 75 (Ct. App. 1984) (“It is now generally conceded that a plaintiff who sues on behalf of a class and the attorney representing the class assume a fiduciary obligation to the absent members of the class . . .”). The County’s language is rich in light of, but unfortunately consistent with, the derisive language employed by members of County Council when discussing this lawsuit and the City. *E.g.*, Motion Exhibit B at 4, 7, 11 (describing this case as “total BS,” “bogus,” a “sham,” a “scam,” and “a scare tactic”); *id.* at 4 (stating that one member “would highly recommend” that “anybody in the City of Myrtle Beach that started this and voted for it . . . pack up and get out of Horry County because this was about as much BS as anybody could even digest” and that if the

City prevails, “Horry County ought to put tag readers and anybody that lives there, you will pay your fair share through a tax action” for projects funded by the Hospitality Fee); Reply Exhibit C at 11-12 (stating that the City intended this to be a class action so it “could rape the taxpayers” and predicting that any member of County Council who voted in favor of the settlement agreement in principle “would be thrown out of office”).

CONCLUSION

The City respectfully submits that the Court should take judicial notice of the public actions and statements of the governing body of the County on November 19, 2019, and December 16, 2019, for purposes of this appeal based upon the foregoing and the City’s original motion and supporting memorandum.

Respectfully submitted,



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January 31, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

City of Myrtle Beach,

For Itself and a Class of Similarly
Situated Plaintiffs,

Plaintiff,

vs.

Horry County,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

)
) CIVIL ACTION NO. 2019-CP-26-01732
)

) **NOTICE OF MOTION AND SECOND**
) **MOTION TO LIFT STAY**
)
)
)
)
)
)

TO: DEFENDANT HORRY COUNTY, by and through its Attorneys: Henrietta U. Golding, Esquire, James K. Gilliam, Esquire, Adam R. Artigliere, Esquire, and Wm. Grayson Lambert, Esquire, all of Burr Forman McNair:

YOU WILL PLEASE TAKE NOTICE that Plaintiff City of Myrtle Beach (“City”), on behalf of itself and a class of similarly situated plaintiffs, will move for an order lifting the stay entered by this Court on July 18, 2019, to bring before the Court two discrete matters: (1) a Motion to Amend and Supplement Class Complaint, attached hereto and incorporated herein by reference as Exhibit “1” to (a) clarify and add additional grounds supporting the City’s challenge to the validity of the Hospitality Fee imposed by Ordinance 105-96 and (b) to include factual matter supporting the City’s causes of action that arises out of events and occurrences that took place subsequent to the filing of the original complaint herein; and (2) the County’s Motion for Judgment on the Pleadings so as to enable the City to later request certification of a class. The City will, if one is deemed necessary by the Court,¹ seek a hearing on the within motion before the Honorable William H. Seals, Jr. at the Horry County Courthouse, Conway, South Carolina, or such other location as the Court may set, ten days after the date of this motion or as soon

¹ See Supreme Court Order 2015-09-10-01, paragraph 6 (committing to the discretion of this Court whether to conduct oral arguments on non-dispositive motions).

thereafter as a hearing is scheduled by the Court. In support thereof, the City submits this combined motion and supporting memorandum under Supreme Court Order 2015-09-10-01, paragraph 1.

BACKGROUND

On November 15, 2019, the authorized representatives of the parties in this matter executed a settlement agreement in principle that was reached over the course of three full days and more than forty hours of formal mediation conducted by the Court's appointed mediator, Karl Folkens, Esquire, along with countless other hours of negotiations and exchanges (conducted through the mediator) in the intervening periods. This settlement agreement in principle provided, *inter alia*, for the joint funding of (i) the proposed Interstate Highway 73 project in Horry County and (ii) certain modifications (including elevation changes to address chronic flooding) to S.C. Highway 22 in Horry County, same to be provided by Horry County ("County") and the municipalities situated within Horry County in which the County's 1.5% Hospitality Fee is collected.² On November 19, 2019, notwithstanding the fact that this settlement agreement in principle had been reached only four days prior, the County Council in a public meeting voted to cancel the financial participation agreement between the County and the South Carolina Department of Transportation ("SCDOT") for the I-73 project within Horry County.³ A stated reason for this cancellation was the County Council's contrived frustration

² Nothing herein constitutes the divulgence of confidential mediation communications. Given the nature of the named parties to this litigation, as well as other municipal bodies within Horry County that are a part of the proposed class of plaintiffs, any settlement agreement in principle reached by the representatives of the parties was required to be presented and recommended to the respective governing bodies of the parties for public consideration, comment, and vote, all of which occurred. The within recitation reflects the public comments made and documents disclosed during the course of those public debates and votes.

³ The minutes of this County Council meeting are attached hereto and incorporated herein by reference as Exhibit "2." County Council had been briefed on this litigation in executive

over the fact that other governmental entities, including the municipalities in Horry County, were unwilling to support funding of the I-73 project.

The County Council's November 19 action proved prescient, if not pretextual. During a public meeting held on December 16, 2019, to vote on the settlement agreement in principle reached by the parties' authorized representatives in mediation, various members of the County Council chastised the City for bringing the instant action, deriding it as "total BS," "bogus," a "sham," a "scam," and "a scare tactic."⁴ One County Council member stated that he "would highly recommend" that "anybody in the City of Myrtle Beach that started this and voted for it . . . pack up and get out of Horry County because this was about as much BS as anybody could even digest." Ex. C at 4. He also believed that if the City prevails in this case, "Horry County ought to put tag readers and anybody that lives there, you will pay your fair share through a tax action" for projects funded by the County's (unlawful) Hospitality Fee. *Id.* These condemnable remarks were interspersed with a series of falsehoods regarding the City's lawsuit created, spread, and fostered by a number of County Council members.

Given this unfortunate posturing and political theater, it is wholly unsurprising that County Council did not approve the settlement agreement in principle recommended by the County's authorized representatives (see Rule 6(b)(2), SCADR) and approved at public meetings held by the governing bodies of the City, the City of North Myrtle Beach, the Town of Surfside

session before moving and voting to cancel the SCDOT contract. The proceedings before the County Council may also be viewed in a video which is posted on the County's website at https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1660.

⁴ The minutes of this County Council meeting are attached hereto and incorporated herein by reference as Exhibit "3," and these references can be found at pages 4, 7, and 11. A video of the full proceedings of County Council on December 16 can be viewed at, https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1680.

Beach, the Town of Atlantic Beach, and the Town of Aynor.⁵ The publicly-stated grounds for rejecting the agreement were nothing more than a ruse to mask the lack of support on County Council for the I-73 project in Horry County for which the County claims it had collected the extant fund of Hospitality Fee revenues.

At that meeting, in response to questions by members of County Council, the County's attorneys advised the County Council that "clarification" and "direction" were needed as to whether the City's claims have the potential to invalidate the Hospitality Fee as a whole, i.e., both within and without the incorporated areas of Horry County. *See* Ex. C at 13. Certain actions of the County Council since the filing of the complaint bear directly on the questions it posed on December 16 and warrant amendment and supplementation of the complaint. Through this motion, the City asks this Court to lift the stay pending appeal entered on July 18, 2019, so it can bring a motion to amend and supplement its complaint to provide the clarification sought by County Council and to add those additional factual bases and grounds supporting the City's request for the Court to invalidate the Hospitality Fee.

ARGUMENT

On June 21, this Court issued an order granting the City an injunction against the County to enjoin the County's collection of its 1.5% uniform service charge on accommodations, prepared food and beverage, and admissions (Hospitality Fee) within Horry County municipalities. On July 10, 2019, this Court issued its order denying the County's motion for reconsideration of the June 21 order and reiterating that the injunction applied within the limits of all municipalities situated within the County. The County appealed these orders, and this

⁵ The City of Conway and City of Loris did not vote on the settlement agreement in principle. However, it was structured to provide the exact same relief for the class and the exact same benefit to the County even if these cities declined to participate.

Court, at the request of the County, entered its July 18 order staying further proceedings in this case, except for the mediation which resulted in the January 25, 2020, declaration of an impasse by the Mediator notwithstanding his considerable efforts and the good faith efforts of the City.⁶ The appeal currently is pending before the South Carolina Supreme Court, but the matters the City seeks to bring before this Court do not depend on the outcome of that appeal.

Specifically, the City seeks to have the current stay lifted so that it may present to this Court a motion for leave to file an Amended and Supplemental Complaint which rests on different and further bases and relief than in the City's original Complaint. The bases for supplementing the complaint under Rule 15(d), SCRCR, are that (1) the County now has cancelled its contract with the SCDOT to provide local funding for the proposed Interstate Highway 73 project in Horry County (which has been the County's asserted primary basis for contending that it may continue to impose the Hospitality Fee under Ordinance 105-96),⁷ and (2) rejected the settlement agreement in principle that would have provided this funding, thus rendering the Hospitality Fee invalid as uniform service charge under South Carolina law for this additional reason because it is not intended to fund a specific improvement or project. *See, e.g., Brown v. Horry Cty.*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992) ("A service charge is

⁶ This Court, by Order dated August 16, 2019, previously lifted the stay it imposed to allow the City to file evidence of a surety bond it had obtained.

⁷ *See, e.g.,* Final Brief of Appellant, November 11, 2019, Appellate Case No. 2019-001134, at 6, copy attached hereto and incorporated herein by reference as Exhibit "4" (in which the County states to the Supreme Court in its statement of the case that "not long after the last of the three amendments to the Hospitality Fee, the County adopted two resolutions declaring its intention for how part of the 1.5 percent piece of the Hospitality Fee would be used: construction of I-73. The County pledged up to \$18 million annually (and then even more money, depending on the growth of that revenue) to building this new interstate"); *see also id.* at pp. 19-21 (discussing and describing the funding of I-73 as a justification for the imposition of the County's uniform service charge under the challenged County ordinance imposing the Hospitality Fee); *cf.* Rule 208(b)(1)(C), SCACR ("[a]ny matters stated or alleged in appellant's statement shall be binding on appellant").

imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge"); *see also C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, ___, 481 S.E.2d 427, 438 (1997) ("Under *Brown*, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.") (emphasis supplied). The basis for amending the complaint under Rule 15(a), SCRCP, is that the City has recently learned that the County failed to give Ordinance No. 105-96 the required three readings. *See* S.C. Code Ann. § 4-9-120 ("With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days"). Accordingly, all fee collections under the ordinance have been and would continue to be improper.

The County's Motion for Judgment on the Pleadings, which already has been briefed by the parties, likewise raises issues separate and apart from those pending before the Supreme Court. These matters will all need to be addressed regardless of how the Supreme Court rules. Given the County's rejection of the settlement agreement in principle and accompanying public statements, the time has come to resume litigating this case.

The City therefore respectfully requests that this Court lift the July 18 stay to allow the City to file a Motion for Leave to Amend and Supplement Complaint and thereby allow the City to pursue the additional grounds as will be sought therein if this Court grants leave, and hear the County's Motion for Judgment on the Pleadings. The determination of whether to issue a stay is within the discretion of this Court. *See City of Spartanburg v. Belk's Dep't Store*, 199 S.C. 458,

20 S.E.2d 157 (1942). Thus, the determination of whether to lift a stay issued is also within the discretion of this Court. The Court should exercise its discretion and lift the stay to allow the City to pursue this additional relief.

Pursuant to Rule 11(a), SCRCP, the undersigned hereby certifies that consultation with opposing counsel regarding the substance of this motion would serve no useful purpose.

Respectfully submitted,

s/ Chad N. Johnston

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*Attorneys for Plaintiff City of Myrtle Beach and All
Others Similarly Situated*

Columbia, South Carolina
January 28, 2020

EXHIBIT 1

(Pages 1-79)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

City of Myrtle Beach,

For Itself and a Class of Similarly
Situated Plaintiffs,

Plaintiff,

vs.

Horry County,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

)
) CIVIL ACTION NO. 2019-CP-26-01732

) **NOTICE OF MOTION, MOTION TO**
) **AMEND AND SUPPLEMENT**
) **COMPLAINT, AND SUPPORTING**
) **MEMORANDUM**

YOU WILL PLEASE TAKE NOTICE that Plaintiff City of Myrtle Beach (“City”), individually and on behalf of a class of similarly situated plaintiffs, pursuant to Rules 15(a) and 15(d), SCRCF, will move for an order granting the City leave to file the proposed Amended and Supplemental Complaint attached hereto as Exhibit A¹ to conform to the evidence and to add grounds for declaratory and injunctive relief on the additional bases that Horry County Ordinance 105-96, as amended, (1) is void *ab initio* in its entirety based on Horry County’s failure at its inception to comply with the statutory requirements to adopt an ordinance imposing the uniform service charge and (2) cannot meet the test enunciated by the Supreme Court to qualify as a validly imposed and collected uniform service charge. The City will seek a hearing on the within motion before the Honorable William H. Seals, Jr. at the Horry County Courthouse, Conway, South Carolina, or such other location as the Court may set, ten days after the date of this motion or as soon thereafter as a hearing is scheduled by the Court. In support

¹ To conserve resources, the proposed Amended and Supplemental Complaint attached to this motion does not include any of its exhibits. They remain the same as in the original Complaint except to the extent that new exhibits, consisting of the minutes of the August 6, 1996, August 20, 1996, October 15, 1996, and November 18, 2019, meetings of the Horry County Council (Exhibits “C” and “O” to the within motion), will be added. If leave is granted, the City will of course include all exhibits when filing the Amended and Supplemental Complaint.

thereof, the City submits this combined motion and supporting memorandum under Supreme Court Order 2015-09-10-01.

INTRODUCTION

Documents exchanged during discovery in this matter and the public statements and proceedings of the governing body of Defendant Horry County ("County") have brought to light two additional grounds upon which this Court should find the County's Hospitality Fee is invalid. First, because the evidence demonstrates that the County failed to give Ordinance 105-96 the requisite number of readings prior to its adoption, Ordinance 105-96 and, necessarily, all subsequent amendments are and should be deemed void *ab initio*.

Second, based on the prior arguments advanced by the City, as recognized in the Court's prior orders issued in this case, the Court is aware that the Supreme Court has enunciated clear standards to governmental entities seeking to impose a uniform service charge on payers in its jurisdiction in order for the fee to be lawful. As the City has argued since the outset of this litigation, the Hospitality Fee imposed by the County no longer complies with the Supreme Court's standard, as the express purpose for the imposition of the Hospitality Fee has expired, and the County lacks the Constitutional and statutory authority to unilaterally change the purpose of the Fee within the Municipalities without their consent, which has not been provided. However, beyond that limitation, the County has recently taken unilateral action to cancel the new road construction contract for Interstate 73 ("I-73"), which it has heretofore argued in this litigation represents the "new" purpose for the imposition of the Hospitality Fee. Thus, even under the County's theory in this case, to which the City does not subscribe but is assumed for the purposes of this argument, there now exists no "specific improvement" for which the

Hospitality Fee is imposed; therefore, it is not a valid uniform service charge that the County can lawfully impose and collect.

Justice requires that the City be given leave under Rule 15(a) to amend its complaint to add these additional grounds challenging the County's persistent unlawful conduct and refusal to abide by the law when adopting uniform service charges that enrich the County to the tune of tens of millions of dollars per year in perpetuity at the expense of all members of the proposed class. Furthermore, the Court should permit the City under Rule 15(d) to set forth the occurrences and events involving the County's cancellation of the SCDOT contract which have happened since the original complaint in this matter was filed.

FACTUAL/PROCEDURAL BACKGROUND

At the center of this case is Horry County Ordinance 105-96, as amended, which imposes a uniform service charge on accommodations, prepared food and beverage, car rentals, and admissions in Horry County.² On March 20, 2019, the City filed its Complaint challenging the portion of the fee imposed within Horry County municipalities. The gravamen of the Complaint was that the Hospitality Fee was no longer a valid uniform service charge based on multiple grounds, including the fact that the County needs the consent of the municipalities to impose this fee within their corporate limits, that under the plain language of Ordinance 105-96 and the respective express resolutions of Municipalities such consent expired on January 1, 2017, and that all such collections thereafter have been and will be improper. Upon the City's motion, this Court preliminarily enjoined the County's collection of this fee within all Horry County municipalities. The County appealed that order, and this Court stayed the underlying

² The Hospitality Fee currently has three components: (1) a 1.5% fee imposed county-wide on accommodations, prepared food and beverage, and admission; (2) a 1.0% fee imposed only in the unincorporated areas of Horry County on those same transactions; and (3) a county-wide 2.5% fee on rental cars.

proceedings pending that appeal. Recent developments have given rise to two additional grounds on which the Hospitality Fee is invalid regardless of whether consent was given by any municipality. The City concurrently moves to lift the Court's stay to permit the filing of the proposed Amended and Supplemental Complaint.

As to the first such new ground, the City has confirmed that the Horry County Council ("County Council") failed to properly enact Ordinance 105-96 at the outset, thus invalidating the entire ordinance and all of its amendments. The official copy of Ordinance 105-96 filed with the Horry County Register of Mesne Conveyances in Book 1895 at Page 838 identifies the following procedural history:

FIRST READING:	August 6, 1996
SECOND READING:	August 20, 1996
THIRD READING:	October 15, 1996

Exhibit B, attached hereto, at p. 5. The minutes from the August 20, 1996 County Council meeting similarly claim that an unidentified hospitality fee ordinance was given a first reading on August 6. Exhibit C attached hereto, Meeting Minutes, at pp. 9-10.

In discovery, the City requested all County Council meeting minutes discussing Ordinance 105-96. The County produced only selected pages from the August 6, August 20, and October 15, 1996 meetings. *See generally* Exhibit C, attached hereto. These minutes do not reflect three readings being given to Ordinance 105-96 as required. *See id.* The City promptly informed the County that minutes indicating a first and second reading of Ordinance 105-96 had not been produced and reiterated the City's request for same. Exhibit D, attached hereto. In response, the County reasserted its position that the pages it produced from the August 6 and

August 20 meetings show what it claims to be the first and second readings of Ordinance 105-96 and, in so doing, stated as follows:

In the apparent haste to send out the deficiency letter, the Plaintiff clearly missed several items. A careful review of the document production will reveal several of the items the Plaintiff claims are not included. Specifically, with regard to the meeting minutes for the first and second reading of Ordinance 105-96, please see documents produced by Defendant bearing Bates numbers HC_0000221 through HC_0000232.³

Exhibit E, attached hereto. The County's assertion notwithstanding, these pages in fact confirm that Ordinance 105-96 did not receive the required three readings. Accordingly, as set forth below, Ordinance 105-96 was not properly adopted by the County Council and is void *ab initio*.

As to the second new ground, the County no longer funds a specific improvement using the 1.5% portion of the Hospitality Fee. This portion of the Hospitality Fee was designated to fund a "comprehensive road plan adopted by the County in concert with the municipalities of the County," whereas the 1.0% fee was to "be deposited in the general fund of the County to offset the cost of public safety and public works services and infrastructure directly impacted by tourism." Ex. B at § 1(G), p. 840. There is no identified use of the 2.5% rental car fee which was added later. *See generally* Exhibit F attached hereto. Upon information and belief, however, it too was designated for the comprehensive road plan. As the Court is aware, the "comprehensive road plan" referred to in Ordinance 105-96 is the "RIDE Committee ... plan." Ex. B at Recitals, p. 838

It is undisputed that all RIDE projects have been completed, and all of the borrowing obligations facilitated by the 1.5% Hospitality Fee were paid off by February 15, 2019. In an apparent effort to keep this portion of the fee alive, County Council unlawfully amended Ordinance 105-96 to remove any tether between the 1.5% Hospitality Fee and a specific

³ Exhibit C to this motion contains these referenced pages.

improvement or project, choosing instead to allow its imposition “[f]orever” and “indefinitely” for any projects the County later identifies. Exhibit G attached hereto, Horry County Ordinance 93-16; Exhibit H, attached hereto, Horry County Ordinance 32-17; Exhibit I attached hereto, Hg. Trans. July 10, 2019, at 5:4-6:6. But even some members of County Council correctly recognized that this was legally impermissible. *See, e.g.*, Exhibit J attached hereto, Horry County Council Meeting Minutes, April 18, 2017, at 3 (statements attributed to Councilman Harold Worley that “[t]o collect a tax [sic] that they didn’t know what they would spend it on didn’t seem right. There was something wrong with that. . . . They were asking him to tax [sic] the people, whether tourist or locals, when he didn’t know what the money would be used for.”); Exhibit K attached hereto, Horry County Council Meeting Minutes, May 2, 2017, at 1 (“Mr. Prince said the reason that he was opposed to vote Yea on **Ord. 32-17** was that he thought people needed to know which projects the money would be spent on before it was approved.”).

Even though it lacked the authority to do so, the County thereafter sought to tie the 1.5% Hospitality Fee to the I-73 project in Horry County. *See, e.g.*, Exhibit L attached hereto, Horry County Resolution R-82-18 (dedicating “\$23,000,000 and, considering growth, up to \$25,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73”); Exhibit M attached hereto, Horry County Resolution R-36-19 (proposing to dedicate \$18,000,000 of the 1.5% Hospitality Fee revenues annually to I-73 in Horry County).

In recognition of I-73’s importance to the region, the November 15, 2019 settlement agreement in principle signed by the parties’ representatives during the Court-ordered mediation of this case specifically pledged both municipal and County funds out of Hospitality Fee revenues to support I-73. A copy of that settlement agreement in principle is attached hereto as

Exhibit N.⁴ However, just four days after the agreement was signed, County Council unanimously voted to cancel its contract with the South Carolina Department of Transportation (“SCDOT”) for the I-73 project on the false premise and public assertion that the municipalities did not support it.⁵ See Exhibit O attached hereto. Less than one month after canceling the SCDOT contract, County Council formally rejected the settlement agreement in principle that would have provided the required local funding for I-73.⁶ County Council, by its sole actions,

⁴ The settlement agreement in principle is not submitted “to prove liability for or invalidity of the claim or its amount.” See *Winrose Homeowners Assoc., Inc. & Regime Solutions, LLC v. Hale*, Op. No. 27934, (S.C. Sup. Ct. filed December 18, 2019) (Shearouse Adv. Sh. No. 49, at 14, 22 n. 10) (Petition for Rehearing filed January 2, 2020) (quoting Rule 408, SCRE and holding that this rule of evidence does not prevent the submission of evidence regarding settlement negotiations where it involves “manipulation” of legal proceedings for an ulterior purpose). Here, the settlement agreement in principle is submitted to support the City’s motion to supplement the complaint to take into account certain recent facts which have arisen subsequent to the filing of the original complaint in March of 2019.

⁵ A video recording of the County Council’s November 19, 2019, meeting may be seen at https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1660.

⁶ County Council did so following a public meeting in which one misstatement after another regarding the settlement agreement in principle and the lawsuit were advanced by members of Council, including assertions that the lawsuit was “BS,” a “sham,” a “scam,” and “bogus.” See Exhibit P attached hereto; see also County Council Special Meeting – Dec 16th, 2019, available at https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1680 (video recording of County Council meeting). Ultimately, County Council attempted to publicly negotiate and modify the agreement in principle after it was aware that all of the signatory municipalities had already publicly voted in favor of same and did so on contrived grounds that merely mask what the City believes to be the pertinent fact in play – i.e., that there were insufficient votes on County Council to support funding the I-73 project. Publicly, the County Council stated that it would only approve the settlement agreement in principle if there was unanimity among the municipalities and if the City’s “out of town” attorneys would not be paid a class counsel fee out of the proposed common fund for the City’s efforts in exposing the County’s unlawful actions injuring the payers of the Hospitality Fee. See *id.*

As this Court is no doubt aware, it is customary in class action litigation for class counsel to be compensated out of a common fund of monies obtained for the benefit of those persons and entities alleged to have been harmed. This vote by County Council was little more than political theatre and a ruse to provide political talking points to mask the County Council’s efforts to the public. The proposed settlement agreement in principle was structured specifically to have the consenting municipalities provide the exact same amount of funding for the I-73 project in Horry County even if there was not such unanimity; further, and contrary to the outright false statements otherwise, there was no provision to award attorneys’ fees in the agreement in

has brought about the end of I-73 in Horry County. Moreover, intentionally or not, the County Council's unilateral action in both canceling the SCDOT contract for I-73 some six months after this Court enjoined the collection of the Hospitality Fee, as well as rejecting the settlement agreement in principle to fund the I-73 project, had the additional effect of directly undercutting the County's legal argument in this litigation that the Hospitality Fee is a valid uniform service charge under the standard imposed by the Supreme Court, as the sole project the County (unlawfully) sought to fund using this portion of the Hospitality Fee is now itself gone.

Through this motion, the City seeks leave to amend its complaint to add additional legal grounds for the invalidation of the Hospitality Fee, including to correct any allegations that Ordinance 105-96, and thereby any of its amendments, were properly enacted,⁷ and to supplement its complaint to reflect the County's November 19 action to cancel the contract with SCDOT and December 16 action to reject the settlement agreement in principle providing funding for I-73, all of which provide additional bases for seeking further declaratory and injunctive relief on the ground that the collections under Ordinance 105-96, as amended, were invalid, as well as all future collections are invalid for the reasons stated herein.

principle, but only a provision allowing the City to seek an award of fees in this Court's sole discretion, to be paid out of a common fund created through the sole efforts of the City in this litigation for the benefit of those who paid the illegal Hospitality Fee, up to an amount the County would not oppose. If the County Council truly wanted to proceed with the proposed I-73 project in Horry County, it would have accepted the settlement agreement in principle instead of espousing false narratives, disparaging a lawsuit that the judicial system has not seen fit to dismiss the County's efforts notwithstanding, and erecting these strawmen to reject the proposed settlement.

⁷ This amendment will also encompass correcting the allegation that Ordinance 11-04, which purports to amend Ordinance 105-96, was codified, as the City previously notified the Court during the hearings in this case, as well as in other filings, conforming to the evidence that has come to light since the filing of the original complaint.

LAW/ANALYSIS

“Leave to amend pleadings pursuant to Rule 15, SCRCPP, shall be liberally and freely given when justice so requires and does not prejudice any other party.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). “Prejudice” under this formulation means “a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Pool v. Pool*, 329 S.C. 324, 328-29, 494 S.E.2d 820, 823 (1998). The party opposing amendment bears the burden of establishing prejudice. *Parker*, 362 S.C. at 286, 607 S.E.2d at 716. Without prejudice, denial of leave is improper so long as the proposed amendment is not clearly futile. 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1487 (3d ed. 2010), *cited with approval in Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 183, 826 S.E.2d 585, 589 (2019); *see also Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (directing that leave be given in the absence of “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.”) (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962)). “Even though a [motion under Rule 15(d), SCRCPP, for leave to file a] supplemental pleading is technically different than a motion to amend the pleadings under Rule 15(a), SCRCPP, the standard for granting or denying these motions is the same.” *Tanner v. Florence County Treasurer*, 336 S.C. 552, 558, 521 S.E.2d 153, 156 (1999). “Therefore, South Carolina case law interpreting Rule 15(a), SCRCPP, is authoritative in analyzing ...[a] request to supplement under Rule 15(d), SCRCPP.” *Id.*

Because the issues raised by the within Motion and proposed Amended and Supplemental Complaint do not raise new issues, but only new grounds for the relief being sought and newly

existing facts in support thereof, the County will not be prejudiced and justice requires granting leave to amend the City's complaint.

A. Ordinance 105-96 Is Void Because County Council Did Not Give It the Required Three Readings.

"With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days" S.C. Code Ann. § 4-9-120; *see also* County Code § 2-26(b) (requiring the same). County Council is required to "keep a journal in which shall be recorded the minutes of its proceedings." *Id.* § 4-9-110. These meeting minutes "are the only competent evidence of the proceedings of the transactions of the governing body." *Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992) (discussing municipal meeting minutes under the corollary statute). "Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding . . . unless the minutes are incomplete or ambiguous. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body." *Id.* While local governments are given latitude to determine the procedural particulars for giving an ordinance a reading, *McSherry v. Spartanburg Cty. Council*, 371 S.C. 586, 590-91, 641 S.E.2d 431, 433-34 (2007), the minutes nevertheless must reflect formal readings by whatever process a local government mandates, *see Berkeley Elec. Co-op.*, 308 S.C. at 209, 417 S.E.2d at 582. South Carolina courts will invalidate actions taken by a county council that do not satisfy all procedural requirements. *E.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019) (invalidating ten-year-old, million-dollar severance agreement because county council acted without a quorum); *Berkeley Elec. Co-op.*, 308 S.C. at 209, 417 S.E.2d at 582 (invalidating agreement because minutes do not reflect formal reading).

Here, Ordinance 105-96 unmistakably claims that County Council gave Ordinance 105-96 a first reading on August 6, 1996, a second reading on August 20, 1996, and a third reading on October 15, 1996. The meeting minutes the County produced in discovery, however, unambiguously establish that the County did not actually give the ordinance the required readings. Specifically, the meeting minutes on August 6, 1996, unquestionably do not reflect a reading of Ordinance No. 105-96, or any other ordinance arguably seeking to impose a uniform service charge.⁸ Ordinance No. 105-96 therefore fails to satisfy the most basic of requirements to be a valid ordinance. As a result, Ordinance 105-96 and all amendments to it are void *ab initio* and in their entirety.

B. The Hospitality Fee Is Invalid Because It No Longer Funds Any Specific Projects.

This Court previously held that the Hospitality Fee is a uniform service charge. Order on Mots. for Prelim. Inj. at 14-15 & n. 10. The County has agreed with this holding in its briefing before the Supreme Court, arguing that the Hospitality Fee is a uniform service charge enacted under S.C. Code Ann. § 4-9-30(5)(a) and, in its opinion, authorized by S.C. Code Ann. 6-1-330(A). Final Br. of Appellant at 11-12. “A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge.” *Brown v. Horry Cty.*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992). In *C.R. Campbell Construction Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 427 (1997), a follow-up case to *Brown* that was also authored by Justice

⁸ Nor can the County assert otherwise in view of the fact that the “RIDE Committee ... new plan and [] new timetable” that is specifically referenced in Ordinance 105-96 was not adopted until September of 1996 – the month following the putative first two readings of Ordinance 105-96. See Ex. B at Recitals, p. 838.

Moore, the Supreme Court clarified the standard by which a uniform service charge would be deemed lawfully imposed. Specifically, the Supreme Court held that:

Under *Brown*, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

Id. at ___, 481 S.E.2d at 438. “Simply put, the statutes do not allow these revenues to be treated as a slush fund.” *Azar v. City of Columbia*, 414 S.C. 307, 317, 778 S.E.2d 315, 320 (2015).

The only improvement or projects specifically contemplated in Ordinance 105-96 to be funded by the 1.5% Hospitality Fee were those under RIDE Plan. Those projects have been completed and loans facilitating those projects have been paid off. Under those undisputed facts, the County’s attempts to modify the purpose and duration of the Hospitality Fee fail the second and third prongs, respectively, of the express test for the validity of a uniform service charge established by the Supreme Court in *Brown* and *C.R. Campbell*.⁹ Even assuming Ordinance 105-96 was adopted in accordance with the statutorily required procedure (which it was not), these failures would still end the story and the continued viability of this fee. The County’s unlawful efforts to keep the fee alive by tying it to the proposed I-73 project, even if it is assumed to be a valid effort to start (which it is not, given that it expressly violates the second prong of the Supreme Court’s test), did not get far as County Council unilaterally and voluntarily canceled its contract with SCDOT for the construction of I-73¹⁰ and rejected a settlement agreement in

⁹ It should also be noted that the test enunciated by the Supreme Court requires compliance with all of the elements of the test (*see* reference to “and,” *supra*, in specifying the 4-part test) in order to be deemed a valid uniform service charge; thus, the failure to comply with any one element of the test would render the Hospitality Fee invalid.

¹⁰ Even this action by the County Council was plagued with contradiction. In its August 28, 2019, decision to extend the SCDOT contract, the County Council provided that it would wait until November 26, 2019, to revisit this issue after determining whether there was adequate

principle which would have provided local government financial support for the same. It now is beyond dispute that the 1.5% Hospitality Fee no longer has a “specific improvement contemplated” as required by South Carolina law. As Councilmembers Harold Worley and Paul Prince seemed to recognize, County Council simply wants the Hospitality Fee to continue “forever” so that it can be an illegal “slush fund” the County can later draw from when it finds a need.

C. Leave to Amend and Supplement Is Required So These Issues Can Be Raised and the County Will Not Be Prejudiced.

Leave to raise this issue must be given as this is a matter of significant public importance that impacts all who reside in, visit, or transact business in Horry County. It involves a continued overreach by the County, above and beyond that already subject to this litigation, in an effort to obtain tens of millions of dollars a year in additional revenue without adhering to clear statutory procedures. The payers of these illegal fees should be given the opportunity to pursue all claims and relief, including declaratory, injunctive, monetary, and equitable relief, stemming from the invalidity of Ordinance 105-96 and of the Hospitality Fee. The County can claim no prejudice if leave is given, as the stay of these proceedings pending the County’s appeal of the Court’s preliminary injunction regarding collection of fees within the municipalities ensures the County has a full opportunity to respond to the Amended Complaint. Moreover, as this Court is aware from the substantial briefing in this case to date, the additional grounds and facts the City seeks to advance by way of the proposed Amended and Supplemental Complaint do not raise new or different issues from those contained in the original complaint, but instead merely add additional legal bases and newly developed supporting facts for these legal bases and the relief

municipal support for funding I-73. Exhibit Q attached hereto. However, and for the apparently sole purpose of political theater, the County Council canceled the SCDOT contract seven days before this deadline.

sought. Given that the County Council publicly stated that it sought "clarification" and "direction" as to whether this lawsuit presented additional grounds which might call into question the validity of the Hospitality Fee county-wide beyond the question of municipal consent, amendment and supplementation to comply with the County's request is appropriate, and the County is not prejudiced by the addition of these legal grounds or newly developed facts.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court grant it leave to file its proposed Amended and Supplemental Complaint and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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*Attorneys for Plaintiff City of Myrtle Beach and All
 Others Similarly Situated*

Columbia, South Carolina
 _____, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	AMENDED AND SUPPLEMENTAL
Situated Plaintiffs,	)	COMPLAINT
	)	
Plaintiff,	)	(Action for Declaratory Judgment,
vs.	)	Injunctive Relief, Unjust Enrichment, and
	)	Imposition of a Constructive Trust)
Horry County,	)	
	)	(Jury Trial Demanded)
Defendant.	)	

Plaintiff, City of Myrtle Beach ("City"), for itself and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), on behalf of a class of similarly situated fee payers, complains of Defendant, Horry County ("County"), and would respectfully show unto this Honorable Court as follows:

Introduction

1. Since January 1, 1997, County has, in contravention of its statutory authority and thus illegally, been collecting tens of millions of dollars per year in fees on the gross proceeds of, *inter alia*, accommodations, food and beverage, admissions, and car rentals ("Hospitality Fee") within the municipalities of Atlantic Beach, Aynor, Conway, Loris, Myrtle Beach, North Myrtle Beach, and Surfside Beach (collectively hereinafter "Municipalities") and in the unincorporated areas of the County. County has manifested its intention—and attempted to give itself the authority—to continue collecting this improper Hospitality Fee in perpetuity.

2. City, and all others who have paid the Hospitality Fee, are entitled to both declaratory and injunctive relief to prevent the illegal collection of same now and in the future. Furthermore, City and other payers of the Hospitality Fee are entitled to a refund from County

for the Hospitality Fee collected. City brings this action on behalf of itself and, pursuant to Rule 23, SCRCF, as representative of the members of the Class, as defined herein.

Parties

3. City is a political subdivision and municipal corporation organized and existing under S.C. Const. art. VIII and Title 5 of the Code of Laws of South Carolina whose municipal limits are situated wholly within in the State and County aforesaid.

4. County is a body corporate and politic existing under S.C. Const. art. VIII and Title 4 of the Code of Laws of South Carolina.

Jurisdiction

5. This Court has jurisdiction over the parties and the causes of action pursuant to the statutory and common law of this state, including S.C. Code Ann. § 15-53-20 and S.C. Code Ann. § 15-53-30.

Venue

6. Venue is proper in this Court pursuant to, *inter alia*, S.C. Code Ann. § 15-7-20.

Class Allegations

7. City brings this action on behalf of itself and all others similarly situated under Rule 23, SCRCF. City seeks to represent the following class:

All individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, political subdivisions, counties, municipalities, state agencies, and instrumentalities of the State of South Carolina who have paid the fee under Section 19-6(a) of the Code of Ordinances of Horry County, South Carolina, and/or are subject to paying such fee on a going forward basis, for purchases of covered accommodations, food, beverage, car rentals and amusements both within and without the Municipalities situated in Horry County.

(Hereinafter referred to collectively as "Class").

8. City's claims may be maintained under Rule 23(a), SCRPC on behalf of the members of the Class because the Class is so numerous that joinder of all members is impracticable. As described below, there are questions of law or fact in common to the Class, the claims of the City as representative party are typical of the claims of the Class, the City will fairly and adequately protect the interests of the Class, and the relief sought is primarily injunctive and declaratory.

9. The questions of law and fact that are common to the City and to all members of the Class predominate over questions, if any, that may affect only individual plaintiffs or individual members of Class, inasmuch as the unlawful activity alleged herein is of a character that is generally applicable to the City and the members of the Class. Among the questions of law common to the claims of City and the Class it represents are, *inter alia*:

- a. Whether City and the members of the Class are entitled to a declaration that:
 - i. County did not give the required three readings to Ordinance No. 105-96, and thus the ordinance is invalid *ab initio* and all collections under same, including all amendments, are illegal;
 - ii. The portion of the Hospitality Fee imposed in the incorporated and unincorporated areas of Horry County to fund a comprehensive road plan is no longer valid as there no longer is a specific improvement contemplated to be funded by it;
 - iii. County's attempted unilateral modification of the Sunset Provision and scope of permitted expenditures through its Ordinance No. 93-16 and collection and retention of the Hospitality Fee within the Municipalities after January 1, 2017 was illegal; and

- iv. County's attempted unilateral repeal of the Sunset Provision through its Ordinance No. 32-17 and collection and retention of the Hospitality Fee within the Municipalities after January 1, 2017 was illegal;
 - b. Whether County should be permanently enjoined from collecting or retaining the Hospitality Fee collected from within the corporate limits of the Municipalities and in the unincorporated areas of County;
 - c. Whether a constructive trust has been imposed on County with respect to the Hospitality Fee that it has illegally collected and retained;
 - d. Whether County has been unjustly enriched through the illegal collection and retention of the Hospitality Fee; and
 - e. Whether City and the members of the Class are entitled to proportional refunds of the Hospitality Fee collected unlawfully.
10. Among the questions of fact common to the claims of City and the members of the Class it represents are, *inter alia*:
- a. All factual issues related to the requested declaratory and injunctive relief;
 - b. The amount of the Hospitality Fees County has improperly collected which are held in constructive trust for City and the Class; and
 - c. The calculation of the amount of proportional refund owed each member of the Class.
11. The claims advanced by City are typical of those of each member of the Class in that the nature of the claims is the same for each Class member; the ordinance imposing the fee is the same for each Class member; the illegality of the fees County collected is the same for

each Class member; each Class member paid the illegal fee; and the anticipated defenses of Defendants are the same for each Class member.

12. City paid the Hospitality Fee just as each other member of the Class. City possesses sufficient knowledge and involvement in the matter to fairly and adequately protect the interests of each member of the Class.

13. Each member of the Class is equally entitled to declaratory and injunctive relief, as well as a proportional refund in the amount of each member's payment of the Hospitality Fee collected improperly by County.

General Background/Facts

14. In May of 1996, "the South Carolina Department of Transportation, at the direction of the Governor, created the Road Improvement and Development Effort Committee (RIDE) to determine short- and long-term transportation infrastructure needs and improvements for Horry County along with various options to fund these improvements." *Report to the Honorable David M. Beasley, Governor of South Carolina, The Road Improvement and Development Effort, September, 1996, Preface*, copy attached hereto and incorporated herein by reference as Complaint Exhibit A ("RIDE Report"). The impetus for the creation of the RIDE Committee was an unsuccessful referendum vote by the Horry County electorate on March 5, 1996, to adopt the county's "Comprehensive Road Program" which would have been funded, in part, by a local option sales tax under S.C. Code Ann. § 4-10-10. *See Ex. A at § 1.0*. The RIDE Report to the Governor, issued in September of 1996, recommended a plan by which the need for road improvements in Horry County could be addressed and funded on a short- and long-term basis.

15. The intent of Ordinance 105-96, which resulted from an unsuccessful county-wide referendum to impose a local option sales tax, was to further the goals and objectives of the RIDE Report and pursue the plan recommended therein. Ordinance No. 105-96 sought to impose a two and one-half percent “uniform service charge hereinafter referred to as the ‘hospitality fee’” on the sale of accommodations, admissions, and food and beverages. A copy of Ordinance No. 105-96 is attached hereto and incorporated herein by reference as Complaint Exhibit B. Thereunder, 1.5% of this uniform service charge would apply countywide within the corporate limits of municipalities and in the unincorporated areas of Horry County. An additional 1% would apply only in the unincorporated areas of Horry County. *See* Ex. B at § 1(A).

16. Accordingly, the stated purpose of the 1.5% Hospitality Fee was “to provide needed infrastructure” to improve roads in Horry County (*see* Ex. B, recitals) and thus required that “the funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County **in concert with the municipalities of the County.**” *See id.* at § 1(G) (“Fee Use Provision”) (emphasis added). No other use of these funds was contemplated.

17. If properly enacted, the ordinance was to be effective January 1, 1997. The ordinance further provided that “[t]he imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate” either on August 1, 1997, if the State of South Carolina did not act to provide funding for “the short term funding outlined by RIDE” or “twenty years from the effective date of [the] ordinance.” *See id.* at § 1(H) (“Sunset Provision”).

18. On October 8, 1996, the governing body of Plaintiff, Myrtle Beach City Council (“City Council”), adopted a resolution supporting the recommendations of the RIDE Report, which City Council understood to “propose[] implementation of a 1.5 percent hospitality fee for

a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding” and urged the governing body of County, Horry County Council (“County Council”), to “enact the necessary ordinances to implement the RIDE committee report.” A copy of this resolution is attached hereto and incorporate herein by reference as Exhibit C. Resolutions containing the same language from Exhibit C as quoted in this complaint Paragraph 19 were adopted by the Municipalities, respectively, in or about October and November 1996, copies of which resolutions are attached hereto and incorporated herein by reference as composite Exhibit D.

19. Ordinance No. 105-96, as recorded by the County pursuant to S.C. Code Ann. §4-9-120 in the office of the Horry County Register of Mesne Conveyances in Book 1895 at page 838, states that County Council gave the ordinance a first reading on August 6, 1996, a second reading on August 20, 1996, and a third reading on October 15, 1996. *See* Ex. B. However, County Council did not give Ordinance 105-96 three readings. Ordinance 105-96 therefore does not comply with S.C. Code Ann. § 4-9-120 and Horry County Code § 2-26(b), and it was void *ab initio*.

20. On February 4, 1997, County Council enacted Ordinance No. 7-97 purporting to amend § 1(A)(3)(G) and §1 (A)(3)(H) of Ordinance No. 105-96. The purpose of this amendment was, in part, to provide the County authority to use the revenues collected under Ordinance 105-96 to match State and Federal funds and re-designate the “Road Fund” holding the proceeds of the 1.5% Hospitality Fee as the “Road Special Revenue Fund,” but it retained the Fee Use Provision and the Sunset Provision. A copy of Ordinance No. 7-97, recorded in the Office of the Register of Mesne Conveyances for Horry County in Book 1922 at Page 1463, is attached hereto and incorporated herein by reference as Exhibit E.

21. On October 15, 1997, the County filed an application with the South Carolina Transportation Infrastructure Bank ("SIB") for state funding in the form of a loan for the road improvement plan in Horry County recommended in the RIDE Report ("RIDE Project"), to which application the County attached, *inter alia*, the RIDE Report and the resolutions attached hereto as Exhibit C and composite Exhibit D. A copy of this SIB application, less the exhibits referenced therein, is attached hereto and incorporated herein by reference as Exhibit F. In the SIB application, Horry County referred to the 1.5% Hospitality Fee provided for in Ordinance No. 105-96 as being a "source of local revenue" to fund the RIDE Project, which would generate the approximately \$368 Million County required contribution to the \$774 Million estimated cost to complete the RIDE Project, such contribution being payable by the County. *See* Ex. F at 6, 9. The RIDE Plan further recommended that any surplus in funds generated to support its short-term recommended projects be used to fund the long-term projects recommended under the RIDE Plan. *See* Ex. F at § 3.0, Note.

22. On November 18, 1997, County Council adopted its Resolution Number 224-97 which, *inter alia*, reaffirmed that the 1.5% Hospitality Fee allegedly enacted under Ordinance No. 105-96 is "to be used to provide the county portion of funding for the RIDE Plan" and, at the request of the SIB, reaffirmed the County Council's "support for the RIDE Plan," stating that it "supports, endorses and approves [the County's] amended application to [SIB] to be presented on November 24, 1997." A copy of this resolution is attached hereto and incorporated herein by reference as Exhibit G.

23. On November 20, 1997, the County submitted a revised application to SIB, a copy of which is attached hereto and incorporated herein by reference as Exhibit H. Under this revised application to SIB, the estimated cost to complete the RIDE Project was reduced from

\$774 Million to \$545 Million and the “source of local revenue” to be generated by the 1.5% Hospitality Fee purportedly imposed by Ordinance No. 105-96 was reduced from \$368 Million to \$300 Million, same to be the County’s required contribution to the RIDE Project and payable by the County in installments through fiscal year 2016/2017. *See* Ex. H at i, 5, and 7.

24. On or about March 10, 1998, and following its approval of the County’s revised application, SIB issued a loan to County for \$300 Million for the short-term projects set out in the RIDE Project, which loan was to be repaid by County from revenues in the Road Special Revenue Fund.

25. On or about April 21, 1998, County and SIB entered into a second loan agreement in the approximate amount of \$247.6 Million for the long-term projects set out in the RIDE Project, same also to be repaid by revenues in the Road Special Revenue Fund.

26. County Council purported to amend Ordinance No. 105-96 on a number of occasions by the enactment of a number of subsequent ordinances, including Ordinance No. 7-97 in 1997; Ordinance No. 76-97 in 1997; Ordinance No. 80-01 in 2001 (imposing a 2.5% car rental fee), and Ordinance No. 11-04 in 2004, none of which amendments were effective given the invalidity *ab initio* of Ordinance No. 105-96. County also failed to codify Ordinance No. 11-04 as required by S.C. Code §4-9-120. Furthermore, none of these subsequent ordinances made material changes to the Fee Use Provision and the Sunset Provision.

27. On December 6, 2016, County Council enacted Ordinance No. 93-16, further purporting to amend Ordinance No. 105-96 and thereby attempted for the first time to unilaterally extend the termination date of the Sunset Provision so that “the imposition of the one and one-half (1.5%) Hospitality Fee for infrastructure will terminate on January 1, 2022.” *See* Ordinance No. 93-16, a copy of which is attached hereto and incorporated herein by reference as

Exhibit I at 5, § I(E). This ordinance further granted County Council authorization to use all revenues generated thereunder—including those generated by the 1.5% Hospitality Fee imposed within the Municipalities—for a variety of purposes not set out in Ordinance No. 105-96. *See* Ex. I at 5, § I(F). Ordinance No. 93-16 is null and void because the ordinance it claims to amend, Ordinance No. 105-96, itself is void *ab initio*. Furthermore, County Council did not seek City's consent prior to the enactment of Ordinance No. 93-16. On information and belief, County Council likewise did not seek the consent of any of the other of the Municipalities prior to the enactment of Ordinance No. 93-16.

28. On May 2, 2017, County Council enacted Ordinance No. 32-17, again purporting to amend Ordinance No. 93-16 and thereby attempted to repeal the Sunset Provision altogether. *See* Ordinance No. 32-17, Section I, a copy of which is attached hereto and incorporated herein by reference as Exhibit J. Ordinance No. 32-17 is null and void because the ordinance it claims to amend, Ordinance No. 105-96, itself is void *ab initio*. County Council did not seek City's consent prior to the enactment of Ordinance No. 32-17. On information and belief, County Council likewise did not seek the consent of any of the other of the Municipalities prior to the enactment of Ordinance No. 32-17.

29. County's Code of Ordinances § 19-6, a copy of which is attached hereto and incorporated herein by reference as Exhibit K, contains the County's claimed current version of Ordinance 105-96, as purportedly adopted and amended from time to time as set forth above.

30. On July 24, 2018, County Council adopted Resolution R-82-18, by which it "dedicate[d] \$30,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73." *See* Resolution R-82-18, a copy of which is attached hereto and incorporated herein by reference as Exhibit L. At the meeting adopting the resolution, County Council

amended Resolution R-82-18 to reduce this dedication of Hospitality Fee funds to I-73 to a floor of \$23,000,000 annually, with a maximum of dedication of \$25,000,000 annually with growth. These "Horry County segments of I-73" were not and are not a part of the RIDE Project.

31. And, on July 24, 2018, County Council adopted Resolution R-84-18, a copy of which is attached hereto and incorporated herein by reference as Exhibit M, by which it "direct[ed] [its] staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances to allow the 1.5% hospitality fee for all eligible uses." *Id.* Resolution R-84-18 further states that "[i]n addition, the County Administrator shall include a proposal in the FY 2020 budget a plan to utilize the uncommitted balance of the 1.5% hospitality fee for eligible tourism-related public safety expenditures that lead to tourist destinations." *Id.* Resolution R-84-18 expresses County Council's belief that, as amended, "the Hospitality Fee can be used on other tourism-related purposes besides roads." *Id.* Similar to Resolution R-82-18, County Council amended Resolution R-84-18 to direct staff to create a plan for public safety using \$18,000,000 and any growth above the \$25,000,000 committed in Resolution R-82-18. These "eligible uses," "eligible tourism-related public safety expenditures that lead to tourist destinations," and "other tourism-related purposes besides roads" are not part of the RIDE Project.

32. In Resolutions R-82-18 and R-84-18, County Council admitted that one of the intended effects of Ordinance Nos. 93-16 and 32-17 is to "extend [the Hospitality Fee's] imposition" within the Municipalities.

33. Upon information and belief, no ordinance has been adopted by the County Council amending Section 19-6(h) of the Horry County Code of Ordinances, as contemplated by R-84-18.

34. On or about February 15, 2019, County fully and finally defeased the SIB loans for the RIDE Project. Thus, the specific project the 1.5% Hospitality Fee was intended to fund has been completed and there is no specific project that can lawfully be funded by the 1.5% Hospitality Fee. On or about November 19, 2019, County Council unanimously voted to cancel its existing contract with the South Carolina Department of Transportation regarding the construction of I-73. *See* Horry County Council Minutes, November 19, 2019; at 6, a copy of which is attached hereto and incorporated herein by reference as Exhibit N. The 1.5% Hospitality Fee does not fund a project.

35. The County staff has estimated that 71% of the revenue generated by the 1.5% hospitality fee under Ordinance No. 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances, is generated within the municipalities situated within Horry County. *See* Horry County Council Minutes, July 24, 2018 at 3; a copy of which is attached hereto and incorporated herein by reference as Exhibit O.

36. The City has not consented to the County's imposition of the 1.5% uniform service charge under Ordinance No. 105-96, as purported to have been and amended and appearing as Section 19-6 of the Horry County Code of Ordinances, within the corporate limits of the City on or after January 1, 2017, or for any purpose other than providing a revenue source to allow County to meet its loan obligations to the SIB for the RIDE Project up until that date. Upon information and belief, no other Municipality has so consented.

37. City has paid the Hospitality Fee under Ordinance 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances. Upon information and belief, members of the Class have likewise paid the

Hospitality Fee under Ordinance 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances.

First Cause of Action
(Declaratory Judgment)

38. The pertinent allegations of Paragraphs 1-37 are incorporated into this First Cause of Action by reference as fully as if set forth verbatim.

39. Pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to 15-3-140, City is entitled to a declaration that:

- a. The 1.5% Hospitality Fee within incorporated and unincorporated areas of the County is invalid because there are no specific projects contemplated to be funded by it and it therefore cannot constitute a valid uniform service charge under South Carolina law.
- b. Ordinance No. 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances, imposing the 1.5% Hospitality Fee, the 1% additional hospitality fee, and the 2.5% rental car fee, are invalid as a matter of law because the County failed to give Ordinance 105-96 three readings as required by S.C. Code Ann. § 4-9-120 and County's Code of Ordinances § 2-26(b).
- c. Ordinance No. 93-16 is also invalid as a matter of law because it:
 - i. Modifies the Sunset Provision to authorize imposition of the 1.5% Hospitality Fee within municipalities in Horry County after the date set out in the Sunset Provision of Ordinance No. 105-96 without the consent of the Municipalities;
 - ii. Is not a valid uniform service charge; and

- iii. Is not an ordinance which was in effect on or before December 31, 1996, as contemplated by S.C. Code Ann. § 6-1-330 and/or on or after March 15, 1997, as contemplated by S.C. Code Ann. § 6-1-760;
 - d. Ordinance No. 32-17 is invalid as a matter of law because it:
 - i. Repeals the Sunset Provision to authorize imposition of the 1.5% Hospitality Fee within municipalities in Horry County after the date set out in the Sunset Provision of Ordinance No. 105-96 without the consent of the Municipalities;
 - ii. Is not a valid uniform service charge; and
 - iii. Is not an ordinance which was in effect on or before December 31, 1996, as contemplated by S.C. Code Ann. § 6-1-330 and/or on or after March 15, 1997, as contemplated by S.C. Code Ann. § 6-1-760;
 - e. County may not impose, collect, and retain revenues derived from the Hospitality Fee created under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6;
 - f. County has, since January 1, 2017, wrongfully imposed, collected, retained, and used revenues derived from the 1.5% Hospitality Fee collected within the Municipalities under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, in contravention of the Fee Use Provision and/or the Sunset Provision;
- 40. City, individually and on behalf of all members of the Class, seeks and is entitled to a refund of the Hospitality Fee paid on the sale of food, beverage, car rentals, accommodations, and or amusements based on a declaration that County has wrongfully

imposed, collected, retained, and used revenues from the Hospitality Fee created under Ordinance No. 105-96, as amended from time to time and as appearing in County Code §19-6.

Second Cause of Action
(Preliminary and Permanent Injunctive Relief)

41. The pertinent allegations of paragraphs 1-40 are incorporated into this Second Cause of Action by reference as fully as if set forth verbatim.

42. If County is permitted to continue collecting the Hospitality Fee created under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, City and the members of the Class will suffer irreparable harm as they will be forced to pay an unlawful uniform service charge.

43. City and the members of the Class are likely to succeed on the merits of their claims against County because the continued collection and retention of the Hospitality Fee by County is unlawful, and City and other members of the Class have been subjected to payment of the Hospitality Fee to County when same was not lawfully imposed and collected.

44. City and the members of the Class have no adequate remedy at law because there is no procedure established by ordinance or by statute to protest the payment of Hospitality Fee charges to County.

45. City and the members of the Class are therefore informed and believe that they are entitled to a permanent injunction prohibiting County from imposing and collecting the Hospitality Fee provided for under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, in both the incorporated and unincorporated areas of Horry County.

46. City and the members of the Class are therefore informed and believe that they are entitled to a preliminary and permanent injunction prohibiting County from:

- a. Imposing and collecting the Hospitality Fee provided for under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, within the Municipalities, and
- b. Expending any of the revenue generated by the Hospitality Fee under Ordinance No. 105-96, as amended from time to time and as appearing in County Code § 19-6, collected within the Municipalities on and after January 1, 2017, which the County has unjustly retained under a constructive trust as described herein, including any such revenue deposited by County in the Road Special Revenue Fund described under Ordinance No. 7-97.

Third Cause of Action
(Quantum Meruit / Unjust Enrichment)

47. The pertinent allegations of paragraphs 1-46 are incorporated into this Third Cause of Action by reference as fully as if set forth verbatim.

48. In continuing to pay the Hospitality Fee imposed by County on the gross proceeds of accommodations, food and beverage, car rentals, and/or amusements, City and the members of the Class have conferred a benefit on County in the form of tens of millions of dollars per year.

49. County's continued collection and retention of the Hospitality Fee without any statutory, constitutional, or contractual basis therefore has further created a contract implied in law between City, the members of the Class, and County. This quasi-contract conferred upon County a duty and obligation not to collect or retain illegally charged Hospitality Fees. County has breached and continues to breach this obligation and accept the Hospitality Fees charged City and the members of the Class.

50. Upon information and belief, County deposited the illegally charged Hospitality Fee into the Road Special Revenue Fund and other interest earning accounts, and has thereby realized a benefit from and has been unjustly enriched through the receipt of these monies, to the detriment of City and the members of the Class.

51. Because collection and retention of the Hospitality Fee is illegal, continued collection and retention of that benefit would be unjust, inequitable, unconscionable, and would further constitute a windfall to County.

52. City and the members of the Class are therefore informed and believe that they are entitled to damages in the form of a refund from the constructive trust imposed hereunder for the Hospitality Fee illegally collected and retained by County.

Fourth Cause of Action
(Constructive Trust)

53. The pertinent allegations of paragraphs 1-52 are incorporated into this Fourth Cause of Action by reference as fully as if set forth verbatim.

54. As described herein, County never gave the required three readings to Ordinance 105-96, yet it collected and retained the Hospitality Fee on the gross proceeds of accommodations, food and beverage, car rentals, and/or amusements purchased by City and the members of the Class, amounting to tens of millions of dollars per year annually since January 1, 1997. And as further described herein, County persisted in collecting and imposing the Hospitality Fee within the Municipalities after the expiration of the City's and the Municipalities' consent on January 1, 2017.

55. In collecting and retaining the Hospitality Fee for over twenty two years without adhering to State and County law in enacting the fee to begin with, and in attempting to extend and then eliminate altogether the Sunset Provision on City's prior agreement for the collection of

the Hospitality Fee within the Municipalities, through Ordinance Nos. 93-16 and 32-17, respectively, and in contravention of the express terms of the Sunset Provision and without City's or the Municipalities' consent beyond January 1, 2017, within the Municipalities, County employed actual or constructive fraud, abuse of confidence, and/or unconscionable conduct to initiate and continue its illegal collection and retention of the Hospitality Fee.

56. Because collection and retention of the Hospitality Fee is illegal, continued collection and retention of that benefit would be unjust, inequitable, unconscionable, and would further constitute a windfall to County.

57. City and the members of the Class are therefore informed and believe that they are entitled to the Court's imposition of a constructive trust on County, in the form of a segregated, interest bearing account into which the Hospitality Fee collected by County from within the Municipalities since January 1, 2017 should be transferred to create a common fund, and from which refunds may be provided to City and the members of the Class in proportion to the Hospitality Fees each has been illegally subjected by County.

Prayer for Relief

Wherefore, City, individually and on behalf of all Class Members, prays for judgment against County as follows:

- a. The issuance of an order by this Court finding that:
 - i. The Hospitality Fee imposed and collected by County pursuant to Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, was void *ab initio*;
 - ii. The 1.5% Hospitality Fee collected and imposed county-wide is invalid;

- iii. The Hospitality Fee imposed and collected by County at the rate of 1.5% within the Municipalities pursuant to Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, was terminated as a matter of law on January 1, 2017;
- iv. The Hospitality Fee imposed and collected by County at the rate of 1.5% within the Municipalities pursuant to said ordinance on or after January 1, 2017, was unlawfully imposed, collected, and retained;
- v. County be preliminarily and permanently enjoined from imposing or collecting any fees under said ordinance;
- vi. County has been unjustly enriched by said collection and retention of the Hospitality Fee;
- vii. The imposition of a constructive trust on the County for all Hospitality Fees collected and retained is warranted; and
- viii. City and the members of the Class be entitled to a refund of the Hospitality Fee imposed and collected by County in an amount to be shown at trial.

b. An award of prejudgment interest at the appropriate statutory rate on all fees collected by the County from the City and each of the members of the Class pursuant to Ordinance No. 105-96, as amended from time to time and as appearing in County Code § 19-6; and

c. For such other and further relief as may be just and proper.

Respectfully submitted,

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Chad N. Johnston, SC Bar # 73752
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Attorneys for Plaintiff City of Myrtle Beach and All
Others Similarly Situated

Columbia, South Carolina
_____, 2020

EXHIBIT B

**MINUTES
HORRY COUNTY COUNCIL
REGULAR MEETING
County Council Chambers
April 2, 2019
6:00 p.m.**

MEMBERS PRESENT: Johnny Gardner, Chairman; Tyler Servant; Bill Howard; Gary Loftus; Dennis DiSabato; Danny Hardee; Johnny Vaught; Orton Bellamy; Harold Worley; Cam Crawford; Paul Prince; and Al Allen.

MEMBERS ABSENT:

OTHERS PRESENT: Pat Hartley; Chris Eldridge; Steve Gosnell; Joe Huffman; Arrigo Carotti; Kelly Moore; Justin Powell; and David Schwerd.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Gardner called the meeting to order at approximately 6:00 p.m.

INVOCATION: Mr. Bellamy gave the invocation.

PLEDGE: Mr. DiSabato led in the pledge.

PUBLIC INPUT:

1. Nick Rollins spoke regarding reckless discharge of firearms. He stated that his neighbor that lives behind him fires an automatic weapon with only a small dirt pit and a handful of trees between their two homes with only 50 feet between the property lines. He has walked in his back yard and found bullet holes in his trees from his neighbor's gun. He and his wife had sat in their yard on occasion and heard bullets whizzing through the trees. This was proof that the firing pit was not acceptable. He called the police department and they agreed that this was an extremely dangerous situation. They told him that Ordinance 114-17 was so ambiguous that it did not give them the authority to do anything about it. He was there that night to ask Council to take a look at Ordinance 114-17. The only restriction that it had was that no one could shoot a firearm between 10:00 p.m. and 6:00 a.m. Everything else was so subjective that there wasn't a court that would honor anything that law enforcement brings to the table. Law enforcement said that their hands were tied because there was nothing they could do about it. It was nothing to do with gun rights. It was about gun safety.

Chairman Gardner stated that they would look into this.

Mr. Prince asked if the police had been out and investigated. Mr. Rollins replied yes. Mr. Prince asked if nothing had been done. Mr. Rollins said that one officer that visited the site, the shooter site, on Thanksgiving eve said that the gentleman appeared to be shooting downward into the ground and that there were woods behind it. He said it was an acceptable shooting range. The problem was the woods behind it were his. That was his property. The second officer that came out on March 13th was called out by one of his neighbors. All of his neighbors object to this, and one of his neighbors called the police. He was driving by and he flagged him down to see how the person was shooting. He walked out there and then told him that he wanted to get out of there because he didn't want to get shot. The officer told him that. Then they went out to the front and the officer recommended that he not go back.

Mr. DiSabato asked Mr. Rollins where he lived. Mr. Rollins replied that he lived in Little River in a development project of well over 11 residential homes. Mr. DiSabato said he agreed with him. He didn't vote for this ordinance because it was too subjective and wasn't enforceable. He felt like it needed to be stronger. He supported what he was trying to do and he would continue to support what he was trying to do. He would work with members of Council and try to get them on board as well.

Mr. Worley said he had brought this up at the end of 2017. It was not about gun rights. It was about gun safety. Horry County was growing and changing, and we had to change with it. When they were debating the issue previously the room filled up with gun advocates. He felt there were several people that had legitimate complaints that were gun safety issues, not gun rights. Chief Rhodes stood where he was and said no problem. They could stop this debate because she had in place the ordinances, statues that she needed to stop this. They would be back on this issue and he believed they now had enough votes on the Council where they didn't then. Chief Rhodes stopped the debate when she said what she did. He believed there were enough votes on Council that believed this was a quality of life issue. It was their job to see that the citizens were protected from people that did this kind of thing. This was not being a good neighbor. This was bad. If he lived in his house and they did that to him, he would feel just like he did. This had to stop. He agreed. It was not just in Little River. It was all over areas in Horry County. You couldn't fire guns in areas that were highly developed. It didn't make sense. He asked him to bear with them. They had to run it through committee and get it back in front for debate, and they would.

APPROVAL OF AGENDA CONTENTS: Mr. Hardee commented on Resolution R-05-19. This was regarding people with special needs. They were not just asking for a hand out. They were trying to create it where the kids could earn a living to support themselves, and he said that if there were any Councilmen that could help with the situation, they would greatly appreciate it. They were trying to fix it so that they would be able to earn a living themselves. They would grow produce and sell it. He would appreciate any help they could get. Mr. DiSabato asked if there was a way to see who had contributed and who had not. Ms. Hartley stated who had contributed. Mr. DiSabato said he wanted to see if he had contributed to it and he had. Mr. Howard moved to approve, seconded by Mr. Vaught. The motion was unanimously passed.

APPROVAL OF MINUTES: Regular Meeting of March 19, 2019, Special Meetings of March 5, 2019 & March 25, 2019: Mr. Howard moved to approve the Regular Meeting of March 19, 2019 meeting minutes; Special Meetings of March 5, 2019 & March 25, 2019, seconded by Mr. Hardee. The motion was unanimously passed.

APPROVAL OF CONSENT AGENDA: Mr. DiSabato moved to approve, seconded by Mr. J. Vaught. The motion was unanimously passed. The consent agenda consisted of the following:

Resolutions allocating District Community Benefit Funds

R-02-19 \$8,000 to Socastee Heritage Festival

R-03-19 \$5,000 to Horry County Public Works for parking lot upgrade at Loris Park

R-04-19 \$8,000 to Beautify Carolina Forest for vegetative plantings in medians

R-05-19 \$17,500 to Buck Creek Foundation for gardening programs for adults with special needs

RESENTATIONS / RESOLUTIONS:

Resolution R-33-19 designating April 10, 2019 as Technology Day in Horry County. Chairman Gardner read Resolution R-33-19 and presented it to Messrs. Ken Richardson and Rick Maxey. Mr. Maxey thanked Council for the recognition and support of their technology fair. It had been a wonderful opportunity for the children ranging in ages from Kindergarten – 12th grade. He invited them to attend Technology Day and see what the young people were doing with technology. Mr. Allen moved to approve, seconded by Mr. Howard. The motion was unanimously passed.

Resolution R-34-19 recognizing Liam Hufnagel on winning the 2019 SC Youth Wrestling Association State Championship in the age 6 and under 46 pound weight class. Mr. Howard moved to approve, seconded by Mr. J. Vaught. Mr. Loftus read Resolution R-34-19 and presented it to Mr. Hufnagel. Mr. Hufnagel thanked the Council. The motion was unanimously passed.

Update from the Keep Horry County Beautiful Committee on the 2019 Litter Index. Mr. Bo lves presented the report on the 2019 Litter Index and recognized committee members and county staff for their hard work throughout the year.

Resolution R-35-19 proclaiming April as Zero Tolerance for Litter Month. Mr. Prince moved to approve, seconded by Mr. Howard. The motion to approve passed unanimously.

Update on Polo Farms/Simpson Creek Watershed. Mr. Gosnell stated that at the March 19th council meeting, two issues were raised by the public concerning a sink hole that needed repair, and that Simpson Creek was in need of clearing. He reported that the sink hole had been repaired. Contact was made with the property owner where the downstream section of Simpson Creek that needed clearing and the owner indicated that they would allow access to the property so that section could be cleared. The property was part of a wetland mitigation bank and approval would be needed from the Army Corps of Engineers. The Corps is looking into the request to clear and would advise on what could be done so as to not jeopardize the wetland bank. We're waiting to hear back them.

Resolution R-20-19 approving the allocation of funds to the Solicitor's Intervention Program LLC. Mr. DiSabato moved to approve, seconded by Mr. Howard. The motion was passed unanimously.

READING OF ORDINANCES

Third Reading and Public Hearing – Ordinance 04-19 to approve the request of Van Davenport, agent for Moses Johnson, to amend the official zoning maps. Mr. Prince moved to approve, seconded by Mr. Howard. Robert Berger, Jacqueline Kenny, Peggy Bushey spoke in opposition, and Van Davenport spoke in favor. The vote was:

<u>Yea</u>	<u>Nay</u>
Howard	Servant
Loftus	DiSabato
Bellamy	Worley
Vaught	Crawford
Prince	Gardner
Hardee	
Allen	

The motion to approve passed 7-5.

Third Reading - Ordinance 06-19 to approve the request of G3 Engineering, agent for Phillips Timberlands SC, LLC, to amend the official zoning maps. Mr. Vaught moved to approve, seconded by Mr. Howard. There was no public input. The vote was:

<u>Yea</u>	<u>Nay</u>
Gardner	Worley
Howard	DiSabato
Loftus	Servant
Crawford	
Bellamy	
Vaught	
Prince	
Hardee	
Allen	

The motion passed 9-3.

Second Reading and Public Hearing on the following Ordinances to approve the request to amend the official zoning maps:

Ord 18-19 William Fullwood. Mr. Vaught moved to approve, seconded by Mr. Howard. There was no public input. The motion passed unanimously.

Ord 19-19 Thomas & Hutton, agent for Tallwood LLC and Jimmy & Jo Moore. Mr. Prince moved to approve, seconded by Mr. Howard. There was no public input. The motion passed with Mr. Servant voting nay.

Ord 20-19 Edith & John White. Mr. Hardee moved to approve, seconded by Mr. Vaught. There was no public input. The motion passed unanimously.

Second Reading and Public Hearing - Ordinance 21-19 accepting the transfer of authority from the Town of Surfside Beach to the Horry County Election Commission for conducting the Town's municipal elections. Mr. Vaught moved to approve, seconded by Mr. Servant. There was no public input. The motion passed unanimously.

Second Reading and Public Hearing - Ordinance 22-19 to add certain properties to the Horry County Historic Property Register as individual historic properties, to remove one property, and to correct the spelling on two historic cemeteries. Mr. Vaught moved to approve, seconded by Mr. Howard. There was no public input. Mr. DiSabato moved to amend to strike Pine Island Community Cemetery, seconded by Mr. Vaught. The motion passed unanimously. The main motion, as amended, passed unanimously.

Second Reading and Public Hearing - Ordinance 23-19 to amend the County Code pertaining to boarding or rooming houses. Mr. Howard moved to approve, seconded by Mr. Vaught. There was no public input. The motion passed unanimously.

Second Reading and Public Hearing - Ordinance 24-19 approving & authorizing the county administrator to execute a lease agreement with General Services Administration of space located in the passenger terminal buildings at MYR for use by the Transportation Security Administration. Mr. Howard moved to approve, seconded by Mr. Vaught. There was no public input. The motion passed unanimously.

OLD / NEW BUSINESS

Discussion and vote on a proposed confidentiality agreement between Horry County and municipalities related to I-73 funding. Mr. Servant moved to disapprove the entering into an agreement, seconded by Mr. Vaught. The motion was unanimously passed.

Resolution R-36-19 endorsing Horry County's 1.5% countywide hospitality fee, addressing the cost of public safety resulting from tourism, and providing a good faith offer to the municipalities for the continued use of such hospitality fee. Mr. Vaught moved to approved, seconded by Mr. DiSabato. Mr. Servant moved to amend that \$9 million would be allocated to the county, and the remaining balance of approximately \$14.7 million be allocated to the municipalities in proportion to where the revenue was generated, and in addition, the net balance in the account after defeasance of the SIB loan amounts collected through June 20, 2019 are to be allocated to the County and municipalities in proportion to where the revenue was collect, and in future years, annual revenue above the FY2020 baseline is to be allocated in like manner, seconded by Mr. Worley. The motion to amend passed unanimously. The main motion, as amended, passed unanimously.

ANNOUNCEMENTS

Memorial Dedication: Jimmy Wise; Kevin Gore; Mary Louise Buffkin; and Dagmar "Wickie" Moore.

Upcoming Meetings -- Dates/times of meetings subject to change:

Regular Council Meetings
April 2 and 16, 6:00 p.m.

I&R Committee
April 9, 9:00 a.m.

Public Safety Committee
April 9, 2:00 p.m.

Transportation Committee
April 8, 2:00 p.m.

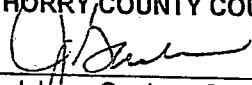
Administration Committee
April 30, 2:00 p.m.

EXECUTIVE SESSION: Receipt of legal advice, pursuant to Section 30-4-70(a)(2), SC Code of Laws, relating to the pending "Hospitality Fee" lawsuit against the County. Mr. Vaught moved to go into Executive Session, seconded by Mr. Allen. The motion passed unanimously. Mr. Allen moved to come out of Executive Session, seconded by Mr. Vaught. Mr. Carotti said while in executive session Council received legal advice relating to the pending "Hospitality Fee" lawsuit against the County. While in executive session no decisions were made and no votes were taken.

Chairman Gardner stated that he wanted to discuss one other thing. While they were there the prior week, regarding one of the items on executive session, there was a discussion of negotiations that were going on and that was postponed. Those negotiations were still in and he had given the attorney two weeks. It had not been two weeks but there had been great progress involved in there. They should be done in two weeks and if not, they would address it at that time. That was why that was not on the agenda. He wanted the public to know because there had been some questions about it.

ADJOURNMENT: With no further business, Mr. Worley moved to adjourn at approximately 8:05 p.m. and it was seconded. The motion was unanimously passed. The meeting was adjourned in memoriam of: Jimmy Wise; Kevin Gore; Mary Louise Buffkin; and Dagmar "Wickie" Moore.

HORRY COUNTY COUNCIL

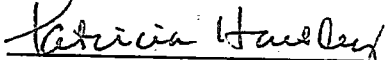


Johnny Gardner, Chairman

Harold G. Worley, District 1
Dennis DiSabato, District 3
Tyler Servant, District 5
Orton Bellamy, District 7
W. Paul Prince, District 9
Al Allen, District 11

Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest



Patricia S. Hartley, Clerk to Council

EXHIBIT C

MINUTES
HORRY COUNTY COUNCIL
REGULAR MEETING
County Council Chambers
November 5, 2019
6:00 p.m.

MEMBERS PRESENT: Johnny Gardner, Chairman; Bill Howard; Gary Loftus; Danny Hardee; Johnny Vaught; Harold Worley; Orton Bellamy; Cam Crawford; Al Allen; Tyler Servant; Dennis DiSabato; and Paul Prince.

MEMBERS ABSENT:

OTHERS PRESENT: Pat Hartley; Steve Gosnell; Randy Webster; Arrigo Carotti; Barry Spivey; David Gilreath; David Schwerd; and Kelly Moore.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Gardner called the meeting to order at approximately 6:00 p.m.

INVOCATION: Mr. Bellamy gave the invocation.

PLEDGE: Mr. Worley led in the pledge.

PUBLIC INPUT:

1. **Dennis Livingston** spoke regarding stormwater issues with Chandler Subdivision. Mr. Livingston stated that he lived on Hwy 66. Prior to a development moving behind him he had a 6 foot drain with a ditch that ran behind him and never had any water issues. Once the development went in, they took away the 6 foot ditch and put in a small swell. There were 63 houses in the development and all the (inaudible) couldn't handle the water flow. It had been a continuous problem because he had a section of about 6 houses to his right that would not clean their part of the swell to keep debris from going into it and blocking it. He had pictures to present. He had touched base with Mr. Tom Roth who went out and looked at the issue. They cleaned it out as a one-time favor to Chandler Run. He received a letter stating that they did it as a one time basis and it was to be maintained by the HOA. The HOA didn't want to take credit for any of it. He had since pulled up a plat and it stated that it was to be maintained by the HOA. He wanted to know where to go from there. He had the plat with him if they needed to look at it.

Mr. Vaught brought up the fact that by state law they were not allowed to work on private property. If that property belonged to the HOA, the county was not allowed to do work on that property.

2. **Tim Belvin** spoke regarding Copperhead Rd / Public Works. Mr. Belvin stated that he had just retired from the military in October. He did not know that Copperhead Road was cited for project one to be paved. He was not disagreeing about the road not being paved, but was disagreeing about the work that was done and being done to the road. They were not informed as homeowners that were affected because of this and the county's decision in the process. In 2000 when the subdivision was developed, an agreement was made between the county and the contractor to block usage of Copperhead Road for residents gaining access to their property. He found out later that the contractor was digging ravines behind their homes to prevent this. They were informed by the county engineer that it was done because of irrigation. He knew that not to be true because he was here during Hurricane Florence taking pictures of the county and reporting to the Horry County Emergency Management team to inform them where the flood waters were occurring. He tried to resolve this issue to the best of his ability. He later came up with the plans on Copperhead Road and in those plans before any work was supposed to be done, the contractor, the county, the engineer and the HOA were supposed to have a meeting to resolve any issues that could arise before work was started. None of the homeowners were informed of this prior to any work and were now told they were stuck with this. They would have loved to know what was going to be done before the work was supposed to take place. It was uncalled for for a member to be told there was nothing they could do about it, and they were paying for this. He didn't think it was fair and he would love to be able to sit down with the individual before this project was done. The project would be done within the next two

weeks and the contractor would be held for the warranty for one year after that. Now, people's fences were collapsing because of erosion. The county had the ravines dug all the way to the property line and now the fences would cave in. He was there to help in any way to resolve this issue.

Mr. Bellamy said he had met with Mr. Belvin and had been out to the site several times talking to Mr. Larry Hamilton regarding his concerns. Referring to the paragraph regarding notification, it was his understanding that they were referring to agencies as in DHEC, Army Corps of Engineers, or state agencies to be notified. Utility companies to reroute cable and things of that nature as far as that but not specifically a public meeting to meet with the specific residents.

Mr. Andy Markunas said the owner of the project was Horry County not the property owners along the road.

Mr. Bellamy asked if they were required to notify utility companies or agencies related to the project itself. Not specifically... The owner was Horry County, correct?

Mr. Markunas said that was correct. The contractor was supposed to notify the owner and utility companies, etc. about the project.

Mr. Belvin said they as homeowners were confused about why was it written in black and white that the county was named different than the owners. Why were the owners named separately from the county?

Chairman Gardner stated that they had run out of time and suggested they schedule a meeting where they could answer that question. He would suggest it be with his councilmember, him, Mr. Gosnell, and engineering.

Mr. Belvin said fair enough.

3. **Roy Darden** spoke regarding Ordinance 38-19. He and his wife owned a villa at Tupelo Bay and he was on the HOA Phase I board of directors as well as the CSA board of directors. They were asking that Council not allow diametrically opposed types of housing to be built at their doorstep. When their Phase II was completed they would be part of a \$55 million plus community consisting of \$200,000 - \$300,000 homes. Directly across Hwy 17 was Bermuda Bay with homes valued between \$375,000 - \$450,000. The proposed cottage development with as little as 510 square feet of heated space. They were there first. All they ask was that any additional houses between Tupelo Bay and Bermuda Bay properties compliment what was already there, not be diametrically opposed. They were asking that they not allow water runoff from the proposed cottage area to flood Tupelo Bay, Oceanside Village, Bermuda Bay, Melody Gardens, or Woodlake. With all the hurricanes, nor'easters, and other types of storms that they had had there and never had a flooding issue from this area and they didn't want one. They were asking that they not allow traffic to get any worse than it currently was during the seven months of high tourist season. Each year it was impossible to turn left out of Tupelo Bay to head north on Hwy 17, and it was very difficult to turn right. Ingress and egress to Surfside Elementary School was also a real problem, particularly when school was in session. Infrastructure modifications caused by additional traffic from the proposed housing would have to be addressed prior to approving any rezoning changes. They had heard many different sets of numbers being thrown around regarding just the one subject of fencing for this particular proposal. Council was being put in the unfortunate position of deciding which set of numbers was correct. The people in front of them in yellow and red were depending on them to make the correct choice. Once rezoning was approved the likelihood of obtaining infrastructure requirement approvals increases exponentially. If things did not work it would be left to the owners to take care of things. They acknowledge that there was probably a need for this kind of housing project being proposed, however, this site that was currently under consideration was not the correct site.
4. **John Sagindorf** spoke regarding Ordinance 38-19. He and his wife had a home at Tupelo Bay Golf Villas. They could tell from the colorful crowd present that they love their communities and they were both engaged and invested in their communities. They all cared. Regularly he read that Horry County's population was expected to grow by 100,000 or more residents in the next 20 years. That was a 25% growth over 20 years and an average of 5,000 new residents each year with the fastest growth taking place from Little River to the South Strand. We were not ready for that kind of growth. There were huge issues to be addressed in the areas of infrastructure, public safety, traffic, compatibility, environment, air and water quality, impacts of the changes in the climate, and on and on. They understand that development was an important economic driver. They also understand that with the growth expected there would be a need for additional housing, but there comes a time

to do things the right way. Rather than saying no to development, they want to be saying yes to responsible development. They want to work with Council and the developers and wanted Council to work with them to help insure that this request for zoning change leads to the responsible development of the property. Their request that night was for Council to vote against Ordinance 38-19 and set in motion an alternative plan that would lead toward responsible development for this particular project. The plan here was to put 221 little buildings on 21 buildable acres. That was about 11 homes per acre which was unthinkable. The proposed development was not compatible with the existing neighbors and would negatively impact the values of those developments. Their only hope to making this zoning change leading to responsible development rests with Council. He ask that they vote no on Ordinance 38-19 that night.

APPROVAL OF AGENDA CONTENTS: Mr. Howard moved to approve the agenda contents, seconded by Mr. DiSabato. The motion was unanimously passed.

APPROVAL OF MINUTES: Regular Meeting, October 15, 2019: Mr. Vaught moved to approve the Regular Meeting, October 15, 2019 meeting minutes, seconded by Mr. Hardee. The motion was unanimously passed.

APPROVAL OF CONSENT AGENDA: Mr. Vaught moved to approve as amended, seconded by Mr. Allen. The motion was unanimously passed. The consent agenda consisted of the following:

Third Reading – **Ordinance 90-19** authorizing the issuance and sale of not exceeding \$18.8 million general obligation bonds; fixing the form and details of the bonds; authorizing the county administrator to determine certain matters relating to the bonds; providing for the payment of the bonds; and other matters relating thereto.

First Reading – **Ordinance 107-19** approving and authorizing the county administrator to execute a shuttle contract agreement amendment with Republic Parking to extend the contract termination date to July 31, 2021.

Resolutions allocating Community Benefit Funds: (Favorable, Administration Comm)

CBF-27-19 \$250 to SC Dept of Archives for historical research on a military plane crash in District 11. (Mr. Allen)

CBF-28-19 \$3,000 to Save R Cats for funding support for feral cat tray/neuter program. (Messrs. Worley and Crawford)

CBF-29-19 \$10,000 to Horry County Police Department for Shop With A Cop program. (Mr. Gardner)

Appointments to the Vereen Memorial Historical Gardens Committee: Richard Patterson, Carol Patterson, Christina Prince (Mr. Worley)

PRESENTATIONS / RESOLUTIONS:

Resolution R-126-19 honoring and recognizing veterans of the Armed Forces of the United States of America. Mr. Howard moved to approve, seconded by Mr. Allen. Mr. Bellamy read the resolution and recognized the Council members who had served in the United States military. Those Council Members were Chairman Johnny Gardner, Army, Mr. Allen, Air Force, Mr. Vaught, Navy, and Mr. Bellamy, Army. He then asked all active individuals serving in the United States Armed Forces and all veterans to stand and be recognized. The motion was unanimously passed.

Resolution R-127-19 approving revisions to the Horry County Employment Guidelines. Mr. Vaught moved to approve, seconded by Mr. Howard. Mr. Owens presented the proposed changes to the Horry County employment guidelines. They took the feedback from Council, from department heads, and employees, and tried to incorporate those comments and feedback into these revisions. Every division was represented. They reviewed, revised, and tweaked and these were the revisions they came up with. Those proposed revisions were employee photo, vacation leave, paid leave buyback, compensation during declaration of emergency, and extended leave of absence ("180 Rule"). Section 1.12 Employee Photo Guidelines. This was a new addition that advises employees that their likenesses may be used in the course of County operations/business. Section 4.4 Vacation. This added back a five-year tier, which also added additional hours to subsequent tiers. Additional revisions section 4.4 Vacation Leave and 4.5 Sick Leave. The language was revised to match current the Munis system. Section 4.4, G Vacation Leave Buyback. The section added back to provide the Administrator the ability to offer buyback program for vacation leave when funds are available. Section 4.11, Part 8 Compensation during Declaration of Emergency. This provides for the administrator to pay employees when offices are closed and Council makes a Declaration of Emergency. Sections 4.13 and 4.14 – Extended Leave. Revised Section 4.13, Extended Leave of Absence, to address only non-occupational illnesses and injuries (non-work related) and maintained the 180-day limit, though the Administrator still has discretion to extend an absence beyond 180 days. Added Section 4.14, Extended Leave of Absence – Occupational, to address occupational injuries (work-related) and provided a leave of absence length of up to 365 days. Additional

Revisions related to the addition of Section 4.14 Extended Leave of Absence – Occupational. Renumbered Outside Employment section from 4.14 to 4.15 to reflect the addition of Extended Leave of Absence-Occupational. Section 6.3 Original Appointments, Part A2: added language indicating that temporary employees hired in response to an extended leave of absence (per sections 4.13 & 4.14) may be retained longer than six months when necessary. Additional issues reviewed were facial hair - other than general professional appearance, policies related to dress code and facial hair should be determined at the department level as some department operations are governed by regulations and standard industry norms for specific services, and using take-home vehicles for personal use – current liability coverage does not include this use. Potential or additional liabilities are injury of a non-employee and duty to respond with a non-employee passenger. In summary, some of the impacts could be: Additional vacation leave may impact shift departments that need to cover when an employee is absent due to vacation; additional extended leave time for occupational injuries may impact departments that need to cover when an employee is absent. A position that is occupied by an employee on extended leave cannot be filled by a regular employee; however, a temporary employee may be used if feasible.; and investment in additional vacation leave, additional extended leave, and the possibility of vacation buyback will positively influence morale, which should have a positive effect on employee retention and employee performance.

The motion was unanimously passed.

Community Benefit Resolution R-26-19 approving the allocation of \$3,000 to the Joshua Empowerment Foundation for sponsorship of Let's Stop the Violence/Anti-Bullying event. (Messrs. DiSabato, Crawford & Vaught) (Unfavorable, Administration Comm). Mr. DiSabato moved to defer, seconded by Mr. Howard. The motion to defer was unanimously passed.

READING OF ORDINANCES:

Third Reading and Public Hearing – **Ordinance 91-19** authorizing the issuance and sale of not exceeding \$2.2 million general obligation bonds; fixing the form and details of the bonds; authorizing the county administrator to determine certain matters relating to the bonds; providing for the payment of the bonds; and other matters relating thereto. (Favorable, Administration Comm). Mr. Howard moved to approve, seconded by Mr. Worley. There was no public input. The motion was unanimously passed.

Third Reading – **Ordinance 38-19** to approve the request of David Wilkes and Joe Morrison, agents for Myrtlewood Realty Associates, to amend the official zoning maps. Mr. Vaught moved to approve, seconded by Mr. Howard.

Mr. Allen said he was a little bit confused on this and asked for Council's help. There had been some phone calls made that day and he was not saying this was a good or bad project for the citizens, but he needed some clarification. At the last meeting Mr. Vaught moved to vote on this on the second reading because he stated that Mr. Servant had asked him to do that. Then the citizenry stated that they were told by Mr. Servant that this would be deferred. No one had spoken to him or called him or asked him anything. Sometimes they are put in very trying positions as a Council. He had seen a few come and go and seen a couple of deals made etc., etc. What he wanted them to understand was that their Councilman could actually vote against this, and Council could still vote for it and pass it. There was only two people sitting up there that they could actually cast a vote for when it comes election time and that was their Councilman and the chairman. So, they needed to understand that. He believed that in any district in the county the district Councilman should know his district better than any other Councilman on the dais because he or she represented their district. He should know what his district wants more so than any other person up there because he should be in touch with his people. With that said, they had always tried to follow along with a district Councilman's wishes to support him and his citizenry. Sometimes that doesn't always work out but what he would like to ask for that night was that he would probably support what Mr. Servant wanted because it was his area and he should know his people. There had been other Councilmen who had had situations to happen in their districts to where they had actually spoken out from the dais and asked the rest of the Council to support them. A good example was the last meeting with Mr. Worley. He asked that the Council support him on an issue in his area. With that said, he was going to support what their Councilman wanted because he was supposed to know his area better than anybody else. If other members of Council would be honest they would be compelled to do the same thing.

Mr. Servant said since his absence was brought up regarding the last meeting. He and his family had been through some difficult times. It was his first Council meeting missed and he apologized to his constituents for not being there, but he appreciated their prayers, thoughts, and concerns through this difficult time. During that time he didn't talk to many people. Family comes first in his life. Getting back to the task at hand with this rezoning he asked Mr. Schwerd to explain to Council and the audience what the property was currently zoned and what it could be developed into as of that day without coming for a rezoning.

Mr. Schwerd said a majority of the property was currently zoned highway commercial. Highway commercial, which was the front portion along Hwy 17, was a zoning district that allows single family residential lots on 6,000 square foot or it allows about 100 different kinds of commercial uses. Those commercial uses were everything from regular retail, strip centers, to restaurants to trade shops, or junk yards, or outdoor storage. Boat and RV storage currently was a popular use in those districts but generally high intensive commercial uses. It allows generally any kind of commercial that you could imagine except for heavy industrial, batch plants, and metal recycling. Other than that highway commercial would allow that.

Mr. Servant said the only dwelling it could be used as it was currently zoned was SF6, correct.

Mr. Schwerd said it was single family 6,000 square foot lots. It refers back to general residential or GR but it only refers to the single-family standards within GR.

Mr. Servant said so no multi-family.

Mr. Schwerd said no multi-family under the current highway commercial zoning.

Mr. Servant said but it does have 100 classifications for commercial uses.

Mr. Schwerd said there were well over 100 commercial classifications and uses that could be under it.

Mr. DiSabato asked if it included townhomes.

Mr. Schwerd said it only allowed single-family detached 6,000 square foot lots.

Mr. Servant said another question that was brought up that night during the comments from the speaker was the calculations and how they calculate gross density and net density and how they were other individuals that calculate it differently. Could he elaborate on that a little on how the County calculates gross and net density and why they calculate it the way that they do.

Mr. Schwerd said the department started looking at gross and net density for a variety of reasons and came up with a very simple calculation. The first was gross density which was the total project acreage, not a phase of the project or a portion of the property, but the entirety of the project. You take that total acreage and divide it by the number of units or take the number of units and divide it by the total acreage to get the number of units. In this particular project the gross density as currently shows was 8.65 dwelling units an acre. The net density was also similar except the only difference was they subtract out the wetlands from that gross acreage. So you take the gross acreage and subtract out the wetland acreage from it and take the remaining acreage and divide that into the units. In this particular project there were 11.8. They adopted that standard so they had one way to calculate across many different projects. They also provided additional information when they did the staff sheet on this one because there was some discussion on the adjacent Tupelo Bay. For comparison the adjacent Tupelo Bay has a gross project density of 4.85 and a net density of 8.69, but if you look at the area that was actually developed it was closer to 15. The reason they did that was... Density had a couple of different things. One was how many units are there. That was important for a reason. The second part was how dense is the area that was being developed. The third one was if you have other things like in this case Tupelo Bay has a golf course that was a portion of their planned development. How dense was the actual area that developed. So if you drive into the condos, how dense does it appear vs. the overall project? Those calculations they had not changed since he started 15 years ago so they used that to compare and provide the same calculation methodology for every project presented to planning commission.

Mr. Servant said he had spent countless hours meeting with the developer as well as his constituents regarding this rezoning. He would venture to say it was as much or more than any rezoning that he had gone through so far being elected. Because of the concerns that they had stated that night as it related to density and how it was so much greater than the surrounding community he would ask that he be shown as a Nay vote.

Mr. DiSabato said that Mr. Servant had covered the questions that he had. His concern was whether or not townhomes were allowable under its current zoning and what a townhome community would come out to density per acre.

Mr. Schwerd said the first part was highway commercial currently does not allow townhomes. The MS6 portion of the project that was behind it was mostly (inaudible) would have allowed duplexes. Normally a townhouse project would be about 6 - 7 units an acre depending on if it's a fee simple where they actually sell the lots or if it's an incoming project.

Mr. DiSabato asked if a mobile home park could go there under its current zoning.

Mr. Schwerd said under highway commercial a mobile home park would not be allowed.

Mr. DiSabato said but an RV park or a boat storage facility would.

Mr. Schwerd said RV and boat storage would definitely be allowed. Not an RV park but a place where you could store RVs would definitely be allowed. In fact, they had a number of outdoor storage uses that had moved into the area because of the number of small lots that they had and the condos require outdoor storage.

Mr. DiSabato said junk yard, scrap yard, all that stuff was allowed.

Mr. Schwerd said junk yards, storage, those were definitely allowed. Trade shops were also. Those would be your HVAC, plumbers, contractors, lay down yards, those would be more likely... He knew they tried retail on this parcel many, many times but the residential density was not there at this moment to support that currently. It would definitely support high density retail which would generate somewhere around 3 ½ times as much traffic as the current proposal.

Mr. DiSabato said that would not happen under the rezoning that they were requesting.

Mr. Schwerd said that could happen under the current zoning with no action taken by Council or if Council chooses to deny it, correct.

Mr. DiSabato said in essence this was a down zone.

Mr. Schwerd said it was a reduction from a commercial use to a residential use. Planning staff tries not to use the word downzoning so much because they were really not trying to encourage downzoning in the eastern part of the county. They were trying to find the best location for new residences.

Mr. DiSabato asked if highway commercial use was consistent with the surrounding communities.

Mr. Schwerd said there was a lot of highway commercial in that area which was one of the reasons that parcel hadn't developed yet as highway commercial because there was so much. County Council when they adopted the zoning in that area the county in 1987, he referred to displayed map and noted everything in the red was zoned highway commercial. That was a significant amount of highway commercial that was created well above and beyond what could actually be consumed during that time frame. There was not as much demand now for big box retail so a lot of those larger highway commercial parcels are still sitting there or they had been developed into other methods like across the street at Bermuda Bay where they developed a highway commercial as lease lot residential single family development.

Mr. DiSabato asked leased lot.

Mr. Schwerd said yes so the majority of the property out there was owned by the same owner, Myrtlewood Realty. They sold the property for the Tupelo. They own the golf course. They own the remainder of Tupelo Bay. They also own The Oceanside and properties next to it. Those were then in turn leased out to the individual.

Mr. DiSabato said he just wanted to make sure that these folks understand what could go there if they vote this rezoning down. He wanted them to understand that.

Mr. Howard asked if this got rezoned, did it fit the 2040 Plan.

Mr. Schwerd said this particular rezoning fits both 2025, which was what they based their recommendations on because Council hadn't adopted 2040, but it also was supported by the 2040 plan.

Mr. Howard asked if these were tiny homes.

Mr. Schwerd said there were some tiny homes on this project. Currently they show six but had the ability to go up to 10% of the project as tiny homes. A tiny home was anything that was less than 750 square feet.

Mr. Howard asked if these would be called cottages.

Mr. Schwerd said 90% of the homes would be larger than the tiny homes. They would be considered single-family detached in common ownership.

Mr. Howard said he had seen the stormwater plan. It looked like they didn't have a stormwater problem. Did they see that there were any stormwater problems in the future?

Mr. Schwerd said he would have to leave that up to the project engineer and Horry County stormwater. He won't claim to know it.

Mr. Vaught said he thought Mr. Roth had studied this significantly and asked if he could come up to the mike.

Mr. Thom Roth said they haven't had the plans come in yet so they could verify what they were going to do. However, there had been some concessions made which typically wasn't done in a rezoning. There were currently some issues with Oceanside Village and with the developer and what the engineer had committed to do was to reduce the runoff going to that area by 50%. Then to meet the county's requirements the majority of the drainage would go to the south down to Calhoun which had a much better outfall. They would actually take the water below Oceanside Village so it would relieve them from their flooding issues and they would have to meet the 20% reduction as well. Between their commitments and Horry County's drainage requirements there should be much improvement.

Mr. Howard said everyone thinks and the theory was if you build roof tops and sidewalks and streets that causes more water, but actually when a development is done like this with the stormwater retention it actually has less water thrown onto the surrounding areas because they retain it, control it, and send it in the right directions.

Mr. Roth said what they were doing was they were going to control it. So, yes there was going to be more water runoff because it was impervious area. However, the ponds allow them to store the water and control the release and that was not what was currently happening now off that site.

Mr. Howard said so a development would help improve the area. Not hurt the area.

Mr. Roth said correct because they were going to... They would have to meet the county's requirements and again with their commitment to send 50% less water the way it was currently going.

Mr. Howard said he was beyond that retirement plan and in his home where he would live forever. Next door to his neighborhood they built one of these developments with cottages, tiny homes. He welcomed it with open arms because it was a beautiful project. He thought there was a need for this and he saw this one come up and he was not for it or against it but he thought it was a better project than what could be built there. He urged Council to vote for this because it was a good project. It met all the criterias. He thought it was a good project.

Mr. Loftus said he wanted to tell them how much he personally appreciated the calm reason demeanor that their speakers spoke with. They usually have people there that rant and rave and they were tuned out almost immediately. Their speakers made their points and made them in a calm reasonable manner and he wanted to let them know that he for one appreciated that. He thought they had gone over what could be built without rezoning and he didn't think anybody wanted a junk yard there. He asked if units similar to Tupelo Bay could be built there with a little modification.

Mr. Schwerd said he and staff both thought planning commission would support it because the 2025 and 2040 plans would both support allowing condo development on that project. If they want to build at the same density as this project it would actually be probably slightly higher density. A normal multi-family project on a parcel this size would be somewhere around 300 units in order to make it a physically responsible project in terms of the development.

Mr. Loftus asked if they were looking at 221 basically single-family homes and cottages vs. the possibility of 300 units.

Mr. Schwerd said correct. They had had several very similar sized projects that were just 18.5 acres of uplands and they had come in at 300. The Haven in Carolina Forest was exactly the same size project. It had 304 units in it. That would be a typical three story walk up multi-family project.

Mr. Loftus said they had already gone over the drainage and which way the water would go.

Mr. Schwerd said correct. The water was being routed to the south and down Calhoun.

Mr. Vaught said the first thing he needed to do was correct Mr. Allen on his recollection from three weeks ago. He in no way stated that Mr. Servant had asked him to act on his behalf with this at all. He knew Mr. Servant was not going to be there and he told him that they were going to go ahead and try to get things worked out. In fact, it was his suggestion looking at the minutes from the last meeting that he requested that they go ahead and pass this on second reading and require the parties to get together and try to work out whatever situations were between them that was keeping this from being moved on because it had been on the table since February. That was what he requested to happen. He did tell Mr. Servant that that was what he had done. He didn't ask for his permission and so if he overstepped his bounds, he apologized to him, but the fact remains that they had had people working on this project since February. They had had engineers come to them. They had the county's water people come to them. They had planning and zoning come to them and tell them that this was a good project. From all he could see on paperwork this was a much better project than a lot of the things that he saw going down Hwy 17 Business. They know that one of the coming things was small families needing more affordable housing. If they could put smaller families and more affordable housing closer to the beach, he thought they were doing a good thing. These were not tiny homes. If you were talking about 700 – 900 square foot homes, you were talking about the same size as a condo. Same size as an apartment. No difference. The only thing was these stand alone. They were only talking about a maximum of 10% being that small anyway. So he would strongly urge his colleagues on Council to vote for this project.

Mr. Prince asked if there would be a traffic light required.

Mr. Schwerd said they couldn't say whether there would be a traffic light required or not. They could say that they had reached out to SCDOT and if the project gets approved, when it was submitted they would request that they go to SCDOT. They would update the traffic counts and see if there was a possibility of having a signal installed at Woodland Drive.

Mr. Prince asked if there was any time frame that they might possibly start the project.

Mr. Schwerd said he would leave that up to the applicant. They didn't deal with time frames in their department. They could deal with being prepared for when they submit but they couldn't structure their financial situation of when they expect to start construction.

Mr. Prince said something like this probably takes 3 – 5 years if they get started right away.

Mr. Schwerd said some of them may have plans ready to go today.

Mr. Prince asked if they could put animal farms there if it was like it was now.

Mr. Schwerd said highway commercial would allow farming but did not allow animals. It just allows to grow crops.

Mr. Allen told Mr. Vaught with all due respect their recollections differed somewhat and he believed the good people would attest to that. It sounded like some on the Council were pushing very hard for this project and they were pushing against the district Councilman with the citizens there. He would like to ask the district Councilman if he would ask Council to support him on his vote. He would.

Mr. Servant asked for a point of privilege. He thought he had just answered that question when he was stating his first statement that he was voting no.

A vote was held.

YEA

Lofus
DiSabato
Howard
Hardee
Prince
Vaught
Bellamy
Crawford

NAY

Servant
Worley
Gardner
Allen

The vote passed eight to four.

Second Reading and Public Hearing – Ordinance 92-19 to authorize and approve the execution and delivery of a Fee Agreement between Horry County and Project Down; to provide for the provision of infrastructure improvement credits; and to provide for other matters related thereto. Mr. Howard moved to approve, seconded by Mr. Hardee.

Chairman Gardner paused the meeting to give anyone that wanted to leave a chance to do so.

Chairman Gardner called for a ten minute break.

Chairman Gardner called the meeting back to order.

Chairman Gardner again read Ordinance 92-19 and Mr. Vaught moved to approve, seconded by Mr. Howard. There was no public input. The motion was unanimously passed.

Second Reading and Public Hearing – Ordinance 93-19 to amend the Index Map of the official map ordinance adding the Conway Perimeter Road to the Horry County Official Index map. Mr. Vaught moved to approve, seconded by Mr. Bellamy. There was no public input. The motion was unanimously passed.

Second Reading and Public Hearing – Ordinance 94-19 to amend the Zoning Ordinance pertaining to value added processing. Mr. Vaught moved to approve, seconded by Mr. Hardee. There was no public input. The motion was unanimously passed.

Second Reading and Public Hearing – Ordinance 95-19 to amend the Zoning Ordinance pertaining to building height and setback compliance regarding the elevation of structures within special flood hazard areas. Mr. Howard moved to approve, seconded by Mr. Hardee.

Ms. April O'Leary stated that she wanted to praise the planning staff and Council for doing the elevation variance. She thought it was a fantastic ordinance change to help protect vulnerable flooded families.

Mr. William Joy said he recently attended the zoning meeting for a request for variance for a house built on Waccamaw Drive in Garden City. The variance request was to increase the height there from 35 feet to 50 feet and the request was denied. He was unsure if this zoning change would affect that area and allow for higher buildings to be built there.

Mr. Schwerd said it would impact those areas, both in the riverine and the Coastal Flood Zone so it does impact Garden City. So those areas in Garden City that were subject to flooding from the Coastal Flood Zone, the houses, currently when they are constructed they get no benefit of the flooding so if the flood zone says they have to be 7 feet above grade in order to meet the requirements, they currently lose that 7 feet in terms of how high the house can be. This would allow them to elevate those homes in those Coastal Flood Zones. So yes. He didn't know that the 50 foot would have been allowed or whether they would have only been able to go to 42 without reviewing that exact plan. He knew it went to the zoning board. He wouldn't be able to answer that question on that specific house but it would impact that Garden City area so it would impact that area.

Mr. Servant asked to be shown as a recusal on Ordinance 95-19.

Public input was closed. The motion was passed with Mr. Servant recusing himself.

Second Reading and Public Hearing – Ordinance 96-19 to amend the Zoning Ordinance pertaining to commercial zoning districts. Mr. Howard moved to approve, seconded by Mr. Hardee. There was no public input. The motion was unanimously passed.

Second Reading and Public Hearing – Ordinance 97-19 to amend the Zoning Ordinance pertaining to open yard storage. Mr. Vaught moved to approve, seconded by Mr. Worley. There was no public input. The motion was unanimously passed.

Second Reading and Public Hearing – Ordinance 105-19 amending the Horry County Code of Ordinances in the continued effort to reduce the incidents of false alarms in Horry County. Mr. Vaught moved to approve, seconded by Mr. Howard. There was no public input. The motion was unanimously passed.

Second Reading and Public Hearing – **Ordinance 106-19** to establish a joint county industrial and business park to be known as the Georgetown County Project Eagle Joint County Industrial and Business Park in conjunction with Georgetown County, such park to be geographically located in Georgetown County; to authorize the execution and delivery of a written park agreement with Georgetown County as to the requirement of payments of fee in lieu of *ad valorem* taxes with respect to park property; to provide for the distribution of revenues from the park with Georgetown County; and other matters related thereto. **Mr. Howard moved to approve, seconded by Mr. Hardee. There was no public input. The motion was unanimously passed.**

Second Reading and Public Hearing of the following Ordinances to approve the request to amend the official zoning maps: **Ord 87-19** Rowe Professional Services, agent for Clearwell LLC. **Mr. Bellamy moved to approve, seconded by Mr. Vaught. There was no public input. The motion was unanimously passed.**

Ord 88-19 Venture Engineering, agent for Horry Furniture Co. **Mr. Vaught moved to approve, seconded by Mr. Prince. There was no public input. The motion was unanimously passed.**

Ord 89-19 G3 Engineering, agent for Robert Floyd Jr. **Mr. Howard moved to approve, seconded by Mr. Vaught. There was no public input. The motion was unanimously passed.**

Ord 98-19 Sandra Jones & Lee Edge. **Mr. Worley moved to approve, seconded by Mr. Howard.**

Mr. Lee Edge stated that when he first did the rezoning the house was suffering from fire damage. The house was in the process of being renovated. There was a roof. They were installing windows and were in the last stages of the renovation. This home was his mom's home and it was a big staple in the community. That was where they held meetings for church and fundraising and choir practice. The home itself was a staple in the community and the people had been supporting him with that. He wanted to let them know about that.

Public input was closed. The motion was unanimously passed.

Ord 99-19 DRG LLC, agent for Waterway Plantation Multi-family PDD. **Mr. Howard moved to approve, seconded by Mr. Vaught. There was no public input. The motion was passed with Mr. Worley voting Nay.**

Ord 100-19 DDC Engineers, agent for Rebecca & Robert Collins. **Mr. Crawford moved to (inaudible) that was previously presented to what was on the dais. He thought this new plan strengthens the rezoning effort and takes into consideration some of the proposals made by the community which include severing the connection with Ocean Bay Road. It also provides the crossing that the community requested and inserts into the plan a traffic signal at Forestbrook Road, and so he would ask that Council please vote in favor of amending the current plan to what was on their desk. Mr. Vaught moved to approve, seconded by Mr. Howard. Mr. Crawford moved to amend, seconded by Mr. DiSabato. Mr. Carotti said technically the motion on the ordinance that was in the packet for second reading was made, seconded, and then public review would occur at that point. Then a motion to amend thereafter.**

Mr. Ted Wylepsky the Vice president of the HOA at (inaudible) for several weeks on this motion to amend this zoning. He understood they needed growth for economic development. He wanted to thank Council and Mr. Crawford for everything he had done to get this moved forward to where the homeowners felt good about what was going to happen in that neighborhood with shutting off the easement to get to Ocean Bay and getting a traffic light installed and also the buffers.

Ms. Cindy Krawczyk and she lived at Hunter's Ridge Crossing. Originally they were against the development and she wanted to take the time to say thank you to their Councilman. Not just their Councilman who took his time to have meetings with them and public meetings and listened to them, but several county departments as well. Their efforts to meet with them, listen to their concerns, and develop a new plan she felt made it responsible building and development. It was going to now be beneficial to their community instead of them looking at it as negative. She just wanted to say thank you.

Public input was closed.

Mr. Crawford moved to amend to the plan on the dais, seconded by Mr. DiSabato. The motion to amend was unanimously passed. The original motion as amended passed.

Ord 101-19 DDC Engineers, agent for Rebecca Collins. **Mr. Howard moved to approve, seconded by Mr. Crawford. There was no public input. The motion passed with Mr. Worley voting Nay.**

Ord 102-19 Rowe Professional Services, agent for Omero Loreda Ibanez. Mr. Howard moved to approve, seconded by Mr. Hardee. There was no public input. The motion passed with Mr. Worley voting Nay.

Ord 103-19 Venture Engineering, agent for Pamela Dawn Squires. Mr. Bellamy moved to approve, seconded by Mr. Howard.

Ms. Grace Gifford stated that this particular project was down towards the southern end of Hwy 319 and runs from Conway at 701 up to Aynor. That road covers two different Council districts. However, it really functions as a single road. This facility would be most active in the morning during rush hour so her concern was for the health and safety of her community. They already have industrial vehicles on this little two lane, unimproved road with canal ditches on either side with no shoulder. She thought it increased the risk for traffic problems. This location was not good for their community.

Public input was closed. The motion was unanimously passed.

Ord 104-19 Rowe Professional Services, agent for Vivian & Charles Brown. Mr. Howard moved to approve, seconded by Mr. Allen. There was no public input. The motion passed with Mr. Worley voting Nay.

First Reading – **Ordinance 84-19** to approve the request of Pamela Timms to amend the official zoning maps. (Planning Commission recommends disapproval). Mr. Crawford moved to defer the request until such time as the new plans were submitted, seconded by Mr. Howard. The motion to defer was unanimously passed.

OLD / NEW BUSINESS:

ANNOUNCEMENTS: Chairman Gardner announced that the 2040 Workshop would be conducted on November 21, 2019 at 2:00 p.m.

Mr. Gosnell recognized Mr. Randy Webster for his service to Horry County and presented him with his 30 year pin.

Mr. Webster said it had been a wonderful 30 years and he was looking forward to 30 more.

Mr. Worley called for a point of privilege. He had spent the day very disturbed about what he was hearing insofar as the mediation was concerned on the hospitality fee. By no means was he there to brow beat the mediators that took their time to go and try to work something out with the municipalities. Having said that, what he was hearing was very, very disturbing. He knew they were fixing to go into an executive session for Mr. Carotti and others to tell them what that deal was, but the cat was out of the bag so far as what the deal was. He couldn't get a grasp on why. He told Mr. Carotti to not shut him up.

Mr. Carotti said he would be remiss not to offer this cautionary word. The members that attended the mediation were all bound by a written agreement as well as court order to keep confidential any discussions that occurred during mediation and any of the matters relating to the mediation including any of the terms and conditions that were discussed during mediation. In this particular case the court has contempt powers so before anything is said that might implicate an individual in the court's eyes he would suggest that they exercise extreme caution in doing so.

Mr. Worley said he was going to say he didn't get it from any of the mediators. What he was fixing to say may or may not be true but he thought they were going to go in the back room and he would probably tell them exactly what he heard on the street.

Mr. DiSabato suggested to Mr. Worley that they go into executive session and save his comments until after executive session was completed.

Mr. Worley said after he went into executive session he was bound too. He represented the people. He didn't represent lawyers. He didn't like what he was hearing. He was not brow beating the chairman, Mr. DiSabato, and the ones that went down there. He told Mr. Vaught he knew he was there too.

Mr. Vaught said no. He had just gotten out of the hospital so he was not there.

Mr. Worley said what he was hearing was very disturbing and he thought the people back home, especially his district... If the rest of them wanted to vote for this, what he called a bad deal, then they could vote for it. He was telling them he was not going to vote for it. From what he was hearing he was not going to vote for it and he hoped they didn't vote for it. These

attorneys had been calling... Why would the municipalities not have an elected official at the mediation? How were you going to have a settlement if you don't have the stakeholders there? There was never intended to be a settlement. It was intended to be a class and that way they could rape the taxpayers. It was awful. It was awful what was going on here behind closed doors. He wouldn't be a part of it. He thought it was a sad day that the lawyers in this case, the municipality lawyers, were coming to the table with a proposal that we have offered them. What they were proposing Council had said all along that they agreed to that. They would give them every nickel of their money.

Mr. Vaught said they had said that since March.

Mr. Worley said since March. They were going to give them every penny of their money yet the lawyers won't accept that, but now they do when there was \$6.5 - \$7 million worth of attorney fees on the table. If they on County Council... He told Mr. Carotti he was not cutting him or any of the lawyers. He was just saying that he would not be a party to paying attorney fees to the tune of \$7 million plus or minus when the deal was... There was no argument. The only argument all along had been what attorney fees. How much they can get out of the taxpayers and who to blame. Who to blame for this whole thing. He knew what they wanted to do. They wanted to take the \$6 - \$7 million and take off with it and blame Chairman Gardner and this Council. He wouldn't stand for it. If they want to say he was in contempt, he was in contempt. Put him in jail but he still presented the taxpayers of Horry County and especially District One which... To give them an idea of how much money they were talking about for them back home, 18.1% which comes up to about \$5 million in this pot of money. Remember they had been banking this money. It was not their money. It was everybody's money. They had offered all along to give Myrtle Beach, North Myrtle Beach, Surfside and others every penny of their money. Now all of a sudden that they had a (inaudible) Mr. Vaught, they were going to tag a \$7 million attorney fee bill on it. He was not voting for it and he could tell them that if anybody on council votes for it they would be thrown out of office.

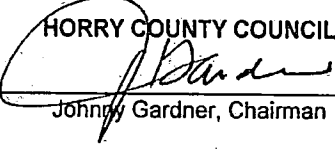
MEMORIAL DEDICATION: Temple Louise (Fowler) Soles; Glenda Smith; Jada Carter; Linda Walters; Tommy Hunter; Margaret Suggs Prince; Bobbie Hardee; Marie Causey Smith; and Alex Kindale Brinson.

UPCOMING MEETINGS: Regular Council meetings – Nov 19, 6:00 p.m.; I & R Committee – Nov 12, 9 a.m.; Public Safety Committee – Nov 12, 2 p.m.; Transportation Committee – No meeting in Nov; and Administration Committee – Dec 3, 2:00 p.m.

EXECUTIVE SESSION: Receipt of legal advice relating to pending litigation or other matters covered by the attorney-client privilege. Mr. Vaught moved to enter into executive session for the reason stated, seconded by Mr. Howard. The motion was passed with Mr. Worley voting nay. Mr. Prince moved to exit executive session, seconded by Mr. Howard. The motion was unanimously passed. Mr. Carotti said that while in executive session Council received legal advice relating to a pending litigation or other matters covered by the attorney-client privilege. While in executive session, no decisions were made and no votes were taken.

ADJOURNMENT: With no further business, Mr. Loftus moved to adjourn at approximately 7:50 p.m. and it was seconded. The motion was unanimously passed. The meeting was adjourned in memoriam of: Temple Louise (Fowler) Soles; Glenda Smith; Jada Carter; Linda Walters; Tommy Hunter; Margaret Suggs Prince; Bobbie Hardee; Marie Causey Smith; and Alex Kindale Brinson.

HORRY COUNTY COUNCIL


Johnny Gardner, Chairman

Harold G. Worley, District 1
Dennis DiSabato, District 3
Tyler Servant, District 5
Orton Bellamy, District 7
W. Paul Prince, District 9
Al Allen, District 11

Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest

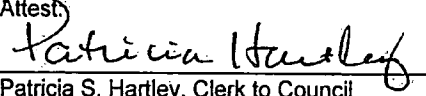

Patricia S. Hartley, Clerk to Council

EXHIBIT D

**MINUTES
HORRY COUNTY COUNCIL
SPECIAL MEETING
County Council Chambers
August 28, 2019
2:00 p.m.**

MEMBERS PRESENT: Johnny Gardner, Chairman; Tyler Servant; Bill Howard; Gary Loftus; Dennis DiSabato; Danny Hardee; Johnny Vaught; Harold Worley; Orton Bellamy; Cam Crawford; Al Allen; and Paul Prince.

MEMBERS ABSENT:

OTHERS PRESENT: Pat Hartley; Steve Gosnell; Randy Webster; Arrigo Carotti; Barry Spivey; and Kelly Moore.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Gardner called the meeting to order at approximately 2:00 p.m.

INVOCATION: Chairman Gardner gave the invocation.

PLEDGE: Chairman Gardner led in the pledge.

Chairman Gardner congratulated Mr. Randy Webster on his appointment as Assistant County Administrator for Public Safety.

Mr. Webster gave a brief update on Hurricane Dorian.

Chairman Gardner congratulated Mr. Barry Spivey on his appointment as Assistant Administrator for Administration.

EXECUTIVE SESSION: Receipt of legal advice relating to the pending "Hospitality Fee" litigation and SCDOT Financial Participation Agreement. Mr. Vaught moved to enter into executive session for the reason stated, seconded by Mr. DiSabato. The motion was unanimously passed. Mr. Howard moved to exit executive session, seconded by Mr. Worley. The motion was unanimously passed. (Note: Messrs. Vaught and Bellamy left the meeting during Executive Session and were not present during the time of voting.) Mr. Carotti said while in executive session Council received legal advice relating to the pending "Hospitality Fee" litigation and SCDOT Financial Participation Agreement. While in executive session, no decisions were made and no votes were taken. It would be appropriate at the time for Council to entertain a motion to request and agree to postpone the approval date for the first annual work plan submitted by the SCDOT to the county to December 31, 2019 with the understanding that no work will be undertaken and no cost incurred until such approval. Mr. Worley moved to approve, seconded by Mr. DiSabato. A vote was held.

<u>Yea</u>	<u>Nay</u>
Servant	Allen
Loftus	
DiSabato	
Howard	
Worley	
Gardner	
Hardee	
Prince	
Crawford	

The motion passed nine to one.

Chairman Gardner stated for the record that if the municipalities did not become parties to this agreement with SCDOT within the next 90 days Horry County had no choice but to end the agreement with SCDOT because Horry County could not go it alone on I-73. Mr. Worley so moved, seconded by Mr. DiSabato. The motion was unanimously passed.

Mr. Worley asked for clarification if that would be in the form of a resolution? Chairman Gardner said it was done then. Mr. Worley asked at the next meeting? Chairman Gardner said they had a motion made and it had been seconded. They had voted on it and it passed. Mr. Worley said he just wanted to make sure they were legal.

Mr. Prince verified that they had not done anything that day as far as spending money other than attorneys and Chairman Gardner said that was correct.

Mr. Howard said he wanted to make sure it was clear. When would this resolution be presented?

Chairman Gardner said the resolution (previously mentioned motion) was passed and was effective then. Ninety days from that day if they didn't have an agreement with the cities on board, then they would be moving that.

ADJOURNMENT: Mr. Worley moved to adjourn at approximately 3:49 p.m. The motion was unanimously passed.

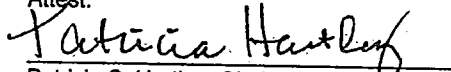
HORRY COUNTY COUNCIL


Johnny Gardner, Chairman

Harold G. Worley, District 1
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Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest:


Patricia S. Hartley, Clerk to Council

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JAN 31 2020

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ... Respondents,

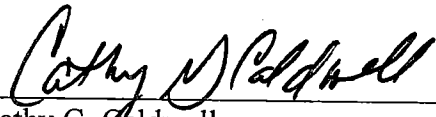
v.

Horry County, ... Appellant.

CERTIFICATE OF SERVICE

This is to certify that I, Cathy G. Caldwell, a legal assistant with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of Respondent City of Myrtle Beach's **Reply and Memorandum in Support of Motion for the Court to Take Judicial Notice** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

William Grayson Lambert, Esquire
Burr & Forman, LLP
P.O. Box 11390
Columbia, SC 29211


Cathy G. Caldwell

Columbia, South Carolina
This 31st day of January, 2020