

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JAN 16 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.

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

Pursuant to Rule 240, SCACR, Respondent City of Myrtle Beach, for Itself and a Class of Similarly Situated Plaintiffs ("City"), respectfully moves this Court to take judicial notice of documentation of two separate actions taken by the governing body of Appellant Horry County ("County"), Horry County Council ("County Council"), which occurred concurrently with and following the filing of the County's Final Brief of Appellant in this matter, and which bear upon the representations of the County to this Court and the issues in this appeal.

Specifically, the City moves to have this Court take notice of (1) the November 19, 2019, action of the County Council to cancel the County's financial participation agreement with the South Carolina Department of Transportation ("SCDOT") to provide funding for the proposed Interstate Highway 73 project within Horry County ("I-73 Project"), as well as (2) the December 16, 2019, action of the County Council to reject a settlement agreement in principle reached by

authorized representatives of the County and City in a mediation ordered by Judge Seals, which provided for funding of the I-73 Project at levels suggested and agreed to by the County's authorized representatives in mediation.¹

For the reasons set forth and discussed below, the City submits that the Court should grant its motion and take notice of the actions of the County, acting by and through its governing body, County Council, occurring on November 19, 2019, and December 16, 2019 as reflected in the exhibits attached hereto and described below.

I. BACKGROUND

This appeal arises out of the circuit court's orders granting the City's motion to preliminarily enjoin the County from collecting a uniform service charge on accommodations, prepared food and beverage, and admissions within Horry County municipalities under County Ordinance 105-96. **(R. pp.6-24)**. As directed by the circuit court, the parties undertook mediation of their dispute, with Karl Folkens, Esquire, serving as the court-appointed mediator. **(R. p.27)**. On November 15, 2019, the parties' authorized representatives executed a settlement agreement in principle to resolve their dispute, which was conditioned upon the approval of same by the governing bodies of the parties, *i.e.*, the Myrtle Beach City Council ("City Council") and the County Council, as well as consent by the governing bodies of the other affected municipalities in Horry County. This settlement agreement in principle provided for funding of

¹ The fact that a settlement agreement in principle was reached in mediation by the parties' authorized representatives and the terms of same are not being advanced by way of the instant motion for any purpose contrary to Rule 408, SCRE, but to demonstrate that the County's conduct is wholly inconsistent with positions taken in this Court and below with respect to the factual basis upon which the County claims the ordinance at issue is valid and to prevent the County from manipulating legal proceedings by failing to bring these facts to the Court's attention. *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).

the I-73 Project. *See generally* Exhibit A, Copy of Minutes of County Council Meeting held December 16, 2019.²

On November 19, 2019, the same date upon which the County filed its Final Brief of Appellant in this matter, the County Council held a regularly scheduled meeting in which it included an executive session legal briefing and vote on its financial participation agreement with SCDOT for the I-73 project. At this meeting, the County Council unanimously adopted a motion to terminate the County's financial participation agreement with SCDOT to fund the I-73 Project. *See* Exhibit B, Minutes of County Council Meeting held November 19, 2019, at p.6.³ This action by County Council squarely walks back statements made in the County's briefing to this Court, submitted that same day. *E.g.*, Final Brief of Appellant at p.6 (“[T]he 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.”).

On December 16, 2019, the County Council held a regularly scheduled meeting in which it included an executive session legal briefing and vote on the parties' November 15, 2019, settlement agreement in principle. At this meeting, the County Council adopted a motion to reject the terms and conditions of the settlement agreement in principle as publicly agreed to and voted upon by the City Council and most of the governing bodies of the other participating municipalities – which provided for funding of the I-73 Project – by, *inter alia*, requiring the consent of all municipalities in Horry County.⁴ *See* Exhibit “A” at 14-15.

² A video recording of the County Council's December 16, 2019, meeting may be seen at https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1680.

³ 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.

⁴ Which proposed modification is ironic for the reasons discussed at p. 6-7, *infra*.

II. LAW

An appellate court may take original judicial notice of adjudicative facts when “the matters [being noticed] ... are indisputable.” *Masters v. Rodgers Development Group*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984); accord *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2001) (citing *Masters, supra*, for the proposition that “an appellate court can take judicial notice of something that was not before the trial court if it is indisputable”).

For a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof. *Moss v. Aetna Life Insurance Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976); *State v. Broad River Power Co.*, 177 S.C. 240, 181 S.E. 41 (1935). Unless the fact is either of such common or general knowledge that it is accepted by the public without qualification or contention, or its accuracy is capable of verification by reference to readily available sources of indisputable reliability, it is not subject to judicial notice.” *Moss v. Aetna Life Insurance Co., supra*; *In the Matter of Harry C.*, 280 S.C. 308, 313 S.E.2d 287 (1984) (citing *State v. Newton*, 21 N.C.App. 384, 204 S.E.2d 724 (1974)).

Masters, 283 S.C. at 255, 321 S.E.2d at 196; cf. Rule 201(a) and (b), SCRE (providing for judicial notice of adjudicative facts which are “not subject to reasonable dispute” because they are either “generally known within the territorial jurisdiction of the trial court or ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). Rule 201, SCRE, applies to this Court. See Rule 1101(a), SCRE. This Court has also inferentially recognized its authority to take judicial notice of legislative facts. Cf. *Davenport v. City of Rock Hill*, 315 S.C. 114, 432 S.E.2d 451 (1993) (determining the validity of a municipal ordinance to issue tax anticipation notes under the limitations set out in S.C. Const. art. X, § 14 based in part on historical facts concerning tax anticipation notes).

Adjudicative facts are those “about the particular event which gave rise to the lawsuit and, like all adjudicative facts, they help[] explain who did what, when, where, how, and with

what motive and intent.” R. Mosteller, *et al.*, 2 *McCormick on Evid.* §328 (7th ed. 2020). Adjudicative facts have been also been characterized by the same commentator as being “historical facts.” *Id.*, §331. On the other hand, “legislative facts” are those facts relied upon by a court to decide, *inter alia*, the constitutionality or validity of statutes. *McCormick, supra*, §§328 and 331. Legislative facts may involve “the use of extra-record data by judges to assay whether there exist circumstances which ... legitimate the exercise of legislative power.” *McCormick*, §328. However, the distinction between adjudicative and legislative facts is not always clear. *McCormick*, §331 (recognizing a “tendency of any bright-line distinction between adjudicative and legislative facts to dissolve in practice”).

III. ARGUMENT

The matter the City seeks to have judicially noticed bears directly upon two specific positions taken by the County in this appeal in support of its argument that it is permitted to continue imposing its Hospitality Fee pursuant to the enjoined County Ordinance 105-96, even after it was terminated by operation of the Sunset Provision contained therein and in absence of consent by the municipalities within Horry County to same as required by applicable constitutional and statutory provisions.

First, the County has stated and argued in this Court that the uniform service charge is valid in part because the County intends to use the proceeds to provide local funding for the I-73 Project, a “road” project which the County submits complies with the stated purpose of the Hospitality Fee.⁵ *See* Final Brief of Appellant at 6,⁶ 19, 20, and 21. Based upon the County

⁵ The City disagrees with the County’s position in this regard, as discussed extensively in its briefing; however, for the purposes of this motion, such disagreement is irrelevant, as the County Council’s actions directly undercut the County’s justification, even assuming it were proper.

Council's official actions taken on November 19, 2019, and December 16, 2019, funding of the I-73 Project cannot be a purpose of Ordinance 105-96 – within or without the corporate limits of the municipalities. These actions, in turn, relate directly to the County's arguments that the lower court erred in imposing the injunction now being appealed and the City's opposing arguments. *See* Final Brief of Respondents at 23-24 (discussing, in the context of Respondent's unrefuted argument that it has demonstrated a likelihood of success on the merits, this Court's holdings in *Brown v. Horry County*, 308 S.C. 180, 417 S.E.2d 437 (1997) and *C.R. Campbell Construction Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437 (1997), stating that a uniform service charge may only be imposed if it is tied to a specific improvement, service, or project).

Second, the County has asserted, *ad nauseum*, that no municipal consent is required for it to be able to continue imposing its Hospitality Fee within the incorporated areas of Horry County. *See, e.g.*, Final Brief of Appellant at p.1 (Appellant's Statement of Issues on Appeal I), p.2 ("the central issue in this case ... is whether the County needed the City's consent ... to change the use of the revenue from the Hospitality Fee"), p.3 (arguing that the circuit court erred in recognizing a requirement of municipal consent to the imposition of the Hospitality Fee in the incorporated areas of the County), pp. 10-11, 13-17 (arguing that municipal consent to the imposition of the Hospitality Fee in the incorporated areas of the County is not required for various reasons). The County's December 16, 2019, action to reject a settlement agreement in principle reached in mediation to fund the I-73 Project unless all municipalities consent to participate in the funding of same (in addition to being ironic) should be treated by the Court as

⁶Because the County's assertion that a purpose of continuing to impose the Hospitality Fee under Ordinance 105-96 within the municipalities of Horry County appears in Appellant's statement of the case, it is bound by that statement. *See* Rule 208(b)(1)(C), SCACR.

an admission that reinforces the fact that there is no specific improvement, service or project which will be funded by the Hospitality Fee and runs counter to the principal legal justification advanced by the County in this appeal bearing on its ability to impose the Hospitality Fee absent municipal consent.

At the very least, the County's actions are legislative facts given that they bear directly on the question of whether Ordinance 105-96 can constitute a valid uniform service charge in the absence of the project or improvement required under *Brown* and *C.R. Campbell, supra*. See *Davenport, McCormick* §328, 331, *supra*. Stated another way, the County's factual assertions to this Court that the Hospitality Fee revenues are to be used to fund the I-73 Project can no longer support the validity of Ordinance 105-96 as a uniform service charge when the County has acted to disavow that intent or make it contingent on the occurrence of future events. The County's actions are also adjudicative facts. This is so because they contradict the County's putative purpose for continuing to impose the Hospitality Fee under Ordinance 105-96 (asserted by the County to exist when this action was brought, *see, e.g., (R. pp.545-46)*, and therefore inform the Court with respect to the intent of the ordinance. See *McCormick* §328, *supra*. Moreover, since the County's actions have occurred long after the instant appeal was filed, initially briefed, and finally briefed in this Court, they could not have been presented in the Court below, *cf.* Rule 210 (c), SCACR.⁷ The City submits taking notice of the County's actions is therefore warranted for

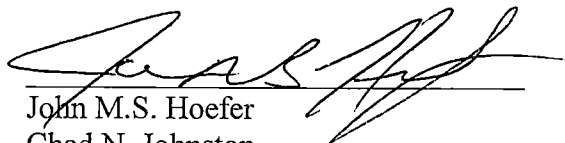
⁷ Nor is the City **presently** able to bring this matter to the attention of the circuit court given that it has issued an order staying further proceedings below (other than mediation) pending this Court's determination in the instant appeal. (**R. pp.29-31**). However, the City intends to submit a 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, SCRCF. The purpose of this submission will be to clarify that grounds exist to invalidate Ordinance 105-96 in its entirety, including the County Council's November 19 and December 16 actions manifesting that the 1.5% Hospitality Fee revenue is not to be used for the purposes the County has heretofore stated in this Court, and

this additional reason – regardless of whether the County’s actions are deemed to be adjudicative facts, legislative facts, or a hybrid of both.

IV. CONCLUSION

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

Respectfully submitted,



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therefore fails this Court’s express test for the validity of a uniform service charge set forth in *C.R. Campbell*.

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CERTIFICATE OF SERVICE

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

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Cathy G. Caldwell

Columbia, South Carolina
This 16th day of January, 2020

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EXHIBIT A

**MINUTES
HORRY COUNTY COUNCIL
SPECIAL MEETING
County Council Chambers
December 16, 2019
6:00 p.m.**

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

PLEDGE: Chairman Gardner led in the pledge.

EXECUTIVE SESSION: Receipt of legal advice relating to the pending "Hospitality Fee" litigation. **Mr. Vaught moved to enter into executive session, seconded by Mr. Prince. The motion was unanimously passed. Mr. Worley moved to exit executive session, seconded by Mr. Howard. The motion was unanimously passed.** Mr. Carotti said while in executive session Council received legal advice relating to the pending "Hospitality Fee" litigation. While in executive session no decisions were made and no votes were taken.

Mr. Worley said so they could get it up on the table and this by no means meant that he was for it but somebody had to make a motion and he so moved. Chairman Gardner said they had a motion to approve the Hospitality Fee settlement as mediated. **The motion was seconded by Mr. Vaught.**

Mr. Worley said he had been dreading that night for a long time. He was going to vote no on this agreement that night and he stated why. Number one, he didn't agree with the attorneys taking \$6.5 - \$7 million, and they had already collected \$1 million. This thing could end up being in the \$8 million range for six months work. He thought that was awful. He represented the people of North Myrtle Beach in District 1. It was a bad deal for North Myrtle Beach. He wanted to go a step further and talk about the elephant in the room, I-73. Based on all the numbers for the past 25 years that he had been dealing with on I-73 there had been a lot of different estimates on I-73. When they were talking about this the previous year, they were looking at setting aside \$25 million for principal and interest for their portion of I-73 here in Horry County and across the Pee Dee. The problem with this settlement agreement that they had just been briefed on... If you take the hospitality fee county wide (inaudible). He thought this was important and he thought Council needed to hear this. At county wide, if everybody contributes a half of one percent to the I-73 fund that was going to be a third of what was collected county wide which was...

Mr. Spivey said currently based on 2020 projections that was \$14.5 million.

Mr. Worley said he was talking about county wide, 1.5%.

Mr. Spivey said county wide 1.5% was \$43.7 million. One third of that was the \$14.5 million.

Mr. Worley said that was his point. They were talking about \$14 million and some change probably. That would not build the portion in Horry County that (inaudible). It just would not do it. It was not enough. They were \$10 million short. At the end of the day would I-73 get built? He thought it would. He thought at some point and time it would get built.

Mr. DiSabato asked Mr. Spivey if that projection was accurate.

Mr. Spivey said when they looked at the information in terms of sizing a contribution locally, he thought the Department of Transportation was looking for a local contribution in the range of \$200 million. That (inaudible) not even a majority of cost so the other funds would have to be brought by the state, by the federal government to come close to building the interstate.

Mr. Worley said at the end of the day, since they talked about that on the dais, they were talking about the federal government bringing money for I-73 and the state bringing money for I-73, but he had heard that day from the state house they were talking about putting a toll on a road that the people in Horry County were going to pay for with taxpayer's money. If he traveled somewhere across the state line, he would have to pay a toll when he had already paid for the road. Was that not the most ludicrous thing you had ever heard? When this money was turned over to SCDOT, they could care less what you thought. He had served at the state house and that was how they treat them. They would do it the way they wanted to do it. They would do it with the county's money. If the federal government brought \$100 million to the table, that was just a drop in the bucket to what the county needed. The state had money running everywhere, and did they think anybody would allocate money to I-73. They had had an opportunity and hadn't done it. What would they do once the county voted to put its money in? They were not going to change anything, but then they would put a toll on us. All of them needed to investigate that and understand that that was a possibility because the numbers don't lie. He asked Mr. Spivey to explain what the cost of the road would be to I-95 and then on to the state line. They were talking about funding... The federal and state governments were not just talking about funding to just the state line. They were talking about to the North Carolina state line.

Mr. Spivey said he was not sure he had the full number of that. He thought what they were looking at was \$670 million which got them to Hwy 76. \$1.3 billion to I-95 from Horry County.

Mr. Worley said and then on to the state line. They had to remember from the state line south was in South Carolina too.

Mr. Bellamy wanted to verify what the total cost was and was told \$1.3 billion from Hwy 22 to I-95.

Mr. Worley asked if there was any estimate that they knew about from I-95 on to the state line.

Mr. Gosnell made an inaudible response.

Mr. Worley said that didn't include raising Hwy 22 or Hwy 501 up because of storms. Correct? So that was another \$100 million. His point was to be real and talk about... This money, this \$14 million and some change a year was a drop in the bucket compared to what they needed. So at some point and time the debate was going to be about how much was the toll going to be. He thought Chairman Gardner was correct in what he said the previous week. It really stuck with him. It was time for the federal and state governments to step up and help Horry County build this road. We could not do it alone. They had to help us. They could. They had the funds to do that. It was not right for Horry County to get on the hook and no one else seems to want to come to the table. All they wanted to do was criticize us for not doing this or that, but at the end of the day they needed to come to the table like the chairman said. They need to come to the table so he would be voting no.

Chairman Gardner said he thought they would energize everybody when they said that. He thought they would get the locals and feds to come in with a plan and he hadn't seen any plans, commitment, or anything to help us. He had heard threats to tell us to how to spend the money that we were going to collect.

Mr. Loftus said he wanted to make sure everybody was clear that this \$6.5 million, or whatever the number was, that the cities' attorneys were going to get comes from the cities and not from the county. There was a \$19 million common fund that was the cities' portion of the hospitality fee that they started with back in February or whatever it was. That did not come from any county money at all in any way, shape, or form whatsoever. That was the cities paying these attorneys and not Horry County. He went back to 1996 when the hospitality fee was first passed and this was before the local sales tax for roads. It was part of a program within Governor Beasley and Representative Mark Kelly and himself and others... They went around after that legislation was passed to every city, Aynor, Loris, Conway, Atlantic Beach, North Myrtle Beach, Myrtle Beach, Surfside Beach, and he thought they went to Briarcliff. They told them what they were proposing and received resolutions from every one of them, and he thought he believed every one of them passed unanimously to adopt this hospitality for roads that would be mainly for tourists in Horry County. What roads did they build with it? Almost \$.5 - \$1 billion worth of roads, 31, 22, Grissom Parkway, Main Street Connector in North Myrtle Beach, 544, and that was just beginning. So it was not something that they passed and didn't work. It was one of the things that they did

pass that did work. To not continue this and just complete the puzzle with I-73 was just beyond him why they would even think of not doing it.

Mr. Vaught said they looked at that night in executive session how this proposed agreement basically differed from a resolution that they passed and sent to the cities back in April that basically laid out how they would return the monies that they were due that were collected within their city limits and stuff. That the county would distribute the money back to them and they could do whatever they chose to do with those monies. That laid out a formula for building I-73 in which everybody contributed as a proportion to where the taxes were collected. They sent that whole resolution out there. We were the big guy and the adults in the room because they could get no motion, no movement whatsoever out of the cities. Then it became well we can't talk with you now about it because it was a lawsuit. Well, the agreement was still there. The resolution was still on the books, and they came back with an agreement that night to look at which was essentially the same exact thing with the one exception of the fact that there was a class action that the attorneys want to declare which would allow them almost an automatic \$6 - \$7 million to be taken out of the cities' portion of this pot of money. That was money that was actually collected in the cities that was going to go back to them whatever. It was their money. His point was they couldn't control what the cities do with their tax money. It makes no sense to him that they would spend it that way rather than on rehabilitating downtown or whatever it was that they wanted to do but that was their decision. Their decision as a Council was what they were going to do with their portion of this. So, they needed to look back and recognize the fact that they had always stood up for what was the right way of doing this thing. When this whole lawsuit came out and the judge said you had to mediate it and everything, they said no problem. We will participate. Horry County sent at least five representatives to every mediation session. He commended them for sitting there for 10 - 13 hours at a time, but they were the only people there other than attorneys for the cities. The cities did not even show up to their own negotiation. There were no parties there who could make decisions when mediation was projecting which was proposed. There was nobody there from the cities who could even make a decision, accept it, or whatever. It was all based on the attorneys. So, understand their county government, this Council on the dais, stood up way back in April. They recognized that there was a problem. They recognized that the cities were coming to them and going to sue them over this. They took positive action. They proposed a plan that would grant them more money than comes from under this agreement. There would be no attorney's fees. The county would have already written them a check back in April for the monies that were due them and they could do whatever they wanted to do. But there they sit with an agreement that would die if they didn't agree to it being a class action suit, that would die and that would kill I-73 because they didn't have the money as a county to actually pay for it. The program that they proposed by resolution in April laid out exactly how much money would come from the cities. The county was going to put out \$18 million per year which would have given them over 30 years. He asked Mr. Spivey if that was correct for the commitment that they had out there. That wasn't satisfactory. They were right back to the same place they were except for attorney's fees of \$6 - \$7 million with what they proposed back in April. So tell him who the adults in the room were.

Mr. Allen said he had been visited by a representative from NESAs the past week. They spoke about this very same issue and he at first told him that he knew he was against I-73. He told him to wait a minute. He had never told anybody that he was against I-73 if it was handled correctly. He told him that his stance was that when the feds and the state and the cities all get skin in the game and get on board, he would be more than happy to support I-73 because he agreed that the county needed some interstate access. But, addressing this because this agreement would tie them up again with I-73. It was not just about the 1.5%. It was not just about the outrageous attorney's fees. It was also going to put this county on the hook again. He reviewed the numbers. \$2.4 billion for the total project from Hwy 22 to the North Carolina state line. \$2.4 billion. It was going to cost a minimum of \$100 million to raise Hwy 22. I-73 or I-65 or I-3047.5 wasn't going to do any good unless you get Hwy 22 up and raise it so that it won't flood. That had to be addressed first. That would cost at least \$100 million. If you add that in they were now at \$2.5 billion total. \$2.5 billion and somebody wants the county to commit... It was at first \$25 million per year and now it was back to \$14.5 million and if you multiply that over our 12 year period that was inside of the current agreement that was only \$174 million in a \$2.5 billion project. That probably would not even raise Hwy 22, but through this agreement we would be obligated to start on I-73 within those 12 years. The numbers didn't lie. The county didn't have the money to do that even with this agreement. We did not have the money. Our state had a \$2 billion surplus in their budget this year and with everybody knowing what we were facing here and with this 30 year journey that we had been on for I-73, how many of them up there had called to say "I am going to try to get you some money for I-73". Crickets. Nothing. The last time he made this statement he got calls and stuff from some on the house board wanting to know what in the world he was doing. Then their congressman said that they had acted shamefully in cancelling this contract, and if he had to be called acting shameful for looking out for the taxpayers of Horry County, he would wear that badge proudly. This was what he saw inside of this deal. Tell him where any interstate highway of this magnitude had ever been built anywhere in this country by local funding. He had researched it and it was zero. Why? Because local entities could not afford this. That was why the feds and states have to get involved. He would send this message that Councilman Al Allen was only one vote, but if our federal representatives and our state would

commit money to I-73, he would vote to support it that night. But if they don't, don't be telling him how he ought to represent yours and his citizens. Because they get a choice in it and he gets a choice in it. He had been out and spoken with the citizens out within his area and they don't want to be the only ones on the hook. If 80% of that 1.5% was paid for by tourists, who was gaining 80 – 90% of the benefits off of I-73. It was not Ketchup Town, Aynor, Conway, Loris, and it wasn't even Carolina Forest. It was not Garden City. He wanted them to think about this. \$2.5 billion. Even if they collect their \$4.5 million a year for the next 30 years and bond it how some were wanting them to do it, that only comes out to only \$435 million over a 30 year period. That wasn't even 25% of what it was going to take to build that interstate. What would happen was that if they commit the taxpayer's money to this, the feds and the states would do what they had been doing for 30 years. Crickets. Who would be left on the hook? Your children. His children. Their grandchildren. And the interstate would never get built even if they put all of the 1.5%.... They couldn't afford it. Tell him a contractor who would bid a job like that not knowing that the money would be secured. They would be foolish because there was too much other work out there that was secured now. They needed to talk about reality and this was the whole hard facts. Take away all of the attorney's talk. He appreciated theirs because he believed that they had with good faith and good hearts and good intentions worked hard on this, but now it comes down to Council because they don't answer to the people like they did. But again, he appreciated all the good points and all the info but as far as Al Allen was concerned he was still not willing to put the people of Horry County on the hook for this pipe dream that would never happen unless the feds and state step up. But the argument would be unless they put in their part they were not going to step up. Oh to the contrary. If we put in our part, they would never step up. You never pay a man until the job is done. That was an old southern ingenuity. You never pay for the whole job until it's done.

Mr. Prince said that Number 9 was four-lane from Finklea to North Myrtle Beach and it had been over 35 years, maybe even 40, and the rest of Number 9 was supposed to go out to I-95. That had never been done and the state and federal governments hadn't stepped in to do anything about that so it was still a two-lane road. They didn't get any help from the state or federal governments with that. Ride I, Ride II, and Ride III were the doings of Horry County government. Was that correct. Didn't they do the referendums to get that done? Mr. Worley said not Ride I. Mr. Prince said he didn't know if they got any help from federal or state on any of that. It was like if the county wanted anything done, it had to do it itself. We didn't seem to get enough help from federal and state like he thought they should. He verified that if the county did this, the unincorporated area for one year on the 1.5% wouldn't get but approximately \$14 million for our part. He asked Mr. Spivey if that was what he said.

Mr. Spivey said the amount collected in the unincorporated areas was just under \$13 million.

Mr. Prince said if we gave 1/3 of it to I-73, what would that be? That wouldn't be but \$3 – 4 million.

Mr. Spivey said it would be \$4.3 million for our share.

Mr. Prince said that was a drop in the bucket so what would you do with that much on that kind of a \$2 - \$3 billion road. That would leave the county with all the road projects. That would cut us down to what?

Mr. Spivey said \$8.5 million would be the balance that we would have for other uses within the county.

Mr. Prince said after all that he thought they might better... He couldn't vote for anything like this until they get some better understanding and the federal and state governments jump in to start helping with the road system in Horry County along with other things that they need to help us with more.

Mr. Hardee said he thought they were there that night to talk about the lawsuit and he wanted to give his opinion on it. Number one, he thought it was total BS and anybody in the City of Myrtle Beach that started this and voted for it, he would highly recommend they pack up and get out of Horry County because this was about as much BS as anybody could even digest. The money was spent on 31 and 22 which benefits them probably greater than anybody in the county. We wanted to come to the table and talk about it and they said that you could not do that because you had to sign this paper and this paper. Number one and no offense to any attorneys, they do a good job on a lot of things and he didn't mean this negative towards them, but he didn't need an attorney to talk for him. If the City of Myrtle Beach can't come in and sit down and talk and get this thing straight, then they need to explain to their people why they wasted millions of their dollars because they had done nothing but wasted millions and millions of the taxpayer's money on total BS. The thing that really bothers him most of all was the state didn't come in. The federal government didn't come. It was all Horry County. If for some reason they think that they were right and they won the lawsuit, he thought Horry County ought to put tag readers and anybody that lives there, you will pay your fair share though a tax action. Like he said, he couldn't say anything other than this thing was a sham to start with and that they were doing nothing but wasting taxpayer's money.

Mr. DiSabato said he had some questions for staff before he went forward. The \$14.5 million that would be collected from the county and the municipalities, what kind of bonding capacity did that give the county?

Mr. Spivey said with that annual payment and it had been sized to increase on an annual basis on the level that the hospitality fees increase each year. So it starts at \$14.5 million and grows each year by roughly 3%. They had averaged over the full life of the fee since it had been in inception 3.8% so they used 3% to try to be a little bit conservative in that regard. At the \$14.5 million they could bond as much as \$275 million. It would have to be out there for almost 30 years to do that. That's longer. It takes a little bit higher rate to do that as well. They were basing that on the market rates where they were currently so in a different rate environment it could be less in that regard.

Mr. DiSabato said it was not enough to build the road.

Mr. Spivey said no.

Mr. DiSabato said in staff's experience, not just within Horry County but seeing how similar type projects have been funded in the past, had the federal government ever come in with grant money or other funding until a project was shovel ready?

Mr. Worley said no.

Mr. Prince said not that he knew of.

Mr. Gosnell made an inaudible response and Mr. DiSabato asked shovel ready means what? That the county was...

Mr. Gosnell made an inaudible response.

Mr. DiSabato said so it would be a fallacy to expect the federal government to come in and put money towards the construction of a road project that we did not already begin.

Mr. Gosnell made an inaudible response.

Mr. DiSabato said history had not been favorable in that particular factual scenario. Okay. In speaking directly to this contract, he agreed with what most everybody up on the dais had said. First of all they were the only political subdivision that sent anybody from elected officials that serve on that political body to any mediation agreement as far as he understood it. He only participated in one out of the three but his understanding was that the first two... Well that one didn't have anybody from City Council attend it but his understanding was that nobody from any of the City Councils had participated in this mediation agreement at all. He asked Mr. Carotti if that was correct and his response was inaudible. His other understanding was that if they were to settle this agreement but one or two of the municipalities that were out there hold out, they could still find themselves exposed financially to a certain degree. Was that accurate and the response was inaudible. He for one, absolutely under no circumstances, did he support using hospitality fee money towards the payment of attorney's fees. He just wanted to be clear on something that Mr. Worley had said when they started this debate. The attorneys they were talking about were not the county attorneys. They were talking about the cities' attorneys. They were the ones that were creating this legal fiction that would entitle them to up to one-third of the common fund which could be \$6 - \$7 million in attorney's fees. He didn't support that at all, but he did see the benefits of settling the case and having some legal certainty as to what the outcome of the litigation itself was. Assuming that they collect these hospitality fee monies from the municipalities and apportion some of it towards the construction of I-73, if they never get to the point where they get the funding to do I-73, what happens to that money? Does it go back to the municipalities?

Mr. Carotti said the money held in trust during that time would be refunded to the participating governmental entities, the municipalities and the county in its apportionment share to how they contributed absent monies that were spent on 22 studies, elevation, and pre-construction activities such as engineering, design, and right-of-way acquisition.

Mr. DiSabato said so at a minimum they could raise 22 so that the flooding that occurred during Hurricane Florence doesn't happen again.

Mr. Carotti said yes.

Mr. DiSabato said if they did not find the funding sources or have the ability to build the rest of the interstate up to the South Carolina border we could then return the monies collected up to that point to the municipalities and themselves.

Mr. Carotti said that was correct absent any pre-construction costs such as engineering, design, and right-of-way acquisitions.

Mr. DiSabato said so settling this lawsuit only provides the framework for local funding for I-73 but does not guarantee the construction of I-73 or the use of these funds towards I-73. Was that correct?

Mr. Carotti said that was correct.

Mr. DiSabato said what he would suggest was that they approve this settlement agreement on the following conditions and he would make this in the form of an amendment to the motion.

Mr. Worley told him to let everybody else talk. There were other people that wanted to talk and asked that he hold his motion. He could make that at any time.

Mr. DiSabato asked if there were other people in the queue.

Chairman Gardner yes, they had...

Mr. DiSabato stated he would hold the motion.

Mr. Howard said he would have to agree with most of the Council. This was a very unique situation where the city had been planning this for years and years and the county was not aware of this. Then all of a sudden they throw this on them. They negotiated in good faith and wanted to see I-73 built. They worked very hard to make it very fair. All the cities, municipalities would receive all the monies that was collected in their cities and then they would put a percentage of that money towards I-73 which was the same thing that they were trying to accomplish with this new settlement. He did not agree with the way the attorneys brought some kind of class action against the county collecting this fee to build roads for Horry County. The state, the law makers, passed this so the county could build these roads for the tourists. They needed to continue to build roads for tourists because they were a tourist destination. They needed this money to build these roads for the tourists and use the rest of it for public safety where they could where it was legal. They had a huge need for that because of the tourists. He agreed with everything everyone was saying and he thought Mr. DiSabato did have a good point and he would make a motion. He thought it would be the way they needed to go about this and he thought it would work. He thought they needed to not lose all this negotiating that they had done and try to come to some kind of agreement where they could continue to move forward, not backwards, and what Mr. DiSabato had mentioned... If they collect \$168 million in 12 years and they hadn't turned dirt, that money would go back to the municipalities. It didn't get lost with DOT. If they didn't get federal money, they were the ones that would make the agreement with DOT, not the tourists. They were going to make the agreement where the money was protected and until they knew that their portion and other portions were going to be built, they were not going to waste that money. They were not going to lose that money. They would protect it. He was anxious to hear Mr. DiSabato's motion.

Chairman Gardner said the concern he had about that was if Horry County makes an agreement with DOT, they would be the only one and if other people want to make contributions to I-73, they should start by being on the contract with the DOT. He was talking specifically about the cities that would enjoy the benefit of it, but they would keep going.

Mr. Bellamy told Mr. Carotti that they had discussed on the dais in regards to the financial exposure risk factor, what was the worst case scenario if the other municipalities did not sign the agreement?

Mr. Carotti said he would assess that the minimum risk would be of most concern to them would be their proportionate share of monies collected since January 1, 2017 through February 15, 2019 that were spent for Ride projects which totaled... If Conway and Loris were the only holdout municipalities, which that days votes indicate that that was very well the scenario, that would total about \$2.9 million.

Mr. Worley asked Chairman Gardner to make sure that they were good and clear on the statement that he just made. The people back home need to understand exactly what the deal was with the monies that was collected by the county but they spent it on Ride I projects, 22 and the whole list, 31, Robert Edge Parkway, Robert Grissom Parkway, all that. That money

was spent on Ride projects. They didn't take that money and go to Las Vegas with it. Please explain that to the people back home so they would understand how bogus this lawsuit was. It was a sham.

Mr. Carotti said that was correct that that money was spent exclusively on Ride projects and not a penny of it was spent elsewhere. However, the city had made a claim for reimbursement of that entire amount, approximately \$53 million.

Mr. DiSabato said even though that was used to pay off a SIB loan that was used to fund those Ride I projects.

Mr. Carotti said correct.

Mr. Bellamy said reference had been made to \$2.9 million.

Mr. Carotti said that was the portion of that \$53 million that was collected within the municipal limits of Conway and Loris.

Mr. Bellamy said if they were talking about the cities not signing the agreement that would go to the next step, the court system from there?

Mr. Carotti said it would if this body, Council, approved the agreement.

Mr. Bellamy asked if Council did not approve the agreement, what would happen then. What was the next step?

Mr. Carotti said they would continue with the litigation.

Mr. Servant said under the current proposal that had been laid out, where was the .5% supposed to be spent on first as it related to roads and infrastructure?

Mr. Carotti said if he was talking about the money that was dedicated to I-73 within Horry County, 22 improvements to address the flooding.

Mr. Servant said first and foremost.

Mr. Carotti said yes.

Mr. Servant asked Mr. Gosnell under his knowledge was any money set aside in the county currently that was being dedicated to raising this road.

Mr. Gosnell said no.

Mr. Servant asked if there were any plans by staff that had been put forward that plan on doing this.

Mr. Gosnell said it was a project that had been discussed and considered but there had been no budget for it.

Mr. Servant asked him in his best estimation how much was it going to cost.

Mr. Gosnell said without studies they didn't have a good idea. He thought they had been talking \$50 - \$100 million but that was a guess.

Mr. Servant asked how needed was this project.

Mr. Gosnell asked which project.

Mr. Servant said raising 22.

Mr. Gosnell said that was the initial study that they had done (inaudible) to determine whether or not the cost was worth the making in order to get the benefit from it. (Inaudible).

Mr. Servant asked if winds get above 50 mph, Georgetown County bridge closes, correct.

Mr. Gosnell said yes.

Mr. Servant asked if Lake Busbee floods, DOT obviously thought that was a good possibility because they brought in barricades, what other option would the residents of southern Horry County have to get out of this county if they did not raise 22.

Chairman Gardner said the best thing for the people on the south end was get the SELL road fixed. They were all talking about dreams.

Mr. Servant said they were talking about monies that were being allocated now to do things.

Mr. DiSabato asked what the raising of Hwy 22 would do in a flooding event that they experienced like Hurricane Florence as far as an evacuation procedure goes.

Mr. Randy Webster said if 22 was raised above the level they saw flooding for Hurricane Florence, and they didn't have another flood above that level at some point and time, then all the congestion and traffic flows they saw trying to come through 501 would have been alleviated through 22 to get across the river and they would have been able to move back and forth to Loris and to the north end as well. So 22 was a tremendous burden with it being flooded. To address the question of the south end, there was nothing but bringing it up 31, 22, or 544 ultimately if 22 floods again just like what happened this time everybody was coming through Conway.

Mr. Servant said he wanted to make sure back home people realized this was just not I-73. This was about raising 22 and the local money that was going to raise 22 would be coming out of the .5%, \$168 million. Just as Mr. Gosnell said, it would cost \$100 million plus to do it and they had no other alternatives out there to raise this road. They all set up on the dais less than a week ago and talked about flooding in Horry County and how important it was to find funding to mitigate flooding and to help the residents get in and out of this county safely. He was yielding his time to Mr. DiSabato.

Mr. DiSabato said he pretty much said it. They could sit up there and debate the virtues of I-73 all day but at the end of the day his reading of this agreement states that they have a funding source to help them fix the problems they were having on 22 which could become the main evacuation route for this county in the event of a flood and they had been talking about flooding at the county in all aspects of the business that they had been doing for the last year and a half. There was nothing in this agreement that forces them into a contract for I-73. All it did was set forth the framework by which the local municipalities would be funding I-73 if they were able to find the rest of the revenue and funding sources to build it. So all this agreement does... It doesn't build I-73. It just allocates the percentage by which each municipality was going to fund the road if they could build it. What it did do was give them the ability and finds them a source of revenue to improve a road that already exists that would help them avoid the problems they had evacuating this county two years ago during Hurricane Florence, and if for no other reason he thought they should support that. There were problems with this agreement that he would get to when he discusses the amendment that he was about to suggest that were completely separated from funding of road projects in this county. But they shouldn't be voting against this agreement because they didn't agree with I-73. That really doesn't come into play unless and until they are able to find other revenues of income to help build that road. So he thought this helps them make the county a safer place to live in the event that they need to evacuate it like they did two years ago.

Mr. Worley told him to make sure that everybody back home also understands that they on Council as a rule had supported the I-73 highway. He thought they had all at some point and time said they support, they voted for that from the dais, but the fact remains this money that they were talking about in this agreement was a penance to what was needed to do the project and they also, Mr. Servant, if he recalled, he was right in the middle of that conversation because of raising 22. What about 501. He asked Mr. Gosnell to tell them what SCDOT was going to do with raising 501 at Lake Busbee. Was that ever going to happen and how much would that cost?

Mr. Gosnell said he was not aware of any plans to do that at the time.

Mr. Worley asked if Mr. Gosnell remembered when the previous chairman said that there was some kind of deal struck with... Said there was some kind of agreement that they were going to come up with the money to raise 501.

Mr. Gosnell said he had no knowledge of that.

Mr. Worley said his point was all the money would come from this I-73 fund, and there was not enough money. They won't take in, based on this agreement that they were talking about, they won't produce enough money to fix Hwys 501 and 22.

Mr. DiSabato asked Mr. Worley if he would yield back to him and he said he would.

Mr. DiSabato said they were saying the exact same things in different ways. They were talking about allocating funds collected. They were not talking about actually spending that money. The only thing that they were committing to spending that money on was a study for I-22 and getting I-22 raised. If they do that and nothing else, they had been successful to a certain degree in this county. He thought the success was based upon the ability for the county to evacuate in the event of a catastrophic emergency and that alone was a benefit. That alone was a benefit. They could debate this back and forth all night.

Mr. Worley said they could debate this back and forth all night. They both were on the same page. All he was saying was at some point and time when these people pay all this money, they were going to want to see some concrete on the ground.

Mr. DiSabato said agreed and...

Mr. Worley said quit studying and pour some concrete.

Mr. DiSabato said he agreed 100% but this agreement to settle this lawsuit did not commit the county to building an interstate. It just identifies who's going to be allocating how much money towards that from a local infrastructure funding.

Mr. Worley told him he had never dealt with SCDOT very much then. He told the chairman to bring up another contract for Council to debate. He was telling them once they sign the contract, they didn't matter. You do not matter, period. It was all about SCDOT and what they want. If they wanted to raise 22 or 501, that was what they would do.

Mr. DiSabato said that was why they needed to keep as much of the power in their court as they could when they were negotiating those contracts, but they were not even at that point.

Mr. Worley said they had as good a representative as they had ever had from this district on DOT but the fact remained that he only had so much power.

Chairman Gardner said nobody was doubting or disagreed with anything especially studying 22 and fixing 22 but he was telling them, for 36 hours 22 was not even on the radar when it came to this agreement. Hwy 22 would probably benefit the cities over at the beach more than it would anybody else. It was something that definitely needed to be worked at. One of the things that was thrown out in some of these discussions was he didn't know if it was worth spending that kind of money on 22 when they had all the other projects such as the SELL road and fixing 501 and things like that. Whatever they did that night was not going to guarantee that 22 gets fixed.

Mr. Howard said he disagreed with that. In this settlement it said they could immediately start fixing, putting concrete down on 22, every penny they collect. They could start it immediately. In this agreement.

Chairman Gardner said they were not going to put any concrete down until they finish the study and they haven't started the study yet. Here was what they had. They had Messrs. Loftus, Allen, Bellamy and Howard.

Mr. Loftus said he didn't know what the status of it was at the point and time, but the state of South Carolina offered \$348 million of federal money, not state money, federal money through the state, and \$348 million towards 22. He didn't know what the status of that was at the time. Whether it was still a viable option or not but it was there. Did they know?

Mr. Gosnell said he thought he was speaking of the INFRA grant that was applied for from the federal government. He didn't believe there had been any movement on that because of the problems in Washington and the budget.

Mr. Loftus verified there was no movement on it meaning it was still maybe available or was it gone.

Mr. Gosnell said he believed it was dead for this session and whether or not it would become available the next year...

Mr. Loftus said for this session of congress depending on how long it lasts according to their definition of how long it lasts.

Mr. Gosnell said yes.

Mr. Loftus said it was his understanding that Charleston was putting money into 526, to what extent he didn't know, but it came out of their one cent sales tax. They had put money so, granted we were doing a lot more than Charleston, but we were not alone in that regards. Which led him to the City of Myrtle Beach that said they would help us, but to date they had taken no action by either ordinance or resolution to tell us how much for how long and when. So if the City of Myrtle Beach said they would help, stand up and tell us how you are going to help. But then they wouldn't know because none of them were at mediation to find out what was going on. Nobody from the city of Myrtle Beach, no elected official, was ever at any mediation session.

Mr. Allen told Mr. Gosnell that he mentioned something that caught his ear. He didn't know if the rest of the Council heard it but it was pertaining to the raising of 22 and a response that he said if a study warrants it. That means to his understanding that if the county pays X amount of dollars, if they were to commit even in this current agreement, and if they put money out there for a study, there was a good possibility that the study could come back and say just because it flooded on a thousand year flood it doesn't warrant spending in excess of \$100 million to raise 22. That was a possibility.

Mr. Gosnell said yes. As he understood the first step of the agreement with the DOT was the completion of a feasibility study for 22 raising.

Mr. Allen said that if we had that study and they came back and advised against it. What that means was their approximately \$174 million that was going to be collected over the next 12 years had to be turned onto I-73 because we are obligated to start on that within 12 years or we have to pay the money back to the municipalities. Correct?

Mr. Gosnell said yes.

Mr. Allen said let's say under the best circumstances that if they institute this study and if the study said it does need to be raised, we don't know how much it would cost yet. He had said \$50 - \$100 million, if it goes to \$100 million that was over half of what we would collect in the first 12 years and probably he would think a job of that magnitude with the study until the time that it's completed even if they started the study next summer, you were probably 6 - 8 years out.

Mr. Gosnell said possible, yes.

Mr. Allen said which would put us again closing in on that 12 year mark. He didn't want Horry County to get caught in this trap. There was a mouse trap out there and it had a big hunk of cheese on it. He liked cheese but didn't like traps and in turn he felt like they could do much better than this because if they pass this agreement it would lock them back into being obligated to I-73, period. If it hadn't been for the county treasurer filing a motion to squash the action of asking for a class action suit they might even be in more trouble than they were. So there was a lot of people involved in this, not just the twelve of them on the dais. It was everybody inside of Horry County and the state of South Carolina and the feds because it would take everybody's tax money to build this road. Council really needed to look at it. They couldn't live above their means. If he could only afford a Chevy Vega, he couldn't drive a Cadillac. That was what the people of Horry County put them there for to look at these numbers that staff does all their homework on and gives to Council because it was their decision. The buck stops with Council. Next year with this election cycle, people would be asking questions if they were smart stewards with the money. If this was the only way that they thought they could pay for the raising of 22 and if it passes, what if the study comes back and says that they don't need to raise 22. Then they start building I-73 and 4 - 10 years from now 22 floods again. He told Mr. Worley they may not be there but there would be somebody sitting up on the dais that would be shanghaied and they should be because they were talking out 10 and 20 years. Do they need an interstate? Yes they did, but they needed a smart interstate. They need to be able to pay for it. He would love for... There were a lot of things that he would love to do as a Councilman and a business man but if he didn't have the money to do it he couldn't do it. It was just the bottom line. The numbers didn't lie.

Mr. Worley asked Mr. Allen if he would yield for a question or comment.

Mr. Worley said \$340 million was what the grant was that they were talking about, correct and Mr. Gosnell's response was inaudible.

Mr. Worley said to say it was \$340 million because he had already done his math. If you take the \$2.5 billion, you know what percent that was for the road. 13%. Where did they think the rest of the money was coming from? That was what they needed to know.

Mr. Allen said that was the \$64 question.

Chairman Gardner said he thought that everybody that wanted to talk had had at least one shot. He wanted to talk for a minute. He wanted to talk about this lawsuit. The City of Myrtle Beach passed an ordinance from an expedited meeting where they could raise their taxes. They started telling the county that their taxes were illegal and he wanted to talk about it and they wanted to talk in secret about it. This panel said no. We were not talking in secret. He asked if they remembered that. So, the city kept saying they would send over a paper and he would say they met on Tuesdays. Send it over. They never sent it over but what they did send over was a lawsuit. He didn't think they worked on that lawsuit overnight or even during the week or two that they were passing their ordinances and stuff. So they had been working at this for a while and somebody had said it was a sham lawsuit or it was a scare tactic. Those were good descriptions of it. They were looking in this lawsuit if he understood it right for about four things. One, they want a class action. They haven't had it certified yet and if they watched television, if they had been looking at television for the last ten years they had seen these commercials come on TV if you bought a certain product you could join a class action. Roundup was one of them. There were all kinds of things out there for class action lawsuits. These were lawyers not from around here and stuff like that. They say join this class action and they don't say join this agreement and we will bring it to the court and will get you a class action. They don't say that. They say join this class action. This agreement was not a class action. This was one of the four things that Myrtle Beach plaintiffs, their lawyers from out of town were seeking and one of them was a class action. He thought Mr. DiSabato had said earlier that if the class action failed then the whole agreement fails. Even if they reach an agreement that night, it was going to be contingent upon a judge granting them class action status. It didn't sound like a class action. He didn't know if the cities understand who the class action people were. Similarly situated plaintiffs was the description they used and if Myrtle Beach was the lead plaintiff then he thought that that should mean the other cities and he thought everybody would probably think that. But the way this lawsuit goes on and the way this agreement was structured, they were talking about individual citizens from other jurisdictions, towns, states, that were visitors here, that may have spent their money here, that may have been taxed under the hospitality fee, and that those were the similarly situated plaintiffs. If those were the plaintiffs how could Myrtle Beach be the lead plaintiff in a case involving citizens. Myrtle Beach was not a citizen. Myrtle Beach was a town in Horry County. That was one of the things they were seeking. They were seeking that back money, \$53 million. That money was spent for Horry County. It was spent for paying off the SIB. It was these roads that Messrs. Loftus and Worley talked about. Those were the benefit of Horry County. That was \$53 million. That might be the scare tactic. That might be the scam. He didn't know but that was what they were asking for. They were asking for money that was spent for their benefit. The other thing they were asking for was the future money from the time that they filed the lawsuit or the time that they told them that their collection was illegal. That was \$19 million. He asked Mr. Spivey if it was in the bank and they were ready to pay that to them. They offered to pay that to them in April. They were looking for back money which the county spent for their benefit. They were looking for future money. They were willing to give it to them. They were looking for a class action. The class action, if they get the class action, what they were going to do was take the \$19 million if they give it to them and they would put it in a common fund as they call it. In that common fund the first thing they were going to do was give one-third of that money to these out of town lawyers. They were going to say it was up to one-third. They were going to try to package that to them because for some reason that might sound not as egregious as one-third. Well anybody that had seen one of these accident commercials on TV, one-third was the going rate for these types of lawsuits. So it was highly unlikely that a judge, if he approves a class action and he didn't know if he would or not, it was highly unlikely that he would not approve one-third so these lawyers were going to get \$6 - \$7 million. Somebody said Myrtle Beach was paying that. Why should Council worry about it? Well they worry about it because Myrtle Beach was in Horry County. Those people that voted Myrtle Beach voted for the chairman. They voted for a Council member in that district. North Myrtle Beach voted for their Council member as well as Surfside. Those were citizens that they were concerned about because they were concerned about all of Horry County. But that's okay. Keep looking back at the \$19 million. One-third of it was gone. It was gone to out of town lawyers. The City could take its portion from the remaining two-thirds of the \$19 million pot and that would be put in a fund to be drawn down on over the course of a future time representing money that normally would have been taxed by the citizens and visitors coming down here that would normally incur a hospitality fee. Instead of those people paying the fee the city would draw down on that fund that they had. This approximately \$12 million fund. So not only is the city paying as Mr. Vaught said wasting away \$6 - \$7 million, and he agreed with that, they were losing another \$12 million because they were putting it in a fund to draw down on money they otherwise would get from somebody else visiting, tourism, and this was a hospitality fee for tourists. So, that was \$19 million in and net at the end of the day they get zero out of it so they were willing to offer them the \$19 million to settle this lawsuit but they would like for them to be stewards of that money a little better. He couldn't be a part of anything that would be setting out these attorney's fees. He just didn't think it was right and he didn't think they needed this class action (inaudible) but they would keep talking about it.

Mr. Vaught asked if was illegal too to spend hospitality fee money on attorney's fees.

Chairman Gardner said he thought so. He thought hospitality fees were supposed to be paid for tourism related activities. That was one of the problems that got Council in hot water with the City of Myrtle Beach. He thought Council did a great job last year. He thought they did a good job getting \$18 million for public safety and Myrtle Beach didn't like that. That was why they brought this lawsuit. It's been public safety, priority one, day one. They needed that money and needed to help Horry County all together. But yes, that was one of the things that they argued about. What can we spend that money for? What was not in that law book didn't say nothing about paying hospitality fees to lawyers.

Mr. Vaught said exactly.

Chairman Gardner said thank you.

Mr. Howard said he had another important aspect of this. He would like to mention that they were missing one of the components that... The state house was trying to take this hospitality fee as well. He would like to yield his time to Mr. Crawford and let him explain how that might happen.

Chairman Gardner said this was his time but he could do that. They had Messrs. Bellamy, Howard, and Servant on the queue. This was his time but he would let...

Mr. Bellamy said he would yield his time to Mr. Crawford.

Mr. Crawford asked Mr. Carotti how much the county generated in the hospitality fee. How much money did they currently generate?

Mr. Carotti said they were not currently generating any from the 1.5% county wide but Mr. Spivey could answer the question as far as what they have been.

Mr. Spivey said in 2019 the total was \$42.5 million. They projected this year roughly...

Mr. Crawford said just in the unincorporated areas.

Mr. Spivey said in the unincorporated areas was \$12.4 million in 2019. They were predicting \$12.7 million in 2020.

Mr. Crawford asked how much of that could they use for public safety?

Mr. Spivey said based on the county's ordinance essentially all of it.

Mr. Crawford asked Mr. Carotti where he saw the... Just say they just vote this thing down that night, where did he see it going after that?

Mr. Carotti said continuing on in the South Carolina Supreme Court.

Mr. Crawford asked if he thought in any way if they vote it down that night, that that money would be jeopardized. That they could potentially use for public safety? If they vote the agreement down that night...

Mr. Carotti said it could. Yes. There was that risk.

Mr. Worley asked what. That was the county's money.

Mr. Vaught said he thought they were getting confused as to whether they were talking about whether they were collecting the cities versus unincorporated Horry County.

Mr. Worley said that was the county's money.

Mr. Carotti said the lawsuit, it had not been clarified at this point in history whether that lawsuit encompasses the entire hospitality fee law that the Council passed back in 1996 and amended over time. It has been attacked universally.

Mr. Vaught said so that law was in jeopardy.

Mr. DiSabato said so if it was invalidated the \$12.4 million that they were currently generating would go away.

Mr. Carotti said that was at risk. The main component part of the litigation was the 1.5% that was collected within the municipal limits, but it was not clear as they stood there that day whether that lawsuit continues to encompass all hospitality monies collected. And their litigation counsel could verify that.

Mr. DiSabato said so that could potentially be invalidated by the Supreme Court.

Mr. Carotti said at that moment in history that was at that risk.

Mr. Crawford said they were supposed to be committed to public safety day one. That was what they had been talking about. That could be in jeopardy if they don't do something to settle this agreement. Or maybe not. Maybe everything would just be okay.

Ms. Henrietta Golding stated at that point in time Mr. Carotti was correct. There needed to be a clarification. The city had been consistently going only after the revenue collected within its boundaries. Not the other boundaries. However, to state that day that that was not at risk would not be appropriate. They would need some direction from the court.

Mr. Crawford asked Mr. Carotti what else was out there if they keep the lawsuit going and going. If they just keep litigating it, what else was out there that could affect us.

Mr. Carotti said he was trying to understand that question.

Mr. Crawford said Mr. Howard was talking about the legislature. Do they have jurisdiction over the Ride I legislation?

Mr. Carotti said yes and he thought what Mr. Howard was referring to was that the proposed bill that they had seen basically commits all that 1.5% back to interstate projects, or I-73. They would not have any description.

Mr. Crawford said if that was passed, then what was left for the county and what was left for public safety. What were they left with?

Mr. Carotti said hopefully the way that, and he didn't have that bill in front of him, he interpreted it and of course the ones who interpret statute would be the courts. The legislature writes them and the courts will interpret them. The way he read the bill the 1.5% would be directed or restricted to the interstate projects or I-73. That was only if the county gives the description to the county to reenact their hospitality law. They could read that in a way that the monies that are collected within the unincorporated areas may not be affected by that legislation because what the legislature has, which was uncommon, was the ability to look back retrospectively to the ordinance that County Council passed in 1996. They were not drafting these bills in a vacuum. They were drafting it specifically addressing the situation in Horry County. The unfortunate thing was that their interest was apparently solely I-73 or interstate projects.

Mr. Hardee said he thought they had kicked this can about as much as they could kick it down the road.

Chairman Gardner said he thought Mr. DiSabato had his motion.

Chairman Gardner called a five minute break.

Chairman Gardner called the meeting back to order.

Mr. DiSabato said there were a couple of things mentioned that he wanted clarification on before he presented his motion. First, had the treasurer actually filed the motion to intervene in this lawsuit yet? Or was it just conjecture that she may or may not?

Mr. Carotti said she did early on but it was inactive.

Mr. DiSabato asked Mr. Carotti if there was anything in this agreement that legally obligated the county to fund I-73.

Mr. Carotti said yes. Along with the other participating municipalities.

Mr. DiSabato clarified that it legally obligates the county to fund I-73 or just provides a framework for the funding.

Mr. Carotti said it provides a framework for the funding if construction doesn't begin on the portion of I-73 west of 22 within 12 years. The monies held in trust for that purpose would be reimbursed to the counties and the participating municipalities' proportionate share to their...

Mr. DiSabato said so if they didn't find the funding for I-73 from the feds and the state then essentially that money goes back to the municipalities.

Mr. Carotti said and us.

Mr. DiSabato said going back to what he was saying earlier when he had the floor, he didn't agree that they should vote for this agreement if it was going to provide any exposure to us from a legal standpoint. Two, he didn't agree with using any portion of this common fund money or any hospitality fee monies be used to pay the attorneys for the municipalities who have litigated this case. **So he would make a motion that they approve the settlement agreement conditioned on the following: One, unanimous approval by all municipalities within Horry County to the agreement; and Two, elimination of all language that monies paid into the common fund can be used to pay attorney's fees and adding language that nothing paid into the common fund can be used to pay attorney's fees.**

Mr. Carotti asked to make one suggestion. When he said that all municipalities within Horry County, Briarcliff needed to be excluded.

Mr. DiSabato said he apologized. **With the exclusion of Briarcliff which was already excluded from the agreement, seconded by Mr. Servant.**

Mr. Worley asked him to repeat his motion.

Mr. DiSabato moved to approve the settlement agreement upon the following conditions: one, unanimous approval by all municipalities within Horry County excepting Briarcliff Acres; and two, elimination of all language in this agreement that money paid into the common fund can be used to pay attorney's fees and adding language that nothing paid into the common fund can be used to pay any attorney's fees. Essentially none of the common fund money could be used to pay any portion of the municipalities' attorney's fees.

Mr. Prince asked if that was an amendment or a motion.

Mr. DiSabato said it was a motion to pass the settlement agreement on those conditions.

Mr. Vaught said they needed to clarify one thing. They had already stated that it was illegal to use hospitality fee money for legal fees. So the reason they were amending this was because if this part of the agreement, this agreement that was as it was, if it were approved by the courts would basically legalize using those monies to pay for attorney's fees. So that was why he wanted to amend it. He wanted to make sure everybody was clear.

Mr. DiSabato said they needed to amend the language in the agreement. Correct.

Mr. Vaught said they had already stated the fact that it was illegal to use funds for that.

Mr. DiSabato said they didn't want to allow the court to circumvent that.

Mr. Vaught said agreed.

Chairman Gardner asked Mr. DiSabato if he had anything in there about the class action or was that it.

Mr. DiSabato said he thought if they take the language about the attorney's fees being taken out of the common fund monies then that sort of resolved itself.

Mr. Carotti said that would be a motion to amend the main motion.

Mr. Worley asked Mr. Carotti if they passed this motion why can't they just pay for the attorney's fees out of the general fund and then his motion would be null and void.

Ms. Golding said she believed the City of Myrtle Beach could pay their attorney's fees out of whatever fund the city may have.

Mr. Worley said in other words, Mr. DiSabato, they could pay them out of some other fund and take that money and put back in...

Mr. DiSabato said but it was not the hospitality fee money that was paying...

Mr. Worley said it was out of one pocket into the other. Why did it matter was his point. Was he looking at it the wrong way?

Mr. Prince said he thought he was right.

Mr. Vaught said it was swapping pockets as they were talking the other night.

Mr. Worley said that was a shell game.

Mr. Hardee told Mr. DiSabato that they were not going to direct them how to spend their money.

Mr. DiSabato said then the deal falls apart and they go back to where they were currently, negotiating again.

Mr. Worley said if they were trying to stop them from paying attorney's fees...

Mr. Loftus said they couldn't stop them from paying attorney's fees. That was their deal with their attorneys.

Mr. DiSabato said he was trying to put the onus on them to pay their attorney's fees. They should not be supportive of that in any way.

Chairman Gardner agreed with him. They should not support that but if they felt the need to pay somebody \$6 million for what had been going on, then they were going to do that. But if they didn't approve this agreement that night, he wanted to make sure they all understood what would happen. This case was still in the Supreme Court. The Supreme Court would decide whenever they decide. If it gets sent back down for trial or another hearing, then they would take it up there. This was not the end of the case unless they decided that they wanted to approve this agreement, and if they amend this agreement it would probably have to go back for everybody else to sign off on and it would be back there anyway.

Mr. DiSabato said correct.

Chairman Gardner asked if there was any further discussion on the motion to amend the main motion. **A vote was held on the amendment.**

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

The motion to amend passed seven to five.

Mr. DiSabato called for a point of order. He asked was it an amendment to the initial motion or was it a vote to approve the settlement conditioned on the following.

Mr. Carotti said it was appropriately an amendment to the main motion.

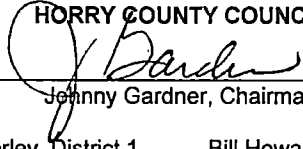
Chairman Gardner said back to the main motion. This was a motion to accept the agreement as amended. A vote was held.

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

The motion to accept the agreement as amended passed seven to five.

ADJOURNMENT: With no further business, Mr. Worley moved to adjourn at approximately 8:47 p.m. and it was seconded. The motion was unanimously passed.

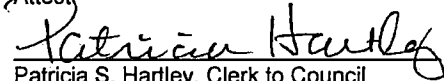
HORRY COUNTY COUNCIL


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

RECEIVED
JAN 16 2020
S.C. SUPREME COURT

EXHIBIT B

**MINUTES
HORRY COUNTY COUNCIL
REGULAR MEETING
County Council Chambers
November 19, 2019
6:00 p.m.**

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

MEMBERS ABSENT: Al Allen.

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. Vaught gave the invocation.

PLEDGE: Mr. Hardee led in the pledge.

PUBLIC INPUT:

1. **Nick Rollins** spoke regarding reckless discharge of firearms. He reviewed the current law on discharging a firearm and then went over what it didn't have in it in his opinion. He then compared it with the hunting laws. He was confused as to why the hunting laws contained requirements for hunting that were accepted as responsible gun owners and residents of communities but were allowed to shoot recklessly and at will in neighborhoods in target practicing. It didn't seem reasonable. He proposed as a solution to adopt the gun laws on the books with regards to the ordinance for shooting in highly dense populated areas.
2. **Donna Kaloz** spoke regarding I-73. She was there to reiterate the importance of I-73. It was very important to the people of Horry County for safety and job reasons. She asked them to do the right thing and get I-73 built for real progress and for the safety of our residents and millions of visitors.

APPROVAL OF AGENDA CONTENTS: Mr. Howard moved to approve the agenda contents, seconded by Mr. Loftus. Mr. Hardee requested to move Ordinance 115-19 from the consent agenda and move it to Ordinances. Chairman Gardner moved Ordinance 106-19 from the consent agenda to Ordinances and took Ordinance 92-19 off consent and moved it to Ordinances. Mr. DiSabato moved to adopt changes by acclamation, seconded by Mr. Howard. Mr. DiSabato moved to approve the main motion as amended, seconded by Mr. Loftus. The main motion as amended was unanimously passed.

APPROVAL OF MINUTES: Regular Meeting, November 5, 2019: Mr. Vaught moved to approve the Regular Meeting, November 5, 2019 meeting minutes, seconded by Mr. Howard. The motion was unanimously passed.

APPROVAL OF CONSENT AGENDA: Mr. Vaught moved to approve as amended, seconded by Mr. Prince. The motion was passed with Mr. Servant requesting to be shown as a Nay vote (Recusal) on Ordinance 95-19. Mr. Worley requested to be shown as voting Nay on Ordinance 95-19. The consent agenda consisted of the following:

Third Reading – 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.

Third Reading – Ordinance 94-19 to amend the Zoning Ordinance pertaining to value added processing.

Third Reading – 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.

Third Reading – Ordinance 96-19 to amend the Zoning Ordinance pertaining to commercial zoning districts.

Third Reading – Ordinance 97-19 to amend the Zoning Ordinance pertaining to open yard storage.

Third Reading – Ordinance 105-19 amending the Horry County Code of Ordinances in the continued effort to reduce the incidents of false alarms in Horry County.

Third Reading of the following Ordinances to approve the request to amend the official zoning maps:

Ord 87-19 Rowe Professional Services, agent for Clearwell LLC; Ord 88-19 Venture Engineering, agent for Horry Furniture Co.; Ord 89-19 G3 Engineering, agent for Robert Floyd Jr.; Ord 98-19 Sandra Jones & Lee Edge; Ord 99-19 DRG LLC, agent for Waterway Plantation Multi-family PDD; Ord 100-19 DDC Engineers, agent for Rebecca & Robert Collins; Ord 101-19 DDC Engineers, agent for Rebecca Collins; Ord 102-19 Rowe Professional Services, agent for Omero Loredó Ibanez; Ord 103-19 Venture Engineering, agent for Pamela Dawn Squires; and Ord 104-19 Rowe Professional Services, agent for Vivian & Charles Brown.

First Reading – Ordinance 108-19 to amend the Zoning Ordinance pertaining to the rural tourism permit.

First Reading of the following Ordinances to approve the request to amend the official zoning maps:

Ord 109-19 Jeff Miller, agent for Chase Storage LLC, Carolina Forest Storage PDD Amendment; Ord 110-19 DDC Engineers, agent for FTTP Bishop Parkway LLC, Fantasy Harbour PDD Amendment; Ord 111-19 Gary Ward, agent for Entity Properties LLC; Ord 112-19 Robert Guyton, agent for Pure Assets LLC; Ord 113-19 South Causeway Builders LLC; Ord 114-19 George Raymond Suggs; and Ord 116-19 Kimberley Payne.

First Reading – Ordinance 119-19 approving the abandonment, conveyance, and removal from the county's maintenance system a remnant portion of the right-of-way of Bertie Road and to deed back the remnant to the adjacent property owner and authorizing the county administrator to execute a quit-claim deed on behalf of Horry County.

First Reading – Ordinance 120-19 approving and authorizing the county administrator to execute a lease agreement with Metglas, Inc. for warehouse property located in the Atlantic Center.

Resolution R-128-19 to opt out of the nationwide class certified for negotiation purpose in the *In Re National Prescription Opiate Litigation*.

Resolution R-129-19 to express Horry County's request for the SC General Assembly to enact laws to better protect historical monuments and markers.

Resolutions accepting roads and drainage into the county system at the following locations:

R-130-19 Clear Pond M250 & M260 Phase 2

R-131-19 Clear Pond M250 & M260 Phase 3

R-132-19 Sierra Woods Phase 1

Board Appointments: Thomas Mezzapelle to the Parks & Open Space Board (Mr. Prince); Hillary Howard to the Museum Board of Trustees

PRESENTATIONS / RESOLUTIONS:

Presentation of Certificates of Appreciation to Horry County Sheriff's Office by Mt. Calvary Missionary Baptist Church. Mr. Bellamy was joined at the podium by Rev Smith, Pastor of Mt. Calvary Missionary Baptist Church, and Mr. Worley. Mr. Bellamy read the Certificate and it was presented to Sheriff Thompson. He also recognized Lt. Steve Cox, Sgt. Ernest Beaty, Deputy First Class Bobby Strickland, and Deputy First Class Andy Cooper with certificates for their escort services during a motorcade that escorted a group of motorcycles to Mt. Calvary Baptist Church.

Mr. Worley thanked Council for allowing them to present the certificates and asked that they approve it. Mr. Vaught moved to approve, seconded by Mr. Howard. The motion was unanimously passed.

Sheriff Thompson thanked Council for the certificates. It was an honor to be able to do this.

READING OF ORDINANCES:

Third Reading – 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 there to. Mr. Vaught moved to approve, seconded by Mr. Howard. Chairman Gardner thought a motion to amend was needed. Mr. Carotti said not on this one because they did not have the specifics. There were some blanks in the document, a property description, specifics about the company's facility, but this would be consistent with what had been presented in

executive session on two occasions if Council understood by passing this ordinance staff would be filling in the blanks once it received that information from the EDC. **The motion was unanimously passed.**

Third Reading – 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. Loftus moved to approve, seconded by Mr. Howard.**

Mr. Carotti said in this particular case they had received that information from Georgetown County and they should have a handout on the dais with information about the description of the company as well as the property. It would be proper for a motion to amend to include those things for the final draft. **Mr. Vaught so moved, seconded by Mr. Howard. The motion to amend was unanimously passed. The main motion as amended was unanimously passed.**

Second Reading and Public Hearing – 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. **Mr. Prince moved to approve, seconded by Mr. Vaught. There was no public input. The motion was unanimously passed.**

First Reading – Ordinance 117-19 to approve the request of Christopher Steele, agent for Thomas Pate, to amend the official zoning maps. **Mr. Vaught moved to approve, seconded by Mr. Crawford. Mr. Crawford asked Council to follow suit with the planning commission's recommendation to disapprove. That would be the way he was voting.**

Chairman Gardner said he would support him on that. It was his district and he would know more about it than he would. A no vote would mean no. **The motion to approve failed.**

First Reading – Ordinance 118-19 to approve the request of Ed Hardee, agent for Palmetto Synergistic Research LLC, to amend the official zoning maps. **Mr. Vaught moved to approve, seconded by Mr. Hardee. The motion to approve failed.**

First Reading - Ordinance 115-19 to approve the request of John & Donna Coughlin to amend the official zoning maps. **Mr. Hardee moved to approve, seconded by Mr. Vaught. Mr. Hardee asked Council to vote Nay on this. The motion failed unanimously.**

OLD / NEW BUSINESS:

ANNOUNCEMENTS: Chairman Gardner congratulated the fire department. They were looking for applications to replace 38 – 40 people for the fire department. He asked Chief Tanner how many that he had gotten and the reply was 500 applications.

Approval of the 2020 Council Meeting Dates. Mr. Worley moved to approve, seconded by Mr. Prince. The motion was unanimously passed.

Chairman Gardner said it gave him great pleasure to recognize Mr. Loftus for being a public servant for 15 years. He then presented him with his 15 year service pin.

MEMORIAL DEDICATION: Rosemary Toth; Rev. Johnny Jenerette; Ting Todd; Teresa Lyons; and Willard Beaty.

Mr. Crawford asked that everyone keep Mr. Carroll Craig in their prayers as he was in the Little River Medical Center.

UPCOMING MEETINGS: Regular Council meetings – Dec 10, 6:00 p.m.; I & R Committee – Dec 17, 9 a.m.; Public Safety Committee – Dec 17, 2 p.m.; Transportation Committee – No meeting in Dec; Administration Committee – Dec 3, 2:00 p.m.; Imagine 2040 Plan Workshop – Nov 21, 2:00 p.m.; and Fall Budget Retreat – Dec 12 – 13, all day.

EXECUTIVE SESSION: Receipt of legal advice relating to pending “Hospitality Fee” litigation and SCDOT Financial Participation Agreement. **Mr. Vaught moved to enter into executive session for the reasons stated, seconded by Mr. Prince. The motion was unanimously passed. Mr. Prince moved to exit executive session, seconded by Mr. Vaught. The motion was unanimously passed.** Mr. Carotti said that 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 votes were taken and no decisions were made. It would be, based on discussions in executive session, it would be appropriate at the time for County Council to entertain a motion to direct the administrator to exercise the County’s

rights under Section VII Subsection D of the December 13, 2018 Financial Participation Agreement between the SCDOT and Horry County providing the DOT a 30 day written notice of terminating this agreement for convenience.

Chairman Gardner said he thought that was proper and asked if there was a motion. **Mr. Worley so moved, seconded by Mr. Howard.**

Mr. Worley said this had been going on a long time. The fight with the municipalities when there was really no fight. Back in March the county offered to give the municipalities all of their money. Every nickel that was collected within the municipalities.

Mr. Vaught said and there would have been no attorney's fees involved to the accepted resolution that was passed back in March or April.

Mr. Worley said that was exactly right. They had been kicking this can down the road and he thought at their previous extension they all agreed that if they couldn't make some headway on it that at this meeting they would abandon that contract. The next day... It was not all bad. The next day at noon the statehouse members would have an opportunity to pre-file legislation. He thought it was time that the delegation stepped up to fix this problem. Maybe fix was not the right word but he would use it anyway. They could save I-73.

Chairman Gardner said they had \$2 billion currently.

Mr. Worley said yes. They had \$2 billion but yet they didn't want to use it for anything to help Horry County and he thought their delegation, and it was time and he thought they would. He thought they would do it the next day. By noon they would probably see a bill introduced that would move them closer to saving I-73 which was a road that he believed it's time had come. Maybe at one time it was not but he thought it's time had come. He thought it would be good for economic development. It would be a good public safety road. There were a lot of things that I-73 would do. He would vote to abandon this. Not that he was against I-73. He was for I-73, but he wanted to send a message loud and clear to the municipalities. If they want to get on board and help the county with I-73, good. If they don't, just say so and let the delegation take care of the problem.

Chairman Gardner said he agreed with him 100%. In fact he thought those were the exact words that he and Mr. Worley used there about 90 days prior when they said they would give it 90 days to see if they could get some kind of commitment from the municipalities, and they did not have that. If Horry County was the only person or only entity willing to kick in money, it was never going to get done. They had kicked the can down the road long enough. All he had heard was it was not going to hurt anything to just kick it down the road anymore. What he would say to them was it was not going to hurt anything to kill it that night. He would vote to kill it that night.

Mr. Vaught told the chairman that he was with him and Mr. Worley. He thought that back in March and April they took a leadership role. He was told specifically by several legislators at that point and time that Council was showing who the adult in the room was because they couldn't get any action out of anybody to make this thing happen and they stepped up, put a resolution on the table, voted for that resolution, and it was a better deal than any kind of an agreement was going to give them because it was a free deal. It was this is your money. You are going to get it back. They would dedicate a certain amount to building I-73 which would benefit the coastal municipalities much more than it would benefit the western part of the county. They could help them build it. The county would take the leadership role and get it done. The county got no cooperation whatsoever. They kept putting off the SCDOT contract saying okay it was not costing us anything but at this point and time, it was not possible for the SCDOT contract, the way it was written, for it to get done this fiscal year. It represented a fiscal year's work. That was not possible. He saw no reason to keep it alive. If the money comes through, if an agreement comes about so that the cities would step up and do their part in building I-73, then he didn't think SCDOT was going to be against the county recalculating and doing a new contract. So he saw no reason for them to continue to kick this can down the road.

Mr. Prince wanted to make sure he understood that they were voting to not extend this. They were voting to kill it.

Chairman Gardner said yes, that was correct. To terminate the contract. A yes vote means to terminate the contract.

Mr. Hardee said he was just basically going to reiterate what he was saying. He thought they had had enough he said, she said. He thought, like Mr. Worley said, the delegation needed to step up. They needed to all be in a room, municipalities included, and if they wanted to participate then have a meeting and do it. This stuff with the Council sitting there saying

this was what they were going to try to do and the delegation over here saying this was what they were going to do and nobody agreeing, they were not getting anywhere. So he didn't support it at all.

Mr. DiSabato said he would say there was a lot of talk on the dais about the municipalities not participating in helping to get I-73 completed was a little bit of misleading in some respects. They certainly hadn't had any formal support from them at that point but they were...

Mr. Worley told him to be careful.

Mr. DiSabato said they were attempting to get them to come to the table to help the county with this. Until they knew that they definitely won't, he didn't see the harm in extending this contract. Also, he did not agree with letting the state legislature lead on local issues of local import where Council should be acting as leaders.

Mr. Howard clarified that a yes was to carry forward or no to stop it.

Chairman Gardner said yes means terminate.

Mr. Howard clarified that yes means terminate and no means continue.

Chairman Gardner said yes.

Mr. Crawford wanted to echo what Councilman DiSabato said. He did think that they would run the risk of the legislature running this operation instead of the local municipality and he thought the local municipalities, local government... He thought that if they kill the contract what they were going to do was they were going to go back and make this thing project specific.

Mr. Vaught asked if he was talking about the legislature.

Mr. Crawford said the legislature.

Chairman Gardner asked if he wanted to elaborate on that and tell them why he thought that because he thought that they were willing to extend this thing and if the money was there they would enter into a new contract with the county.

Mr. Worley said that was right. Anything we wanted to.

Chairman Gardner said they had stood up there for 6 months and said what was the problem postponing. It was not costing anything. Well it was costing the staff time, costing money, costing aggravation over and over again, and what was the harm in killing it now because it was going to have to be remodeled anyway. Even if they had everything in place, the contract as it existed would have to be revised so it would work for the new project. So rather than having a contract that was flawed sitting on the shelf with maybe it would work or maybe it would not work, let's go ahead and kill it that night. Let's work for trying to settle the lawsuit if they could and move forward and let Horry County lead the way like it always does.

Mr. Worley told the chairman he was exactly right. They had worked hard to get this thing done. The thing about it was they were where they were again back in March. That was where they were that day in the settlement.

Chairman Gardner said yes. Mr. Vaught was right because if they had taken that settlement back then they would have saved a great deal of money that they had already spent.

Mr. Worley said they would have been building the road now.

Mr. Bellamy recommended that they have a joint meeting with Horry County, the delegation, and the municipalities and discuss these issues and come up with some consensus.

Chairman Gardner said that was a great idea but for that night they were going to vote to terminate this contract.

Mr. Bellamy said that was correct. He was in favor of terminating it.

Mr. Loftus said he tended to agree with everything that was being said. They had kicked the can and kicked the can waiting for the cities, waiting for the state, waiting for somebody to come along with us and so far nobody had. All they had done was throw road blocks in front of us, one right after another. So he was all for... They were not going to fish so let's just cut bait.

Mr. Vaught said they had been kicking it down the road. They had been showing leadership and had been doing everything they should have been doing. He told Mr. Bellamy that he had a good suggestion. Let's get everybody together and sit down around the table and settle it. They tried that back in March and April. Nobody would even respond to the document that the county put out spelling out exactly what they would do. They would not even respond to it. Wouldn't answer it. Wouldn't sit down at the table. Wouldn't do anything. They went public with what they considered to be a great offer and what, according to all the rumors they hear about the agreements now, was a great offer. A much better offer than the agreement had for them and for the county and would have built I-73. So he had had enough.

Chairman Gardner called for the vote. A Yea would terminate this contract.

YEA

Servant
Loftus
DiSabato
Howard
Worley
Gardner
Hardee
Prince
Vaught
Bellamy
Crawford

NAY


Mr. Hardee told Mr. Vaught that they did respond to them but it was in... They had to sign a secret agreement to talk to them.

Mr. Vaught told him he was correct and he didn't think anybody on the dais was going to go through with that.

The vote was unanimous to instruct the administrator to send the letter terminating the contract.

ADJOURNMENT: With no further business, Mr. Worley moved to adjourn at approximately 7:27 p.m. and it was seconded. The motion was unanimously passed. The meeting was adjourned in memoriam of: Rosemary Toth; Rev. Johnny Jenerette; Ting Todd; Teresa Lyons; and Willard Bailey.

HORRY COUNTY COUNCIL

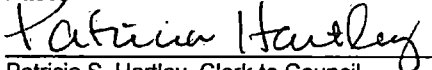


Johnny Gardner, Chairman

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