

**MEETING MINUTES
DECEMBER 19, 2019
10:00 A.M. – REGULAR MEETING – TED C. COLLINS LAW ENFORCEMENT CENTER**

MYRTLE BEACH CITY COUNCIL:

PRESENT:

BRENDA BETHUNE, MAYOR
MICHAEL CHESTNUT, MAYOR PRO-TEM
JACKIE HATLEY
MARY JEFFCOAT
MIKE LOWDER
GREGG SMITH
PHILIP N. RENDER

CITY STAFF:

PRESENT:

JOHN PEDERSEN, CITY MANAGER
JOHNATHAN "FOX" SIMONS, DEPUTY CITY MANAGER
LISA WALLACE, ASSISTANT CITY MANAGER
MICHAEL SHELTON, CHIEF FINANCIAL OFFICER
WILLIAM A. BRYAN, CITY ATTORNEY
JENNIFER STANFORD, CITY CLERK

 Roll Call.

Present: Mayor Brenda Bethune, Michael Chestnut, Jackie Hatley, Mary Jeffcoat, Mike Lowder, Philip N. Render, Gregg Smith.

CALL TO ORDER..... 10:05 A.M,
INVOCATION..... Councilwoman Jeffcoat
PLEDGE OF ALLEGIANCE..... Councilman Lowder
APPROVAL OF AGENDA.....

 Motion: To Approve, Moved by Mike Lowder, Seconded by Jackie Hatley.


 Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Brenda Bethune, Michael Chestnut, Jackie Hatley, Mary Jeffcoat, Mike Lowder, Philip N. Render, Gregg Smith.


DISCUSSION:


Discussion of Horry County's position on the proposed Hospitality Fee litigation settlement.

 Mayor Bethune's statement attached.

 City Attorney, Mr. Bryan, reviews what class action suites are as well as case mediation and attorney fees.

 Mayor Bethune continues and completes reading attached statement.

 Councilman Render states that he appreciates the professional exhibited by city staff and compliment city council body for their measure of restraint to exercise this whole endeavor.

 Councilman Lowder explains that the county has claimed the city's unwillingness to negotiate and that is simply not true. Councilman Lowder states that this body has been negotiating as advised under the rule in confidentiality. What is true is that not of all of our elected officials attended all the meetings, those meetings were intended for negotiation between the attorneys. Even if we were there, we would have no say so at the time of those meetings. We do not operate that way. That decision would have to come in front of this body. The county needs to understand this, we are all on an equal playing field, they do not control

this council, no more than we control them. They do not sit at a higher place at the table than this council does.

EXECUTIVE SESSION - Council may take action on matters discussed in Executive Session which are deemed to be “emergency” concerns.

Note: South Carolina law requires that Council’s business is conducted in public with limited exceptions known as “Executive Sessions”. Subjects eligible for Executive Session include:

- ***Personnel matters.***
- ***Negotiations concerning proposed contractual arrangements and proposed sale or purchase of property.***
- ***The receipt of legal advice relating to:***
 - ***A pending, threatened, or potential claim.***
 - ***Other matters covered by the attorney-client privilege.***
 - ***Settlement of legal claims, or the position of the City in other adversary situations.***
- ***Discussions regarding development of security personnel or devices.***
- ***Investigative proceedings regarding allegations of criminal misconduct.***
- ***Matters relating to the proposed location, expansion, or provision of services encouraging location or expansion of industries or other businesses.***

Motions to go into Executive Session must be made in public and specify one or more reason above. Council can take no votes or take action in Executive Session.

ADJOURNMENT

 Motion: To Adjourn, Moved by Mike Lowder, Seconded by Jackie Hatley.

 Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Brenda Bethune, Michael Chestnut, Jackie Hatley, Mary Jeffcoat, Mike Lowder, Philip N. Render, Gregg Smith.

10:40 A.M.

ATTEST:

BRENDA BETHUNE, MAYOR

JENNIFER STANFORD, CITY CLERK

City Council's Statement Responding to Horry County RE: Proposed Hospitality Fee Lawsuit Settlement

DECEMBER 19, 2019

Ladies and gentlemen, the purpose of today's meeting is to give you a very thorough and honest overview of where we are with the Hospitality Fee lawsuit with Horry County. As you know we have been engaged in mediation with the County in an effort to seek a fair settlement in this dispute that is in the best interest of our citizens.

Our Council understands that you have had many questions and concerns regarding this suit and we want to address those today.

Since County Council has refused to vote for the proposed settlement agreement, we can now give a briefing on where we are with the case as well give you information about the legal details. We will also clearly address false statements made by members of County Council that are derogatory, inflammatory and unfair to all residents of Horry County.

This suit is a complicated legal issue and one that we feel is very important for the public to understand. We have been held to a confidentiality agreement that has kept us from releasing certain details about the mediation process. Today we will set the record straight.

The City is understandably disappointed that on Monday County Council voted not to accept the proposed settlement agreement.

This case, at its heart, has to do with honoring the rights of voters to have their municipal Councils determine how to spend service charges that are raised within their city limits rather than have the County dictate those uses for them.

The proposed settlement agreement would have achieved the following:

- Returned money that was unlawfully collected by the County without the consent of the municipalities to the individuals, businesses and other entities who paid the fees.
- The agreement generated much needed funds to immediately address flooding on SC Highway 22 and to serve as a long term source of local funding for I-73.

Again, understanding that this is a complicated legal issue I ask that our attorney, Will Bryan, explain some of the key details of the suit as well some of the legal issues surrounding it. We are mindful that this is a lot of information to digest and we hope that Will's analysis helps make it clearer.

On Monday County Council's vote and the public comments made by some council members preceding that vote were based on a number of false statements and mischaracterizations that are clearly void of facts.

An assertion was made by a County Council member that the City sought an agreement to negotiate a resolution in private prior to bringing this lawsuit and then filed the suit without having provided such an agreement.

This is false: The City brought a lawsuit and then, at the County's subsequent request, agreed to negotiate a resolution under a standard confidentiality agreement that is commonly used in legal proceedings. Only after being ordered by the circuit court to do so did the County finally agree to confidential negotiations- which is again the norm.

An assertion was made by a County Council member that the City of Myrtle Beach was somehow confused about who would constitute members of the proposed class of plaintiffs.

This is false: I assure you that the City has never been confused about that and has made it clear from day one that the class members are those persons, businesses, and other entities who have paid the unlawful fee. This includes residents and visitors to the municipalities who paid these fees since January 1, 2017.

A statement was made by a County Council member that \$19M in monies collected by the County, which would have formed a common fund to benefit residents and visitors to the municipalities, is money that belongs to the municipalities.

This too is false: This money belongs to the persons, businesses and other entities who paid the unlawful fees and it is not "tax" revenue as was claimed.

Statements were also made during the County Council Meeting implying that County Council was unaware that payment for the attorney's fees would be paid from the \$19 million common fund. Let me remind County Council that this has been in the agreement since the first mediation session. County Councilmembers were in attendance at each of these mediation sessions, including the last session that concluded with the Chairman stating that a basis for the agreement had been reached.

Statements were made implying that County Council was unaware that two municipalities had decided not to participate. That is inconceivable. Efforts were made by attorneys on both sides to recognize and adjust to that reality. Each of the municipalities were then briefed on those changes to the original settlement and approved the amended settlement with that understanding. We simply do not believe that that same information was not shared with County Councilmembers prior to their vote on this issue.

An assertion was made by a member of County Council that the municipalities were better off financially under the County's April 2019 Resolution than they would have been under the settlement agreement that was signed by representatives of the City and the County.

This is also false: The County's Resolution R-36-19 clearly provides that municipalities would receive \$21.3M in the first year and would receive about \$14.7M annually going forward. This assumes that the County would CHOOSE to continue making distributions to the municipalities, which was not guaranteed.

By contrast, under the rejected settlement agreement, the municipalities would have realized annual revenues of \$20.7M, which would have increased in subsequent years based on expected growth. Unlike the County's April Resolution, the proposed settlement agreement would have generated a guaranteed revenue stream for every municipality for years to come. If you compare the revenues that have been reported in the media to the County's April Resolution, you will see that each municipality would have realized more revenues under the proposed settlement agreement than it would have under the County's April Resolution. The only jurisdiction that would have realized more revenues under the County's April Resolution is, not surprisingly, the County.

An assertion was made by a member of County Council that the City of Myrtle Beach has taken no action to tell how much, for how long, or when the City would contribute to I-73.

This is false: Since the very beginning of this lawsuit, the City has steadfastly and publicly stated its support of I-73. However, the County has never stated their support. The City did clearly outline our funding strategy for I-73 in the proposed settlement agreement which County Council HAD seen and was briefed on by their attorneys and which City Council approved by Resolution. We expressly stated how much the City would contribute, for how long, and when. Any suggestions that City Council has refused to pledge support for I-73 are not true at all.

The assertion was made several times by one County Council member that the City's lawsuit was, and I am quoting him, "BS." Others called it a sham and bogus. Not only are these statements beneath the dignity of an elected official, unprofessional and exude poor demeanor, they are also FALSE.

The County and their attorneys were unable to convince a very experienced and well respected circuit judge to dismiss this suit based on their argument that it was without merit. That is why the County is now prohibited from collecting the fee within the municipalities. The County and their attorneys were also unable to convince the SC Court of Appeals that the Circuit Judge erred in concluding that the City's lawsuit had merit. The County Council members who made the assertion that the City's suit is BS, a sham, and bogus are at the very least disrespectful to two levels of our State's judicial system.

A statement was made by one County Council member that those who voted in favor of bringing this lawsuit, and I am quoting again, "should pack up and leave Horry County" and that the County

“ought to put tag readers on anyone who thinks the lawsuit has merit to make sure they pay their fair share of projects funded by the Hospitality fee.” We strongly condemn statements of this type. They clearly show a lack of professionalism and maturity. I, for one, am thoroughly disgusted by this type of demeanor and I believe that the citizens of Horry County deserve better. Statements such as these are also disrespectful of the court system and are meant to intimidate this and other municipal Councils who have acted in the best interests of our residents and visitors. Let me be very clear, our Council, is not, and I repeat, is NOT intimidated by such tactics and bullying.

You can be certain that some members of County Council will try to spin their vote as protecting citizens of Horry County. It does the exact opposite. The vote of County Council not to accept the proposed settlement agreement appears intended to serve two purposes: Kill the I-73 initiative and fool the citizens of Horry County into believing that this dispute involves taxpayer dollars. As to the former, each of the participating municipalities of Horry County have indicated their support for I-73 and the proposed resolution with the necessary local funding. The County’s premature and unnecessary cancellation of its contract with SCDOT flies in the face of efforts by our Governor, Congressman Rice, members of our Horry County House delegation, our Chamber of Commerce and others who have worked diligently to secure local support for I-73.

I would like to also state that the monies collected by the County from residents of and visitors to the municipalities under their invalid ordinance are not taxpayer dollars that belong to the County. It is money that we contend was unlawfully collected from residents, businesses and visitors and that is who it belongs to. The assertion by members of County Council that these funds belong to either the County or to the municipal governments is simply not true.

In conclusion, the City of Myrtle Beach will not dignify the County’s failure to mediate in good faith. The County’s attempt to publicly negotiate and modify the terms of the proposed settlement agreement is unacceptable. Our Council has sought all along to negotiate in good faith and the County has surely been updated on key information and settlement points all along, just as we have.

Therefore, I want to emphatically state that this council will not be voting on the county’s proposed amendment to the settlement agreement.