

MINUTES

A Regular Meeting of Walterboro City Council was held at City Hall on Tuesday, November 23, 2010, at 6:15 P.M., with Mayor Bill Young presiding.

PRESENT WERE: Mayor Bill Young, Council Members: Dwayne Buckner, Randy Peters, Charles Lucas, Ted Parker, Franklin Smalls and Tom Lohr. City Manager Jeff Lord, City Clerk Betty Hudson and City Attorney George Cone were also present. There were approximately 32 persons present in the audience.

There being a quorum present, Mayor Young called the meeting to order and called on Council Member Smalls for the invocation, and Council Member Parker to lead the pledge of allegiance to our flag.

There being no objection, the Mayor presented an additional agenda item No. 1 under New Business, entitled, "Consideration of a Resolution Pertaining to the Delegation's Appointments to the Colleton County Elections Commission - Travis Avant."

PUBLIC INPUT ON AGENDA ITEMS:

Marsha Johnson, city resident, said she was glad to see the City address the resolution regarding the last election. She stated, I hope you will take it seriously, because it does fall under the question of the integrity of the voting process.

APPROVAL OF THE MINUTES:

The Minutes of the November 9, 2010 Regular Meeting were approved as submitted on the motion of Council Member Parker, seconded by Council Member Lucas, and passed with all members voting in favor.

OLD BUSINESS:

There was no Old Business before Council.

NEW BUSINESS:

1. Consideration of a Resolution (No. 2010-R-12) Pertaining to the Delegation's Appointments to the Colleton County Elections Commission - Travis Avant (Add-On Agenda Item)

Mr. Travis Avant appeared before Council on behalf of a group of concerned voters about the recent General Election held on November 2, 2010. He said, our concern is of the unsatisfactory administration of the entire election process by the director and the four members of the Colleton County Board of Elections and Voter Registration. Mr. Avant identified the following problems with the recent election which he said began on election day:

- 1) The newly appointed director has no experience with elections and received no professional assistance with this first election.
- 2) The precinct workers were inadequately trained and inexperienced.
- 3) The assignments of precinct workers were racially imbalanced.
- 4) In accordance with the S.C. Code of Laws, Section 7-13, subsection 7-42, too few electronic voting machines were placed at large precincts, specifically Walterboro No. 4 and Cottageville.

Mr. Avant then stated that the voters of Colleton County hold the Board of Elections and Voter Registration responsible for the adherence of the Code of Laws and the satisfactory administration of the election process. At the end of the election day on

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November 2 when the four members of the Board and the director conducted the voting results, more than 1,000 absentee votes cast in the electronic machines in the office were not included in the total count. A day later when the mis-count was realized, the director and the four members of the Board made an attempt to add those votes to the total count. Unfortunately, the director and the members of the Board erred by tabulating double counts of some of the precincts; however, they did not catch their mistake. As a result a certified result signed off by the chairperson of the Board and the three members showed 11,656 ballots cast, but 13,045 votes were cast in Colleton County for statewide elections. None of the Board members nor the director caught that discrepancy, so these erroneous counts were certified with the South Carolina Election Commission. The State Commission became aware of the inaccuracies by the Board. Even though asked by the State members and members of our group to recertify the results, they refused to do so. The chairperson argues that the law does not permit the correction of the results. The chairman of the Board has publicly refused to correct the error. Therefore, Colleton County now stands apart from the other 45 counties with incorrect election results certified as a matter of historical record. We do not believe that any law would uphold these erroneous results. We stand for the integrity of the process and fully expect an impartial election procedure that is a fundamental and constitutional right of the citizenry. The expectation is that votes will be counted accurately and that their certified results will be without error.

Mr. Avant pointed out that the Code of Colleton County Board of Elections and SC Code 7-27-280 states that, it is established that the Board of Elections and Voter Registration of Colleton County to be composed of nine (9) members. Currently, we only have four (4) members. The Board's composition is not in compliance with the law. The responsibilities for the appointments to the Board lie with the Colleton County Legislative Delegation. The Delegation is responsible for appointing members to a term of two years and to fill any vacancies when they occur. The appointee should be competent and discreet, who are qualified electors of the county.

Mr. Avant further stated, in addition to the statues, we, the concerned voters, recommend that such appointments be made reflective of the population of Colleton County relative to race, age, sex and party political considerations. Therefore, on behalf of the group, I ask respectfully that City Council support the efforts of concerned voters to insure lawful elections by adopting a resolution requesting that Colleton County Legislative Delegation proceed with diligence and speed to "appoint a full nine-member Board of Elections and Voter Registration of qualified and capable citizens reflective of the makeup of Colleton County relative to race, age, gender and political party consideration." After all, isn't democracy the art of working together to achieve the common goals collectively?

A motion was then made by Council Member Parker to adopt the Resolution (No. 2010-R-12) as submitted. Council Member Peters seconded the motion.

Mayor Young then read the resolution in its entirety into the records. A copy of said resolution is attached as part of these minutes.

The Mayor then opened the floor to discuss the motion. Council Member Smalls asked if the County Delegation had been approached regarding this matter beforehand? Mr. Avant responded that some of the members had been approached. Council Smalls then asked, how long has this been in existence with not having a full committee? Mr. Avant responded, I don't know exactly how long, but at least throughout this past year.

Council Member Buckner then asked Mr. Avant, could you bring me up to speed as to where the citizens are in the process of appeal? Could you tell us what the group has done so far, and where the process would be for appeal? Mr. Avant then

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responded, there is a process the concerned citizens are pursuing, but because of legal advice, at this particular time, I am not at liberty to say.

Mr. Buckner responded, so, there is a process of appeal, and is the group considering appealing to the State Board of Elections? Is that the next step? Mr. Avant responded, we think so, yes.

Council Member Lucas, then asked City Attorney Cone, would that not be considered fraud, to knowingly certify something that they know is incorrect? Attorney Cone responded, "if they knowingly certified something incorrect - that would be dereliction of their duties, but I don't know the specific facts surrounding the certification and I would not like to have anything come out in the papers that either this Council or any representative of the City said anything about fraud."

Council Member Lohr made the following remarks. He stated, I have been on several boards, and usually if there is not a quorum, we don't even meet or take any action. Questions have been forwarded to me on "how can four out of nine, of this particular body act or should act as others should or have acted." How would that be even a legitimate vote? Attorney Cone responded, I have not reviewed the bylaws or other operating laws or regulations under which they operate, and this is an assumption that always gets you in trouble that a quorum of the seated members is sufficient to conduct business - the members present at the meeting and if there were four of them, then three would be a quorum. Asking Attorney Cone to speculate, Council Member Lohr then said, let's assume the number goes down to three, then two and then one. Is one sufficient? Attorney Cone responded, my speculation would be that it would be sufficient.

Council Member Lohr then made the following additional comments.

- 1) This is probably a very appropriate resolution. Let me also mention some issues, and I quit counting at 9 telephone calls.
- 2) I raise a couple of other questions that I think are worthy of our thought. Mr. Avant, your group, I am sure can do without my help, but perhaps those people who contacted me would like for me to at least share their comments.

It took us numerous years, and I think we came to the right conclusion around 1920 to allow women the right to vote. Unfortunately, it took us a lot longer than that for us to involve our black citizens, at least in our county. Half of our population, its talents were not tapped, and I think that's a shame, but we corrected that. So, they were inhibited from voting, and sometimes by law. I proposed and these folks proposed and I am sharing this with you, to look at the arrangements that were made in Walterboro No. 4 (where I vote and I am retired and it took all day for me to vote). People who tried to get off in the morning on the way to work had no luck, came back by lunch had no luck, and usually ended up voting that night, if they voted. I contend that arrangement is an inhibiting factor to their right to vote. I would also ask you, Mr. Avant, to consider contacting the United States Justice Department on behalf of at least 9 or 10 people, who contacted me. In the discussion, they were not lawyers and neither am I, but I think that particular arrangement (while I am not saying was on purpose) was a complete dereliction of duty. Certainly some action needs to be considered on that. As I understand it, a former chairperson of the Election Commission, Mr. Bert Duffie, called this to the attention of the Legislative Delegation back in 2007.

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Attorney Cone then stated, based on the percentage of registered voters that voted in Walterboro No. 4 being in the double digits percentage wise was lower than all the other precincts in the county, that would bear out what Mr. Lohr is stating.

Council Member Buckner then asked Attorney Cone, could you tell us how we as a City, what grounds do we have from a legal standpoint to be entangled with a county or state function? Attorney Cone responded, this would be the First Amendment to the Constitution - Freedom of Speech. All you're doing is saying what City Council thinks. It does not carry any more weight than a resolution by any other large group. As a City Council, if you think this is the will of the people of the City and represents what the people of the City would have you to say, then City Council has a right to speak for them, and under the First Amendment, they can address issues that are very disparate. This is an issue that falls fully within the right of the City Council to address, and the City Council should consider in each resolution whether it is wise to get involved in making a resolution. That is a decision that each of you have to make, based on serving as a City Councilman and knowing the responsibilities of the job.

Council Member Peters then stated, we are all citizens of Colleton County, to answer Mr. Buckner's question. So, I think that as a City Councilman, I have as much right to propose this resolution or to vote on this resolution as anybody, and also to join Mr. Avant's group if I so desire. My question to Mr. Avant's group, is this strong enough language? Is this suitable to you for what you want us to pass? Of course, this is the first time we have seen it. If you think it needs to be stronger, then I am certainly for taking a look at something different. Mr. Avant responded, we think it is suitable.

Council Member Peters then pointed out, in response to Ms. Johnson's question about the election coming up, the city runs its own election. Therefore, whether we vote or this or don't vote on this, is not going to affect the City Election anyway, because we don't get the county involved in our elections. The City has its own Election Commission that directs its own election. We can go to them (the county) for advice, to borrow their machines, and we can go to them if we want to, but we have our own Election Commission. We can decide to vote on Saturdays if we want to instead of Tuesdays or use paper ballots rather than voting machines if we want to. However, that is not going to influence what we are doing here as far as our voting on this proposal. This is a very good proposal, and this needs to be done. The Delegation needs to get off the table and do their job. A lot of it has to do with the fact that we don't have one particular representative in Colleton County, whether it be a senator or a representative. I mean, we are split up. I think we are starting at a good place with City Council backing this. If we can get our County Council to come behind it, and other groups like yours, I think we can get the job done.

With the approval of the Mayor, Council Member Buckner then asked Mr. Avant, has your group contacted the Delegation, our senators and representatives, and voiced your concerns to them? If so, what was their response to your concerns? Mr. Avant responded, we have contacted some of the Delegation Members. We have not contacted all. I think it would be appropriate if they responded to this.

Council Member Lohr then stated, I am not sure it's our responsibility since they know there have been mistakes made. There's a lot I don't know. The only thing I do know and I am not putting George or the Press on the spot. I think we have heard from two of six (Delegation members) so far, who have made comments about it.

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Mayor Young then stated, I want to echo what Councilman Peters has said. We are approaching a time now where we are getting into redistricting. One of the biggest problems we face in Colleton County is that we can't elect somebody that represents us. We really need to make our voices heard. We need to get the districts redrawn so that a Colletonian can be elected, somebody who lives here, whether he's black, white, Republican or Democrat. He needs to be a Colletonian. As we go through the redistricting process that is coming up now, we need to let people like Glenn McConnell know and others. We have been split up long enough, and it's time we have a representative who lives here and represents us, and then some of these problems would go away. We just don't have that now.

The motion to adopt the resolution (No. 2010-R-12) as submitted then passed with a vote of 6/1, with Mayor Young, Council Members Peters, Lucas, Parker, Smalls and Lohr voting in favor and Council Member Buckner voting against the motion for adoption.

At this point, the Mayor recognized and welcomed Councilman Gene Whetsell of the Colleton County Council to the meeting.

2. Reconsideration of Bids Received for Three (3) Vehicles for Police Department

City Manager Lord stated he regretted that a mistake had been made at the last Council Meeting when he reported the bid figures for the purchase of three police vehicles. He said, I gave you the wrong data. The inaccuracy was in the calculation of taxes that were associated with the vehicles. The bid from Walterboro Motor Sales was reported to you at \$102,222.00 and it is actually \$100,422.00. The mistake we made is that we added \$900 of tax per vehicle when it should have been \$300 of tax per vehicle. The mistake on O.C. Welch's bid was similar in that there were no taxes added to those vehicles. The last mistake was with Summerville Ford, and we did the same as the first. We added \$900 tax per vehicle, when we should have added \$300 tax per vehicle. The correct bids were as follows:

Walterboro Motor Sales	\$100,422.00
OC Welch Ford	\$ 98,618.07
Vic Bailey Ford	\$101,400.00
Summerville Ford	\$102,399.00

The Mayor then announced that the chair would entertain a motion to reconsider, and if the motion to reconsider is adopted, then this would come up for consideration at the next City Council Meeting to reconsider the bids. The Mayor further explained that the motion to reconsider must come from someone who voted with the prevailing side last time, which means, Councilman Lucas, Mayor Young, Councilman Parker, Councilman Smalls or Councilman Lohr can make that motion.

A motion was then made by Council Member Lohr, seconded by Council Member Parker to reconsider the bids for the purchase of three new police vehicles at the next Council meeting.

In discussing the motion, Councilman Buckner asked the City Manager to explain how this error occurred with the bids? He asked, if the dealership submitted their bids to us, did they not include the taxes in their bids on what their vehicles would cost? City Manager explained that staff did not use a uniform bid document. What we did, we solicited their price and they sent it to us by letter, fax or e-mail. Some of them indicated the tax by vehicle, and some of them submitted a lump sum price that did not include their tax. The error was on our part.

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Another question was asked by Council Member Buckner. He stated, after our last meeting when Council voted to approve O.C. Welch, did the City in anyway shape or form, notify O.C. Welch that they were the winners of that bid. City Manager Lord responded, we did. He further stated that we notified them that they were selected as the low bidder. Later that day we notified them that we had identified an error and asked them to withhold the order.

Councilman Buckner then asked City Manager Lord, are you familiar with the Uniform Commercial Code. Mayor Young intervened and stated, Mr. Buckner that would be out of order to question the City Manager, you can ask the City Attorney your question if you want.

Councilman Buckner then asked the City Attorney, what is the rule under the UCC for the purchase of vehicles wherein we have notified a potential vendor that we plan to purchase from them and then we renege on that purchase? City Attorney Cone responded, without research I would not know, but if O.C. Welch has been notified and has suffered no damages, the City probably has very little exposure in the matter. I would imagine from what Mr. Lord has said that it was a matter of hours when they were notified. As they have not changed their position, they would not have suffered damages. As far as I understand it from Mr. Lord that O.C. Welch said, "yes, we understand and we'll wait to here from you. Mr. Buckner responded, my concern is whether or not O.C. Welch changed their position on our promise to purchase vehicles from them. If they have, then we are looking at a potential lawsuit. City Attorney Cone, responded, I agree with you that if they had changed their position, but based on Mr. Lord's statement of them being notified later that day, I would assume that they would not have had time to "change their position." Also, from what Mr. Lord has reported in his conversation with them later that day, it would lead me to believe that they had not changed their position, and it would lead me to believe that they agreed to the City redoing the process on the bids. Also, Mr. Lord would have to expound on any conversations he has had with them. I am just speaking from what I heard tonight. I don't have any prior knowledge of what those conversations were.

City Manager Lord also addressed the matter. He stated, their bid is one that did not list the taxes. So, we could easily argue that their bid was incomplete.

The discussion concluded, and the motion passed with a vote of 6/1 with Mayor Young, Council Members Lucas, Peters, Parker, Smalls and Lohr voting in favor and Council Member Buckner voting against the motion.

3. Request to Waive Sign Ordinance for Placement of Temporary Advertisement Signs in City Limits for 7 Days in December - Mr. Willard Long

Mr. Willard Long told Council that the sign ordinance allows the merchants 7 days a year to put out advertising signs for their businesses at the two interchanges on Bells Highway and Highway 63. Our two busiest seasons are the 4th of July and the Christmas to New Year Holiday. He requested that he be allowed to put up temporary signs for all his store locations on Bells Highway and Highway 63 for 7 additional days to what is already allowed by the ordinance.

The Mayor then entertained a motion to waive the Sign Ordinance for 7 days in December for the entire City of Walterboro. Council Member Lucas so moved, and Council Member Smalls seconded the motion. At this point, the City Attorney recommended that the motion should properly say - "to have a moratorium on enforcing the Sign Ordinance," rather than waiving it. I don't think we have the authority without another ordinance to waive it, but you can declare a moratorium.

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Council Member Lucas then withdrew his original motion and restated as follows: "Motion to have a moratorium on enforcing the Sign Ordinance for 7 days in December." Council Member Smalls seconded the motion that passed with all members voting in favor.

4. Large Animal Variance Request - Carol Brown

Mayor Young informed Council a letter was received from Mr. Carl Brown, who had petitioned the City to keep two horses on his property (at 111 Camellia Drive) in the City Limits. City Manager Lord reported that Mr. Brown was unable to attend the meeting. He added that Mr. Brown owns about a 14-acre piece of property in the Forest Hills Subdivision. It has old stables on it, and he just recently acquired the property. He is asking permission to keep two horses on it. The City Code, Section 4-63(b) states that: No livestock shall be kept within the corporate limits without specific Council approval."

A motion was then made by Council Member Lucas to approve the large animal variance request submitted by Mr. Carl Brown. Council Member Parker seconded the motion. In discussing the motion, Council Member Smalls asked if animals had been kept on this piece of property in the past. Mr. Lord responded that the stables were existing. Council Member Buckner asked Mr. Lord if any residents from the Forest Hills area and voiced any concerns about the possibility of having horses in their neighborhood?

City Manager Lord responded, we have identified about 5 adjacent property owners. Of those, we tried to contact them all. We were able to get in touch with 3 of them. Two of them said "no problem whatsoever" and the third person did not offer an opinion.

City Attorney Cone stated that the ordinances provide that if this becomes a nuisance, then this permission can be revoked. It says by smell, noise, or anything else. So, this does not waive him having to comply with the ordinance, just because you allow him to keep the horses there. He has to keep all his neighbors happy.

The motion then passed with all members voting in favor.

With the Mayor's permission, Council Member Parker was then excused from the meeting.

5. Acceptance of Resignation of Judy S. Bridge from the City Planning Commission Effective 1/2011

A motion was made by Council Member Buckner, seconded by Council Member Smalls to accept the resignation of Ms. Judy Bridge from the Municipal Planning Commission with regret effective 1/2011.

Speaking as a past member of the Planning Commission, Council Member Lucas commented that Ms. Bridge had done a tremendous job for the City and community, and from Council he expressed a heartfelt thank-you. The motion then passed unanimously, except Council Member Parker was ABSENT and did not vote.

6. Request for Street Closing for Martin Luther King Jr. Day Parade January 16, 2011

After a typo correction to the agenda by Councilman Buckner that the parade is scheduled for January 16, 2011 and not "January 17, 2010, a motion was made by

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Council Member Lucas to approve the street closing parade permit request as submitted for the Martin Luther King, Jr. Day Parade. Council Member Peters seconded the motion that passed with all members voting in favor, except Council Member Parker was ABSENT and did not vote.

7. Consideration of Canceling or Rescheduling the December 28, 2010 City Council Meeting

Council Member Lucas made a motion to cancel the December 28, 2010 Regular City Council Meeting. Council Member Smalls seconded the motion that passed unanimously, except Council Member Parker was ABSENT and did not vote.

COMMITTEE REPORTS:

There were no committee reports given.

The Mayor then entertained a motion to enter an Executive Session. Council Member Lucas So Moved. Council Member Lohr seconded the motion. The motion passed unanimously. The Mayor then announced that the meeting would convene into an Executive Session for a personnel matter of Boards and Commission Appointments.

The Meeting returned to Open Session with no action taken as a result of the Executive Session.

There being no further business to consider, a motion to adjourn was made by Council Member Lucas, seconded by Council Member Peters and passed unanimously. The Mayor adjourned the meeting at 7:30 P.M. Notice of this meeting was distributed to all local media and posted on the City Hall bulletin board at least twenty-four hours prior to meeting time.

Respectfully,

Betty J. Hudson
City Clerk

APPROVED: January 11, 2011