

**MINUTES
ORANGEBURG COUNTY COUNCIL
NOVEMBER 21, 2011
5:30 P.M.**

Pursuant to the Freedom of Information Act, the news media was notified and notice was posted on the bulletin board 24 hours prior to the meeting.

MEMBERS PRESENT:

**Johnnie Wright, Sr., Chairman
Clyde B. Livingston
Heyward H. Livingston
Willie B. Owens
Johnny Ravenell
Harry F. Wimberly**

MEMBERS ABSENT:

Janie Cooper, Vice Chairman

OTHERS PRESENT:

**Bill Clark, County Administrator
D'Anne Haydel, County Attorney
Jacqueline P. Turner, Clerk to Council**

CALL TO ORDER

Johnnie Wright, Sr., Chairman

MOMENT OF SILENCE

Moment of silence observed

APPROVAL OF MINUTES

Motion by Councilman Owens, seconded by Councilman Wimberly, to approve minutes of November 7, 2011 with corrections, if any. Motion passed unanimously.

PUBLIC COMMENTS

AGENDA ITEMS

Mr. Greg Cranford, Social Studies teacher, Orangeburg-Wilkinson High School, introduced himself, stating they are studying economics and government; he brought some of his students and two parents, to witness how local government operates, and asked them to introduce themselves. Chairman Wright thanked the group for attending, and stated they were free to ask questions of Council members. No questions were asked.

Chairman Wright announced before the start of the regular meeting the County Attorney had items to be added to the agenda before Council had its next meeting. He asked her to explain to Council, after which he stated he would ask for a motion and a second.

Ms. Haydel requested someone on Council consider making a motion to amend the agenda to deal with two housekeeping points that have to do with procurement, the first on Broadband procurement and the second on regional wastewater facility procurement. The tenure of this is as follows: there is a provision in the Procurement Code that allows for deviation from the terms of the Procurement Code if the funding agency requires it, which is going to apply to the Broadband project, or if the special type of contract is one that should be exempted, which is going to apply to the regional wastewater facility. The requirement in the Procurement Code is the deviation must be acknowledged in a Council meeting. This is now being brought before Council to have their acknowledgement at some point in the meeting.

Councilman Owens asked whether the Attorney was asking to change the procurement code or would this pertain only to Broadband and wastewater? Attorney Haydel indicated the change would apply only to these projects. The Attorney suggested adding a new number, perhaps 8, calling it Procurement Housekeeping, (A) calling it Broadband, and (B), Regional Wastewater Facility.

Councilman Owens made a motion to add procurement to the agenda as A. Broadband Contract and B. Wastewater. Councilman Wimberly asked where would he put this. Councilman Owens replied 8 A and B. Chairman Wright pointed out 8(A) and (B) were already on the agenda, and suggested adding them as 7(A) and 7(B), which Councilman Owens agreed to. The Attorney stated the motion required a second. Councilman Wimberly seconded the motion.

For clarification, Chairman Wright stated it had been moved by Councilman Owens and seconded by Councilman Wimberly, that Council add items to the agenda as 7A and 7B pertaining to housekeeping items for Broadband and the Regional Wastewater system. Motion carried.

Councilman Clyde Livingston asked Chairman Wright if this had been brought up in committee, and Chairman Wright stated it had not been brought up in committee, the Attorney had just explained what was needed, and if he had a question, he could ask the Attorney. Councilman Clyde Livingston asked the Attorney when did she realize it had to go on the agenda. The Attorney answered this morning, during a review of the final draft of the two procurements. In order to meet the exact guidelines of the County's Procurement Code, there needed to be an acknowledgement by Council. The tenure of the contracts is no different than it ever was expected to be, but saying out loud that it is going to be in accordance with the funding agency's procurement requirements, or that we are going to exempt the wastewater facility to the extent that is necessary for that specialty, is something that had been anticipated, but she had not thought of the actual step of having Council approve it.

Councilman Clyde Livingston asked what exactly had to be changed in the procurement process. The Attorney explained on the Broadband project, while USDA Rural Utility Services does not have a procurement code it requires, it has a form contract, from which the owner, who would be the County, and the vendor, cannot deviate. This includes some contract terms that are at odd with some of the things the County has in its Procurement Code. Inside the Procurement Code there is a section that talks about what is applicable to, and in general it will say it is applicable to procuring any goods and services, except ... and one of the exceptions is if the funding agency has a requirement that may be in contradiction to what the County Procurement Code is so that we are allowed to take advantage of funding by the outside funding agency, and the other which has to do with the regional wastewater facility, today in going over the final drafts, there are certain things in

the form contract that the Project Engineer wants in that contract and just in case that is not enforceable in our contract, that is what we would want to use. Councilman Clyde Livingston asked if this is something the Project Engineer wants in the contract, or is something the funding agency requires.

Attorney Haydel stated there are two – on Broadband, it's the funding agency, so that is literally acknowledging we've got a funding agency whose requirements are different from our Procurement Code, but to accept the funding, we have to accept that contract, and so we are going to acknowledge that is not going to be within our Procurement Code.

The second is we don't have a funding agency that requires it, the Project Engineer has a contract, and it's hard to make a comparison, but this is about an \$8 million dollar contract for a regional wastewater facility, and frankly our Procurement Code is not written for that purpose; it is written for many different kinds of contracts, but some modifications is needed. An example would be what are the damages if the project is not done at a certain point in time. The County Code does not allow for liquidated damages since that would affect some funding and down the line that is one of the things the Project Engineer wants to have in the contract.

Councilman Wimberly asked if the change on Broadband would allow the County to use another agency for procurement or would the County have to use their agency? Attorney Haydel stated the County will use portions of its Procurement Code, but where the Procurement Code may be inconsistent with what the funding agency requires, we would use that. For example, what the County has done since the Procurement Code has been enacted, is to take a request or invitation for bids or proposals and the actual successful proposal will literally be stapled together with a small form contract on the front that explains the contract terms. They don't do this for wastewater facilities and the same thing applies for Broadband.

Councilman Wimberly asked will the project use procurement through the County or through others. Attorney Haydel stated Broadband procurement will go through the County. The Project Engineer, as with many gatekeeper projects, will certainly be involved in the evaluation and recommendations to County Council, but it will be on the County's website and Procurement Code.

Councilman Ravenell asked if this was going on the agenda as a part of the procurement process and how will it affect the process of the contracts. Will it add more segments to the contract? Attorney Haydel stated on each one of them, as normally done with procurement, there is a page called the Procurement Articles Acknowledgement. Any vendor will have to submit a statement saying they agree their submissions are in accordance with the entire Code and each one of its articles. For each one of those, there is going to be two chapters of exceptions that go with those individual projects. The Remedy Section will be the same. Instead of the Procurement Director being the person to evaluate and make the recommendation to the County, it would be the Project Engineer. These are normal things we do. We just have not had a gatekeeper kind of contract recently.

Councilman Owens asked if this will be a temporary addendum to the Procurement Code or will it become permanent? Attorney Haydel stated it will not change the Procurement Code at all. What it does is acknowledges the County using certain portions of the Procurement Code.

Councilman Clyde Livingston asked if what is being done today only have to do with these two purchasing sources, to which Attorney Haydel replied yes. Councilman Clyde Livingston stated in other words we have it in our Code that we can have deviations under certain circumstances but there has to be notification and Council has to acknowledge that we are taking exception to the Procurement Code, to which Attorney Haydel responded that was correct.

Chairman Wright repeated the motion was properly made, seconded and passed by Council.

CHECK PRESENTATION – TED CREECH, AT&T

Chairman Wright stated Council was to receive a presentation from AT&T related to Project Steele. Ted Creech and Pamela Lackey, representatives from AT&T, presented a check in the amount of \$50,000 to the County to be used to assist with infrastructure costs and improvements, specifically with rail work at the facility. The funds are from a Utility Tax Credit grant designated by AT&T. Ms. Lackey stated AT&T is about bringing jobs to Orangeburg County, referencing AT&T's \$675 million investment in South Carolina.

1. ORDINANCE – THIRD AND FINAL READING

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT DATED AS OF NOVEMBER 21, 2011 BY AND BETWEEN ORANGEBURG COUNTY, SOUTH CAROLINA AND ESCOSCAPES COMPOSITES LLC PROVIDING FOR A PAYMENT OF A FEE IN LIEU OF TAXES, THE ISSUANCE OF SPECIAL SOURCE REVENUE CREDITS, AND OTHER MATTERS RELATED THERETO

Chairman Wright asked County Administrator Clark to once again reiterate the salient points relative to the ordinance. Mr. Clark stated Ecoscapes is a manufacturer of pre-fab material for housing that can be used following disasters. The company has been located in the Dana building since October 1, 2011 in the County/City Industrial Park and represents an investment of \$9.3 million and 288 jobs. The standard fee agreement allows a 6 percent assessment ratio instead of 10.5 percent; a 10-year, 30 percent special revenue source credit; and a multi-county agreement with Dorchester County which will open up more incentives.

Motion by Councilman Ravenell, seconded by Councilman Owens to approve third and final reading of the ordinance. Motion carried.

2. ORDINANCE – THIRD AND FINAL READING

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THAT CERTAIN AGREEMENT FOR DEVELOPMENT FOR A JOINT COUNTY INDUSTRIAL

**PARK FOR THE ESTABLISHMENT OF AN ECONOMIC DEVELOPMENT
FUND USED FOR THE PURPOSE OF ECONOMIC DEVELOPMENT**

Chairman Wright asked Bill Clark to give a briefing on this ordinance. Mr. Clark stated the ordinance was modeled after one adopted in Berkeley County and elsewhere in the state whose purpose is to dedicate 5 percent of fees streams from new fee-in-lieu agreements that are part of municipal county industrial park agreements to create an economic development fund to assist with infrastructure projects, engineering certification matters or any other economic development matter that would be approved by Council.

Councilman Clyde Livingston asked if this was the ordinance that would be retroactive to the beginning of the 2011 tax year. Bill Clark indicated the ordinance is retroactive to the first of the 2011 tax year.

Motion to approve third and final reading made by Councilman Heyward Livingston, seconded by Councilman Wimberly. Motion carried.

**3. RESOLUTION AUTHORIZING THE EXECUTION OF A REAL
PROPERTY AND REVENUE SHARING AGREEMENT BETWEEN THE
COUNTY OF ORANGEBURY, CITY OF ORANGEBURG AND THE
ORANGEBURG COUNTY/CITY INDUSTRIAL PARK COMMISSION**

Chairman Wright read the resolution aloud and asked if any Council member had a question following the reading of the resolution. No questions were asked by Council members.

Motion by Councilman Owens, seconded by Councilman Heyward Livingston, for adoption of the ordinance. Motion carried.

4. OFFICIAL ACTION

**AN OFFICIAL ACTION OF THE ORANGEBURG COUNTY
COUNCIL AUTHORIZING THE PURCHASE OF PROPERTY FROM ST.
PAUL UNITED METHODIST CHURCH, INC.**

Chairman Wright asked Bill Clark to summarize this action. Bill Clark stated this action is related to previous renovations and security enhancements made at the Orangeburg County Court House. In the area of Gibson Street, the County created a closed portion of the street for a secured entrance to involve the transport of inmates in and out of the Court House and to facilitate the safe

movement of vehicles and staff in the same area. In the process of the road closing, it had to be determined which part of the roadway was owned by what entity. A portion of the roadway, approximately one tenth of an acre, is under the control of St. Paul United Methodist Church. A third party appraisal was done and the result presented to the Church for them to review through their hierarchy. The Church has authorized this transaction to go through involving compensation in the amount of \$10,000.00. Earnest money of \$500.00 has already been put forward, and by completion of this Official Action, the County will be able to close the transaction and put the final stamp on the renovation project at the Court House.

Motion by Councilman Wimberly, seconded by Councilman Owens, to authorize the Official Action to purchase on tenth of an acre of property for \$10,000.00 from St. Paul United Methodist Church to complete renovations of Court House. Motion carried.

5. ACCEPTANCE OF BID – PUBLIC WORKS DEPARTMENT – PARTIAL ROOF REPLACEMENT – ORANGEBURG COUNTY COURT HOUSE

Chairman Wright requested Bill Clark to explain this matter. Bill Clark stated a portion of the roof at the Court House has some areas where water is infiltrating through and causing some maintenance issues within the building. In order to be able to fully address the maintenance issue, the first thing is to stop the infiltration of the water. To this end the County solicited bids for the purpose of making the necessary repairs to the roof.

There was a mandatory pre-bid conference on October 17, 2011, where 12 vendors were present. During the bid opening conducted November 7, 2011, a total of 6 vendors responded. The results of the solicitation were included in the agenda packets forwarded to Council members. Following the application of the vendor preference as provided for in the Procurement Code, the lowest responsive bid was submitted by Aqua Seal Manufacturing Roofing of West Columbia, S.C. in the amount of \$109,500.00. This was an anticipated item when the budget was being put together last year, and funds are earmarked in the Capital Improvement fund for this purpose. Bill Clark stated it is his recommendation tonight for Council to accept the low bid from Aqua Seal Roofing of West Columbia, S.C. in the amount of \$109,500.00, so the County can proceed with the repairs.

Councilman Owens asked Bill Clark about Bill Hill Roofing. Mr. Clark stated they were an out of state vendor and after the application of the in-state reference points, Aqua Seal became the low responsive bidder.

Motion by Councilman Heyward Livingston, seconded by Councilman Ravenell, to approve accepting the recommendation of Bill Clark to accept the low responsive bid of \$109,500.00 from Aqua Seal Roofing, West Columbia, S.C. to repair a portion of the roof of the Orangeburg County Court House. Motion carried.

Councilman Ravenell asked Bill Clark about the bond amount of this bid and while acknowledging the necessity of following County procedures, should there not have been more local vendors responding? Mr. Clark stated he was not sure why there were not more local vendors responding. The County did advertise locally in the Times and Democrat, as well as a state-wide publication called South Carolina Business Opportunities, which is a well known publication for contracting and procurement activity for construction work. Twelve bidders responded to the pre-bid, but he's not sure if any of those 12 represented local vendors, but the six who responded, were not local vendors from Orangeburg; five of the six were from South Carolina.

Councilman Ravenell asked what would the dollar figure of the bond amount be? Mr. Clark responded they would have to bid the amount of the contract. Councilman Ravenell stated it was a shame that a local vendor could not have gotten the job. Mr. Clark expressed regrets also.

6. APPROVAL OF ORANGEBURG COUNTY EMPLOYES HOLIDAYS – 2012

Chairman Wright noted this was something Council does every year as the end of the years draws closer, and outlined the holidays that will be observed in 2012.

Motion by Councilman Owens, seconded by Councilman Heyward Livingston approving the Orangeburg County Employee Holidays for 2012. Motion carried.

7A. AND 7B. PROCUREMENT CODE HOUSEKEEPING MODIFICATIONS ON BROADBAND AND THE REGIONAL WASTEWATER FACILITY

Motion by Councilman Wimberly, seconded by Councilman Clyde Livingston, that Council approved 7A and 7B as previously discussed and Council is acknowledging publicly that Council is taking advantage of a section in the Procurement Code that allows for certain deviations and modifications that are to come. Motion carried.

8. VOTE FOR EXECUTIVE SESSION

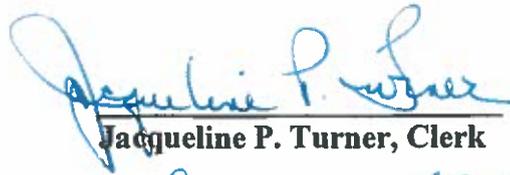
Motion by Councilman Ravenell, seconded by Councilman Owens to vote for an executive session to discuss economic development and a contractual matter regarding the Broadband project. Motion carried.

9. EXECUTIVE SESSION

10. VOTE FOR ADJOURNMENT

Motion for adjournment made by Councilman Heyward Livingston, seconded by Councilman Ravenell. Motion carried.

Meeting adjourned.


Jacqueline P. Turner, Clerk


Johnnie Wright, Sr., Chairman