



Special Called Meeting of County Council Meeting

Chairman

Joseph F. Passiment, JR.

Vice Chairman

D. Paul Sommerville

Council Members

Michael E. Covert

Gerald Dawson

Brian E. Flewelling

York Glover, SR.

Chris Hervochon

Alice G. Howard

Mark Lawson

Lawrence P. McElynn

Stu Rodman

Interim County Administrator

Eric Greenway

Clerk to Council

Sarah W. Brock

Administration Building

Robert Smalls Complex

100 Ribaut Road

Contact

Post Office Drawer 1228

Beaufort, South Carolina 29901-1228

(843) 255-2180

www.beaufortcountysc.gov

County Council Agenda

Monday, December 07, 2020 at 1:00 PM

[This meeting is being held virtually in accordance with Beaufort County Resolution 2020-05]

ALL OF OUR MEETINGS ARE AVAILABLE FOR VIEWING ONLINE AT WWW.BEAUFORTCOUNTYSC.GOV AND CAN ALSO BE VIEWED ON HARGRAY CHANNELS 9 AND 113, COMCAST CHANNEL 2, AND SPECTRUM CHANNEL 1304

1. CALL TO ORDER – Chairman Joseph Passiment
2. PLEDGE OF ALLEGIANCE - Chairman Joseph Passiment
3. *PUBLIC NOTIFICATION OF THIS MEETING HAS BEEN PUBLISHED, POSTED, AND DISTRIBUTED IN COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT*
4. APPROVAL OF AGENDA

ACTION ITEMS

5. A RESOLUTION REQUESTING AND AUTHORIZING THE TREASURER TO ACCEPT PREPAYMENTS OF AD VALOREM TAXES AND FEES FOR TAX YEAR 2020, DUE TO THE AUDITOR'S ANTICIPATED DELAY IN THE COMPLETION OF AMENDING THE ANNUAL TAX ROLL TO REFLECT THE CORRECT MILLAGE FOR RURAL & CRITICAL DEBT SERVICE.
6. AN UPDATE ON THE TOWN OF HILTON HEAD ISLAND SHERIFF USER FEE LITIGATION AND SETTLEMENT NEGOTIATIONS
7. DISCUSSION REGARDING AN AGREEMENT WITH HILTON HEAD ISLAND FOR LAND USE PLANNER FOR US 278 PROJECT

EXECUTIVE SESSION

8. Pursuant to SC Code Section 30-4-70(a)(2), (2) for the receipt of legal advice where the legal advice relates to a settlement of legal claims in the Whitehall litigation.
9. **Matters Arising Out of the Executive Session**

CITIZEN COMMENTS

10. **CITIZENS COMMENTS** – CITIZENS MAY JOIN VIA WEBEX USING THE LINK AND MEETING INFORMATION BELOW:

MEETING LINK

Meeting number: 179 978 4534

Password: BC123

COMMENTS WILL ALSO BE ACCEPTED IN WRITING AT PO DRAWER 1228, BEAUFORT SC 29901, BY WAY OF OUR PUBLIC COMMENT FORM AVAILABLE

ONLINE AT WWW.BEAUFORTCOUNTYSC.GOV (ANYONE WHO WISHES TO SPEAK DURING THE CITIZEN COMMENT PORTION OF THE MEETING WILL LIMIT THEIR COMMENTS TO NO LONGER THAN THREE (3) MINUTES AND WILL ADDRESS COUNCIL IN A RESPECTFUL MANNER APPROPRIATE TO THE DECORUM OF THE MEETING, REFRAINING FROM THE USE OF PROFANE, ABUSIVE, OR OBSCENE LANGUAGE)

11. ADJOURNMENT.

ADD-ONS

The document(s) herein were provided to Council for information and/or discussion after release of the official agenda and backup items.

Subject: RE: My Public Comment
Date: Monday, December 7, 2020 at 11:59:00 AM Eastern Standard Time
From: Brock, Sarah
To: Flewelling, Brian, Passiment, Joseph

Yes'sir!

Sarah W. Brock, JD
Clerk to Council
Beaufort County Government, SC
843-255-2183 (Office)

-----Original Message-----

From: Flewelling, Brian <brianf@bcgov.net>
Sent: Monday, December 7, 2020 10:41 AM
To: Brock, Sarah <sbrock@bcgov.net>; Passiment, Joseph <jpassiment@bcgov.net>
Subject: My Public Comment

Sarah, Joe,

Please make sure this is read during public comment:

"Fellow Council Members. I regret my absence from today's meeting. A previously scheduled and much needed appointment prevents my attendance.

"There is no apparent reason for this emergency meeting. We have a regularly scheduled meeting next week that could easily have included all the matters on today's Agenda without any significant impact on any of the matters you will discuss. The only impact is that I won't be in attendance, which was a fact well known by the Chairman before he scheduled this meeting today. My voice, which predicted this problem and was opposed to the majority whose decisions regarding changing the millage rate...my voice has been silenced; and you should object to this meeting. Why the urgency?

"However, I know adjourning this meeting is not very likely to occur. You should, however, have the Treasurer and Administration address a gaping flaws in their resolution to the problem we now have. Specifically, the proposal only addresses payment by an individual or entity to pay taxes on their own property online. It does not address the common situation of attorneys who have collected 2020 taxes and must pay those amounts prior to 12/31/2020 so that their clients can receive the tax benefits of current year payments. I doubt any attorney will (or I even suspect can) pay estimated taxes online. Their trust accounts require cancelled checks. Nor would they consent to having their Trust Account numbers entered anywhere online. You must provide some 'drop-box' for law firms and CPA's to make a physical check receivable by the Treasurer. Further, I'm concerned that payment by escrow companies paying multiple tax accounts will not be received prior to the end of the year. It's very likely that thousands of taxpayers will lose the tax benefit of current year payment unless their payments can be accepted as well.

"And finally, I wonder how much this temporary change in procedure will cost. The additional staff time already is significant. Where is our legal exposure? Will we be liable for interest on the overpayment? Will our liability insurance cover us?

"I'll be watching. Thank you.

"Brian Flewelling, County Council District 5, representing approximately 17,000 residents of Beaufort County."

REASONS FOR A RESOLUTION TO ACCEPT PREPAYMENTS

Earlier this year, County Council passed a budget and millage rates sufficient to operate essential government services. This included a millage rate of 4.8 mils for the repayment of Rural and Critical Land debt. The ordinance which Council adopted itemized the millage by category. The narrative contained a typo. It mistakenly indicated the itemized millage totaled 65.22 when, in fact, the total was 64.2.

The Beaufort County Auditor chose to use the erroneous 65.22 millage as opposed to the correct 64.2 millage; it appears he attributed the extra 1 mil to the Rural and Critical Land debt, deviating from Council's Ordinance which set the debt service millage for Rural and Critical at 4.8.

Passing a budget and millage rates require numerous discussions, public meetings, three public readings and a public hearing. The auditor attended most if not all those meetings. He certainly had access to the budget ordinance as it was part of the numerous agenda backups. At no time during those many months of work did the Auditor indicate he was in disagreement with the County's data or the millage rates being considered and ultimately approved by Council.

The auditor's deviation from Council's Ordinance was not realized until the end of September as the Treasurer's Office was preparing to send out the 2020 annual tax bills.

The Auditor was asked to lower the tax rate for Rural and Critical Land debt to rate approved by Council; he refused.

This matter was discussed throughout the month of October in a series of five public meetings.

During those meetings, the Auditor never presented the arithmetic or documents which supported his decision to use a higher tax rate than the rate approved by Council.

On October 5, 2020, in a specially called Council Meeting, at the 9 minute 20 second mark, the explanation given is that Auditor mistakenly thought a recent bond which the County issued was entirely for Rural and Critical Lands.

On October 12, 2020, in an Executive Committee meeting, at the 14 minute 30 second mark, Council is advised by the County Administrator that the Auditor "has taken unilateral action and increased taxes without the governing body's authority and approval."

On October 12, 2020, in a Council Meeting, the first time Auditor Beckert discusses this matter in public, at the 1 hour 27 minute 40 second mark, the explanation given is that he included a 20% projected decline in tax revenue, alleging that this number was obtained from County Administration. However, no such number was used to determine the County's budget and collections as of that date had never been higher.

On October 19, 2020, in a specially called Council Meeting, at the 1 hour 32 minute 35 second mark, the explanation given by the Auditor is that he was unaware of a bond premium that was due to the County.

On October 26, 2020, in a Council Meeting, the Auditor joins a public meeting, the explanation given is that the fluctuating value of one mil, i.e. changing property values, caused his excessive tax rate.

I encourage our viewers and citizens to go back and watch the discussions which occurred on each of these dates. The weak, fluctuating explanations and inconsistent justifications, whether delivered by the Auditor himself or by his representatives, are obvious.

Whether it was incorrect reading of bond documents, unfounded fears of revenue declines or claims of fluctuating property values, the story was ever changing and unconvincing. And at the end of the day, whichever explanation one chooses to believe, it indicates a failure by the Auditor to follow Council's ordinance (which is a law) and the Auditor's failure to correctly take into account everything he must take into account in order to perform the ministerial functions of his job properly. His failure to do so resulted in effort to overtax the citizens and businesses of Beaufort County.

As a result of the Auditor's refusal to appropriately tax the citizens, Council took legal action. It filed an action which required the Auditor to enter the proper Rural and Critical debt service millage (4.8).

On November 12, 2020, a circuit court judge ruled from the bench in favor of the County's position and ordered the Auditor to correct the Rural and Critical Land millage to the lower tax rate which Council passed twice.

It appears the Auditor did not begin to comply with the Court's order until eight days later, on November 20, 2020. Further, it appears that whatever preparation the Auditor engaged in, it did not include seeking the input of outside experts such as the manufacturer of the software which the County uses for the purpose of preparing tax bills and with whom the County has a support contract.

Never once, as the County sought to correct the tax roll which the Auditor prepared, did the Auditor communicate with Council, Administration, or the Court that the process to correct the tax bills would take weeks and possibly over a month to accomplish. In fact, the Court gave the Auditor the amount of time he told the court it would take his office to prepare the amended tax roll.

Now, the County is in the unfortunate position of being operationally held hostage by the work of the Auditor.

Due to the a unexpectedly long amount of time it has taken the Auditor to prepare an amended tax roll which contains the correct debt service millage for Rural and Critical Land Program and the demand it has placed on our software system, the Auditor has demanded that all other County Offices refrain from using the County's tax software, making vital processes prohibitive, like the updating of our online payment systems and processing of Legal Residence Exemptions.

Even worse, our taxpayers are now at risk of losing their ability to claim a significant income tax deduction because it appears, he will not provide the Treasurer with an amended tax roll before the end of the year or, if he does provide it before the end of the year, will there be enough time for the Treasurer to perform the tasks her office must perform before issuing the tax bills to the property owners in the County.

The purpose of today's resolution is to allow citizens and businesses to prepay their taxes and fees for tax year 2020 before the year ends so they can deduct those taxes from their annual state and federal income tax returns for this year. We must approve the resolution before us as written and do whatever necessary to restore effective and cohesive government.

The people of this County should and do demand better of their County Government. It is time that Council deliver on that demand.

LAW ENFORCEMENT USER FEE TIMELINE AND ISSUES

On December 3, 2020 Town of Hilton Head Mayor John McCann sent a message to all residents of Hilton Head Island informing residents that Beaufort County would be collecting a Law Enforcement Charge and Uniform User Fee. That is a true statement. But the statement was incomplete and misleading. The purpose of this statement is to fill in the gaps and to set the record straight.

Beaufort County adopted an ordinance imposing a law enforcement user fee on property in Hilton Head on August 24, 2020. But what residents may not know is that this ordinance was adopted reluctantly and is a result of a letter the County received from Mayor McCann indicating that, after 37 years of paying the County an agreed amount for the municipal police services the sheriff provided to the Town, the Town intended to start reducing those payments unilaterally without any reduction in services. I will discuss that in more detail in a minute. It also fails to mention the numerous failed negotiation meetings between members of County Council and members of the Hilton Head Town Council the sole purpose of which was to resolve issues regarding the payment for Sheriff services so it would not be necessary for County Council to adopt an ordinance which requires property owners in the Town to pay a user fee to reimburse the County for the sheriff's services.

Mayor McCann stated in his message that we are imposing this fee for law enforcement services in the middle of a pandemic and that we should be helping people not harming others. Here are some facts that have been left out of his message.

In May of 1983, the Secretary of State issued a certificate of incorporation to the Town of Hilton Head Island.

In October of 1983, the Town of Hilton Head Island passed three specific ordinances that established how the Sheriff would provide law enforcement services through an intergovernmental service contract, that the town council would also pay for additional services and that the town would also use other state and federal law enforcement agencies.

This relationship has lasted for 37 years. The sheriff provided law enforcement services to Hilton Head Island and the Town paid the County an agreed upon fee to cover the costs of those services. This arrangement allowed the Town of Hilton Head to avoid creating, at considerable expense (many times greater than the annual fee paid to the County), its own police department like that of the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee.

What changed this year? On May 18, 2020 Mayor McCann sent a letter to County Council Chair Passiment that he would have Hilton Head reduce the amount it would pay the county for police services in the amount of \$1,000,000 per year for each of the next three years after which it would pay \$300,000 per year for what the Town believes should cover the costs for beach patrol services, enforcement of town ordinances and other municipal police services.

Meetings were held on June 17, 2020 and June 24, 2020 to try to resolve the issues and, again, to avoid adopting the user fee ordinance. Unfortunately, no agreement was reached. The county budget was adopted on or before June 30 as required by state law. It was adopted without the \$3,400,000 that Hilton Head Island budgeted (and taxed its property owners) for the sheriff's services but which it refused to provide to the county. Those funds remain in the Town's budget. In June of 2020, Beaufort County hired an independent firm to analyze the data and to develop a uniform user fee that could be

used to have Hilton Head reimburse the County for the value of the services rendered by the sheriff to the Town.

It should be noted that there was a three-year contract for the period January 18, 2015 to January 31, 2018. That contract specified that the Town of Hilton Head would pay for sheriff services. It was signed by the county administrator, the sheriff and the Hilton Head town manager. After that contract expired an MOU was drafted in January of 2018 which spelled out services, but it was never signed by anyone. Currently there is an MOU in place dated July 3, 2019 signed only by the town manager and the sheriff. It provides for quarterly payments to be made to Beaufort County for sheriff services. This MOU is for an indefinite period of time. The County is not a party to the contract. The County has not received any payments from the Town of Hilton Head for law enforcement services since June 2020.

The question that Hilton Head residents should be asking is what has the town council done with the money taxpayers paid for sheriff services? Beaufort County Council stands ready to establish an amount of money for sheriff services that may eliminate the need for a user fee.

We await a response from the Hilton Head Town Council regarding another meeting to resolve this issue.



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>A resolution requesting and authorizing the Treasurer to accept prepayments of ad valorem taxes and fees for tax year 2020, due to the Auditor's anticipated delay in the completion of amending the annual tax roll to reflect the correct millage for Rural & Critical Debt Service.</i>
MEETING NAME AND DATE:
County Council Special Called Meeting on December 7 th at 1:00PM
PRESENTER INFORMATION:
<i>Maria Walls and Tom Keaveny 30 minutes</i>
ITEM BACKGROUND:
<i>This issue has come about due to the length of time being taken to update the 2020 annual tax roll, as ordered by the Court, to reflect the correct millage previously adopted by Council. This delay may result in many individuals not being able to pay their property taxes prior to December 31st, 2020 in order to qualify for an income tax deduction.</i>
PROJECT / ITEM NARRATIVE:
The proposed process will be explained during the presentation of this item but, in summary, will entail the use of myBeaufortCounty to accept prepayments for the 2020 tax bills in calendar year 2020 thereby allowing those who wish to claim the property tax deduction on their 2020 income tax returns to do so.
FISCAL IMPACT:
<i>It is projected that the possible liability, if an alternative procedure is not approved, that the liability could be in excess of 12 million dollars.</i>
STAFF RECOMMENDATIONS TO COUNCIL:
Adopt the resolution authorizing the Treasurer to collect <i>Ad Valorem Taxes and Fees for FY 2020/2021 tax year.</i>
OPTIONS FOR COUNCIL MOTION:
<i>Due to the length of time being taken by the Auditor to amend the 2020 annual tax roll, as ordered by the Court, Council hereby requests and authorizes that the Treasurer accept prepayments of ad valorem taxes and fees for tax year 2020 to ensure continued government services throughout Beaufort County and to provide taxpayers the ability to pay during calendar year 2020.</i>

RESOLUTION

A RESOLUTION REQUESTING AND AUTHORIZING THE BEAUFORT COUNTY TREASURER TO ACCEPT PREPAYMENTS OF AD VALOREM TAXES AND FEES FOR TAX YEAR 2020

WHEREAS, it appears that, for reasons which are beyond the control of County Council, the annual real property tax bills which the County is required by law to issue in the last quarter of each calendar year will not be issued timely in 2020; and

WHEREAS, Beaufort County has received, from the South Carolina Department of Revenue, extensions of time to issue the annual property tax bills and the County expects to request and to receive from the department another extension authorizing the 2020 property tax bills to be issued at the beginning of 2021 for the reasons stated above and also extending the time period for owners of property to pay their property tax bills without incurring penalties and interest; and

WHEREAS, delaying the date by which owners of real and personal property must pay taxes on their property will inure to the benefit of many taxpayers given the vicissitudes of 2020. But some taxpayers may, for a variety of reasons, wish nevertheless to make their property tax payments in this calendar year; and

WHEREAS, the Beaufort County Treasurer and representatives of the South Carolina Department of Revenue, have determined that although Beaufort County will not issue its annual property tax bills this calendar year, and that the issuance of such tax bills is ordinarily a prerequisite to a taxpayer’s ability to make tax payments, the Treasurer has the authority, given the exceptional circumstances presented this year, to accept prepayment of property taxes, fees and all other sums for tax year 2020 through the web portal myBeaufortCounty.

NOW, THEREFORE, BE IT RESOLVED THAT Beaufort County Council hereby requests and authorizes the Beaufort County Treasurer to accept prepayments of ad valorem taxes and fees for tax year 2020 through the web portal myBeaufortCounty to ensure continued government services throughout Beaufort County and to provide those taxpayers who wish to do so the ability to make their annual payment of property taxes and fees in calendar year 2020.

Adopted this _____ day of _____, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Joseph F. Passiment, Chairman

ATTEST:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>An update on the Town of Hilton Head Island Sheriff User Fee litigation and settlement negotiations</i>
MEETING NAME AND DATE:
County Council Special Called Meeting on December 7 th at 1:00PM
PRESENTER INFORMATION:
<i>Tom Keaveny and Dawes Cooke</i> <i>30 minutes</i>
ITEM BACKGROUND:
<i>This issue has come about as a result of the litigation filed by the Town of Hilton Head Island regarding the County Sheriff User Fee and their recent attempt to negotiate a settlement.</i>
PROJECT / ITEM NARRATIVE:
The details will be explained during the presentation of this item.
FISCAL IMPACT:
<i>It is projected that the fiscal impact could range from \$0.00- \$4,400,000.00 depending on the settlement negotiations or findings by the court.</i>
STAFF RECOMMENDATIONS TO COUNCIL:
No recommendation.
OPTIONS FOR COUNCIL MOTION:
<i>No motion may be needed.</i>



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Agreement with Hilton Head Island for Land Use Planner for US 278 Project

Council Committee:

Special Council Meeting

Meeting Date:

Monday December 7, 2020

Committee Presenter (Name and Title):

Councilman Rodman

Issues for Consideration:

Councilman Rodman has requested that council consider entering into a Memorandum of Agreement with the Town of Hilton Head Island regarding hiring a land use planner to study the impact of the US 278 project on the neighborhoods and lands affected by the project. The Town has proposed to share the \$70,000 cost with the County. It would be an amendment to the contract for the Mitchellville study project.

Points to Consider:

.

Funding & Liability Factors:

A funding source will need to be identified.

Council Options:

Approve or reject

Recommendation:

Consider the MOU.

WHEREAS, the Town and the County have therefore decided that the County should extend its contract with the Land Use Planner to have it develop a land use plan for the land within and in the vicinity of the Project for a fee of up to but not to exceed \$70,000.00, with that contract extension to be expressly contingent upon the County and the Town entering into the within Memorandum of Agreement which, *inter alia*, provides for the County and the Town to split equally the fee to be paid to the Land Use Planner; and

WHEREAS, the Town and the County have determined that, notwithstanding the fact that the County would be the primary contracting party and the Land Use Planner's fee would be split equally between the County and the Town, that the Town is the appropriate entity to administer the contract with the Land Use Planner and the work thereunder, in material part because a substantial portion of the land subject to the planning is owned by the Town; and

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Town and the County, having been duly authorized by their respective councils, hereby agree that: 1) the County shall extend its contract with the Land Use Planner to have it develop a land use plan for the land within and in the vicinity of the Project for a fee of up to but not to exceed \$70,000.00, and the County and the Town shall split equally the Land Use Planner's fee; 2) the work to be done by the Land Use Planner shall be done concurrently and in collaboration with the Independent Engineering Review, with the Land Use Planner's work to be materially completed no later than the January 31, 2021, i.e., the anticipated completion date of the Independent Engineering Review; and 3) the Town shall administer the contract with the Land Use Planner and the work thereunder, but the nature of that work to be guided by and in furtherance of the objectives set forth in the "WHEREAS" clauses herein.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the dates hereinafter set forth.

WITNESSES:

BEAUFORT COUNTY

By: _____
Eric Greenway
Acting County Administrator
Date: _____

TOWN OF HILTON HEAD ISLAND

By: _____
Steve Riley
Town Manager
Date: _____