1. CALL TO ORDER. Mayor Childs called the special meeting to order at 5:00 p.m. Mayor Childs, Mayor Pro Tempore Ott, and Councilmembers Courtney, Johnson, Pellegrino, Samples and Stevens were in attendance. A quorum was present. Others present: Town Attorney Battle; Administrator Fellner; Town Clerk Herrmann, and Deputy Administrator Harrah.

2. PUBLIC COMMENTS - AGENDA ITEMS. (3 minutes).

Ms. Mary Mabry, 15th Avenue North: First of all, I want to say thank you so much for having this meeting. It is so important. Mayor Childs: Ma'am, would you please give your name and address. Ms. Mabry: Oh, I'm sorry. Mary Mabry, 517 15th Avenue North, Surfside. The main thing I want to say is thank you for having the meeting. It is important for the public, and it's important for you, because we can never be reminded enough about the unique form of government that Surfside has. It's daunting, if you take it in its whole. You [sic] not only legislative, but you are administrative, as well. So, it's a big task, and so thank you for having the meeting, but I'd also like to remind you, and we're talking about some the things I hope the attorney goes into, just because you don't say anything or you don't vote on anything doesn't mean that you're not complicit in the actions of any administrator or anybody, so please, be aware that your silence is often speaking volumes. So I do want to remind you that they're going to be some issues coming up. I hope you keep that in mind.

Mayor Childs: Anybody else? If not, we'll move to business.

3. BUSINESS. Question and answer discussion with Town Attorney Mike Battle, including, but not limited to taking minutes of executive session.

Mayor Childs: We'll move on to the business questions and answer discussion with attorney Mike Battle, including but not limited to taking the minutes of the executive session. Mr. Battle.

Mr. Battle: I am hear your request to answer any questions you have. I can give you an attorney general's opinion, if you want that or I can answer any questions you have, if you specific questions.

Mayor Childs: Does anybody have specific questions for Mr. Battle? Mr. Ott.

Mr. Ott: If you would, thank you, Mr. Battle, would you give us your opinion on the taking the minutes in our executive session, which is on our, we'll start off with that. Thank you.

Mr. Battle: Let me start with a legal opinion, and then go to an experiential opinion that you may or may not want. You can cut me off at any time. Legally you can take minutes in executive session. The minutes themselves should not disclose any information that would be exempt under your Freedom of Information Act. For example, if you were to go into executive session and to talk about an individual and discipline of an individual, and that sort of stuff, you may be able to go in and mention the case name,
but really you should not in your minutes talk about who, the person’s name, because the minutes become public records. So taking minutes would basically boil down to an executive session, the attorney advised us as to such and such a contract or a talk about this employment matter, and, and you can’t take any action in executive session. No votes or anything can be taken, but you could take minutes. They are permitted, but the my question is, and then my thought is how do you approve those minutes and what goes into those minutes, and the minutes, if you’re, if you’re going to do the minutes, and you are going to approve them, the minutes should have the same exemptions, including in them that are in the in the statute that are included in your minutes so that you leave out certain things from the minutes and you don’t name names, and, and you don’t take a verbatim record, and there is authority that you can prohibit a council or councilmembers from all recording verbatim minutes of the sessions. Also, the decision as to whether or not to take minutes is a decision for the council as a whole. The council as a whole acts as a body. An individual would not, if, if, could be subject to discipline, if they were to take minutes and keep the minutes and try to say that those are the minutes, and do that against the wishes of the majority of the body.

Mr. Ott: Okay. One follow up, sir. If we did take these minutes, could we limit them to being just specific items like we said we would hire somebody, and we said what the approximate salary would be, if we said something like that? Could we just do those things without being completely verbatim?

Mr. Battle: I’m trying to; certainly your discussion, but the decision to hire somebody is a public matter. Their salary is exempt if it is under $50,000. If it is over $50,000, then it is a matter of public record. So I’m not sure, if you not make any decisions, what you would want to do. The discussion, you know, I think so is a bad person. I don’t want them to be hired should be left out. But we discussed the employment of the city clerk, and we decided, and, and we discussed the potential salaries and that sort of thing, but no action was taken. And then you come out on the dais, and you say okay, we decided to hire Debra Herrmann as a city clerk and we are going to pay her salary of $60 or whatever thousand you pay her. That’s the way you would do it. But in your minutes themselves, the best rule of thumb is if it’s exempt from disclosure from the statute, it should be left out of the minutes. That’s the way I look at it as my thing. And the minutes have to be something that’s approved by the council as a whole, and that is, is a matter that is not clear. The Attorney General’s opinion says it is not clear, but that’s my rule of thumb. That would prevent you from getting into problems with invasion of privacy; gets you into problems with liability issues. The one thing that all of you should know, and I’m sure you do know, but one thing you should know is that if you disclose any confidential information from executive session, such as discussion of negotiations of a contract, along those lines, and somehow you or some member of your family may get some financial gain out of that, that violates the statute and could be prosecuted in a criminal action.

Mr. Ott: Thank you very much.

Mr. Johnson: For follow up on that if people, councilmembers disclose information from the
executive session, you were talking about liability, or fines or so on and so forth. Let us know about that; your opinion.

Mr. Battle: I’ll be glad to email this to your administrator, or whomever you want me to; your clerk. The opinion is almost directly on point on that issue is a 1984 Attorney General’s opinion and the site on it if you want to go see to it is 1984-WL-566300. It deals with that question specifically, and it has a lot language. It is close to 12 pages long. I’m not going to go into it. Let me just give you a rule of thumb. I think if an individual discloses information that’s in executive session, and the individual is not allowed by council, and y’all agree, and your ordinances say you will not disclose things from executive session, I think that the body has the ability to discipline within its own members; certainly by statute and under Roberts Rules of Order there’s a procedure which is the default procedure in your ordinance, but as far as being the individual being prosecuted or being somehow or other dealt with, that would violate the First Amendment. You have a right to conduct your meetings. You have a right to discipline your own members and deal with your own members, but that is your responsibility. That would not be a court or some ethics panel in Columbia responsibility. Does that make sense to you?

Unknown Speakers: Yes. Yes it does.

Mr. Johnson: Also following up on that what is your opinion of councilmembers recording conversations in executive session?

Mr. Battle: It can be prohibited. There is case law, and there is not any US Supreme Court case law; there is not any South Carolina Supreme Court, or Court of Appeals State Law, but there is case law that says you can; you’re allowed to prohibit that in your ordinances you prohibit the disclosure of information from executive session. So the question is recording. You have somebody that is doing something that the council, acting as a whole, decides that is not proper. They have a right to control their meeting. That is my opinion. You won’t find a law; you also have a right if you find, and let’s assume you have a situation where you have somebody says I don’t care what your say, I’m gonna record; you can’t stop me. That can be then construed as a disruption of your executive session, because people don’t feel free to talk. They don’t feel free; the whole purpose of going into executive session is to go in and be able to exchange sensitive ideas or legal matters, or something along those lines freely and you do have the authority to expel a member who’s being disruptive under statute and under Roberts Rules. I certainly would hope it wouldn’t get to that. I would remind all of you that you have taken an oath to follow the laws and execute your duties according to the law. In doing so, if you have an ordinance on the books that says you won’t do this, and you deliberately disobeyed that or you deliberately ignore it, then there may be a question of whether not you violated your oath, and again that would be a matter for the body to take up in a disciplinary action within the body itself, that is council.

Mr. Johnson: Thank you.

Mr. Stevens: Thank you for coming here, Mr. Battle. Under Section 2-151 of the Surfside Beach ordinance, it says under there, and I’ll be glad to give you a copy of it, it says the town attorney shall
serve at the pleasure Town Council.

Mr. Battle: That is correct.

Mr. Stevens: And it also says it shall be the duty of the town attorney, whenever called upon by the Town Council or the necessity arises to give advice to or/and direction to Town Council or any member thereof. Now, you just said is a statement a few minutes ago that you would contact the administrator, but you're not going to contact council, but it says …

Mr. Battle: I did not say that I was not going to contact council. I said I would send a copy of this opinion so she could distribute it, but any if body wanted it, I’ll be glad to …

Mr. Stevens: Is it fair when you give that opinion to the administrator that you also send it to each member of council so we're fully informed?

Mr. Battle: That’s reason I gave the site. You can get off the Internet. I’ll be glad to give everyone an opinion. It’s an Attorney General’s opinion, it’s a public record.

Mr. Stevens: And I want to go one step further, and this is public information. I’m gonna give you a copy of the minutes of July 24, 2012. We are in the process of this, it is going to be coming before us today about changing the duties of the administrator, and if you go down to line 319, it quotes “Mayor Samples said it was a general statement that the town government, everything that Town Council does is government. The town administrator is not over the legislature.” Would you agree with that statement?

Mr. Battle: The town administrator serves at the pleasure of the council as a whole. That’s a majority.

Mr. Stevens: Thank you. Alright, attorney Moss, Ken Moss, who was our … He said there are also other factions. The administrator does not manage, i.e. the court systems that is managed through the court administration, and some police and fire functions that are managed at state level. Would you agree with those statements by attorney Moss?

Mr. Battle: I might quibble with the way the language is or how it’s interpreted. Let me give you what I think is close to that. I believe that the administrator does not manage court system. I think council can manage the court system through its appointment of the judge, the hiring of the municipal judge. I believe that is a court, I mean a statutory right of council, so to that extent you manage the court system. Police and fire functions, obviously, they're bound by state law and state statutes. I don't think they take direction from anyone other than who is the head however your government set up in the flowchart. Certainly they have to obey all state statutes, and that typically applies to criminal matters, because the city cannot make a matter a criminal matter by ordinance unless it is also recognized by statute or common law as being a criminal matter.

Mr. Stevens: Okay and I will continue on, and in this. Like I said, this is public minutes. July 24, 2012. The mayor said in his opinion the first duty of administrator is to ensure that the elected officials are fully informed with each member receiving the same information, and then he stated over the past
two administrator that has not happened, in his opinion. Under, and I’m gonna give you a copy, this is
the previous law, and this was the law that was adopted. Would you agree that the duties under the
duties of the administrator is to keep the Town Council, each and every member, fully informed with the
same information?

Mr. Battle: Now, which one is the current one? The large print?

Mr. Stevens: The other one with the bigger print is the current one, and the one has a date on
the bottom of 2/25/2008, which that was a previous ordinance, and the other one is a …

Mr. Battle: The other one has been replaced, correct?

Mr. Stevens: Yeah.

Mr. Battle: So, the only one need to be concerned about is what’s in the law now.

Mr. Stevens: Yeah.

Mr. Battle: I would refer to Section 2-113 (A), it says the town administrator is responsible for
keeping the Town Council fully informed to support Town Councilmembers fulfillment of their fiduciary
responsibilities, and to better represent the citizens. That is what it says.

Mr. Stevens: Yeah. So that would Mayor Samples’ statement be correct that everybody, every
councilmembers needs to be treated exactly the same. All information needs to go to each
councilmembers, the same information.

Mr. Battle: You know, to pull a rule out of the air like that, first of all, you’re talking about it
hasn’t been done by previous administrators. I have no knowledge of that matter. As to information
informing the councilmembers, if all of the councilmembers want the information requested, they are
entitled to it. I have no question with that.

Mr. Stevens: Okay, alright. But should the administrator inform, it says her duties are to fully
informed Town Councilmembers, and I would say Town Councilmembers in plural would be all Town
Councilmembers.

Mr. Battle: I agree with that. I don’t have any problem with that. What I’m thinking about is the
nuts and bolts of let’s say, the administrator has a conversation with you about an issue that you bring
up to the administrator regarding a pothole that needs to be fixed in your neighborhood.

Mr. Stevens: Right.

Mr. Battle: I don’t necessarily think she is required to send out a memo to all members of
council that that pot hole is going to be fixed, because …

Mr. Stevens: That make sense. That makes sense.

Mr. Battle: Well, I hope so.

Mr. Stevens: Okay, and on the same minutes, July 24th, on the second page, starting a line 336
with Mayor Samples, it says Mayor Samples said it would be imprudent for an administrator to take such
drastic actions as hiring or firing a department director unless it was because of moral outrage or similar
circumstances that were documented, and I emphasize “were documented.” He further stated in the
past, department directors were not hired nor terminated without council approval. Department directors are critical to the town function. Attorney Moss, who was representing the town at that time, said in his opinion, the authority to hire and fire department heads is not in the proposed ordinance that the authority is in the current ordinance. Adopting the amendment would remove that authority from the administrator. Councilman Smith asked if designated the administrator to chief administrator of the town gives them that authority. Mr. Moss said there was no express authority in the draft ordinance, so in his opinion, it did not. Do you agree with that statement?

Mr. Battle: I can't agree or disagree with that. I'm not at all …

Mr. Stevens: Can you give us your legal opinion on it?

Mr. Battle: Council can set the duties of the town administrator. If you say you can't hire and fire without the permission of council, I think you have the right to do that. If you don't say that and the part of the contract or ordinances are such that the administrator can hire and fire without Town Council permission, the administrator can do that. I think is purely a matter of your discretion as to how you want to proceed and how you want the administrator to function, and what duties you want to authorize. I don't know of any statute that requires you to act outside of your discretion.

Mr. Stevens: Okay. Alright, that's good enough. I want to give you this. This is state law, and just wanted to discuss some of the sections. This is under Title Five, Municipal Corporations, Chapter 11, Council Form of Government. As you may know, under our town ordinance, we are listed as a council form of government, and under Section 5-11-30 it says legislative and administrative powers of the municipality vested in the municipal council. All legislative and administrative powers of the municipality and determination of all matters of policy shall be vested in the municipal council. Each member of council, including the mayor, shall have one vote. Now, under our code, under our ordinance were under council form of government. Under state law, is this, am I correct in assuming that what we have is that we are a council form of government, and that we have the legislative and administrative powers as stated by state law. Am I correct?

Mr. Battle: You are correct. But, let me say this, that doesn't prevent you from delegating any administrative authority you want to, and allow any discretion you want to delegate to any administrator or assistant administrator. You can delegate that authority.

Mr. Stevens: Okay. Yeah.

Mr. Battle: It's vested with the council.

Mr. Stevens: But council does have legislative and administrative powers?

Mr. Battle: That is what the statute says.

Mr. Stevens: Okay, alright, that's fine. I'm gonna go a little further, and I want to hand you this right here, and I want a clarification, because this is, I got this from US Legal, it's a legal website, and it gives the existence of a contract, and requires seven items. Now under the current contracts that we have, and I'm gonna let you look at these, I want a clarification on this. On each one of 'em, it has terms
on dated on a certain date. You, if you could read those terms, and where it says terms on ...

Mr. Battle: I've read these documents.

Mr. Stevens: Okay, under Section 6 of the existence of a contract, a legal contract, it says terms and conditions for performance, but under these two contracts I gave you there's no terms or conditions.

Mr. Battle: Bear in mind that the written document is a record, but it is not necessarily the contract. The contract is formed by the instructions you give, it's formed by whatever the ordinances are you have a situation where you have reference to other terms that they have been going on since 2015 and 2016. It is an understanding. What is a contract is a meeting of the minds. I understand these things are good, and we had them all in law school. But, I can tell you that court of law, if there's an understanding between the parties as to how much you're going to get paid, what your job's going to be, and how long you're going to do it, you've got a contract. It can be verbal; it can be written. It doesn't matter.

Mr. Stevens: My problem when I, and that's the reason I voted against it, if you look at the latest one.

Mr. Battle: I see it.

Mr. Stevens: I, I did not vote for that because there were no terms and conditions written out,

Mr. Battle: I see that.

Mr. Stevens: And to me that's not a meeting of the minds, if I have nothing that spells out any terms.

Mr. Battle: Okay.

Mr. Stevens: Am I correct?

Mr. Stevens: No, sir. The contract does not have spell out in the body of the written document; the contract does not have to spell out the terms and understanding of the parties. Besides that, you've got one, two, three, four, five, six people who felt that they did have an understanding and meeting of the minds, and I assume you also feel you had the person who was the contracting party had a meeting of the mind and has been forming and acting in accordance with that since that point in time. So, I disagree with you that it has to be in the written document. We have memorandums of leases that we record in the courthouse all the time that just simply say there's a lease between these parties, and that's is sufficient to be evidence of the lease. Contracts, the only time that you have an issue with contracts is under the Statute of Frauds, and that is raised as an affirmative defense. That's when you have contracts that deal in the real estate, or contracts that have to be performed in excess of a year, or something along that. You don't have any writing or anything signed by either party and then somebody can raise a defense of Statute of Frauds, but you can waive it, also.

Mr. Stevens: Okay. My question is would you recommend that these terms be written out?

Mr. Battle: I think that it is always best to write; if you want to be right, you write.

Mr. Stevens: In other words, full disclosure.
Mr. Battle: Full disclosure, certainly.

Mr. Stevens: Okay, alright. I’m gonna will share with you an email. This is another question I have. As you see, once you look at this, this is an email from you sent August 23rd, 2017 at 4:41 p.m. It was sent to Micki Fellner, and it was, the subject was executive session audio from ‘Keeping it Real’ I don't know what that is, but I think it's Facebook, I believe. In the second paragraph, and I highlighted it, as you said there are some other remedies that may be available. Section 5-7-210 allows council to set conditions for forfeiture of office. This is, that it is essentially an impeachment proceeding. It is a long and expensive process. I do not recommend it. By the way, here’s the law. I’ve brought the law with me. Are you familiar with it? (Mr. Battle indicated yes.)

Mr. Stevens: Okay, my question is, is why would somebody from town, from the town of Surfside send you an email and request information about [an] impeachment hearing? Is there member of this council that was referred to for impeachment?

Mr. Battle: I do not have the ability to waive any attorney-client privilege. If the body as a whole wants to vote to waive it, I'll be glad to answer your question.

Mr. Stevens: I would like to know.

Mr. Battle: You need a motion and a resolution to waive it.

Mr. Ott: I’d like to make a motion to waive that so that we can hear the client/attorney privilege so we can actually hear the name and who it was.

Mr. Stevens: I second.

Mr. Ott: All those in favor?

Mr. Ott, Mr. Courtney and Mr. Stevens: Aye.

Mayor Childs: Three ayes; insufficient number.

Mr. Johnson: I'm not really sure that I want to go there.

Mr. Stevens: Pardon me?

Mr. Johnson: I'm not really sure that I want to go there, but ...

Mr. Stevens: Well, it is somebody from town, from this town ...

Ms. Samples: Mr. Mayor, could we have quiet in the room, please.

Mayor Childs: Gavel.

Mr. Stevens: Somebody from this town, recommended somebody for impeachment.

Mayor Childs: Would you hold up, Mr. Stevens, please. We've got a motion. Can we; Mr. Johnson you would like to be heard?

Mr. Johnson: Can I get some clarification? Would it be from; would you mention names?

Mr. Battle: No, I would not.

Mr. Johnson: Oh, okay. I'll vote for it.

Mayor Childs: Okay, motion approved.

Mr. Battle: I was requested to say what happens if individual members of city council published materials that were brought up in executive session. No names were given. What, if any, would be the
possible way to punish them or sanction them? The Attorney General’s opinion was on the exact same
question. It was not specific; no names were made. I certainly don’t recall anybody being singled out. It
was just the question was asked what can we do, and told him in my email, I said I can’t find any
authority on the subject one way or the other, which is true. The second part of it is it’s your ordinances
which prohibit that are presumed to be Constitutional, but to violate, you have a general ordinance that
deals with a violation of an ordinance may be considered a misdemeanor. So, I anticipated the question
whether that would violate the First Amendment to prosecute somebody on a First Amendment basis;
you can’t do that. I don’t do that, I don’t think you could. Then I went on the next step and okay, if you
can do that, what’s available to you? Then I said 5-7-210, which I told y’all about earlier, about the
statute giving you the right to sanction and discipline your own members or remove ‘em. I told the
administrator about that particular statute, and then I said, I don’t recommend considering going down
that road, because is a long expensive, unnecessary process. There was no individual member of council
singled out. I have no idea who has been violating or has been going against the code, or the executive
orders. As you know, I don’t come to these meetings unless I’m requested to, so I have no idea who is
being referred to. I don’t think it was any attempt to; I was not specifically asked. I will say I was not
specifically asked how do you impeach a member or what do you do to impeach a member or anything
along those lines. I don’t think that was ever the intent. Basically, it was the intent of some members are
upset with stuff being discuss in executive session being disclosed to the public and does that open us up
to liability, and what can council as a whole do about it.

Mr. Stevens: Okay. I’m gonna ask another question on that.

Mr. Battle: Sure.

Mr. Stevens: This was sent to the administrator, Mickey Fellner.

Mr. Battle: Correct.

Mr. Stevens: So, she is executive, the executive administrator or the administrator of the town,
and she works at the pleasure council. I would have to assume either she did this on her own or
somebody directed her.

Mr. Battle: I don’t know.

Mr. Stevens: That, that’s the question that is, that I have to ask, because she works at the
pleasure of council. Why would she send an email having any question about impeachment?

Mr. Battle: First of all, let me correct you. There was not a question about impeachment.

Mr. Stevens: There was none?

Mr. Battle: The question was solely about executive sessions, and how to sanction or how to
prevent [sharing information.] The impeachment came solely from me. It was not asked for, and I was
just giving an example, just like I gave you the example of the pot hole. It has nothing to do any request
for an opinion. I get requests for opinions from your fire chief, from your police chief; I get requests from
your assistant administrator, and I get requests for opinions from your clerk, and from your
administrator. I respond to those requests and try to answer in as brief and as sensible way that I can.

Mayor Childs: Mr. Stevens, let Mr. Ott (**). You’ve had enough time, let Mr. Ott ask a question.

Mr. Ott: Thank you, Mr. Battle, and I’d like to make just one statement on that, and I think it was almost the entire council that wanted to know where this was coming from and it wasn’t just the administrator. I believe that when we were in that executive session, we asked for that to be done. If I can have anybody else say anything on that? If I remember correctly, we wanted to know how did that information get released. That’s what we asked.

(** several speaking at once.)

Mr. Stevens: And I think you explained earlier that if we wanted to record or keep minutes of executive session, we could.

Mr. Battle: I think council can prevent you from recording it.

Mr. Stevens: No, I’m talking about, the whole council. If we voted … that’s what I’m saying.

Mr. Battle: Oh, yeah, if the whole council voted to recorded it … I think that you are, you would be violating the Freedom of Information Act to go into executive session and record it, simply because there is no need to go into executive session and then have a public document come out. You have to go into executive session; you have to have a reason to go into it. You can’t simply go in because you feel good and talk about it. If you go into executive session and you record it, then that recording becomes a public document and it’s like it didn’t occur. To me, if you’re going to have that kind of record of what takes place, it becomes a public record under the Freedom of Information Act. The best thing to do is do it out here on the dais, and let everybody be aware of what is going on. I see no reason for executive session in that situation, and I feel like that often times the reasons for going into executive session are sometimes abused; not this council, but such, and I say that. But, I have seen it abused in other situations.

Mr. Stevens: And, we have had members of the press that said that in some cases, we have violated Freedom of Information on executive sessions. What is your suggestion as our town attorney for reasons to go into executive session? I realize it seems like sometimes we go in executive session every time we turn around, and I’m thinking, well do we really need to do this. What is your recommendation, your recommendation as our attorney in your, your legal opinion of why we should go into executive session.

Mr. Battle: Those exceptions are set forth expressly in the statute. My opinion is you should follow the statute, and you should have a majority vote of council after a proper motion, and resolution to go in. If it doesn’t fall within one of the exception exemptions, you shouldn’t go into executive session to discuss it.

Mr. Stevens: Okay.

Mr. Battle: I haven’t memorized the statute, but one of them would be employment matters; contract negotiations; to receive legal advice; those types of things.
Mr. Stevens: This is a question that goes to all the council. Would you, would council have any problem with the attorney Battle sending us, all of council, a memorandum, legal opinion outlining our reasons for going into executive session, so we'll have a full legal knowledge and understanding of it?

Mr. Battle: I would be glad to send you the statute, because it's very clear.

Mr. Stevens: Could I have a consensus on it?

Several members concurred by voice or indicated agreement.

Mr. Stevens: Thank you.

Mr. Battle: Very good.

Ms. Herrmann: Mr. Mayor, was that a consensus?

Mayor Childs: Does anybody else have any questions here?

Mr. Courtney: Ms. Samples.

Mayor Childs: Ms. Samples, do you? (Ms. Samples indicated no.) Okay, Mr. Stevens, continue.

Ms. Herrmann: Mr. Mayor was that a concurrence?

Mayor Childs said yes, concurrence. Council CONCURRED.

Mr. Stevens: I have another question.

Mayor Childs: Mr. Stevens has a question.

Mr. Battle: Yes, sir.

Mr. Stevens: I'm gonna give you another document. This is a public document.

Mr. Ott: I don't think that's for this.

Mr. Stevens: We are currently in the midst of a lawsuit and the one of the defendants is the town of Surfside. Normally on lawsuits we are represented by any insurance firm out of Columbia. And I see on this lawsuit from the Horry County 15th Judicial Circuit Case Number 2016-CP-260-5531 that you are representing the town.

Mr. Battle: That is correct.

Mr. Stevens: Alright. How much is that costing the taxpayers?

Mr. Battle: My hourly rate is $225 an hour, and I bill on an hourly basis.

Mr. Stevens: Bill on an hourly basis. How many hours did you say you have now tied up in this case?

Mr. Battle: I really don't know. I would estimate the case is going to end up costing the town between $15,000 and $20,000.

Mr. Stevens: Fifteen to $20,000?

Mr. Battle: Yes, sir. If I can go further, we submitted this to the insurance company. The insurance company denied coverage. They said we were not covered; it did not come within our policy. They asked me to go ahead and defend it. I made the motion to try to get it dismissed on a legal charge. The judge would not do that, so we then had to go through discovery. We're now going through, getting ready to go through a mediation. There is a possibility, and I have discuss this, there is a possibility that
at the end of the case to bring an action against the insurance company. [My] brother does it all the time for bad faith in refusing to cover the claim. That is a possibility, but for right now, the town had to defend the claim, and I was the town attorney and they asked me to do it as I have experience in these types of claims.

Mr. Stevens: Okay. So, are you thinking before this is over we’re gonna spend somewhere in the $25 to $30,000 range?

Mr. Battle: It’s very possible.

Mr. Stevens: [Whistled] Okay. That was just a question.

Mr. Battle: And, I’d be glad to brief you in executive session as to what your liabilities are and why there may be liability.

Mr. Stevens: Okay. That I would like to find out.

Mayor Childs: Is there any further question? Mr. Ott.

Mr. Ott: Thank you. I have one question and it is basically a lot of what Councilman Stevens went over, and it’s in reference to the duties of the administrator. What confuses me is that it stated in there that the attorney that was present that evening said that the statute was not going to be changed, but I didn’t understand why this council sat here and voted on the judge, and it was not the appointment of the administrator. She did not do it. We had another in a[n] executive session. We voted on not to discharge a director, and even before I was on council, the council under those rules voted on the police chief, which is Rodney Keziah. It states in the employee handbook, also, that the administrator may discharge or at the pleasure of council at the recommendation of council. So I do not believe that that ordinance was changed at all, because of those facts, and the administrator has never had that ability to do that without the approval of council.

Mr. Battle: Usually, and I don’t know, because I was not asked and was not given information that I was to be looking at that point, so unless I look at your ordinances, and all that sort of stuff, usually council sets the policy; hires an administrator to take care of personnel matters, because if you’ve ever been involved in personnel matters that is a very time-consuming thing, and y’all will be having special meetings regularly, and your job duties will increase. As far as what the duties of the, what the rights of the administrator are or are not that is something that would have to go and look at the ordinance. What it says in the ordinance, I do not have that in front of me. And then I would have to look at y’all’s past practices and customs.

Mr. Ott: I would appreciate it if you could do that for us and stated what happened and was it changed or was it not changed at that time, because of the practices since that date where council was approving all directors at that time up until recently. Mr. Battle, this has been a very, very nice meeting here with you. I appreciate you coming here. It helps us a lot.

Mr. Battle: Thank you.

Ms. Samples: We need a concurrence on what Mr. Ott just suggested that the attorney do. You
need council concurrence. One councilmember cannot direct.

Mayor Childs: Do we have a concurrence of council?

Mr. Stevens, Mr. Ott, Mr. Courtney, and others said or indicated. Yes.

Mayor Childs: You have concurrence. Mr. Courtney.

Mr. Courtney: Good evening, Mr. Battle. Thank you for coming. I was the one that invited you and I thank you very much for being here. I just want to try to sum this up a little bit. I’ve been listening very carefully to what you said, and what you’re basically saying with executive session that is should only be personnel matters of discipline and hiring, and firing should be up here on the dais of the directors, is that correct?

Mr. Battle: If council does it, it has to be done on the dais. If you, you can only act through ordinance or resolution. So, that’s how you would go about it, and I don’t, you cannot go back in executive session and fire somebody. That’s my opinion.

Ms. Herrmann: May I ask Mr. Battle to explain “resolution,” please, to the council. That’s not a term that we use in the sense that you’re referring.

Mr. Battle: A resolution is a first reading only vote of the majority based on a motion and a second. An ordinance requires two readings. So, you could by resolution, say I hereby move to terminate such and such, so-and-so, and/or terminate, you don’t even have to name who it is, this person. You can discuss it in executive session, but when you come out on the dais, you’re going to have to do it by public vote.

Mr. Courtney: I’d also like to ask you about recording in executive session, and I apologize, I really want to send you out questions, but unfortunately our mail system, the integrity of our mail system has been compromised. I had department emails that have been posted all over Facebook, which the chief of police has been notified about, and they weren’t sent out by me. So this is where we have a problem here. Go into executive session, you said before it should really strictly be personnel issues, as far as discipline, and hiring. Firing should be up here, correct?

Mr. Battle: The act itself. Now your discussion and the privacy of what you want to discuss and criticisms and all that sort of stuff can be done in executive session, but the act to do something, they want a public record of who voted for and against.

Mr. Courtney: The reason I bring us to your attention is because since 2012 the Council has hired over 17 directors on this dais. We’ve, and even gone as far as hiring our police chief, our fire chief, our town clerk, hiring code enforcement, appoint judges. We appointed our judges that we have currently now. So by this, from reading here is that we, the council is a council form of government. We appoint our directors, correct?

Mr. Battle: If you’ve delegated that authority to someone else, they can do it as well as you. I think is any reason why you can’t. I mean, as a practical matter, you can say, you can instruct the administrator, which is one of the things I do with some towns and say look just instruct your
administrator to hire this person, or you can instruction your administrator to terminate this person. But, that sort of resolution or whatever is something that should be done from the dais. You should do that. In certain cases, you would have to conduct a hearing, and then rather than having a grievance procedure, you’d have to have a hearing and let that person have an opportunity to speak, and give reasons why they should not be terminated, and then the person on the other side who is recommending the termination would be allowed to come in and then the two come together, and then y’all act as a quasi-judicial body.

Mr. Courtney: So, it would be up to Council is what you’re saying, on this dais?

Mr. Battle: I think, and as a practical matter, let’s say you don’t agree with the decision of your administrator. I think you can override that decision. You may have to change some of your ordinances. I haven’t, like I said, I haven’t researched what your ordinances said.

Mr. Courtney: So it is up to council is what you’re saying.

Mr. Battle: Yeah. (***) Let me, let me say just one thing, again, if your ordinances prevent you from doing that you’ll have to go to an ordinance. If your ordinances don’t prevent you from doing that you can do it by a single reading through a resolution. But, you have to have a majority.

Mr. Courtney: So based on, also, you had said about verbal contracts. Now, I find that to be very weak, to be honest with you. If I was going to have a contract, I would have a written contract. Would you agree?

Mr. Battle: That’s what lawyers are here for.

Mr. Courtney: Basically, he said, she said, is where we get down to.

Mr. Battle: But you have them all the time, and they’re enforceable.

Mr. Courtney: So, as far as executive sessions and taking minutes, and I believe in transparency, and I believe that the taxpayers have the right to know what goes on executive sessions. What I gather from what you’re saying is that this council has been going into executive session way too much, according to your emails.

Mr. Battle: I’m not saying that. I’m not saying that at all. I haven’t been to these meetings enough to know what you go into executive session for and what you don’t do. You’re putting words in my mouth, now.

Mr. Courtney: I didn’t mean to do that, sir. I’m sorry.

Mr. Battle: That’s okay.

Mayor Childs: Mr. Courtney, do you have any further questions?

Mr. Courtney: No, Mr. Mayor.

Mr. Ott: Mr. Battle, as being an elected official sitting on this dais, do I have the privilege to call your office and leave a question for you?

Mr. Battle: If you ask me a question, I’m going to give you an answer.

Mr. Ott: That’s what, that’s what I wanted to know. Thank you. If it required a little bit of
Mr. Battle: If you asked me a question until council tells me not to. If council tells me not to, I
won’t. But, right now, my thing is, is that I’m to serve all of council, including the individual members,
and if they have questions, I’ll be glad to answer them as best I can. I don’t; that kind of formality is a
little more than I’m used to.

Mr. Ott: Okay. Thank you very much,

Mayor Childs: Is there any further question?

Mr. Johnson: No, sir.

Mayor Childs: If not, thank you very much, Mr. Battle, for coming.

Mr. Courtney: Thank you, sir.

Mr. Battle: Do you want me to explain the Lazar suit to you in executive session, and if you want
me to stay for the whole meeting, or if you want me to be excused and do it at a later time, I do think
you should understand what’s going on in the Lazar case, and what the issues are, and why the town has
been sued.

Mayor Childs: Mr. Battle …

Mr. Stevens: I would.

Mayor Childs: Mr. Stevens, hold on will you? Would we like Mr. Battle to come back on this at a
later date, because we have a pretty full agenda tonight? Several councilmembers said yes.

Mr. Battle: No problem. No problem at all.

Mayor Childs: Thank you. Thank you Mr. Battle.

Mr. Courtney: Thank you, Mr. Battle. I appreciate you coming out.

Mr. Battle: Am I excused?

Mayor Childs: Yes, you are. Thank you.

Mr. Ott: Thank you very much.

Mayor Childs: Okay, we stand adjourned on this special meeting. (6:24 p.m.)

Prepared and submitted by,

Debra E. Herrmann, CMC, Town Clerk

Approved: January 23, 2018

VOTE: Yes No

SURFSIDE BEACH TOWN COUNCIL

Robert F. Childs, III, Mayor

Ron Ott, Mayor Pro Tempore
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