



TOWN OF SURFSIDE BEACH ♦ TOWN COUNCIL CHAMBERS
March 04, 2008, 5:30 o'clock p.m.
SPECIAL TOWN COUNCIL MEETING MINUTES

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6 **1. CALL TO ORDER.**
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8 Mayor Hyman called the special meeting to order at 5:30 p.m. and expressed the purpose of the
9 meeting was to discuss the coverage of legal counsel for Mr. Bill McKown involving a pending lawsuit.
10 Mayor said the issue was brought to his attention on Monday by the Town Administrator who requested
11 guidance on behalf of the Town Attorney, David DuRant and the Town. Mayor said the Town
12 Administrator informed him that no action could be taken without Town Council approval. Mayor Hyman
13 turned the matter over to the Town Administrator who introduced Town Attorney, David DuRant.
14

15 **2. DISCUSSION**
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17 Mr. DuRant appeared on behalf of the Town and referred to the Cause of Action noted as Grandell
18 vs. William McKown and Kirkland McQuiddy. The lawsuit was filed in January 2008. Mr. McKown
19 approached Mr. DuRant a few weeks ago asking if the Town of Surfside Beach was going to provide him
20 with a defense in this case. Mr. DuRant advised Mr. McKown that he was not in a position to make that
21 decision but advised him to take the summons and complaint to Mr. Booth, Town Administrator for
22 submission to the Insurance Reserve Fund for consideration of defense. Mr. DuRant said since that time,
23 the Insurance Reserve Fund has denied the provision of defense for Mr. McKown as the allegations that are
24 maintained are outside the scope of Mr. McKown's employment as a Town Council member. Mr. DuRant
25 called the council's attention to the three "Causes of Action" that were brought against Mr. McKown. 1.
26 *Defamation* – An allegation made that is an intentional act where Mr. McKown allegedly made false
27 statements regarding the Plaintiff; 2. *Third Party Interference With a Contract* – An intentional interference
28 with a third party contract; 3. *Intentional Infliction of Emotional Distress*.
29

30 As a general rule Mr. DuRant said, the Insurance Reserve Fund will not provide the defense for
31 intentional acts, which is why they are not providing Mr. McKown with the defense. Mr. DuRant added
32 that he could affirmatively state that the Town Council has no legal obligation to provide Mr. McKown
33 with a defense at the Town's expense but the Town Council can do so if they want to for other reasons.
34

35 Mayor Hyman asked if the Town has ever provided defense before. Mr. DuRant recalled only the
36 defense provided for Ms. Hiatt in conjunction with the lawsuit by the Surfside Beach Rescue Squad. Mr.
37 DuRant said he filed an answer for Ms. Hiatt with the stipulation caveat that at that time there was no
38 appearance of a conflict but, if a conflict arose Ms. Hiatt would need to seek outside counseling because
39 Mr. DuRant would be representing the Town.
40

41 Mayor Hyman asked if Mr. DuRant had filed an answer for Clyde Merryman who was also named
42 in the Surfside Beach Rescue Squad lawsuit. Mr. DuRant said he did not recall doing anything for Mr.
43 Merryman.
44

45 Mayor Hyman asked for Council Comments.
46

47 Mr. Samples stated that regarding the Rescue Squad suit, the Town is a party to that suit and asked
48 why the Town is not a party to this case involving Mr. McKown. Mr. DuRant said he had no idea why this
49 suit was filed and frankly, he expects it to be probably dismissed on a 12-B6 Motion because Ms. Grandell
50 was not terminated but laid off due to economic slow down. It appears to be a frivolous lawsuit but; these
51 are allegations at this time.

52 Mayor Hyman said he for one is seeking advice from Mr. DuRant as to the Town's obligation. At
53 the time of the alleged "Causes of Action", Mr. McKown was a member of Council Mayor Hyman said and
54 the concern is, are council members liable to anyone without any legal representation.
55

56 Mr. Martin agreed with the Mayor's statements and concerns and said that being on council makes
57 an individual a target. If Mr. McKown would not have been on council, he likely would not have been
58 sued Mr. Martin said, and added would probably not have been involved. As a council member I would
59 like to think that the council would come to my defense if someone filed a "frivolous" lawsuit against me
60 and by not defending Mr. McKown, we would be setting a precedence Mr. Martin said.
61

62 Mr. Truett asked Mr. DuRant if council would be able to just file a response at this time to this
63 lawsuit. Mr. DuRant said he was not certain when Mr. McKown was served but he has 30 days from that
64 day to file the response. Based upon what Mr. Booth has said, the lawsuit appears to be frivolous. Mr.
65 Truett asked if this lawsuit could be handled similarly to the way it was handled with Ms. Hiatt, with a
66 caveat that if this were to move forward past the response that you [Mr. DuRant] might write for Mr.
67 McKown, then the council revisit this issue at that point. Mr. DuRant said that would be a council decision
68 and added; council can put stipulations and a caveat on the cost of litigation because you are not legally
69 obligated to provide defense. The allegations are dealing with issues that were outside the scope of Mr.
70 McKown's position as a town council member. That is why the Insurance Reserve Fund denied the
71 request for defense and that's why Mr. McKown has come back with this request that council consider
72 paying for the cost of the defense. As far as putting caveats or stipulations on the decision made tonight is
73 up to council. Mr. McKown needs direction from council so he can either hire his own counsel or council
74 can direct me to file an answer and appear on Mr. McKown's behalf which is why I'm here because I can
75 not make that decision and Mr. Booth can't make that decision. Only Town Council can make the decision
76 in which direction we should go.
77

78 Mr. Samples asked if council knew why the Insurance Reserve Fund denied this. Mr. Booth said
79 for the same reason that Mr. DuRant is here; there is no legal obligation on behalf of the town. Mr. Booth
80 said they viewed this as an individual matter because the Town was not mentioned. Mr. DuRant said it felt
81 the reason to be twofold. The Insurance Fund will provide a defense for individual employees or anybody
82 who is negligent or does something in the scope of their employment with the Town that causes someone
83 else damage. The town does not have to be named. The Fund looks at the "Causes of Action" and the
84 "Causes of Action" of this particular pleaded case are not negligent course but are intentional or semi-
85 intentional course; defamation, potential infliction of emotional distress, all of those things are not covered
86 under the Insurance Reserve Fund.
87

88 Ms. Hiatt said that the insurance then is basically saying that even though a council person is acting
89 in the best interest of the Town, does not mean they're going to provide the defense because that is what
90 happened with the other lawsuit. Of course false accusations can always be made and that's usually what
91 happens but whenever a council person is acting on behalf of the town, Mrs. Hiatt is she felt the town
92 should stand up for any council person. Mr. DuRant said again, all of the "courses" are allegations, which
93 are unproven, and anyone can make them and Mr. Martin is correct when he said that council members are
94 in public office and are targets that will be subject to more frivolous lawsuits. Mrs. Hiatt said anytime they
95 don't like what you're doing, even though it's in the best interest of the town, a person can attack a council
96 person or any other employee of town.
97

98 Ms. Tuttle said she understands that the Insurance Reserve Fund is not defending Mr. McKown
99 because they consider he acted outside of the scope of authority. Mr. McKown said that is correct. Ms.
100 Tuttle said having said that, Ms. Tuttle continued by saying there has been a request for a jury trial and
101

102 there is a lot of sympathy with the jury for the “underdog” or “poor me” who has been beaten up on. Ms.
103 Tuttle said taking that risk with the jury trial, if we provide the defense and damages are awarded, will the
104 town be liable for the damages? Mr. DuRant said the Town has not been named as a party in the defense.
105 Ms. Tuttle said if we provide Mr. McKown’s defense is the Town assuming the liability? Mr. DuRant said
106 no will not be liable unless they would re-plea the Summons & Complaints the Town would not be
107 responsibility for Mr. McKown’s judgment. Ms. Tuttle said if we provide the defense.....Mr. DuRant
108 asked if Ms. Tuttle was asking for a release from Mr. McKown? Ms. Tuttle expressed concern that there
109 may be an assumption on Administration’s or Mr. McKown’s part that the town would be responsible. Mr.
110 DuRant said he would think that since this is at Mr. McKown’s request and he knows who he is getting to
111 defend him in this case, if you agree to pay for the defense, Mr. DuRant said Mr. McKown could not then
112 say, “I don’t want Mr. DuRant as my attorney”. Mr. DuRant said he felt sure Mr. McKown would sign a
113 waiver releasing the town or council from any liability.

114
115 Mr. McKown approached the podium and said he checked with a couple of attorney’s in the area
116 (Sid Connor and Tommy Britton) who stated the council does have a responsibility because if there is an
117 opportunity to read the lawsuit, it is not outside of the town function because everything that’s being
118 charged is saying I acted as a council member to remove her from her position which is not correct or true.
119 Mr. McKown said the lawsuit is predicated on her referring to me as a council member not as an individual
120 as Mr. Martin mentioned earlier. There has to be a response done because the report was given to Mr.
121 Booth about 20 days ago and there is a time limit of 30 days. If there is not a response within 30 days, the
122 judge can have a judgment for the Plaintiff and I will be held in default Mr. McKown said and referred to
123 the lawsuit in the county with Ms. Angus which was thrown out of court because the State of South
124 Carolina is an At Will employment state which states that anyone can be fired for any reason. Mr.
125 McKown said he has to make a decision today as to whether there is no response from council to this or if I
126 must obtain outside representation because of the time constraints. Mr. McKown said if any other council
127 member was in the same situation they would want the town to stand behind them as well.

128
129 Ms. Tuttle said she wanted to clarify for the record a demand for a Jury Trial on the Civil Action
130 Coversheet. Ms. Tuttle said a policy is needed regarding this type of situation so that town council does not
131 have to review each case on a case-by-case basis. She said she felt we have set precedence when the town
132 offered a response for Ms. Hiatt in the Surfside Rescue Squad case. Based on recent precedence, the
133 minimum done should be to set a policy to authorize a response. Beyond that, it would be up to advice
134 from the attorney. Mr. DuRant said currently, the town is not a named party in this case so there is
135 obviously no conflict of interest but if a conflict did arise, Mr. DuRant said he would have to reclude
136 himself because he is the attorney for the town. Ms. Tuttle concluded by saying town members do have
137 designed duties and responsibilities by law and one can operate outside of those duties and responsibilities.

138
139 Mr. Samples reiterated the reason that the Municipal Insurance Reserve Fund did not take this case
140 is because the allegations indicate Mr. McKown operated outside his authority as a council member. Mr.
141 Samples stated that Mr. McQuiddy was also named in the lawsuit so there is a non-council member named.
142 Mr. Samples felt it bad precedence because if in fact it is frivolous in nature that should be determined
143 rather quickly and inexpensively. Mr. Samples expressed a concern that if in fact the lawsuit is not of a
144 frivolous nature, taxpayer’s money is being spent and he could not support that.

145
146 Mr. Truett reiterated what he said previously and agreed with Ms. Tuttle in that there is a need for
147 clear rules regarding council and its representation. Mr. Truett said he had no problem asking the attorney
148 to file a response on behalf of Mr. McKown because in his opinion, this is a frivolous lawsuit and should be
149 thrown out and according to Mr. McKown, the other attorney’s feel the same way however if it comes to a
150 trial, this council needs to revisit this.

151 Mayor Hyman said everything is now an assumption because we are only hearing one side of the
152 story. We do not know what Mr. McKown did or did not do. Mr. McKown was a member of this council
153 for the Town of Surfside Beach at the time of these allegations and felt that we should ask the attorney to
154 do what ever is necessary to defend Mr. McKown.

155
156 Mr. Samples said he hated to do this and asked Mayor if Mr. McKown is running his (Mayor)
157 campaign or contributed funds to it? Mayor Hyman refuted the statement. Mr. Samples said someone
158 asked him that. Mr. McKown spoke from the audience and said that he has never contributed money to
159 anyone running for any position nor am I running Roy Hyman's campaign for Mayor or any other position.
160 Mr. Samples said thank you and explained the reason he asked was because he had heard that Mr. McKown
161 was.

162
163 Mr. Truett moved to instruct the town's attorney to file a response to the lawsuit. Mr. Martin
164 seconded. Mr. Truett, Mr. Martin, Ms. Tuttle and Ms. Hiatt voted IN FAVOR. Mr. Samples voted against.
165 **MOTION CARRIED.**

166
167 Ms. Tuttle asked the attorney the procedure needed to put a policy in place regarding town council
168 representation. Mr. DuRant said it would be difficult to create a policy that would fit all legal situations.
169 No two cases are alike however a form of policy could include general guidelines of council member
170 actions outside of designed duties and responsibilities that would not be allow provisions of defense. Ms.
171 Tuttle said she does not want to get too detailed but "a policy that the insurance, because I wouldn't want to
172 go so far to determine that one was outside of their scope of authority but, it could be stated that we
173 would...any case that the Insurance Reserve did not defend for that initial answer, which is fairly simple to
174 do as a rule, you just go on and deny, deny and....but that's basically what, we have done that in the past,
175 the recent past with Ms. Hiatt". Ms. Tuttle concluded by saying we need to continue on because we have
176 set the policy [precedence].

177
178 Mr. DuRant asked for clarification of Town Council's directive. Mr. Mayor said this has not been
179 voted on this particular comment. Mr. DuRant said "I am to appear on Mr. McKown's behalf and defend
180 him. Mayor Hyman said that is exactly right and this other we can discuss at a workshop at a later time.

181
182 Mr. Truett clarified his motion. Mr. Truett said the motion was to file a response.

183
184 Mr. DuRant said once he files the response and he's their attorney, I'm in. There will be discovery
185 and there will be depositions, preparations for the trial and it will go through the process. A response
186 cannot be filed without a conclusion to the case. Mr. DuRant said he wants council to understand that it's
187 more than just filing an answer. There will be a process with legal fees and Mr. DuRant wanted council to
188 understand that this will be more than just filing a response; he will need to defend Mr. McKown. Mr.
189 Truett said that was not his understanding; he understanding was that Mr. DuRant would file the response
190 and then we would wait to see if it [the case] was going to be thrown out or if it would go on to court. Mr.
191 Truett reiterated his earlier comment that if that was the case, then it will need to come back to this council
192 for a decision if the money, time and resources should be spent on Mr. McKown's defense. Mr. Truett said
193 his motion was to file the response. Mr. DuRant said the practical effects of him filing an answer and
194 appearing as counsel reference for Mr. McKown is that he will be the attorney and he will need to defend
195 him through the process which means he will need to respond to whatever discovery requests are made of
196 Mr. McKown and I will need to do depositions and whatever preparation needs to be done as if it is going
197 to a jury trial. That is more than just filing a response and I don't want you to believe that it's a simple
198 filing of an answer because like Ms. Tuttle said, once you become council reference, I will need to do my
199 best to represent and defend him in the action. Mr. Truett asked Mr. DuRant if this occurs immediately
200 when the response is filed. Mr. DuRant said no. Mr. Truett said you will probably get a letter from some-

201 one saying there is a jury trial set for a certain date so you will get some type of notification after the
202 response. Mr. DuRant said after he files the answer [response] the next phase in the process is usually the
203 discovery stage for 120 days; you have the right to send out interrogatory press production asking the other
204 side who they intend to call as witnesses and how you intend to prove your case. They have to respond to
205 me and I have to respond to them. Normally in these type cases, depositions are scheduled etc. Every case
206 doesn't necessarily follow that track, I don't know if this case will follow that track that is why I am trying
207 to make sure I have direction from council. I will have to defend Mr. McKown. I will have to do for any
208 client of mine. If you came in and saw me, I've got to do what I need to do to defend you. It's not simply
209 filing the answer and waiting for someone to call me and tell me I've got a jury trial set up some day.
210 There's a process I've got to go through. Ms. Tuttle said so what you're saying is the council does not have
211 the option of another attorney but Mr. McKown does? Mr. DuRant said he was not certain he understood
212 the question. Ms. Tuttle said what she is hearing is that once an attorney takes a case at some point; does
213 the client have the option of getting attorney? Mr. DuRant answered by saying "absolutely". Ms. Tuttle
214 continued by saying but council doesn't have that option then. Mr. DuRant said no, the council could
215 withdraw the financial support. Mr. DuRant said in his opinion council is doing this without the
216 requirement of law; you're voting to do this without the requirement of any legal responsibility to do it.
217 Mr. DuRant again said he wants council to fully understand that it's not simply filing an answer that he will
218 need to file a request for introduction, interrogatories and all the other requirements and go through the
219 process of discovery. Ms. Tuttle asked if the summary judgment would come before all of the
220 requirements. Mr. DuRant said it does. Ms. Tuttle said at that point.....Mr. DuRant said after discovery,
221 the summary judgment comes. Ms. Tuttle asked what the time frame is up to the summary judgment. Mr.
222 DuRant it could probably be up to a year because you've got to get the discovery. You could expedite it
223 and go 120 days but Mr. DuRant said once Mr. Booth testifies and some of the other witnesses say that the
224 person was laid off due to the economic situation and that it had nothing to do with this council I don't
225 believe it will get past the summary judgment however you never know. Mr. DuRant said he's only heard
226 one side of the story so he can't say definitely until he hears both sides and their witnesses.
227

228 Mayor Hyman said a motion has been made, second and carried so that's it. Mr. Truett asked for
229 the motion to be read. Mrs. Lewis quoted "Councilman Truett made motion to file response to the
230 lawsuit". Mayor Hyman asked Mr. DuRant what that is. Mr. DuRant said it sounds to him like Mr. Truett
231 thinks we can file an answer and sit on it. Mr. Truett said that was his understanding during the discussion
232 and process. Mr. Truett said he had a discussion with Mr. McKown this afternoon for the very point and he
233 asked me if we could respond for him and at a later date he would get another attorney. Mr. Truett asked
234 Mr. McKown if that was not true. Mr. Truett said Mr. McKown told him that Mr. Booth had the papers
235 and held them for 20 days and that he (several talking at one time). Mr. McKown said we are at a point
236 now where the, you know Mr. Connor [attorney] and their opinion on it. They've already filed a motion to
237 dismiss and David is probably correct that it will be because of the previous case log with Ms. Angus. The
238 bottom line is they feel that the town, because of the way the thing is written, they have an obligation and
239 we can say what we want to say but the bottom line is if, you take in any lawsuit, if you've answered the
240 question, I don't even know if David has the skill set to negate this....he is the only one that can tell us if he
241 can or can't, but the bottom line is that we've got ten days left in which to respond one way or another. If I
242 have to hire an outside attorney and I feel obligated that the town was responsible because of the precedent
243 that was set with Ms. Hiatt's situation, I'm going to be looking for recourse through that attorney toward
244 the town. That is what was discussed with Mr. Truett. Mr. McQuiddy called me Mr. McKown said, and
245 asked if the town had responded yet. Mr. McKown said he told him no and Mr. McQuiddy said you need
246 to have somebody respond something because if not, they could make a judgment against you. Mr. DuRant
247 said yes if you don't respond in 30 days. Mr. McKown said Mr. Booth had the papers for nearly two weeks
248 but he understands Mr. Booth had an operation etc. Mr. Booth said no the delay had to do with the
249 Municipal Association because the papers were sent to them within 24 hours. Mr. McKown said that Mr.
250 McQuiddy's attorney said there are no grounds for this lawsuit based on the Angus lawsuit.

251 Mr. Truett said so if this has already been filed then all council needs to do is file a response. Mr.
252 McKown said they were filed on behalf of Mr. McQuiddy. Mr. Connor [McQuiddy's attorney] was under
253 the impression that the town was responsible for it and that the town had hired an attorney and asked who
254 the town had hired. Mr. McKown said that is when I called Ed and he said that he had not yet received an
255 answer from the Municipal Association which is when I called the Mayor and a few council members to
256 find out the status because I have to do one of two things; David DuRant has offered to file a response or
257 I'm going to have to hire an attorney probably Tommy Britton to pursue this issue. Mr. Booth said he
258 could keep up with the attorney to track hours and the cost and continue to give an update to the council
259 and then at some point you need to decide to continue or pull out. Ms. Tuttle said she wouldn't be willing
260 to set a figure and when that amount is reached stop the defense, because that is not right. Mr. Booth said
261 no he meant that he would keep council informed of the expense.
262

263 Mr. Truett reiterated what he said earlier; "I have no problems filing a response for Mr. McKown
264 but I am not comfortable representing Mr. McKown in court". Basically, what we talked about. Mayor
265 Hyman asked Mr. DuRant, what's our motion? Mr. DuRant said well, if you want to have a vote or a
266 revote on what you intended by that motion because it wasn't clear for me to..... Mr. Truett said he felt
267 it was pretty clear. I said I've made the motion for you to file the response for Mr. McKown. Mr. DuRant
268 said he could do that but that's not the same thing as providing him a legal defense. Mr. Truett said he
269 feels that Mr. McKown's concern is to get it filed as soon as possible, like tomorrow. Mr. McKown said
270 well of course because if there's no response to the complaint they will make a summary judgment against
271 me for not responding to it. Mr. McKown added that one thing to clarify is where has the lawsuit gone that
272 the town filed for Ms. Hiatt. Mr. DuRant answered but was not audible. Mr. McKown asked how long it
273 has been, almost a year? Mr. DuRant said at least 120 days. Mr. DuRant added that everything is running
274 at least 18 months. Mr. Truett asked if costs are still being incurred on that case. Mr. DuRant said they are
275 in the discovery phase now. Mr. McKown said he was on council when Ms. Hiatt's case was discussed and
276 he understood that lawsuit had the name but it also named Ms. Hiatt specifically and the town has agreed to
277 pay for it and basically the same council members were opposed that. I don't know how you can compare
278 the two because Ms. Hiatt was named individually. Ms. Hiatt said that lawsuit was made to the town
279 administrator and to the town as a whole. There were three names on that lawsuit. Mr. Samples said he
280 thinks that it was unanimously supported and we can check the records. Mr. McKown said he thinks that
281 Mr. Samples is incorrect. Mr. McKown said that all three names were included. Mayor Hyman said we
282 need to focus on whether this council wants to give Mr. DuRant the authority to represent Mr. McKown.
283 We have a motion on the floor with a second. The motion passed. Mayor asked Mr. DuRant what he could
284 do with the motion given. Mr. DuRant said he could file the response but wanted council to understand
285 that it will involve more than just filing the response. Mr. DuRant said he would also have to provide the
286 defense. Mr. Truett said in the meantime since there are 10 more days left in this process to file, it will give
287 Mr. DuRant the time to file but will also give Mr. McKown the opportunity to seek another attorney in the
288 meantime but we will file it initially. Mr. DuRant said if I file the response, my name is on the plea saying
289 I'm representing Mr. McKown; I'm representing Mr. McKown. If you want to pay me just for filing the
290 response for Mr. McKown to sign to send off so he can answer in time, I will do that if that's all you
291 intended me to do. Mr. Truett said that was the intent of the motion. Mr. DuRant clarified that the
292 intended motion was for him to prepare something for Mr. McKown to sign..... Mr. Truett said because
293 he's in a crunch and a timeframe. Had the paperwork been handed to the town in a timely manner, and I do
294 agree that it was turned over to us 20 days ago, I have no problem with filing a response for him because of
295 the time frame and that's it. Mayor Hyman said in other words, you're not interested in calling for the
296 town to represent Mr. McKown is that it? Mr. Truett said no.
297

297 Mr. Martin said there may have been some confusion because my understanding of the motion was
298 that we were making a decision to defend Mr. McKown period. That the first part of that was to file the
299 response, which gets it started. I thought that was the decision that we were making. I think that we're
300 really on thin ice here and if I were a candidate for council Mr. Martin said, I'd be very concerned about
301 this discussion tonight. As a member of council, you are a target and anyone can file a lawsuit for any
302 reason that they want frivolous or not. And, if the town will not defend council members then I think
303 people should think twice before running for council.

304
305 Ms. Tuttle asked if there has ever been a case where an individual has been filed against until
306 recently. Mayor Hyman said not to his knowledge. Ms. Tuttle said then the risk is low and it was my
307 understanding that we, due to the time crunch for Mr. McKown, we file a response but not the defense.
308 Ms. Tuttle said she believes that was what was done for Ms. Hiatt. Mayor Hyman said he would not want
309 to have someone say something about him that was not true with no defense. This could happen to any one
310 of council and as much talking that's being done out there I'm really surprised we're not seeing more than
311 we are.

312
313 Mr. DuRant said we need to have a motion because we have two different understandings and
314 someone is going to have to clarify right now what I have been told to do. If it is to help or assist Mr.
315 McKown to prepare an answer tomorrow morning either by a 12-(b)(6) motion or answer for him to sign so
316 that he can get through this time crunch, that's what I've been told to do. So if that's all you want me to do,
317 that's all I'll do. But Mr. Martin was obviously voting off of something else, as was Mr. Mayor.

318
319 Mayor Hyman said the motion carried. Mr. DuRant repeated "that motion has carried." Mr.
320 Mayor said exactly right and asked Mr. Truett if that is his motion to stand.

321
322 Mr. Truett moved to reconsider the motion. Mr. Samples second. All Voted IN FAVOR.
323 **MOTION CARRIED.**

324
325 Mr. Truett asked Mr. DuRant to explain the 12-(b)(6) motion and asked if this is something to have
326 the filing that says that the case will be dismissed? Mr. DuRant said that the 12-(b)(6) motion is basically a
327 motion that is filed prior to filing an answer where they have alleged an allegation upon which; legally they
328 are not entitled to relief on. Mr. DuRant mentioned Mr. McKown's reference to Ms. Angus' case which
329 was similar to this where she sued Burroughs and Chapin along with several others and claimed that they
330 were particularly trying to get her fired as the county administrator and the reason Sid Connor [attorney] is
331 familiar with that case is because he represented Linda Angus in the lawsuit which went all the way to the
332 S. C. Supreme Court and he lost because it was said there was no basis in the law for that suit to have been
333 brought. Mr. DuRant again stated the 12-(b)(6) motion does stay the time in which to answer the
334 complaint. Until that's heard, you don't have to file an answer if you file a 12-(b)(6) motion. That's
335 probably what Sid Connor has been filed for Mr. McQuiddy and will rely on the Angus case as the basis for
336 the fact that she doesn't have any legal basis to sue Mr. McKown or Mr. McQuiddy. Mr. Truett said when
337 the 12-(b)(6) motion is filed does the discovery process continue. Mr. DuRant said no that stays everything
338 until that motion is heard. Mr. Truett said then why would we not do that? Mr. DuRant said he could do
339 that. If the 12-(b)(6) motion is denied then Mr. McKown would have 10 days to file an answer. Mr. Truett
340 said he thinks that Mr. DuRant can see what council is struggling with here and asked Mr. DuRant for an
341 opinion. Mr. DuRant said his opinion is based upon what he has seen on the allegations in the lawsuit, that
342 it is a frivolous lawsuit. Mr. DuRant said he has had conversations with Mr. Booth who stated the
343 individual was not terminated from the town but was laid off due to the economy. Mr. DuRant said he
344 feels that there will be a very good chance of success in filing the 12-(b)(6) motion. However, there are no
345 guarantees with that and if the court denies the motion then you're back to square 1; filing an answer, going
346 through the discovery, and going through the process. That's what I'm talking about if the 12-(b)(6) motion

347 is denied and it could take up to six months because it is very slow in the county. The 12-(b)(6) motion
348 stops the time running on the answer [30 days] until the motion is heard. Once the motion is heard, and if
349 the court grants it, the case is over. If the court denies the motion, Mr. DuRant said he would have to file
350 an answer in 10 days and appear on Mr. McKown's behalf. That's the process.

351
352 Mr. Samples said to follow up, what would preclude us from the time you file and stipulate only
353 filing the 12-(b)(6) motion and if not approved, would Mr. McKown have a recourse against the town. In
354 other words, could the town require a signed release from Mr. McKown from legal recourse to the town?
355 Mr. DuRant said the council has the authority to direct him how to proceed in this. Mr. Samples said he is
356 looking at it from the down side for the town. Mr. DuRant said he stated his opinion at the outset of this
357 meeting as to what the town's legal obligations are as far as providing Mr. McKown defense. In his
358 opinion Mr. DuRant said, the town is not required to provide the defense based upon the Causes of Action
359 that have been alleged. We are discussing the town council stepping up for a former member of council
360 who has been sued in what I feel is a frivolous lawsuit. Ms. Tuttle is correct in that the town does not have
361 a policy that deals with this issue and we have had some precedence with Ms. Hiatt's case. These are the
362 issues in play here but the council can direct me to do whatever it wants me to do in this case. If council
363 wants to limit me to filing a 12-(b)(6) motion and trying to get it dismissed that way without appearing as
364 counsel reference, I will do that. Mr. Samples said to follow up, if the town were going to take any steps
365 because you can be sued for anything and we can't defend..... unless you see something with your own
366 eyes, you don't know if it happened or not. Mr. Mayor said that is the case right now. Mr. Samples said he
367 understands that and that is why we have a justice system set up to make that determination. My point is I
368 agree with Mr. Truett, we need to limit the exposure of the town, file a 12-(b)(6) motion with a signed
369 release from Mr. McKown of any future liabilities to the town for its protection and stop there. That's as
370 far as I think the town should go. Mr. Samples said none of us know until discovery is done and they go
371 through the process what actually happened.

372
373 Mayor Hyman said Mr. Samples accused Mr. McKown of being my campaign person and
374 everything and ever since Mr. McKown's been on council, he's been Doug Samples' enemy and I can
375 understand why he [Mr. Samples] is against Bill McKown right now for the simple reason, he's never liked
376 Bill McKown and he's not going to vote for Mr. McKown regardless of what happens. I think the rest of
377 us need to make up our minds and if four people want it fine and if not fine and let Bill McKown go his
378 way and this council go ours and let's hope nobody else sues anybody else up here. If you can't support a
379 council member what are you going to support?

380
381 Mr. Samples said Mr. Mayor, since you used my name in that, I would like a minute to respond to
382 you. Mayor Hyman said you don't have a minute because we're getting out of here. Mr. Samples said Mr.
383 Mayor, Mr. Mayor.....

384
385 Mr. Martin said Mr. Mayor.

386
387 Mayor Hyman said he [Mr. Martin] responds first, you've already had it. Joe. Joe you have the
388 floor.

389
390 Mr. Martin said what I think is being discussed tonight is very important for candidates for council
391 and another candidate has shown up since we started and if you don't have deep pockets, and you're
392 willing to as Mr. McKown, he's a fortunate person because he has deep pockets, it doesn't really matter to
393 him, he can afford to get the best attorney in the area. If we have a member of council that is elected in this
394 election who doesn't have deep pockets but just cares about the town, I feel sorry for you because they're
395 not going to be protected by the other members of council if someone sues them. I'll give you an example
396 of something that can happen, you have members of the town that come to you and say, this town person is

397 behaving badly and you go to Mr. Booth and you say this town person is behaving badly, and Mr. Booth
398 investigates it and fires that person. Guess what? You influenced that firing and you can be sued just like
399 this case and what have you done? You've done your job. You've let the town administrator know that
400 there are concerns from citizens. This is not that much different than what we're discussing here and
401 people are becoming more litigious all the time so the fact that it wasn't done twenty years ago, doesn't
402 mean much to me now because there are more and more and more lawsuits being filed all the time. I'm
403 very concerned if council is not willing to stand behind a council member.
404

405 Mr. Samples said Mr. Mayor. Mayor Hyman said Doug, do you have a comment? Mr. Samples
406 said I do and Mr. Mayor, you know this to be true because I called you and I called my executive director
407 when I was employed at Waccamaw Regional Council of Government, because I know the kinds of things
408 that Mr. McKown can say. You sat right there.....you know what I'm talking about. Mayor Hyman said,
409 no I don't, I don't have the slightest idea of what you're talking about. Mr. Samples said Mr. McKown
410 you've threatened me in the past. Mr. McKown (from the audience) said, "I have?" Mr. Samples said yes
411 sir. Mr. McKown asked how he threatened him from the past? Mr. Samples said.....
412

413 Mayor Hyman said wait a minute. This is out of line. I call this right now. (Gavel Sounds) We
414 are not here to discuss this Mr. Samples or Mr. McKown, we're getting back down to the business of this
415 meeting and we're going to have a motion whether we're going to provide an attorney for Mr. McKown for
416 this lawsuit, or we're not going to do it so I'm asking for a motion as such.
417

418 Mr. Martin moved to appoint Mr. DuRant as the town attorney for Mr. McKown to represent him
419 fully in this matter. Ms. Hiatt seconded. Three voted for the Motion. Three Voted Against. The motion
420 was declared a TIE.
421

422 Mr. Truett moved to instruct the town attorney, David DuRant to file a 12-(b)(6) motion on behalf
423 of Bill McKown not to proceed further if denied by the court. Mr. DuRant asked if unsuccessful, should he
424 come back before town council. Mr. Truett said yes. Ms. Hiatt seconded. In discussion, Mr. Truett said in
425 defense of people who will be on town council. Currently, there is a vacant seat on town council resulting
426 in six people. Following the election, there will be a full council with people who will be able to listen to
427 this if it comes back before us. Mr. Truett said he is not certain it is our responsibility to put the monetary
428 response on a new council.
429

430 Mr. Samples moved to amend the motion to require a signed release from Mr. McKown written
431 with town attorney assistance to protect the town's interest. Ms. Tuttle seconded. Discussion. Ms. Tuttle
432 asked for clarification on the amendment. Mr. Samples said should at a later date as was suggested by Mr.
433 Truett, the town elect not to provide further defense that Mr. McKown understands this is a possibility, and
434 in terms of legal recourse, there would be none. Ms. Tuttle said in other words, sign a release. Mr.
435 Samples said yes. Ms. Tuttle asked if that is clear enough in the motion. Mr. DuRant said the only
436 question he had was, is Mr. Samples are you saying he [Mr. McKown] agreed our representation extend
437 only through the 12-(b)(6) process..... Mr. Samples said that he recognizes that it may occur. Mr.
438 DuRant said and that if we are not successful, that he agrees to release the town from any further liability
439 associated with any additional attorney fees is that what the motion is? Mr. Samples and Ms. Tuttle said
440 "or damages". Mr. DuRant said a Hold Harmless and Indemnification. Mr. Samples said correct. Mr.
441 Martin said to be clear what council is asking is the town attorney to prepare that material. The council
442 cannot tell Mr. McKown to sign that. The town council can only request the attorney prepare it. Ms. Tuttle
443 said with the condition. Mr. Samples said that's the motion. Mr. Samples, Mr. Truett, Ms. Tuttle and Ms.
444 Hiatt Voted IN FAVOR. Mayor Hyman and Joe Martin Voted No. **MOTION CARRIED.**
445

446 Mayor Hyman said we are back to the original Motion. With no discussion, All Voted IN FAVOR.
447 **MOTION CARRIED.**

448
449 **ADJOURNMENT**

450
451 Mr. Truett moved to adjourn the meeting at 6:35 p.m. Mr. Samples second. All Voted IN
452 FAVOR. **MOTION CARRIED.**

453
454
455
456 _____
457 Jan Lewis, Administrative Manager

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461 Approved: March 25, 2008

462
463
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465
466 _____
467 Roy Hyman, Jr., Mayor

468
469
470 _____
471 Rebecca J. Hiatt, Town Council

472
473
474 _____
475 Joseph P. Martin, Town Council

476
477
478 _____
479 Vacant

480
481 _____
482 Douglas F. Samples, Town Council

483
484 _____
485 James S. Truett, Mayor Pro Tem

486
487 _____
488 Judith K. Tuttle, Town Council

489
490 Transcribers Note: This document constitutes minutes of the meeting, which was audio taped. In accordance with FOIA, meeting
491 notice and the agenda were faxed and/or emailed to media and interested parties and displayed on the town marquee. A complete
492 list is on file in Town Hall. The agenda was posted on bulletin boards outside council chambers and in the town hall reception
493 area. Meeting notice was also posted on the town marquee.