

In compliance with the Freedom of Information Act, the news media was notified of the time, date, and place along with a copy of the agenda of this meeting and a notice was posted on the front door of the Batesburg-Leesville Town Hall no later than twenty-four hours prior to the meeting.

REGULAR COUNCIL MEETING

MAY 11, 2015

The Regular Council Meeting for the Town of Batesburg-Leesville, held in the courtroom of the Batesburg-Leesville Judicial Complex, was called to order by Mayor Crapps at 7:00 P. M. Members present were Mayor Crapps, Council Member Taylor, O'Dell, Simpkins, Penick and Ricard. Council Members Cain, Mingo and Fox were absent.

INVOCATION

The invocation was given by Council Member Simpkins.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was held.

APPROVAL OF AGENDA

A motion was made by Council Member Taylor with a second by Council Member Penick to approve the agenda. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

ADOPTION OF MINUTES

Adoption of the minutes from the April 13, 2015 Regular Council Meeting was held. A motion was made by Council Member O'Dell with a second by Council Member Taylor to adopt. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

Adoption of the minutes from the April 21, 2015 Special Council Meeting was held. A motion was made by Council Member O'Dell with a second by Council Member Simpkins to adopt. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

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MAYOR'S REPORT

Mayor Crapps reported the next Regular Council Meeting would be June 8, 2015 here in the courtroom.

CENTRAL MIDLANDS - Council Member O'Dell

Council Member O'Dell had no report.

ENVIRONMENTAL PLANNING & ADVISORY COMMITTEE (E. P. A. C.) Council Member Penick

Council Member Penick stated there was no meeting.

JOINT MUNICIPAL WATER/SEWER COMMISSION - Council Member Penick

Council Member Penick stated their meeting involved personnel actions.

ECONOMIC DEVELOPMENT - Council Member Simpkins

Council Member Simpkins gave an update on the Economic Development Committee meeting held May 7, 2015.

POLICE DEPARTMENT - Chief Oswald

Chief Oswald reported there were no major incidences during the Poultry Festival.

Stated that May 15th has been designated nationwide for many years to recognize officers that died in the line of duty. In 2014, there were 127 deaths and in 2015 up until now there were 44. Officers from the Batesburg-Leesville area that lost their lives in the line of duty were:

Deputy Tommy Fox - August 27, 1970

Highway Patrolman Ben Strickland - May 31, 1974

Chief Bill Lundy - February 17, 1988

Thomas Kerney - December 15, 1988

POLICE DEPT. CONT'D.

Reported that Wednesday morning at 9:00 there will be a Memorial Ceremony for Lexington County officers that have died in the line of duty if anyone would like to attend. He further stated that the new sheriff and himself would be laying the wreath.

Council Member Penick gave a quick update on the installation of fire alarms and carbon monoxide units in the Batesburg-Leesville area.

PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA - None received

UNFINISHED BUSINESS - None

NEW BUSINESS

A. Resolution - Peachtree 23 Yard Sale was read by Mayor Crapps. A motion was made by Council Member Simpkins with a second by Council Member Penick to adopt. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

B. Proclamation - National Police Week was read by Mayor Crapps. Mayor Crapps stated this does not require a vote but would love to have one by Council. A motion was made by Council Member Simpkins with a second by Council Member Penick to adopt. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

C. Proclamation - Women's Lung Health Week was read by Mayor Crapps.

D. Approval of Funds from the DPW Reserve to Purchase & Install Liquid Lime Feed System at the Wastewater Treatment Plant

Mr. Tim Schumpert, DPW Utilities Director, gave a brief overview on the liquid lime feed for the wastewater treatment plant. He stated due to the recent heavy rain we have been getting, it has changed the ph of our influent coming into the wastewater plant. In order to prevent the alkalinity level in the plant from dropping too low,

NEW BUSINESS CONT'D.

additional alkalinity needs to be added. Currently, plant staff is hand dumping bags of sodium bicarbonate, sodium carbonate (soda ash) and hydrated lime into the aeration basins. Currently four bags are dumped in the morning and four in the afternoon with nothing being dumped at night. An automated, consistent feed system will ensure regulatory compliance and bolster around the clock process efficiency. In order to study more efficient and effective ways to control alkalinity, a pilot project was conducted at the wastewater plant between March 9th and April 17th. The study showed that by using a liquid lime feed, staff was able to more effectively maintain the presence of alkalinity throughout the plant's treatment processes. Even with seven inches of rain, the plant was able to ensure compliance with toxicity testing at higher than normal flow. There has never been a feed system in place at the wastewater plant but one needs to be in place. A motion was made by Council Member O'Dell to approve up to \$243,500 for the installation of a liquid lime feed system with a second by Council Member Penick. With no further discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

E. Approval of Funds Towards the Purchase & Development of the Industrial Park Entrance off HWY. #1

Town Manager Luckadoo stated at the April 8, 2013 Council went into executive session to discuss allocating \$50,000 towards the purchase of land to be used for the Highway #1 Industrial Park entrance after Lexington County Councilman Frank Townsend appeared before Council March 11, 2013 requesting the Town pay \$50,000.00 towards this purchase. Council voted unanimously to approve the \$50,000 towards the purchase of the land. A few days ago, County Council collectively agreed that they would like the Town to contribute \$50,000 towards the entrance. These funds would not necessarily be used for the purchase of the land, but rather, will be used for the overall project. The County is moving now towards the purchase of the land, so when our funds are paid, the land will have already been acquired by the County. Preliminary cost opinions given to us by Alliance Engineering have indicated the project cost to engineer and construct the entrance would be approximately \$310,000 with the purchase of the land to be approximately \$100,000 for a total of \$410,000 for the entrance. Stated we have a bond balance of \$1,737,501 and our bid costs for

NEW BUSINESS CONT'D.

water/wastewater infrastructure is \$1,693,472.80 which would leave approximately \$44,000 contingency, which may or may not be used. Suggested that if funds are remaining after construction, we apply those funds towards the cost and then any remaining out of reserve or checking. Stated he explained this to Attorney Spradley and he recommended that the current Council revisit the commitment and reapprove the \$50,000 towards the entrance. A motion was made by Council Member Taylor with a second by Council Member Simpkins to approve up to \$50,000 toward the overall project of the entrance for the Industrial Park off Highway #1. This \$50,000 is **not an additional \$50,000** that was approved in 2013 for the purchase of land, but the same \$50,000 that is to be used towards the overall project of the entrance. After discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

F. First Reading - Ordinance to Amend Section 6-2-12 of the General Code of Ordinances related to Bulk Goods Collection

Manager Luckadoo reported that bulk good pickup is provided to Town residents at no additional cost to them. Bulk goods include, but not limited to, furniture, mattresses and box springs, tables, chairs, metal goods and other bulky items. This service costs the Town approximately \$35,000 annually. Under the existing code, residents are able to place an unlimited amount of items on the curb for pickup by the street department on Thursday or Friday and they place this pickup in special containers for pickup by Advanced Disposal. The Town is then assessed a disposal fee based upon the weight and contents of the container. We have found this service is primarily used by owners of rental properties and apartment complexes who place a large amount at the roadside either when a tenant has moved out or they have been evicted. Elimination of bulk pickup will not only save the Town approximately \$35,000 annually it will also provide time savings for the street department staff to be used elsewhere. Currently around 30-40 man hours are spent each week providing bulk pickup. Advanced Disposal would do the bulk pickup for approximately an additional \$1.35 per month per residence and wanted a 2-3 year contract extension. If no resident uses this service they still would be charged this extra fee. If approved, this change would be effective July 1, 2015. Also, the Town will promote this change in the Twin City News, Channel 2, Town's website,

NEW BUSINESS CONT'D.

Twitter and Facebook. A motion was made by Council Member Penick with a second by Council Member Taylor to adopt the Amendment to Section 6-2-12 of the General Code of Ordinances Related to Bulk Goods Collection with an implementation date of July 1, 2015. After discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

MANAGER'S REPORT - Ted Luckadoo

Manager Luckadoo reported the following:

- The new website should be up and running any day now.
- Industry Appreciation Night - Tuesday night, 6:30 P. M., Southern Occasions
- New Utility Billing Outsourcing
- Lexington County Municipal Association Meeting June 18th in Pelion
- SC Municipal Association Annual Meeting July 16-19 in Hilton Head, registration May 22nd for the drawing, June 2, 3 actual registration for attendees
- Saturday, June 20th Tire Disposal Day from 8:00 A. M. - 3:00 P. M. Advanced Disposal and the County of Lexington Solid Waste Dept. are sponsoring the event with no cost to the Town. Plans being finalized to utilize the parking lot beside the Town Hall to place the dumpsters and use as the collection point.
- The County is also considering and checking to see if they can do another electronic recycling event at the same spot the same day.

EXECUTIVE SESSION

A motion was made by Council Member Simpkins with a second by Council Member O'Dell to go into Executive Session at 7:47 P. M. for receipt of legal advice and discussion on a contractual matter. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

At 9:31 P. M. a motion was made by Council Member Simpkins with a second by Council Member Penick to re-enter the Regular Council Meeting. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

POSSIBLE ACTIONS BY COUNCIL IN FOLLOW-UP TO EXECUTIVE SESSION

A. Possible Action on Petition Received

Mayor Crapps recognized Attorney Spradley at this time. Attorney Spradley stated on April 29th a package was received at Town Hall addressed to the Mayor and was given to the Town Manager who immediately called me and I went and picked it up. Attorney Spradley read into the record the following. **We are registered voters of Council District 3 and ask the Mayor for help. Steve Cain was elected to represent our district and has not been at a Town Meeting for many months. Rumors say he is not living in South Carolina and certainly not living in our district. We have no one to represent us in matters that concern the Town and the district. We ask that whatever it takes to remove Mr. Cain from Town Council and hold an election to fill the empty seat for Council District #3 signed by 15 people.** Attorney Spradley stated he started doing some research into the main issue in the petition which is the allegation that Mr. Cain is not living in the District. Attorney Spradley stated there are State statutes that state **grounds for forfeiture of office for councilmen are and one of those is not possessing the qualifications for the office as prescribed by State law. One of the qualifications prescribed by State law is one member elected from each ward of the municipality by the qualified electors of the ward. Candidates seeking office from a particular ward shall be residents of the ward during their entire terms of office. After checking, the Town Ordinance matches the State statute. Another statute is Council as judge of election and qualifications of its members and of grounds for forfeiture of their office. The Council shall be the judge of the election and qualifications of its members and of the ground for forfeiture of their office. In the statute it says if a member is charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the Council under this section may be appealed to the court of common pleas.** Attorney Spradley stated the proper procedure to go forward is Council must make a decision whether to "charge" Mr. Cain with failure to remain qualified as a Town Council Member. A motion was made by Council Member O'Dell with a second by Council Member Penick to charge Council Member Cain with failure to remain a qualified elector in Council District 3. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

POSSIBLE ACTION ON PETITION CONT'D.

Attorney Spradley stated the next step is there has to be an investigation to the allegations made by the citizens done on Council's behalf. This can be done directly by Council or Council may hire an investigator. Attorney Spradley suggested for Council to appoint Chief Oswald and himself to be a committee to go out and find an independent person, someone with some law enforcement background with no connection to the Town that may still hold some type of private investigator's license to do the investigation of the Town's behalf. A motion was made by Council Member Taylor with a second by Council Member Ricard that Council empower the Chief of Police and the Town Attorney to retain an independent investigator to investigate the allegations made against Council Member Cain. After discussion, a vote was taken.

VOTE 6 Approved 0 Denied

Attorney Spradley stated the next step is a procedure for going forth with this hearing and has laid out what he thinks the procedure should be.

1. It will be held as a common law adversarial hearing. There will be an opening by both sides then the investigator will call witnesses and put in evidence. Mr. Cain may represent himself or by an attorney. Mr. Cain will be able to ask questions as well as Council. When the investigator rests, Mr. Cain will then put up witnesses and put in evidence, the investigator as well as Council could ask questions. At the end of Mr. Cain's case, the investigator could rebut what Mr. Cain has put in and then there would be closing statements by both sides, Mr. Cain first then the investigator. The presence of Mr. Cain is not something that should stop the hearing from going forward. Once the charge is being brought, will be properly notified of the hearing and the date will be set and go forward from there. If Mr. Cain is not here, whether or not he is represented by someone at the hearing, the hearing needs to go forward at that time.
2. Hearsay evidence should be allowed at the hearing. Other rules of evidence, although relaxed, should apply.
3. All of Council should be able to ask questions, relevant questions to what is being done, and no time limits should be put on any presentation by either side, as long as it is relevant to the question of being a "**qualified elector of the district.**"
4. The Mayor will rule on issues that arise during the hearing. If Council, by a majority, disagrees, the Mayor is over ruled.

POSSIBLE ACTION ON PETITION CONT'D.

5. The Town Attorney sits as "advice counsel" to answer questions and advise on matters of law.

6. At the end of the hearing, any discussion among Council on how you plan to vote needs to be in public. The only other option would be to go into Executive Session and thinks this would not be appropriate at this time. Once the evidence is in, then Council would vote as a majority, as in the Town Ordinance. The Mayor would not vote unless there is a tie. The question voting on is **was he a qualified elector in his district the entire time he has held this office during his term**, if not, he would then be removed by majority vote. This vote is by a simple "yes" or "no", not by a motion and a second with discussion done in public. Since Mr. Cain will not be sitting as a Council Member that night he would not have a vote. Attorney Spradley stated Council needs to accept the subpoena document drafted that is issued by the Town of Batesburg-Leesville, you can't use a civil court or criminal court document. The Town Clerk and the Mayor would be signatories on this document with the Town seal applied. Mr. Cain would be able to request these as well as the investigator. Attorney Spradley stated based on these recommended procedures he feels this would be a fair and impartial hearing. Council Member Penick made a motion with a second by Council Member Simpkins that Council accepts our Attorney's procedures for this event as he has read in the rules. With no discussion, a vote was taken.

VOTE: 6 Approved 0 Denied

Attorney Spradley stated the term "public hearing" means a hearing on an issue in public, not a normal public hearing. After discussion, all of Council agreed **not to allow the public to speak.**

Attorney Spradley stated the next step would be once the investigator feels he is coming to the end of his investigation we would then have to set up a Special Council Meeting and then the notices would go out for the hearing.

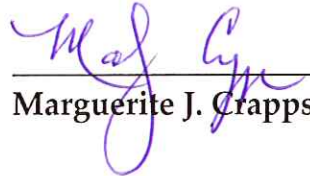
POTENTIAL AGENDA ITEMS FOR JUNE 8, 2015 COUNCIL MEETING - NONE

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ADJOURNMENT

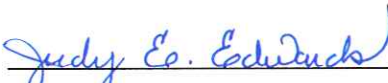
A motion was made by Council Member Simpkins with a second by Council Member Penick to adjourn at 9:51 P. M. All members present were in favor.

Approved this 8th day of June 2015.



Marguerite J. Crapps, Mayor

ATTEST:



Judy E. Edwards, Town Clerk

§5-7-200. Grounds for forfeiture of office of mayor or councilman; filling vacancies in office.

- (a) A mayor or councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution; (2) violates any express prohibition of Chapters 1 to 17; or (3) is convicted of a crime involving moral turpitude.
- (b) A vacancy in the office of mayor or council shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

§5-7-210. Council as judge of election and qualifications of its members and of grounds for forfeiture of their office.

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the council under this section may be appealed to the court of common pleas.

§15-5-20. Methods of election of council; mayor elected at large; qualifications.

Each municipality in this State shall provide by ordinance for the election of its council. Councils shall select any one of the following methods of election of council:

- (1) Members of the council elected from the municipality at large.
- (2) One member elected from each ward of the municipality by the qualified electors of the ward. Candidates seeking office from a particular ward shall be residents of the ward during their entire terms of office.
- (3) Some members elected from wards as provided for in (2) and the remainder elected from the municipality at large.
- (4) Members required to be residents of particular wards but be elected from the municipality at large.
- (5) Some members may be required to be residents of particular wards and others may be residents of the municipality without regard to a particular ward and all members shall be elected from the municipality at large.

Regardless of the form adopted by the municipality, the mayor shall be elected at large.

Mayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification.

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.