

MINUTES
Town of Lexington
Executive Session and
Special Council Meeting
May 20, 2013

Town Council held an Executive Session and a Special Called Council Meeting on May 20, 2013 starting at 5:00 p.m. in the Eli Mack Room located at 111 Maiden Lane, Lexington, South Carolina. The meetings were followed by Council's May Work Session. The meetings were attended by: Mayor Randy Halfacre, Mayor Pro-Tem Hazel Livingston, Council Members Kathy Maness, Ted Stambolitis, Todd Shevchik, Danny Frazier, and Steve MacDougall. Staff members present were: Town Administrator Britt Poole, Assistant Town Administrator Stuart Ford, Municipal Attorney Brad Cunningham, Police Chief Terrence Green, Community and Economic Catalyst Johnny Jeffcoat, Utilities and Engineering Director Allen Lutz, Finance Director Kathy Roberts, Director of Parks Streets and Sanitation Dan Walker, Planning Building and Technology Director John Hanson, Grants Administrator Wesley Crosby, Events and Media Coordinator Jennifer Dowden, I.T. Manager Josh Emory, and Assistant Municipal Clerk Karen Hanner.

There were approximately thirty citizens present and three members from the news media.

EXECUTIVE SESSION REPORT:

Mayor Randy Halfacre reported that the *Executive Session* was called to order at 5:00 after a motion was made by Councilmember Maness and seconded by Councilmember MacDougall to go into *Executive Session*. The motion was unanimously carried by all those present (Mayor Pro-Tem Livingston and Councilmember Shevchik arrived later.) Council adjourned from *Executive Session* at 6:19 after a motion was made by Councilmember Maness and seconded by Councilmember Shevchik. The motion was unanimously carried. Mayor Halfacre reported that Council met in *Executive Session* to discuss: one legal issue related to the sale of Town property; contractual issues related to a potential property purchase, potential development of Project Icehouse and a Town event; and one routine personnel matter. No vote was taken. A motion was made by Councilmember Maness and seconded by Councilmember Shevchik to ratify Mayor Halfacre's *Executive Session* report. The motion was unanimously carried.

INVOCATION, PLEDGE OF ALLEGIANCE AND CALL TO ORDER: Mayor Halfacre welcomed everyone to the meeting and introduced the Council Members. Mayor Halfacre gave the invocation. Councilmember Maness led the Pledge of Allegiance. Mayor Halfacre called the meeting to order at 6:27 p.m.

OLD BUSINESS:

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1. **Final Reading of An Ordinance Authorizing the Sale of the Town's Property Interest at Barr Pond:** The Town has received an offer of \$60,000 for its interest at Barr Pond (aka Wildlife Pond). The Town owns water rights there and a small parcel of land adjacent to the Pond. Prior to the Water Contract with West Columbia, it appeared at one time the Town may need the pond as a water source. However, that no longer appears to be the case and the Town may wish to dispose of its rights in the pond. It is important to note that only about five acres of the Town's interest is made up of actual land. The rest is either water and/or wetlands. Most of the Town's interest consists of "water rights," and even those are shared with SCE&G. The Town does not own the property upon which the Wildlife Federation Chapter's facilities sit. That parcel is owned by SCE&G, and the sale of the Town's interest does not force the Wildlife Federation to move nor does it terminate their fishing rights. The Wildlife Club's fishing rights were granted by SCE&G. It is also worth noting the Town did not pay anything for its interest in the Pond, that the area is heavily encumbered by utility easements, that the Town does not have direct legal access to its property interest, and that it is not available for public use. At the May 6th, 2013 Regular Council Meeting, Town Council voted to delay the matter to the May 20th, 2013 Special Called Council Meeting and requested that the members of the Lexington Wildlife Chapter and the prospective developers attempt to come up with an agreement satisfactory to both parties regarding the future use of the pond.

A motion was made by Mayor Pro-Tem Livingston and seconded by Councilmember MacDougall to approve the Final Reading of An Ordinance Authorizing the Sale of the Town's Property Interest at Barr Pond.

Councilmember Frazier stated he did not feel the property should be sold in this manner. He said it should be put out to the public and there should be a fair opportunity to bid on it, especially the Lexington Wildlife organization that has done so much for this community. Councilmember Frazier said the contract should not have been signed. He asked fellow Councilmembers to not be afraid to vote no because this is wrong. Councilmember Stambolitis stated that not much information was known about the planned development and an environmental impact study was needed. He stated he felt rushed development can cause serious damage. Water safety should be a high priority and we needed to slow down. Councilmember Frazier stated the Contract of Sale was signed before a vote was taken by the Council. He said there was a brief discussion during an Executive Session on March 4. He was told that the property couldn't be put out for bid. Councilmember Frazier stated that was not the way to do this and they should have transparency. He said the First Reading vote was on April 1 and then today having the second

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vote is wrong. Councilmember Frazier stated he wanted to be clear that he had no issue with the real estate company or the developer. He stated the Council and Mayor made a mistake. He felt this should have been open to the public and everyone should have been able to bid on it.

Councilmember Shevchik said he disagreed for several reasons. He remembered this having been discussed several times. At one time the Town attempted to donate the pond to the Wildlife organization and SCE&G would not allow that based on the shared ownership. Councilmember Shevchik stated it was a complicated process. He said the Town has no legal access to the property; no need for the pond and there is a liability concern. He stated the sale of the Town's property does not affect the Lexington Wildlife Club. The residents of the Town don't have use of the pond and he was here to protect the Town residents. He said the SCANA owned property is the key to the situation. The Town has tried to broker agreements between the developer and the Wildlife group. Councilmember Shevchik said the way the process of the sale was handled is according to the way the Town has done business. He stated we can reevaluate that process and look at different options in the future.

Councilmember Frazier stated he agreed with what was said and that the issue at the pond had been brought to Council but staff never reported the problem as urgent. He said he disagreed regarding the liability. If the dam broke tomorrow, the Town would still be liable.

Councilmember Stambolitis asked why the developer would buy that liability. He repeated that an environmental impact study was needed. Councilmember Frazier agreed that there would be stormwater issues. Councilmember Stambolitis stated that runoff from new development and impervious surfaces could affect the pond. He said he felt there were questions that, environmentally, needed to be answered.

Mayor Halfacre asked Municipal Attorney Cunningham and Town Administrator Poole about accusations that he signed the contract illegally. He stated the contract was signed as a result of a discussion in Executive Session. Mr. Poole stated there was a telephone poll that was later ratified at the Work Session. He said the preponderance of the group wanted to enter into the contract on March 4. One of the clauses in the contract was that this Council vote in public twice and hold a Public Hearing before it could be put into effect. Councilmember Maness asked if this property was inside the limits of the Town of Lexington. Mr. Poole responded that it is not. Councilmember Maness asked if this property was open to anyone for fishing or are there "No Trespassing" signs. Mr. Poole responded that the recreational rights are owned by SCANA and no private citizen who is not a member of the Wildlife

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club can use the pond. Councilmember Maness asked if anything the Council did tonight would affect the Wildlife Club's ability to continue to have use of their facility and their use of the pond for their activities. Mr. Poole responded that all of that lies with the lease the Wildlife Club has with SCANA so the answer is no, Town property, whether sold or not, will not affect the lease the Wildlife club has for their property.

Councilmember Frazier asked about page seven, Section E of the contract that says "This Contract constitutes the entire agreement between the parties and no changes shall be effective unless in writing signed by the party adversely affected." Mr. Poole agreed that is in the contract. Councilmember Frazier quoted Section H, "This Contract is contingent upon the Town Council of Lexington giving formal approval. This contingency shall be valid for sixty (60) days from the contract execution date. Approval shall be deemed granted should no notice be given to the Purchaser after the expiration said sixty (60) day period." Mr. Poole agreed that statement is in the contract. Councilmember Frazier asked if, as of 9:00 a.m. this morning, we have received anything or sent anything like that. Mr. Poole stated he received a signed statement saying it was okay today but he was not sure what time that was. Councilmember Frazier stated that as of May 3, the sixty day period was up. Mr. Poole said there were conversations and emails back and forth. Councilmember Frazier said there was an Executive Session at the last Council meeting and there wasn't anything in writing. He said there was a contract that stated if we didn't vote on it within sixty days it becomes automatically valid. Mayor Halfacre stated it was agreed at the Executive Session. Councilmember Frazier stated that was after the sixty days.

Councilmember MacDougall stated the Wildlife group was asked to make a proposal to the new developer. He asked if that agreement was made and accepted. Mr. Poole reported that he received a communication from the Wildlife group asking to continue to have use of the pond as they do now and a response from the developer which offered an alternate agreement which would allow monthly use of the property to continue the club's activities. Mayor Pro-Tem Livingston referred to the Executive Session and the fact that both groups were there and had notification that the Council agreed to extend the contract. Councilmember Frazier repeated that the contract states agreements must be in writing. Mayor Pro-Tem Livingston stated both parties said yes to extend the vote to May 20. Councilmember Frazier stated that the way the contract is written, if Council voted no, they could exercise their right in the contract and they would win.

Mayor Pro-Tem Livingston asked about stormwater runoff issues. Town Administrator Poole stated this property and the adjacent property are in

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Lexington County and approvals for development would be submitted to them.

Councilmember Stambolitis asked about facilitating the agreement between the developer and the Wildlife group. Mayor Halfacre referred to a letter from the Wildlife group that requested their rights to use the property remain the same and invited their representative to speak.

Mr. Wayne Jowers introduced himself as the treasurer of the Lexington Wildlife Chapter of the South Carolina Wildlife Federation. He stated they have received a response from the developer offering limited access and a shared responsibility in the maintenance of the dam. Mr. Jowers stated the Town's engineering report showed received bids on repairs to dam between \$140,000 and \$320,000. He said he felt it didn't fully address the problems with the dam. Councilmember Stambolitis asked if they offered use of the facility at no charge and shared cost of the area. Mr. Jowers said they have 150 members in their club. The fishing rights to the pond get interest in the club. Members are encouraged to do community service for the four children's homes and veteran groups. He stated the chapter is open for membership to anyone and is not a private club. Councilmember Stambolitis said both groups have good intentions and the club's events are a help to the community. He hoped they could find a way to compromise. He said he understood SCE&G today has awarded the bid on the eleven acres to the developer and he hoped a way could be found to allow the club to continue their community work. Mr. Jowers said they needed to have their monthly meetings and events like the DNR Fishing Clinics. They need access to the dam for the Adopt A Waterway and Adopt A Highway events.

Mr. Nick Stomski, NAI Avant, stated they have offered a reasonable proposal. They cannot offer unrestricted rights to a club when they have lot purchasers who would need unrestricted rights to an amenity they have paid for. Mr. Stomski said the compromise was to allow use once a month or possibly more often for an event that is of benefit to the community. He said he felt it was unreasonable to expect the developer with the amount of investment that they have to share the unrestricted rights with a club that is not a lot owner or contributor to maintenance or upkeep of the property. Mr. Stomski said they asked for a clean up fee for the facilities and the developer would be solely responsible for the repair of the dam. Mr. Stomski stated that the only thing they could convey was access and repair and maintenance of the dam because the Town of Lexington does not control the recreational rights to the property. The recreational rights are through the lease with SCE&G. Councilmember Stambolitis stated the deed gives the owner access to the pond. Mr. Poole referred to the letter from SCANA clarifying that the owner of the 11 acre parcel has the recreational rights.

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Councilmember Stambolitis questioned Mr. Stomski regarding sharing the cost of the repair of the dam. Mr. Stomski replied that at that time, the only thing that could be compromised were rights to be conveyed with the Town of Lexington property. Mr. Stomski said that now that they have the 11 acre SCE&G property under contract they don't have to compromise with the Wildlife club but they were willing to do so because they said they would.

Councilmember Stambolitis asked if they could get it in writing that the developer is responsible for the repair of the dam and the club can use the space as needed. Mr. Jowers stated the lease expires on June 30. He said the lease states either party can cancel the lease with a thirty day notice. He stated that over the years the club has put in thousands of dollars in capital improvements at the pond. Councilmember Stambolitis said the developer was willing to work something out. Mr. Jowers said once a month is not enough. The community fishing clinics during the summer would need more than once a month. He stated they have a monthly chapter meeting. Councilmember Shevchik said the Town does provide Gibson Pond Park. Mr. Jowers stated Gibson Pond Park was absolutely not acceptable for the children from the shelter homes. He said they don't want anyone from the public there when those children were there for programs. He stated the club has a \$12,000 handicap accessible dock. Gibson Pond doesn't have anything like that which can accommodate veterans in wheelchairs. He stated it is a great place to have a picnic but for their programs it just will not do.

Mr. Stomski said he doesn't see that they can change much from their reasonable proposal. He stated the Wildlife club had the same opportunity to purchase the property that has the recreational rights. He said they could give thirty days notice as in the lease but they are willing to be reasonable in an agreement to give access once a month. He asked Mr. Jowers how many public outreach events the club holds. Mr. Jowers reported that the VA has come out several times and the Children's Home was there four times last month and were there all day. Councilmember Stambolitis said the Wildlife group couldn't get everything and the developer wants to protect their investment and is kind enough to offer an olive branch. He said the Wildlife group should work with the developer and once a month meetings would be better than nothing.

Councilmember MacDougall called for the question. Councilmember Shevchik seconded the motion. The vote was 5-2 on the call for a vote with Councilmember Stambolitis and Councilmember Frazier voting no. The vote on the motion to approve Final Reading was 5-2 with Councilmember Stambolitis and Councilmember Frazier voting no.

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NEW BUSINESS:

1. **First Reading of An Ordinance Adopting the 2013-2014 Budget:** South Carolina law requires Town Council to adopt a balanced budget each year. Budget Revenue and Expenditures are attached as well as the draft ordinance.

A motion was made by Councilmember Maness and seconded by Councilmember MacDougall to approve First Reading. The motion was unanimously carried.

2. **First Reading of An Ordinance to Provide for the FY 2013-2014 Tax Levy:** South Carolina law requires Town Council to adopt the Tax Levy each year. Attached is the draft ordinance for the Tax Levy for FY 2013-2014.

A motion was made by Councilmember Stambolitis and seconded by Councilmember Shevchik to approve First Reading. The motion was unanimously carried.

COMMENTS:

Mr. Terry Ward, Lexington Chronicle, requested a copy of the Budget. A copy was provided in the meeting information packet.

ADJOURNMENT TO WORK SESSION (7:14 PM)

Respectfully submitted,

Karen Hanner
Assistant Municipal Clerk

APPROVED:

T. Randall Halfacre
Mayor

FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.