

March 5, 2012

A Special Meeting of Town Council was held on the above date at Town Hall at 8:00 p.m., all requirements of the Freedom of Information Act having been satisfied:

Present were: Mike Perkis, Mayor Pro Tem
Hartley Cooper, Councilwoman
Jerry Kaynard, Councilman
Madeleine McGee, Councilwoman
Pat O'Neil, Councilman
Mary Jane Watson, Councilwoman

Mayor Pro Tem Perkis called the meeting to order and stated the public and press were duly notified according to state law. The purpose of the meeting was for general discussion of the Town of Sullivan's Island vs. Islanders for a Smaller School, et al.

Motion was made by Councilman Kaynard, seconded by Councilwoman Watson to go into executive session for legal advice on the Town of Sullivan's Island vs. Islanders for a Smaller School, carried unanimously. Councilman Kaynard also suggested the order of proceeding after executive session to be a report from the Town Attorney, followed by Council members and public input.

Motion was made by Councilman O'Neil, seconded by Councilwoman Watson, to come out of executive session at 8:25 p.m., carried unanimously.

Mayor Pro Tem Perkis asked Town Attorney Larry Dodds to give a summary of what Town Council asked of him as pertains to the petition, to give his opinion on the options available and his recommendation, and to explain how we arrived to where we are today.

Mr. Dodds stated a petition with the required number of signatures was received by the Town requesting a referendum. The petition asked the Town to pass an ordinance that would require the building of the school to conform to the Town's ordinances for neighborhood compatibility and that it be approved by the Design Review Board, or that the building be built at approximately the same size as the old building, and that any agreements the Town has with the School Board be terminated. Town Council asked Mr. Dodds to respond with his opinion to the petition. He explained that petitions for referendums do not govern all functions of Council in government. They are basically for legislative purposes, particularly not for administrative purposes. To ask Council to make sure the school is built according to the guidelines of the Design Review Board for approval, those are administrative functions. So, from the beginning the petition for referendum is defective because it cannot control administrative functions.

The second reason it is defective is that where the school is to be built is not zoned, so the Town cannot require the School Board to go before the Design Review Board or to require them to meet neighborhood compatibility unless they agree to it, and the Town cannot require them to adhere to the Zoning Ordinance. But that was known when the Town entered into the lease, and safeguards were built into the lease so they would have to get the plans approved by Council. The lease speaks to size, scale, and neighborhood compatibility; and the intent of the Town was to govern the construction of the school through the lease.

The third reason it is defective is the Town is not required to hold a referendum if the outcome of the referendum would be something that would not have an effect or could not be implemented. There have been other opinions the Town could terminate the lease and mitigate damages, but the School Board has in its discretion a remedy called specific performance. They can go to court and require the Town to adhere to the lease.

It was Mr. Dodd's recommendation to Council, regardless of his personal view, was that it was a waste of the Town's funds to proceed with the referendum. Attorney Trenholm Walker has also given Council the same recommendation.

A declaratory judgment was filed to determine whether or not the referendum should be held. The School Board was served, but there was no representative for the Islanders for a Smaller School group to accept service. Because there is not a representative and the Town does not want to name one person and put him in a position where he may not want to be, the Town is waiting for someone to step forward.

Unless a representative comes forward and accepts service on behalf of the Islanders for a Smaller School, and they will put up a bona fide contest in adversarial situation, the Town does not have a legal obligation to go forward with the lawsuit. It is Town Council's decision to make whether to proceed with the lawsuit.

Mayor Pro Tem Perkis opened the meeting for public comment.

Stephanie Smith, 1908 Thee Street, stated at this point it is not known how many people do want a big new school, or do not want a big new school. We have asked for the right to vote, and that will answer the question. Council says it wants to save the Town money; however, it continues to pay attorneys instead of paying for a referendum.

Councilwoman McGee asked Mr. Dodds if the question Mrs. Smith is proposing could have been asked – do you want a big school or do you not? Mr. Dodds responded that it may have been possible in an advisory referendum before the lease was signed, but not after the lease was entered. The lease gave the School Board the number of students it could have, along with the maximum amount of square footage, so the proposed question would again be of no avail. Hypothetically, if the lease had not been signed, Council is boxed in by the wording on the petition that was received. That is another problem with the petition because it did not frame a question for Council to pass an ordinance that could be implemented very well. That is beyond the legal problem.

Mrs. Smith responded that they had to write up the petition twice to please Council. She continued that they could write a new petition and get the required signatures again. She stated Council is supposed to represent the people who live on the island, but it will not even listen to find out if the people want a school or not.

Barbara Spell, 1702 Atlantic, stated that a number of reasons this petition was supposedly defective were given tonight, but the reasons were reasons that might be suggested to someone that they should vote against this referendum. But it doesn't make the petition itself defective. We had submitted a petition with certified signatures on October 10, 2011, eight days before the lease was ratified. We also submitted an advisory petition two weeks before that. On the afternoon of October 18, 2011 when the lease was to be ratified, we respectfully asked that Council defer ratification until the referendum had taken place. The Mayor made the motion and no one seconded the motion.

Skip Scarpa, 2102 Atlantic. Mr. Scarpa stated the referendum still needed to take place by October, and if it is not held, believed the petition signers would have the option to file suit against Council at that time.

Wayne Stelljes, 3104 I'on Avenue stated the petition for referendum does not call for a vote on the size of the school. He stated that attorney Billy Want told him that the petition would not allow for a vote on the size of the school, all it would allow residents to do is vote for a school that is no larger than the old one, or vote against that. Charleston County has already said it will not build a school for less than 500 students.

Councilman Kaynard stated Council decided to do the declaratory judgment to accommodate the opinions of the Islanders for a Smaller School, but Council could not locate a representative of that group who would take responsibility and accept the documents to start the judicial procedure. He inquired if the members of the audience were representatives of the group.

Skip Scarpa stated he could not speak for the signers of the petitioners, but believed the Town wanted to file suit against them and force them to spend thousands of dollars to defend what appears to be an unnecessary lawsuit. Council is using our tax dollars to sue them. Pay our legal fees and we will know what the judge decides.

Mayor Pro Tem Perkis closed the public comment session and asked for Council member discussion.

Councilman O'Neil asked Mr. Dodds what would happen if the referendum were held, and the Islanders for a Smaller School won the referendum? Mr. Dodds answered that it would not have any effect because there is an ordinance on the books that read like the petition, and Council would not have the ability to require the School Board to adhere to that ordinance. Council could not require the School Board to build a school of the same size as the last one because the property is not

zoned, and that right was given up in the lease. Council could require the School Board to adhere to neighborhood compatibility as the petition has it; there is something in the lease that can require that, so the net effect of the referendum if it passed would be no effect whatsoever, therefore it is a waste of time and money on the referendum.

Councilman Kaynard stated that he believed this Council tried to be frugal and not waste taxpayer money. Any cost incurred in the matter caused by the petition was not caused by an action taken by Council.

He stated Council talked to the School District for about one year before beginning the lease negotiation, which took three to four months, and the first reading was August 16, 2011 at a public meeting. Everyone had an opportunity to make a comment about the lease. The second reading was on September 12, 2011 at a public meeting. As of September 20, 2011 the lease ordinance had three public readings and discussion, and Council had not received a petition for the referendum prior to that time. Council had actually already voted three times on the lease and it was a committed decision of Council. The Town rules state there has to be a unanimous decision reversing the initial three readings of the document at ratification to stop ratification from going forward. It was already a committed decision of this Council.

As far as the cost incurred for litigation, Council actually had to choose which was the lesser expensive route. If Council were forced to fight the signed lease with the Charleston County School District, it could be a multi-million dollar verdict for damages. Council has to abide by the signed agreement, and as stated previously in meetings, if the lease had not be adopted, there was a pre-existing lease still in effect for over 40 more years. The school district could have built the school without the Town's review or permission. The only authority that Council has to review this project has come under the lease adopted in October 2011. Because many residents who came to meetings appeared to want Council to get a declaratory judgment to satisfy them as to the legal effect of the petition, Council decided to do it in the interest of everyone on the island. This judgment was sought even though Council had two solid legal opinions that supported the decision of this Council that the petition was defective because the way the question was framed.

The central question in the petition would require the Town to have a vote on a school the same size as the existing school, and that is not a fair question to the public because the Town and citizens have been told repeatedly by the school district that they will not build that size school. The Town has let everyone have an opportunity to be heard on this issue, and continued to do so in the design meetings. Because residents who signed a petition do not seem to really have an interest in pursuing it, Councilman Kaynard believes the lawsuit should probably be dropped.

Councilwoman Cooper stated that although the lease did not specify the approval of the Design Review Board, both the Design Review Board Chairman and Vice Chairman have participated in the design meetings, as well as the Historic Charleston Foundation. The project is actually a very positive project, and the hard work and dedication is paying off for the community.

Councilwoman McGee thanked those for their input, and stated since October the majority of the citizens including the Design Review Board Chairman, who signed the initial petition, are now working on the design. There is public engagement through the community process and they are comfortable with the product the Town will have.

Councilman O'Neil emphasized Attorney Dodds' and Councilman Kaynard's point that had the School District been content with the 40 plus years remaining on the existing lease they had, they could have built a 1,500 student school.

Mayor Pro Tem Perkis stated he was concerned about the money spent on this and at this point agreed that Council should not be spending any more money on it. Council has two well documented opinions that say if Council goes forward with the declaratory judgment, the action is still mute. Council is an elected body governed by the rule of law and has to make decisions based on the rule of law. He continued that he would be hesitant to serve a resident who does not want to be served.

Councilman O'Neil and Councilwoman Watson added that they agree.

Motion was made by Councilman Kaynard, seconded by Councilman O'Neil, that if no one will voluntarily accept service as a representative of the Islanders for a Smaller School for the lawsuit by next Tuesday, March 13, 2012, then this Council would withdraw the lawsuit for a declaratory judgment and terminate legal proceedings.

Motion was made by Councilman O'Neil, seconded by Councilwoman Watson, to amend the motion to change the deadline to the close of business by this Friday, March 9, 2012 with notification provided in writing to the Town Administrator, Andy Benke, carried unanimously.

The motion, as amended, reads: if no one will voluntarily accept service as a representative of the Islanders for a Smaller School for the lawsuit by close of business this Friday, March 9, 2012 with notification provided in writing to the Town Administrator, Andy Benke, then this Council would withdraw the lawsuit for a declaratory judgment and terminate legal proceedings, carried unanimously.

Motion was made by Councilwoman Watson, seconded by Councilman Kaynard, to adjourn at 9:10 p.m., carried unanimously.

Respectfully submitted,

Ellen Miller