



**MINUTES
SPECIAL MEETING
FAIRFIELD COUNTY COUNCIL
NOVEMBER 26, 2018**

Present: Billy Smith, Doug Pauley, Neil Robinson, Jimmy Ray Douglas, Dan W. Ruff, Mikel Trapp, Bertha Goins, Council Members; Jason Taylor, County Administrator; Davis Anderson, Deputy County Administrator; Tommy Morgan, County Attorney; Patti L. Davis, Clerk to Council.

Others Present: J. R. Green (School District Superintendent), William Frick (School Board Chairman), Sue Rex (Foundation Chairman), Attorney William Halligan.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80 (e), as amended, the following persons and/or organizations have been notified of the time, date and location of this meeting: The Independent Voice of Blythewood and Fairfield, The Country Chronicle, and one hundred thirty five other individuals.

1. CALL TO ORDER

Chairman Smith called the Special Meeting to order at 6:00 p.m. in the County Council Conference Room.

2. APPROVAL OF AGENDA

It was moved by Council Member Ruff and seconded by Vice Chair Goins to approve the Agenda. ***The motion carried unanimously 7-0.***

3. ITEM(S) FOR DISCUSSION

A. Fairfield County School District Education Foundation Teacher Village Project.

Chairman Smith welcomed everyone to the meeting and introduced the representatives from the School District, School Board, Foundation and their attorney. The reason for this meeting is to get everyone to the table to ensure lines of communication are handled correctly. Chairman Smith then turned the meeting over to the County Attorney, Mr. Tommy Morgan. Mr. Morgan gave a brief synopsis of the project. He also covered a similar project which was undertaken in Richland County and is now in litigation since 2016 with Fairfield County being a party to this action as it relates to the Multi-County Industrial Park. Judge Manning issued an order in 2017 stating the project was proper and valid; however, the case has subsequently been appealed. Mr. Morgan is concerned for the County in that while the projects are similar, they are also different, the main difference being the single family home. There is a 2010 Attorney General opinion, which is not binding, stating there would be some concern with the nature of the houses being single family versus multi-family. These issues raise a concern in Mr. Morgan's mind, and he wonders if the special source revenue credit agreement would be the best way to accomplish the School District's request. Mr. Morgan has also not seen anything saying the School District cannot directly enter into an agreement with the developer to

work out its own agreement to do the credit thereby bypassing the step involving the Council. If there are concerns with the first step, one would then naturally look to the next step. Chairman Smith stated the County has now shared its concern with the arrangement of the vehicle which has been requested and now the suggestion is made that it may be possible to do something else. These discussions have been had, and he has been told the School District and foundation believe there may be a concern with this process. Chairman Smith requested the legal basis of this concern. Mr. Halligan stated the question to him was what authority does the district have to use its cash received from two sources in its general fund. It receives state money through the Educational Finance Act, and every state dime comes with a required purpose. The property taxes are the source of the local match but is still tied into the same purposes. All school property must be used exclusively for school purposes. The statute also deals with the powers of school trustees, to buy property for the use of the district, i.e. the school buildings, district office, etc. Cash can be used to maintain these buildings. There is no legal right spelled out for cash to be paid to a third party not related directly to the buildings of the School District. The School District bond lawyers have been uniform in saying this is not a capital improvement owned by the School District; therefore, School District debt could not be used. At this point, no source is known that would enable the district to write a check or to cut any taxes. The School District has no authority over the tax rate. The private property owner determines the value and assessment ratio of the property by its use. This is collected by the treasurer and then comes to the School District. The School District has no right and authority in this chain of events to determine property taxes. Chairman Smith stated there is no disagreement there. The suggestion is not that the School District would rebate the taxes but that it would contract to pay the developer the requested amount of money over the seven year period. Mr. Halligan does not believe there is any authority in the law to do this. The County has the right by statute to grant credits to Multi-County Parks. No such statute exists for the School District. Whereas the County is allowed to do certain acts for economic development, the School District has no authority to do this. Further, Mr. Halligan stated the School District can pay the teachers but cannot buy their groceries and cannot pay for their housing. The County has the ability through the park mechanism to grant a credit which lowers the cost ultimately for the teachers. Mr. Morgan then questioned if that credit is applied to outside entities apart from teachers, how would this impact. Mr. Halligan stated it would be a credit to the owner/developer and the teachers would be tenants. The School District would have no say in a Multi-County Park, and this would be solely up to the County with consent of the City. In this case, the credit for school taxes is benefitting the school district through the attraction of potential teachers. From the district's standpoint, this is a very worthwhile innovative use of this that is justified in the law and by the benefit to the County and the School District. From the School District's perspective of the student housing in Columbia or rental apartments, that is just a classification of a commercial property with a 6% assessment ratio. This would be the assessment for rental houses as commercial property with an assessment of 6%. Once it becomes a sole house, it probably would not be property, but at that point, it is exempt from school taxes. Dr. Green stated the Foundation sought someone who could help to finance this potential project, which is

housing to attract and retain teachers. After introduction to colleagues known by Dr. Rex, these individuals were very much interested in the project. The School District and the Foundation, to be clear, are here to advocate on behalf of a tax incentive that Gorelick is requesting. Dr. Green wants to draw this distinction because he is hearing that the School District is requesting the tax incentive. The School District obviously has some significant interest in the project, the Foundation obviously is working to make this happen, but the request is coming from the private entity. There is no tax incentive to be given to the School District or the Foundation. They are simply advocating for the tax incentive on behalf of Gorelick Brothers who has requested this as a function of making the \$3.6M investment in Fairfield County. Representatives from Gorelick Brothers were present at the last meeting. Pertaining to the County's concern with what has occurred in Richland County of which Fairfield County is a party to, Judge Manning obviously ruled in favor of Richland County and now the case has been appealed. The County has already been successful and now someone is seeking to overturn the ruling. Dr. Green believes it is highly unlikely this will be overturned. He also believes Richland County is moving forward with new projects of the same kind. He disagrees if the sentiment of the County is to not move forward based on this appeal. If this is the position of the County, he will accept this and just wants to be clear if this is what the County is saying. Mr. Morgan stated it is a concern for the County. Further, Gorelick Brothers, being the private developer, is who must bring this forward, and they are doing this at the School District's request. Dr. Green feels the only distinction is that the School District and Foundation did go out and recruit an investor. He does not feel there is a difference in this and if someone came to them stating they wanted to invest in Fairfield County. Mr. Morgan explained the difference would be the private investor would bring it to the County, and this has been one of the issues. Hypothetically, if the County was interested in going forward, reservations aside, there are still many steps which must be undertaken, none of which would be undertaken by the County. First and foremost is the fact that the property has not yet been conveyed to the Foundation. Chairman Smith also spoke to the distinction of different types of projects, one distinction would be that in this case, the School District is transferring the property for this purpose. Another distinction would be that the County, to his knowledge, has not received a request from Gorelick Brothers, but has only received a request from the Foundation. Mr. Morgan reiterated there are many steps that must be undertaken by the School District, the Foundation and Gorelick Brothers along with the Town before the project would ever get to the point that the County's role or involvement is needed. Dr. Green does not understand the relevance of whether or not the property has been transferred. Per Mr. Morgan, the zoning would have to be changed. His understanding is that this issue went before the Town on November 14. The Town was in receipt of a typewritten letter on Fairfield County School District letterhead which was not signed, requesting a zoning change on 22 acres of land. This was not on Gorelick Brothers letterhead and again was not signed. There were concerns arising from having it rezoned from C2 general commercial to a PDR (Planned Development Residential). There are steps that must be undertaken in this process in order to get the Town's approval, and this is one step the County has no control or involvement in. Dr. Green explained the reason the letter was not signed is because it was not a formal request for rezoning. A gentleman from the School District's office

was working with someone from the Town to review the documents to see if everything necessary was included. Dr. Green stated obviously a formal zoning request would not be submitted without a signature. Per Mr. Morgan, he was not present at the Town meeting and must rely solely on the minutes which state "Mr. Harrison began by stating that the meeting was called to consider a request for an amendment/change in the Zoning Map". Whether this is a formal request or not, these are all steps that must be undertaken, whether by the School District, the Foundation or Gorelick Brothers. Dr. Green questioned if the property has to be rezoned before it can be considered for a Multi-County Park. Mr. Morgan stated it has been said that this is a Gorelick Brothers capital project and the property is in the School District's name. It cannot be in the School District's name and be considered a Gorelick Brothers project. Rezoning is part of the process. The Council has asked Mr. Morgan his opinion on necessary steps in this project. If a company approaches the County to build a factory, documents with regard to the request for the Multi-County Industrial Park, the ordinance, the special source revenue credits, all are documents that are prepared by the developer and brought to the County for their review and decision to approve the project or not. To clarify, Chairman Smith stated the County is being told that what the Town thought was a request, in fact, was not a request because it was not signed, yet the understanding is the request has been made to the County to put this property in a Multi-County Park and do a special source revenue credit, yet as discussed earlier, we have received no request from Gorelick Brothers. He questions if this is all too early and if a formal request has, in fact, been made. Dr. Green stated Gorelick was at the table at the last meeting. At the conclusion of that meeting, the understanding was that the County would provide Gorelick what they would need to include in the request. Chairman Smith agreed that the request has not occurred, but the information has been provided. Dr. Green feels what was provided was a Plan B involving the School District entering into an agreement with Gorelick in lieu of pursuing the special source revenue credit. Per Chairman Smith both were provided on the same page. Dr. Green stated this is why Gorelick Brothers has not submitted anything for approval for the special source revenue credit. As the Superintendent of the School District, Dr. Green feels this is a very worthwhile project from a teacher retention perspective and an economic development perspective. If the County's position is they do not want to proceed, he asks that this be stated. No official action has been taken, so Chairman Smith cannot speak for all Council members, but the concern is that what has been requested of the County, there has been caution presented based on the case in Columbia with this being a multi-tenant rather than a single family detached housing property. It was stated in this order that it was a multi-tenant property and not single family. In order to help and work in any way possible, Chairman Smith has personally expressed support for the project with hard cash from the County in other ways. So, it is not that there is no willingness to work together as he feels this has been made clear. However, if the County has a concern with what has been asked and this concern has been evidenced with another possible option given with now concern for this, the County has provided the School District with its concerns, the School District now needs to provide the County with its concerns involving the state statute, etc. If this concern can be demonstrated and the County agrees with it, then we are going to be the ones to accept the risk for what many see as a School

District project, and there would then be some conditions to talk about. Speaking on his behalf only, Chairman Smith would like to see the following stipulations met:

1. Agreement with investor to indemnify the County, so that if this goes to litigation similar to what has happened in Richland County, the developer would be responsible for those costs. If the framework is being followed, it should be followed completely.
2. Agreement with the School District or someone else to cover legal expenses in association with the project as, again, it is not a County project.
3. Legal description of the property (this was also listed in the previously mentioned document). This would not include a graphical outline but would be a survey from a licensed surveyor.
4. Agreement by Town of Winnsboro to place the property in a Multi-County Park as it is within the Town of Winnsboro's limits.
5. In addition, it would not make sense for the County to spend a lot of money in this regard without the offer of someone to pay the expenses until the Town has concluded the rezoning process. If the property is not rezoned as requested, that determination would end the project. As the Town is the primary player in this process, let them get through with their process before attempting to proceed.

Chairman Smith stated he will not be here, but he would be willing to speak with other Council members and promote that some amount of County money be put toward the project. Dr. Green stated he appreciates this because it is very clear, and he understands what has been laid out. He asked if the County's position is that they will not entertain the project until the Town has rezoned, then they know there is no point in having the conversation any further. He has not heard this before, but if this is the will of the County that the business must be finished with the Town of Winnsboro first, then no more time will be taken up until that is done. In reference to Plan B, Dr. Green stated if there were any way this could have been done without coming to the County, they would not have come to the County. Chairman Smith does not doubt the intention but asks that the County be provided with the legal basis for the concern and the County, in turn, will have their attorneys review it. Based on this review, the County may agree and there may also be another apparent avenue. Chairman Smith is simply saying for all to work together to see what the legal basis for the concern is. The County has provided their legal basis for their concern, but the County has not been provided with this from the School Board. Mr. Frick commented concerning the case before the Court of Appeals and what is the standard review, if it will be a de novo hearing. Mr. Morgan stated it would not be a de novo hearing. Mr. Morgan has experience with the Supreme Court and understands the appellate process. He agrees that one generally tries to win a case at the lowest level possible because you generally do not get a return. However, this is a legitimate concern for the County. Mr. Frick wants everyone to understand that this is not a retrial on the case, and if it goes through the normal process and "giving great deference to the trial judge", the trial judge would have had to have made a clear error in his interpretation of the law. In this case, Chairman Smith's question would be on the indemnification and the payment for the legal fees. If one party in a deal doesn't see any concern in

what they're asking the other party to do and they do not see a risk, then they should be willing to pay and hedge that bet on the risk. It is not acceptable to say there is no risk with what we're asking you to do, but we don't want to pay for the risk just in case it does happen. Mr. Frick inquired if this is asked with other economic development projects. Per Mr. Morgan, generally in other economic development projects, it has already been parsed out and withstood judicial review. This is new as everyone has agreed, and that is why there is some concern on this end. In this case, Mr. Frick stated the County is asking the School District to do something that it does not believe the law will allow and there is no precedent. Chairman Smith stated the County has given the School District the opportunity to see what the County's concern is and has allowed time to share thoughts. To date, the County has not been provided that same opportunity. Again, if there is no risk seen, there should be no problem with indemnification. Dr. Green questioned in reference to indemnification if we are talking about the district or Gorelick. Per Chairman Smith, this would be a decision that Gorelick would have to make. He also understands that they had a meeting concerning this today and questioned if anyone knew the outcome. Dr. Green stated as an investor to determine if they are willing to go forward, he would imagine that until they see clear signs that the County is willing to support the project in terms of a Multi-County Park and special source revenue credit, he does not know if they are willing to make the commitment. To be clear, Chairman Smith inquired if the County is being asked to follow the formula and foundation/framework that was used in Richland County except for the indemnification piece. Dr. Green stated he is not asking this and does not know about the indemnification piece. At this point, he does not know if Gorelick feels as if the County is committed to providing the tax incentive; therefore, he does not know if they are willing to make that commitment. Chairman Smith stated it is always unknown until a request is made and a vote is taken. Vice Chair Goins stated Gorelick makes the request to the County for the tax incentive and through doing that, the process is continued with going before the Town to do what is necessary with them, at the same time Gorelick is working with our attorneys to get everything that is legal in place. This project is a good project, and emotion needs to be removed to get down to seeing what we need to do to move the project forward. Gorelick needs some assurance that the County is going to do its part once all the paperwork with the Town is done. They need assurance from us, and at the same time, we need assurance that they will go forward. Instead of going around and around, whatever is necessary, let's do this, including the portion needed from the Town. Any legalities of coverage of liabilities needs to be included in the agreement and then move forward. Council Member Douglas inquired if Dr. Rex has the papers he provided, and these include all the zoning information. Dr. Rex stated they are working on this. Mr. Castles, the Chairman of the Planning Commission, has stated they need a detailed site plan. The Foundation's engineer, who has done pro bono work up to this point, will attempt to provide what is needed. Per Council Member Douglas, they will need the size of the lots, the house sizes and set-backs. Vice Chair Goins stated these are some of the concerns, and once these concerns are dealt with, the County will then know where it stands and what it can do. The County will not back off, but just needs to know that everything is in place. Dr. Rex stated this will be the first teacher village in South Carolina and one of the first in the nation to have single family homes,

which will be a stronger recruiting tool and stronger retention tool. She feels this will be positive for Fairfield. Vice Chair Goins stated this is what is important, that the Town, County, District and investors work together collaboratively, and this will reflect on future projects. This is new, but everything starts new, and we can do this. Dr. Rex stated for this to work, they need the City and the County to tell them what is needed to make it work. If it is stretched out too long, the investors will be lost. Dr. Green appreciates Vice Chair Goins' words and support, but responds if she feels that emotions are involved in the discussion, he would disagree and say there is passion as he sees the value of the project, but no one is emotionally involved in this other than wanting the best for the community. Vice Chair Goins stated we are all on the same page from the perspective of developing Fairfield County and making it better. Dr. Green stated he has had teachers approach him about wanting to reside in the community, but there are no options. Some people do not want to purchase homes, so you must have viable rental options as well. Vice Chair Goins posed the question if anyone at the table could speak for Gorelick concerning whether they would be willing to accept liability. Per Dr. Rex, she is aware that they contacted Nexsen Pruet Law Firm today. The attorneys have reduced any fears Gorelick had about the pending lawsuit, and Nexsen Pruet has been asked to put together an opinion letter for the County, City and all to see. They know this case is out there. Vice Chair Goins stated the County must be sure it is covered in the event something does happen. Per Dr. Rex, the letter should be received in one to two weeks. Chairman Smith stated if we can find out about the indemnification question and coverage for the legal fees along with a formal request from Gorelick Brothers, this would be when we need to come back to the table. As stated on numerous occasions previously, the County does not have a formal request from Gorelick Brothers. Dr. Green inquired if the zoning would need to be completed before coming back to the table. Per Chairman Smith, this would be his personal opinion; however, this is not something the Council has discussed in great detail. He cannot speak for others, but unless someone is covering the legal expenses, there should be no problem proceeding before the zoning is complete because then the County has lost nothing if the property is not rezoned. To be clear moving forward, Dr. Green states it appears the County does not want to pursue this any further until the zoning process has been complete. Chairman Smith stated that would be the sentiment if no one agrees to pay the legal fees. Dr. Green questioned who would be agreeing to pay the legal fees. Per Chairman Smith, the School District, Foundation or Gorelick Brothers. Dr. Green stated his takeaway is the County is not willing to entertain this any further until the zoning process is complete. Per Chairman Smith, the main takeaway should be the fact that there is no formal request from Gorelick Brothers. There is also no formal request to the Town for rezoning. Per Dr. Green, the School District is attempting to rezone the property before it is transferred, so a formal request will come from the School District relating to the zoning. Obviously, the special source revenue credit request would come from Gorelick, and the School Board is here simply advocating on behalf of the investor. Further, his impression was that the County was not at a point to receive a formal request from Gorelick Brothers. Per Chairman Smith, there is no such thing as willing or unwilling to receive a request. Mr. Frick inquired if this was communicated to Gorelick at the last meeting. Chairman Smith was not present at this meeting. Mr. Frick stated

someone said the County would let them know what is needed to move forward. Chairman Smith stated this was done. Dr. Green inquired what exactly was needed to move forward. Chairman Smith referenced item B on the document, a legal description of the project. Per Mr. Morgan, this would be needed to get the project rolling, but the FILOT ordinance, special source credit documents and other details are brought by the developer to the County in every instance. This is part of the negotiation process and is presented by the developer. Council Member Pauley inquired if the developer has to be in possession of the land when these requests are made. Typically speaking, Mr. Morgan stated this is the case. Agreements will be in place for the developer to enter into negotiations and if this is not done, you are entering into speculation. To evidence this fact, Chairman Smith stated there was a first reading for an economic development project at the last meeting and second reading did not occur at the meeting earlier today. This was because the property was not in their hands yet. The process can start with first reading but cannot be completed until third reading and the property is in the hands of the developer. Dr. Green stated there are conversations that need to be held with Gorelick. He stated it would be a huge disappointment if they decide to not invest in the County. Chairman Smith agrees, but if the County is being asked to follow a framework, the framework should be followed completely. If it is not followed completely, this would be an unreasonable request. Dr. Green has not heard previously of the indemnification. Chairman Smith stated he has not spoken with anyone at Gorelick directly and all of his communications have been with Dr. Rex. The idea of indemnification has been discussed a number of times over the last two weeks. Dr. Rex has brought this up to Gorelick, but they have not responded. They were waiting on the opinion from Nexsen Pruet. For clarity, Dr. Green asked if Gorelick needs to submit anything or are we waiting on zoning. Chairman Smith feels this would be a political question for Council to answer. However, he feels Gorelick should send the request since this has never been received, agree to the indemnification as was done in the framework in Richland County and for someone to agree to pay the County's legal fees. This may not happen. There are some things that have come before Council during the Chairman's tenure and everything asked was not achieved; however, he still voted in the affirmative. It does not mean he will not support something even if he doesn't get everything that was asked for. However, it cannot be that the vote is based on exactly what the requestor is asking for either. There has to be some give and take and working together. He is completely willing to do this. So again, what is needed is a request from Gorelick, indemnification, legal fees, then the request is started. If these items are met, potentially first reading could be at the next meeting. Vice Chair Goins questioned if the legal fees would be all that is encumbered during this process as well as the liability fees, and Chairman Smith stated this is correct. Mr. Frick asked if the County has the indemnification language. Chairman Smith believes this can be provided by Ray Jones and this will be sent to Dr. Rex.

Chairman Smith thanked everyone for attending the meeting tonight and hopefully something will move forward shortly.

4. ADJOURN

At 8:32 p.m., it was moved by Vice Chair Goins, properly seconded by Council Member Pauley to adjourn. ***The motion carried 6-0. (Council Member Douglas left the meeting shortly before adjournment.)***

PATTI L. DAVIS
CLERK TO COUNCIL

WILLIAM B. SMITH, JR.