

**MOUNT PLEASANT TOWN COUNCIL**  
**Special Council Meeting**  
**Thursday, March 29, 2018**  
**1:00 p.m. (or immediately following the**  
**12:00 p.m. Budget Committee Meeting)**  
**Committee Meeting Room**  
**3<sup>rd</sup> Floor - Mount Pleasant Municipal Complex**  
**100 Ann Edwards Lane, Mount Pleasant, SC 29464**

**MINUTES**

**I. Call to Order**

Mayor Haynie called the Special Town Council Meeting to order at 12:41 p.m.

Council Members Bob Brimmer, Joe Bustos, Kevin Cunnane, Kathy Landing, Tom O'Rourke, Jim Owens, Gary Santos and Guang Ming Whitley were present.

**II. Public Comment**

**[None]**

**III. Consideration of draft inquiry letter to the Attorney General (from the March 13, 2018 Council meeting)**

Mr. Pagliarini presented the letter without the comments.

Mr. O'Rourke stated that all Council members received this information and either read it or chose not to do so. He said that he would recommend ensuring that it is satisfactory with Council and if not, discuss it at this time.

*Mr. O'Rourke made a motion that Council agree on this today and send out; seconded by Mr. Cunnane.*

Mayor Haynie asked Mr. O'Rourke about the nature of his motion.

Mr. O'Rourke stated that his motion is that Council act upon the letter that was sent to Council from Legal Counsel and if there are corrections to be made that they are addressed at this time.

Ms. Whitley stated that it was difficult to read on her iPhone and asked if the letter that Mayor Haynie currently has, incorporates all the comments of Council members or is it the original draft letter that was read.

Mayor Haynie stated that it is the original draft that was read.

Mr. Pagliarini stated that there is an original and then another letter that was sent to all Council members with all the comments that Council members made. He said if Council would like to see the letter with all the comments, copies can be made, but it was also sent to all Council members.

Ms. Whitley asked if there is a copy of the letter available that incorporates all the changes that Council made.

Mr. Pagliarini stated that the changes were not incorporated, but instead the Council members' comments were noted in the margin. He said many Council Members may have had comments on the same issue. He said rather than change it, the comments were added so that Council could discuss them and see what other Council members were thinking, so it would foster the discussion today.

Ms. Whitley proposed going through the letter paragraph by paragraph and incorporate any comments Council wishes and then approve them in order to have a finished letter with the incorporated changes that can be approved to be mailed out.

Mayor Haynie stated that in order to do so, Council will need a hard copy that shows the suggested changes.

Ms. Whitley stated that she is suggesting a procedure for Council to review the letter methodically and ensure that the comments of all Council members are incorporated.

Mayor Haynie asked if Mr. O'Rourke would amend his motion to state that Council will review the draft with all of Council's proposed edits.

*Mr. O'Rourke amended his motion as stated by Mayor Haynie; Mr. Cunnane amended his second.*

Mayor Haynie stated that the motion is to receive a hard copy of the draft that was written by the Town's Legal Counsel based on the vote of the March 13, 2018 Town Council meeting.

Mr. Bustos stated that there are two things; the consideration of the draft inquiry; however, the Legal Department is making copies for Council. Then there is the executive session to discuss a contractual matter. He said in order to provide the Legal Department with ample time to make copies, he would suggest amending the agenda to move Item #4 to be addressed now in order to continue the meeting while the copies are being made.

Ms. Landing stated that since Council is having discussions today, she submitted a rewording of what she believes is a long run-on sentence. She said it does not change the context but would like to see if it is possible to have additional amendments since the hard copy is not yet available. She said this was sent via email this morning to the attorneys.

Mayor Haynie stated that how he views the motion is that this draft will be finalized today.

Mr. O'Rourke stated that this is the desire.

Ms. Landing stated that the second item which talks about the executive session having certain items in it and when it was voted on to move it up. She was not present, because she was there for the earlier portion of the meeting, although she was not an elected official at the time. She said there is a long sentence that has a great deal of moving back and forth and it becomes very confusing. She said she took the same sentence and broke it into two questions, rather than one. She said it may not be the exact wording, but it reads: *"Regarding a published agenda of the Town Council meeting, when a scheduled executive session contains multiple items and one of those items is moved to a different position on the agenda, should the item discussed in executive session be voted on following the conclusion of that*

*meeting. If the item is voted on at a later time in the meeting and not when it was discussed, possibly following a separate executive session, is the decision by Council valid?"* She asked if this was an appropriate interpretation.

Mayor Haynie stated that he prefers Ms. Landing's wording. He stated that he will go first with his suggested changes. He stated that when he met with Mr. Pagliarini, he felt the simplest way to do this would be to cut and paste from the minutes what the motions were and then send the minutes and the amended agenda. He believes the Attorney General's office will be able to handle the rest. He said he has copies of the minutes from the November 14, 2017 meeting. He read the following from the minutes: *Mr. Haynie stated that this is for anything that Council may act on. He said to the new Council members that there was a situation prior where there may have been some exposure of Town Council members to personal liability. He said that he would like to reaffirm this with the new Council. He stated that he would be looking for a motion to approach the Attorney General with this question and will offer to lead the drafting of this request. Mr. Santos made the motion to proceed."*

Mayor Haynie stated that as he views this, the motion was, *"Did we have personal liability"*. He said the answer that he takes from the vote that Council took is the answer Council is looking for to help them understand when Council has personal liability and when they do not. He said there was no discussion about, *"should we recuse ourself"*, and there was nothing in the motion that said Council was asking, *"if they should recuse themselves"*. He said the motion was that there may have been exposure of Town Council members to personal liability. So, that is what is in the minutes as the question we voted on to ask. He said he does not mind the question of when Council should recuse themselves, but what was actually voted on was: *"Did Council have personal liability"*, not what Council should do if they think they have personal liability, because a Council member can recuse themselves and still be personally liable.

Mr. Cunnane stated that he is unable to tell from the motion if Mayor Haynie is discussing the general concept of when Council would be liable for votes versus were those Council members liable on the voting question. He said he believes this is really the essence of it. He said both items are important. He said the first one, Council members should know from the Town's Legal Counsel before any vote is made. He said the second one is looking backwards so if Council knows if it is proper or not, and Council may make adjustments moving forward also. He asked Mayor Haynie if this was a general item or is he referring to a specific Council member who stormed out of the room when they found out that there was potential liability for himself.

Mayor Haynie stated that he would let the minutes speak for themselves. He said there may have been some exposure of Town Council members to personal liability when acting in an official capacity.

Ms. Whitley stated that she had suggested in comment JR43 that Council phrase the question, "*Under what circumstances can an elected official be held personally financially liable in a municipal related litigation*", and she believes this captures the sentiment in the motion. She would like to propose that Council have this as the question.

Mayor Haynie asked for the reference again.

Ms. Whitley stated J4R3 and it is the fourth comment down on the first page.

Mayor Haynie stated that he is fine with this. He asked if Council should make this question #1.

Mr. Cunnane stated that this brings up the same issue. He agrees that this is very clear and concise, but are we talking about the general concept of Council's liability or are we talking about what happened at the July meeting. He said he believes this is the difference. He said we need both and does not believe the Attorney General is in a role to provide legal advice about general matters and believes the purpose

of the letter is to obtain the Attorney General's opinion on what happened at the July 2017 Town Council meeting.

Mayor Haynie stated that he does not have an issue with this either.

Mr. Cunnane stated that it would likely need to be broken down.

Mr. Pagliarini stated that where this came from in the draft, the word "affirmation" was used in the November 2017 Town Council meeting of a prior vote and when Council reviews the September 2017 minutes, *"Mr. Haynie stated that the motion would say in what way and what circumstances might Council members be personally liable, because it has affected a vote of this Council. Mr. Gawrych (then Council member), stated that he would add that if deemed personally liable, should they therefore recuse themselves."*

Mr. Pagliarini stated that he is not suggesting what question is addressed, but this is where this came from on the draft, the affirmation of the vote in November. Legal Counsel went back and reviewed the September 2017 minutes, and this is where it came from.

Ms. Whitley stated that she would then suggest that we add, *"and in this situation or should they be personally liable, should they be required to recuse themselves"*.

Mr. Cunnane asked to add the question of *"whether it was proper for someone to recuse themselves in the July meeting"*. He asked what the purpose of the exercise is and if Council is looking for legal advice, Council should either use the lawyers that are paid for by the Town or hire another one. He said the Attorney General is not going to provide generalized legal advice and Council would like a legal opinion about what happened in that meeting (July 2017 Town Council meeting).

Mayor Haynie stated that he is agreeable with asking that question but would like to know how Town Council members feel.

Mr. O'Rourke said to ask the Attorney General whatever Council would like to ask and he will either provide a response or advise Council that he will not respond to that question. He said it is better to

send too much information and allow the Attorney General to advise what he will not respond to, than have Council members debate all day what should be put into the letter.

Ms. Julia Copeland, Town Attorney, stated that as she interprets Council's discussion, *"under what circumstances can an elected official be held personally financially liable in municipal related litigation and in this situation (meaning the July 2017 Town Council meeting), should Mr. Gawrych have recused himself."*

Mr. Cunnane stated that he does not know if he (Mr. Gawrych), has to even be named, but *"was the recusal that happened proper?"* He asked if this was discussed in the November 2017 motion or is this something that Council is going to ignore.

Mr. Pagliarini stated that it is not in the minutes, whether the recusal was appropriate.

Mr. Brimmer stated that his interpretation of this was that the issue really was not about recusal, because Council members may recuse themselves or not, which is an individual decision. He said the issue was really, *"does the recusal prevent Town Council members from being liable"*, so the question is really about liability. He said Ms. Whitley's statement about *"where are those boundaries of liability on Council's votes"* is really the issue. The recusal is an ancillary issue. Whether Council members recuse themselves or not, there is still the question of *"are they (Council members), liable in litigation"*. He stated that he would rather the question focus on that issue as opposed to the recusal issue.

Mayor Haynie stated that, in the context in which this was in, it was the first meeting of the new Council members, prior to Mr. Cunnane's election, and there were new Council members with this weighing heavy on everyone's minds whether they were going to be personally liable, because at the July 2017 Council meeting, someone said they thought they were and recused themselves. He said Council was attempting to find out, as Ms. Whitley has worded, under what circumstances can you be held personally liable. He personally would

like to know if it has ever happened in the history of the State of South Carolina.

Mr. Cunnane stated that he has a question regarding the case at hand, the Middle Street case that resulted in the July 2017 meeting. He directed his comments to the Town Attorneys. He said there was a motion to remove the Council members in their personal capacity and asked if this motion was denied by the judge.

Mr. Pagliarini stated that Mr. Hinchey litigated this. He stated that he can respond to the question; however, Mr. Hinchey lived it, wrote it and did it and if allowable, would prefer that Mr. Hinchey respond to this question specifically as to the course; however, yes there was a motion and yes, some of the Council members were named individually, in their individual capacity, and then others individually, but in their capacity as Town officials, so there is a distinction.

Mr. Cunnane stated that he does not need to go backwards on that case and is looking at the general issue. He asked if the motion was denied to remove the individual capacity officials out of the case.

Mr. Pagliarini responded in the affirmative.

Mr. Cunnane asked if this is normal or unusual.

Mr. Pagliarini stated that it is very normal at that stage of the case. He said to keep in mind that the Town was litigating parallel the Park West case where the Town won that motion. He said there were two different judges with two different results.

Mr. Cunnane stated that at that instant when this was transpiring, there was one case where the officials were released and one where officials were included. He stated that there was some level of panic regarding this.

Mr. Pagliarini stated that at the time of this meeting, those individual Council members had not yet been dismissed from the case, if in fact they would have ever been dismissed as individuals. He said he would like to outline the distinction between "*named individually in their*

*capacity as Council members” versus “named individually” sort of the ultra vires act naming.*

Mr. Cunnane stated *“personally liability”* issue.

Mr. Pagliarini responded in the affirmative.

Mayor Haynie stated that it is also confused by the fact that some Council members who were not even on Council when that vote was taken, remain named in a lawsuit simply by ascending to Council and did not even vote or participate in any of the deliberation on that case.

Mr. Pagliarini responded in the affirmative and stated that those Council members were the ones who are named individually, but in their official capacity as opposed to those on the prior, so what he would suggest is there was a significantly different standard or approach from the carry over Council members versus the new Council members.

Mr. Bustos stated that he prefers the simple straight forward question that Ms. Whitley suggested. He said this is getting too complex, and Council simply needs to ask the two questions: *“Are we financially liable for the decisions we make on Council”*, which he believes Ms. Whitley worded appropriately; and, *“can Council vote for a second executive session, on what was discussed in a previous executive session”*. He thinks these are simple questions, but the first one, he believes Ms. Whitley has worded well.

Mayor Haynie asked Council members to go to comment J7: Mr. Brimmer suggested an alternate inquiry; *“When a published agenda contains a single executive session item with multiple sub-topics, followed by a single action item related to the entire executive session and Council amends the agenda to move one sub-part from the executive session to the beginning of the meeting, leaving the remaining sub-parts and action item, when is the appropriate time to take the noticed action.”* Mayor Haynie stated that he agrees with this completely.

Ms. Whitley stated that she is in favor of this question as well.

Mayor Haynie stated that there is consensus on Ms. Whitley's question, J4R3 and J7, which was Mr. Brimmer's.

Ms. Landing stated that the difference in her comments was that it was not a run-on sentence where it became very convoluted, but two sentences that asks a more pointed question, which is, *"if you do take a vote out of sequence, is that a valid Council vote"*.

Mayor Haynie stated that when this was voted on at the November 2017 Council meeting, it was said there are two questions. First, this is the one Mr. Brimmer's motion addresses about amending the agenda and going into executive session; and the other is the law regarding the use of the agenda and believes it addresses this. He said if both are inserted, he believes this concludes the comments.

Mr. O'Rourke asked if Mr. Santos was agreeable with the accuracy of what is proposed to be in the letter to the Attorney General.

Mr. Santos stated that he was in favor of the original letter. He said now that Middle Street Partners has been mentioned, which is why he originally recused himself, he would like to ensure what is being voted on. He asked if the intent is to simply find out whether or not Council at that time on their vote, which he did not vote on, made an error, or if this is an attempt to undo the mediation for Middle Street Partners. He asked the Attorneys about the difference, before he makes the decision to recuse or not, because Middle Street Partners was introduced in the conversation, which is why he recused himself to begin with. He said if this is not about that, which has already been introduced into the minutes of this meeting, he feels that he should recuse himself, because they have been brought into it as if this was done because of them (Middle Street Partners).

Ms. Landing stated that what she has thought about and checked with is, *"if Council were to find out from the Attorney General that somehow the vote was not taken correctly and that it should have been timely to the session that related to it and therefore, it is not valid"*, are we then opening up the Town to significant risk.

Mr. Pagliarini stated that as he understands what has been put on the record at previous Council meetings that this is an Attorney General's opinion for future guidance. If that is the question, then this is about future guidance and not about the vote. He said he cannot make the decision as to whether Mr. Santos should recuse himself or not, but Mr. Santos' conflict at that time as stated would not apply now, meaning that this is about future guidance and therefore, Mr. Santos would not have any conflict. He stated that if under Mr. Santos' scenario this was about attempting to undo a Council vote, then there may be a conflict. He said it would depend on what the purpose of this is and based on the record, he believes it is apparently for future guidance.

Mr. Santos stated that if this was for the purposes of future guidance, then the name of a company should not have been brought up which is why he abstained to begin with, so this now has him concerned.

Mr. Cunnane stated that he mentioned that company in the context of the name of the case, which is public information.

Mayor Haynie stated that going back to the minutes of the meeting where he is talking, he said, "He said that if everything on the particular vote going back to May or June, if the law was followed in this and if not, help Council to follow it better in the future for the sake of transparency and compliance with the law". He said there is nothing in that discussion noted in the minutes that has anything to do with undoing anything or any previous action by this Council.

Mr. Brimmer stated that this goes to his comment J8, which is that he would ask that this paragraph under facts, be struck from the letter and does not believe the context of the lawsuit is relevant to receiving a response from the Attorney General and believes that it provides a complicating context that may in some way influence the result that Council receives. He suggested taking that paragraph out and present the questions as stated.

Mr. Owens stated that he does not agree. He said as Mr. O'Rourke stated earlier, the more information provided, the better, and to keep

the facts in place is pertinent. He said the Attorney General can speak to that himself.

Mayor Haynie stated that he agrees with Mr. Owens and believes that the Attorney General's office will respond to the two questions that involve the actions of Council as a body and the rest as background. He asked Council if this covers everything.

Ms. Copeland asked if there is an overall decision to include Ms. Landing's question.

Mr. Haynie stated that he would say yes.

Mr. Cunnane suggested treating it as an amendment to Mr. O'Rourke's motion.

Ms. Whitley stated that she believes it was meant to be a two-part question; two questions, but the second question would be two-part.

Mayor Haynie asked if Council is in agreement with the proposed three changes; J4R3, J7 and adding Ms. Landing's clarification. He asked Ms. Landing to point out in the draft Attorney General's letter, for the record, where this is located.

Ms. Landing stated that it is clarifying #2.

Mayor Haynie stated that as discussion ends, Council will move to a vote to make these changes, instructing the Town's attorneys to draft up the letter, which will go to the Attorney General as the action of this Council.

Ms. Landing stated that since we are not trying to go back and undo the past but are going to be asking the question that could come back with, "this was not the right way to vote on this". She said if this is the case, does this open the Town up to any risk.

Mr. Pagliarini stated that he will provide a two-part response. He stated that the Attorney General provides guidance and opinions and those opinions are not material in the sense that they carry no legal precedent nor value. He would believe that this answers this question. He stated that he does not wish to make this more complex than what it is; however, it is a long answer and they have certainly thought

about it and he has stated his position on the record previously, it is more a corollary action as a result of an opinion that they are concerned about but would be happy to put this in a separate confidential memorandum for Council.

Ms. Landing responded in the negative and suggested moving on.

Ms. Whitley stated that there are additional comments on the second and third page of the letter and said she would like to see them all incorporated. She thinks Mr. Bustos' clarification of whether it was the first or the second executive session is important, as well as Mr. Owen's clarifications which are also important. She suggested comments J10 through J13 be incorporated.

Mayor Haynie stated that the motion on the floor will incorporate those changes stated to this letter which will be the draft of this Council.

*All present voted in favor.*

**IV. Executive Session to discuss a contractual matter involving the right of way exchange agreement between Patriots Point Development Authority and the Town of Mount Pleasant**

Mayor Haynie stated that representatives from Patriots Point will be providing the legal aspect of this item. He said there are also two Mount Pleasant residents present who are Board members of the Patriots Point Development Authority (PPDA), who he serves with on the Board. He said with everything moving in this direction, that it would be favorable for all of Town Council to hear from the lawyers at PPDA as well as the Town's Legal Counsel all the legal ramifications that this has nothing to do with a submission of building height, but the Exchange of Right-of-Way agreement. He said there will be no discussion of building heights or design approval.

Mayor Haynie asked if there is a motion to adjourn into executive session for the purpose of a contractual matter involving the right of way exchange agreement between Patriots Point and the Town of Mount Pleasant.

*Ms. Whitley so moved; seconded by Mr. Owens. All present voted in favor.*

Council adjourned into executive session at 1:12 p.m.

**V. Post Executive Session**

**Council may take action on any item listed on an executive session agenda or discussed in an executive session during a properly noticed meeting.**

Council reconvened at 2:09 p.m.

Mayor Haynie stated that no action or votes were taken in executive session. He stated that he does not believe there is any action coming out of executive session. He said Council received information on this large project and all the obligations that would befall the Town. He thanked everyone for their time.

**VI. Adjourn**

There being no further business, Council adjourned at 2:09 p.m.

Respectfully submitted,  
Barbara Ashe  
March 29, 2018