

**EDGEFIELD COUNTY COUNCIL MEETING
MINUTES
March 1, 2011**

The Edgefield County Council held its regular meeting at 6:00 P. M. Tuesday, March 1, 2011, in the County Council Chambers, 225 Jeter Street, Edgefield.

Members present

Dean Campbell, Chair
Genia Blackwell, Vice Chair
Rodney Ashcraft, Councilmember
Willie C. Bright, Councilmember
Norman Dorn, Councilmember

Others present:

Alton Brown, County Administrator
Lynn Strom, Finance/Budget Manager
Michael S. Medlock, County Attorney
Barbara R. Stark, Clerk to Council
and others as per list attached

Chairman Campbell called the meeting to order and Attorney Medlock gave the invocation. The Pledge of Allegiance to the Flag was then recited.

March 1, 2011 council agenda approval

Chairman Campbell requested that Agenda Item 7 under New Business (patrol cars for the Sheriff's Dept.) be moved to No. 3 under Old Business. The motion to approve the March 1st agenda with the chairman's request was made by Councilwoman Blackwell, seconded by Councilman Ashcraft. Motion carried unanimously.

Approval of council minutes

Motion was made by Councilman Ashcraft, seconded by Councilman Bright, to approve the February 1, 2011 Edgefield County Council Minutes. Motion carried unanimously.

Public Hearing

A Public Hearing was held to receive written and/or oral comment from the public concerning the County Council Planning Session to be held March 4th. There were no comments, written or oral, from the public.

Comments from the public

A citizen in the audience asked about the construction that's taking place near the Senior Citizens and Parker School. Since the construction did not pertain to the county the question was directed to Edgefield Mayor Ken Durham and Mr. Durham stated "they are apartments." As the conversation continued, Chairman Campbell stated that since this was not council business to please continue the discussion outside.

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Reports of Boards / Standing Committees

No comments.

Old Business

Item 7 under New Business was approved to be placed under Old Business at this time, that being “Consider the purchase of two patrol cars for the Sheriff’s Department.”

Sheriff Dobe explained that his request for two patrol cars is the replacement of one with high mileage (130,000 miles) and the other one for the a car that was wrecked. He felt two could be purchased for \$45,000 – he received \$10,000 from the wrecked vehicle of which we could use \$7,000 to buy the equipment for the vehicles. We have eight fair vehicles and the majority of those are at the shop being work on. We normally try to keep five in good repair. In addition to that it has been a normal practice to pass on vehicles to other government agencies. We have had two requests.

The chairman asked the sheriff if in his budget is there a line item that can pay for these cars? “No, that is why I am asking. There may be a line item but I don’t believe there is any money in it because there was none appropriated in last year’s budget.”

The purchase of the cars would have to come from contingency, I assume, stated the chairman, right Mr. Administrator? The finance director stated, when asked of the balance in contingency, is \$37, 818.09.

The chairman asked the administrator if he had any recommendation. “I don’t. I don’t have enough information.”

Councilman Dorn made the motion to buy one patrol car and to take the funds from the contingency, which would leave “a little” in the account. The motion was seconded by Councilwoman Blackwell. Motion carried unanimously.

Speed Tables / Whispering Woods

The request for speed tables in the subdivision of Whispering Woods was brought before council at the February meeting. It was held over until the March meeting until the sheriff could speak with Mr. Kevin Ratcliff, the individual bringing the request to council. Mr. Ratcliff was not present for the March meeting.

The Chairman asked the Sheriff if he had had an opportunity to talk with Mr. Ratcliff and he (sheriff) responded he had called a couple of times and a meeting was scheduled but neither of them could make the meeting. Captain Wash explained that a speed trailer but be one way of detecting speeders. The two towns (Johnston & Edgefield) have speed trailers but they do not have data collection on them.

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Councilwoman Blackwell asked Captain Wash if that type of equipment could be borrowed from another county and he stated he had tried locally but other agencies outside of our county do not like to loan their equipment.

Administrator recommended deferring the speed tables request until April and council agreed.

Board appointments

Zoning Board of Appeals: Calvin Jackson has agreed to serve another term.

Planning Commission: James Burt, Roger Timpson, Nadine Horne, Tracey Freeman, Rodney Ingle and two at large, Dan Bergtholdt and Torrey Johnson. Councilman Ashcraft stated he was planning to appoint Dennis Brite replacing Roger Timpson

Board of Assessment Appeals: Defer until April

Recreation Commission: Defer until April because the Town of Johnston will not consider an appointment until March 14th.

Fire Board and Building Code Board of Adjustments & Appeals: Defer both until April.

Edgefield County Hospital: Dr. Sam Hair, Henry Kowalewski, and Keith Lynn.

Motion was made by Councilman Bright, seconded by Councilman Dorn, to approve appointments to the Zoning Board of Appeals, the Planning Commission, and the Hospital Board. Motion carried unanimously.

New Business

Amendment of Sept. 7, 2010 Minutes

Mr. Roy Blackwell made this request and when recognized by the chairman Mr. Blackwell stated that the letter was self-explanatory. Chairman Campbell stated that Mr. Blackwell would like for council to remove from the September 7, 2010 meeting all of the references and attachments to his publication. They fell under the administrator's purview and so for discussion the chairman asked the administrator for comments on the remarks and why or why not they should be deleted from the minutes.

The administrator stated that he would really like for Roy come to the podium and explain more than just the e-mail that he sent. I would like to know why it took him six months to come to this conclusion that there was a copy write infringement. Also, I am aware that the e-mail only went to three of the five commissioners and I am hoping that all five of the commissioners are aware of the content of that. I also want to discuss with

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him in his comments that the contents of this was defeated several times (I think it is in the second paragraph or somewhere about that) it was never defeated, deferred several times, but never defeated. I was also curious about his comment when he said, “they were defeated several times until in a meeting in June when Rodney and Genia both were absent.” It was deferred into a meeting, it was advertised, it was postponed, it was deferred until that meeting and I wondered what he meant by the fact, yes, they were absent but it wasn’t that it was put on the agenda at that meeting it was put on that agenda at the meeting before that so I wondered what he intended by that.

Also, he noted that the federal copyright laws are very specific in the Edgefield Daily, “myself, nor our parent company gave written permission.” I was curious about the pronoun “our” –I wondered who he meant by “our” plurality there. Also, the parent company – I would be interested in knowing who the parent company is. Going further with that, in a paragraph or two down, talking about the content published by the Edgefield Daily without expressed written permission, I will be forced to advise our parent company to seek remedy. So it is apparent to me by reading that, unless I am badly mistaken, that since there is a parent company that Mr. Blackwell does not have the authority to file suit, that he can only advise the parent company, so I would like to think that the worst case scenario that this council thinks that there is a, or even a minute possibility that there are grounds for a suit that you would suggest that the attorney for the parent company get in touch with the county attorney and let them work on this to see if they work this out without litigation, but apparently he is not willing to come to the podium and answer questions. Now, I will briefly talk a little bit about from the action that transpired in leading to these being intermittent I don’t want to delve on that because we are not here to discuss why they are there we are here to discuss the copy writing infringement issue because that is the basis of the threatened law suit. But just to touch on it a bit and refresh everybody’s memory because there are people who weren’t here because it has been back now about nine months.

At the July 6, 2010 council meeting you made comments and attempted to answer questions regarding the Calliham Building. I think the most of us at that point and time were getting rather, if I may say so, tired of the constant bickering. And my comments were made for the knowledge and benefit of all to put the pettiness behind us and move on with the renovation to protect an employee from an unwarranted abuse and criticism and to clarify certain codes and statutes, and, the Edgefield Daily Editor had alleged corruption in receiving kickbacks on the part of an employee, by name, without offering any documentation, and stating there may be more than one seat challenged in November and my job, the county administrator’s job, might hang in the balance in the outcome. Then, on July 7th and July 15th, 2010, Mr. Blackwell began a variety of misquotes and misstatements from the July 6th meeting which I responded to in detail in the administrator’s comments offering documentation for each rebuttal. At the July 10, 2010

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meeting, Mrs. Blackwell requested that the administrator's comments from the July 6th, 2010 meeting be included in the minutes. The only motive stated for objecting to the submission of the administrator's comments as minutes was that they were not comments made at the meeting. The comments were not actually made at the meeting. However, the county attorney replied at the time that the documents need not be read in order to be included in the minutes. Of the nine bullet points referred to comments made at the July 6th meeting requested by Mrs. Blackwell be included in the minutes and misrepresented by Mr. Blackwell. I would think that the council and the public would be pleased to receive a more detailed explanation with documentation in the form of an addendum to the minutes.

To address the copyright infringement, specifically, and this is my opinion, o.k.? Based on some experience and not intended as anything but my opinion. Sometimes copy writing infringements can be used as a tool to silence criticism. Copyright owners often try to use copyright laws as weapons to squelch speech that is critical of them or of their work of authorship. Mr. Blackwell's threat to advise his parent company of our copyright infringement law suit against the council due to materials contained in the September 2010 council meeting minutes are almost certainly protected by Section 107, Fair Use, of the Copyright Law of the United States of America. The Fair Use Doctrine exists to prevent copyright holders from doing what Mr. Blackwell has attempted here – to punish the dissenters and to suppress speech in to criticizing copyrighted works. For all of his ironic appeals to the first amendment rights, Mr. Blackwell asks the council to remove minutes that expose inaccurate content of his blog. Such criticism of inaccurate reporting is of no affront to either free speech of copyright infringement and indeed should be expected in the marketplace of ideas that the first amendment and the copyright act strongly protects...

At this point Councilwoman Blackwell called for a point of order. Councilman Dorn asked "why?" Mrs. Blackwell stated because if this has been a threat of a law suit this should be in executive session. It needs to stop from the side show. Councilwoman Blackwell made a motion to go in executive session but at the time Councilman Dorn stated he had a question. (Councilman Ashcraft seconded the motion).

Councilman Dorn stated that since he and Councilman Bright were not possibly part of the concerns about the information to be discussed "I am not going in to executive session because if I was not involved at the on-set I am not going to be involved at the after-set. Three people were contacted with this information. I know I wasn't involved with any information period. I can't speak for Mr. Bright because he is over 21 years old, but three people already received most of the information now being discussed and I know I was not included then and I won't be included now."

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The administrator asked the chairman to be able to continue with his comments. “I am almost done, you asked me the question and I also ask Mrs. Blackwell if she intends to recuse herself from comment and voting because of the conflict of interest she is involved in.”

Mrs. Blackwell stated that she was not “required or requested to be removed prior and no I do not intend to be removed.”

Chairman Campbell stated there is a motion and a second on the floor about an executive session for a legal briefing on this. Three yeas (Campbell, Blackwell, Ashcraft) and Councilmen Bright and Dorn opposing. We’ll move in executive session for a couple of minutes to receive a legal briefing. At this time the administrator requested that his comments up to this point be included for the record.

Returning to regular session, Chairman Campbell recognized Attorney Medlock for comments. “Council convened in executive session to receive legal advice on this subject only. No action was taken, no vote was taken, and no decisions were made in executive session.”

The administrator asked if he would be allowed to continue. There were no objections but the chairman asked that he make it brief. Administrator Brown: “I may back up and repeat a half of a paragraph but I think is worth it.”

The Fair Use Doctrine exists to prevent a copyright holder from doing what Mr. Blackwell is attempting here – to punish dissenters and to suppress speech aimed at criticizing copyrighted works. For all his ironic appeals to First Amendment Rights, Mr. Blackwell asks the Council to remove minutes that expose the inaccurate content of his blog. Such criticism of inaccurate reporting is of no affront to either free speech or copyright infringement and indeed should be expected in the marketplace of ideas that the First Amendment and the Copyright Act strongly protect.

The Fair Use of a copyrighted work, including such use by reproduction or by any other means specified by Copyright Law is not an infringement of copyright. In determining whether the use in any particular case is a Fair Use, the *Four Fair Case Factors* are:]

(1) The purpose and character of the use, including whether such use is of a commercial or for profit purpose.

At this point the chairman stated that they had had the legal briefing on that and the administrator could skip the legal briefing part of his comments. But the administrator stated that he would like to read this into the record if he may – it would be brief.

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Chairman: O. K.

The use was clearly not for profit.

- (2) The nature of the copyrighted work.

The factual nature of the work means that one may rely more heavily on the protections of fair use and the amount of documentation offered should prevail as an acceptable practice when considering Fair Use.

- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

There is no guide that definitively states how much of a copyrighted work can be used without copyright liability. Instead, courts examine how such excerpts were used and what their relation was to the whole work. Since the use of copyrighted text was limited to only the portion necessary to convey my message, the likelihood that a court will find the usage is a Fair Use is substantially increased.

- (4) The effect of the use upon the potential market for or value of the copyrighted work.

The courts tend to view this factor as the most important factor and will examine the situation to determine how the market value of the copyrighted work is affected by the use in question.

The fact that the original work was distributed free shall weigh against a finding that the work had publication value.

This factor is concerned only with economic harm caused, not by criticism. That one's use harms the copyright holder through negative publicity or by convincing people of one's critical point of view is not part of the analysis.

Bottom line is that the addition or addendum to the minutes submitted September did not meet or do meet the four fair use factors and, therefore, in my opinion are not subject to the copyrighting infringement laws and I would request that the council do not vote to remove those from the minutes.

The chairman asked Mr. Blackwell (one more time) if he wanted to say anything. No response, and the chairman said "I take that as a no." Chairman Campbell asked for a motion.

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Councilman Dorn felt that if these minutes were removed then why not go back and re-do others. Why have a legal meeting with the proper minutes accepted and now un-accept what has already been accepted. No use to vote when the opportunity is there is a change to approve or disapprove the minutes. Don't vote at the time because it can be overturned or challenged. If it is already set, why disturb them? Councilwoman Blackwell said she believes this is being done because it is requested by a citizen.

The question was asked what percentage is required to approve removing the administrator's remarks from the September 2010 minutes. The chairman stated that basically *Robert's Rules of Order* say that you can do a majority vote instead of a two-thirds vote if you examined the why you are doing it at a public meeting or a vote of the majority of the entire membership meaning that we are all here tonight so it would be a vote of the entire membership. So, under *Robert's Rules* it would be a majority. Administrator stated that he thinks that refers to if you have a body of membership like the Southern Baptist Association. Membership refers to the entire membership of the association not the board or the council

Councilman Bright made the motion the minutes stand as is. The attorney stated that would be a negative motion – already approved. The only motion could be to amend the minutes as requested.

Councilman Ashcraft remarked that whatever happened at the meeting is what the record reflected because the report, everything in it was not talked about at the meeting. As far as I know that would probably be the first set of minutes ever where we had content in there that was not conducted at the meeting The administrator stated, "what about if you pass an ordinance that wasn't spoken or read in its entirety. How do you differentiate that? Do you want to read that 29 page ordinance that you passed?" No, replied Councilman Ashcraft, no especially no not that one. But, yeah, I mean exceptions included. My thoughts on that are different from the editor of Edgefield Daily. An ordinance is being passed to put on record as a directive from the county where as the information you (administrator) included in that one meeting is added in there, does that mean any of us can take a big section or whatever website we wanted to and include it as long as there is something in that section pertinent to business in the county.

The chairman asked council if there was a motion on this issue? Motion was made by Councilwoman Blackwell to amend the contents of the minutes of September 7, 2010, as discussed. Councilman Ashcraft seconded the motion. The administrator asked the chairman if he had arrived at a decision of whether it is 2/3 or a majority? The chairman replied that based on what the attorney had given him a simple majority. The administrator said that he was looking at Robert's Rules of Order and he thinks that a 2/3 vote is required. Also, in accordance with Title 8, Chapter 13, with all do respect, Ms.

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Blackwell is putting herself out on a limb by not recusing herself from discussion and voting. Councilwoman Blackwell: When the minutes were brought up, Mr. Brown, and it was discussed month after month after month, I was never asked to recuse myself at that time. All of a sudden I am being asked to recuse myself. I do not agree that that is accurate. The administrator stated that the Council is under threat of a lawsuit and you have a relationship. Ms. Blackwell: That is fine, I will recuse myself.

The chairman asked all council members for a show of hands that were in favor of the motion. Mrs. Blackwell made the original motion but recused herself, so another motion had to be made. No motion was made.

Foreign Trade Zones

The chairman explained to council this request came from the Economic Development Partnership – actually requested by the Columbia Airport, asking Edgefield County to have our geographic area a *Foreign Trade Zone* which would allow industries that do business overseas to bring their goods here as with customs and taxes they would not be subject to (would not have to pay). Things could be assembled or made here in our local industries and shipped back out without the added costs to the industries that would be doing that. It does not cost the county anything, it adds to the county by giving local businesses more work if they are in a Foreign Trade Zone. Most counties have this. Just would like to open this Foreign Trade Zone here for people who could have jobs should this occur. Councilman Dorn made the motion to receive the Foreign Trade Zone request. Motion seconded by Councilman Bright and the motion carried unanimously.

Off Duty Deputy funding

An off-duty deputy is now attending council meetings – I think it is a necessity in today's world. According to the sheriff the cost of this cannot come out of his budget. There is no money in his budget. The remainder of this fiscal year the cost will be \$1,000 approximately, to be taken from the contingency account, and have a line item next year in the budget (approximately \$2,000). Since an off-duty deputy was not funded this year council will have to consider the \$1,000 from contingency to fund a deputy for the remainder of the fiscal year. Motion was made by Councilman Dorn, seconded by Councilwoman Blackwell to fund an off-duty deputy for the remainder of the fiscal year from the contingency (\$1,000). Councilman Bright why do this, it will cost a lot of money. We need a deputy here now? Do you think that deputy is going stop somebody from doing whatever they want when they walk through that door? Motion carried with four yeas and Councilman Bright opposing.

Courthouse Security

Clerk of Court, Mrs. Shirley Newby gave an update on the courthouse security upgrade. She acknowledged how much help Sheriff Dobey and Capital Wash had been to her.

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They have the training and the knowledge of the security and they graciously helped her with the upgrade. Rick Logan from EDTS, our new IT Company also worked with Ms. Newby and he provided everything she needed and in a timely manner. Then those things that have come up later that you have to have, he has been there.

ADT has installed cameras and proximity cards and she stated she is working on fire alarms to make sure they are monitored at all times. Mike Casey and Sandy Backensto and Shirley are working together to provide an evacuation plan for the courthouse, and they will work with the elected officials and department heads on this evacuation. She informed council that they had a wake-up call a few months ago when the fire alarm sounded and realized then the evacuation plan needed updating. The employees and public safety must be a number one priority. She thanked council for allowing the upgrade, and realize how busy every one is and appreciates everyone taking their time and she values their opinion and their skill and training. It has been a difficult task and a lot of people have been called on for their knowledge. Many county officials have helped her.

Chairman Campbell thanked Mrs. Newby for taking ownership of that and accountability in working to get that done.

Judge Carpenter asked if their office is included in that? No, I don't think so on this one. Ms. Carpenter stated that twice someone has come to her office and measure and look for a place to put cameras and Captain Wash told her there was money in that the night she asked him. "We have nothing but one locked door in my office. We don't have a camera, we have zero. When there is a hearing I have no security in my office unless I am having court the deputy involved is present.

The chairman asked the administrator to look into the security issue of the magistrate's office since the Clerk of Court isn't sure if the magistrate was to be included. He stated he would.

RECOGNITION OF GUESTS

No comments.

COMMENTS FROM PUBLIC

No comments.

COMMENTS BY THE COUNTY ADMINISTRATOR

No comments.

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COMMENTS BY THE COUNTY COUNCIL MEMBERS

Councilman Bright informed council of the Upper Savannah COG meeting he attended. and the approval of the widening of Highway 25. The money has been appropriated for this region to widen Hwy. 25 and Hwy 221 in Laurens. Highway 25 widening will be from Barton's up to near Vann's Bar-be-cue. This takes all of the money from now until 2015. No more projects in this region. This project will begin April 1st and should be through buying the right-of-way by end of the year and actual construction should start the first of 2012.

The widening will be from the existing four-lane all the way up pass the Industrial Park Attorney Medlock made the statement that it had been mentioned at the Alliance meeting of taking it to that point and then may have to re-route it. Mr. Bright said that for years it was argued about doing the widening in two phases and if it would go all the way and completed it, first of all there would not be enough money. There are six counties involved and they are not going to get anything during this period, so they would never approve it. So, it is split in two phases because another reason if you go all the way it will cost about forty million dollars. If you go all the way there will be a law suit. If you get that money distributed to you and there is a law suit chances are you will lose the money. Law suits can run ten to twelve years. Mr. Bright says he hopes to see it up the Industrial Park in his life time – doubt if he will see it finished.

The only problem they have now, there is one house along the highway that is on the Historical Register and the Historical Society will not let them move the house or cut the trees. The people that own the property will allow it. (There was discussion between Tricia Glenn (Archives) on this matter.

COMMENTS BY THE COUNTY CHAIR

The chairman informed council members that he had met with all of the elected officials: Clerk of Court, Sheriff, Probate Judge, Auditor, Treasurer, and Coroner. He stated he had learned a lot about their offices. What he really learned, he said, and you don't hear a lot about this, but they and the other departments really work together well. They lend each other people when they have to, they work together behind the scenes, and none of them sit in an ivory tower and expect their departments to run. Very pleased of how it runs with the elected officials. They are extremely professional and knowledgeable and he feels we are blessed to have them. He wanted to publicly thank them for the work they do.

Mr. Campbell reminded council to be back in the chambers in three days, Friday from 9:00 a.m. to 3:00 p. m. for the Goal and Planning Setting session. Look forward to council beginning to provide a road map for the citizens. To prep for this, the chairman asked members to start thinking about their top three to five issues you think we need to

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work on as a county and they will be discussed on Friday. The Upper Savannah COG will send two folks to help us to facilitate.

On March 24th is our budget work shop.

ADJOURN

There being no further business, Councilman Dorn made the motion to adjourn. Councilwoman Blackwell seconded by motion and the motion carried unanimously. The next regular meeting of council is scheduled for Tuesday, April 5th in the County Council Chambers.

Dean Campbell, Chair

Regenia Blackwell, Vice Chair

Rodney Ashcraft, Councilmember

Willie C. Bright, Councilmember

Norman Dorn, Councilmember

Barbara R. Stark, Clerk to Council