



## **CHESTER COUNTY SPECIAL CALLED COUNCIL MEETING**

### **R. Carlisle Roddey Chester County Government Complex**

1476 J.A. Cochran Bypass Chester, SC 29706

**Monday, December 12, 2022 at 2:00 PM**

#### **AGENDA**

**Present:** Interim Chairman Dr. Frederick, Vice Chairman Branham, Councilman Jordan, Councilwoman Guy, Councilman Wilson, Councilman Vaughn, County Attorney Winters, and Clerk to Council Lee. Councilman Killian arrived at 2:04 pm.

1. **Call to Order-** Interim Chairman Dr. Frederick called the meeting to order.
2. **Ordinance/ Proclamation/ Resolution**
  - a. **2022-17 Resolution** To Declare The Results Of A Referendum Held In Chester County, South Carolina On November 3, 2020. Vice Chairman Branham motioned to approve, second by Councilman Vaughn.  
Vote 5-0 to approve.
3. **Executive Session-**Councilwoman Guy motioned to go to executive session, second by Councilman Jordan.  
Vote 5-0 to approve.
  - a. To receive legal advice regarding a potential MOU agreement with Chester County and Chester Wastewater Recovery. Attorney Winters.
  - b. To receive legal advice regarding the hiring of the County Administrator. Attorney Winters.
3. **Council Actions Following Executive Session-**Vice Chairman Branham motioned to go back to regular session, second by Councilman Killian. Vote 6-0 to approve.
  - a. Action taken regarding a potential MOU agreement with Chester County and Chester Wastewater Recovery. Taken as information.
  - b. Action taken regarding the hiring of the County Administrator. Taken as information.
4. **Old Business**
  - a. **Discussion regarding development and impact fees. Interim Chairman Dr. Frederick.**

Dr. Frederick stated Council had received a contract from Tischler Bise that was redline by our County Attorney for the scope of work. Tischler Bise was on zoom to speak but had a cut off time at 3:30. He asked Bond Attorney Michael Kozlarek if he could answer any questions Council may have.

Attorney Kozlarek stated the only caveat that he would give is any legal advice that he might want to give counsel, he certainly would not be comfortable doing in open session, for example, and he would not be making this comment about the current subject matter. But if someone were to ask him his opinion, and he would say I don't think that's legal, and do it in open session, and then the county ultimately decided to move forward with that direction for whatever the matter would be. That would certainly put the county in a difficult position and put him in a difficult position. And again, that is a general comment that has nothing to do with the current subject matter. But he thought counsel can appreciate they would not want to have that kind of general discussion in an open session. With that caveat. He was happy to give any other information he could experience or anything else that may not be legal advice.

Attorney Winters asked could he speak to it from a statutory standpoint.

Attorney Kozlarek stated he thought counsel has broad discretion under its home rule powers to enter into contractual arrangements with third parties generally speaking. There is also a provision in South Carolina code that deals with development agreements and the fees that may be charged and that is encapsulated within the development impact fee portion of the code and title six, chapter one, as I recall, but whether that is broad enough to cover what the county is interested in doing or not, he thought that would lend itself to a discussion and Executive Session. I can't say I don't think that the statute. I don't think that going through an impact fee study necessarily requires the county to impose development impact fees, as set forth in that portion of the code, the information itself whether the council ultimately uses it for the development impact fee or for some other lawful purpose, he thought would be useful information to have. He thought more information is always going to be better in making a decision.

Vice Chairman Branham asked between the development and impact fee which would give the county more lead way and where could we put the money and use the money versus collected and what restrictions would go predominantly with the impact fee.

Attorney Kozlarek stated the development impact fee portion of the South Carolina code is very specific in what the funds have to be used for how quickly they must be spent, how they must be set aside. Those things are not set out in in general statute with respect to a county's ability to contract with a third party, for example, a developer that isn't to say that there may not be some restrictions are there may be some general legal restrictions on how a county can use funds, but the development impact fee portion of the code is very specific on that. So it may be that not using that portion of the code may provide more flexibility within General constraints of South Carolina law and a county's ability to sort of function if you will, in our home rule.

Councilwoman Guy asked which one gives the county more flexibility to spend the money.

Attorney Kozlarek stated the development impact fee portion of the code is very specific in how it requires the money to be accounted for collected the types of projects that have to be that the funds have to be spent on and how quickly that money has to be spent.

Attorney Kozlarek stated that that would be the development impact fee. And I'm saying development impact fee. I think there's been a little bit of confusion the code actually refers to them as development impact fees. And I think we have been referring to them simply as impact versus sort of developer agreements or development agreements. And so I was just trying to go back

to that statutory language to make sure there wasn't any miscommunication or misunderstanding about which portion we're talking about. It's very specific. Hence the need for a study. Again, very clear under state law, hence the discussion with Tischler Bise. about the possibility of serving in that role. A study is absolutely required for a development impact fee to be imposed by the county. Again, that is not necessarily the case for general concepts of home rule and contracting with third party developers.

Councilman Wilson asked as we use development agreement fees, we have to figure out how to allocate the different funds. Such a study, would that give us useful information in doing that? Or is there a better process that we should be following to figure that out?

Attorney Kozlarek stated I certainly think whether it's couched as a development impact fee study or is simply looking at the nature of infrastructure needs in the county, independent of the possibility of imposing fees under state law. I certainly think that more information about what types of infrastructure will be necessary over the next 10 to 20 years in the county, where that growth is anticipated to be and what those costs would be useful for any policymaker to try to determine, again, whether it's fees coming from a third party source as part of a developer agreement, development impact fee or simply the county spending, general taxpayer millage. I certainly think that information would be helpful.

Vice Chairman Branham asked if there was any type of formula that can be used just on the development the bar itself not the impact fee that we could use as far as imposed and what it would take to facilitate the needs of the residents of the new houses or the something that would benefit would be advantageous for the county and imposing a fee on the bill?

Attorney Kozlarek stated, again, just as a matter of very simple math without any of the nuances that he suspected could be involved. You could look at a single-family residence call, for example, a sheriff's call to a single-family residence cost. And then try to extrapolate from that if you're going to have 300 new single-family residences, and how would you determine that it could be the sheriff's office budget divided by the number of calls per year, waited in some way versus residential? Owner Occupied residential, rental, residential and commercial industrial and trying to figure out what that per call cost is and then extrapolate that out to what it would be for 300 new residences over some period. That seems like a very simplistic way to do it. And he meant, that both in terms of the math is probably not that hard. But he also thought that that doesn't capture the nuance of a single-family residence being sort of out in the outskirts somewhere where there may only be one residence versus a housing development where there may be 300 that could totally impact what those calls actually cost relative to where the sheriff has people stationed. Same would be true with fire and that also is going to be district by district, whereas the Sheriff of course is county wide. You know, other services that the county may not provide, at this point, for example, water and sewer. Whether the county is looking at trying to recoup any of those in order to provide that to a third party, who may be a partner with as private or another public entity. Again, that level of nuance may not be captured simply by taking the total cost to provide a service or a budget line item and dividing it by the number of calls that that department receives every year, or permanent or fill in the blank. But that could be a way to do it. And I suspect your treasurer is much better with the calculator and the spreadsheets and I have probably done that I figured somebody else needed to be on the hot seat.

Councilman Wilson stated so in terms of approving the contract with Tischler Bise my preference would still be to have an opportunity to talk to them. I mean, that's just something we need to do. Of course, we're going to have new council members here soon and maybe it'd be nice for them to be fully on board with what we're doing to this. We're paying quite a bit of money for a study we want to make sure we use that study to its full effect. He would like everybody to be on board with that. It's kind of his thoughts but just one opinion there.

Dr. Frederick stated another meeting could be scheduled for someone from Tischler Bise to be present to answer questions.

**b. Discussion regarding the rules of procedure. Attorney Winters.**

That's a draft of some of the changes that I've made. I did ask counsel just to send me some of your thoughts. She thought this might help get those thoughts generated just so you can see. You can see the blue line on the document where I've crossed things out and I've added some things. It'll take a little time to go through. There's also a copy of a memo that I wrote in October of 2006, to then county council regarding the justification for some of the rules that are in these rules of procedure. And then the last document is the current code of ordinances. It's the same document that you have in front of you, it just doesn't have the changes. So this is the one that has the changes. And I would welcome any input from counsel obviously not today, but you just send me an email. I will make changes as you do send me those emails of things that you would like to see changed and I have added two significant pieces at the end. The rules of procedure did not have anything in there for the duties of the chair and the duties of the vice chair. And as you know you'll be voting on chair and vice chair something you've not done under supervisory form of government under the administrative form of government, you will have to appoint a chair you've always had a vice chair but now you'll have to have both, so I welcome any comments from Council again, just send me an email, and then we'll present a final version to council. If you have another special call before the end of the year, we'll present it then. If not, we'll make sure that you have it for January.

**5. Adjourn-Councilwoman Guy motioned to adjourn, second by Councilman Killian. Vote 6-0 to adjourn.**