

The Smithfield Town Council met in Special Session on Tuesday, August 29, 2023 at 6:30 pm in the Council Chambers of the Smithfield Town Hall, Mayor M. Andy Moore presided.

Councilmen Present:  
Mayor Pro-Tem, John Dunn  
Marlon Lee, District 1  
Sloan Sevens, District 2  
Travis Scott, District 3  
Dr. David Barbour, District 4  
Stephen Rabil, At-Large

Councilmen Absent  
Roger Wood, At-Large

Administrative Staff Present  
Michael Scott, Town Manager  
Ted Credle, Public Utilities Director  
Shannan Parrish, Town Clerk

Also Present  
Bob Spence, Jr., Town Attorney

### Call to Order

Mayor Moore called the meeting to order at 6:32 pm

### Approval of the Agenda

Councilman Barbour made a motion, seconded by Councilman Rabil, to approve the agenda with the following amendment:

Add Closed Session pursuant to NCGS 143-318.11 (a) (3) if needed.

Unanimously approved.

### Action Concerning Bulk Wastewater Agreement with Johnston County

Mayor Moore stated that Johnston County had denied the Home2Suites hotel because the Council has not executed the bulk wastewater agreement with the County. The Town and County were currently operating under the 1979 agreement and sewer was still being treated by the County. This issue was impacting economic development in the Town. Mayor Moore further stated that he wanted the Council to be comfortable with the contract before approving it because this contract will affect generations.

Town Attorney Bob Spence explained the first page was called the recitals which outlined the terms of the agreement.

Page 2 stated the purpose of this agreement at the bottom is to set forth the terms and conditions of the agreement between the Town and County regarding the bulk wastewater transmission and treatment services period.

Town Manager Michael Scott pointed out that on page two, paragraph three it stated the following: *"WHEREAS, the County currently provides bulk wastewater transmission and treatment services to the Town in accordance with the "Declaration of Joint Venture" between the County of Johnston, Town of Smithfield, Town of Selma, West Smithfield Sanitary District, Town of Pine Level and Town of Four Oaks dated November 13, 1979;"* meaning the County was still honoring the 1979 contract.

Town Attorney Bob Spence stated this contract was a complete rewrite of the original 1979 contract. The original joint venture was user fee based and this contract is based on capacity allocation and fees associated with the capacity.

Page 3 outlined the capacity allocation as determined by the County. Mayor Moore questioned if additional language should be included in this section to protect the Town and its citizens since this was a fifty-year contract. Mr. Spence stated he felt there was ambiguity in this language and all ambiguities should be resolved. Section 2.1 A stated *"The amount of the Initial Capacity Allocation is based on the highest yearly average flow received by the County from the Town in the five-year period between 2015 and 2019"*. Mayor Moore questioned why more recent data was not included. Public Utilities Director Ted Credle explained that by including 2019, it does work in the Town's favor as that was one of the wettest years. He surmised since this contract has been in the works for several years, the County used the data it had at the time and had not updated it. Mayor Moore stated having the more recent data was important if the Council was going to approve a contract.

It was the consensus of the Council that given all the data, the contract should include the data that is most favorable to the Town. Mr. Spence responded that the average from 2015-2019 was a 42.8% and he felt that was a reasonable average.

Mayor Moore asked that the analysis for 2018-2022 be completed. Mr. Spence stated that until this was resolved, the Town was at a standstill and other Town could receive more allocation.

Councilman Scott questioned the amount that Pine Level and Four Oaks were paying. The Town Manager responded it was just under \$11.

Mayor Moore stated the County was offering \$500,000 to purchase allocation.

Councilman Stevens questioned if the Town need to sell capacity back to the County would they buy it back at the rate at which the Town paid it or would it be at a different rate. Mayor Moore stated the Town should

have the ability to decide the rate in which they would sell capacity back to the County.

Mr. Spence stated that under the 1979 contract, the County agreed to accept all of the Town's sewer. Mayor Moore pointed out that the new contracts for Pine Level and Four Oaks were fifty-year contracts. The Town of Smithfield's current contract was 44 years old which in his opinion was still valid.

Mayor Moore questioned if County buildings would be counted against the Town's allocation. Mr. Spence responded that the recent detention center's allocation was added back to the Town's allocation. Mayor Moore stated that any capacity going to County development should not be counted against the Town's overall allocation.

Mr. Spence reviewed section 2.2 with the Council. In that section, Mayor Moore questioned the meaning of the phrase "*Requests from the Town to the County for Additional Capacity Allocation shall not be unreasonably withheld*". He questioned what was reasonable and not reasonable. Mayor Moore reiterated that the Town currently had a contract in place for sewer. Mr. Spence stated the County was in breach of its current contract.

Mayor Moore stated the purpose of this meeting was because the Council had been directing the Town Attorney to negotiate this contract and not much has changed since the first contract was given to the Town.

Mr. Spence stated the \$500,000 was a funding source from the County. All four of the communities are receiving the same amount and Pine Level and Four Oaks use less capacity than Smithfield and Selma.

Councilman Stevens stated that if the Town of Smithfield wanted to double its population, the Town would have to buy additional capacity. Mr. Spence responded that the Town could purchase additional capacity if available by the County.

Mr. Spence explained paper flow to the Council as outline on page 4 section A. These were developments that had approved capacity on paper only.

Mr. Spence explained Article 3 of the contract. Mayor Moore questioned if these were the only upgrades needed. Mr. Credle responded that these were the County projects that ran through the Town.

Mr. Spence explained Section 3.2. Mayor Moore questioned how the Town would know who caused the sanitary overflow. Mr. Credle responded staff could trace it back to the source. There was not an industry in Town that could produce the type of overflow.

Mr. Spence explained Article 4 of the contract. Mayor Moore questioned if sewer from Selma and Pine Level are flowing into the new Wastewater plant would there be enough capacity for the future growth of the Town of Smithfield.

Mr. Spence explained Article 5 of the contract.

Mr. Spence explained Article 6 of the contract. Mayor Moore stated there could be language added to Section 6.1A stating that the calibration reports be provided to the Town.

Councilman Barbour questioned if only Town of Smithfield sewer would flow through the current wastewater plant once the new facility was built. Mr. Credle responded it would be a gradual movement from the existing plant to the new plant.

Mr. Spence explained Article 7 of the contract. Mayor Moore stated that Section 7.1 B should be negotiated. Mr. Spence agreed that 7.1 B should be addressed because costs could be much higher in 20 years.

Mayor Pro-Tem Dunn stated that in Section 7.1 A he felt that 25% was an excessive percentage and should be negotiated.

Mr. Spence explained Article 8 of the contract. Mayor Moore asked that Section 8.3 be removed from the contract.

Mr. Spence explained Article 9 of the contract. Mayor Moore asked that Section 9.10 be removed from the contract. Mr. Spence also explained that on the signature page would include every member of Council.

Mr. Spence questioned who had the authority to negotiate the contract with the County. Mayor Moore suggested that the Council consider entering into Closed Session to discuss contract negotiations.

#### **Closed Session Pursuant to NCGS 143-318.11 (a) (3)**

Councilman Barbour made a motion, seconded by Mayor Pro-Tem Dunn, to enter into Closed Session pursuant to the aforementioned statute. Unanimously approved at 9:05 pm.

#### **Reconvene In Open Session**

Councilman Barbour made a motion, seconded by Councilman Scott, to reconvene in Open Session. Unanimously approved at 10:17 pm.

#### **Action Taken Following Closed Session**

Councilman Barbour made a motion, seconded by Councilman Rabil, to direct the Town Attorney to file legal action against Johnston County for breach of contract. Unanimously approved.

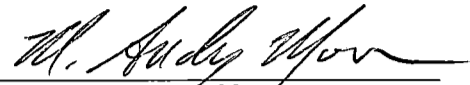
**Adjourn**

Councilman Scott made a motion, seconded by Councilman Wood, to adjourn the meeting. The meeting adjourned at approximately 10:20 pm.

ATTEST:

  
Shannan L. Parrish, Town Clerk



  
M. Andy Moore, Mayor