

Belhaven Town Council
Special Called Meeting
August 3, 2007

Call to Order

The Belhaven Town Council met in a Special Called Meeting on Friday, August 3, 2007 at 10 A.M. in the Council Chambers at Town Hall. Councilman Carawan handed Town Clerk Adams a letter from the Mayor which stated that he would not be attending due to advice from his attorney. In the absence of Mayor Adam W. O'Neal; Mayor Pro-Tem George R. Ebron, Jr. presided over the meeting and called the meeting to order. Council members present were: Albert Baker, Dr. Charles O. Boyette, Steve W. Carawan and Cynthia M. Heath. Town Manager Tim M. Johnson, Town Attorney Keith B. Mason and Town Clerk Marie J. Adams were also present.

Purpose of Special Called Meeting

The purpose of the meeting was for the Council to vote on a consent order concerning the lawsuit (request of public records) filed by Adam W. O'Neal, Mayor. The lawsuit was filed against Town Manager Tim M. Johnson, Town Clerk Marie J. Adams and Council members: Albert Baker, Dr. Charles O. Boyette, Mayor Pro-Tem George R. Ebron and Cynthia M. Heath.

Attorney Mason stated that the Council needed to vote on the Consent Order to settle the lawsuit with Mayor O'Neal. Councilman Carawan questioned "vote for what"?

Attorney Mason stated that the Council needed to approve the Consent Order as a whole and payment of a portion of Mayor O'Neal's attorney's fees.

Councilman Carawan stated that he could not see the Town (tax payers money) paying for the Mayor's Attorney's fees, when the Mayor was requesting public records. Councilwoman Heath stated that the Council wished to settle to keep from costing the tax payers additional money. Councilwoman Heath stated that this type of action tarnishes the image of the Town and there was no need to carry this lawsuit any further.

Councilman Carawan tried to re-hash the lawsuit several more times and was not recognized. Town Attorney Mason stated that the purpose today was to end the lawsuit and that all details of the lawsuit had been hashed out in public meetings numerous times and now was not the time to rehash the lawsuit.

Motion to Approve Consent Order

There being no further discussion, Councilman Boyette made the motion to accept the following Consent Order, Councilwoman Heath seconded the motion. Councilman Baker and Ebron voted in favor of the motion. Councilman Carawan voted against the motion. The motion carried 4 to 1.

(Clerk's Note: Attached is signed copy of Consent Order) Mayor O'Neal did not sign the document at the meeting but signed on Monday, August 6, 2006.

**Belhaven Town Council
Special Called Meeting
August 3, 2007**

STATE OF NORTH CAROLINA
BEAUFORT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 06 CVS 1684

ADAM O'NEAL,)
Plaintiff)
)
vs.)
)
TIM JOHNSON, Town Manager, and)
Individually, MARIE ADAMS, Town Clerk,)
CHARLES O. BOYETTE, GEORGE R.)
EBRON, JR., CYNTHIA M. HEATH and)
ALBERT BAKER, Councilmen, and)
Individually,)
Defendants)

CONSENT ORDER

2007 AUG -3 AM 11:30
CLERK OF SUPERIOR COURT
BEAUFORT COUNTY, N.C.

THIS CAUSE came on before the undersigned Superior Court Judge upon the consent and agreement of the parties to a settlement of this case which was brought pursuant to Chapter 132 of the General Statutes of North Carolina concerning public records. The plaintiff is represented by Attorney Franklin B. Johnston of the Beaufort County Bar. Defendants are represented by Attorney Rudolph A. Ashton, III of the Craven County Bar. Belhaven Town Attorney Keith Mason is also present.

Having reviewed the file and investigated the attending circumstances, and following a full disclosure by the parties and upon the record, the Court finds the following:

1. The complaint in the action was filed by the plaintiff on December 29, 2006 in Beaufort County Superior Court.
2. Defendants filed a timely answer and a motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure on March 5, 2007.
3. Defendants' motion to dismiss came on for hearing at the July 16, 2007 civil term of Beaufort County Superior Court, the Honorable Alma L. Hinton, Superior Court Judge presiding. At the conclusion of the hearing the defendants' motion to dismiss was allowed as it pertained to defendants Tim Johnson, Charles O. Boyette, George R. Ebron, Jr., Cynthia M. Heath, and Albert

**Belhaven Town Council
Special Called Meeting
August 3, 2007**

Baker, individually. Said motion to dismiss was denied in all other respects. The order pertaining to the motion to dismiss was filed in the Beaufort County Superior Court on July 24, 2007.

4. After the hearing on the motion to dismiss, counsel met and reported to the Court that they had reached a settlement of the remaining issues, the terms of which are as follows:

- (a) Defendant Johnson will forward to the plaintiff electronically all e-mails pertaining to Belhaven town business from July 1, 2006 through the present date ^{RAW} 5:00 pm ^{THU} DATE.
- (b) Defendant Johnson will provide timely¹ copies of all correspondence that pertains and relates to town business to the plaintiff as long as Johnson occupies the position of Town Manager and as long as plaintiff occupies the position of Mayor of the Town of Belhaven.
- (c) Defendant Johnson will provide timely¹ copies of all e-mails that pertain and relate to town business to the plaintiff as long as Johnson occupies the position of Town Manager and as long as plaintiff occupies the position of Mayor of the town of Belhaven.
- (d) The plaintiff will provide timely¹ copies of all correspondence that pertains and relates to town business to the Town Manager which are generated by the plaintiff while he occupies the position of Mayor of the town of Belhaven.
- (e) The plaintiff will provide timely¹ copies of all e-mails that pertain and relate to town business to the Town Manager which are generated by the plaintiff while he occupies the position of Mayor of the Town of Belhaven.

¹Timely is within 24 hours

**Belhaven Town Council
Special Called Meeting
August 3, 2007**

- (f) If any party feels the other has violated the terms and conditions of the consent order, said party may apply to the Superior Court of Beaufort County to enforce said order by the contempt powers of said Court. This provision will remain as long as the parties remain in their official capacities, plaintiff as Mayor of the Town of Belhaven and defendant Johnson as Town Manager of the Town of Belhaven.
- (g) The parties agree to cooperate to insure that this agreement is followed.
- (h) The defendants will pay attorney fees in the amount of \$2,500.00 to the plaintiff within fifteen (15) days of the filing of this order.
- (i) At such time as defendant Tim Johnson and plaintiff Adam O'Neal are no longer in their official capacities as Town Manager and/or Mayor of the Town of Belhaven, then this lawsuit is dismissed with prejudice.

5. The Court finds and concludes that under the circumstances as the Court knows them to be, the proposed settlement is fair and reasonable and in the best interest of all parties, and accordingly, it is hereby fully approved. The settlement will resolve all disputes between the parties.

IT IS NOW THEREFORE, by consent, and upon the findings of the Court as aforesaid, ORDERED, ADJUDGED AND DECREED THAT:

1. The aforesaid compromise settlement agreed upon is fair and reasonable and in the best interest of the parties, and such settlement and agreement is hereby, in all respects, APPROVED, by the Court.

2. Defendant Johnson will forward to the plaintiff electronically all e-mails pertaining to Belhaven Town Business from July 1, 2006 through the present date. *by 5:00 pm this Date.*

RAA

**Belhaven Town Council
Special Called Meeting
August 3, 2007**

3. Defendant Johnson will provide timely¹ copies of all correspondence that pertains and relates to town business to the plaintiff as long as Johnson occupies the position of Town Manager and as long as plaintiff occupies the position of Mayor of the Town of Belhaven.

4. Defendant Johnson will provide timely¹ copies of all e-mails that pertain and relate to town business to the plaintiff as long as Johnson occupies the position of Town Manager and as long as plaintiff occupies the position of Mayor of the Town of Belhaven.

5. The plaintiff will provide timely¹ copies of all correspondence that pertains and relates to town business to the Town Manager which are generated by the plaintiff while he occupies the position of Mayor of the town of Belhaven.

6. The plaintiff will provide timely¹ copies of all e-mails that pertain and relate to town business to the Town Manager which are generated by the plaintiff while he occupies the position of Mayor of the Town of Belhaven.

7. If any party feels the other has violated the terms and conditions of the consent order, said party may apply to the Superior Court of Beaufort County to enforce said order by the contempt powers of said Court. This provision will remain as long as the parties remain in their official capacities, plaintiff as Mayor of the Town of Belhaven and defendant Johnson as Town Manager of the Town of Belhaven.

8. The defendants, as Town Councilmen, shall have no further liability except as to cooperate to carry out the intents and purposes of this agreement.

¹Timely is within 24 hours

**Belhaven Town Council
Special Called Meeting
August 3, 2007**

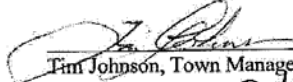
9. The defendants will pay attorney fees in the amount of \$2,500.00 to the plaintiff within fifteen (15) days of the filing of this order.

10. At such time as defendant Tim Johnson and plaintiff Adam O'Neal are no longer in their official capacities as Town Manager and/or Mayor of the Town of Belhaven, then this lawsuit is dismissed with prejudice.

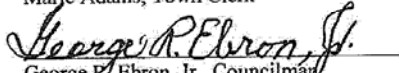
This the 8 day of August, 2007.

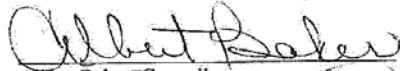
By: 
Alma L. Hinton
Superior Court Judge
Beaufort County

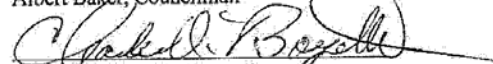
WE CONSENT:

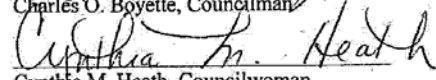

Tim Johnson, Town Manager

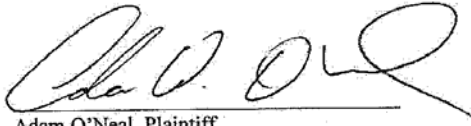

Marje Adams, Town Clerk

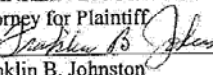

George R. Ebron, Jr., Councilman


Albert Baker, Councilman



Charles O. Boyette, Councilman


Cynthia M. Heath, Councilwoman


Adam O'Neal, Plaintiff

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Adjournment

There being no further business, Councilman Boyette made the motion to adjourn. Councilwoman Heath seconded the motion which carried unanimously. The meeting adjourned at 10:10 A.M.

**Belhaven Town Council
Special Called Meeting
August 3, 2007**

Repectfully submitted,

Marie J. Adams, CMC
Town Clerk