

COUNTY COUNCIL OF BEAUFORT COUNTY
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STEWART H. RODMAN
CHAIRMAN

D. PAUL SOMMERVILLE
VICE CHAIRMAN

COUNCIL MEMBERS

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GERALD DAWSON
BRIAN E. FLEWELLING
YORK GLOVER, SR.
CHRIS HERVOCHON
ALICE G. HOWARD
MARK LAWSON
LAWRENCE P. MCELYNNE
JOSEPH F. PASSIMENT, JR.

ASHLEY M. JACOBS
COUNTY ADMINISTRATOR

SARAH W. BROCK
CLERK TO COUNCIL

AGENDA
COUNTY COUNCIL OF BEAUFORT COUNTY
REGULAR SESSION
Monday, October 14, 2019
6:00 p.m.
Council Chambers, Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road, Beaufort

1. CALL TO ORDER REGULAR SESSION – Chairman Stu Rodman 6:00 p.m.

2. PLEDGE OF ALLEGIANCE AND INVOCATION – Councilman Mark Lawson

[Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act]

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES (backup)
 A. September 9, 2019 (Regular Session)

5. PROCLAMATIONS
 A. World Polio Day
 B. Anti-Bullying Awareness
 C. Penn Center Heritage Days
 D. Red Ribbon Week

6. CITIZEN COMMENTS *[See Clerk to Council for sign-in prior to meeting. Speakers shall limit comments to three minutes and comments must pertain to items on the Agenda.]*

7. ADMINISTRATOR’S REPORT

8. CHAIRMAN’S MINUTE

9. CONSENT AGENDA

A. Items Originating from the Finance Committee – Councilman Hervochon

1. First Reading of an Ordinance establishing the Finance Committee as the Internal Audit Committee (backup)
 1. Consideration of First Reading on October 14, 2019



2. Public Hearing – Monday, October 28, 2019, 6:00p.m., Large Meeting Room, Hilton Head Island Branch Library, 11 Beach City Road, Hilton Head Island
3. Finance Committee recommended approval on September 23, 2019 / Vote 7:0

2. Consideration of a Resolution authorizing the County Administrator to execute the necessary documents and to partner with the City of Beaufort to purchase a fifty percent (50%) interest in a parcel of land known as r100 024 000 0410 0000 and also known as the Gray Family Property (backup)

1. Consideration of approval on October 14, 2019
2. Finance Committee recommended approval on September 23, 2019 / Vote 7:0

3. Consideration of a Resolution authorizing the County Administrator to execute the necessary documents for the purchase of approximately 110 acres of real property known as tax map serial number r200 010 000 0170 0000 and also known as Pineview

1. Consideration of approval on October 14, 2019
2. Finance Committee recommended approval on September 23, 2019 / Vote 7:0

4. Consideration of a Resolution authorizing an exemption of property from Ad Valorem Taxation (backup)

1. Consideration of approval on October 14, 2019
2. Finance Committee recommended approval on September 23, 2019 / Vote 7:0

5. Consideration of a Resolution approving the expenditure of the 2006 1 Cent Transportation Sales Tax Program Remaining Funds (backup)

1. Consideration of approval on October 14, 2019
2. Finance Committee recommended approval on September 23, 2019 / Vote 7:0

6. Approval of Qualifications for Coordinated Comprehensive Master Planning Services between Beaufort County and the Town of Port Royal (backup)

1. Consideration of approval on October 14, 2019
2. Finance Committee recommended approval on September 23, 2019 / Vote 7:0

10. PUBLIC HEARINGS

A. Public Hearing and Third Reading of an Ordinance to terminate the lease agreement on the “Lucky” Property (backup)

1. Consideration of Third and Final Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. Second Reading approved on September 23, 2019 / Vote 9:0
4. First Reading approved on September 9, 2019 / Vote 10:0
5. Public Facilities Committee recommended approval on June 3, 2019 / Vote 8:0

B. Public Hearing and Second Reading of an Ordinance authorizing the sale of property known as Bob Jones Field or Bob Jones Park (backup)

1. Consideration of Second Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. First Reading approved on September 23, 2019 / Vote 9:0
4. Public Facilities Committee recommended approval on August 12, 2019

- C. **Public Hearing of an Ordinance to adopt an amended and restated development agreement for River Oaks at Okatie Village** (backup)
1. Consideration of Second Reading on October 14, 2019
 2. Public Hearing on October 14, 2019
 3. First Reading approved on September 23, 2019 / Vote 5:4
 4. Natural Resources Committee recommended approval on August 19, 2019 / Vote 6:5
- D. **Public Hearing and Second Reading of an Ordinance authorizing the County Administrator to execute the Brewer Memorial park 2019 joint ownership agreement and operating policy with the Beaufort County Open Land Trust** (backup)
1. Consideration of Second Reading on October 14, 2019
 2. Public Hearing on October 14, 2019
 3. First Reading approved on September 23, 2019 / 9:0
 4. Natural Resources Committee recommended approval on September 16, 2019 / Vote 5:0
- E. **Public Hearing and Second Reading of an Ordinance authorizing the execution of a declaration of restrictive covenants on property located at 75 Confederate Avenue, also known as Bailey Memorial Park** (backup)
1. Consideration of Second Reading on October 14, 2019
 2. Public Hearing on October 14, 2019
 3. First Reading approved on September 23, 2019 / 9:0
 4. Natural Resources Committee recommended approval on August 19, 2019 / Vote 11:0
- F. **Public Hearing and Second Reading of a new Rural and Critical Lands Ordinance** (backup)
1. Consideration of Second Reading on October 14, 2019
 2. Public Hearing on October 14, 2019
 3. First Reading approved on September 23, 2019 / 7:2
 4. Natural Resources Committee recommended approval on September 16, 2019 / Vote 5:0
- G. **Public Hearing and Second Reading of an Ordinance amending the existing Rural and Critical Lands Board Ordinance (Division 5, Section 2, 281-290)** (backup)
1. Consideration of Second Reading on October 14, 2019
 2. Public Hearing on October 14, 2019
 3. First Reading approved on September 23, 2019 / 8:1
 4. Natural Resources Committee recommended approval on September 16, 2019 / Vote 5:0

11. **ACTION ITEMS**

- A. **Third Reading of an Ordinance regarding a Northern Beaufort County map amendment (change the zoning of the property from C3-NMU to C5-RCMU)** (backup)
1. Consideration of Third and Final reading on October 14, 2019
 2. Public hearing on June 10, 2019
 3. Second reading approved on June 10, 2019 / Vote 9:1
 4. First reading approved on May 28, 2019 / Vote 9:0
 5. Natural Resources Committee recommended approval on May 20, 2019 / Vote 7:1

12. **COMMITTEE REPORTS**

Prior Meetings

1. Finance (October 7, 2019)

2. Public Facilities (October 7, 2019)
3. Executive (October 14, 2019)

Upcoming Meetings

1. Vice-Chairs Committee (October 21, 2019)
2. Community Services (October 21, 2019)
3. Natural Resources (October 21, 2019)
4. Governmental (October 28, 2019)

13. LIASION REPORTS

- 14. CITIZEN COMMENTS** *[See Clerk to Council for sign-in prior to meeting. Speakers shall limit comments to three minutes.]*

15. MATTERS ARISING OUT OF EXECUTIVE SESSION

16. ADJOURNMENT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Approval of Minutes

Council Committee:

County Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Issues for Consideration:

Approval of the County Council Minutes from September 9, 2019

Points to Consider:

Funding & Liability Factors:

None.

Council Options:

Approve, Modify or Reject

Recommendation:

Approve

**MINUTES
COUNTY COUNCIL OF BEAUFORT COUNTY
REGULAR SESSION**

September 9, 2019

Council Chambers, Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road, Beaufor

The electronic and print media duly notified in
accordance with the State Freedom of Information Act.

Attendance

Present: Chairman Stu Rodman, and Council Members Joe Passiment, York Glover, Alice Howard, Lawrence McElynn, Michael Covert, Mark Lawson, Brian Flewelling, Chris Hervocho, and Gerald Dawson.

Absent: Vice Chairman Paul Sommerville

CALL TO ORDER

Chairman Rodman called the meeting to order at 6:00 p.m.

MOMENT OF SILENCE

Chairman Rodman called for a Moment of Silence for former Beaufort County Employees Greg Millidge and Veronica Miller.

PLEDGE OF ALLEGIANCE AND INVOCATION – Councilman Brian Flewelling

FOIA COMPLIANCE

Chairman Rodman noted that public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act.

APPROVAL OF AGENDA

Motion: It was moved by Councilman Passiment, seconded by Councilman Covert to approve the agenda minus agenda item A.1. - Third and Final Reading of an Ordinance authorizing the execution and delivery of a Fee Agreement by and between Beaufort County, South Carolina and Project Burnt Church Distillery providing for a payment of a Fee in Lieu of Taxes. The vote: YEAS: Councilman Hervocho, Councilwoman Howard, Councilman Passiment, Councilman

Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

PRESENTATION

Councilwoman Howard accepted a Lithograph of the US Navy Blue Angels from MCAS Commanding Officer Colonel Timothy Miller as a thank you for their continued support of the Air Show.

APPROVAL OF MINUTES

Chairman Rodman asked for a motion to approve the minutes from the June 24, 2019 County Council meeting.

Motion: It was moved by Councilman Flewelling, seconded by Councilman Dawson that Council approve the June 24, 2019 County Council meeting minutes. The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

CITIZEN COMMENTS

Mike Garrigan – spoke in reference to the 278 Guiding Principles and questioned why there wasn't a first reading ordinance on the agenda for approval.

ADMINISTRATOR'S REPORT

County Administrator Ashley Jacobs spoke about the hurricane and how the county responded. She feels the county executed all aspects very well and welcomes any feedback pertaining to areas of improvement.

CHAIRMAN'S MINUTES

Chairman Rodman commended the staff on a wonderful job during hurricane activities.

CONSENT AGENDA

A. Items Originating from the Finance Committee – Councilman Passiment

- 1. Third and Final Reading of an Ordinance adopting an Intergovernmental Agreement with the City of Hardeeville for the collection of Public Facility Development Impact Fees**
- 2. Third and Final Reading of an Ordinance amending the County's 2019 General Bond ordinance (Ordinance No. 2019/21) to add \$500,000 to the bond amount for TCL training kitchen**

3. **Second Reading of an Ordinance authorizing the issuance and sale of General Obligation Bonds, series 2019c, in the amount not to exceed \$25,000,000; fixing the form and details of the bonds; authorizing the County Administrator or her lawfully authorized designee to determine certain matters relating to the bonds; providing for the payment of the bonds and the disposition of the proceeds thereof; and other matters relating thereto**

B. Items Originating from the Public Facilities Committee – Councilman Flewelling

1. **First Reading of an Ordinance to terminate the lease agreement on the “Lucky” Property**
2. **Adoption of a Resolution approving an Impact Fee Credit reduction for Beaufort Memorial Hospital**

C. Items Originating from the Governmental Committee – Vice-Chair Sommerville

1. **Third and Final Reading of an ordinance authorizing the execution of a lease for Agnes Major Community Center to the Boys and Girls Club of the Lowcountry**

Motion: It was moved by Councilman Passiment, seconded by Councilman Flewelling that Council approve the consent agenda. The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

UPDATE

Senator Tom Davis gave an update regarding the Okatie Land Fill and stated when EPA leaves in two to three weeks, DHEC will assume jurisdiction.

PUBLIC HEARINGS AND SECOND READINGS

Item: Public Hearing and Second Reading of an Ordinance authorizing the execution and delivery of a utility easement encumbering property owned by Beaufort County known as the Wright Family Park

Chairman Rodman opened the floor for a public hearing.

No one came forward.

Chairman Rodman closed the public hearing.

Motion: It was moved by Councilman Flewelling, seconded by Councilman Passiment that Council approve the second Reading of an Ordinance authorizing the execution and delivery of a utility easement encumbering property owned by Beaufort County known as the Wright Family Park. The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment,

Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

Item: Public Hearing and Second Reading of an Ordinance to appropriate \$21,677 from the local hospitality tax for waterfront structure inspections of portions of the Spanish Moss Trail and Wimbee Creek Fishing Pier and

Item: Public Hearing and Second Reading of an Ordinance to appropriate \$27,000 each year for five (5) years from the 3% Local Accommodation Tax funds for the inspections of Broad River Fishing Pier subject to appropriation.

Chairman Rodman opened the floor for a public hearing.

No one came forward.

Chairman Rodman closed the public hearing.

Motion: It was moved by Councilman Flewelling, seconded by Councilman Passiment that Council approve, the Second Reading of an Ordinance to appropriate \$21,677 from the local hospitality tax for waterfront structure inspections of portions of the Spanish Moss Trail and Wimbee Creek Fishing Pier and the Second Reading of an Ordinance to appropriate \$27,000 each year for five (5) years from the 3% Local Accommodation Tax funds for the inspections of Broad River Fishing Pier subject to appropriation, together as one item. The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

Item: Public Hearing and Second Reading of an Ordinance pertaining to the sale of Myrtle Business Park

Chairman Rodman opened the floor for a public hearing.

No one came forward.

Chairman Rodman closed the public hearing.

Motion: It was moved by Councilman Dawson seconded by Councilman McElynn that Council approve the Second Reading of an Ordinance pertaining to the sale of Myrtle Business Park.

Discussion: Councilman Lawson stated he was opposed to this but it was not because it was not a good project, he does not feel approval would be being good stewards of the tax payer's dollars.

The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, and Councilman Dawson. NAYS: Councilman Covert and Councilman Lawson. The motion passed 8-2.

ACTION ITEMS

Item: Adoption of the US 278 Corridor Guiding Principles

Discussion: David Johnson, Chairman of the 278 Corridor Committee, spoke regarding the guiding principles. Mr. Johnson stated these principles are not meant to be priorities but rather meaningful guiding principles as to how the committee would define success from beginning to end of the project.

Motion: It was moved by Councilman Flewelling, seconded by Councilman McElynn that Council approve a resolution adopting the US 278 Corridor Guiding Principles. The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

Item: Adoption of a Resolution establishing a Regional Housing Trust Fund

Discussion: Councilman Passiment stated the money for this trust fund has been identified and explained the purpose behind a Regional Housing Trust Fund is to address multi-jurisdictional needs for affordable, attainable housing. The \$65,000 requested is to be used to put in place the individual who will be responsible for setting up the guiding principles for setting up a Regional Housing Trust Fund.

Motion: It was moved by Councilman Passiment, seconded by Councilwoman Howard that Council approve a resolution establishing a Regional Housing Trust Fund. The vote: YEAS: Councilman Hervochon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

Item: First Reading of an Ordinance approving Beaufort County School District's request Millage Surcharge Rate

Discussion: Tonya Crosby, Beaufort County School District, CFO, reviewed the history behind this request as a refresher for council stating with a motion from the school board on May 16th directing the Superintendent to take all necessary steps to explore all legal channels to recoup the then estimated \$7.7 million lost to the District due to an error in the County's calculation of last year's millage rollback. The BCSB is now requesting that County Council agree to establish and levy 3.3 mills as a surcharge for the 2019-2020 fiscal year to fund part of the deficiency from the 2018-2019 fiscal year and appropriate all funds from the millage surcharge to fund school operations, and declare its intention to cure the balance of the deficiency by levying an additional surcharge for the 2020-2021 fiscal year. If Council does not vote in favor of the School Boards request multiple things will happen:

- District moves forward with Operating Millage of 114.0
- Identify more opportunities for savings in expenditures

- Identify more opportunities to generate additional revenues
- If School District projections are accurate, our current year revenues will be made whole. Expenditure savings will be needed to gradually restore the fund balance over time.
- If the County Auditor's projections are accurate, the excess will be used to offset fund balance reductions (may require outside legal opinion).

Motion: It was moved by Councilwoman Howard, seconded by Councilman Dawson that Council approve First Reading of an Ordinance approving Beaufort County School District's requested Millage Surcharge Rate. The vote: YEAS: Councilwoman Howard, Councilman Rodman, Councilman Dawson. NAYS: Councilman Hervocho, Councilman Passiment, Councilman Sommerville, Councilman McElynn, Councilman Flewelling, and Councilman Covert. The motion failed 4-6.

COMMITTEE REPORTS

Finance Committee, Chairman Passiment

Councilman Passiment stated that the finance committee will be taking up the item that was removed from the agenda pertaining to Burnt Church.

Point of Order: Attorney Keaveny called a point of order regarding lack of a motion for item 9. A. 1, Third and Final Reading of an Ordinance authorizing the execution and delivery of a Fee Agreement by and between Beaufort County, South Carolina and Project Burnt Church Distillery providing for a payment of a Fee in Lieu of Taxes and other matters related thereto, directing Council to make a motion to refer it back to the Finance Committee.

Motion: It was moved by Councilman Flewelling, seconded by Councilman Covert that Council refer item 9. A. 1, Third and Final Reading of an Ordinance authorizing the execution and delivery of a Fee Agreement by and between Beaufort County, South Carolina and Project Burnt Church Distillery providing for a payment of a Fee in Lieu of Taxes and other matters related thereto., back to the Finance Committee. The vote: YEAS: Councilman Hervocho, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Flewelling, Councilman Covert, Councilman Lawson, and Councilman Dawson. The motion passed 10-0.

Public Facilities Committee, Chairman Flewelling

Councilman Flewelling listed a few items that are upcoming for the Public Facilities consisting of a few contract awards, transportation impact fee credit request and the possible sale of Beaufort County Real Estate.

Community Services Committee, Chairman McElynn

Councilman McElynn stated his committee will be reviewing a grant request, hearing an update from the Drug and Alcohol Department, as well as information on the potential of a New Riverside Library Branch.

Natural Resources Committee, Chairwoman Howard

Councilwoman Howard stated Stormwater will not be holding a meeting this week so she will give an update following their next meeting.

Governmental Committee, Chairman Sommerville

Vice-Chair Sommerville stated their next meeting is September 23rd and they will be continuing their mayors discussion on subjects of mutual interest.

Upcoming Meetings

1. Finance Committee (September 3, 2019)
2. Public Facilities Committee (September 3, 2019)
3. Executive Committee (September 9, 2019)

CITIZEN COMMENTS

Joe Olszyk, resident of Hampton Lake, opposed to the sports complex project.

Dave and Renae Winn, residents of Hampton Lake, opposed to the sports complex project.

Motion: It was moved by Councilman Passiment, seconded by Councilman McElynn that Council that Council extend their meeting past 8PM. The vote: YEAS: Councilman Hervochoon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Covert and Councilman Lawson. NAYS: Councilman Flewelling and Councilman Dawson. The motion passed 8-2.

Carol Murphy, resident of Hampton Lake, opposed to the sports complex project.

Joe Barth, Owner of HWY 21, inquired as to when his issue is going to become important and stated that no one ever calls him back. He just wants to hear from somebody.

Valley ?, resident of Hampton Lake, opposed to the sports complex project.

EXECUTIVE SESSION

Motion: It was moved by Councilman Passiment, seconded by Councilman Dawson to go into executive session. The vote: YEAS: Councilman Hervochoon, Councilwoman Howard, Councilman Passiment, Councilman Sommerville, Councilman Rodman, Councilman McElynn, Councilman Covert, Councilman Lawson, and Councilman Dawson. NAYS: Councilman Flewelling. The motion passed 9-1.

ADJOURNMENT

The meeting adjourned at 8:29 p.m.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council
Ratified:

DRAFT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Audit Committee

Council Committee:

Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Christopher Inglese, Deputy Administrator

Issues for Consideration:

Points to Consider:

Funding & Liability Factors:

Council Options:

Approve or deny

Recommendation:

Approve

ORDINANCE 2019/ ____

AN ORDINANCE ESTABLISHING THE FINANCE COMMITTEE AS THE INTERNAL AUDIT COMMITTEE AND PROVIDING FOR THE PURPOSES, POWERS, DUTIES AND FUNCTIONS AS SET FORTH BELOW FOR INTERNAL AUDITS.

WHEREAS, the County finds that establishing an Audit Committee will provide for additional oversight and opportunities for transparency in government accounting; and

WHEREAS, the public interest is served when there are appropriate procedures and policies for assuring the continued success of County government financial practices; and

WHEREAS, the Beaufort County Finance Department was recently awarded the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting and County Council desires to provide support to staff to continue to improve the County's finance policies and procedures; and

WHEREAS, the Beaufort County Code of Ordinances provides Section 2-402 for the establishment of an internal audit unit with reporting duties directly to the Administrator, however the Audit Unit has not been active for the past several years; and

WHEREAS, County Council finds that it is in the best interest of taxpayers, and indeed a duty of the elected members of County Council, to have direct involvement in financial oversight of the County operating budget; and

WHEREAS, the Finance Committee did discuss and unanimously approved moving forward with establishing the Finance Committee as the Internal Audit Committee to provide oversight, direction, priorities, and overall guide the internal audit process; and

WHEREAS, the Finance Committee met September ____, 2019 and did discuss and voted to approve moving forward with establishing the Finance Committee as the Internal Audit Committee; and

WHEREAS, County Council finds that it is in the best interest of the citizens and residents of Beaufort County to establish the Finance Committee as the Internal Audit Committee that will report directly to the County Council from time to time and as needed.

NOW, THEREFORE, BE IT ORDAINED that Beaufort County Council, duly assembled, does hereby delete in its entirety "Section 2-402 Establishment of internal audit unit" and insert in its place and stead the following:

“Section 2-402 Finance Committee of County Council is the Internal Audit Committee.

(1) *Creation.* The Finance Committee of County Council is hereby established as the Internal Audit Committee (the “Committee”) which shall have the purposes, powers, duties and functions established below.

(2) *Membership; terms.* The Committee shall be comprised of all members of the Finance Committee. Other members of Council may participate as ex-officio members. Ex-officio members shall have the same privileges as committee members with respect to making motions, debates and votes, however ex-officio members need not be counted for establishing a quorum.

(3) *Internal Audit* shall mean a review of the County’s mechanisms, rules, and procedures implemented to ensure the integrity of financial and accounting information, to promote accountability and prevent fraud. Internal audits are intended to ensure compliance with laws and regulations and provide timely financial reporting and data collection. Internal audits may result in recommendations for improving operational efficiency and effectiveness of financial processes and procedures.

(4) *Duties, Purpose and responsibilities.*

a. The Committee shall develop a proposed internal audit schedule and shall have the authority, within its budgeted allocation, to move forward with internal audit projects. ~~The purpose of the internal audits shall be to identify opportunities for improving efficiency and effectiveness in the County’s financial practices.~~

b. The audit schedule shall include areas of interest to be reviewed, their priority, and the timelines for completion. The audit schedule shall also include interim audit progress updates, audit follow-ups, and address special needs for audits of specific areas requiring additional resources or extended timelines.

c. The Committee shall oversee the internal audit process. The Committee’s oversight shall include, among other things, selection of independent consultants for performing internal audits, directing the consultants, establishing timelines for consultant reviews, establishing the framework for internal audit projects, and overseeing implementation of recommendations from any reports. The Committee shall be responsible for coordinating between the work of the Administrator’s staff, contractually hired consultants and any other party as necessary to fulfill the duties, purpose and responsibilities of the Committee.

d. The Committee shall review organizational policies and procedures regarding all areas of County operations for which County funds are levied, collected, expended, or otherwise used, and make recommendations to Council for approval by majority vote. The Committee review shall include departments or offices reporting to the County Administrator, departments or offices headed by elected or appointed

officials, millage agencies, legislatively appointed Commissions receiving County funding, nonprofit organizations receiving funds from the County, and any other organization receiving any type of funding for any purpose from the County.

e. The Committee shall oversee the responsibilities of the independent consultants hired by the County for assisting with Internal Audits. The Committee shall work closely with the independent consultant selected, the Administrator, and appropriate staff for review and recommendations regarding all aspects of the County's financial practices.

f. The Committee shall provide an annual report to full Council after the completion of each fiscal year budget but no later than an October meeting of the Finance Committee. The report shall summarize the findings of the independent consultant's internal audits and identify any recommendations to be brought forward to Council. The report shall include a detail plan for implementing the recommendations including costs of implementation.

g. The Committee shall annually review the Financial Policies and Procedures manual and the practices of the County departments, and make recommendations for updates and improvements. Any recommendations made shall include a detail plan for implementing the recommendations including costs of implementation.

(5) Every three years, the Administrator shall cause a Request for Proposal/Qualifications to be publicly advertised. Respondents meeting the minimum requirements of the RFP/RFQ shall be pre-qualified and available to the Committee for Internal Audits as needed. The Committee shall select an independent consultant based on a number of factors including but not limited to: the special needs of the particular project; any specialized knowledge or experience of a pre-qualified consultant; the ability to complete the project in a desired timeline or other factors. The Committee shall establish selection criteria with input from the Administrator and appropriate staff.

(6) In the performance of these duties, the Committee and the selected independent consultant, shall have access to all such information and records regarding the financial activities and transactions of all departments or offices reporting to the County Administrator, departments or offices headed by elected or appointed officials, millage agencies, legislatively appointed Commissions receiving County funding, nonprofit organizations receiving funds from the County, and any other organization receiving any type of funding for any purpose from the County.

(7) Effective date. This Ordinance No. 2019/___ shall become effective immediately upon its adoption.

Adopted this _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Stewart H. Rodman, Chairman
Beaufort County Council

ATTEST:

Sarah W., Clerk to Council

Chronology

- Third and final reading occurred
- Public hearing occurred
- Second reading occurred
- First reading approval occurred
- Finance Committee discussion and recommendation



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Beaufort County and City of Beaufort purchase of Gray family land

Council Committee:

Approved at Finance Committee (9/23), recommended to full County Council

Meeting Date:

Finance Committee (9/23), Full County Council (10/7)

Committee Presenter (Name and Title):

John O'Toole, Executive Director Charlie Stone, Project Manager

Issues for Consideration:

Authorize BCEDC to use designated economic development funds toward Gray family land purchase.

Points to Consider:

The BCEDC will ensure that the County's 50% interest in 13.91 acres is reflected in bill of sale.

Funding & Liability Factors:

Funding through Economic Development dedicated millage fund

Council Options:

Authorize County Administrator to execute necessary documents to partner with the City of Beaufort to purchase a 50% interest in 13.91 acres.

Recommendation:

The BCEDC Board approved unanimously (July 25th, 2019) the use of BCEDC Site Funds for the purchase of a 50% interest in 13.91 acres. The Finance Committee of County Council voted on and approved unanimously (September 23rd, 2019) the authorization of the BCEDC to use designated site funds to purchase a 50% interest in 13.91 acres.

RESOLUTION 2019 _____

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO PARTNER WITH THE CITY OF BEAUFORT TO PURCHASE ONE PARCEL OF LAND KNOWN AS R100 024 000 0410 0000

WHEREAS, the Gray family the owner of one of real property identified as **R100 024 000 0410 0000** in Beaufort County, South Carolina; and

WHEREAS, the Beaufort County Economic Development Corporation has requested the authorization from County Council to purchase the above referenced parcel; and

WHEREAS, the Finance Committee has discussed the matter and voted to recommend to County Council to approve authorizing the County Administrator, to purchase the above referenced parcels and execute any and all necessary documents for the acquisition of the above referenced properties; and

WHEREAS, County Council finds that it is in the best interest of the citizens and residents of Beaufort County for the Interim County Administrator to pursue acquisition of the above referenced parcel.

NOW, THEREFORE, BE IT RESOLVED by Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute any and all documents necessary for the purchase of the properties known as **R100 024 000 0410 0000** in Beaufort County, South Carolina.

Adopted this _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____

Stewart H. Rodman, Chairman

APPROVED AS TO FORM:

Ashley Jacobs, County Administrator

ATTEST:

Sarah Brock, Clerk to Council

DRAFT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) **PURCHASE AGREEMENT**

WHEREAS, the Venture, Inc. of Beaufort owned a 27.82 acre parcel of real property identified as R100 024 000 0410 0000 in Beaufort County, South Carolina;

WHEREAS, Venture, Inc. of Beaufort subdivided the parcel in to two individual parcels of equal acreage with “Parcel A” containing 13.91 acres and “Parcel B” containing 13.91 acres. Said subdivision was effected by that certain Subdivision Plat Prepared for Venture, Inc. of Beaufort and the City of Beaufort and is recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 152 at Page 151;

WHEREAS, Venture, Inc. of Beaufort sold to the City of Beaufort 13.91 acres as shown on the above referenced plat as “Parcel A”. Said limited warranty deed from Venture, Inc. of Beaufort to the City of Beaufort was recorded on September 27, 2019 in the Office of the Register of Deeds for Beaufort County, South Carolina in Records Book 3797 at Page 2252; and

WHEREAS, the City of Beaufort and Beaufort County, by and through the Beaufort County Economic Development Corporation, have determined that it is in the best interests of the citizens and residents of Beaufort County to form a partnership and have Beaufort County purchase a fifty percent (50%) interest in the 13.91 acres as shown as “Parcel A” on the aforementioned plat.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the City of Beaufort, the parties agree as follows:

A contract is made this _____ day of _____, 2019, by Beaufort County, hereinafter referred to as “Purchaser”, and City of Beaufort, hereinafter referred to as “Seller”.

1. **PROPERTY DESCRIPTION.** Purchaser agrees to buy, and Seller agrees to sell, a fifty percent (50%) interest in all that lot or parcel of land, with improvements thereon, if any, situated in Beaufort County, State of South Carolina, and being described as follows:

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 13.91 acres, more or less, and being more particularly shown and designated as Parcel “A” on that certain plat prepared by David S. Youmans, R.L.S., dated September 17, 2019, and recorded in Plat

Book 152 at Page 151 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

A portion of: DMP: R100 024 000 0410 0000

2. **PURCHASE PRICE.** The purchase price of the property shall be Two Hundred and Eight Thousand, Six Hundred and Fifty and XX/100 (\$208,650.00) Dollars (the "Purchase Price").

3. **CLOSING COSTS.** The Purchaser and Seller shall each pay normal, customary and allowable settlement charges or closing costs.

4. **CONVEYANCE.** Seller agrees to convey a good and marketable title subject to all restrictions, covenants and easements of record and subject to all zoning ordinances and regulations, and free of encumbrances with all stamps affixed thereto. The title shall be insurable by a title insurance company licensed in South Carolina. Purchaser shall have the responsibility to examine the title to the Property.

5. **SELLERS DELIVERY OF DOCUMENTATION.** Seller shall deliver to Purchaser at or before the Closing (at such times as Purchaser may reasonably request) all of the following documents, the delivery and accuracy of which shall be a condition to Purchaser's obligation to consummate the purchase and sale herein contemplated:

a) Limited Warranty Deed. A limited warranty deed satisfactory in form and substance to counsel for Purchaser, conveying a fifty percent (50%) fee simple interest to the Property, free and clear of all liens, encumbrances, easements and restrictions of every nature and description, if any.

b) Seller's Affidavit.

c) Owner's Affidavit.

d) City Ordinance or Resolution Authorizing Sale.

6. **DATE OF CLOSING.** The transaction shall be closed only after the Beaufort County Administrator has been given the authority, by resolution or ordinance, from Beaufort County Council to engage in said transaction. Further the transaction shall occur at such time that the County has been given a reasonable time to conduct any due diligence that they deem to be necessary including, but not limited to, an appraisal, inspections, survey, title search and examination, or otherwise. Upon completion of any due diligence items by the

purchaser, the parties hereto shall agree upon a mutually convenient closing date, time and place, but in no event shall the closing take place any longer than sixty (60) days after such time Beaufort County Council authorizes the transaction.

7. **DEFAULT.** If the Purchaser shall default under this Agreement, the Seller shall have the option of suing for damages including but not limited to reasonable attorney's fees or rescinding this Contract. Upon default by the Seller, the Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract.

8. **EFFECT OF CONTRACT.** The parties hereto further agree that this written contract expresses the entire agreement between the parties and that there is no other agreement, oral or otherwise, modifying the terms hereunder.

9. **BINDING CONTRACT.** This Contract shall be binding on both parties, their administrators, Councils, representatives and assigns as state law permits.

10. **EARNEST MONEY.** Not Applicable.

11. **EXTENSION AGREEMENT.** Time is of the essence; however, if there is reasonable cause why the transaction cannot be closed within the stipulated time limit of this Contract, then both parties agree to extend said Contract for a reasonable period from the date designated for original closing.

12. **NOTICES.** Any notice, communication, request, approval or consent which may be given or is required to be given under the terms of this Agreement shall be in writing and shall be transmitted (1) via hand delivery or express overnight delivery service to the Seller or the Purchaser, (2) via facsimile with the original to follow via hand delivery or overnight delivery service, or (3) via e-mail, provided that the sending party can show proof of delivery, as the case may be, at the addresses/numbers set forth below:

TO SELLER:

City of Beaufort
c/o Bill Prokop, City Manager
1911 Boundary Street
Beaufort, SC 29902
wprokop@cityofbeaufort.org
Office (843-525-7070)
Fax (843-525-7013)

AND ALSO:

Harvey & Battey, PA
c/o Kevin Dukes
PO Box 1107
Beaufort, SC 29901
kdukes@harveyandbattey.com
Office: (843) 524-6973
Fax: (843) 524-6401

TO PURCHASER:

County of Beaufort
c/o Legal Department
PO Box 1228
Beaufort, SC 29901
tkeaveny@bcgov.net
Office (843) 255-2055

Copy to:

Beaufort County Development Corporation
John O'Toole, Executive Director
110 Traders Cross, Bluffton, SC 29909
jotoole@beaufortscedc.org
Office (843) 705-8414

And also to:

Howell, Gibson & Hughes, P.A.
Thomas A. Bendle, Jr.
PO Box 40
Beaufort, SC 29901
tbendle@hgpha.com

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN.

IN WITNESS WHEREOF, the Seller herein has caused this Agreement to be duly executed this _____ day of _____, 2019.

WITNESSES:

SELLER: **City of Beaufort**

By: William Prokop
Its: City Manager

IN WITNESS WHEREOF, the Purchaser herein has caused this Agreement to be duly executed as of this _____ day of _____, 2019.

WITNESSES:

PURCHSER:

Beaufort County

By: Ashley Jacobs
Its: Administrator



110 Traders Cross, Bluffton, SC 29909
Tel: (843) 705-8414 E-mail: jotoole@Beaufortscedc.org

August 21th, 2019

Ms. Ashley Jacobs
Office of the County Administrator
100 Ribaut Road
Beaufort, South Carolina 29902

Dear Ashley,

The Beaufort County Economic Development Corporation (BCEDC) board voted unanimously on July 25, 2019 to partner with the City of Beaufort to obtain ownership of a total of 27.824 acres located at 123 Schork Road, Beaufort, South Carolina, property ID R100 024 000 0410 0000. The land is prime industrial land within the Beaufort Commerce Park.

The Gray family currently owns the property and is willing to sell 13.91 acres to the City of Beaufort at the price of \$30,000 per acre or \$417,300. A recent appraisal confirms this is the appropriate cost for the land. The remaining 13.91 acres will be donated to the City of Beaufort by the Gray family. The Beaufort County Economic Development Corporation would like to request the amount of \$208,650 to fund 50% of the City's 13.91-acre purchase – the balance of the purchase will be funded by the City of Beaufort. This partnership will result in a total of 27.824 acres under municipal control for development

We believe the 27.824 acres are prime for development and provide an avenue for long-term industrial growth at the Beaufort Commerce Park. The land has the necessary infrastructure to attract investment, is in the opportunity zone and is being offered at an excellent price. Can you please process this request through County Council. Let me know if there are any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. O'Toole", is written over a horizontal line.

John A. O'Toole, CEcD
Executive Director

Beaufort County Economic Development Corporation

110 Traders Cross, Bluffton, SC 29909

Office (843) 705-8414

INVOICE NO. 20181919

AUGUST 21, 2019

BILL TO

Beaufort County
Administration Building
Robert Smalls Complex
100 Ribaut Road,
Beaufort, SC 29902

Post Office Drawer 1228,
Beaufort, SC 29901

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	City of Beaufort Ownership of 27.824 acres adjacent to Beaufort Commerce Park - 123 Schork Road, Beaufort, SC, Property ID R100 024 000 0410 0000 - The Beaufort County EDC will assist in funding the City of Beaufort's 13.91-acre purchase. The Beaufort County EDC will fund 50% of the purchase price - \$208,650. The Gray family will also donate an additional 13.91 acres to the City of Beaufort for a total of 27.824 acres under municipal control.	\$208,650	\$208,650
TOTAL			\$208,650

Thank you!

Note: This invoice reflects the BCEDC's request for reimbursement from the economic development fund -- Site Development and Job Retention set aside.



Beaufort Commerce Park

Update September 18, 2019

Background

The City of Beaufort has secured a deal to acquire 27.824 acres in the Beaufort Commerce Park from the Gray Family. The land is in the middle of the Beaufort Commerce Park. The parcels to be purchased are served by all required infrastructure and are largely in the “Opportunity Zone.” The land has an appraised value of \$30,000 per acre. The deal has been arranged as follows -- The City will purchase 13.91 acres at \$30,000 per acre for a total purchase price of \$417,300.00. The Gray family will donate the balance of 13.91 acres. This donation is valued at \$417,300.00.

The Beaufort County Economic Development Corporation is requesting use of \$208,650 from its “set aside fund for sites and job retention” to assist in this purchase. The county, by extension of the city gains control of additional land for economic development purposes for its share - \$7,499 per acre.

Recently Absorbed Properties

Southern Beaufort County		Northern Beaufort County	
New Construction		New Construction	
Bluffton Centre	71,000 sf	Alpha Genesis	50,000 sf
Burnt Church Distillery	20,000 sf		
Blue Jay Way	12500 sf	Total New Construction	50,000 sf
Watterson Brands	4500 sf		
		Existing Building	
Total New Construction	108,000 sf	Glass WRX	83,960 sf
		LeCreuset	48,960 sf
Existing Building		Blue Sky Processing	15,000 sf
Spartina	40,000 sf	Dust Solutions	11,500 sf
VIM	2,000 sf	Gullah Coop	7,000 sf
		Limuli Laboratories	5,500 sf
Total Existing Buildings Absorbed	42,000 sf	Cabinets by Dean Williams	2,000 sf
Total New and Existing	150,000 sf	Total Existing Buildings Absorbed	173,920 sf
		Total New and Existing	223,920 sf



**Master Development Plan
for the ± 209-Acre Beaufort Commerce Park
in Beaufort County, South Carolina**

Prepared by Alliance Consulting Engineers, Inc.

Beaufort County
Beaufort County, South Carolina

ALLIANCE
CONSULTING ENGINEERS

NOTE: OPEN SPACE TO BE UTILIZED TO MEET BUFFER, LANDSCAPE, AND/OR STORMWATER REQUIREMENTS PER ORDINANCES OF STATE AND LOCAL AGENCIES AT THE TIME OF DEVELOPMENT.

Project No.: 18114-0007 (IN FEET)
April 13, 2018

PARCEL	TOTAL ACREAGE	DEVELOPABLE ACREAGE	BUILDING SIZE
1	± 7.8 ACRES	± 4.8 ACRES	± 50,000 SF
2	± 8.4 ACRES	± 5.2 ACRES	± 30,000 SF
3	± 8.7 ACRES	± 7.4 ACRES	± 30,000 SF
4	± 8.8 ACRES	± 4.8 ACRES	± 30,000 SF
5	± 8.7 ACRES	± 8.5 ACRES	± 50,000 SF
6	± 9.4 ACRES	± 9.4 ACRES	± 90,000 SF
7	± 9.5 ACRES	± 9.3 ACRES	± 90,000 SF
8	± 9.3 ACRES	± 4.6 ACRES	-
9	± 9.2 ACRES	± 8.7 ACRES	± 105,000 SF
10	± 9.4 ACRES	± 7.4 ACRES	± 50,000 SF
11	± 8.2 ACRES	± 8.2 ACRES	-
12	± 4.7 ACRES	± 4.5 ACRES	-
13	± 13.0 ACRES	± 11.9 ACRES	± 100,000 SF
14	± 9.3 ACRES	± 9.3 ACRES	-
15	± 3.0 ACRES	± 3.0 ACRES	-
16	± 8.2 ACRES	± 8.2 ACRES	-
17	± 9.4 ACRES	± 9.4 ACRES	± 90,000 SF
18	± 8.1 ACRES	± 8.1 ACRES	± 50,000 SF
19	± 3.8 ACRES	± 3.5 ACRES	-
20	± 12.3 ACRES	± 11.5 ACRES	± 60,000 SF
21	± 9.6 ACRES	± 8.7 ACRES	± 37,500 SF
22	± 31.7 ACRES	-	-
TOTAL	± 288.7 ACRES	± 183.9 ACRES	± 862,500 SF
UNDEVELOPABLE AREA (AGRICULTURE, WOOD LOT, ETC.)	-	-	-

REFERENCE IS MADE TO JURISDICTIONAL WETLANDS DELINEATION REPORT AND SURVEY PROVIDED BY BEAUFORT SURVEYING, INC. DATED FEBRUARY 15, 1996.

2. REFERENCE IS MADE TO 25-FOOT YARD BUFFER, 50-FOOT REAR YARD BUFFER AND 90-FOOT WETLANDS BUFFER

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0265

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv. Unins.	6. File Number P-25916-19SS
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.	7. Loan Number	
8. Mortgage Insurance Case Number			

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. **WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.**

TitleExpress Settlement System
Printed 09/26/2019 at 09:29:55

D. NAME OF BORROWER: The City of Beaufort
ADDRESS: 1911 Boundary Street, P.O. Box 1167, Beaufort, SC 29901

E. NAME OF SELLER: Venture, Inc of Beaufort
ADDRESS: 20 Sams Point Rd, Beaufort, SC 29907

F. NAME OF LENDER:
ADDRESS:

G. PROPERTY ADDRESS: Par "A" Beaufort Commerce Park
13.91 Acres of Commerce Park property, Beaufort County, SC
 Principal Residence Other Real Estate

H. SETTLEMENT AGENT: Harvey and Battey, P.A.
PLACE OF SETTLEMENT: 1001 Craven Street, Beaufort, SC 29902

I. SETTLEMENT DATE: 09/26/2019

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	417,300.00	401. Contract sales price	417,300.00
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400)	4,304.16	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	421,604.16	420. GROSS AMOUNT DUE TO SELLER	417,300.00
200. AMOUNTS PAID BY OR ON BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
201. Deposit or earnest money	417,300.00	501. Excess Deposit (see instructions)	
202. Principal amount of new loans		502. Settlement charges to seller (line 1400)	2,850.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of First Mortgage Loan	
205.		505.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes		510. City/town taxes	
211. County taxes 01/01/19 to 09/26/19	92.51	511. County taxes 01/01/19 to 09/26/19	92.51
212. Assessments		512. Assessments	
213. *Storm Water Only*		513. *Storm Water Only*	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	417,392.51	620. TOTAL REDUCTION AMOUNT DUE SELLER	2,942.51
300. CASH AT SETTLEMENT FROM OR TO BORROWER		800. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	421,604.16	801. Gross amount due to seller (line 420)	417,300.00
302. Less amounts paid by/for borrower (line 220)	417,392.51	802. Less reduction amount due seller (line 520)	2,942.51
303. CASH FROM BORROWER	4,211.65	803. CASH TO SELLER	414,357.49

SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service if you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. The Contract Sales Price described on line 401 above constitutes the Gross Proceeds of this transaction.

SELLER'S INSTRUCTIONS: If this real estate was your principal residence, file Form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040).

You are required by law to provide Harvey and Battey, P.A. If you do not provide your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law, and Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

TIN: _____ / _____ SELLER(S) SIGNATURE(S): _____ / _____ SELLER 2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT

File Number: P-25916-19

PAGE 2

TitleExpress Settlement System Printed 09/26/2019 at 09:29:58

I. SETTLEMENT CHARGES		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL SALES/BROKER'S COMMISSION based on price \$417,300.00 @ 0.000 =			
Division of commission (line 700) as follows:			
701. \$	to		
702. \$	to		
703. Commission paid at Settlement			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Origination Fee	%		
802. Loan Discount	%		
803. Appraisal Fee			
804. Credit Report			
805. Lender's Inspection Fee			
806. Mortgage Application Fee			
807. Assumption Fee			
808.			
809.			
810.			
811.			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest From	to @ \$ /day		
902. Mortgage Insurance Premium for	to		
903. Hazard Insurance Premium for	to		
904.			
905.			
1000. RESERVES DEPOSITED WITH LENDER FOR			
1001. Hazard Insurance	mo @ \$ /mo		
1002. Mortgage Insurance	mo @ \$ /mo		
1003. City Property Tax	mo @ \$ /mo		
1004. County Property Tax	mo @ \$ 10.50 /mo		
1005. Annual Assessments	mo @ \$ /mo		
1009. Aggregate Analysis Adjustment		0.00	0.00
1100. TITLE CHARGES			
1101. Closing Fee	to David L. Tedder		525.00
1102. Abstract or title search	to Palmetto Title & Abstract	250.00	
1103. Title Binder	to Palmetto Title & Abstract Agency, Inc.	150.00	
1104. Title Insurance binder			
1105. Contract Prep	to David L. Tedder		800.00
1106. Notary Fees			
1107. Attorney's fees	to Harvey & Battey, P.A.	575.00	
(includes above items No:)			
1108. Title Insurance	to Palmetto Title & Abstract Agency, Inc.	1,197.36	
(includes above items No:)			
1109. Lender's Policy			
1110. Owner's Policy	417,300.00 - 1,197.36		
1111. Contract Review	to Harvey & Battey, P.A.	75.00	
1112.			
1113.			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording Fees Deed \$ 15.00 : Mortgage \$: Release \$		15.00	
1202. City/County tax/stamps Deed \$: Mortgage \$			
1203. State Tax/stamps Deed \$: Mortgage \$			
1204.			
1205.			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey	to Beaufort Surveying, Inc.		200.00
1302. Post Inspection			
1304. Parcel B Costs	to P-25916-19B Joined	2,041.80	1,325.00
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)		4,304.16	2,850.00

HUD CERTIFICATION OF BUYER AND SELLER

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

The City of Beaufort

Venture, Inc of Beaufort

By: Herbert G. Gray, CEO

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE TITLE 18: U.S. CODE SECTION 1001 AND SECTION 1010.

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

By: _____ DATE _____



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Resolution Authorizing Exemption of Property from Ad Valorem Taxation

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II County Attorney

Issues for Consideration:

On April 28, 2014, Beaufort County adopted Ordinance 2014-9. This ordinance approved a Development Agreement between Jaz 278, LLC and Beaufort County. The proposed development was Bluffton Gateway Commercial Center. The area to be developed contained a Brownfield site. Under state law, non-responsible parties who remediate Brownfield sites may, if they satisfy all the requirements imposed by the legislature, qualify for an exemption from ad valorem taxes for a period of five years from the year of completion. Article XI.D. of the Development Agreement, Brownfield Voluntary Cleanup Exemption, provides that upon issuance of the DHEC Certificate of Completion for the Brownfield Voluntary Cleanup Program, Beaufort County shall authorize and approve by resolution the exemption of property from ad valorem taxes as provided by the general laws of the State of South Carolina. DHEC issued the Certificate of Completion in 2015. Jaz 278 LLC is entitled to the exemption under state law and as provided for in the 2014 Development Agreement with Beaufort County.

Points to Consider:

See above.

Funding & Liability Factors:

None

Council Options:

Approval based on contractual obligations.

Recommendation:

Approve

**A RESOLUTION AUTHORIZING
AN EXEMPTION OF PROPERTY FROM
AD VALOREM TAXATION**

WHEREAS, Jaz 278, LLC is a Georgia Limited Liability Company authorized to conduct business in South Carolina and owner of certain Property consisting of sixty-six and 20/100 (66.20) acres of land known as Bluffton Gateway Commercial Center which is located at 34 Bluffton Road, Bluffton, South Carolina; and

WHEREAS, on July 7, 2014 Jaz 278, LLC and Beaufort County entered into an agreement known as Development Agreement for Bluffton Gateway Commercial Center (“Development Agreement”); and

WHEREAS, certain parcels of the Property are subject to a Non-Responsible Party Voluntary Cleanup Agreement (“Brownfield Voluntary Cleanup Agreement”) entered into by Jaz 278, LLC and the South Carolina Department of Health and Environmental Control (“DHEC”) pursuant to South Carolina Code of Laws, Section 44-56-710, et seq. (the “Volunteer Cleanup Program”); and

WHEREAS, the Brownfield Voluntary Cleanup Program provides for the exemption of certain ad valorem taxes pursuant to and as more particularly described in South Carolina Code of Laws, Section 12-37-220 (44) (“Brownfield Voluntary Cleanup Exemption”); and

WHEREAS, the Brownfield Voluntary Cleanup Exemption provides for a five (5) year exemption from certain ad valorem taxes upon the issuance of Certificate of Completion by DHEC (“DHEC Certificate of Completion”) and the subsequent approval by resolution of the appropriate governing body; and

WHEREAS, Beaufort County Council is the governing body contemplated by South Carolina Code of Laws, Section 12-37-220 (44); and

WHEREAS, Jaz 278, LLC has provided Beaufort County with a Certificate of Completion issued by DHEC dated March 16, 2015; and

WHEREAS, Jaz 278, LLC has further provided Beaufort County with copies of Tax Credit Certificates for Expenses Incurred through Brownfield Voluntary Cleanup Program for the years 2013 (\$86,239.94), 2014 (\$105,221.78) and 2015 (\$417,629.29); and

WHEREAS, Section XI.D. of the Development Agreement provides that the exemption shall be in the form of a refund by the County to the owner within ninety (90) days of the County’s receipt of (i) the payment in full of all ad valorem taxes due for the property, (ii) an itemized list with evidence of owner’s payment for costs and fees incurred for permitting and the actual cost of demolition, construction, remediation and testing requires to secure the DHEC Certificate of Completion and (iii) a certified copy of the DHEC Certificate of Completion.

NOW, THEREFORE, BE IT RESOLVED, that upon presentation of the items enumerated above, Jaz 278, LLC is exempt from ad valorem taxes (and ad valorem taxes only) pursuant to the general laws of the state of South Carolina for a period of five (5) years commencing in 2015.

DONE this _____ day of September, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____

Stewart H. Rodman
Chairman

ATTEST:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Resolution for 2006 1 Cent Transportation Sales Tax Program Remaining Funds

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II, County Attorney and Robert McFee, PE, Division Director Construction, Engineering and Facilities

Issues for Consideration:

In 2015 Beaufort County substantially completed its SC 170 Widening project. This project was part of the 2006 sales tax referendum. As part of the project Beaufort County agreed to install water and sewer casing under SC 170. These casings were not installed and need to be installed now. BJWSA has agreed to perform the work at a cost of approximately \$200,000.

Points to Consider:

The casings were intended to be installed but were omitted.

Funding & Liability Factors:

Remaining 2006 1 Cent Transportation Sales Tax Funds

Council Options:

Approve or disapprove the request.

Recommendation:

Staff recommends Council approve the request.

RESOLUTION

WHEREAS, on August 14, 2006, Beaufort County Council adopted a Sales Tax Ordinance which identified ten (10) infrastructure projects with an estimated completion cost of One Hundred Fifty-Two Million Dollars (\$152,000,000) and which called for a voter Referendum on whether the County should proceed with the projects; and

WHEREAS, a Referendum to approve the expenditure of One Hundred Fifty-Two Million Dollars (\$152,000,000) by implementation of a one percent (1%) sales tax was held and approved by Beaufort County voters in November 2006; and

WHEREAS, construction of the projects is complete and a remainder of approximately \$2,272,000.00 exists which must be programmed and expended on the approved projects; and

WHEREAS, on May 13, 2019, Council adopted Resolution 2019-20 which authorizes the County to use the remaining funds to complete several projects which are a part of, and incidental to, the ten (10) projects approved by the voters in November 2006; and

WHEREAS, Council now wishes to add to that list of projects which were previously approved by Resolution 2019-20, the installation of water and sewer casings under the newly widened SC 170 at an anticipated cost of approximately \$200,000.

NOW, THEREFORE, IT IS HEREBY RESOLVED that County Council authorizes the expenditure of \$200,000 for water and sewer casings incidental to the widening of SC 170 and further authorizes the County Administrator to execute any and all documents necessary for the completion of the same.

Adopted this _____ day of September, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman,
Chairman, Beaufort County Council

Attest:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Request for Qualifications (RFQ) # 061719 for Coordinated Comprehensive Master Planning Services between Beaufort County and the Town of Port Royal

Council Committee:

County Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Robert Merchant, Community Development Deputy Director

Issues for Consideration:

Beaufort County issued a Request for Qualifications (RFQ) from qualified firms to provide coordinated comprehensive planning services for Beaufort County and The Town of Port Royal. The intent of these services is to write and adopt a place-based Comprehensive Plan which comports with the requirements of the State of South Carolina and meets the long range planning needs of the individual jurisdictions. Since the publication of the RFQ, the Town of Bluffton announced that it is delaying the update of its comprehensive plan and would not participate.

Points to Consider:

See above.

Funding & Liability Factors:

The total cost of the contract is \$238,370. Beaufort County will contribute \$178,370 which will be partially funded from the CDD FY20 budget; the Town of Port Royal will contribute \$60,000. The funding for Beaufort County's contribution will be split between FY2020 and FY2021. We are requesting funds be set aside for an appropriation in FY2021.

Council Options:

Award or not award the contract.

Recommendation:

Award the contract to Design Workshop.



**COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT**

106 Industrial Village Road, Bldg. 2, Post Office Drawer 1228
Beaufort, South Carolina 29901-1228

David L Thomas, Purchasing Director
dthomas@bcgov.net 843.255.2353

TO:

FROM: David L Thomas. CPPO. Purchasing Director

SUBJ:

DATE:

BACKGROUND:

Beaufort County issued a Request for Qualifications (RFQ) from qualified firms to provide coordinated comprehensive planning services for Beaufort County, the Town of Port Royal and the Town of Bluffton. The intent of these services is to write and adopt a place-based Comprehensive Plan; which comports with the requirements of the State of South Carolina and meets the long-range planning needs of the individual jurisdictions. Since the publication of the RFQ, the Town of Bluffton announced that it is delaying the update of its comprehensive plan and would not participate.

VENDOR INFORMATION:

COST:

1. Design Workshop, Inc., Asheville, NC	\$295,000*
2. Benchmark, Charlotte, NC	\$300,000
3. Opticos Design, Inc., Berkeley, CA	\$525,000
4. McBride Dale Clarion, Cincinnati, OH	\$300,000

*The budget for Design Workshop has been revised to reflect Bluffton not participating in the plan.

FUNDING:

FY 2020 - Beaufort County Community Development Department Comprehensive Plan line item #10001132-51160 (\$89,185).
FY 2021 - Beaufort County Community Development Department Comprehensive Plan line item #10001132-51160 (\$89,185) This portion is subject to the approval of the appropriation within the Fiscal Year 2021 General Fund Budget Ordinance.
Town of Port Royal (\$60,000)

Funding approved: By: Date:


FOR ACTION:

County Council meeting on October 14, 2019.

RECOMMENDATION:

The Purchasing Department recommends that the Natural Resources Committee and County Council approve the contract award of \$238,370 to Design Workshop, Inc., for the aforementioned services.
Please note: This was approved by the Finance Committee on Monday, September 23, 2019.

Attachment:  RFQ 061719 (2).pdf
601.68 KB

 No file attached

cc: Ashley Jacobs, County Administrator

Approved: Date:

Check to override approval: Overridden by: Override Date:

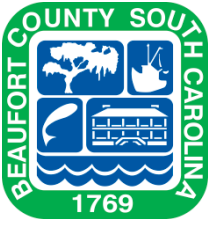
Alicia Holland, Assistant County Administrator, Finance

Approved: Date:

Approved: Date:

Check to override approval: Overridden by: Override Date: ready for admin:

After Initial Submission, Use the Save and Close Buttons



COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT

102 Industrial Village Road, Bldg 2—Post Office Drawer 1228
Beaufort, South Carolina 29901-1228

TO: Councilman Alice G. Howard, Chairman, Natural Resources Committee

FROM: Dave Thomas, CPPO, Purchasing Director

SUBJ: **Request for Qualifications (RFQ) # 061719 for Coordinated Comprehensive Master Planning Services between Beaufort County, the Town of Port Royal, and the Town of Bluffton**

DATE: September 16, 2019

BACKGROUND: Beaufort County issued a Request for Qualifications (RFQ) from qualified firms to provide coordinated comprehensive planning services for Beaufort County and The Town of Port Royal, and The Town of Bluffton. The intent of these services is to write and adopt a place-based Comprehensive Plan; which comports with the requirements of the State of South Carolina and meets the long range planning needs of the individual jurisdictions. Since the publication of the RFQ, the Town of Bluffton announced that it is delaying the update of its comprehensive plan and would not participate.

VENDOR INFORMATION AND RANK ORDER

COST

1. Design Workshop, Inc., Asheville, NC	\$295,000*
2. Benchmark, Charlotte, NC	\$300,000
3. Opticos Design, Inc., Berkeley, CA	\$525,000
4. McBride Dale Clarion, Cincinnati, OH	\$300,000

*The Budget for Design Workshop has been revised to \$238,370 to reflect Bluffton not participating in the plan.

FUNDING:

1. FY 2020 - Beaufort County Community Development Department Comprehensive Plan line item # 1001132-51160 (Amount \$89,185).
2. FY 2021 - Beaufort County Community Development Department Comprehensive Plan line item # 1001132-51160 (Amount \$89,185).
3. Town of Port Royal - \$60,000

FOR ACTION: Natural Resources Committee meeting occurring September 16, 2019.

RECOMMENDATION: The Purchasing Department recommends that the Natural Resources Committee and County Council approve the contract award of \$238,370 to Design Workshop, Inc. for the aforementioned services.

CC: Ashley Jacobs, County Administrator
Alicia Holland, Assistant County Administrator, Finance
Monica Spells, Assistant County Administrator, Civic Engagement and Outreach
Eric Greenway, Director of Planning

Attachments: RFQ Scoring Summary

Beaufort County Coordinated Comprehensive Plan with The Town of Port Royal and the Town of Bluffton, South Carolina

RFQ 061719

Summary Score Sheet

Evaluators	Name of Company	Name of Company	Name of Company	Name of Company
L. Bridges	Benchmark	Design Workshop	McBride Dale Clarion	Opticos
E. Greenway	68	80	68	60
R. Merchant	75	87	72	76
B. Semmler	76	94	80	81
TOTALS:	69	67	55	59
	288	328	275	276
1. Design Workshop	328			
2. Benchmark	288			
3. Opticos	276			
4. McBride Dale Clarion	275			



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Council Committee:

Meeting Date:

Committee Presenter (Name and Title):

Issues for Consideration:

Points to Consider:

Funding & Liability Factors:

Council Options:

Recommendation:

ORDINANCE 2019/ __

AN ORDINANCE AUTHORIZING THE TERMINATION OF A LEASE OF COUNTY OWNED REAL PROPERTY TO GENE BARDO

WHEREAS, The Trust for Public Land (“TPL”) acquired from John Lucky approximately 70.69 acres of real property (“Property”) as described in Exhibit A in the amount of \$750,000 by Deed dated December 5, 2005, which deed is recorded in Deed Book 2282 at Page 1080 in the ROD Office for Beaufort County, South Carolina; and

WHEREAS, at the time of acquisition, TPL conveyed the Property to Beaufort County (“County”) for conservation, open space, public access, passive recreation, education and other similar uses; and

WHEREAS, at the time of acquisition the Former Abutters and Owners agreed to amend the Private Restrictions to be effective at the time the United States Marine Corps Air Station (MCAS) Restrictive Easement was imposed on the Property by conveyance from the County to the MCAS; and

WHEREAS, the County conveyed a Restrictive Easement on April 28, 2006 on the Property to the MCAS to prevent the Property from being developed and allowing the Property to be used for conservation, parks, open space and other similar uses, which easement is recorded in Deed Book 2364 at Page 1060 in the ROD Office for Beaufort County, South Carolina; and

WHEREAS, the County entered into a month to month with 30 days notification of vacancy Lease Agreement for the Property with Gene Bardo dated December 1, 2005, which was approved by Beaufort County Council by ordinance on January 9, 2006; and

WHEREAS, the MCAS conducts routine easement inspections of the Property and has filed reports with the County indicating repeated “Failing” grades concerning the residence, trash and garbage on the Property by the Lessee; and

WHEREAS, the County no longer finds that a Lease Agreement of the Property with the Lessee is in the best interests of Beaufort County and the public in general and wishes to terminate the Lease Agreement dated December 1, 2005 as provided in Section 18 of the Lease Agreement; and

WHEREAS, the County wishes to include the residence and any other structures on the Property in a razing plan to be developed by the County Passive Parks Manager.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNTY COUNCIL OF BEAUFORT COUNTY, SOUTH CAROLINA HEREBY AUTHORIZES:

1. The County Administrator to provide a 30 day termination notice to the Property Lessee for the dissolution of the Property Lease Agreement dated December 1, 2005.
2. The County Passive Parks Manager to include the structures on the Property in the County Passive Parks Razing Plan.

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah Brock, Clerk to Council

3rd Reading: _____

2nd Reading: _____

Public Hearing: _____

1st Reading: _____

Public Facilities Committee: June 3, 2019

Exhibit A

Property Description

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Grays Hill Section of Beaufort County, South Carolina consisting of 70.69 acres, more or less and having such metes, bounds, courses and distances as will more fully appear on that certain plat prepared by Robert D. Trogdon, IV RLS dated June 4, 1999 and recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 77 at Page 21. For a more completed description as to metes, bounds, courses and distances, reference is made to a plat prepared by David S. Youmans, RLS dated October 3, 2005, revised November 22, 2005, which is recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 110 at Page 84.

TMP: R100-016-000-0238-0000

LEASE AGREEMENT

IN CONSIDERATION of the mutual promises, obligations and agreements herein set forth, this LEASE AGREEMENT is entered into as of this 1st day of December, 2005 by and between Gene Bardo, with a mailing address of 5 Winn Farm Road., Beaufort, SC 29906 ("LESSEE") and the County of Beaufort, South Carolina, having a mailing address of County of Beaufort, Administrator, P.O. Drawer 1228, Beaufort, South Carolina 29901-1228 ("LESSOR"). LESSOR is the owner of Real Property to the Leased Premises (as herein defined) hereby consents to this lease by LESSOR to LESSEE.

1. Description of Premises. LESSOR hereby agrees to lease to LESSEE, and LESSEE hereby agrees to accept, subject to the terms and conditions set forth below, the land consisting of approximately 71 acres and a single family residence thereon currently occupied by LESSEE, located at 5 Winn Farm Road, Beaufort, South Carolina 29906 (the "Leased Premises").

2. Term. The term of this Lease shall commence on December 30, 2004 and shall terminate on an undetermined time (the "Term") unless sooner terminated pursuant to the provisions of this Lease.

3. Base Rent. The monthly rent for the Term of this Lease is Six Hundred Fifty Dollars (\$650.00), which LESSEE covenants to pay to LESSOR on the first day of each month. A check for the Base Rent will be payable to Beaufort County Treasurer, with a mailing address of County of Beaufort, Attn: Controller, P.O. Drawer 1228, Beaufort, SC 29901-1228.

4. Heat, Water, Utility Charges. LESSEE shall pay all utility charges for electricity, gas, and other utility services used on the Leased Premises (including telephone).

5. Compliance with Laws. LESSEE shall not make or permit any use of the Leased Premises which will be unlawful, improper, or contrary to any applicable law or municipal ordinance (including without limitation all zoning, building or sanitary statutes, codes, rules, regulations, or ordinances), or which will make voidable or increase the cost of any insurance maintained on the Leased Premises by LESSOR.

6. Condition of the Leased Premises. LESSEE is fully familiar with the physical condition of the Leased Premises. LESSOR has made no representation in connection with the condition of the Leased Premises and shall not be liable for any latent defects therein; provided however, that if such latent defects render the Leased Premises untenantable for the purposes of this Lease, LESSEE may, at its option, upon prior written notice to LESSOR, terminate this Lease.

7. Furnishing of the Leased Premises. LESSEE shall, at its sole cost

and expense, provide any furnishings for the Leased Premises.

8. Repairs. Subject to applicable law, LESSEE shall keep and maintain the Leased Premises and all equipment and fixtures thereon or used therewith repaired, whole and of the same kind, quality and description and in such good repair, order and condition as the same are at the beginning of the Term of this Lease or may be put in thereafter, reasonable and ordinary wear and tear and damage by fire and other unavoidable casualty (not due to LESSEE's negligence) only excepted. If LESSEE fails within a reasonable time to make such repairs, or makes them improperly, then and in any such event or events, LESSOR may (but shall not be obligated to) make such repairs and LESSEE shall reimburse LESSOR for the reasonable cost of such repairs in full, as additional rent, upon demand.

9. Fixtures. The improvement or fixtures installed by LESSEE which are located on or are affixed to the real estate must be removed upon the termination of this Lease, and all damage or defacement of the Leased Premises caused by such removal must be repaired by LESSEE to the satisfaction of LESSOR. Any improvements or fixtures which are not removed prior to the termination of this Lease shall become the property of LESSOR.

10. Alterations and Improvements. LESSEE shall have the option and the right, at its expense, to improve the decor and appearance of the exterior or interior of the single family residence located on the Leased Premises, but shall not construct any other structures on the Leased Premises. Any work done by LESSEE shall be done in accordance with all applicable laws and regulations, with a proper permit, using first-class materials and in a workmanlike manner. LESSEE shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for LESSEE at or for use in the Leased Premises, which claims are or any be secured by any mechanics' liens or materialmens' liens against the Leased Premises.

11. Fire, Other Casualty. Should a substantial portion of the Leased Premises be damaged by fire or other casualty, LESSOR shall terminate this Lease. When such fire, casualty, or taking renders the Leased Premises or any part thereof unfit for use and occupancy, a just and proportionate abatement of rent shall be made.

12. Condemnation. If the Leased Premises are partially or wholly taken for any public use, LESSOR or LESSEE may terminate this Lease by giving written notice to the other party within five (5) days after the taking becomes final.

13. Insurance. LESSEE understands and agrees that LESSEE bears full responsibility for insuring LESSEE's personal property. LESSEE shall also carry comprehensive general liability insurance insuring LESSOR and its agents and LESSEE. LESSOR shall obtain and keep in force during the Term of this Lease public liability insurance insuring LESSOR against liability arising out of ownership, use, occupancy or maintenance of the Leased Premises or the building of which it is a part.

At his election, LESSOR may also obtain and keep in force during the Term of this Lease casualty insurance insuring the value of the structures on the Leased Premises.

14. Subletting and Assignment. LESSEE shall not assign this Lease nor sublet the Leased Premises in whole or in part, nor mortgage or otherwise transfer or encumber all or any part of LESSEE's interest in the Lease or the Leased Premises.

15. Entry, Inspection and Maintenance. LESSEE shall allow LESSOR or its agents during the Term, at any time to enter and view the Leased Premises and to make repairs and alterations if they should elect to do so.

16. Quiet Possession. LESSOR covenants and warrants that LESSOR has full right and lawful authority to enter into this Lease for the full Term hereof. LESSOR further covenants and warrants that if LESSEE shall discharge the obligations herein set forth to be performed by LESSEE, then LESSEE shall have and enjoy the quiet and undisturbed possession of the Leased Premises for the uses herein described, together with all appurtenances thereto.

17. Default and Remedies. In the event that: (a) LESSEE shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days after written notice thereof; or (b) LESSEE shall default in the observance or performance of any other of LESSEE's covenants, agreements or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof; or (c) LESSEE shall be declared insolvent, or shall be adjudicated or bankrupt, or shall assign its assets for the benefit of creditors, or (d) the Leased Premises shall be taken on execution, LESSOR may immediately, or at any time thereafter, (1) make demand to LESSEE to quit, or (2) elect to enter upon said Leased Premises and to take possession thereupon, whereupon, after either (1) or (2), this Lease shall absolutely terminate and it shall be no defense to LESSEE that previous violations of any covenants have been waived by LESSOR either expressly or by implication. Any such election by LESSOR shall not discharge LESSEE's obligations under this Lease and LESSEE shall indemnify LESSOR against all loss or damages suffered by reason of such termination.

18. Termination. LESSEE agrees to quit and deliver up the Leased Premises peaceably and quietly to LESSOR, or its attorney, or other duly authorized agent, at the expiration or other termination of this Lease. This Lease may be terminated upon thirty days (30) notice from Lessor to Lessee or upon the occurrence of any of the events set forth in Paragraph 17.

19. Waiver. LESSEE agrees that the failure of LESSOR to insist upon strict performance of any of the covenants or conditions herein contained, shall not constitute or be construed as a waiver or relinquishment of LESSOR's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

20. Notices. All notices hereunder by LESSOR to LESSEE shall be given in hand or by registered or certified mail, return receipt requested, addressed to LESSEE at the Leased Premises, or to such other address as LESSEE may from time to time give to LESSOR for this purpose, and all notices by LESSEE to LESSOR shall be given in hand or by registered or certified mail, return receipt requested, addressed to LESSOR's address shown in the initial paragraph of this Lease, or to such other address as LESSOR may from time to time give in writing to LESSEE for this purpose. Such notice shall be deemed delivered, if by hand when hand delivered or if by mail when deposited with the US Postal Service.

21. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction or by any future legislative action, such holding or such action shall not invalidate or render unenforceable any other provisions hereof.

22. Miscellaneous. This Lease is to be construed as a South Carolina lease; is to take effect as a sealed instrument; sets forth the entire agreement between the parties; is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns; and may be cancelled, modified or amended only by written instrument signed by both LESSOR and LESSEE.

24. Non-Recourse. No shareholder, officer, director, trustee or employee of LESSOR shall be personally liable for the performance or observance of any obligation expressed or implied hereunder.

25. Security Deposit. LESSOR acknowledges receipt from LESSEE of Six Hundred Fifty Dollars as the Security Deposit to be held by LESSOR, as security, without interest, for and during the Term, which deposit shall be returned to LESSEE at the termination of this Lease, provided there exists no breach of any undertaking of LESSEE. If all or any part of the Security Deposit is applied to an obligation of LESSEE hereunder, LESSEE shall immediately upon request by LESSOR restore the Security Deposit to its original amount. LESSOR may apply the Security Deposit to repair any damage to the Leased Premises caused by LESSEE. The balance of the Security Deposit, if any, will be returned to LESSEE when he vacates the Leased Premises at the end of the Term.

IN WITNESS WHEREOF, the parties hereto have executed this Lease all as of the date first-above written.

Atty. W. Bradshaw
Witness
Cheryl Harris
Witness

LESSOR:
Beaufort County
By: Gary T. Kubic
Gary T. Kubic, County Administrator

Approved as to form:
[Signature]
Beaufort County Attorney

LESSEE:

Gene Bardo
Gene Bardo

[Signature]
Witness

[Signature]
Witness



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

An Ordinance for the Sale of Real Estate known as the Bob Jones Fields

Council Committee:

Public Facilities

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II, County Attorney

Issues for Consideration:

Points to Consider:

Funding & Liability Factors:

N/A

Council Options:

Approve or deny the request.

Recommendation:

Staff recommends Council approve the request.

ORDINANCE 2019 / _____

AN ORDINANCE AUTHORIZING THE SALE OF PROPERTY KNOWN AS BOB JONES FIELD OR BOB JONES PARK

WHEREAS, Beaufort County is the owner of certain property which is located in the City of Beaufort and which is known in the community generally as Bob Jones Field or Bob Jones Park. The address of the property is 2712 Jones Avenue and 304 Burroughs Avenue. It consists of three parcels (R120 003 000 0842 000, R 120 003 000 0843 000 and R120 003 000 0844 000) all of which collectively total approximately 4.31 acres more or less; and

WHEREAS, Beaufort County received this land from the City of Beaufort several years ago with the condition that the land be used for recreational purposes and that it be returned to the City if ever the County stops using the property for these purposes. The County has used the property for recreational purposes ever since receiving it; and

WHEREAS, Holy Trinity School is located in the City of Beaufort on property which adjoins Bob Jones Field. The school would like to expand onto the field. The City believes the presence of the school is a benefit to the City and would like the school to remain in its current location and to be able to expand onto the field. To this end the City has authorized the County to sell the property to the school for the amount of \$387,900 provided that the County use these funds on parks and recreation programs, services and infrastructure in the City of Beaufort exclusively, which the County has agreed to do; and

WHEREAS, the County and Holy Trinity School have further agreed that in addition to the sales price stated above, and as further consideration for the sale of the property, Holy Trinity will, if after purchasing the property, it decides to leave its current location without expanding the footprint of the school onto the field, offer to sell the property back to the County for the value of the land as determined by a certified appraiser at that time. If Holy Trinity decides to leave its current location after expanding the footprint of the school onto the field so that the field can no longer be used as a recreational facility, it agrees to pay Beaufort County the full current appraised value (land and improvements) of \$444,000.

NOW, THEREFORE, BE IT ORDAINED, that Beaufort County Council does hereby authorize the County Administrator to execute any and all documents necessary to effectuate the sale of the above referenced property to Holy Trinity School on the conditions set forth above.

This _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah Brock, Clerk to Council

First Reading:
Second Reading:
Public Hearing:
Third and Final Reading:



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

River Oaks

Council Committee:

County Council

Meeting Date:

September 23rd, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

During the March Natural Resources Committee meeting the Community Development Director, on a motion by Council Member Glover and Seconded by Council Member Covert, was tasked with working with the developer on the following three items: 1) Formalize an agreement on the affordable housing commitment made by the developer, 2) Obtain a letter of approval from the Beaufort County School District regarding the density and capital fees, 3) Work with the developer on the density/layout of the development. During the April NRC meeting the direction on the BCSD approval was modified to request the developer work on language agreeing to pay the School Impact Fee if adopted by the County Council. Please see the attached comparison summary between the developer submitted Development Agreement amendment and the Staff's recommended amendment through our work with outside counsel. At the August 2019 NRC meeting the committee recommended on a 6-5 vote the developer version of the DA with the stipulation that 40 units meet the requirements for attainable housing and be deed restricted and that the developer pay all the costs associated with the DA amendment preparation. Those items are reflected in the attached DA amendment.

Points to Consider:

None remain as the current document reflects the recommendation from the August 2019 NRC meeting.

Funding & Liability Factors:

Funding issues are only related to School Impact/Capital Fees.

Council Options:

1. Recommend the Developer version of the River Oaks DA amendment.
2. Recommend the Community Development Department Staff version of the restated and amended DA.
3. Recommend Modification of each development agreement to include specifics from each version into the modified document.
4. Recommend Denial of Development Agreement amendment and leave the current/amended version in place.

Recommendation:

Staff recommends that the Community Development Department staff's and Legal Counsel's version be recommended for approval as it more thoroughly implements the direction of the NRC's March and April directives.

ORDINANCE 2019/___

AN ORDINANCE TO ADOPT BEAUFORT COUNTY AMENDED AND RESTATED DEVELOPMENT AGREEMENT (RIVER OAKS AT OKATIE VILLAGE) ("Amended Agreement") REFERENCED AS PIN NUMBER R600 013 000 008C 0000 CONTAINING PLUS OR MINUS 63.54 ACRES OFF OF S.C. HIGHWAY 170.

WHEREAS Beaufort County Council Adopted Ordinance 2008/48, Adopting the River Oaks at Okatie Village; and

WHEREAS the River Oaks at Okatie Village was amended on July 25, 2014 as a minor amendment; and

WHEREAS the original River Oaks at Okatie Village Development Agreement is hereby amended and restated to incorporate the document entitled River Oaks at Okatie Village PUD Planned Unit Amended and Restated Development Agreement, a copy of which is attached hereto as Attachment 1 and incorporated herein by reference.

NOW THEREFORE BE IT ORDAINED, that the County Council of Beaufort County, South Carolina, hereby amends and restates the River Oaks at Okatie Village Development agreement and the ordinance authorizing the same. The summary and findings of the County Council for the amendment to the River Oaks at Okatie Village Development Agreement is attached hereto and adopted by the County Council.

Adopted this ___ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Chairman

ATTEST:

Clerk to Council

First Reading:

Second Reading:

Public Hearing:

Third and Final Reading:

~~July 10, 2019~~

Draft – As Approved by the Natural Resources Committee (August 19, 2019)

(Space above this line for recording use)

STATE OF SOUTH CAROLINA)	AMENDED AND RESTATED
)	DEVELOPMENT AGREEMENT
COUNTY OF BEAUFORT)	(RIVER OAKS AT OKATIE VILLAGE)

This **AMENDED AND RESTATED DEVELOPMENT AGREEMENT (RIVER OAKS AT OKATIE VILLAGE)** ("Amended Agreement") is made and entered the ____ day of _____, 2019 (the "Effective Date"), by and between **BBII HOLDING COMPANY, LLC**, a South Carolina limited liability company ("Owner"), and the **COUNTY OF BEAUFORT**, a body politic and corporate, a political subdivision of the State of South Carolina ("County").(Owner and County are each a "Party" and, collectively, are the "Parties").

RECITALS

WHEREAS, the legislature of the State of South Carolina has enacted the South Carolina Local Government Development Agreement Act as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended (the "Act"); and

WHEREAS, the Act recognizes that "[t]he lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning." [Section 6-31-10 (B)(1)]; and

WHEREAS, the Act also states that "[d]evelopment agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and,

WHEREAS, the Act further authorizes local governments, including county governments, to enter into development agreements with developers to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

WHEREAS, Owner has acquired a tract of land containing a total of approximately 63.54 acres of highland and wetland located in the County in Bluffton Township on S.C. 170 and known as the River Oaks at Okatie

Village development and presently zoned by Ordinance 2008/14, as amended, as River Oaks Planned Unit Development; and

WHEREAS, a development agreement dated September 3, 2009, for the River Oaks at Okatie Village development was entered into by the development's former owner, ARD Hilton Head, LLC, and the County which was recorded in the records of the County Register of Deeds in Book 02888, Pages 0579-1047 (the "Original Agreement"); and

WHEREAS, the Original Agreement was set to terminate five (5) years after the date of execution by the parties, however, by 2010 S.C. Act No. 297 (Permit Extension Joint Resolution of 2010) and 2013 S.C. Act No. 112 (Permit Extension Joint Resolution of 2013) the General Assembly provided for the suspension of the running of certain development approvals, thereby resulting in the Original Agreement having a termination date of January 1, 2022; and

WHEREAS, a minor amendment to the Original Agreement was made in 2014 that provided for the development of River Oaks at Okatie Village as a non-age restricted, family community; and

WHEREAS, since the approval of the Original Agreement, and the 2014 minor amendment, no development or sales activity has taken place in the River Oaks at Okatie Village development; and

WHEREAS, Owner has revised the plan for the development of the River Oaks at Okatie Village development; and

WHEREAS, the revised development plan requires the amendment of the Original Agreement; and

WHEREAS, the Act and Original Agreement provide for the amendment of the Original Agreement only by written agreement of the parties; and

WHEREAS, the nature and scope of the proposed amendments to the Original Agreement have led Owner and County to conclude that the most efficient and practical way to accomplish the amendment of the Original Agreement is by amending and restating the Original Agreement in its entirety, thereby providing a single comprehensive document for the use of the Parties and the public; and

WHEREAS, Owner and County have determined that it is in the best interests of the County and Owner to enter into this Amended Agreement to set forth the terms and conditions of the development in order to more fully protect the Owner's development rights, thereby providing certainty and predictability to the Owner of those rights and providing certainty and predictability to the County on the scope and terms of the development.

AMENDED AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the encouragement of well-planned development, and other good and valuable consideration, including the potential economic benefits to both County and Owner by entering into this Amended Agreement, the receipt and sufficiency of such consideration being hereby acknowledged, County and Owner hereby agree as follows:

SECTION 1. INCORPORATION.

The above recitals are hereby incorporated into this Amended Agreement.

SECTION 2. DEFINITIONS.

As used herein, the following terms mean:

"Amended Agreement" means this Amended and Restated Development Agreement (River Oaks at Okatie Village) entered into by the Parties on the Effective Date.

"Design Guidelines" means the design guidelines set forth in Section 4E and Exhibit F.

"Development" means the land disturbance of portions of the Property and/or vertical or horizontal construction of improvements thereon as contemplated by the Zoning Regulations.

"Development Plan" means the layout and development scheme contemplated for the Property, as more fully set forth in the PUD approval for River Oaks at Okatie Village, attached hereto as Exhibit B, and as may be modified per the terms of this Amended Agreement.

"Development Rights" shall mean the right to undertake Development in accordance with the Zoning Regulations and this Amended Agreement.

"Effective Date" means the date this Amended Agreement was made and entered into by the Parties, the _____ day of _____, 2019, which is the date this Amended Agreement takes effect.

"Homeowner's Association" or "Owner's Association" shall mean a duly constituted Owner's Association under South Carolina law, pursuant to a Declaration of Covenants and Restrictions, filed of record in Beaufort County at or about the time of land subdivision, providing regulations for the governance of such subdivision, the upkeep of common elements, including assessment provisions, and other related matters.

"Owner" means BBII Holding Company, LLC, a South Carolina limited liability company, and any and all successors in title to all or a portion of the Property who or which undertake or cause to be undertaken development activity on the Property. "Owner" includes a person or entity that is transferred or assigned Development Rights to all or a portion of the Property.

"Party" means, each, the County and the Owner.

"Parties" means the County and the Owner, collectively.

"Property" means that certain tract of land described on Exhibit A.

"PUD" means the Development Plan and zoning approved for the Property by Ordinance 2008/14, as amended by Ordinance 2019/_____, as set forth in Exhibit B.

"Term" means the duration of this Amended Agreement, as set forth in Section 3 hereof.

"Zoning Regulations" means, unless otherwise provided in this Amended Agreement, those laws and land development regulations set forth in Exhibit C and includes the terms and conditions of: (i) the River Oaks at Okatie

Village PUD approval, as amended, as set forth in Exhibit B; (ii) the Zoning and Development Standards Ordinance (ZDSO) of Beaufort County, in effect on September 3, 2009; (iii) the Design Guidelines, as set forth in Exhibit F; and (iv) the terms and conditions of this Amended Agreement. In case of any conflict between or among the laws and land development regulations, the terms and conditions of this Amended Agreement shall take precedence, followed by the terms and conditions of the PUD, as set forth in Exhibit B, followed by the terms and conditions of the ZDSO.

SECTION 3. TERM.

The term of this Amended and Restated Development Agreement shall be for five years from the date of execution hereof, provided that the term shall be further extended for an additional five years if neither party hereto is in material breach hereof and if development of the subject property has not been completed during the initial term. Both parties agree that with the execution and adoption hereof, no present defaults exist between the parties and all future activities within River Oaks shall be governed by the terms hereof.

SECTION 4. DEVELOPMENT REQUIREMENTS AND DEVELOPMENT OF THE PROPERTY.

A. Zoning Regulations Apply. The Property shall be developed in accordance with the Zoning Regulations.

B. Consistency Finding. The County agrees that it finds the development permitted by this Amended Agreement is consistent with the County's Comprehensive Plan and land development regulations.

C. Permitted Uses. Permitted uses on the Property include single-family detached dwelling and accessory uses thereto and community recreational uses such as parks and water-related amenities. No more than three hundred fifteen (315) single-family detached dwelling units shall be constructed on the Property. Timesharing or fractional ownership uses are not permitted on the Property.

D. Development. The location of roads, building types, uses, amenities, recreation facilities, layouts and development standards for permitted uses are shown on the Master Plan (Exhibit B, B-1, and B-2). Changes to the Development Plan (Exhibit B) may be made but only in accordance with the provisions of the PUD. Projecting porches may fall within the setback.

E. Design Guidelines. The Design Guidelines (Exhibit F, Exhibit B-1 & B-2) apply to the

Development of the Property.

F. **Tree Preservation.** In the Development of the Property, Owner agrees to comply with the Zoning Regulations, including specifically the Zoning and Development Standards Ordinance (ZDSO) of Beaufort County, in effect on September 3, 2009, applicable to tree preservation. Protection for and removal of specimen trees has been anticipated by the Master Plan (Exhibit B) and will follow the 1999 Zoning and Development Standards Ordinance to the maximum extent practicable. In the event the Plan (Exhibit B) is in conflict with the 1999 Beaufort County Zoning and Development Ordinance, the Plan shall govern.

G. **Alleys.** Owner agrees that in the Development of the Property alleys are required when the average lot width on a street is thirty-nine (39) feet or less measured at the front or rear setback line, whichever is less, as shown on the Master Plan (Exhibit B, B-1, and B-2).

H. **Porches.** Owner agrees that all single-family houses in the River Oaks at Okatie Village development shall have either a projecting porch, engaged porch, or side yard porch. The interior alley-fed lots (30' Lots) porches will be a minimum 4' X 6' and up to 6' X 8' as shown on Exhibit B-1. The perimeter front loaded lots (40' Lots) porches will be a minimum 4' X 6' and up to 4' X 10" and set behind the garage front facade wall as shown on Exhibit B-2.

~~I. **Affordable Housing.** The original River Oaks Development Agreement did not contain a Workforce Housing Requirement (as was required for Osprey Point and Okatie Marsh) because River Oaks was to be a retirement and age restricted development. In order to assist in meeting the needs of the County to produce more housing in the affordable price range, Owner commits to the following requirement, which shall totally replace all prior provisions relating to affordable and/or workforce housing. Owner/Developer agrees that thirty percent (30%) of the residential units offered for initial third-party sale by the Owner shall be offered at prices that allow purchasers to buy a home who earn up to 120% of the latest posted Average Median Income for Beaufort County, which Median Income was established at \$83,000.00 for a family of four (2018). Standards established by the US Department of Housing and Urban Development shall control regarding the calculation of pricing to meet the terms hereof. The sole responsibility of Owner hereunder shall be to regularly report to County such qualifying sales until the 30% threshold has been met, and no other County standards regarding affordable housing, moderate housing, or workforce housing shall be applied within the Property, nor shall any deed covenants be required.~~

J. Affordable Housing. Owner agrees that 40 housing units in the River Oaks at Okatie Village development will be sold as affordable housing units and will be sold at a price that meets up to 100% of the area median income (AMI) for a family of four for 2018 as determined by the United States Department of Housing and Urban Development, as adjusted by the County Human Services Department or its successor. Owner agrees that the 40 affordable housing units will be restricted by deed as affordable housing units for 20 years. The affordable housing units shall be chosen by the purchaser and placed by the purchaser based on the availability of lots. Owner agrees to pay on behalf of the applicant for a building permit for each of the 40 affordable housing units the School Capital Construction Fee, imposed pursuant to Section 9.B. of this Agreement. Except as may otherwise be provided in this Section 4.I, incentives available under the County's affordable housing program apply to the 40 affordable housing units. County agrees to work with Owner to ensure an easy process for certifying that the proposed purchaser of an affordable housing unit meets the financial qualifications to purchase the house.

J. Trail and Open Space Plan. The location of trails and open spaces for the River Oaks at Okatie development are shown on the Trail and Open Space Plan, attached to the Amended Agreement as Exhibit G. Changes to the Trail and Open Space Plan may be made but only in accordance with the provisions of the PUD.

SECTION 5. DEVELOPMENT SCHEDULE.

The estimated development schedule for the Property is set forth on Exhibit D. The Parties acknowledge that the development schedule is an estimate. Pursuant to the Act, the failure of the Owner to meet the initial development schedule shall not, in and of itself, constitute a material breach of this Amended Agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owner's good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only, and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, causing modifications to the development schedule, shall not be considered a default hereunder as long as the Owner demonstrates good cause for such modifications, which good cause may include market conditions. The parties acknowledge that development activity may occur faster or slower than the development schedule, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted by Owner as a result of

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market conditions shall not be considered a material amendment or breach of this Amended Agreement as long as the Owner demonstrates good cause for such adjustments, such as market conditions.

SECTION 6. VESTED RIGHTS; EFFECT OF FUTURE LAWS.

County agrees that Owner, upon receipt of its development permits, may proceed to develop the Property according to the terms and conditions of this Amended Agreement. As of the Effective Date, the right of Owner to develop the Property is deemed vested with Owner for the Term of this Amended Agreement. County agrees that the Zoning Regulations, as set forth in Exhibit C to this Amended Agreement, in force on the Effective Date, unless another date is otherwise specified in this Amended Agreement, shall govern all aspects of the Development of the Property, according to the terms and conditions as stated in this Amended Agreement, for the Term of this Amended Agreement. All laws, regulations and ordinances of the County, other than the Zoning Regulations, and those as may be enacted in the future, shall be applicable to Owner and the Development of the Property so long as they do not conflict with the Zoning Regulations or interfere with the ability to utilize and develop the Property in accordance with the Development Plan (Exhibit B).

Except as provided in Section 6-31-80 of the Act or as may be otherwise provided in this Amended Agreement, the Zoning Regulations as applied to the Property and Development shall not be amended or modified during the Term. Owner agrees that the County may amend or modify the procedures contained in the Zoning Regulations for processing land development applications and approvals, approval of subdivision plats, or the issuance of building permits and those amended or modified procedures shall apply to the Property and Development.

It is specifically acknowledged that this Amended Agreement shall not prohibit the application of any current or future building, housing, electrical, plumbing, gas, swimming pool or other standard codes of general application throughout the County, of any tax or fee of general application throughout the County, or of any law or ordinance of general application throughout the County found by the County Council to be necessary to protect the health, safety and welfare of the citizens of County. Specifically, the County may apply subsequently enacted laws applicable to development to the Property and Development in accordance with Section 6-31-80(B) of the Act.

SECTION 7. INFRASTRUCTURE AND SERVICES.

County and Owner recognize that services will be provided for the River Oaks at Okatie Village development by the County and other governmental or quasi-governmental entities. For clarification, the parties make specific note and acknowledge the following:

A. Private Roads. All roads within the Property shall be constructed by the Owner and maintained by it and/or a Homeowners' Association. The County shall not be responsible for the construction or maintenance of any roads within the Property, and the Owner and/or Homeowners' Association shall continue the maintenance until such time as the roads are accepted for maintenance by an appropriate governmental body. The County shall not be required to accept title to, or responsibility for maintenance of, any roads within the Property. Roads within the Property may be restricted regarding public access; *provided, however*, that Owner agrees that residents of the Osprey Point development shall be allowed access to reach the ___ school and Cherry Point areas during daylight hours and school-related trips.

B. Public Roads. The major public road that serves the Property is S.C. 170 and it is under the jurisdiction of the State of South Carolina regarding construction, improvements and maintenance. County shall not be responsible for construction, improvements or maintenance of S.C. 170 or any other public roads which now or hereafter serve the Property, unless the County elects to do so in the future. It shall be the responsibility of the Owner to adhere to applicable state or County requirements regarding ingress and egress to S.C. 170 or any other public roads that may serve the Property.

C. Potable Water. Potable water will be supplied to the Property by Beaufort-Jasper Water & Sewer Authority (BJWSA). Owner will construct or cause to be constructed all necessary water service infrastructure within the Property, which will be maintained by it or the BJWSA or a Homeowner's Association. County shall not be responsible for any construction, treatment, operation, maintenance or costs associated with water service to or for the Property. Owner agrees that all Development, with the exception of irrigation and facilities existing on the Effective Date, will be served with potable water prior to occupancy and that when the existing buildings are demolished all new construction will be served with potable water provided by BJWSA. Owner shall be responsible for all financial arrangements with the BJWSA.

D. Sewage Treatment and Disposal / Access for Neighboring Properties. Sewage collection, treatment and disposal will be provided by BJWSA. Owner will construct or cause to be constructed all necessary sewer service infrastructures within the Property, which will be maintained by it or the BJWSA or a Homeowner's Association. County shall not be responsible for any construction, treatment, maintenance or costs associated with sewer service to the Property. The Owner agrees that all Development, with the exception of facilities existing at the date of this Agreement, will be served by sewer prior to occupancy and that when the existing buildings are demolished all sewage disposal shall be through BJWSA. Owner shall be responsible for financial arrangements with BJWSA. If the BJWSA concurs, Owner is not required to use treated wastewater for irrigation purposes.

Owner agrees that the sewer service pipe system for the Property will be appropriately sized so as to accommodate potential future hookup to the system for the immediately adjacent existing homes in the neighboring Cherry Point Road community to the west of the Property, estimated to be approximately 20 homes. Owner will extend an appropriately sized sewer line to the property line of the Property. Any cost of connection regarding neighboring properties or any further improvements to facilitate connection and flow from neighboring properties shall be the sole responsibility of those seeking to establish such connection, and not the responsibility of Owner, the Homeowner's Association or the County. Any necessary system design work for such offsite work, permitting work or other related expense shall also be the responsibility of others and not Owner, the Homeowner's Association or the County. All required laws and regulations must be followed by those seeking connection to the River Oaks at Okatie Village sewer system, and the provision of sewer service to neighboring properties is subject to the approval of BJWSA and other relevant agencies. Owner's responsibility to extend the sewer line as described in this Section 7.D. shall be completed according to the Development Schedule set forth in Section 5 and Exhibit D of this Amended Agreement.

E. Drainage System. All storm water runoff and drainage system improvements within the Property will be (i) designed utilizing the County's best management practices in effect at the time development permits are applied for, (ii) will be constructed by Owner, and (iii) will be maintained by Owner and/or a Homeowners' Association. The County is not responsible for any construction or maintenance costs associated with the drainage system within the Property.

Owner shall be required to abide by all provisions of federal and state laws and regulations, including those established by the South Carolina Department of Health and Environmental Control (DHEC), Office of Ocean and Coastal Resource Management (OCRM), and their successors, for the handling of storm water that are in effect at the time of permitting.

F. Solid Waste Collection. Solid waste collection is currently provided by agreements with private companies. Solid waste collection shall be provided to the Property on the same basis as is provided to other residents and businesses within the County.

G. Police Protection. The County shall provide police protection services to the Property on the same basis as is generally provided to other residents and businesses within the County.

H. Emergency Medical Services. Emergency medical services are now being provided by the

County, and the County will continue to provide emergency medical services to the Property on the same basis as is provided to other residents and businesses within Bluffton Township.

I. **Library Services.** Library services are now provided by the County, and the County will provide library services to the Property as it currently provides on a County-wide basis.

J. **School Services.** School services are now provided by the Beaufort County School District and such service shall continue.

K. **Fire Services.** Fire services are now provided by the County, and the County will provide fire protection to the Property on the same basis as is provided to other property within Bluffton Township.

SECTION 8. AGREEMENT NOT TO ANNEX; PROCESSING OF APPLICATIONS.

A. **Annexation.** Owner agrees that it will not seek or permit the Property to be annexed into Jasper County, the City of Hardeeville, or any other local government prior to the expiration of the Term of this Amended Agreement. This Section 8 may be enforced by the County by all available legal means, and includes all remedies available at law or in equity, including specific performance and injunctive relief.

B. **Processing of Applications.** County agrees that its Community Development Department will process all complete application submittals on matters within its jurisdiction that do not require outside review within two weeks of receipt by providing comments or decisions. If the Owner has questions or concerns regarding the timely processing of any application submittals made to the County, the Owner shall contact the Director of the Community Development Department and County Attorney, who will investigate the question or concern and report back to the Owner within ten (10) days of being notified.

SECTION 9. FEES AND RELATED AGREEMENTS.

A. **Purpose.** The Parties understand and agree that Development of the Property imposes certain burdens and costs on the County, including those for certain services and infrastructure improvements. Eventually, *ad valorem* taxes collected from the Property may meet or exceed the burdens and costs placed upon the County, but certain initial costs and capital expenditures are now required that are not to be funded by any increase in taxes paid by existing residents of the County. The purpose of this Section 9 is to identify the matters agreed upon to be provided by Owner to mitigate those burdens and costs.

B. School Capital Construction Fee. Owner shall pay an impact fee of \$1,500 for each residential unit at the time of obtaining the building permit for the residential unit (the "\$1500 Impact Fee"). The \$1,500 Impact Fee terminates if the County adopts a school impact fee during the Term at which time Owner shall pay the county-wide school impact fee adopted by the County. For purposes of this Section 9.B and the 40 affordable housing units provided for in Section 4.I, "Owner" means BBII Holding Company, LLC, a South Carolina limited liability company.

C. Impact Fees, User Fees and Assessments. The Parties agree that the Property and Development shall be subject to all applicable impact fees, user fees and assessments in effect in the County at the time the Owner submits its permit applications, specifically including any impact fees, user fees and assessments that are in effect on the Effective Date and those that may be adopted by the County after the Effective Date.

D. Payment of Costs. Upon submission of appropriate documentation of the expenditure, Owner agrees to reimburse the County, not later than 180 days after the Effective Date, for the County's reasonable unreimbursed actual costs related to this Amended Agreement, including attorney's fees. ~~The foregoing cost reimbursement is capped at Four Thousand Dollars (\$4,000.00) and is limited to County payments to third party vendors and service providers.~~

E. Processing Fees. Owner is subject to the payment of any and all present or future fees enacted by the County that are of county-wide application and that relate to the County's costs of processing applications, issuing development permits, reviewing plans, conducting inspections or similar type processing costs.

F. Other Entity Charges and Fees. Nothing in this Amended Agreement shall be construed as relieving Owner from the payment of any fees or charges that may be assessed by entities other than the County.

SECTION 10. PERIODIC REVIEWS.

Owner shall cooperate with the County's zoning administrator in the periodic review conducted by the zoning administrator to determine if Owner is in compliance with this Amended Agreement. Periodic reviews will be conducted not less frequently than every twelve months. Cooperation by Owner includes meeting with the zoning administrator and providing documents and information required to be provided by this Section 10 and other documents and information that may be requested by the zoning administrator. Owner is required to provide such

information as may reasonably be requested by the zoning administrator, to include, but not be limited to, the amount of acreage or number of lots of the Property sold in the prior year, acreage or lots of the Property under contract, the number of certificates of occupancy anticipated to be issued in the ensuing year and any relevant information regarding fee payment, taxes and assessments, including an accounting by Owner regarding payments made under Section 9 of this Amended Agreement. Reporting of information required by this Section 10 will be made upon such forms as the County and Owner may agree upon from time to time. The review required by this Section 10 is in addition to, and not in lieu of, any other reporting or filing required by this Amended Agreement. If, as a result of a review, the County determines that Owner has committed a material breach of the terms or conditions of this Amended Agreement, the County shall serve such party in writing notice of such breach pursuant to the procedures set forth in Section 6-31-90(B) of the Act, affording the breaching party the opportunity to respond as set forth in Section 6-31-90(C) of the Act.

SECTION 11. DEFAULTS.

The failure of Owner or the County to comply with the terms and conditions of this Amended Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Amended Agreement in accordance with the Act; provided, however, no termination of this Amended Agreement may be declared by the County absent its according the Owner the notice, hearing and opportunity to cure as provided in the Act. Nothing in this Section 11 shall be deemed or construed to preclude the County or its designee from issuing stop work orders or voiding permits issued for development when such development contravenes the provisions of the Zoning Regulations.

Notwithstanding the foregoing, it is acknowledged by all Parties to this Amended Agreement that the following events shall constitute a default, entitling the County to pursue the termination of this Amended Agreement, in accordance with the Act: (i) the failure to timely remit payments required hereunder to the County per the terms of this Amended Agreement; and (ii) if at any time during the Term, prior to the Owner having fulfilled any of their payment obligations, there shall be filed by or against the Owner in any court, pursuant to any state or federal statute, a petition in bankruptcy or insolvency, or for reorganization or appointment of a receiver or trustee of all or part of the assets of the Owner, or if it makes an assignment for the benefit of creditors.

SECTION 12. MODIFICATION OF AGREEMENT.

This Amended Agreement may be modified or amended only by the written agreement of the Parties. No statement, action or agreement made after the Effective Date shall be effective to change, amend, waive, modify,

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discharge, terminate or effect an abandonment of this Amended Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom the change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced. Any amendment to this Amended Agreement shall comply with the Act.

SECTION 13. NOTICES.

Any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to the other at the address set forth below or to such other addresses such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or, if by mail, on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to:

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The County of Beaufort
P.O. Box 1228
Beaufort, South Carolina 29901-1228
Attention: County Administrator

With Copy to:

The County of Beaufort
P.O. Box 1228
Beaufort, South Carolina 29901-1228
Attention: Community Development Director

And to the Owner at:

BBII Holding Company, LLC

With Copy to:

Richard Schwartz
President & COO
Village Park Homes LLC
4454 Bluffton Park Crescent
Suite 101
Bluffton, SC 29910

SECTION 14. ENFORCEMENT.

Any Party hereto shall have the right to enforce the terms, provisions and conditions of this Amended Agreement, if not cured within the applicable cure period, by any remedies available at law or in equity, including specific performance and the right of the prevailing party to recover attorney's fees and costs associated with said enforcement. Any Court action concerning this Amended Agreement shall be conducted in Beaufort County, South Carolina.

SECTION 15. GENERAL.

A. Subsequent State and Federal Laws. In the event state or federal laws or regulations are enacted after the Effective Date which prevent or preclude compliance with the Act or one or more provisions of this Amended Agreement ("New Laws"), the provisions of this Amended Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, the Parties shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect that such New Law would have on the purposes and intent of this Amended Agreement. During the time that the Parties are conferring on such modification or suspension or challenging the New Laws, the County may take reasonable action to comply with such New Laws. Should the Parties be unable to agree to a modification or suspension, any Party may petition a court of competent jurisdiction for an appropriate modification or suspension of this Amended Agreement. In addition, any Party shall have the right to challenge the New Laws preventing compliance with the terms of this Amended Agreement. In the event that such challenge is successful, this Amended Agreement shall remain unmodified and in full force and effect.

B. Estoppel Certificate. Each Party may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

1. that this Amended Agreement is in full force and effect,
2. that this Amended Agreement has not been amended or modified, or if so amended, identifying the amendments,
3. Whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Amended Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and
4. Whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, would constitute a default and, if so, specifying each such event.

C. Entire Agreement. This Amended Agreement sets forth and incorporates by reference all of the agreements, conditions, and understandings between or among the Parties relative to the Property and its Development, and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, between or among these Parties relative to the matters addressed herein other than as set forth or as referred to herein. The Parties agree that this Amended Agreement replaces in its entirety the Original Agreement and that on the Effective Date of this Amended Agreement that the Original Agreement is no longer in force or

effect.

D. **No Partnership or Joint Venture.** Nothing in this Amended Agreement shall be deemed to create a partnership or joint venture between or among the County and any other Party or to render the County or such other Party liable in any manner for the debts or obligations of another Party.

E. **Exhibits.** All exhibits attached hereto and/or referred to in this Amended Agreement are incorporated herein as though set forth in full.

F. **Construction.** The Parties agree that each Party and its counsel have reviewed and revised this Amended Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Amended Agreement or any amendments or exhibits hereto.

G. **Successors and Assigns.**

(1) **Binding Effect.** This Amended Agreement shall be binding upon the Owner's successors and assigns in the ownership of part or all of the Property or in the transfer of Development Rights for part or all of the Property. A successor or assigns to the Owner shall be responsible for the performance of the Owner's obligations under this Amended Agreement as to portion or portions of the Property, or Development Rights thereto, so transferred during the Term of this Amended Agreement. Owner's successors and assigns of part or all the Property, or Development Rights thereto, shall be required to execute a written acknowledgement applicable to the portion of the Property being conveyed accepting the Owner's obligations under this Amended Agreement, said document to be in recordable form and provided to the County at the time of recording any deed transferring all or a portion of the Property or instrument transferring Development Rights. This Section 15G(1) shall not be construed to prevent the assignor from obtaining indemnification of liability to the County from the successor or assignee, as applicable, and their successors and assignees. Further, Owner shall not be required to notify the County of, nor shall this Section 15G(1) apply to, the sale of single-family dwelling units or residential lots which have been platted, subdivided and approved in accordance with the terms of the Zoning Regulations, *provided, however*, nothing in this Section 15G(1) shall relieve the person obtaining a building permit for a residential unit from the obligation to pay the \$1500 Impact Fee required by Section 9B of this Amended Agreement.

(2) **Transfer of Property.** In addition to the requirements of Section 15G(1), Owner shall be entitled to transfer title to, or Development Rights for, any portion or all of the Property to a successor or

assignee subject to the following requirements:

(a) **Notice.** When the Owner intends to transfer all or a portion of the Property, the Owner shall notify the County in writing thirty (30) days in advance of the transfer specifying the name, address, telephone number, facsimile number, and contact person for the successor or assignee, as applicable.

(b) **Assignment.** Any and all conveyances of any portion of the Property to a successor or an assigns to undertake Development within the Property shall by contract and covenant running with the land in the deed or recorded assignment agreement into the successor or assignee, as applicable, assign a precise number of density units, which assigned number shall reduce the assigning Owner's number of density units provided for herein. Owner agrees to provide to the County Planning Department a copy of the deed or recorded assignment agreement.

(3) **Assignment Form.** The Parties hereto contemplate that the provisions of this Section 15G shall be fulfilled and set forth in a form of "Partial Assignment and Assumption of Rights and Obligations Under Development Agreement", to be executed at the time of any transfer of property covered under this Section 15G, by the assignor and assignee, in a form to be approved by the County and recorded in the land records of the County.

H. **Governing Law.** This Amended Agreement shall be governed by the laws of the State of South Carolina.

I. **Counterparts.** This Amended Agreement may be executed in several counterparts, each of which shall be deemed an original, and the counterparts shall constitute but one and the same instrument.

J. **Agreement to Cooperate.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Amended Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

K. **Eminent Domain.** Nothing contained in this Amended Agreement shall limit, impair or restrict the County's right and power of eminent domain under the laws of the State of South Carolina.

L. **No Third Party Beneficiaries.** The provisions of this Amended Agreement may be enforced only by the County and the Owner. No other persons shall have any rights hereunder.

M. Severability. If any provision in this Amended Agreement or the application of any provision of this Amended Agreement is held invalid, the invalidity shall apply only to the invalid provision, and the remaining provisions of this Amended Agreement, and the application of this Amended Agreement or any other provision of this Amended Agreement, shall remain in full force and effect. However, if the invalid provision would prevent or materially impair Owner's right or ability to complete performance of this Amended Agreement, the Parties agree to use their best efforts to renegotiate that provision in order for Owner to complete performance of this Amended Agreement.

N. No Waiver. Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.

SECTION 16. STATEMENT OF REQUIRED PROVISIONS.

Section 6-31-60(A) of the Act requires that a development agreement must include certain mandatory provisions. Although certain mandatory provisions are addressed elsewhere in this Amended Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60(A) of the Act for the required items:

(A)(1) Legal Description of Property and Legal and Equitable Owners. The legal description of the Property is set forth in Exhibit A, attached hereto. The legal owner of the Property is BBII Holding Company, LLC.

(A)(2) Duration of Agreement. The duration of this Agreement is five (5) years as set forth in Section 3 of this Amended Agreement.

(A)(3) Permitted Uses, Densities, Building Heights and Intensities. A complete listing and description of permitted uses, building intensities and heights, as well as other development-related standards, are contained in the Zoning Regulations and on the Development Plan (Exhibit B). Exhibit E sets forth anticipated population density of the Property at build out. Building heights will be limited to 45 feet, unless otherwise permitted in the Design Guidelines (Exhibit F), measured from the average adjacent ground level to the building (as measured for federal flood elevation certificates) to the eaves of the building (excluding chimneys, cupolas, and other such non-habitable spaces).

(A)(4) Required Public Facilities. The County will provide, or cause to be provided, police and fire services, as well as development application services to the Property. Beaufort-Jasper Water & Sewer Authority will provide water to the Property. Beaufort-Jasper Water & Sewer Authority will provide sewer collection services to the Property. Mandatory provisions and procedures of the Zoning Regulations and this Amended Agreement will ensure availability of roads and utilities to serve the residents on a timely basis.

(A)(5) **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** The Zoning Regulations contain numerous provisions for the protection of environmentally sensitive areas. All relevant state and federal laws will be fully complied with, in addition to the provisions set forth in this Amended Agreement, and as shown on Exhibit B.

(A)(6) **Local Development Permits.** Specific permits must be obtained prior to commencing development, consistent with the standards set forth in the Zoning Regulations. Building Permits must be obtained under County law for any vertical or horizontal construction, and appropriate permits must be obtained from the DHEC (OCRM) and the Army Corps of Engineers, when applicable, prior to any impact upon critical area or jurisdictional freshwater wetlands. Access to S.C. 170 will be in accordance with permitting procedures of the South Carolina Department of Transportation. It is specifically understood that the failure of this Amended Agreement to address a particular permit, condition, term or restriction does not relieve the Owner from the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

(A)(7) **Comprehensive Plan and Development Agreement.** The Development permitted and proposed in this Amended Agreement is consistent with the County's Comprehensive Plan and land development regulations.

(A)(8) **Terms for Public Health, Safety and Welfare.** The County finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Amended Agreement, the Zoning Regulations and existing law, and further, that entering into this Amended Agreement will further the public health, safety and welfare of the present and future residents of Beaufort County.

(A)(9) **Historical Structures.** Any historical or archaeological issues will be addressed through the permitting process at the time of Development under the Zoning Regulations and no exception from any existing standard is hereby granted.

SECTION 17. RECORDING.

Owner shall record this Amended Agreement in the real estate records of the County within fourteen (14) days of the execution of this Amended Agreement by the County.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the Parties hereto have executed this Amended Agreement, effective on the Effective Date.

BBII HOLDING COMPANY, LLC

By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA)
)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named BBII HOLDING COMPANY, LLC, by its Manager, _____, sign, seal and as its act and deed, deliver the within written instrument and that (s)he, with the other witness above subscribed, witnessed the execution thereof.

First Witness Signs Again Here

SWORN to before me this
____ day of _____, 2019

Notary Public Signs AS NOTARY
Notary Public for _____
My Commission Expires: _____

COUNTY SIGNATURE FOLLOWS ON NEXT PAGE.

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA)

) PROBATE

COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named BEAUFORT COUNTY, SOUTH CAROLINA, by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument and that (s)he, with the other witness above subscribed, witnessed the execution thereof.

First Witness Signs Again Here

SWORN to before me this

__ day of _____, 2019

Notary Public Signs AS NOTARY

Notary Public for South Carolina

My Commission Expires: _____

List of Exhibits

Exhibit A – Property Description, River Oaks at Okatie Village

Exhibit B – River Oaks at Okatie Village Planned Unit Development (PUD), Ordinance 2008/14 as amended by Ordinance 2019/___

Exhibits B-1 and B-2- Lot Standards

Exhibit C – Zoning Regulations

Zoning Regulations

1. Ordinance 2008/14, zoning the Property River Oaks Planned Unit Development, as amended by Ordinance 2019/___, as set forth in Exhibit B.
2. Zoning and Development Standards Ordinance (ZDSO) of Beaufort County, in effect on September 3, 2009. A copy of the ZDSO is on file in the office of the County Planning Department. [Attach as Exhibit, attached selected provisions as Exhibit 2]
3. The Design Guidelines, as set forth in Exhibit F.
4. This Amended Agreement.
5. Ordinance 2019/___ approving this Amended Agreement.

Exhibit D – Development Schedule

Exhibit E – Population-??

Exhibit F – Design Guidelines

Exhibit G - Trail and Open Space Plan

1984161 v4



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Brewer Memorial Park 2019 JOA and Operating Policy

Council Committee:

Natural Resources Committee - September 16, 2019

Meeting Date:

September 23, 2019

Committee Presenter (Name and Title):

Stefanie M. Nagid, Passive Parks Manager

Issues for Consideration:

A revised Joint Ownership Agreement (JOA) between the County and BCOLT for Brewer Memorial Park.

A new Operating Policy between the County and BCOLT for Brewer Memorial Park.

Points to Consider:

With the construction of the new stormwater demonstration site at Brewer Memorial Park, revisions to the original 2011 JOA, and the development of a more specific operating and maintenance policy, are necessary. County staff/Legal and BCOLT agree to the documents as written.

Funding & Liability Factors:

None

Council Options:

1) Approve the 2019 JOA and Operating Policy as written; 2) Approve the 2019 JOA and Operating Policy with revisions; 3) Do not approve the 2019 JOA and Operating Policy

Recommendation:

Approve the County Administrator to execute the Brewer Memorial Park 2019 Joint Ownership Agreement and Operating Policy as written.

ORDINANCE 2019/ ____

AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE BREWER MEMORIAL PARK 2019 JOINT OWNERSHIP AGREEMENT AND OPERATING POLICY WITH THE BEAUFORT COUNTY OPEN LAND TRUST

WHEREAS, Beaufort County (“County”) and the Beaufort County Open Land Trust (“BCOLT”) are joint owners of certain real property in Beaufort County, South Carolina known as Brewer Memorial Park (aka Factory Creek Vista) on Lady’s Island under and by virtue of that certain general warranty deed dated December 9, 2011 and recorded at Deed Book 03104, Pages 1056-1058, Beaufort County, South Carolina recorded (said real property being referred to hereinafter as “Property”); and

WHEREAS, the County is the owner of a 49% undivided interest in the Property and BCOLT is the owner of a 51% undivided interest in the Property; and

WHEREAS, County Council finds that it is in the best interests of County citizens, residents and visitors to enter into a Joint Ownership Agreement and an Operating Policy with BCOLT, which designate shared ownership, operating and maintenance responsibilities between the parties.

NOW, THEREFORE, BE IT ORDAINED by Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute the Brewer Memorial Park 2019 Joint Ownership Agreement and Operating Policy with the Beaufort County Open Land Trust, hereto and incorporated herein as fully as if repeated verbatim.

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah Brock, Clerk to Council

BREWER MEMORIAL PARK

(aka Factory Creek Vista)

JOINT OWNERSHIP AGREEMENT

This agreement made and entered into this ____ day of _____, 2019 by and between Beaufort County, a political subdivision of the State of South Carolina (referred to hereinafter as the “County”), and the Beaufort County Open Land Trust, a South Carolina non-profit corporation, (referred to hereinafter as “BCOLT”) as follows:

WHEREAS, the County and BCOLT are joint owners of certain real property in Beaufort County, South Carolina known as Brewer Memorial Park (aka Factory Creek Vista) on Lady’s Island under and by virtue of that certain general warranty deed dated December 9, 2011 and recorded at Deed Book 03104, Pages 1056-1058, Beaufort County, South Carolina recorded (said real property being referred to hereinafter as “Property”); and

WHEREAS the County is the owner of a 49% undivided interest in the Property and BCOLT is the owner of a 51% undivided interest in the Property; and

WHEREAS, the County and BCOLT intend by this Agreement to delineate their respective rights, duties, and obligations respecting the joint ownership and use of the Property.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, BE IT AGREED AS FOLLOWS:

1. JOINT OWNERSHIP

It is acknowledged that the parties to the Agreement jointly own the Property and the respective shares of ownership of the owners are as follows:

Beaufort County	49% undivided interest
Beaufort County Open Land Trust	51% undivided interest

The parties intend that the Property shall be used as a passive park and open space for the enjoyment of the citizens of Beaufort County as provided for in this Agreement. The Property is a memorial to Judith Haskell Brewer in honor of the individual whose private donation initiated and enabled the preservation of the land. A plaque inlaid on a brick monument has been constructed and is maintained by BCOLT as a memorial. Additionally, a small sign commemorating the collaborative purchase, similar to other jointly preserved properties, has been constructed and is to be maintained by the County.

2. INTENDED USAGE

It is agreed that the Property shall be used as a passive park and the Brewer Memorial Park Stormwater Demonstration Site open to the public by mutual consent of both parties and in accord with an Operating Policy agreed to by both parties.

The Property currently has a community pier and dock facility on the site which is under the jurisdiction of the County. It is intended that this pier and dock will remain for the enjoyment of the public with the following understanding:

1. The pier and dock is for non-motorized watercraft only.
2. Recreational fishing is allowed from the dock.
3. Repair and maintenance of the pier and dock is the responsibility of the County.
4. Enforcement and security of the pier and dock is the responsibility of the County.
5. The County will hold the dock facility permit.

BCOLT and the County shall jointly develop an Operating Policy governing the public use of the Property, which can be amended from time to time to reflect the current desires of the parties.

3. INSURANCE

County and BCOLT each shall at all times maintain a policy of liability insurance with limits of liability of at least \$1,000,000.00 per occurrence for the uplands. County will carry liability insurance for the pier and dock.

4. MONITORING AND INSPECTIONS

The property and grounds will be operated and maintained by BCOLT in accordance with the Operating Policy as open space. Monitoring and inspection of the grounds will be conducted by BCOLT.

The pier and dock facility will be operated and maintained by the County in accordance with its applicable policies. Monitoring and inspection of the pier and dock facility will be conducted by County personnel.

The Brewer Memorial Park Stormwater Demonstration Site, as illustrated in Exhibit A, will be operated and maintained by the County in accordance with its applicable policies. Monitoring and inspection of the Brewer Memorial Park Stormwater Demonstration Site will be conducted by County personnel.

5. NOTICE

Each party shall give the other prompt notice of any adverse circumstance or situation arising in connection with the use of the Property including notice of any claim or dispute arising from its use. Any such notice including and any other notice necessary or appropriate under this Agreement shall be given as follows:

Beaufort County, Attn: County Administrator, P.O. Box 1228, Beaufort, SC 29901

Beaufort County Open Land Trust, Attn: Executive Director, P.O. Box 75, Beaufort, SC 29901

6. BREACH OF CONTRACT

If a party to this Agreement determines that the other party is in breach of the terms of this Agreement or that a breach is threatened, the claiming party shall notify the other party of the breach (hereinafter, "First Notice") and request voluntary compliance. In the event that voluntary cure is not agreed upon within sixty (60) days of receipt of First Notice, the claiming party shall give written notice to the noticed party of such breach (hereinafter, "Second Notice") and demand corrective action.

If the noticed party fails to cure the breach within sixty (60) days after receipt of Second Notice, the claiming party may bring an action at law or in equity in a court of competent jurisdiction.

7. TERMINATION

Either party shall have the right to terminate this Agreement upon six (6) months' prior written notice. In the event either party terminates this Agreement, it shall accompany notice of termination with an offer to purchase the ownership interest of the other party in the Property based upon a current professional (MAI) appraisal of the Property. The noticed party shall have thirty (30) days to respond to the terminating notice with a written confirmation of purchase offer acceptance.

8. OTHER PROVISIONS

- (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, administrators, executors, successors, and assigns.
- (b) All prior agreements by or between the parties shall be deemed to have merged into this Agreement, including the Factory Creek Vista Joint Ownership Agreement dated March 2, 2011.
- (c) No amendment or change to this Agreement shall be effective unless made in writing and signed by authorized representative of both parties.
- (d) This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

SO AGREED this ____ day of _____, 2019.

WITNESSES:

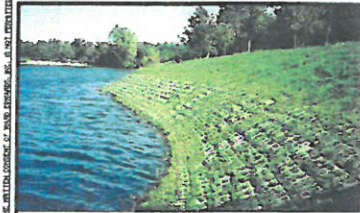
BEAUFORT COUNTY

By: _____
Name: Ashley Jacobs
Title: County Administrator

BEAUFORT COUNTY OPEN LAND
TRUST

By: _____
Name: Kristin Williams
Title: Executive Director

THIS DOCUMENT IS AN ILLUSTRATION OF A DESIGN OPTION. IT IS NOT A CONTRACT DOCUMENT. THE CONTRACTOR SHALL VERIFY THE EXISTING CONDITIONS AND THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



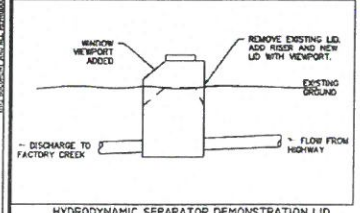
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PERMEABLE CONCRETE



POROUS PAVERS



HYDRODYNAMIC SEPARATOR DEMONSTRATION LID

NOTE: EDUCATIONAL SIGNAGE TO BE INSTALLED AT EACH BMP



LIVING SHORELINE



FILTRERA BIORETENTION



GRAVEL DRIVE



WOODEN BULKHEAD



INFILTRATION TRENCH



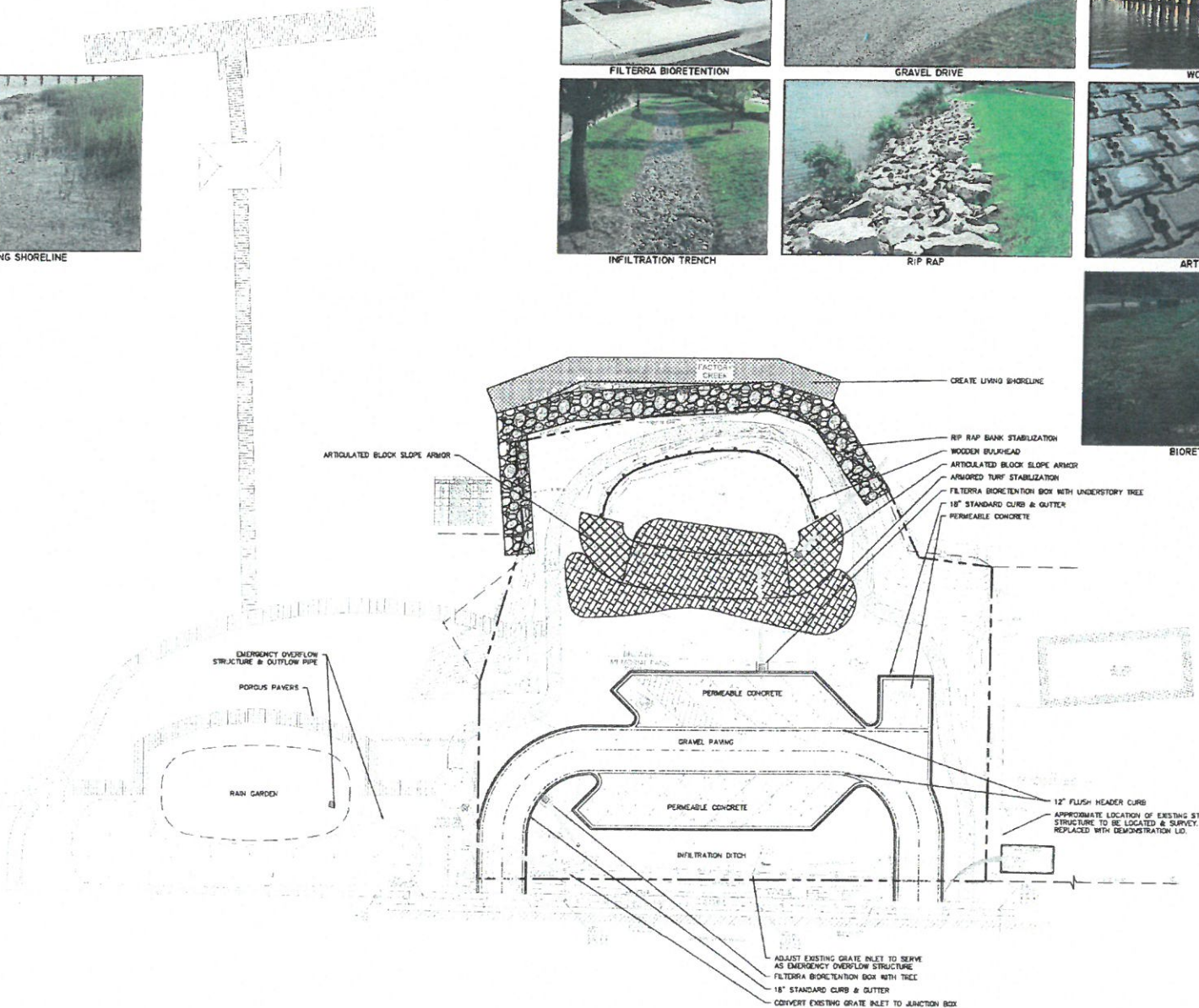
RIP RAP



ARTICULATED BLOCK



BIORETENTION / RAIN GARDEN



NO.	DESCRIPTION	DATE
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2		
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4		
5		
6		
7		
8		
9		
10		

Ward Edwards
ENGINEERING
P.O. BOX 10411, SOUTH CAROLINA 29910
TEL: 803.781.1234
WWW.WARDEDWARDS.COM

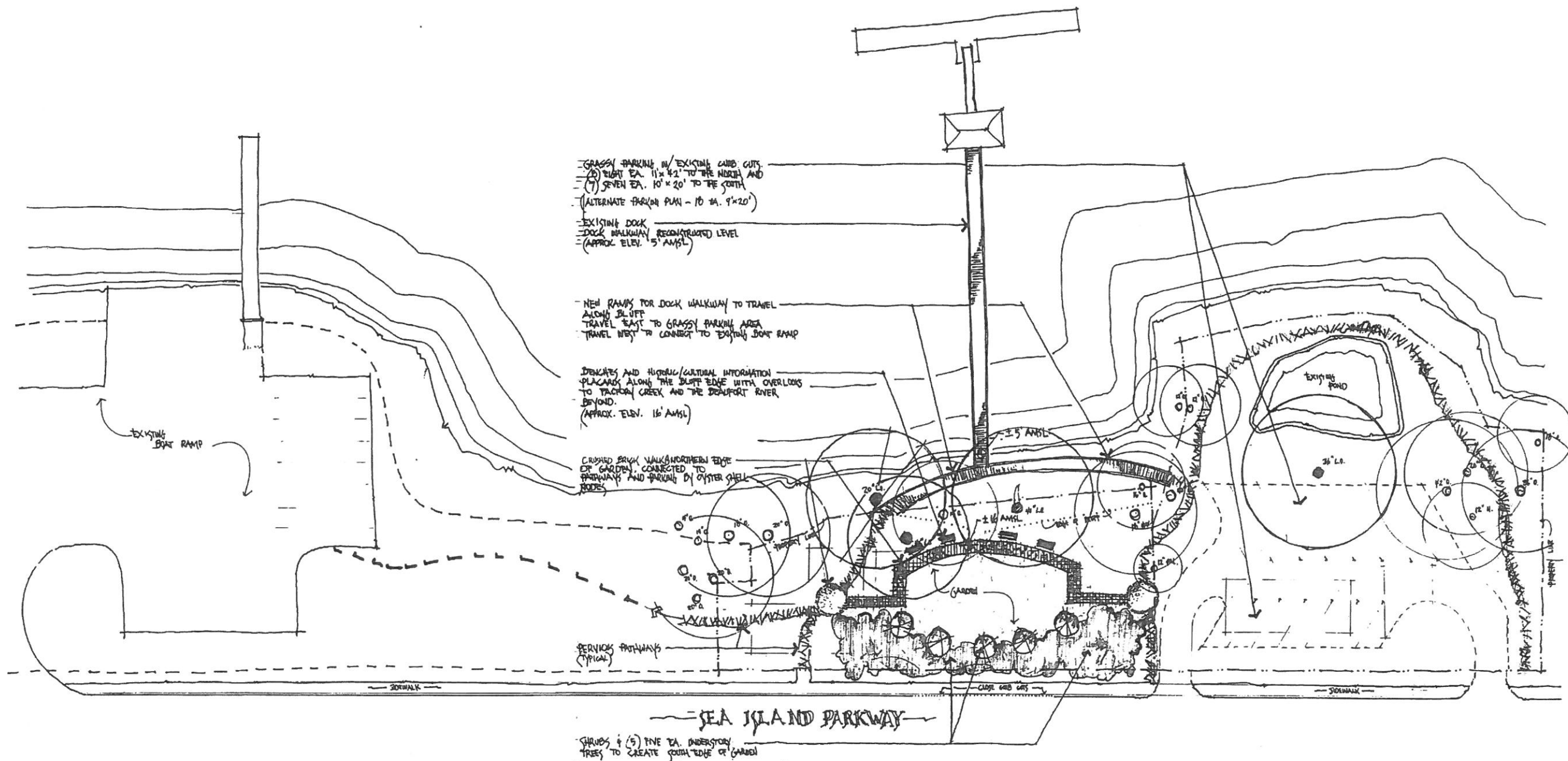
BREWER MEMORIAL PARK
BEAUFORT COUNTY, SOUTH CAROLINA
BEAUFORT COUNTY, SOUTH CAROLINA
CONCEPT PLAN

IF THIS SHEET IS TO BE USED FOR CONSTRUCTION, IT IS RELEASED FOR CONSTRUCTION.
PROJECT # _____
DATE: 06/13/18
DESIGNED BY: J.N.
CHECKED BY: J.N.
SCALE: 1"=20'
SHEET EX.01

BREWER MEMORIAL PARK STORMWATER BMP IMPROVEMENTS

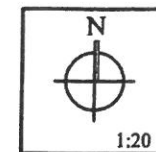


IF THIS SHEET IS TO BE USED FOR CONSTRUCTION, IT IS RELEASED FOR CONSTRUCTION. SCALE ACCORDINGLY.



MONTGOMERY
 ARCHITECTURE &
 PLANNING, INC.
 1-17-13
 www.monarchpl.com

Project VISTA
 Factory Creek



BREWER MEMORIAL PARK

(aka Factory Creek Vista)

OPERATING POLICY

As designated by the Brewer Memorial Park Joint Ownership Agreement (JOA), Beaufort County (“County”) and the Beaufort County Open Land Trust (“BCOLT”) mutually agree to the duties and responsibilities as described in this Operating Policy.

PROPERTY DESCRIPTION

The Properties (R200 015 000 0142/143C 0000), known as Brewer Memorial Park (aka Factory Creek Vista), are jointly owned by the County (49%) and BCOLT (51%) and is more particularly described in Exhibit A.

USE OF PROPERTY

Brewer Memorial Park shall be used as a passive park for passive recreation, as described in the JOA and defined by the County’s Community Development Code and also as the Brewer Memorial Park Stormwater Demonstration Site. The County’s Passive Parks Ordinance (2018/53) shall apply to the Property.

HOURS OF OPERATION

Brewer Memorial Park shall be open to the public from dawn to dusk, with the public entrance off U.S. Highway 21 at the south base of the Woods Memorial Bridge on Lady’s Island.

ROUTINE MAINTENANCE BY BCOLT

BCOLT shall be responsible for certain routine maintenance tasks of Brewer Memorial Park, including but not limited to:

- Grass cutting and landscape plants along the property entrance, parking area, and open grounds.
- Landscape plants within the bioretention tree box and bioretention/rain garden, after installation by the County.
- Tree pruning and limb removal as needed for health and safety of the trees and the public, as approved by the County’s Natural Resource Planner.
- Irrigation systems.
- Lighting, including rental of fixtures and monthly utility bills.

Routine maintenance shall be provided by BCOLT.

ROUTINE MAINTENANCE BY COUNTY

County shall be responsible for certain routine maintenance tasks of Brewer Memorial Park including but not limited to:

- Signage, fencing, gates, bollards, locks, roadways, parking areas, piers, docks, and debris removal requiring the use of heavy equipment.
- The Brewer Memorial Park Stormwater Demonstration Site, as shown on Exhibit B, which may include:
 - Armored turf pond slope treatment
 - Articulated block pond slope treatment
 - Rip rap pond slope treatment
 - Wooden bulkhead pond edge treatment
 - Permeable concrete
 - Porous pavers
 - Hydrodynamic separator demonstration lid
 - Bioretention tree box
 - Infiltration trench
 - Gravel drive
 - Bioretention/rain garden
 - Living shoreline

MINOR REPAIR

It shall also be the responsibility of BCOLT to repair or replace any condition on the Property mutually deemed by the parties to be unsafe, the cost of which shall not exceed \$2,500.00.

MAJOR REPAIR OR MAINTENANCE

In the event the estimated cost of a repair or maintenance item exceeds \$2,500.00, the entire cost of such major maintenance or repair shall be shared in the proportion of ownership, or as mutually agreed upon by County and BCOLT.

MAJOR ALTERATIONS AND CAPITAL IMPROVEMENTS

Any “major alterations” or “capital improvement” on Brewer Memorial Park shall be mutually agreed to by both parties and shall be undertaken under the supervision of the County and their policies and procedures. The cost of such major repairs or capital improvements shall be mutually agreed to between the parties on a case by case basis. For the purposes of this Policy, the term “major alteration” or “capital improvement” shall be deemed to be any alteration or capital improvement having a cost or expense including all labor, materials, permits, and related items totaling in excess of \$2,500.00.

EDUCATIONAL EVENTS

The Brewer Memorial Park Stormwater Demonstration Site installed on the Property by the County is intended to be educational in nature. As such, the County and BCOLT shall encourage field trips and site visits to the Property by schools, civic groups, environmental clubs, and similar organizations. There shall be no charge for these types of events.

SECURITY

Brewer Memorial Park shall fall under the jurisdiction of the Beaufort County Sheriff's Department and will be routinely monitored by such.

TERMINATION

Either party shall have the right to terminate this Operating Policy upon thirty (30) days written notice for cause, which shall mean material breach of any obligation of the other party under the terms and provisions of this Operating Policy. In addition, either party shall have the right to terminate this Operating Policy upon six (6) months' prior written notice without cause.

BEAUFORT COUNTY

BEAUFORT COUNTY OPEN LAND TRUST

By: Ashley Jacobs
Title: County Administrator
Date: _____

By: Kristin Williams
Title: Executive Director
Date: _____

WITNESSES:

WITNESSES:

EXHIBIT A

Parcel R200 015 000 143C 0000

ALL that certain piece, parcel or tract of land, situate, lying and being on Lady's Island, Beaufort County, South Carolina, being a portion of Lot 25, Section 9, 1S1W as shown on a plat prepared by R.D. Trogon, Jr., RLS, dated October 29, 1968, and recorded in Deed Book 160 at Page 23 at the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description of said property, reference may be had to an individual plat prepared by David S. Youmans, RLS, dated October 4, 1994, and recorded in Record Book 736 at Page 741 at the office of the Register of Deeds for Beaufort County, South Carolina. SAVE AND EXCEPT THEREFROM that portion of the property shown as Parcels "A" and "C" on a plat prepared by David E. Gasque, RLS, dated January 8, 1997, and recorded in Plat Book 59 at Page 117 at the office of the Register of Deeds for Beaufort County, South Carolina, which was conveyed to Beaufort County by deed of James A. Trumps dated January 31, 1997, and recorded in Record Book 923 at Page 2419 at the office of the Register of Deeds for Beaufort County, South Carolina. AND ALSO, all those certain pieces, parcels or lots of land, situate, lying and being on Lady's Island in Beaufort County, South Carolina, being shown as Parcels "B" and "D" on a plat prepared by David E. Gasque, RLS, dated January 8, 1997, and recorded in Plat Book 59 at Page 117 at the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description of said property, reference may be had to a plat prepared by Lorick V. Fanning, dated January 2, 2009, which is recorded in Plat Book 133 at Page 149 in the Office of the Register of Deeds for Beaufort County, South Carolina.

This is the same property acquired by the within Grantor by way of deed dated September 22, 2004 and recorded in Book 2027 at Page 472 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Parcel R200 015 000 0142 0000

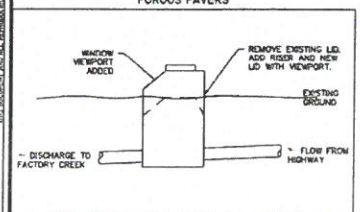
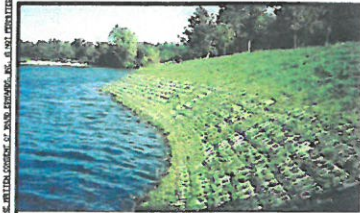
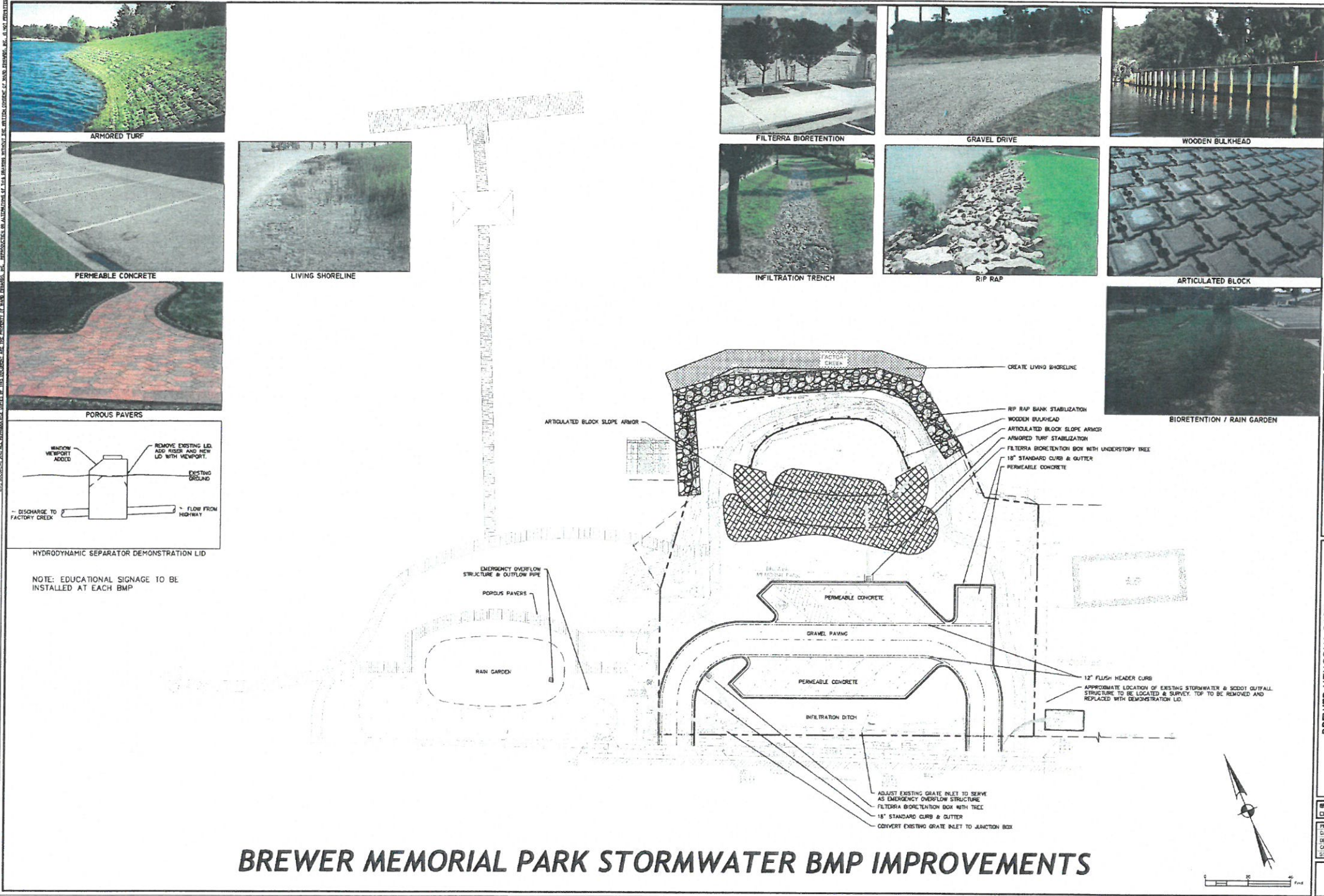
All that certain piece, parcel or lot of land with improvements thereon, situated, lying and being on Lady's Island in the City of Beaufort, County of Beaufort, State of South Carolina, and being shown and designated as 0.580 acres, more or less, on a plat prepared for Lois Jenkins, dated February 14, 2007 and recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 118 at Page 120.

The property conveyed herein is the same property conveyed to Lois P. Jenkins, Vivian Pigler (a/k/a Vivian P. Tolbert), and James E. Pigler, by Deed of Willie Pigler, dated January 20, 1966 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 135, at Page 105. Thereafter, upon the death of James E. Pigler on March 30, 1989, by Deed of Distribution dated August 7, 1993, and recorded in the Office of the Register of Deeds in Book 664, at Page 399, Muriel H. Pigler, Personal Representative of the Estate of James E. Pigler, conveyed the decedent's undivided one-third (1/3) interest as follows: Muriel H. Pigler, an undivided one-sixth (1/6) interest; Yvonne Pigler Magness, an undivided one-twenty-fourth (1/24) interest; Sandra Patricia Pigler, an undivided one-twenty-fourth (1/24) interest; and James Edward Pigler, Jr., an undivided one-twenty-fourth (1/24) interest. (See Beaufort County Probate Case No. 89ES0700371). Thereafter, by Deed dated September 7, 1993, and recorded in the Office for the Register of Deeds, Muriel H. Pigler conveyed her undivided one-sixth (1/6) interest in said property to Yvonne Pigler Magness, Sandra Patricia Pigler, Carmen Celeste Pigler and James Edward Pigler, Jr., each of whom owned an undivided one-twelfth (1/12) interest in the above-described real property.

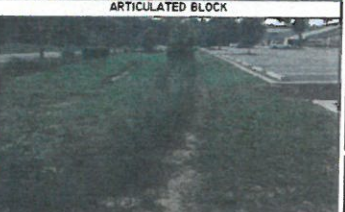
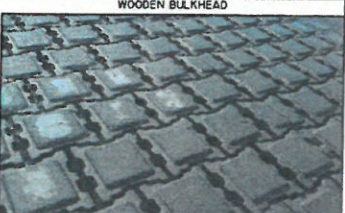
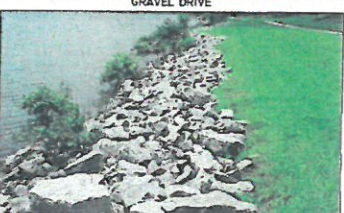
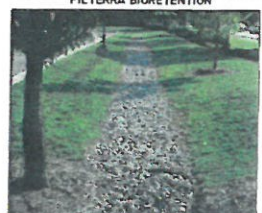
EXHIBIT B

Brewer Memorial Park Stormwater Demonstration Site Project Plans

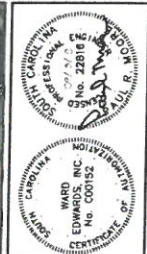
THIS DOCUMENT IS AN INSTRUMENT OF SERVICE. IT IS THE PROPERTY OF WARD EDWARDS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN CONSENT OF WARD EDWARDS, INC. © 2011 WARD EDWARDS, INC.



NOTE: EDUCATIONAL SIGNAGE TO BE INSTALLED AT EACH BMP



BREWER MEMORIAL PARK STORMWATER BMP IMPROVEMENTS



NO.	DESCRIPTION	DATE
1		
2		
3		
4		
5		
6		
7		

Ward Edwards
ENGINEERING
P.O. BOX 10411, SOUTH CAROLINA 29910
FAX: (803) 799-2338
WWW.WARDEDWARDS.COM

BREWER MEMORIAL PARK
BEAUFORT COUNTY, SOUTH CAROLINA
BEAUFORT COUNTY, SOUTH CAROLINA
CONCEPT PLAN

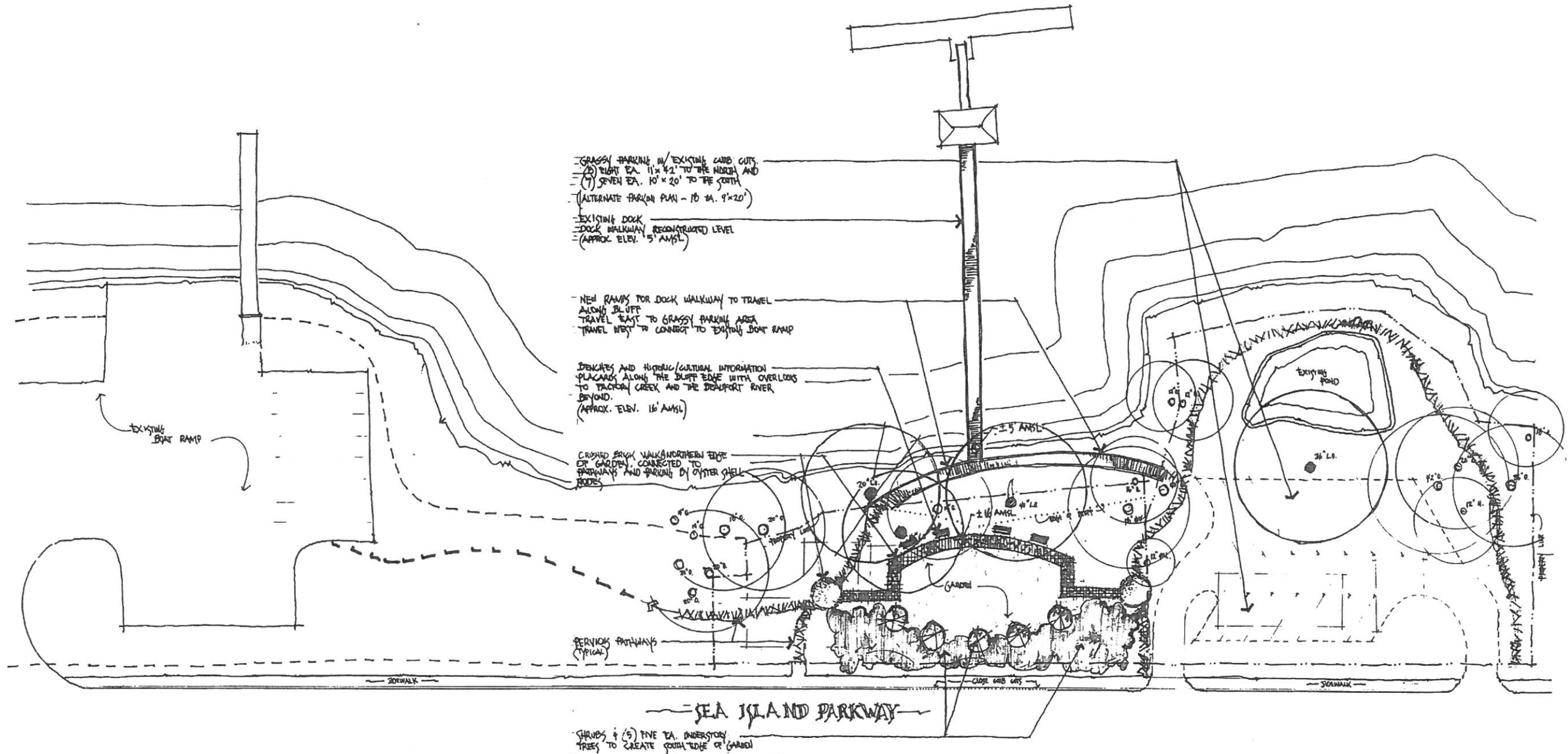
IF NOT FOR CONSTRUCTION RELEASED FOR CONSTRUCTION

PROJECT # _____ ISSUE DATE: 06/13/18
DESIGNED BY: J.N. CHECKED BY: P.J.
SCALE: 1"=20'

SHEET
EX.01

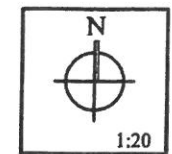


IF THIS SHEET IS 1/4" SCALE (1/4" = 1'-0") IT IS A REDUCED PRINT. SCALE ACCORDINGLY.



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 Factory Creek





BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Ordinance authorizing execution of a declaration restrictive covenants on 75 Confederate Avenue, also known as Bailey Memorial Park

Council Committee:

Natural Resources

Meeting Date:

August 19, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

Whether or not to place restrictive covenants on 75 Confederate Avenue.

Points to Consider:

The request, if approved, will result in restrictive covenants which place limitations on how the property is to be developed, used, and maintained as a public space consistent with the conservation value of the property.

Funding & Liability Factors:

None.

Council Options:

Approve, modify, or reject

Recommendation:

Staff recommends Council approve the request.

ORDINANCE 2019/_____

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DECLARATION OF RESTRICTIVE COVENANTS ON PROPERTY LOCATED AT 75 CONFEDERATE AVENUE, ALSO KNOWN AS BAILEY MEMORIAL PARK.

WHEREAS, Beaufort County (“County”) is the sole owner in fee simple of certain real property located at 75 Confederate Avenue, Bluffton, South Carolina, 29910, which is known as the Bailey Memorial Park (“Property”) ; and

WHEREAS, the County established the Rural and Critical Land Preservation Program in 1999 with purposes which include providing for the purchase of fee simple interests in lands which are deemed critical for the protection of natural resources, historic and cultural significance, regional or local recreation potential, viewscapes and lands suitable for public use; and

WHEREAS, the County purchased the Property through the Rural and Critical Lands Preservation Program to provide the public with a park for passive recreation, the opportunity to enjoy natural resource-based activities and to enjoy the scenic natural surrounds and views; and

WHEREAS, the County desires to establish restrictive covenants to ensure that the use of, and any future owners of any portion of the Property, protect the unique character of the Property in a manner which provides for public use and enjoyment of the Property; and

WHEREAS, Beaufort County Council has determined that it is in the best interests of its citizens and residents of Beaufort County to authorize the execution and delivery of the Declaration of Restrictive Covenants (Exhibit “A”) which are attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED by Beaufort County Council that the County Administrator is hereby authorized to execute and record the Declaration of Restrictive Covenants as are set forth in Exhibit “A”.

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council

First Reading:
Second Reading:
Public Hearing:
Third and Final Reading:

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **DECLARATION OF**
) **RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS (“Declaration”) is made and established this _____ day of _____, 2019 (“Effective Date”), by Beaufort County (“County”),

WHEREAS, the County is the sole owner in fee simple of certain real property located at 75 Confederate Avenue, Bluffton, South Carolina, 29910, otherwise known as the Bailey Memorial Park, and more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, the Property possesses open space, natural value, and scenic value which are all of great importance to the County and to the people of South Carolina, the protection of which will yield significant public benefit; and

WHEREAS, the County established the Rural and Critical Land Preservation Program in 1999 with purposes which include providing for the purchase of fee simple interests in lands which are deemed critical to provide for the protection of natural resources, historic and cultural significance, regional or local recreation potential, viewscapes and lands suitable for public use; and

WHEREAS, the County purchased the Property through the Rural and Critical Lands Preservation Program to provide among other things the public with a park for passive recreation, the opportunity to enjoy natural resource-based activities and to enjoy the scenic natural surrounds and views; and

WHEREAS, the County desires to establish this Declaration to ensure that future use of the Property, and any future owners of any portion of this Property, must adhere to the restrictions described in this Declaration in order to protect the unique character of the Property in a manner that provides for public use and enjoyment of the Property.

NOW, THEREFORE, the County, in accordance with the purposes of the Rural and Critical Lands Preservation Program, hereby declares that the Property is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered, improved, and used subject to these Restrictive Covenants. These Restrictive Covenants, the benefits of these Restrictive Covenants, and the affirmative and negative burden of the Restrictive Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the land herein referred to as the Property; and these Restrictive Covenants are intended to be covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property interest in the Property whether by assignment, succession, or inheritance, or other method of conveyance.

1. Purpose. The purpose of this Declaration (hereinafter the “Purpose”) is to retain and protect natural, scenic, historical, or open space values of real property, to assure its availability for agricultural, forestry, passive parks, recreational, educational, open space use, protect natural features and resources,

to maintain or enhance air quality or preserve the natural, historical, architectural, archeological or cultural aspects of the Property and protection for all other purposes in perpetuity.

This Purpose is further to ensure that the Property will be retained in perpetuity predominantly in its relatively natural and scenic condition for conservation goals and to prevent any use of the Property that would significantly impair or interfere with the Purpose while allowing for public passive recreation and education use of the Property that are compatible with, and not contrary to, the goals and purposes of the Rural and Critical Lands Preservation Program and Beaufort County's Community Development Code.

2. Restrictions. The County, and any future owners of any portion of the Property, shall be restricted to use the Property in accordance with these covenants. Specifically the following acts or uses are prohibited:
 - a. *Residential Structures*. No structure on the Property shall be used as a temporary or permanent dwelling for human beings.
 - b. *Industrial Uses*. There shall be no industrial uses, activities, or structures. No right of passage across or upon the Property shall be allowed or granted if that right of passage is used in conjunction with any industrial uses or activities.
 - c. *Commercial Use*. There shall be no commercial uses, activities or structures on the Property, unless approved by the current owner of the Property. The owner of the Property may grant approval for use of the Property for the purpose of events or activities, so long as the events or activities do not violate a reasonable standard for passive park and recreation activities, or for a purpose in furtherance of the Purpose as stated in this Declaration.
3. Enforceability. This Declaration shall be binding upon the County and any subsequent owner of the Property. The failure of the County, or any subsequent owner of the Property, to enforce any provision hereof shall not be deemed a waiver of any provision established in this Declaration.
4. General Provisions.
 - a. *Amendment*. Any amendments to this Declaration shall be made in writing and recorded in the Beaufort County Register of Deeds by the current owner of the Property.
 - b. *Captions*. The section headings appearing in this Declaration are for convenience of reference only and are not intended to any extent for the purpose, to limit or define any section or any subsection hereof.
 - c. *Severability*. If any provision of this Declaration is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration shall nonetheless remain in full force and effect.
 - d. *Governing Law and Forum*. This Declaration shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina. The forum and jurisdiction for any litigation associated with this Declaration shall be the Court of Common Pleas for Beaufort County, South Carolina.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the _____ day of _____, 2019.

WITNESSES:

Beaufort County:

(Witness #1)

Ashley M. Jacobs
Beaufort County Administrator

(Witness #2/Notary Public)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned, a Notary Public for South Carolina, do hereby certify that **Ashley M. Jacobs**, personally appeared before me this day and, in the presence of the two witnesses named above, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2019.

Notary Public for _____
My Commission Expires _____

County Use Only
Location: Beaufort County
Township:
Tax Map No.

EXHIBIT A

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being more particularly described as Parcel "B" containing 54.318 Acres as shown and described in that certain plat entitled "Southmark Properties" dated September 26, 1980 and revised on February 12, 1981, and prepared by Low Country Land Surveyors and signed by Forrest F. Baughman, RLS which said plat is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 81. For a more detailed description as to the courses, metes, distances, bounds, reference may be had to a drawing of TMS #R600 039 00B 0147 prepared by Mark W. Douglas, III of Coastal Surveying Co., Inc. dated July 13, 2015, and recorded with the Warranty Deed in Book 3763 at Page 1764.



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

RCLP Program Ordinance (NEW)

Council Committee:

County Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

Consideration of 3rd reading for adoption of a new ordinance that provides process specificity for the Rural and Critical Lands Preservation Program.

Points to Consider:

An RCLPP Ordinance was adopted in 1998. In 2006, the RCLPP Ordinance was removed from the code. There is currently no County code governing the administration of the RCLP Program. In 2006 a guidelines resolution was adopted, but it lacks detail. This new ordinance is needed in order to memorialize current RCLP Program procedures. The Beaufort County Open Land Trust and Beaufort County Staff/Legal agree with this ordinance as written. During the September 23, 2019 County Council meeting an amendment was offered and approved that requires a 2/3 majority vote for the sale, lease, swap of Rural and Critical Land. The attached ordinance reflects that amendment.

Funding & Liability Factors:

N/A

Council Options:

1. Approve as written. 2. Approve with revisions. 3. Do not approve.

Recommendation:

Staff recommends to approve the ordinance as written.

**AN ORDINANCE OF THE COUNTY OF BEAUFORT, SOUTH CAROLINA, WHICH SHALL BE REFERRED TO AS
THE RURAL AND CRITICAL LANDS PRESERVATION PROGRAM ORDINANCE**

Chapter 26 – COMMUNITY DEVELOPMENT

ARTICLE II – RURAL AND CRITICAL LANDS PRESERVATION PROGRAM

SECTION 26-26: TITLE

This ordinance shall be known as the Rural and Critical Lands Preservation Program Ordinance.

SECTION 26-27: PURPOSE

It is the purpose of this ordinance to:

1. Provide a means by which rural and critical lands may be protected and enhanced as economic and environmental resources of major importance.
2. Encourage landowners to make a voluntary long-term commitment to rural and critical land protection by offering landowners financial incentives and security of land use.
3. Preserve open space; protect critical and natural resources; and/or provide land for passive recreation.
4. Leverage federal, state, local, and private conservation efforts and development rights purchase funds and protect the investment of taxpayers in purchased and donated conservation easements.
5. Provide a means whereby rural landowners can maintain and preserve the rural character of their land through land conservation.
6. Provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
7. Reduce and defer the need for major urban infrastructure improvements in the rural areas of the county and the expenditure of public funds for such improvements.
8. Provide for the purchase of fee simple interests in lands deemed critical to provide for the protection of the natural resources, historic and cultural significance, passive recreation, viewscapes and lands suitable for public use in a manner consistent with its conservation values.

9. Provide for purchase of development rights and fee simple interest in lands threatened by development, which if it occurs will have detrimental effects on land use patterns, traffic, public safety, stormwater runoff, water quality or other conservation objectives.
10. Provide for purchase of development rights on rural lands, which provide protection of natural resources and stability of agricultural, timber and other open space uses.

SECTION 26-28: FINDINGS

1. Rural and critical lands in many parts of the county are under significant development pressure from expanding urban areas.
2. This urban pressure takes the form of scattered development in wide belts around urban areas and brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation.
3. Many of the rural and critical lands in the county are in jeopardy of being lost due to these activities.
4. These rural and critical lands constitute unique and irreplaceable land resources of countywide importance.
5. There are additional critical lands which are also valued natural and ecological resources which provide open space for wildlife habitat, wildlife corridors, clean air, clean water, groundwater recharge, and protection of cultural resources.
6. It is the declared policy of the county to provide a voluntary program to acquire or otherwise permanently protect rural lands and other lands containing critical natural, cultural and historic resources.
7. It is the policy of the county that rural and critical lands are valued natural and ecological resources which provide certain needed open space for wildlife habitat, wildlife corridors, clean air, clean water, groundwater recharge, and protection of historic and cultural resources.
8. It is the policy of the county to provide opportunities, through the purchase of development rights, to landowners to protect agricultural lands so that they may continue to farm the land, as well as to acquire such rights to protect other parcels where the landowner wishes to retain an ownership interest.

SECTION 26-29: DEFINITIONS

The following words and terms shall have the meaning respectively ascribed to them in this section:

1. *Conservation easement* means a non-possessory interest of a holder in real property imposing restrictions or affirmative obligations as defined in S.C. Code Ann. Section 27-8-20, or as defined in 26 U.S. Code Section 170(h).
 - a. These easements could take the form of an agricultural conservation easement, which would be rights and restrictions encumbering a property primarily for the purpose of protecting the agricultural soils, including prime, statewide, and locally important agricultural soils, viability, and productivity of that property.
2. *County* means Beaufort County, South Carolina.
3. *County Council* or *Council* means the elected County Council of Beaufort County, South Carolina.
4. *Critical lands* means any lot(s), tract(s), parcel(s), or areas(s), within the county that possess unique, significant, or important characteristics as may be identified by the Rural and Critical Land Preservation Board and subject to final approval by County Council. "Unique, significant, or important characteristics" include but are not limited to protection of cultural and historic resources and sites, the potential for medium to high density development, the ability to use the land for public access and passive recreation, the ability to use the land for public access to waterways, the ability of the land to be used for the preservation of public views of waterways or other scenic vistas, the quality of the land for purposes of a wildlife sanctuary, or such other and further characteristics which may be used to further the goals of Council.
5. *Development right* means the right to legally develop or subdivide property under current county codes and ordinances. The term includes, but is not limited to, the right to develop property for any commercial, industrial or residential use except as expressly permitted by this article and as further defined by the Beaufort County Community Development Code, as adopted and amended by County Council.
6. *Easement holder* means a holder as defined by S.C. Code Ann. Section 27-8-20(2), or a qualified organization as defined by 26 U.S. Code Section 170(h)(3).
7. *Greenprint* means the most recent Beaufort County Council approved version of the map of identified and prioritized parcels for acquisition under the County's Rural and Critical Lands Preservation Program.
8. *Landowner* means the record owner of the land or the authorized contract purchaser of the land.
9. *Land Preservation Board* or *Board* means the Beaufort County Rural and Critical Lands Preservation Board established by County Council as more fully described in County Code of Ordinances Chapter 2, Section 2-281 through 2-290.

10. *Land trust* means a nonprofit land conservation organization accredited by the Land Trust Alliance which meets the requirements of Internal Revenue Code Section 170 and is active in conservation efforts in the county or state.
11. *Passive park* means any fee-simple county owned or co-owned property purchased with Rural and Critical Lands Preservation Program designated funding as adopted by the Beaufort County Council. A list of passive parks is available with the Passive Parks Manager upon request and/or on the Beaufort County website. Properties not designated by the Council as a passive park may still be managed through the Passive Park Program/Manager.
12. *Passive recreation* means recreation requiring little or no physical exertion focusing on the enjoyment of one's natural surroundings. In determining appropriate recreational uses of passive parks, the promotion and development of resource-based activities such as fishing, camping, hunting, boating, gardening, bicycling, nature studies, horseback riding, visiting historic sites, hiking, etc., shall be the predominant measure for passive park utilization.
13. *Resource conservation area* means those areas of land in the County designated as "resource conservation areas" on the Zoning Map of Beaufort County, as adopted and amended by County Council.
14. *Restrictive easement* means rights and restrictions encumbering a property primarily for the purpose of limiting development on that property that would be incompatible with the United States of America's mission of Marine Corps Air Station Beaufort.
15. *Rural land* means any lots, tracts, parcels that are zoned for low-density residential, rural, agricultural or farming uses, or which are being used, or which have the ability to be used, for such purposes, including but not limited to wildlife management or recreation. Rural lands possess unique, significant, or important characteristics as may be identified by the Beaufort County Rural and Critical Land Preservation Board and subject to final approval by the County Council. Unique, significant, or important characteristics include but are not limited to protection of farmland, prime soils, other working landscapes, river frontages, small marsh islands, wildlife corridors, fresh and saltwater wetlands, and land on the urban-rural edge or immediately outside the municipal boundary under threat of development or such other and further characteristics which may be used to further the goals of the county.
16. Any terms left undefined by this ordinance shall take the meaning as otherwise defined by the Beaufort County Community Development Code, as adopted and amended by County Council. In the event of conflicting meanings, the definitions of this section shall control.

1. The County Council may designate by Resolution any policies, procedures, rules and regulations for the purpose of regulating the Rural and Critical Lands Preservation Program, its operation and funding, and may request and receive recommendations from the Rural and Critical Lands Preservation Board.
2. The County shall retain a Rural and Critical Lands Preservation Program Land Acquisition Contractor who shall be trained and properly qualified for the work and who shall work with the County Community Development Department, or other County staff as assigned, to procure, dispose of, and administer real estate and land rights for the County which have been procured through the Rural and Critical Lands Preservation Program in accordance with the County's purchasing policies and procurement code.

SECTION 26-31: TYPES OF ACQUISITIONS

There are two types of property interests that can be acquired under the provisions of this ordinance, the Purchase of Development Rights and the Purchase of Fee Simple Interests.

A. Purchase of Development Rights (PDR)

Development rights will typically be purchased in areas designated "Rural land", although there may be instances where PDR may be appropriate for purchase in other zoning designations. Generally, properties considered for PDR are those areas of the County where one or more of the following apply:

1. There are conservation values in or on the property to be preserved.
2. Development of the property would result in adverse impacts to the environment or public infrastructure serving the property.
3. The character of the property and its surrounding area would be threatened by proposed or possible future development.
4. The owner wishes to retain ownership of the property.
5. Public access to the property is not required or desirable.

The development rights purchased shall be transferred to Beaufort County by a Deed of Development Rights. If the development rights are to be purchased, the property may also be subject to the provisions of a conservation easement, and/or other applicable legal instruments as approved by Beaufort County Council which will assure that the property is protected from development other than what is permitted by the PDR agreement, the conservation easement, and/or any other legal instruments as approved by Beaufort County Council.

B. Purchase of Fee Simple Interests (PFSI)

Fee simple interests shall be applicable in all areas of the County, including those designated as "Rural land". Generally, properties considered for PFSI are those where the property owner(s) are willing to sell in those instances where one or more of the following apply:

1. There are conservation values in or on the property to be acquired and the owner is only willing to sell all of their interest in the property.

2. Public access to the property is required or desirable.
3. Development of the property for public access and passive recreation use is desirable.
4. Development of the property would result in adverse impacts to the environment or public infrastructure serving the property.

SECTION 26-32: GENERAL PROCESS

- A. The PDR and PFSI is a multi-step process within the Rural and Critical Lands Preservation Program (RCLPP or Program) whereby, at a minimum:
 1. The Land Preservation Board receives initial acquisition applications and does or does not recommend due diligence authorization to County Council.
 2. The County Council does or does not authorize due diligence funding.
 3. The Land Preservation Board receives acquisition proposals due diligence information and does or does not recommend acquisition approval to County Council.
 4. The County Council does or does not approve acquisition proposal.
- B. The PDR and PFSI is also an application process within the RCLPP whereby the following apply:
 1. Generally, eligible applicants are those individual property owners, land trusts, environmental advocacy organizations, or municipalities located in Beaufort County where property has been identified on the most recent version of the Greenprint.
 2. An application form shall be completed and submitted, as provided and instructed on the County website.
 3. Applications will be compiled and reviewed by the appropriate County staff and the Land Acquisition Contractor on no less than a quarterly basis.
 4. Eligible applications will be provided to the Land Preservation Board where they will discuss, prioritize, and recommend to the County Natural Resource Committee (NRC) for due diligence approval.
 5. The Board recommendation will be presented to the NRC, or other committees as may be appropriate or required, where a decision to fund due diligence will or will not be approved for each application.
 6. If approved by the NRC, the Land Acquisition Contractor will proceed with obtaining due diligence, which will be reviewed and each application ranked by the appropriate County staff and Contractor upon completion utilizing the Board adopted ranking forms.
 7. Applicant due diligence will be presented to the Land Preservation Board where they will discuss, prioritize, and make a recommendation to the NRC for acquisition approval.
 8. The Board recommendation will be presented to the NRC where a recommendation to acquire will or will not be made to County Council for approval.
 9. The NRC recommendation and applications will be presented to the full County Council for final approval.
 10. All closing documents will be provided to the County Attorney no less than three (3) days prior to closing for review and approval.

11. All contractual discussions by the Board, NRC, or Council may or may not be in Executive Session, as permitted by the South Carolina Freedom of Information laws.

SECTION 26-33: DUE DILIGENCE

Any PDR or PFSI will be subject to all due diligence being satisfactorily completed, reviewed and approved by the County. All due diligence shall be reviewed by the appropriate County staff before being sent to County Council for action. Due diligence shall include, but may not be limited to:

1. An appraisal of the value of the interest being acquired prepared by a Member of the Appraisal Institute (MAI), or other appropriately licensed or certified South Carolina appraiser.
2. A boundary survey completed by a South Carolina Registered Land Surveyor. In those instances of PFSI, a topographic survey, tree survey, archaeological survey, or other due diligence items shall also be obtained when appropriate.
3. A Phase I Environmental Assessment by a qualified environmental consulting firm. In instances where the Phase I report so indicates, a Phase II Environmental Assessment including a plan for any remediation, by the seller or purchaser, is required for the property to address the concerns to the satisfaction of the County.
4. When warranted by the Community Development Department or the Land Acquisition Contractor as a part of due diligence, a title search, title opinion, and/or title insurance commitment with only normal title exceptions.

SECTION 26-34: CONSERVATION EASEMENTS

1. Conservation easements may be placed on property where development rights have been acquired (Section 26-31:A.).
2. The conservation easements shall be granted directly to an appropriate easement holder by the owner, or by the County. The RCLP Board shall recommend an appropriate easement holder to County Council.
3. The stewardship funding required by the easement holder to defend and provide the necessary annual monitoring required for the easement may be granted by the County for the easement depending on the nature of the agreement reached between the County and the easement holder.
4. When the County and Marine Corps Air Station (MCAS) Beaufort collaborate on a PDR acquisition, an appropriate restrictive easement will be applied to the acquired property.

SECTION 26-35: COVENANTS AND RESTRICTIONS

1. Covenants and restrictions may be placed on property where development rights have been acquired.
2. Generally, covenants and restrictions will describe in some detail how a property is to be developed, used and maintained consistent with the conservation values of the property.

SECTION 26-36: RESALE, SWAP, CONDEMNATION OR LEASE OF ACQUIRED PROPERTY

There may be instances where property acquired under the RCLPP for its conservation value(s), and possibly to mitigate the impacts of development, may not be suitable or needed for county ownership in the future. In such cases, the County Council may request the RCLP Board to evaluate and make a recommendation on selling, swapping or leasing the property, in whole or in part.

In those instances, the RCLP Board shall be guided by the following:

1. To ensure that the resale, swap or lease of the property, in whole or in part, will not have an adverse impact on the conservation value(s) of the property, which can be assured through the placement of a conservation easement or other appropriate instruments on the sold, swapped or leased property if necessary.
2. To ensure that the development of the property for use(s) permitted under a conservation easement will be carefully monitored by the easement holder.

Additionally, the following will apply:

1. Any RCLPP property considered for sale, swap or lease shall require appropriate action by a 2/3 majority of the County Council following prescribed procedures for sale, swap or lease of County-owned land.
2. If all or part of a RCLPP property is sold, swapped or condemned, the County and any co-owners will be entitled to respective ownership ratio compensation of any net proceeds, after payment of all closing expenses.
3. Any RCLPP property sold, swapped or condemned will have the County's portion of any proceeds deposited into the Land Preservation fund for use in future RCLPP acquisitions.
4. Any RCLPP property leased by the County will have any proceeds deposited into the Passive Parks fund for use in management and maintenance of RCLPP passive parks.

Secs. 26-37 – 26-49. Reserved

This ordinance supersedes and repeals Resolution 2006-3.

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

APPROVED AS TO FORM:

Thomas J. Keaveny, II, Esquire
Beaufort County Attorney

ATTEST:

Sarah Brock, Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

RCLP Board Ordinance

Council Committee:

Natural Resources

Meeting Date:

September 16, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

The revisions to the existing Rural and Critical Land Preservation Board Ordinance (Division 5, Section 2, 281-290).

Points to Consider:

Clarifying appointment, officer, and procedures sections also including board reporting and grammatical updates. Revisions for consistency with other board ordinances and current procedures. Beaufort County Open Land Trust and Beaufort County Staff/Legal are in agreement with the revisions as written.

Funding & Liability Factors:

N/A

Council Options:

1. Approve as written. 2. Approve with revisions. 3. Do not approve.

Recommendation:

Staff recommendation is to approve revisions as written.

DIVISION 5. – COUNTY RURAL AND CRITICAL LANDS PRESERVATION BOARD

Sec. 2-281. – Appointment.

An 11-member county rural and critical lands preservation board shall be appointed by the county council. One member with relevant experience and qualifications in matters such as estate law, finance, rural land ownership, agriculture, or conservation shall be appointed from each of the 11 county council districts.

Sec. 2-282. – Officers.

The county rural and critical lands preservation board shall elect annually one member of the board to serve as chairman and one member to serve as vice chairman. The chairman and vice chairman will serve a maximum of four (4) consecutive one-year terms. A vacancy in either the chairman and/or vice chairman must be filled for the unexpired term through board election within two (2) board meetings.

Sec. 2-293 – Terms.

The terms of initial appointees to the county rural and critical lands preservation board shall coincide with the expiration of the term of the county council district representative who serves the district which the appointee has been selected to represent. Thereafter, all members shall be appointed for four-year terms. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The membership is subject to division 1 of article V of chapter 2 of the Code regulating boards and commissions and appointments thereto as well as the county template ordinance.

Sec. 2-284 – Compensation.

Members of the county rural and critical lands preservation board shall serve without salary, but the county council shall entitle each member to reimbursement for his actual and necessary mileage expenses incurred in the performance of his official duties.

Sec. 2-285. – Conflicts of interest.

No member of the county rural and critical lands preservation board shall be disqualified by reason of his membership from selling any parcel or the development rights of any parcel in which ~~he has~~ they have a financial interest, but any member with a direct or indirect financial interest in such parcel shall recuse ~~himself~~ themselves from any board vote, discussion, or decision regarding such parcel.

Sec. 2-286. – Rules of procedure.

~~The county rural and critical lands preservation board shall promulgate procedures necessary to promote the efficient, uniform, and countywide administration of this article. The county rural and critical lands preservation board shall adopt rules of procedure governing its procedures and operations. Copies of adopted rules of procedure shall be made available for public inspection in the office of Director during normal business hours.~~

Sec. 2-287. – Powers and duties.

The county rural and critical lands preservation board shall have, but is not limited to, the following powers and duties:

- (1) Develop and recommend to county council, for adoption by resolution, ~~a set of the~~ Beaufort County Rural and Critical Lands Preservation Program ~~GreenPrint Policies and Guidelines~~ to guide the identification ~~and~~, prioritization, ~~and management~~ of parcels to be acquired through the county rural and critical ~~[lands]~~ preservation program. ~~The board may make recommendations to county council for amendments to the policies and guidelines as the need arises;~~
- (2) Identify, prioritize and recommend to county council rural and critical lands to be acquired through purchase of development rights, the option to purchase development rights, the fee simple purchase of property, or the exchange and transfer of title to parcels, as provided for in the county council's adopted ~~Beaufort County~~ Rural and Critical Lands Preservation Program ~~Ordinance Policies and Guidelines~~;
- (3) Promote, educate and encourage landowners to participate in the county rural and critical lands preservation program; and
- (4) Perform such other duties as may be assigned by county council.

Sec. 2-288. – Board Report

The county rural and critical lands preservation board shall submit to county council an annual report in December based on all of the activities carried out pursuant to the rural and critical lands preservation program. The report shall include but is not limited to the following:

- (1) Map indicating the location of the total parcels of lands that have been acquired;
- (2) Total number of acquired lands, number of acres and type of acquisitions of each of the acquired lands throughout the county;
- (3) Number of landowners contacted or properties received for consideration for the program in the given year;
- (4) Number of lands acquired, number of acres of of each and type of acquisitions of each land acquired throughout the county in the given year;
- (5) Total dollars spent in the program and total dollars leveraged with the program; and
- ~~(1)~~(6) Dollars spent and leveraged in the given year for the program.

Cross reference – Administration, ch. 2.

Secs. 2-28~~8~~9 – 2-290. – Reserved.

DIVISION 5. – COUNTY RURAL AND CRITICAL LANDS PRESERVATION BOARD

Sec. 2-281. – Appointment.

An 11-member county rural and critical lands preservation board shall be appointed by the county council. One member with relevant experience and qualifications in matters such as estate law, finance, rural land ownership, agriculture, or conservation shall be appointed from each of the 11 county council districts.

Sec. 2-282. – Officers.

The county rural and critical lands preservation board shall elect annually one member of the board to serve as chairman and one member to serve as vice chairman. The chairman and vice chairman will serve a maximum of four (4) consecutive one-year terms. A vacancy in either the chairman and/or vice chairman must be filled for the unexpired term through board election within two (2) board meetings.

Sec. 2-283 – Terms.

The terms of initial appointees to the county rural and critical lands preservation board shall coincide with the expiration of the term of the county council district representative who serves the district which the appointee has been selected to represent. Thereafter, all members shall be appointed for four-year terms. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The membership is subject to division 1 of article V of chapter 2 of the Code regulating boards and commissions and appointments thereto as well as the county template ordinance.

Sec. 2-284 – Compensation.

Members of the county rural and critical lands preservation board shall serve without salary, but the county council shall entitle each member to reimbursement for their actual and necessary mileage expenses incurred in the performance of their official duties.

Sec. 2-285. – Conflicts of interest.

No member of the county rural and critical lands preservation board shall be disqualified by reason of their membership from selling any parcel or the development rights of any parcel in which they have a financial interest, but any member with a direct or indirect financial interest in such parcel shall recuse themselves from any board vote, discussion, or decision regarding such parcel.

Sec. 2-286. – Rules of procedure.

The county rural and critical lands preservation board shall adopt rules of procedure governing its procedures and operations. Copies of adopted rules of procedure shall be made available for public inspection in the office of Director during normal business hours.

Sec. 2-287. – Powers and duties.

The county rural and critical lands preservation board shall have, but is not limited to, the following powers and duties:

- (1) Develop and recommend to county council, for adoption by resolution, the Beaufort County Rural and Critical Lands Preservation Program GreenPrint to guide the identification and prioritization of parcels to be acquired through the county rural and critical lands preservation program. ;
- (2) Identify, prioritize and recommend to county council rural and critical lands to be acquired through purchase of development rights, the option to purchase development rights, the fee simple purchase of property, or the exchange and transfer of title to parcels, as provided for in the county council's adopted Rural and Critical Lands Preservation Program Ordinance;
- (3) Promote, educate and encourage landowners to participate in the county rural and critical lands preservation program; and
- (4) Perform such other duties as may be assigned by county council.

Sec. 2-288. – Board Report

The county rural and critical lands preservation board shall submit to county council an annual report in December based on all of the activities carried out pursuant to the rural and critical lands preservation program. The report shall include but is not limited to the following:

- (1) Map indicating the location of the total parcels of lands that have been acquired;
- (2) Total number of acquired lands, number of acres and type of acquisitions of each of the acquired lands throughout the county;
- (3) Number of landowners contacted or properties received for consideration for the program in the given year;
- (4) Number of lands acquired, number of acres of of each and type of acquisitions of each land acquired throughout the county in the given year;
- (5) Total dollars spent in the program and total dollars leveraged with the program; and
- (6) Dollars spent and leveraged in the given year for the program.

Cross reference – Administration, ch. 2.

Secs. 2-289 – 2-290. – Reserved.



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Zoning Map Amendment/Rezoning Request for R100 029 000 0046 0000, 10.69 acres at 126 Broad River Boulevard, from C3-Neighborhood Mixed Use District to C5-Regional Center Mixed-Use District

Council Committee:

Natural Resources

Meeting Date:

May 20, 2019

Committee Presenter (Name and Title):

Robert Merchant, AICP, Assistant Community Development Director

Issues for Consideration:

See staff report

Points to Consider:

See staff report

Funding & Liability Factors:

Council Options:

Approve or disapprove

Recommendation:

Approval



MEMORANDUM

TO: Natural Resources Committee of County Council
FROM: Robert Merchant, AICP, Beaufort County Community Development Department
DATE: May 13, 2019
SUBJECT: Zoning Map Amendment/Rezoning Request for R100 029 000 0046 0000, 10.69 acres at 126 Broad River Boulevard, from C3-Neighborhood Mixed Use District to C5-Regional Center Mixed-Use District; Owner: 10 Frontage Road LLC, Applicant: Andy Burris

STAFF REPORT:

A. BACKGROUND:

Case No. ZMA-2019-02
Owner/Applicant: 10 Frontage Road, LLC; Agent: Andy Burris
Property Location: Located in the Burton area on the north side of Broad River Boulevard approximately 1,200 feet west of the intersection with US 21 (Parris Island Gateway)
District/Map/Parcel: R100 0290 000 0046 0000
Property Size: 10.69 acres
Current Future Land Use Designation: Urban Mixed Used
Current Zoning District: C3-Neighborhood Mixed-Use (C3-NMU)
Proposed Zoning District: C5-Regional Center Mixed-Use (C5-RCMU)

B. SUMMARY OF REQUEST:

The owners of a 10.69-acre parcel located on the north side of Broad River Boulevard approximately 1,200 feet west of the intersection with US 21 (Parris Island Gateway) is requesting to change the zoning of the property from C3-NMU to C5-RCMU. The owner is interested in development multi-family housing on the property. While C3-NMU allows multi-family housing, developments are limited to a maximum of 80 dwelling units and a maximum height of 2 ½ stories.

While the parcel is just over 10 acres, the rear half of the property is a wetland. The parcel contains a dwelling unit that is in the Beaufort County Above Ground Historic Sites Survey. The structure has been determined to be not eligible for the National Register of Historic Places.

This same rezoning went before the Metro Planning Commission at their December 19, 2016, meeting. At that time, the MPC did not recommend rezoning the property because it was felt that the applicant had options to develop multi-family housing under its existing zoning designation – C3-Neighborhood Mixed-Use. Since that time, Beaufort County Council approved a zoning amendment that removed a requirement that multi-family housing in C3 needed to be located in mansion apartments with no more than 6 units per building. However, the applicant wishes to construct more than 80 units in 3 story buildings, and utilize the affordable housing density bonuses available in the C5-Regional Center Mixed-Use district.

C. ZONING MAP AMENDMENT ANALYSIS: Section 7.3.40 of the Community Development Code (CDC) states that a zoning map amendment may be approved if the proposed amendment:

1. ***Is consistent with and furthers the goals and policies of the Comprehensive Plan and the purposes of this Development Code:***

The proposed amendment is not consistent with the future land use map of the Beaufort County Comprehensive Plan and would require an amendment to the plan itself. The Comprehensive Plan advocates the development of affordable housing. This zoning amendment has the potential to foster the development of affordable housing in a centrally located area with relatively close proximity to employment and retail.

2. ***Is not in conflict with any provision of this Development Code, or the Code of Ordinances:***

As stated above, the proposed zoning district of C5-RCMU is not consistent with Table 1.4.10.A of the CDC for parcels that are designated as Urban Mixed-Use in the Comprehensive Plan.

3. ***Addresses a demonstrated community need:***

The proposal has the potential to foster the development of affordable housing.

4. ***Is required by changing conditions:***

The character of the surrounding area has not changed significantly in the last 10 years.

5. ***Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zone and uses for the land.***

There is a mix of uses along Broad River Boulevard in the vicinity of this parcel. These uses include small warehouses, private social clubs, churches, a small mobile home park, and single-family residential.

6. ***Would not adversely impact nearby lands.***

Properties located to the east and across from Broad River Boulevard from this parcel are zoned C5-RCMU and would not be adversely impacted by amending the zoning of this parcel.

7. ***Would result in a logical and orderly development pattern.***

See item 6 above.

8. ***Would not result in adverse impacts on the natural environment – including, but not limited to, water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.***

Approximately one half of the parcel is wetland that would be required to be preserved. There should be no adverse impacts assuming that applicable local, state, and federal

environmental protection requirements are met with any future development of the parcel.

9. *Would result in development that is adequately served by public facilities (e.g. streets, potable water, sewerage, storm water management, solid waste collection and disposal, schools, parks, police, and fire and emergency facilities)*

The proposed rezoning is located in close proximity to utilities and public facilities. Sewer is available on Parris Island Gateway; water lines are available along Broad River Boulevard.

D. NORTHERN BEAUFORT COUNTY REGIONAL PLAN

The proposed parcel is located within the growth boundary as put forth in the Northern Beaufort County Regional Plan. The regional plan and the intergovernmental agreement that implements the plan require that all increases in zoning in unincorporated Beaufort County located within the growth boundary explore options to annex into the appropriate municipality – in this case the City of Beaufort. The intergovernmental agreement states the following:

The county shall encourage any landowner who seeks an increase in densities/intensities under current zoning on lands that are not contiguous to a municipality but within the growth boundary, to explore ways to annex the land. If annexation is not feasible, following the procedures outlined in Section G (below) the County will consult with the Planning Staffs of the City of Beaufort and the Town of Port Royal to determine the following: a. Whether the proposed zoning amendment or planned unit development is consistent with the Comprehensive Plan of the municipality in whose future growth area the proposed development is located; and b. Whether the proposed zoning amendment or planned unit development is consistent with the Northern Beaufort County Regional Plan.

This report has been sent to the City of Beaufort staff. Beaufort County staff will consult with City staff to determine whether annexation is feasible and whether this rezoning is consistent with the Northern Regional Plan.

E. STAFF RECOMMENDATION:

Staff supports the rezoning of this property from C3-NMU to C5-RCMU with the following condition:

- County staff will consult with City of Beaufort staff to determine whether annexation is feasible for this parcel and whether the proposed zoning designation is consistent with the Northern Beaufort County Regional Plan.

F. BEAUFORT-PORT ROYAL METROPOLITAN PLANNING COMMISSION

RECOMMENDATION: At the March 18, 2019 meeting of the Metro Planning Commission, Judy Alling motioned and Jim Crower seconded to recommend approval of the proposed zoning amendment. The motion passed unanimously.

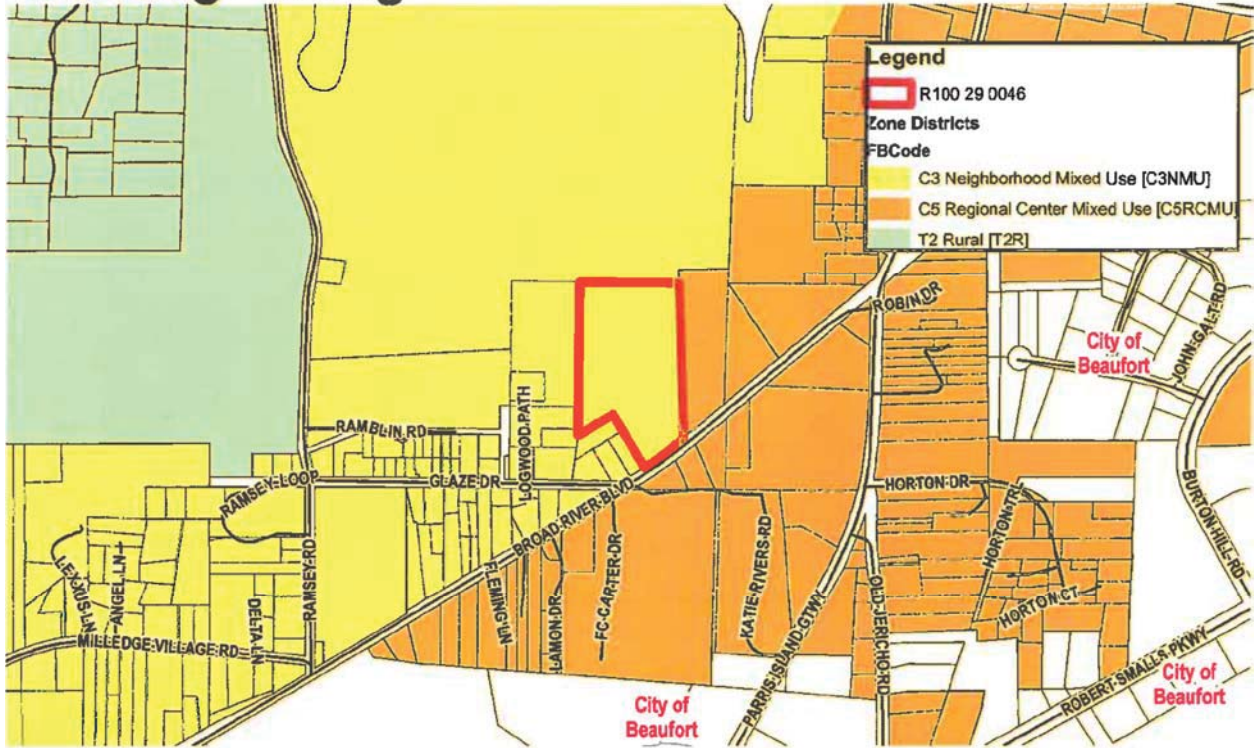
G. BEAUFORT COUNTY PLANNING COMMISSION RECOMMENDATION:

Chairman Semmler asked for a motion regarding the rezoning request. Mr. Jason Hincer made a motion to approve the rezoning request from C3 Neighborhood Mixed Use to C5 Regional Center Mixed Use with a strong recommendation to forward the affordable housing issue to the Natural Resources Committee for their input. Dr. Caroline Fermin seconded the

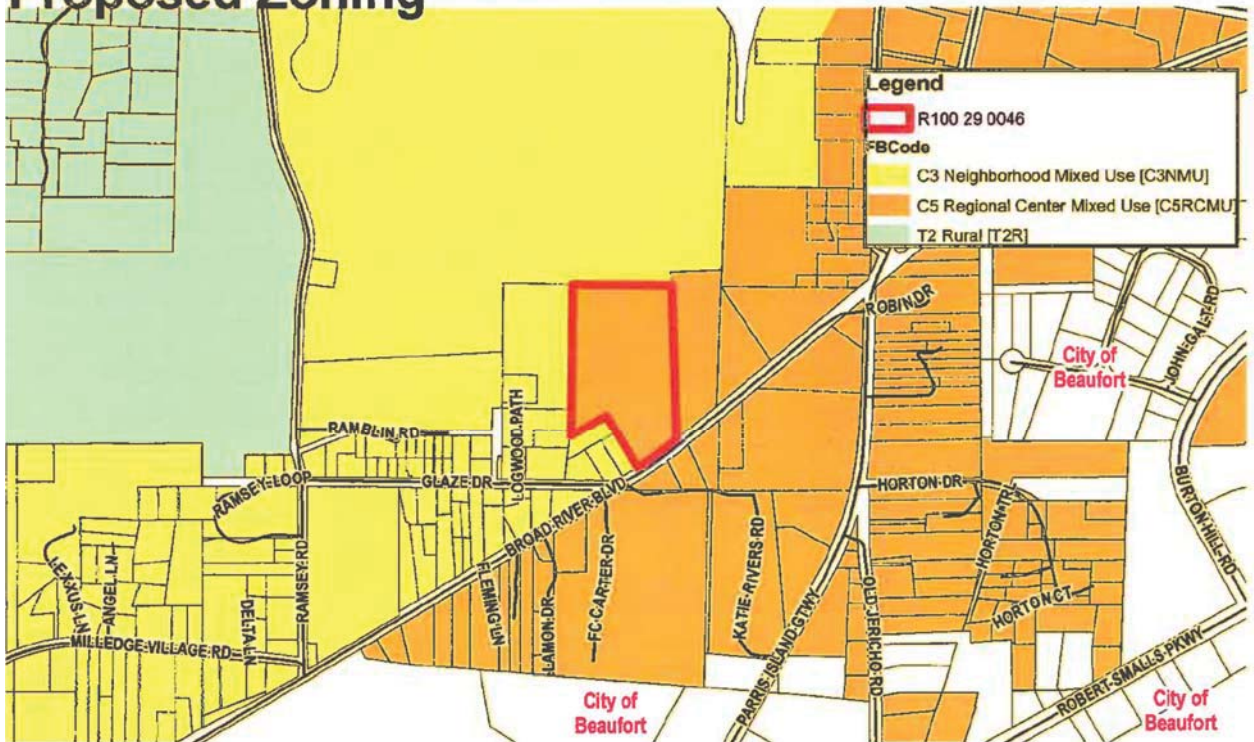
motion. The motion to approve the request was unanimous. The affordable housing issue that was brought up at the meeting was the possibility of adopting a text amendment regarding the C3 zoning to exceed the 80-unit cap if a percentage of the units meet the definition of affordable housing.

H. ATTACHMENTS: Zoning Map (existing and proposed)

Existing Zoning



Proposed Zoning



ADD-ONS

The document(s) herein were provided to Council for information and/or discussion after release of the official agenda and backup items.

Citizens Comments

October 14, 2019

FULL NAME

TOPIC

PHONE # or EMAIL
ADDRESS

- | | FULL NAME | TOPIC | PHONE # or EMAIL ADDRESS |
|---------------------|----------------------------|------------------------------|--------------------------|
| 1. | STIP HALLARD | TAPAS CHAIR | 843-384-7260 |
| 2. | CAROL SCOTT | RIVER OAKS | 843-987-9118 |
| 3. | TERRY BOSTON | River Oaks | 843-575-7861 |
| 11/24 | LEE BRYAN | BROAD RIVER APTS. | 843-812-3851 |
| 11/25 | WONDI ZERA | BROAD RIVER APTS | 843-263-8946 |
| 11/25 6. | ANGELA CHILBERS | BROAD RIVER APTS | 843-525-1059 |
| 7. | MIKE CAMIGNAN | Wind/Hamboer | 843-784-4538 |
| 11/24 8. | HERBERT JAY | AGENDA N/A REZON | 843-812-3102 |
| 9. | JOE DUCSA | RIVER OAKS | 843-683-8881 |
| 10. | JOE BULL | DRIVE FL | 843-297-2993 |
| 11. | | | |
| 13. | | | |
| 14. | | | |
| 15. | | | |
| 16. | | | |

Public Hearing
October 14, 2019

FULL NAME

TOPIC

PHONE # or EMAIL
ADDRESS

1. ~~Step #046/000~~ ~~Agenda~~ 843-384-7260

2. ~~Fernando~~ River Oaks 843-575-7861

3. Mike Carrizosa Windmill Hantown 843-785-4538

4. ~~Albert N. Pizar~~ Agenda I/A 843-812-3102

5. ~~JOE DUGGER~~ ~~RIVER OAKS~~ 842-683-8881

6. ~~Bob~~ ~~...~~ 843-247-2993

7. _____

8. _____

9. _____

10. _____

11. _____

13. _____

14. _____

15. _____

16. _____

Topic: A-TAX ARTICLES

Date Submitted: OCTOBER 14, 2019

Submitted by: Skip Hogland, Beaufort Watchdog

Venue: County Council

**PALM BEACH COUNTY
CONVENTION AND VISITORS BUREAU
AUDIT**



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

Audit Services Division

December 2006



SHARON R. BOCK

Clerk & Comptroller
Palm Beach County

December 14, 2006

Honorable Addie Greene, Chair
Members, Board of County Commissioners

Board of Directors
Discover Palm Beach County, Inc.,
d/b/a Palm Beach County Convention and Visitors Bureau

We have conducted an audit of the Palm Beach County Convention and Visitors Bureau (CVB).

The objectives of our audit were to determine weaknesses in internal controls, adequacy of management and accounting internal controls, whether other improprieties exist, whether audited expenditures were reasonable and necessary for effective tourist-related activities, and whether tax monies were used in conformity with County contracts and policies.

Our audit was neither designed nor intended to be a detailed study of every relevant system, procedure or transaction. Accordingly, the findings and recommendations presented in this report are not all-inclusive.

We conclude that internal controls are not adequate. This lack of controls, in addition to gross mismanagement, allowed the misappropriation of \$1.55 million to occur without detection. We identified some expenditures that may not be reasonable or necessary. We were unable to analyze all expenditures because of inadequate records.

I emphasize that we have not conducted a forensic audit to determine the total amounts misappropriated by the former Controller. That task is being performed by a commercial forensic auditing firm. That audit is ongoing. While we worked in cooperation with the auditing firm during the course of our audit, our findings as to the total amount misappropriated may differ.

Our normal procedure would be to obtain written responses from

301 North Olive Avenue
West Palm Beach, Florida 33401

P.O. Box 229
West Palm Beach, Florida 33402

Telephone 561-355-2996
Facsimile 561-355-6727

www.pbcountyclerk.com

Page 2

Palm Beach County Convention and Visitors Bureau Audit

the auditee to be included in our report. Because of the urgent and critical nature of our findings and recommendations, along with the fact that CVB management is in transition, we are issuing this report without responses to make the information available to decision-makers as soon as possible. Our findings and recommendations have been discussed with counsel for the CVB Board of Directors.

We appreciate the cooperation shown by the staff of the Palm Beach County Convention and Visitors Bureau during the course of this review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sharon R. Bock". The signature is fluid and cursive, with the first name "Sharon" being the most prominent.

Sharon R. Bock, Esq.
Clerk & Comptroller
Palm Beach County

EXECUTIVE SUMMARY

The Clerk & Comptroller conducted a review of the internal control structure and environment of the Palm Beach County Convention and Visitors Bureau (CVB). Discover Palm Beach County, Inc., d/b/a Palm Beach County Convention and Visitors Bureau was formed in 1983 as a nonprofit corporation under contract with Palm Beach County to provide tourism marketing services and management of the Palm Beach County Convention Center (Convention Center).

Internal controls in the operation of the CVB are not adequate. The lack of controls, along with mismanagement, allowed the misappropriation of approximately \$1.55 million without detection. We identified some expenditures that did not appear reasonable or necessary; however, because of inadequate records, we are unable to provide assurance that, overall, the CVB's expenditures were reasonable and necessary.

The former CVB Controller has misappropriated \$1,556,961, which is the amount known to date. The misappropriations occurred during the period from June 4, 2003 to October 18, 2006. This included a total of 222 checks the Controller made payable to herself. The misappropriations went undetected for over three years as a result of gross mismanagement within the corporation. The Vice President of Finance & Administration (VPF&A) failed to monitor the Controller's and the Bookkeeper's activities and responsibilities. Had the VPF&A properly monitored activities, the misappropriation of funds could have been prevented or detected on a timely basis.

The CVB contracted with a commercial auditing firm for the past ten years to perform annual audits. During the Clerk & Comptroller's audit, several requests were made of the external audit firm to review its working papers, including its work product on the annual financial audits of the CVB. The external audit firm declined to provide any portion of their work papers unless the County signed a waiver that would prohibit the County from taking action in the event inadequate audit work was found. The external audit firm failed to detect the misappropriations during the last three annual financial audits of the CVB. Although fraud detection is not the objective of the annual audit, the auditor does have certain due diligence responsibilities relating to material fraud.

The County's relationship with Discover Palm Beach County, Inc. should be reconsidered. The current contractual arrangement does not reasonably ensure the efficient and effective use of public resources. Several Board Members of the CVB may have an actual or perceived conflict of interest with the Palm Beach County Convention Center. Several of the CVB Board Members are industry leaders in Palm Beach County, including business owners and managers that are in direct competition with the Palm Beach County Convention Center

for business. The current structure, whereby the Convention and Visitors Bureau is a nonprofit corporation, has effectively reduced County oversight of the use of tourist development tax funds, and also has facilitated CVB activities that may not be reasonable or necessary.

Public funds have been co-mingled and converted into private funds. The CVB has developed outside revenue sources that have been earned largely as a result of tax-supported activities. The CVB then retains earned revenues and spends them outside of County control. We noted expenditures for activities that do not appear reasonable or necessary. These include flowers for staff, dinners for Board members, tickets to numerous sporting events, including, in April 2006, four season tickets to the Dolphins games at a cost of \$10,151. While some of the expenditures may be reasonable, there was no documentation available to justify the individual expenses.

The CEO traveled extensively without adequate documentation or oversight. Travel included first class overseas airfare in violation of County policy. The CVB Board of Directors Executive Committee or the full Board of Directors should approve all of the CEO's travel in advance.

The CVB has paid over \$140,000 to a contractor and pays \$5,800 per month for a reservation system that is providing virtually no benefit to the County. The reservation system did not go online until February 23, 2006 and has had produced only 36 bookings, 127 room nights, and \$468 in transaction revenues. The online reservation system should be eliminated immediately.

Credit card controls need improvement. Some CVB employees are issued corporate credit cards with which to charge CVB-related activities. CVB employees have made personal charges on CVB's corporate credit cards. In one incident, a CVB employee who was subsequently terminated had \$6,000 in personal charges on the CVB credit card. The CVB hired a CPA firm to provide additional services to review and determine a course of action to recover the \$6,000 after the individual was terminated. Currently, credit card statements are mailed to the employees' homes; the employees pay the bill, and then seek reimbursement from the CVB. To exercise more control, the CVB should receive the credit card statements and pay the bill directly. Any personal use would then be discovered promptly.

Many weaknesses in internal controls allowed the misappropriations to occur without detection. These weaknesses include inadequate segregation of duties, improper use of the accounting system's test database, an inadequate record management system, inadequate check security, lack of financial reporting to division directors, and inadequate policies and procedures.

This report contains 34 findings and 75 recommendations. The CVB is encouraged to implement all recommendations as applicable to its future operational structure.

TABLE OF CONTENTS

INTRODUCTION	1
Scope and Methodology	1
Overall Conclusion	1
Background	2
Convention and Visitors Bureau Organizational Chart	3
FINDINGS AND RECOMMENDATIONS	5
1. Gross mismanagement allowed misappropriation of funds at the Convention and Visitors Bureau	5
2. Public funds have been co-mingled and converted into "private funds"	6
3. There are inadequate controls to monitor the use of the Convention and Visitors Bureau's "private funds"	11
4. Lack of cooperation on the part of the external audit firm prevented a determination of the adequacy of its work	12
5. Issues relating to the Board Of Directors should be addressed	14
6. Convention and Visitors Bureau's conflict of interest policy is not sufficient	15
7. Convention and Visitors Bureau does not have adequate fidelity bond insurance coverage to protect the County	16
8. Withholding taxes paid by the County to the Convention and Visitors Bureau were not paid to the IRS	17

9. Convention and Visitors Bureau Board of Directors' control over the Convention Center may create a conflict of interest	18
10. County is advancing funds for payment in violation of the contract with the Convention and Visitors Bureau	19
11. Vice President of Finance & Administration failed to monitor financial activity	20
12. Convention and Visitors Bureau lacks sufficient management over information technology activities	21
13. Segregation of duties is inadequate	22
14. Convention and Visitors Bureau's record management system does not provide adequate tracking of expenditures	23
15. Policies and procedures are inadequate to ensure proper internal controls	24
16. The Convention and Visitors Bureau's Membership Program provides special benefits	25
17. The CEO traveled extensively without adequate documentation of reasonableness and necessity, and in violation of County policies	27
18. The CEO's full compensation package is not approved by the county	29
19. Sweep account revenues are not remitted to the County	30
20. Convention and Visitors Bureau manages the computer network systems for the Tourist Development Council (TDC) and other organizations under the TDC	31
21. Online reservation system has not produced sufficient revenue to cover costs	31
22. The CVB has used outside legal counsel to perform administrative tasks	32
23. Security of the automated accounting system's test database is insufficient	34

24. Insufficient policies related to computer access rights and tracking compromised the automated accounting system	34
25. Policies on password security are inadequate	35
26. Controls over voided checks are inadequate	36
27. Controls over check security are inadequate	36
28. Financial activity is not reported to division directors	39
29. Controls over use of corporate credit cards are inadequate	39
30. Controls over mail opening and processing are inadequate	40
31. Procurement procedures are not specific	41
32. There is no centralized travel booking	42
33. There is no centralized invoicing	42
34. There is no centralized purchasing	43
CONCLUSION	45

INTRODUCTION

Scope and Methodology

The Clerk & Comptroller conducted a review of the internal control structure and environment of the Palm Beach County Convention and Visitors Bureau (CVB) Finance department. The objectives of our audit were to determine:

- Weaknesses in internal controls that may allow improprieties to occur
- Adequacy of accounting and management internal controls
- Whether other financial improprieties have occurred
- Reasonableness and necessity of expenditures for tourism-related activities

In order to meet these objectives, we conducted interviews, reviewed policies and procedures, identified internal controls for financial operations and identified weaknesses in the internal control environment that may allow improprieties to occur. We have not conducted a forensic audit. We worked with the commercial forensic auditing firm and examined specific transactions deemed necessary to fulfill our audit objectives without duplicating the work of the forensic audit firm.

To help ensure proper control over public monies, this report includes recommendations for changes in management and policies and procedures.

An organizational chart highlighting areas audited appears following this introduction.

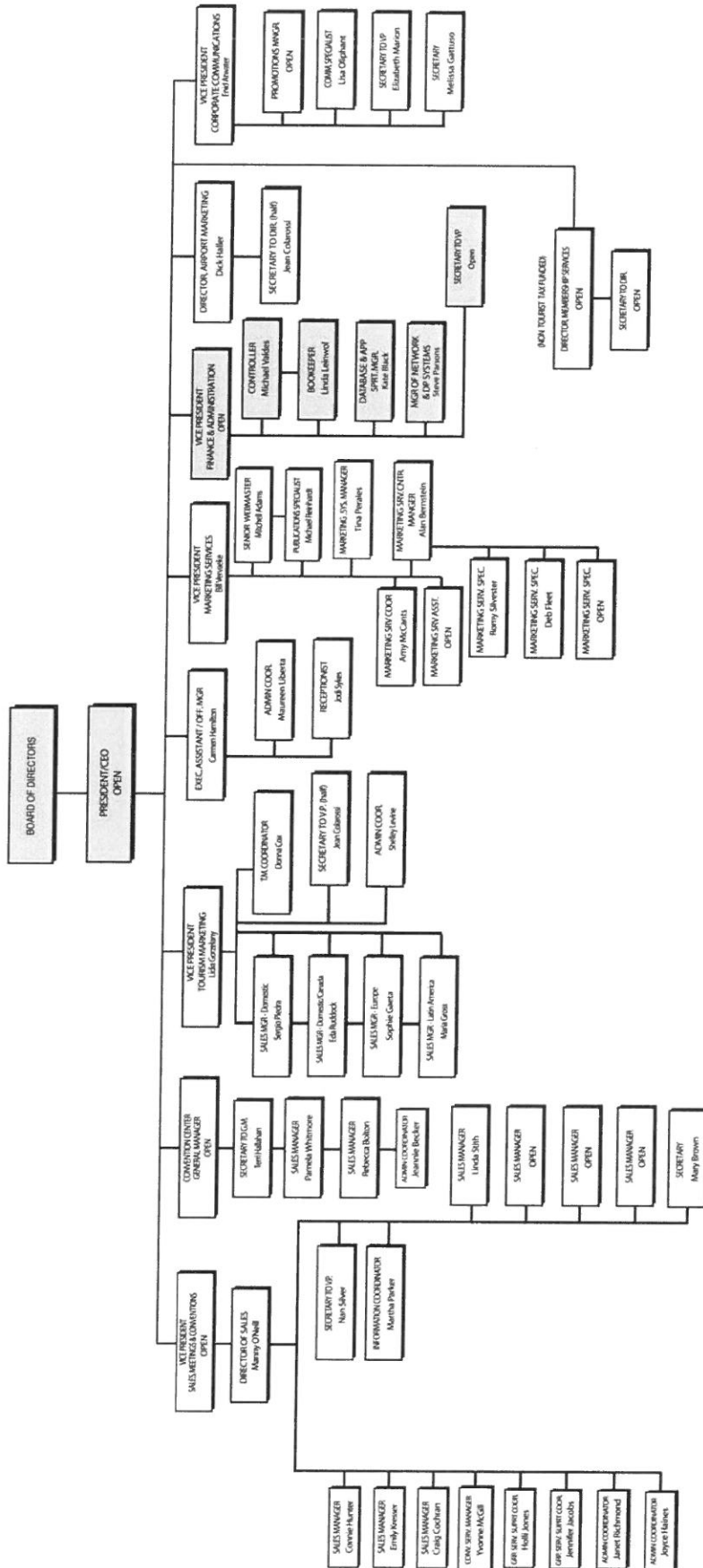
Overall Conclusion

Internal controls in the operations of the CVB are not adequate. The lack of controls, including gross mismanagement, allowed the misappropriation of approximately \$1.55 million without detection. While we noted no additional misappropriation of funds, we did not duplicate the work of the outside commercial forensic auditing firm hired to perform this function. We identified some expenditures that may not be reasonable or necessary; however, because of inadequate records, we were not able to analyze all expenditures. We are not able to provide reasonable assurance that expenditures of the CVB were reasonable and necessary, taken as a whole.

Background

Discover Palm Beach County, Inc., d/b/a Palm Beach County Convention and Visitors Bureau, was formed in 1983 as a nonprofit entity. The CVB operates under a contract with Palm Beach County to provide tourism marketing services and management of the Palm Beach County Convention Center (Convention Center). The CVB budget for fiscal year 2005-2006 was \$9,450,000, of which the total amount is from tourist development taxes, or "bed tax." The CVB budget for fiscal year 2006-2007 is \$9,640,000, of which the total amount is from bed taxes. Other funding sources and revenues designated by the CVB as "private funds" are not included in the budget presented to the County.

**ORGANIZATIONAL CHART
PALM BEACH COUNTY CONVENTION AND VISITORS BUREAU
FISCAL YEAR 2007**



REVISED 11/17/2007

FINDINGS & RECOMMENDATIONS

The Clerk & Comptroller's audit disclosed certain policies, procedures, and practices that could be improved. The audit was neither designed nor intended to be a detailed study of every relevant system, procedure or transaction. Accordingly, the findings and recommendations presented in this report may not be all-inclusive of areas where improvement may be needed.

1. Gross mismanagement allowed misappropriation of funds at the Convention and Visitors Bureau

The CVB Controller misappropriated funds in the amount of \$1,556,961, which is the amount known to date. The CVB's Controller has admitted to misappropriating funds. The misappropriations occurred during the period from June 4, 2003 to October 18, 2006. The misappropriations were effected by the Controller making checks payable to herself and forging official signatures. We identified a total of 222 checks made payable to the Controller (average of five checks per month), which included up to 14 checks written during the month of September 2004. The checks used for the misappropriation ranged from \$2,796 to \$14,605.50. Our primary role was to audit the appropriateness of accounting and management controls at the CVB. A separate forensic audit is currently being conducted by Cass, Levy & Leone, L. C., which may reveal additional misappropriations or other inappropriate activities.

The misappropriations went undetected for over three years as a result of gross mismanagement within the CVB. The amounts misappropriated did not involve a complex embezzlement scheme, which might be difficult to detect. In fact, the misappropriations were detected by the bank rather than any control or act of the management of the CVB. Had the Vice President of Finance & Administration (VPF&A) or the CEO exercised due care and reviewed as few as one or two bank statements and checks during the three-year period, the misappropriations could have been detected. As a part of our audit, we interviewed the Controller. She said the VPF&A "trusted me." An interview with the VPF&A confirmed this.

The misappropriations went undetected for over three years as a result of gross mismanagement within the CVB.

The lax controls over expenditures are part of a pattern of liberal spending in the CVB, with little management control and inadequate records. Examples of this pattern are noted in other findings.

RECOMMENDATION:

The CVB should:

- A. Cooperate with law enforcement to pursue prosecution of the Controller and recover as much of the misappropriated funds as possible from responsible parties as noted in this report.
- B. Implement all recommendations contained in this report.
- C. Prepare and file with the IRS, Form 1099 for the Controller for the amounts of the misappropriations for each year she embezzled funds.

2. Public funds have been co-mingled and converted into "private funds"

The CVB is principally funded by the tourist development tax; however, the CVB has created additional revenue sources considered by the CVB to be "private funds," which it maintains in its own accounts. These revenue sources include, but are not limited to:

"Private funds", generated largely from County-provided resources, have been used for some activities that do not appear reasonable or necessary, such as travel perks for the CEO, parties for CVB staff, etc.

- Membership fees
- Board fees
- Exhibition sharing fees
- Reservation system fees
- Network and system maintenance fees
- Promotional items reimbursement
- Interest revenues from sweep account

These revenue sources have been established as a direct result of tax-supported activities, including staff time, office equipment, and reimbursed funds from the County. However, instead of returning these funds to the County to offset the County's expenses, the CVB has maintained these fees in its own accounts and used the monies for activities that may not be reasonable, necessary, or allowable under County policies. The end result is that the CVB, a private corporation, has used County resources for its benefit. In essence, this circumvents County control over these activities and expenditures.

We noted the following specific concerns:

- A. "Private funds", generated largely from County-provided resources, have been used for some activities that do not appear reasonable or necessary, such as travel perks for the CEO, parties for CVB staff, etc. Adequate documentation was not available to justify these expenses as reasonable and necessary. We noted the following examples:

EXPENDITURES FOR GOLF, TICKETS, ETC.

Date	Vendor	Amount	Purpose
01/31/03	W.E. McLaughlin	\$795.00	Orange Bowl Committee
04/18/03	Dolphin Stadium (Pro Player)	\$5,694.00	Dolphins Season Tickets (4)
06/09/03	Orange Bowl Committee	\$915.00	Orange Bowl Tickets (8)
07/11/03	Westchester Golf & Country	\$300.00	Golf Tournament
09/26/03	PGA National Golf & Sports	\$100.00	Golf Locker
12/04/03	Miami Dolphins Ltd.	\$803.00	Dolphins Playoff Tickets (4)
03/10/04	Miami Dolphins Stadium (Pro Player)	\$5,670.00	Dolphins Season Tickets (4)
05/27/04	Orange Bowl Committee	\$1,795.00	Orange Bowl Tickets (8)
04/04/05	Chamber of Commerce of the Palm Beaches	\$600.00	Golf Tournament
04/14/05	Dolphins Stadium (Pro Player)	\$6,697.00	Dolphins Season Tickets (4)
05/13/05	PBC Hotel & Lodging Assoc.	\$600.00	Golf Tournament
06/06/05	Orange Bowl Committee	\$1,080.00	Orange Bowl Tickets (8)
08/23/05	W.E. McLaughlin	\$300.00	American Express Annual Fee
12/14/05	Gershwin Theater	\$253.00	Theater Tickets NY
04/06/06	Dolphins Stadium	\$10,151.00	Dolphins Season Tickets (4)
04/19/06	W.E. McLaughlin	\$1,637.96	Prize at WTM 5 nights PGA
05/03/06	PBC Hotel & Lodging Assoc.	\$600.00	Golf Tournament
06/07/06	Winston Trails CC & Golf	\$97.00	Golf Tournament

TRAVEL RELATED EXPENSES

Date	Vendor	Amount	Purpose
04/18/03	W.E. McLaughlin	\$4,143.93	Travel
11/11/04	W.E. McLaughlin	\$1,978.95	Airfare - Mark Foley
12/21/04	W.E. McLaughlin	\$1,673.12	Lodging UK
12/14/05	Gershwin Theater	\$253.00	Theater Tickets NY
04/19/06	W.E. McLaughlin	\$1,637.96	Prize at WTM 5 nights PGA w/travel
09/13/06	Christine Hamblin	\$109.16	Restaurant MA Trade Show

CHARITY GROUPS EXPENSES

Date	Charity Group	Amount	Purpose
02/21/03	LEAH	\$2,500.00	Gala Seat
12/21/04	Amara Shrine Chapter	\$6,499.98	Local Chapter
12/19/05	Boys & Girls Club	\$10,000.00	Local Club

OFFICE/STAFF EXPENSES

Date	Vendor	Amount	Purpose
05/24/04	Love's Florist	\$162.64	Flowers for Staff
12/21/04	W.E. McLaughlin	\$807.28	Restaurant FL
12/21/04	W.E. McLaughlin	\$490.20	Restaurant FL
04/14/05	Carmen Hamilton	\$90.00	Costco
04/14/05	Love's Florist	\$61.25	Flowers for Staff
04/19/05	Natures Bouquet	\$55.00	Flowers for Staff
04/27/05	Natures Bouquet	\$15.91	Flowers for Staff
05/13/05	Natures Bouquet	\$248.32	Flowers for Staff
05/31/05	Natures Bouquet	\$176.76	Flowers for Staff
07/28/05	Carmen Hamilton	\$39.26	Kitchen Supplies
12/28/05	That's Entertainment Inc.	\$400.00	Employee Holiday Party Entertainment
12/29/05	W.E. McLaughlin	\$1,428.00	Restaurant FL
01/19/06	Convention Center	\$2,340.00	Employee Holiday Party
02/06/06	Maloney & Porcelli	\$1,383.95	Restaurant NY Strategic Planning
02/15/06	Belden's Florist	\$133.13	Flowers for Staff
03/08/06	Carmen Hamilton	\$104.25	Kitchen Supplies & Birthday Cake
05/17/06	Belden's Florist	\$367.42	Flowers for Staff
07/07/06	Carmen Hamilton	\$88.56	Birthday Party
07/07/06	Carmen Hamilton	\$76.87	Kitchen Supplies
08/03/06	Magic Image	\$10.65	Gift for Staff

MISCELLANEOUS EXPENSES

Date	Vendor	Amount	Purpose
01/31/03	W.E. McLaughlin	\$492.40	Restaurant FL
03/26/03	Barnes Rugby Football Club	\$5,696.11	Rugby Team Sponsorship
07/21/03	W.E. McLaughlin	\$605.40	Restaurant FL
09/12/03	Enid Atwater	\$288.00	Luncheon - Mark Foley
11/14/03	W.E. McLaughlin	\$424.01	Restaurant FL
05/13/05	Barnes Rugby Football Club	\$1,500.00	Rugby Jerseys
07/07/05	Crowne Plaza Oceanfront	\$2,220.89	Catering
07/08/05	Mort Kaye	\$3,393.75	Photography
07/28/05	Governors Club of the Palm Beaches	\$512.82	Restaurant FL
08/23/05	W.E. McLaughlin	\$765.95	Restaurant FL
10/19/05	Women's Chamber of Commerce	\$1,000.00	Trump Special Event
12/29/05	W.E. McLaughlin	\$262.10	Restaurant FL Board Member Dinner
01/25/06	W.E. McLaughlin	\$384.04	Restaurant FL Board Member Dinner

Because the Controller was co-mingling private and public funds into one account, it is unclear whether public funds were used to pay for expenses that would not have been reimbursable under County policies.

Activities directly or indirectly funded with resources provided by the County should be subject to County scrutiny.

- B. The Board of County Commissioners (BCC) approved an amendment to the County's contract with the CVB to include a provision that allowed tourist development taxes to be converted into "private funds."

For example, the CVB purchases exhibition space at various trade shows, which is reimbursable by the County. The CVB shares this space with organizations (local hotels, resorts, etc.) and charges the organizations a price based on the trade show and value of the exhibition space.

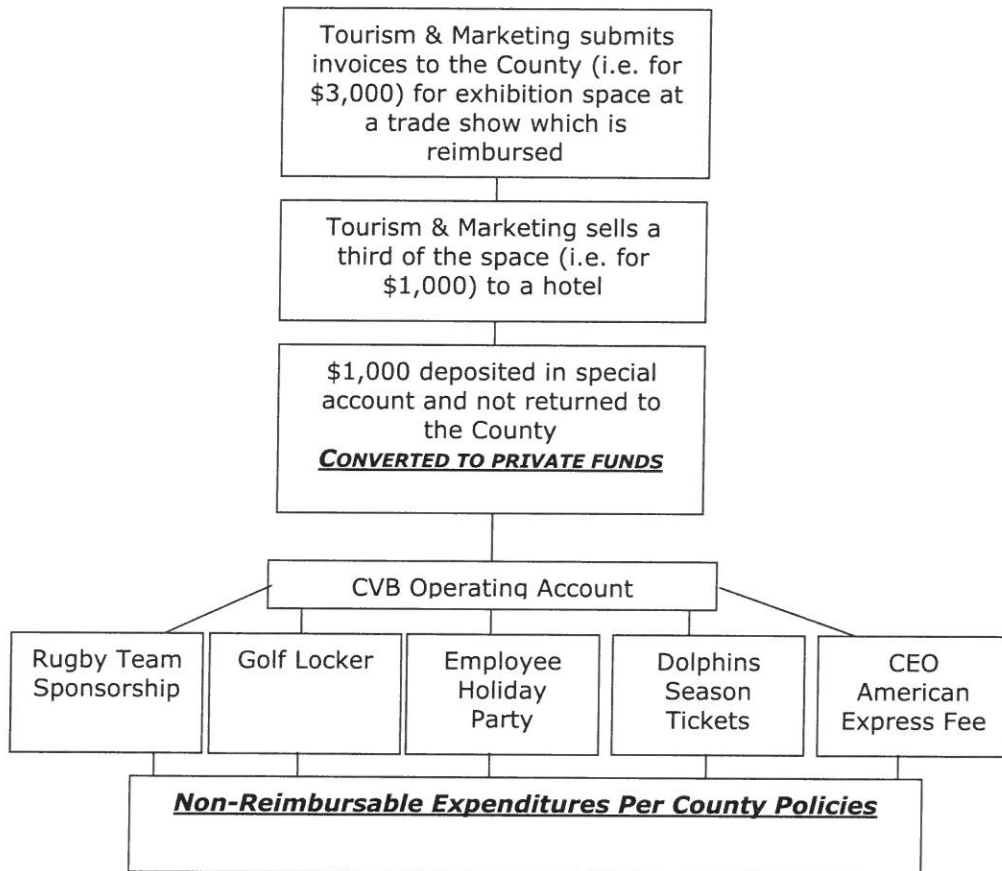
The BCC approved the contract on September 28, 1999. The amendment states:

"These monies will now be designated as private and will be used to pay for expenses incurred for the purpose of promoting Palm Beach County and some administrative expenses. They will not be remitted to the County as they have been in the past. These monies will be kept in a separate account with all sources and uses of funds accounted for."

Because of this contract amendment, the CVB has been allowed to charge for sharing this exhibition space and to convert those funds for private use. Historically, these funds were remitted to the County as revenue to the tourism promotion fund.

- C. The CVB maintains four separate local accounts. The revenues for each activity are to be maintained separately in each account as defined in the policies and procedures and the contract between the BCC and the CVB. Each individual account is to reimburse the operating account for expenses incurred for each area of operation within the CVB such as Memberships, Board Fees, Special Accounts, and Operating.

The following flow chart is an example of how public funds were converted to "private funds" by the CVB:



In essence, the CVB received funds from the County for an allowable activity. The CVB also received funds from private sources to pay again for the activity, and, rather than refund the money to the County, the CVB used the funds to pay expenses that would not be reimbursable under County policy.

The impact of the contract amendment was to allow for the conversion of public funds into "private funds" at the expense of taxpayers.

- D. The following internally generated fees were charged or earned by the CVB as a direct result of tax-supported activities, including staff time, office equipment, and reimbursed funds from the County.
- Network and system maintenance fees
 - Promotional items reimbursement
 - Interest revenues from the sweep account

Instead of returning these fees to the County to offset or supplement tax revenues, they were converted into "private funds" and maintained in CVB accounts.

Because the Controller was able to have control of all accounts and money going in and out of each account, and because management was not reviewing any detail of the various accounts, the Controller was able to funnel most CVB funds through the Operating Account while maintaining minimal balances in "private funds" accounts. This prevented a proper accounting of all financial activity, combined public funds with "private funds," and prevented the proper separation and use of taxpayer funds.

RECOMMENDATION:

The CVB should:

- A. Work with the BCC to rescind the contract amendment that allows the conversion of public funds to "private funds."
- B. Transmit all CVB revenue to the County as reimbursement of taxpayer funds.

3. *There are inadequate controls to monitor the use of the Convention and Visitors Bureau's "private funds"*

The contract between the BCC and the CVB regarding "private funds" specifies the CVB:

"...shall incur and pay only such expenses as lawful, ordinary and necessary administrative and operating expenses incurred in connection with the marketing and promotion of Palm Beach County tourism..."

The policies and procedures of the CVB state that "private funds" shall be spent consistent with the CVB/County contract.

CVB records reveal numerous instances of "private funds" being spent on various expenditures including benefits for the employees of the CVB, in potential violation of the CVB/County contract and the CVB's policies and procedures.

RECOMMENDATION:

The CVB should:

- A. Eliminate "private funds" and process all revenue and payments through the County.

4. *Lack of cooperation on the part of the external audit firm prevented a determination of the adequacy of its work*

The following concerns were noted regarding the CVB's commercial financial statement auditing firm:

- A. Several requests were made of the external audit firm to review their working papers, including its work product on the annual financial audits of the CVB. The external audit firm declined to provide any portion of its work papers unless the County signed a waiver that would prohibit the County from taking action in the event inadequate audit work was found. The waiver presented for signature stated:

"We understand that the purpose of your review is to assist you with your forensic audit of Discover Palm Beach County, Inc. For that purpose only, we will provide you documents that relate to that objective. These documents are being provided to you in the original form in which they were received to facilitate your investigation. All audit work has been expurgated from these documents.

Because your review of these documents is undertaken solely for the purpose described above, and will not entail a review of all our working papers, you agree that (a) the information obtained from the review will not be used by you for any other purpose, (b) you will not comment orally or in writing to anyone as a result of that review as to whether our audit was performed in accordance with auditing standards generally accepted in the United States of America, (c) you will not provide expert testimony or comment on issues relating to the quality of our audits, and (d) except as contemplated by auditing standards generally accepted in the United States of America, you will not use the documents and

working papers provided as evidential matter in rendering an opinion on the financial statements of Discover Palm Beach County, Inc.”

This waiver, if signed, would potentially prohibit the County from fulfilling its responsibilities in the event that inadequate audit work is found. If the firm was negligent in the performance of its audit, the firm could have liability regarding the misappropriation of funds. It appears the external audit firm failed to detect the misappropriations during the last three annual financial audits of the CVB. Although fraud detection is not the objective of the annual audit, the auditor does have certain due diligence responsibilities relating to material fraud. Additionally, the American Institute of Certified Public Accountants (AICPA) requires, under its Due Professional Care audit standard, that the audit firm perform minimal control procedures relating to internal controls.

- B. The CVB Board of Directors has used the same audit firm to audit the financial statements of the CVB for over a decade. Best practices suggest that the Board of Directors select, through a competitive process, a new audit firm to audit financial statements at least every five years. The use of a different firm can provide an additional independent analysis of internal controls, which may uncover weaknesses or problems not uncovered in previous audits. It also can provide a new perspective and a more accurate representation of the financial position of the entity being audited.

RECOMMENDATION:

The CVB should:

- A. Pursue the possibility of taking legal action against the accounting firm.
- B. Implement an auditor rotation policy whereby a mandatory rotation of auditors would occur at least every five years through a competitive selection process.
- C. Terminate the financial audit contract with the current external auditing firm and select a new auditing firm through a competitive process.

5. Issues relating to the Board of Directors should be addressed

A review of the structure and responsibilities of the CVB Board of Directors led to the following observations:

- A. The CVB Board of Directors did not maintain proper oversight of the operations of the CVB. As a Board, the members have a responsibility for oversight of the CVB. This oversight includes approving various actions of the CVB, ensuring adequate policies, ensuring adequate accountability of executive management, and monitoring financial issues.
- 1) The Board of Directors is required by the contract to approve the CVB's policies and procedures each year. However, we found no record of approval by the Board since September 1999.
 - 2) No documentation of communication between the Board and the external auditing firm was found regarding risks of the organization. The Board also does not have an audit committee, which would serve to communicate these risks and to monitor audit quality and results.
 - 3) No approved detailed travel policy placing specific restrictions on travel and procedures for determining when it is cost-justified was found. There was no evidence of Board approval of the CEO's travel.
 - 4) Numerous expenditures for entertainment were noted; however, no detailed Board policy requiring cost-justification and participant documentation was found. Lack of a specific policy could allow expenditures for personal use.
- B. The Board of Directors has not established term limits. The Board consists of leaders in the Palm Beach County tourism industry, appointed by various organizations as well as representatives of local businesses. Each member serves a two-year term on the Board of Directors. Most Board members are reappointed because of their position within the appointing organization or position within the tourism industry. Term limits would allow for participation by a broader spectrum of tourism representatives and business leaders and would reduce the possibility of any perceived or actual conflicts of interest.

Other recommendations regarding the Board are found in other areas of this report.

RECOMMENDATION:

The CVB Board should:

- A. Review and approve policies and procedures annually.
- B. Establish an audit committee comprised of several Board members and, perhaps, outside citizens, to oversee the audits. Oversight would include auditor selection, approval of audit scope, audit status reports, reporting of results, and follow up with management on recommendations.
- C. Develop a corporate travel policy that includes CEO travel criteria, requires cost justification for all travel, and mandates Board approval prior to CEO travel.
- D. Develop a corporate policy on entertainment, which requires Board approval prior to all significant entertainment expenditures.
- E. Enact term limits for all Board members.

6. *Convention and Visitors Bureau's conflict of interest policy is not sufficient*

- A. The CVB does not have a comprehensive conflict of interest policy. Several situations were noted that could be conflicts of interest, at least in appearance, if not in fact. These situations include:

- Members of the Board of Directors had spouses employed by the CVB.
- Elected officials had spouses working for the CVB.
- Board members have been treated to meals by the CVB CEO.
- Elected officials have been consultants for the CVB.
- A relative of the CEO provided goods and services to the CVB.

In order to have a successful operation and to gain and maintain the trust and confidence of the citizens and businesses of Palm Beach County, it is important that no conflict exist with officers, directors, agents or employees.

No records were found to indicate that these conflicts of interest were reviewed and addressed. In order to have a successful

operation and to gain and maintain the trust and confidence of the citizens and businesses of Palm Beach County, it is important that no conflict exist with officers, directors, agents or employees.

The County's contract with the CVB clearly states that:

"Conflict of Interest. Neither Discover Palm Beach County, nor its officers, directors, agents or employees shall acquire any interest, either directly or indirectly, which would conflict in any manner with the duties, obligations or the performance of services provided by this Agreement..."

RECOMMENDATION:

The CVB should:

- A. Develop, implement and distribute a comprehensive conflict of interest policy to include wording that no vendor or Board member may be related to any CVB employee. Require all officers, directors, agents, employees or vendors to sign a conflict of interest statement attesting that no conflict exists under the policy. All possible conflicts must be disclosed to the Board in writing.
- B. Adhere to and enforce the conflict of interest policy.

7. Convention and Visitors Bureau does not have adequate fidelity bond insurance coverage to protect the County

The impact of the loss could have been mitigated had the CVB determined the appropriate amount of insurance coverage based on an assessment of the CVB's level of risk.

Approximately \$1,556,961 was misappropriated over the last three fiscal years from the different CVB bank accounts. The impact of the loss could have been mitigated had the CVB determined the appropriate amount of insurance coverage based on an assessment of the CVB's level of risk. Instead, the CVB had a basic crime plus policy for only \$300,000 coverage.

Prudent business practice requires that a certain level of risk may be allowable; however, failure to determine that level of risk exposed the CVB to a minimum loss of over \$1.55 million and a current liability of over \$800,000. The premium for the \$300,000 policy was \$1,723 per year.

RECOMMENDATION:

The County should:

- A. Amend the CVB contract to include an appropriate level of fidelity bond coverage based on the CVB's level of risk. The CVB should work with the County to amend CVB's current contract to increase the fidelity bond coverage to a more appropriate amount. The required coverage should be analyzed in terms of potential loss to the CVB and the County.

8. Withholding taxes paid by the County to the Convention and Visitors Bureau were not paid to the IRS

Approximately \$750,000 is due the IRS for payroll taxes for periods between December 2005 and September 2006. Payroll taxes appear to be one of the sources for the Controller's misappropriation of funds. The County reimbursed the CVB for the payroll taxes, which were never remitted to the IRS.

The County has already paid the CVB for payroll taxes and should not pay them again. All County expenditures must serve a public purpose. The contract between the County and CVB only allows County-approved activities for reimbursement with public funds. Non-County approved activities must be paid from private sources.

It is critical that the CVB immediately negotiate the resolution of this matter with the IRS. This negotiation should not include any repayment of withholding taxes by the County.

Because of this debt, along with the misappropriation of funds, we question the viability of the CVB as a going concern.

It is critical that the CVB immediately negotiate the resolution of this matter with the IRS. This negotiation should not include any re-payment of withholding taxes by the County.

RECOMMENDATION:

The CVB should:

- A. Determine the total amount of back payroll taxes due and negotiate terms for their payment with the IRS.

- B. Assume full responsibility for the IRS payment. The CVB should not request reimbursement from the County.

9. *The Convention and Visitors Bureau Board of Directors' control of the Convention Center may create a conflict of interest*

Representatives of the tourism industry who are members of the CVB Board could be in competition with the Convention Center. CVB Board members have the ability to affect the business of the Convention Center and to otherwise oversee their operations by voting on rate changes, contracts, policies, procedures, staffing, etc.

The following potential conflicts were noted:

- The CVB Board Chairman's company has the contract to build the Convention Center hotel.
- A member of the Tourist Development Council (TDC) Board also is part of the company contracted to build the Convention Center hotel project.
- A large number of the Board members are in the lodging industry and in direct competition with the Convention Center for meetings, conferences, and food and beverage business.
- A Board member's spouse works for the Convention Center.
- A Board member's organization is late on paying a Convention Center invoice.
- A Board member's organization entered into a contract with the TDC for consulting services.

A large number of the Board members are in the lodging industry and in direct competition with the Convention Center for meetings, conferences, and food and beverage business.

RECOMMENDATION:

The CVB should:

- A. Rescind the Convention Center contract between the BCC and the CVB and use a competitive bidding process to select new management for the Convention Center facility. Alternatively, the County may consider assuming responsibility for the operations of the Convention Center.

10. County is advancing funds for payment in violation of the contract with the Convention and Visitors Bureau

The County is advancing funds for payment prior to the CVB expending the funds. Policies and procedures do not specify that documentation of payment of expenses be provided when seeking reimbursement from the County.

The contract between the CVB and the Board of County Commissioners specifies:

"Payments by the County shall be made to CVB in accordance with the fiscal procedures of the County as reimbursement for authorized expenditures or provision of goods or services, following CVB's determination that the goods and services have been properly provided, and upon submission of invoices by CVB to the Executive Director of the TDC or his designee, and a determination by the Executive Director of the TDC or his designee that the invoiced payments are authorized as defined above and that the goods or services covered by such invoice have been provided or performed in accordance with such authorization."

In addition, pursuant to Florida Statute 125.014(4)(e), the Tourist Development Council is charged with continuously reviewing expenditures of revenues and shall report unauthorized expenditures to the county governing board and the Department of Revenue.

The CVB is submitting the invoices to the TDC and the County prior to payment of the invoices actually being made. For example, plane tickets could be purchased months in advance and submitted for reimbursement without the actual travel occurring. The term "reimbursement" means to make repayment for the expense incurred. The County is actually making an advance payment to the CVB for expenses prior to the money being spent. By not ensuring the payment actually has been made, the County is paying the CVB for expenses that may or may not exist even though an invoice may appear to be valid.

RECOMMENDATION:

The CVB should:

- A. Provide documentation of the payment of expenses prior to seeking reimbursement.

11. Vice President of Finance & Administration failed to monitor financial activity

The misappropriation was discovered by a bank employee in late October 2006, and it was later determined that the misappropriation activities had been going on for over three years. Had the VPF&A properly managed and monitored the Controller's and the Bookkeeper's activities and responsibilities, the misappropriation could have been detected and/or prevented in a more timely manner.

...the misappropriation could have been detected and/or prevented in a more timely manner.

The position description for the CVB's VPF&A states:

"Essential duties and responsibilities include:

- *Establishes and monitors a system of internal controls to safeguard assets and maintain the integrity of Bureau operations and transactions.*
- *Supervises the maintenance of all financial records. Directs the periodic review of these records to ensure completeness.*
- *Reviews and approves disbursements; supervises accounts payable.*
- *Reviews and approves financial transactions.*
- *Reviews and monitors purchasing activities of department heads.*
- *Prepares reports for regulatory agencies and taxing authorities.*
- *Supervises the accounting and human resources functions.*
- *Responsibilities include interviewing, hiring, and training employees; planning, assigning, directing, and evaluating work; rewarding and disciplining employees; and addressing complaints and resolving problems."*

Additionally, job descriptions for other CVB positions state that the VPF&A is responsible for monitoring the functions of the Controller and the Bookkeeper to ensure that responsibilities are carried out in accordance with policies and procedures.

Duties at the CVB should be adequately segregated. The VPF&A's failure to monitor this aspect of internal controls allowed the Controller to have access and control over the bank accounts, checks, bank statements, and bank reconciliations.

The VPF&A resigned his position in November 2006. Until such time as a new VPF&A is hired, proper segregation of duties should be established, assigning another position that does not have access to funds.

RECOMMENDATION:

The VPF&A should:

- A. Monitor and enforce a system of internal controls to ensure the controls are operating effectively.
- B. Conduct regularly scheduled and unannounced financial reviews, to include bank reconciliations and bank account balances, to detect and prevent abnormalities.

12. Convention and Visitors Bureau lacks sufficient management over information technology activities

- A. The CVB's Controller stated in an interview that she gambled on the Internet using CVB funds during working hours while using CVB's computers. The CVB's computer policies and procedures were last updated in 1997, and the policies only relate to general oversight. Rapid changes in technology require that the CVB management have a vision for information technology (IT) needs. Current CVB IT policies and procedures include no policy that would have restricted the Controller from engaging in these activities.

Basic IT policies should provide guidelines and restrictions for computer usage, Internet usage, security, e-mail usage, and expectation of privacy policies.

The CVB's Controller ... gambled on the Internet using CVB funds during working hours while using CVB's computers.

- B. The CVB management did not renew a \$1,000 licensing fee for its Internet-filtering software. Internet filtering software allows the IT staff to monitor and prevent (filter-out) employees from going to inappropriate websites, such as gambling, pornography, terrorist sites, etc.

- C. The CVB has no approved off-site facility for back-up data storage. In an interview, an employee stated that he is responsible for taking CVB back-up data home weekly. In an emergency, such as a hurricane, the back-up data is given to multiple employees to take home. Without a secure off-site storage facility, there is a risk of data being lost or inappropriately used.
- D. The CVB's IT function is decentralized. The CVB's organizational chart includes several employees whose duties are related to IT, e.g., Senior Webmaster, Data Base and Application Support Manager, Manager of Network and Data Base Systems, etc., however these employees report to different divisions. There is no IT plan that outlines the needs and goals of the CVB.

RECOMMENDATION:

The CVB should:

- A. Update policies and procedures for computer usage, Internet usage, computer security, and e-mail use and eliminate the expectation of privacy for employees while using CVB computers.
- B. Install and maintain Internet-filtering software.
- C. Identify and use a secure, approved, off-site data storage facility for backup tape storage.
- D. Merge all IT functions, operations, and systems under one division.
- E. Develop and implement an IT strategic plan.

13. Segregation of duties is inadequate

- A. In the absence of management oversight, the Controller deposited checks into various bank accounts, prepared checks for payment, received bank statements, and performed bank reconciliations, allowing for the misappropriation of funds to remain undetected.

The position descriptions for the Controller and Bookkeeper provide for the proper segregation of duties regarding the deposit of revenue and the disbursement of funds. However, the activities actually performed by the Controller and Bookkeeper were contrary to the position descriptions.

Under proper segregation of duties, bank reconciliations should not be prepared by the same person that prepares the checks for payment or receives funds for deposit.

- B. The preparer of expense reimbursement packets also picks up and deposits the reimbursement check.

This lack of segregation of duties could allow the preparer to potentially manufacture documents for reimbursement and keep and/or transfer the funds for non-CVB purposes.

RECOMMENDATION:

The VPF&A should:

- A. Conduct regular assessments of the internal control systems to verify the controls are functioning as outlined in the policies and procedures and position descriptions.
- B. Segregate the duties of preparing expense reimbursement packets and picking up and depositing checks.

14. Convention and Visitors Bureau's record management system does not provide adequate tracking of expenditures

- A. Review of the CVB travel and/or expense reimbursement requests was an excessively cumbersome process due to the CVB's record management system's inability to access specific expenditures. The system is set up for the reimbursement of expense packets that are submitted to the County and not for the tracking of individual or event expenses.

To adequately manage financial resources and to ensure financial data is available to exercise management control, the accounting and filing system should facilitate locating individual or event expenditures, payments to each vendor, payment details and payments by category.

- B. It is a common practice of the CVB staff to split a single travel expense reimbursement request between several expense reimbursement packets. The splitting of reimbursement requests is inefficient and causes confusion when trying to determine the full expense.

RECOMMENDATION:

The CVB should:

- A. Obtain a record management system that identifies, tracks, analyzes, and locates specific expenditure information. The system should also have detailed reporting capabilities, including reports that cross-reference expense reimbursement packets by individual vendors, type of expenditure, etc.
- B. Create a policy and procedure for the processing of reimbursement requests that requires, at minimum, the following: complete and legible expense reimbursement request forms, detailed information for each line item, breakdowns, receipts for all expenses, and timely submission.

15. Policies and procedures are inadequate to ensure proper internal controls

The policies and procedures for CVB's Finance division are insufficient to provide for proper internal control. The lack of adequate policies and procedures allowed the misappropriation of funds to occur without detection. The internal control system failed to detect significant misappropriations that were occurring on a monthly basis since June 2003.

CVB policies and procedures have not been updated since September 1999. The contract between the Palm Beach County Board of County Commissioners and the CVB requires the policies and procedures to be updated annually and be reviewed and approved by the TDC. This was not done.

While some policies and procedures do exist, they were never inclusive of all responsibilities and functions of the accounting function within the CVB. The responsibilities for each position were outlined in the position description, but there are no formal procedures documented in the policies and procedures that provided any guidance on performing a particular duty within the accounting function. The policies and procedures that are included are not followed nor referred to by the staff on a regular basis.

Accounting procedures and systems have changed significantly since the Policy and Procedures Manual was last updated. An accounting system was purchased and implemented by the VPF&A, but nothing has been added to the Policy and Procedure Manual regarding any changes resulting from the implementation of the new accounting software package. The policies and procedures regarding the new automated accounting system should include access rights, review policies, testing procedures, automated procedures, reporting requirements, and the Finance/Accounting Check List. The policies and procedures regarding the accounting function should include initiation and approval of transactions, making deposits, opening the mail, preparing bank reconciliations, completing the proper payroll tax forms, payroll, and monitoring of all activity.

The Policy and Procedures Manual does not provide the minimum definition of internal controls necessary to ensure there is a proper segregation of duties and that all accounting functions are performed properly. The Policy and Procedures Manual should include all internal controls related to the processing of transactions within the accounting system. The policies and procedures were not written in a manner that would allow any employee to reference them for guidance regarding any procedures.

RECOMMENDATION:

The CVB should:

- A. Adhere to its contractual obligations and develop proper policies and procedures for each function within accounting as well as adequate segregation of duties.
- B. Ensure the Board of Directors and Tourist Development Council annually review and approve policies and procedures. Ensure that all internal controls are in place and functioning in accordance with the policies and procedures.

16. The Convention and Visitors Bureau's Membership Program provides special benefits

The purpose of the CVB is to promote Palm Beach County as a tourist destination. A County ordinance was created to assess a tourist development tax on tourists who spend the night at a lodging destination in Palm Beach County. The tourist development tax is commonly referred to as the "bed tax."

The CVB annually produces promotional activities including various publications and the CVB Web site.

The CVB has established a Membership Program that provides local businesses with membership in the CVB for a fee. These fees are treated by the CVB as "private funds."

Membership fees established by the CVB are:

Membership	Fee
Corporate	\$1,000
Business	\$500
Associate	\$250

Benefits of being a member of the CVB include hyper linking to the CVB Web site; referrals for client-requested services from groups booking meeting space; leads from groups booking the convention center; travel agent and tour operator leads; description listing in CVB collateral materials; and, opportunities to participate in trade shows, sales missions and press trips. Any businesses that are not members are not guaranteed to be mentioned in any publication or on the Web site unless they are prominent enough to be a tourist draw without any additional promotion. Some non-members are listed only by name and address whereas members receive additional descriptions of their business, including Web site addresses.

The bed tax that funds the CVB is collected on every overnight stay in Palm Beach County. The intent of the bed tax is to promote Palm Beach County as a destination. While the fee to become a member of the CVB provides greater visibility, the Membership Program provides a greater benefit to members at the cost of non-members. For non-members that may not be able to afford the membership fee, they may only be mentioned in CVB publications and the CVB Web site by chance and are not afforded the same benefits of being a Palm Beach County tourism business.

RECOMMENDATION:

The CVB should:

- A. Eliminate the Membership Program and promote all Palm Beach County tourist businesses equally.

17. The CEO traveled extensively without adequate documentation of reasonableness and necessity, and in violation of County policies

A. The CVB’s CEO had a history of extensive travel. It was not practical to determine the travel history beyond two years due to inadequate records. We identified the following examples of CEO travel:

Start	Finish	Location
02/02/05	02/04/05	New York
03/03/05	03/05/05	New York
03/10/05	03/20/05	Berlin
03/20/05	03/21/05	New York
04/20/05	04/21/05	New York
05/04/05	05/06/05	New York
05/16/05	05/17/05	Atlanta
06/20/05	06/22/05	Philadelphia
06/29/05	07/01/05	Dallas, Texas
08/02/05	08/06/05	San Diego
08/28/05	08/31/05	Toronto
09/14/05	09/16/05	New York
09/25/05	09/28/05	Denmark
09/30/05	10/08/05	Dublin, Ireland
10/01/05	10/02/05	London
11/03/05	11/04/05	New York
11/11/05	11/17/05	London
12/06/05	12/09/05	Las Vegas
01/30/06	02/01/06	New York
02/22/06	02/24/06	New York
03/06/06	03/13/06	Berlin
04/25/06	04/29/06	Argentina
05/15/06	05/18/06	New York
06/21/06	06/24/06	London
07/15/06	07/19/06	Canada
08/21/06	08/23/06	Boston
09/05/06	09/08/06	New York
09/25/06	09/28/06	Chicago
10/15/06	10/17/06	New York
11/01/06	11/11/06	London and Dublin

*This is not an all-inclusive listing of the CEO/President Travel for this period. Dates are based on the CEO’s travel records.

B. The CEO also traveled first class on a number of occasions.

Date	Vendor	Amount	Purpose	Destination
01/20/05	Delta	\$2,590.45	First Class/Business Travel	London
09/30/05	Delta	\$1,799.65	First Class/Business Travel	London
11/10/05	Delta	\$2,726.01	First Class/Business Travel	London
04/25/06	Delta	\$1,928.00	First Class/Business Travel	Buenos Aires
07/15/06	Delta	\$1,035.42	First Class Travel	Toronto
11/01/06	Delta	\$2,834.24	First Class/Business Travel	London

Historically, the CVB has invited an important dignitary to attend the annual World Travel Market in London, and paid the full cost of the trip for the dignitary. Recent dignitaries included U.S. Rep. Mark Foley (2005) and former West Palm Beach City Commissioner Ray Liberti (2004). The 2006 dignitary was the Palm Beach County Administrator. The expense report for the CEO’s recent trip to England and Ireland for the World Travel Market included two first class tickets, one for himself and one for the County Administrator. The County’s travel policy prohibits reimbursement for first class tickets. All air travel is to be coach class.

On November 27, 2006, the TDC inquired as to the cost of the County Administrator’s first class ticket in order to reimburse the CVB for the ticket. Furthermore, it was noted during our review that the CEO also had purchased a first class ticket on his CVB corporate credit card for the County Administrator’s spouse. The CVB policy is that “no personal charges” are allowed on CVB corporate credit cards. Therefore, the CEO’s purchase of the County Administrator’s spouse’s ticket is a violation of County policy. It is our understanding the spouse’s ticket may have later been reimbursed.

C. The CEO also had significant expenditures for meals and entertainment, some within the Palm Beach area.

Date	Restaurant	Amount	Purpose (Number of people attending)	Average cost per Person
04/07/05	Morton’s	\$243.61	Meal/Entertainment (3)	\$81.20
08/11/05	Morton’s	\$348.40	Meal/Entertainment (3)	\$116.13
09/04/05	Redfield’s Lounge	\$121.32	Meal/Entertainment (2)	\$60.66
09/25/05	Galioden	\$125.59	Meal/Entertainment (2)	\$62.80
10/04/05	Brinkley’s	\$122.65	Meal/Entertainment (2)	\$61.33
10/18/05	Palm Beach Golf Club	\$127.77	Meal/Entertainment (2)	\$63.89
10/20/05	Gatsby’s	\$132.91	Meal/Entertainment (2)	\$66.46
11/04/05	Pastis	\$77.28	Meal/Entertainment (2)	\$38.64
12/05/05	City Cellar	\$262.10	Meal/Entertainment (2)	\$131.00
02/06/06	Maloney & Porcelli	\$1,383.95	Meal/Entertainment (6)	\$230.66

RECOMMENDATION:

The CVB Board should:

- A. Develop a travel and entertainment cost-benefit analysis as part of the annual marketing plan.
- B. Approve all of the CEO's travel in advance.
- C. Review all CEO expenditures to ensure all expenditures are reasonable, necessary and in compliance with County policy.

18. The CEO's full compensation package is not approved by the County

The CEO receives salary and benefits that are budgeted, approved and reimbursed by the County. In addition, the CEO receives monies from CVB's "private funds" that supplement the CEO's salary and benefits. These include, salary, bonuses, auto allowance, and additional benefits such as meals and entertainment, as noted below.

Annual Compensation	Oct.1, 2004	Oct.1, 2005	Oct.1, 2006
Salary from Tourist Development Taxes (County)	\$145,355	\$152,622	\$160,253
Salary from CVB Funds	\$4,075	\$4,278	\$4,492
Total Salary	\$149,430	\$156,900	\$164,745
Bonus From CVB Funds	\$12,454	\$13,800	\$-0-
Auto Allowance from Tourist Development Taxes (County)	\$4,800	\$4,800	\$4,800
Auto Allowance from CVB Funds	\$1,200	\$1,200	\$1,200
10% Contribution to Pension Plans	\$14,943	\$15,690	\$16,474
*Insurance Premiums - CEO	\$6,624	\$6,624	\$6,624
*Insurance Premiums - CEO's spouse	\$8,928	\$8,928	\$8,928
Total Salary and Benefits	\$198,379	\$207,942	\$202,771

*Shown at current rate for all years.

While the CVB currently pays the entire health insurance premium for all employees, it does not normally pay the premium for the employee's spouse. However, the CVB paid the \$8,928 annual premium for the CEO's spouse.

Although the CVB is a private entity, it is principally funded by public tax dollars. The Board's use of "private funds" to increase County-approved compensation and benefits results in unapproved expenditures of County dollars. "Private funds" are generated as a result of the County's funding of the infrastructure and operations of the CVB. Therefore, any revenue generated by the activities of the CVB should be remitted to the County.

RECOMMENDATION:

The CVB should:

- A. Compensate the CEO in compliance with the County's approved compensation package.
- B. Remit to the County any revenue generated by the activities of the CVB.

19. Sweep account revenues are not remitted to the County

The CVB's operating account, reimbursed by the county with public funds, is used to pay daily expenses of the CVB. At the end of each day, the closing balance in the operating account is invested by the CVB into a "sweep account." A sweep account is an operating account that is zeroed out each evening and transferred to an investment account. The funds are transferred back to the CVB the next business day along with revenue generated from interest on the investments overnight.

The CVB considers revenue from the sweep account to be "private funds." Since the investment income is earned largely from the funds on hand as a result of advance payment by the County, the revenue should be considered public funds.

RECOMMENDATION:

The CVB should:

- A. Remit all sweep account interest revenue to the County to offset County expenses

20. Convention and Visitors Bureau manages the computer network systems for the Tourist Development Council (TDC) and other organizations under the TDC

The CVB manages the computer network systems for the Tourist Development Council (TDC), the Cultural Council and Film and Television Commission.

- A. The organizations under the TDC, including the CVB, are separate nonprofit organizations. This gives the CVB control of the computer network systems of these organizations, especially the TDC, which has oversight of the CVB. The CVB should not manage the computer network systems for the TDC and any other organizations under the TDC.

- B. The CVB charges \$1,500 per computer for approximately 20 computers for revenue of \$30,000 per year. The staff and resources used to maintain the computer network systems are paid with public funds from tourist development taxes through normal payroll expenses. The revenue is deposited into the CVB's Special Account to cover expenses not reimbursed with public funds.

This practice is another method the CVB uses to obtain private revenues from public resources.

RECOMMENDATION:

The CVB should:

- A. Discontinue managing computer operations of the TDC and other organizations.

21. Online reservation system has not produced sufficient revenue to cover costs

The CVB has paid over \$140,000 to a software vendor and pays \$5,800 per month for service and maintenance for an online reservation system on the CVB Web site. The system allows users to make reservations for local hotels, car rentals and airline tickets.

In the CVB's 2004-2005 marketing plan, the goal of the online reservation system was to generate 11,947 bookings for the fiscal year, producing 47,788 room nights and \$143,364 in transaction revenues for the CVB to offset the cost of system expenses.

In the CVB's 2005-2006 marketing plan, the goal of the online reservation system was to generate 22,728 bookings for the fiscal year, producing 68,184 room nights and \$295,464 in transaction revenues for the CVB to offset the cost of system expenses.

The reservation system did not go online until February 23, 2006. Since that time, it has produced 36 bookings, 127 room nights, and \$468 in transaction revenues. This reservation system competes with nationally recognized reservation systems and local providers (hotels, rental companies, and airlines). This reservation system has not produced sufficient bookings to recover the \$140,000 expense on the system software. In addition, it has not produced sufficient bookings to recover the monthly maintenance and service fees charged by the vendor.

On December 1, 2006, the CVB Executive Committee voted to discontinue the online reservation system.

RECOMMENDATION:

The CVB should:

- A. Eliminate the online reservation system.
- B. Develop a detailed project planning methodology to ensure future projects are better planned and implemented. The methodology must include cost-benefit analysis.

22. The Convention and Visitors Bureau has used outside legal counsel to perform administrative tasks

The CVB routinely spends an average of \$8,300 per month on legal expenses. From November 2001 to October 2006, the CVB has been billed approximately \$490,000 for legal fees at \$195 per hour. The same legal firm has been used exclusively for over ten years.

A review of some of the services billed by the firm appear to be administrative in nature, including compliance issues and Human Resources requirements. Normally, outside counsel would be used for unique circumstances or new areas where legality was an issue, not for routine administrative matters.

The following is a sample of administrative matters handled by the legal firm:*

- Providencia Award re-allocation of receipts
- Revise Personal Performance Objectives (staff)
- Review auditor's questionnaire
- Prepare letter to auditor's request for information
- Meeting Groups & Meetings Incentive Plan
- Review procedures for County approval of manual
- Prepare Board agendas
- Review bank signature cards
- Prepare flow charts
- Memo on financial accounts
- Change orders memo for software changes
- Prepared draft minutes of Executive Committee
- Revise performance standards
- PowerPoint presentations
- Methodology review of salary survey

*This is not an all-inclusive listing of the legal services provided for this period.

RECOMMENDATION:

The CVB should:

- A. Re-evaluate the organization's policy for referral of matters to outside counsel.
- B. Train staff to handle administrative functions previously handled by outside counsel.

23. *Security of the automated accounting system's test database is insufficient*

The lack of security for the accounting system ... provided a means for the Controller to write and print checks to herself that did not get posted to the General Ledger.

The lack of security for the accounting system's test environment provided a means for the Controller to write and print checks to herself that did not get posted to the General Ledger.

The test account database is a test/practice, second set of books to the actual books of the CVB. The test account's purpose is to provide a method for the staff to practice and test the accounting software package. The test account for the accounting system was not secured and purged after each test and/or practice session. Access was not limited or monitored. In addition, the Controller had access to the accounting system from home.

RECOMMENDATION:

The CVB should:

- A. Require that IT be informed that the test account is being used. IT should review and then purge the test database after each test and/or practice session.
- B. Monitor and review the history of the test account to ensure there is no unauthorized activity in the test account.
- C. Designate a non-finance administrative staff member with read-only rights to periodically test the automated accounting system for unusual activity.

24. *Insufficient policies related to computer access rights and tracking compromised the automated accounting system*

For proper system security, access rights are limited by job responsibilities as defined in the position descriptions and policies and procedures. Adequate internal controls require a policy where access rights are also based on a proper segregation of duties.

The following concerns were noted in the review of the computerized accounting system controls:

- A. The VPF&A had master access to the automated accounting system and was the only person designated to grant access rights to other employees. The VPF&A gave the Controller full access and change rights to the accounting system. Without proper monitoring and oversight, the Controller allowed the Bookkeeper to use her User ID and password to perform work within the system rather than have the Bookkeeper's access rights changed.
- B. The accounting system has a tracking feature that was not enabled. This tracking system is designed to track system access and activity. The Controller's system activities from her home or office could not be tracked.

The Vice President of Finance & Administration gave the Controller full access and change rights to the accounting system.

RECOMMENDATION:

The CVB should:

- A. Activate the tracking feature within the automated accounting system and limit access and change rights.
- B. Require all requests for access and change rights be submitted in writing, be reviewed by IT and authorized by management.
- C. Monitor access and change rights.

25. Policies on password security are inadequate

- A. The CVB does not have a policy on password security. The Bookkeeper stated she used the Controller's User ID and password to process payroll for a period of time. In addition, the Controller allowed the Bookkeeper to use her User ID and password to perform work within the accounting system. A standard password security policy would require employees to keep their passwords confidential.

To maintain proper security, it is essential that the practice of sharing User ID's and passwords be strictly prohibited.

- B. The CVB does not have a policy regarding changing passwords on a regular basis, which would help to prevent unauthorized use of passwords.

RECOMMENDATION:

The CVB should:

- A. Establish a policy that all passwords are to be kept confidential.
- B. Establish a policy that all passwords are to be changed on a regular basis.

26. Controls over voided checks are inadequate

No controls exist within the accounting system to track voided checks. The accounting system allows the user to change the number of the next check.

RECOMMENDATION:

The CVB should:

- A. Implement security controls over voided checks.

27. Controls over check security are inadequate

- A. Proper security measures were not in place for the safekeeping of blank checks. The Bookkeeper was responsible for keeping the checks locked in a drawer in her desk. After the termination of the Controller's employment, it was discovered that the Controller had in her desk a duplicate of the Bookkeeper's key.

- B. The Controller was able to order multiple sets of checks out of sequence and have those checks mailed to her home, although her home address was not the official address of the CVB. The checks she ordered had check numbers that were duplicates of checks that had already been purchased by the CVB and that were kept in the CVB office. The checks were ordered from a check printing company that charges \$1.95 for each order of checks for fraud defense. According to the description on the check printing company's Web site, the fraud defense features are represented to include:

The Controller was able to order multiple sets of checks out of sequence and have those checks mailed to her home....

- "Fraud defense by (Name Deleted) is a proprietary fraud protection service designed to protect small business customers against check order fraud and reduce the risk of identity theft. We automatically screen your business check orders to help make sure someone else isn't using your business identity to their advantage. This exclusive service is only \$1.95 automatically added to each business check order. **No other check supplier offers you this level of protection or peace of mind.**
- **Order Screening** -- New check orders and reorders are screened automatically. Our proprietary software program evaluates the **account information** including routing/transit number and account number, **order behavior** and **contact information** against a comprehensive matrix of known fraud characteristics and indicators. Orders are also run against an **intelligence database** of fraudulent account information.
- **Phone Number Screening** -- Reorders called in from questionable locations are flagged and screened to eliminate risks to you.
- **Fraud Expert Evaluation** -- If we suspect an order, our Fraud Defense team steps in. These highly trained specialists delve into each questionable order using a variety of the latest fraud detection techniques. If we believe that the order is fraudulent, we will call the financial institution and inform them of the situation."

The company also includes a disclaimer as follows:

Does Fraud Defense guarantee protection against fraud?

While Fraud Defense reduces incidences of fraud, (Name Deleted) does not guarantee that fraud will not occur. (Name Deleted) disclaims all liability and losses arising from any fraud incidents. We urge you to monitor your accounts carefully and to follow safeguards necessary to protect your personal information.

The fraud defense did not protect the CVB from fraud. The following are customary controls for the security of blank checks:

- Only authorized personnel should have access to the checks
- Ordering of checks should be limited to authorized personnel
- Checks should be kept in a safe, with access to the safe being tightly monitored
- Access to the safe should require two keys
- Logs should be maintained with the checks and signed by both key holders when checks are accessed
- The log should identify the check numbers removed from stock
- The log should be updated when checks are ordered and added to the stock

RECOMMENDATION:

The CVB should:

- A. Implement controls over the ordering of checks and not rely on assurances made by check companies.
- B. Establish procedures for the handling and safekeeping of checks.
- C. Determine whether the CVB has a potential legal claim against the check-printing company.
- D. Ensure checks are secure and that only authorized personnel have access to the checks.
- E. Keep checks in a safe and tightly monitor access to the safe. The safe should require two non-duplicatable keys for access.
- F. Maintain a check log to be signed by both key holders when checks are accessed and identify the check numbers removed from stock.
- G. Update the log when checks are ordered and added to the stock.

28. Financial activity is not reported to division directors

The CVB Finance division does not create or distribute financial reports regarding activities of the various divisions to division directors or vice presidents. The misappropriation of funds may have been detected if a reporting mechanism had been in place. As an example, for memberships, the Membership Director prepared a daily deposit slip containing any funds received regarding the Membership Program. The Membership Director never received a report of the money transferred out of the Membership account and did not review the Membership bank statements.

Monthly reporting of expenses and revenues serves as an internal control to help ensure that financial transactions are properly performed.

RECOMMENDATION:

The CVB should

- A. Create and distribute monthly financial activity reports for each of the division directors and vice presidents.

29. Controls over use of corporate credit cards are inadequate

Some CVB employees are issued corporate credit cards to charge CVB-related expenses. Employees are required to sign an "acknowledgement form" that indicates their agreement to the credit card policy. They also agree to indemnify the CVB and pay all personal charges.

- A. The acknowledgement form is inadequate. For example, a CVB employee, incurred \$6,000 in personal charges on the CVB corporate credit card. The CVB consulted with a CPA firm and utilized legal services to provide additional assistance in recovering the \$6,000 after the employee was terminated. Due to the employee's non-payment and subsequent Chapter 7 bankruptcy filing, the CVB paid the \$6,000 to the credit card company as well as the costs of the CPA firm and legal fees. Since this incident, the CVB has instituted a verbal policy on non-personal use of the corporate credit card.

- B. It is a CVB practice to have corporate credit card statements mailed directly to the employee's home. Prior to payment of the bill, the employee receives reimbursement from the CVB for CVB-related activities on the bill. The employee is then responsible for full and timely payment of the bill.

The use of corporate credit cards is subject to abuse if strong internal controls are not present. To ensure the CVB does not incur obligations for unnecessary expenditures, controls over credit card usage should be strengthened immediately.

RECOMMENDATION:

The CVB should:

- A. Require credit card bills be sent to the CVB's Accounting Department for direct payment rather than seeking reimbursement from CVB employees.
- B. Obtain an immediate account balance upon termination of an employee by accessing the employee's corporate credit card account and reviewing outstanding charges. Any personal charges should be deducted from the employee's final payroll check.
- C. Update the credit card acknowledgement form to include a "no personal use" provision. The policies and procedures should also be updated to reflect this.

30. Controls over mail opening and processing are inadequate

The Controller had all Finance Department mail sent directly to her, including the bank statements.

The CVB has no formal policy or procedure regarding the opening of mail. Such policies would address opening the mail, preparing a mail log, distributing the mail to appropriate departments and forwarding checks to Finance for deposit. As a result, funds received through the mail could be diverted without timely detection.

- A. Mail is delivered directly to each department and there is no mail log to identify the sender or recipient. Checks received by each department are documented in the department and then forwarded to Finance for deposit. Finance endorses the checks, prepares a deposit slip, and sends the deposit receipt back to the receiving department.

There is no tracking or monitoring to ensure that all checks received at the CVB, regardless of the department, are forwarded to Finance and deposited into the correct account.

- B. The Controller had all Finance Department mail sent directly to her, including the bank statements. The Controller took over the responsibility of making bank deposits in place of the Bookkeeper. According to the CVB position descriptions, it was the responsibility of the Bookkeeper to prepare and make all banking transactions. This was a violation of internal controls, which was not addressed by management.

As a result of this violation, the Controller was able to default on payroll taxes, default in contributing to the pension funds, transfer funds between accounts, receive bank statements and copies of checks made payable to her, all without detection. The CVB should immediately implement a mail- and check-handling procedure

RECOMMENDATION:

The CVB should:

- A. Establish a policy that requires mail be opened by a designated person having no access to bank accounts or financial records.
- B. Generate a log entry for each check received in the mail.
- C. Establish a policy requiring daily reconciliation of the mail log to the daily deposit slip by an employee with no access to cash or checks.

31. Procurement procedures are not specific

The contract between the CVB and the County contains guidelines that prescribe the bid requirements to be used in the procurement process. The contract does not provide sufficient detail regarding use of Requests for Proposal (RFP's), for example, when to use an RFP, how and when to advertise, evaluation of bids, and circumstances that would warrant the purchase of sole source items or services.

To prevent the appearance of favoritism or preferential treatment in the procurement process, it is essential that specific procurement policies be established and followed.

RECOMMENDATION:

The CVB should:

- A. Develop written purchasing procedures detailing the use of comprehensive RFP's and sole source purchasing.

32. There is no centralized travel booking

Each employee of the CVB is responsible for making his or her own travel arrangements. This practice does not ensure travel is accomplished through the most economical means and increases the risk of abuse. For example, under the current system, an employee may make airline or hotel reservations based on personal preference rather than the most economical choice. Additionally, there are no controls in place to notify the County if an advance payment has been made for a trip that is subsequently cancelled.

A centralized booking system for the CVB would ensure adequate oversight of travel arrangements. Centralized booking should be required to book travel in the most economical means and manner, subject to minimum standards. Centralized booking procedures should include refunds to the County in the event travel plans are canceled.

Centralized booking would eliminate the need for individual employees to make their own travel arrangements or incur individual travel expenses. It would also centralize record keeping for travel expenses.

RECOMMENDATION:

The CVB should:

- A. Establish a centralized travel-booking program to make all arrangements for CVB employees who are authorized to travel.

33. There is no centralized invoicing

There is no uniform process for invoicing or systems of control for remittance of payment throughout the CVB. Invoices are prepared by each individual department.

The Finance division should initiate all invoices and receive all remitted payments. A weekly report of invoices paid and payments received should be sent to each department. This would ensure that all checks are secured upon arrival and that all departments are kept up to date on invoices that have been paid or remain outstanding.

RECOMMENDATION:

The CVB should:

- A. Develop a centralized invoicing function.
- B. Develop an invoice and payment remittance tracking system.
- C. Develop policies and procedures on invoicing and remittance of payments.

34. There is no centralized purchasing

Centralized purchasing should be required to purchase items in the most economical means and manner, subject to minimum standards. Currently, each division is responsible for their own purchasing. This practice does not ensure goods and services are obtained through the most economical means and could increase the risk of abuse. For example, under the current system, an employee may place orders based on preferences for certain brands of office supplies or equipment that may be more expensive than others.

Additionally, since payments for purchases are sometimes made by the County in advance, if a purchase is canceled or returned, the County may not receive reimbursement for goods and services not received.

RECOMMENDATION:

The CVB should:

- A. Establish a centralized purchasing system.

CONCLUSION

There has been a complete breakdown of internal controls and lack of management oversight within the financial operations of the CVB. This created an opportunity for the Controller to assume some of the responsibilities of the Bookkeeper to prepare checks and make deposits and to have access and control over bank accounts, checks, bank statements and bank reconciliations. As a result, over the last three years, the Controller was able to misappropriate funds from the CVB in excess of \$1.55 million.

...the viability of the CVB to operate as a going concern is questionable due to the significant losses it has sustained.

The sources of the misappropriated funds include:

- \$750,000 in payroll taxes (resulting in additional fines, penalties, and interest levied by the IRS)
- \$35,000 in pension funds for the employees
- Liquidation of "private funds" generated by the CVB, which include membership fees, Board fees and special activities

The CVB is principally funded by tourist development tax dollars ("bed tax"). These public funds have been co-mingled with "private funds" and public-funded resources have been used to generate "private funds" that are used for activities that may not be reasonable, necessary or allowable under County policies.

Although "private funds" are allowed by the CVB contract with the County, control is not exercised over the use of these funds and the benefit to taxpayers is questionable. The CVB's efforts to generate private funds in order to support an atmosphere of liberal spending are inappropriate.

The total loss to County taxpayers is not yet known. A forensic audit of the CVB is currently ongoing. However, the viability of the CVB to operate as a going concern is questionable due to the significant losses it has sustained.

The Controller was terminated on October 23, 2006, is under criminal investigation and has not been charged to date. The President/CEO and Vice President of Finance & Administration have resigned.



Fighting “Small Town” Corruption

How to Obtain Accountability, Oversight, and Transparency



Author:

This toolkit was prepared by the Center for the Advancement of Public Integrity (CAPI) at Columbia Law School. CAPI would like to thank Columbia Law School J.D. Candidate Shyam Shanker for his assistance in researching and drafting this publication, Rancho Palos Verdes City Manager Douglas Willmore and Southgate City Manager Mike Flad for sharing their expertise, and former Executive Director and Counsel of the New York City Conflicts of Interest Board Mark Davies for the use of his model ethics code.

What is CAPI?

CAPI is a nonprofit resource center dedicated to improving the capacity of public offices, practitioners, policymakers, and engaged citizens to deter and combat corruption. Established as partnership between the New York City Department of Investigation and Columbia Law School in 2013, CAPI is unique in its city-level focus and emphasis on *practical* lessons and tools.

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Fighting “Small Town” Corruption

How to Obtain Accountability, Oversight, and Transparency

Small municipalities have been the subject of numerous corruption scandals. Bell, California and Crystal City, Texas are just two of many small cities to have made their way into the national spotlight after suffering at the hands of seriously corrupt leadership.¹ While news headlines often focus on issues of corruption within state or federal governments, the effects of corruption within local municipalities is equally problematic. First, there are many thousands of small cities and towns in the United States, depending on one’s definition. And these governments receive and spend billions of dollars in public funds. For obvious reasons, however, small cities and towns typically operate with few employees, and have limited resources to expend on non-essential personnel and programs.

This means that the very nature of small municipalities makes them susceptible to corruption, because their small size and workforce do not allow for the kind of oversight and enforcement mechanisms that larger cities, state governments, and the federal government can employ. Nor can small towns usually count on oversight from county-level or state oversight mechanisms, at least absent a specific complaint about egregious conduct that is deemed important enough for higher-level officials to pursue.

Given these limitations, what can small towns and smaller cities do to ensure that their public officials are operating with integrity? In this Practitioner Toolkit, CAPI explores ways in which small governments can work towards the three pillars of governmental integrity: accountability, oversight, and transparency, even with their inherent budget constraints.

Appendices:

Appendix 1:

City Ethics Manual for Local Government Ethics Programs

Appendix 2:

United Nations Office for Drug Control and Crime Prevention Anti-Corruption Tool Kit

Appendix 3:

New York City Local Law No. 33 – Whistleblower Protections

Appendix 4:

CAPI Issue Brief – Ingredients for an Effective Public Ethics Training Program

Instituting Accountability at the Local Level

Public servants within local government – like officials at all levels of government -- must be accountable for their actions to their constituents. The reason for this is that public servants are the spenders and keepers of taxpayer money – the constituents’ money. Officials owe a high duty of care to these taxpayers to ensure that money is handled and spend appropriately and that officials behave honestly. The keys to instituting accountability are: (1) establishing a culture of integrity; (2) setting rules and regulations to ensure that public officials are held to high standards, and (3) enforcing those rules. Most ethics professionals agree that establishing a culture of integrity is at the same time the most challenging (because of its amorphous nature) and the most important task of all. One way to begin, of course, is with a strong ethics code and enforcement regime, as described below. Other tips for establishing an ethical culture in an office or department can be found in the literature on organizational culture.²

In some ways, ensuring accountability is not appreciably more difficult for small governments than it is for bigger ones, because any government is capable of emphasizing a culture of integrity and setting strong rules. The challenge for smaller governments, as discussed further below, is in backing up these steps with an appropriately robust enforcement mechanism.

The first step towards establishing accountability is the enactment of a comprehensive and easily understood ethics code. Ethics codes are vital because, when well drafted, they provide clear guidance to public servants, the majority of whom are honest people who want to behave with integrity. Mark Davies, the former Executive Director and Counsel of the New York City Conflicts of Interest Board and a leading expert in this field, has created a model ethics code well worth emulating. It can be found in a book, *Municipal Ethics in New York: A Primer for Attorneys and Public Officials*, which was published in 2016 by the New York State Bar Association. The book is an excellent resource for municipalities around the country grappling with how to enforce integrity. Other resources, which discuss ethics codes as well as many other topics related to local government ethics, can be found in Appendices 1-4.

Ethics Code: Mandatory Principles and Provisions

While ethics codes may slightly vary to take into account a city's unique structure of government and other individualized factors, there are certain important principles and provisions that should be present in all codes. Again, please see the sample ethics code in *Municipal Ethics in New York: A Primer for Attorneys and Public Officials* for examples of mandatory provisions.

An ethics code should:

- Avoid legalistic language and be easily digestible by the public.
- Uniformly apply to all public officials – this includes elected officials, all city employees, appointed officials, and any other government held position. This should also include citizens serving on any commissions or boards, when they are acting in their official capacities.
- Be readily available to the public.
- Include comprehensive conflict of interest provisions which prohibits certain relationships while mandating disclosure.
- Cover corruption, abuse, fraud, bribery, other violations of the law, and non-criminal conduct which violates the code's conflict of interest provisions.
- Include an affirmative obligation to report suspected violations which affirmative obligation has its own enforcement mechanism.
- Have an independent enforcement mechanism for any violation.
- Contain adequate whistleblower protection for those who report violations.
- Cover the inducement of violations by private citizens.

Avoiding Legalistic Language and Making the Code Easily Digestible

An ethics code should be easily understood by all readers, so that the code's requirements can be more easily adhered to. CAPI also recommends creating a short synopsis of the code's most important provisions (on one page if at all possible). This will help members of the public, who might not have the time or inclination to read the full ethics code, as well as serve as a reminder for public officials of the code's most important provisions. CAPI recommends that the synopsis be distributed and posted in high-traffic areas such as on the city's website and in places like city hall. A code should also clearly spell out its rules and provisions, many of which will not be intuitive, like specific dollar limits on gifts that can be accepted.

Uniformity in Application

Local governments should strive to create one code for all public officials and employees, as well as citizens serving as commissioners or board members for the city, to the extent they are acting in their official capacities. Creating too many different sources of laws and regulations will make it difficult to determine what provisions exist and which ones apply to which groups.

Comprehensive Conflict of Interest Provisions

Having adequate conflict of interest provisions is essential to a successful ethics code. While there are many obviously criminal actions which should be prohibited by the ethics code, there are also non-criminal actions which are ethically suspect and should be included. Conflict of interest provisions often fall into this category. Conflict of interest provisions should include prohibitions on taking actions that benefit the official's household or family members, business clients, debtors, or political donors. The code should contain a recusal provision, a ban on gifts from people seeking a benefit from the government, a ban on gratuities, and a nondisclosure provision with respect to confidential government information.

Affirmative Obligation to Report Suspected Violations

The code should include an affirmative obligation to report suspected violations of the ethics code and the law. This is particularly important as it dovetails with setting an overall tone of accountability for all public officials and a city's entire administration.

Penalties for Violation of the Code

The code should include penalties for violating the code's provisions, and must have some sort of enforcement mechanism, to be described further below. Penalties for violation of the code should vary, depending on the violation, but should be clearly and publicly defined.

Adequate Whistleblower Protections

An ethics program will be ineffective if officials and employees do not feel they can report ethical conduct because they are concerned about retaliation or harassment. Whistleblowers should be protected by law. The City of New York's whistleblower protection statute can be found [here](#) and is reproduced in Appendix 3.

Inducement of Violations of the Code

Private actors such as contractors, firms, and citizens can play a large part in ethical violations, because they are often the ones offering bribes, improper gifts, gratuities, and the like. Accordingly, the code should include a provision prohibiting individuals from inducing a violation of the ethics code, so that this unethical conduct does not go unpunished.

Ethics Code: Optional Provisions

What follows are some optional provisions that can be considered when assembling an ethics code. These provisions may be desirable depending on your circumstances, but are not as important as those above. Some of the factors that may inform whether such provisions would be helpful are the municipality's size, and past history of ethical problems. The sample ethics code in *Municipal Ethics in New York: A Primer for Attorneys and Public Officials* contains numerous optional provisions of the sort described below. Examples of these provisions include the following:

Prohibited Positions and Ownership

Sometimes a municipality will want to prevent its officials and employees from occupying certain positions other than their government positions. This may be particularly relevant where a government official is part-time. Prohibiting officials from taking certain jobs may avoid actual conflicts of interest, as well as an appearance of impropriety. The sorts of outside employment that a city should consider prohibiting is any sort of job for an entity that is doing or seeking business with the city.

Lawyers and Experts

A municipality may wish to prohibit officials and employees from being lawyers or experts in any lawsuit against the municipality's interest.

Political Party Positions

A city may wish to prohibit certain officials and employees from asking for political contributions, and to prohibit certain officials from holding a political party office.

Definitions and Exclusions

For purposes of clarity, definitions and exclusions should appear in their own section, separate from the body of the code of ethics.

Ethics Code: Training

Formulating an appropriate ethics code is only the first step in instituting appropriate accountability measures. To be successful, thorough and regular employee training on the code must occur. City attorneys or other relevant officials should work to create a training program designed to cover the ethics code and any other necessary materials to inform officials and employees of the key provisions. For tips on how to develop an excellent municipal ethics training program, please see [CAPI's Ingredients for an Effective Public Ethics Program](#), also reproduced as Appendix 4.

Oversight

Many ethics experts feel that the biggest challenge for smaller cities and towns looking to instill effective corruption control is oversight. A dedicated government of any size can create a strong ethics code, and, particularly with the tools now available, meaningful transparency is also becoming much more attainable. Oversight, on the other hand, requires resources.

Notwithstanding this challenge, there are a number of options available for localities which are serious about anti-corruption oversight. Each has its own benefits and costs, and each city or town will have to consider what option will work best for its particular circumstances. One common feature of these methods is that oversight is generally independent from the government officials with spending power. A system with this feature can both ensure effective oversight and can help to gain the public's trust in governmental integrity.

Ethics Officer

Some municipalities have appointed an ethics officer. Ideally, the ethics officer would report to an independent ethics commission (see below). The ethics officer should be independent, and ideally will hold no other city position, even if the employment is only part-time. Conflicts of interest may arise when one city official is charged with overseeing another on ethics issues, so this should be avoided if possible. At a minimum, if the city must appoint someone who already has a city position, the ethics officer should have no other city position that involves program administration or the collection or distribution of money. The ethics officer oversees city officials, management, and staff with respect to any ethical issues that arise, and is responsible for encouraging compliance and coordinating ethics training.

Ethics officers also will investigate reports of ethics violations. If there is an ethics board or commission, the ethics officer would refer the matter to the board or commission after making his/her findings, either with or without a recommendation for future action.

One city that utilizes an ethics officer is [Tallahassee, Florida](#). Tallahassee also [posts](#) reports of complaints made to its ethics hotline, as well as the outcomes of any investigations and the results of referrals to the ethics commission. Another entity is [DeKalb County, Georgia](#).

Some jurisdictions have an independent ethics officer report to a city manager or other city official or officials, rather than a commission or board. The benefits of utilizing a board or commission are discussed below, but smaller cities might utilize this approach if budgetary concerns prevent the establishment of an independent commission. In such a case, it is paramount that the ethics officer's findings and any recommendations are ultimately publicly reported to ensure that the findings were independent from any influence from city officials.

Ethics Commission

An ethics commission or board is an independent body which is designed to enforce a government's ethics programs, including violations of the ethics code and other applicable regulations. A commission can work with or without an ethics officer.

There are different varieties of ethics commissions. For example, see Tallahassee, Anchorage, Minneapolis, Jacksonville, and Philadelphia. Ethics commissions are currently more common in larger cities, but some smaller cities and counties are going down this path. See, for example, Kent County, Queen Ann's County, and Calvert County, all in Maryland, Reading, Pennsylvania, and numerous small cities and counties in Washington State (see Bainbridge Island, Bremerton, Edmonds, Fircrest, Grandview, Chelan County, Clallam County, Cowlitz County, and Douglas County).

Ethics commissions or boards can advise and make recommendations to city employees, officials, and the public regarding conflicts of interests, acceptance of gifts, and the use of city resources. A commission enforces the ethics law by imposing fines and recommending other discipline for violations. It also plays a role in educating city officers and employees on performing their duties in an ethical manner. A commission can also administer and enforce the city's lobbying laws and the financial disclosure requirements for city officials, although the more administrative and training duties the commission has, the more likely it is that the commission will need at least one staff member.

Ethics commissions are typically made up of appointed officials who are in office for a predetermined term. Often commissioners are chosen by the mayor, the city manager, the city council, or some combination thereof. Some cities have the mayor or city manager nominate members and have the city council confirm the appointments.

Sometimes the ethics commission will directly receive complaints and conduct investigations, but usually the commission's purpose is to hear the findings of an investigation and determine whether there is a violation and what the appropriate punishment should be. Cities should make all ethics commission decisions public and post them on the city website.

For example, reports from [Atlanta's board of ethics](#) can be found online. Some cities, such as [Minneapolis](#), also provide annual reports.

In some larger cities, ethics commissioners draw a salary, but in most smaller cities and counties ethics commissioners do not receive a fixed salary and are considered to be volunteers. As mentioned above, though, if there is no ethics officer and the commission is expected to take complaints and investigate, the commission will likely need at least one staff person. In addition, commissioners may require some funding for travel and other reimbursements.

Compliance Officer

Compliance officers are responsible for ensuring that the city meets specific regulatory objectives – like those regarding food safety, or the environment -- rather than trying to ensure ethical behavior overall. They are akin to a compliance officer within a corporation. While similar to ethics officers in some respects, both the structure and substance of oversight differ under this scenario. A compliance officer typically works for a city manager or other relevant city officials; he or she thus lacks the independence of an ethics officer. And typically compliance officers do not advise an independent board. This means that while they do not accept all ethical complaints and work towards

ethical government in a broad sense, compliance officers can audit the functions relevant to their focus and carry out certain recommendations themselves, or in collaboration with the city manager, city council, or mayor. Compliance officers also typically do not conduct ethics training or advise officials on ethical issues apart from their regulatory focus.

Rather than creating a single compliance officer position, cities sometimes create the position to enforce particular regulations that are deemed important. For example, [Middletown, Connecticut](#) has a compliance officer position specifically to ensure compliance with the Americans with Disabilities Act.

However, some cities have gone beyond this narrow focus and have recently created compliance officer positions with a focus on ensuring compliance with a city's ethics code. In these cases, the position includes some of the duties of an ethics officer, but with the reporting structure of a compliance officer (lacking the independence typically given an ethics officer). [Gresham, Oregon](#), a suburb of Portland, adopted this approach after it was determined there had been an electoral error made in creating an independent city auditor position. [Sarasota County](#), Florida is an example of a county that has a compliance officer whose job includes ethics compliance.

Anti-Corruption Committee

Another approach is to provide oversight through current employees, but in a committee structure to minimize the likelihood that corruption will occur in the oversight process. Because the members of the committee would not be independent of the municipality, it is not an ideal solution, but it does permit oversight without hiring any additional employees, so is helpful in terms of saving resources. One possible structure would be to create a committee of three of the following: the city manager or head city administrator, the chief of police, the city attorney, and the head of human resources. The committee would take complaints concerning violations of the ethics code and other ethical violations, would investigate the matter itself (unless the matter was likely criminal, in which case the matter would be turned over to the police immediately), and would report the result of the investigation to the city council, the city attorney, and the city manager, along with any other relevant agency head. This approach would work only for affirmative complaints, however, and would not be a way to ensure proactive corruption control, or the prevention of waste of city resources.

Regional Ethics Bodies

Regional ethics bodies can be an effective way to ensure appropriate oversight, whether at the county level or by grouping cities or counties together. They operate like an ethics commission in a single city, except that a regional ethics body will have to oversee multiple cities or counties and its costs would be shared among the governments it oversees. A regional solution makes sense for many reasons. First, it is cost effective. Second, particularly in places where small cities are so close together geographically that it is not at all clear where one ends and the other begins (like in the Los Angeles area where Bell is located), the culture of corruption tends to be regional as well. Third, banding together to ensure oversight could build momentum for adopting other efficiencies on a regional basis, like combining service delivery and other cost sharing measures. Fourth, a regional ethics body would allow for the efficient sharing of best practices on ethics issues. Moreover, a regional approach takes advantage of peer pressure in a positive way; elected officials would not want to be outliers in terms of ethics enforcement, so pressure to impose a strong code and robust oversight would likely lead to more vigorous efforts than if each small city were proceeding alone.

At least one area has adopted this approach. The [Shared Ethics Advisory Commission](#) was founded in 2005 in Northwest Indiana. It consists of 7 cities, 13 towns, and 3 counties. There is a uniform code of ethics and values that governs each municipality, and the Commission itself consists of one volunteer member from each of the member governments. Each member government is expected to make a contribution to a shared ethics initiative fund for the purposes of acquiring supplies and services including the training that the commission provides to its member municipalities.

Local Inspectors General

Inspectors General are independent officials employed by the city or county whose job it is to identify waste, fraud, and governmental wrongdoing by conducting and supervising investigations relating to programs and operations of the government. While auditors are typically accountants, inspectors general often come from law enforcement. They receive complaints from officials, employees, and residents, and refer any cases dealing with criminal conduct to the proper law enforcement authorities. They typically refer violations of city regulations to the City Council or other appropriate body for appropriate action. Typically, Inspectors General can be found in larger cities and urban counties because an Inspector General will need at least a small staff, so setting up that office tends to be more resource intensive.

Some [academic literature](#) suggests that instituting inspectors general at a municipal level would not only further a commitment to ethical government but also would be cost-effective. However, cost savings would not be apparent until the Inspector General's work got underway and had time to develop, and there are municipalities so small that the initial costs are prohibitive in and of themselves. That said, some localities have avoided some of the pain of an up-front investment by creating a funding mechanism, like [Miami-Dade County's allocation](#) of a percentage of a fee on construction contracts to the IG office.

Some small localities have successfully established Inspector General offices. [Mount Vernon](#), a small city in NY, has established its own inspector general position, although it is unclear how active the office is. [Yonkers](#), another New York city, and counties, such as [Mercer County](#) in New Jersey have formed inspector general positions.

Perhaps the Inspector General position has the most in common with that of an Ombudsman, although Ombudsmen are much more prevalent. The difference is that Ombudsmen typically accept citizen complaints about a wide range of governmental matters, not just fraud, corruption, and waste, and they tend to work as mediators as much as investigators to resolve complaints in a manner acceptable to all parties.

City Auditor

A professional-level audit of a city's books and records is essentially, if not expressly, mandatory for all cities. An auditor is often a non-government employee contracted to audit a city's finances pursuant to generally accepted professional standards. Auditors provide assessments as to whether public resources are managed responsibly and effectively, but tend not to accept and investigate complaints, and do not deal with alleged violations of an ethics code that are not related to financial issues. Thus, a city auditor's scope of work is narrower. For cities that are primarily concerned with their expenses and finances, this may be a cost-effective way to oversee the integrity of public resources, as long as two conditions are met. First, ideally the audits should encompass not just financial audits but performance audits (i.e. the auditor should look at the city's "books" and also delve into the operations of the agencies to see whether improvements can be made), in which case the auditor also serves a sort of consultant function. This adding-on of functions is relatively inexpensive, so this may be the most cost-effective way to obtain a thorough audit. Second, the auditor should be carefully chosen through a competitive process and should be changed periodically on a set schedule (i.e. every 3 years).

Cities can also choose to hire an in-house city auditor. This may be more expensive, but there are some benefits to that course. Specifically, a city-employed auditor may be more likely to conduct competent performance audits with inside knowledge of the government. [Scottsdale](#), Arizona and [New Bedford](#), Massachusetts are examples of smaller cities that have adopted a city auditor position in-house.

Less Formal Control Measures

In addition to the above, there are other measures that very small cities and towns can take to improve their ability to identify and prevent fraud. One of these is the cross-training of city employees. Often in a very small municipality, there is only one person who performs a particular function. For example, there may be one person who handles the

city's accounts payable. This is a fraud risk in and of itself, if no one else is routinely overseeing this work and the city does not publish its accounts payable for public consumption. Moreover, when one person is responsible for a specific function, it is frequently the case that when that person is away on vacation for a week or two, no one else steps in to do that job during that time. This is another problem, because even if bills do not need to be paid while the person is gone, this is a missed opportunity to have a pair of fresh eyes on accounts payable, to make sure that this job is being done competently and honestly.

To fix these problems, Doug Willmore, the current City Manager of Rancho Palos Verdes, California, and the former City Manager of Bell, California who got Bell back on track after its major corruption scandal, recommends cross-training employees. Cross-training employees on different jobs means that there will always be more than one person who can perform a particular task, and allows the second person to step in when the first employee is on vacation or leave to provide a check on the competence and honesty of the way the first employee is doing that job. With respect to accounts payable, having a second person check over the books will minimize a city's embezzlement risk. Having more than one person open and log in the mail is another inexpensive common sense measure to add oversight to city processes.

Transparency

The final component of a meaningful integrity system is transparency. Generally speaking, corruption is less likely when citizens are informed about government activities. Transparency in government spending creates more watchdogs to help cities root out corruption, waste, and mismanagement. Transparency initiatives also tend to increase citizen involvement with government, as the public can see how government is trying to work for their benefit.

In terms of transparency of government processes, cities should strive to make as much information as possible available over the internet. Traditionally, city council meetings that are open to the public provided an opportunity for citizens to get involved with and to stay informed about government matters. With the technological advances available today, however, cities should attempt to provide online streaming of meetings, and should make all non-confidential documents available on the city's website, so that even very busy citizens can easily keep track of what the government is doing.

Recently, mobile internet use has surpassed internet use on desktops and laptops. It is important to post and update relevant documents on the city website, but cities should also make sure that such information is accessible on smartphones as well as traditional computers.

Information to be Included

Sunshine Review (recently acquired by Ballotpedia) created a 10-point transparency checklist for items that should be included in a city's website.³ They are:

- Budgets
- Open meetings; minutes of past meetings; meeting agendas
- List of elected officials and their contact information
- List of administrative officials and their contact information
- Information about building permits, licenses, and zoning, and applications for permits
- Audit reports
- Contracts with the city, and rules governing such contracts

- Lobbying regulations
- Public records
- Tax information

Budgets

The website should include the current budget, and ideally some previous budgets so that citizens can understand trends in local government spending over time. Credit card receipts and the checkbook register should also be posted to allow citizens to follow the spending habits of their government.

Open Meeting Information

The website should include minutes of all past meetings and information detailing when and where future public meetings will take place so citizens can attend them. Attending these meetings is one method for citizens to engage their representatives so it is important this information is available in advance. Governments also should post minutes and agendas after each meeting to ensure that everyone is adequately informed about what took place; ideally the meetings should be streamed and/or recorded and posted later so that citizens can watch and/or listen to the meetings even if they were unable to attend.

It is now easy and inexpensive to record and post meetings online and to archive these recordings. According to City Manager Mike Flad, Southgate, California uses a site called SoundCloud to host its meeting recordings, paired with a free software called Audacity to create the MP3 file that is then posted on SoundCloud. Audacity is free; SoundCloud costs \$135 a year. Another option that is more expensive is an archiving system like that available from Granicus.com.

Elected and Administrative Officials

The website should include the names and contact information — including email addresses — of elected and administrative officials to try to encourage citizen engagement and responsive government.

Permits, Licensing, and Zoning

All permit, license, and zoning applications should be made available for downloading online, to streamline the process. Citizens who submit applications should be able to track the progress of their application online.

Audits

The website should also include information from audits. This should include: report results, audit schedules, and performance audits for government programs. This will allow citizens to examine how specific agencies and programs are functioning. While a budget provides the big picture, audit reports provide information on specific aspects of government performance.

Contracts

The website should include all of the rules which governs government contracts. Ideally, the website will also provide information about bids for all city projects and procurement, so that the bidding and implementation processes are fair and transparent.

Public Records

The website should ensure that citizens can easily submit open records requests. It should include the contact information for those who are in charge of fulfilling those requests. The website should also disclose tax information where possible.

Examples of Internet Success

Comprehensive websites of the kind described above are not out of reach, even for small municipalities. For example, in Bell, the Sunlight Foundation worked with the local government after their corruption scandal to enhance its website.⁴ Governments can proactively seek out and achieve reforms by collaborating with such organizations to achieve online transparency.

Other examples include Providence, R.I., which utilized a software program to allow the city to upload digital audio recordings of their council meetings, which are accessible from both computers and mobile devices.⁵ In Atlas Township, Mich., they have been using a legislative management solution that assembles and emails information packets to members of the board of trustees before meetings and post minutes. Citizens can view those packets, resolutions, contracts, and other documents through the website. According to Township Clerk Tere Onica, citizens often use this information to contact elected officials about agenda items before meetings begin.

The city of San Carlos, California is using a “listserv” service called “e-Notify.”⁶ This allows residents to sign up for emails providing information about city events, council meetings, and other relevant happenings.

Additional Internet Measures

While creating a website is a must for effective transparency, there are other tools available for municipalities that either help cities go above and beyond, or help them implement their transparency measures more easily. Various companies exist to enable online engagement between citizens and municipalities.⁷ Doug Willmore, the City Manager of Rancho Palos Verdes in California, reports that many smaller municipalities use opengov.com, a platform to help cities organize their governmental information and provide it to citizens in a streamlined fashion. Opengov allows the public to make comments and suggestions, which provides feedback to the city to make improvements in the way it governs and communicates with its citizens. One drawback of Opengov is that while there may be a lot of data there, getting citizens to utilize it is a challenge. Cities that decide to use a platform like this should pair it with a campaign to get the word out and get citizens involved, including finding out from citizens how they prefer to receive information about how their government functions.

Open Town Hall from Peak Democracy is another website which provides services to municipalities. It provides a platform for citizens to engage elected officials. Some cities have developed an app in addition to having a mobile platform. Seattle has a My Neighborhood Map, which allows citizens to find various services and look at 911 incident reports.

Another free tool available to any government is social media. Governments can easily create Facebook, Twitter, and Instagram accounts to keep citizens informed and to advertise events. There are also various apps, like Buffer and HootSuite, to help local governments send tweets.

Conclusion

Those interested in instituting ethics reform in their municipality will need to make convincing arguments that reform is worth the resources. Luckily, instituting a strong ethics code and setting up transparency measures and a user-friendly website do not require big expenditures. But proper oversight costs money. This is why meaningful reform is often seen only after a major scandal has hit a city.

The best argument probably is that oversight saves a city money in the long run. As David Eichenenthal, Managing Director of PFM's Management and Budget Consulting practice and former Director of Performance Review for Chattanooga, put it, "The most successful argument typically is an economic or fiscal case. That tends to carry the day."

Corruption can result in severe economic losses for local governments. In Bell, the city lost over 5.5 million dollars in its corruption scandal, and barely escaped bankruptcy.⁸ Bell isn't alone. Studies have shown that crimes committed by elected officials cost taxpayers significant sums of money. One study, in particular, determined that if states with higher than normal corruption had only the average amount of corruption, they would have spent 5.2% less over the course of 10 years.⁹ This came to an average of \$1,308 per person.

While economic arguments may be the most convincing, efficacy of government is another reason to institute proper oversight. Moreover, corruption or the perception of a corrupt government will undermine its legitimacy with constituents, leading to less citizen involvement. While the political will to address reforms often is highest after a scandal emerges, cities can and should try to avoid the costly effects of such scandals by addressing reforms ahead of time.

Endnotes

¹ *Bell Scandal: A Times Investigation*, Los Angeles Times, February 11, 2016, <http://www.latimes.com/local/bell/la-me-bell-scandal-a-times-investigation-20160211-storygallery.html> (last visited October 28, 2016); Matt Zapposky, *This might be the most corrupt little town in America*, Washington Post, https://www.washingtonpost.com/world/national-security/this-might-be-the-most-corrupt-little-town-in-america/2016/03/05/341c21d2-dcac-11e5-81ae-7491b9b9e7df_story.html (last visited October 28, 2016).

² For more information and citations to literature, see www.ethics.org; www.ethicalsystems.org.

³ *Transparency Checklist*, https://ballotpedia.org/Transparency_checklist (last visited October 28, 2016).

⁴ Alisha Green, *Bell, California: Moving From Secrecy to Sunshine*, Sunlight Foundation, <http://sunlightfoundation.com/blog/2013/03/21/bell-california-moving-from-secrecy-to-sunshine/> (last visited October 28, 2016).

⁵ *Improving Citizen Trust in Local Government – How online tools spur communication, improve transparency and boost accountability*, Governing Institute (2014), <http://www.ncacc.org/DocumentCenter/View/1135> (last visited October 28, 2016).

⁶ *E-Notify*, City of San Carlos, <http://cityofsancarlos.org/mysc/default.asp> (last visited October 28, 2016).

⁷ Catherine Yochum, *8 Ways Technology Can Improve Local Government Transparency*, ClearPoint Strategy, November 10, 2015, <https://www.clearpointstrategy.com/technology-local-government-transparency/> (last visited October 28, 2016).

⁸ Jennifer Medina, *As Official Face Corruption Charges, California City Struggle to Move On*, New York Times, November 21, 2010, <http://www.nytimes.com/2010/11/22/us/politics/22bell.html> (last visited October 28, 2016).

⁹ Alexandria Fisher, *Study: Corruption Costs Taxpayers More than \$1,300 Per Person*, NBC Chicago, July 15, 2015, <http://www.nbcchicago.com/blogs/ward-room/Study-Determines-Cost-of-Corruption-in-Illinois-267165861.html> (last visited October 28, 2016).

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Fusco earned a degree in education from the Central Connecticut State Teachers College, a professional diploma from the University of Connecticut, a Master of Arts from Columbia University, and a doctorate from the University of Massachusetts.

Fusco also founded the Parkside School and Academy for special-education students and co-founded the Springfield Preparatory School.

He resides in Guilford, Connecticut, with Constance, his wife of 53 years. They have four children and fourteen grandchildren.

INTRODUCTION

In order for school boards and their employees to protect, maximize and monitor school resources with due diligence, it is essential that all school operations and practices be reviewed and analyzed independently and constantly. The most effective way to begin and maintain such a process is to form a community-based Forensic Auditing Committee (FAC). One of its primary tasks would be to ask critical questions of the school board. The reason for asking the questions is to determine quickly and easily whether board policies and school practices are protecting and maximizing school resources effectively, efficiently, and ethically and that they are free from the ravishes of potential or actual corruption.

Fortunately, a trend toward the establishment of groups akin to forensic auditing committees (FACs) seems to be gaining momentum. School officials in Mesa, Arizona, have proposed creating a public school audit committee that would “independently review the district's books.” Unlike audit committees formed by neighboring school districts, “Mesa's committee would be composed entirely of community volunteers with expertise in accounting and education.” (*Arizona Republic* August 6, 2006) Also, the Arizona Tucson Unified School District's governing board is seeking people to join an audit committee to strengthen the school district's internal financial controls. (*Arizona Daily Star*, August 3, 2007)

The reality is that some degree of corruption is likely to be found in most school districts. However, it takes critical questioning and diligent forensic review and analysis to determine whether corrupt acts have taken place, are taking place, or could be committed with relative ease. In this regard, it is vital to understand what is meant by the term “corruption”:

“breach of trust, bribery, crime, crookedness, deceit, deception, dishonesty, exploitation, evil, extortion, fraud, graft, malfeasance, nepotism, payoff, profiteering, tainted, unethical, untrustworthy and unscrupulousness”

Typically, boards will be defensive and deny that corruption is a malignant and institutionalized problem and will provide a reason that should never be accepted: *school accounts are audited regularly so there is no reason to be concerned about or suspect any wrongdoing.* Although it appears to be a very credible answer, it does not withstand verification because **routine school audits are not designed to uncover the three categories of corruption: cheating and deceit, waste and mismanagement, or even fraud and stealing.**

If the audit were conducted with generally accepted auditing standards (GAAS) -- and therefore incorporated Standard #99 (Consideration of Fraud in Financial Statement Audits) -- it still would not identify waste and mismanagement issues or cheating and deceitful practices.

The two major problems facing taxpayer advocates are (1) how to discover if there is school corruption and, if so, (2) how to prove corruption to the public. Only when corruption can be proven will practices and procedures be put into place to limit its cancerous impact on resources. This manual will provide the information, tools, and techniques that will assist taxpayer advocates in this critical endeavor.

THE TEN CONFIRMATION QUESTIONS

It is important to understand that regardless of how school districts are organized (county, unified, regional, etc.) budgets begin at the local school and district level where these questions need to be asked with the expectation of receiving credible and verifiable responses.

Question 1: Asset Management

Is there a comprehensive list of assets and an independent management verification system in place to regularly document the existence of each asset? Failure to have a list of monitored assets is a strong indication that the school district is not managing and protecting resources from loss and abuse.

Background: Most schools will not have a formal asset management system that is monitored yearly, independently, and physically. If non-consumable assets are missing or stolen, common school practice is to replace the assets using more taxpayer dollars. It would be unusual to find any references in budget documents indicating that asset replacements are needed because they were either stolen or could not be located.

A study completed in 2002 by Quality Education Data surveyed 479 school districts in all 48 contiguous states. The information furnished by the school officials revealed that lost or damaged assets cost the average school system about \$250,000 a year, including nearly \$80,000 a year in technology equipment alone. Large districts lose as much as \$1.4 million in assets per year. (*biblio #4*)

Proposed Solution: What is important is to have a verification system in place that documents the existence of each asset at the end of each year or the reason why an asset is missing. This must be done by independent, physical inspections -- not by internal staff alone. Any organized taxpayer group (properly trained) or audit firm would be able to provide independent verification.

The proper way to develop an asset management program without significant cost is to have a community based Forensic Auditing Committee (FAC) examine each purchase order to determine what has been bought in recent years. Using purchase order documentation is the only way to develop an accurate list; any list prepared by the administration should never be accepted as accurate unless it has been independently verified by purchase orders. Each asset should then be identified by serial number or other designation, where it is located, and the responsible person or department. An excellent example of how to take a physical inventory can be found in the California School Accounting Manual. (*biblio #6*)

Question 2: Board Policies

Are there school board policies dealing with the prevention and detection of school corruption? What policies have been adopted to protect, maximize, and monitor school resources effectively? Is there a policy or procedure manual for handling reported and suspected incidents of corrupt acts?

One of the most shocking examples of school corruption occurred in the Roslyn, Long Island, School District, where the superintendent and others embezzled over \$11,000,000 -- this in spite of yearly independent audits that failed to detect or prevent the thefts.

Background: Board policies are contained in a policy manual that is a public document. The manual is available in the central office, at each school, and possibly on the school website. It is extremely unlikely that corruption policies will be found because school boards are reluctant to use the term "corruption" due to its negative implications. Even when corruption is found, it is hidden from public view whenever possible.

However, examining board policies is a critical task for taxpayer advocates to undertake because it will indicate whether the board has any concern about protecting and preventing school resources from being mismanaged and protected from loss and abuse. Failure to have policy statements would be an unequivocal indication that the board is either in denial or ignorant about the nature and extent of school corruption; furthermore, it is also a green light for corrupt acts to be committed.

Proposed Solution: School boards must adopt policies and practices designed to manage, protect, and maximize resources more effectively. Further, they should provide convincing evidence that preventing waste, mismanagement, and other corrupt acts has the highest priority. A school board can provide convincing evidence by adopting the following:

1. Anti-Fraud and prevention policies. (*biblio #2*)
2. The establishment of an internal auditing committee (IAC) that includes some community

representation (such as retirees who have some expertise in finance or budgets) and a member of the community-based auditing committee (if there is one). The purpose of the IAC would be to meet regularly in order to review purchase order requests and other disbursements, check for legitimacy of vendors, match requests with budgeted dollars, etc.

3. Accepted auditing standards that include *Auditing Standard #99 -- Consideration of Fraud in Financial Statement Audits*. (biblio #1) It requires auditors to hold brainstorming sessions with their entire engagement team to discuss how fraud might occur, and it also requires auditors to increase scrutiny of documentation, interview district employees, and implement other measures to reduce the risk of fraud. (This standard is now required for all school audits conducted in New York State.) *Governmental Accounting Standards Board* guideline #34, which clarifies the appropriateness of information and sufficiency of evidence in performance audits (biblio #10), should also be included.

4. A requirement that the check register be posted monthly on the school website and that it include the reason or documentation to support why a check was issued. Any check reference to a purchase order number should be supported by posting a copy of the purchase order to make sure that it matches the check. More than 50 school districts now post their check registers online. (biblio #26)

Question 3: Credit Cards and Employee Reimbursement

Who has credit cards? Are credit card charges and requests for reimbursements independently verified to see if they are not only legitimate school expenses, but also that they are also reasonable?

Background: Credit card abuse and employee reimbursement are one of the prime sources of corruption. The reason for this is that most school districts do not have an effective monitoring system in place to verify credit card charges with supporting documentation in order to determine legitimacy and accuracy or to forensically review employee reimbursements.

Proposed Solution: The internal audit committee and at least one independent source (town treasurer, finance director, or FAC) should review and analyze credit card charges and employee reimbursements.

In addition, guidelines must be developed that specify legitimate expenses and the limits on each such item. However, **the best practice is not to have any credit cards.** Employees can use their personal credit cards and then seek reimbursement, since this process requires more documentation whereas a school credit card statement may not be reviewed for documentation. An alternative to credit cards is to use a purchase order.

If credit cards are to be used, a Procurement Card Manual should be developed to provide procedures and practices so all employees are aware of what is required. If there is one, it should be posted on the school website. Whether or not there is a manual, a list of all credit card users (employees and board members) should be posted on the school website along with the monthly credit card charges with documentation, as well as detailed employee reimbursements.

Because of flagrant credit card abuses, the Dallas Intermediate School District revised its Procurement Card Manual, and it is an excellent example of outlining the procedures necessary to help protect against card abuse. But again, if the policies or procedures are not monitored effectively, abuse will take place. (biblio #20)

Question 4: Federal and State Grants

How are grants being managed in the school district? Who is responsible for monitoring and auditing the grants for proper implementation? How are the monitoring and auditing actually done? Has grant money been returned because it was not spent and, if so, why?

Background: Grants are a common source of abuse, mismanagement, and fraud. There are two types of grants -- entitlement and competitive. Entitlement grants are allocated dollar amounts to a school district for

specific purposes, but the school district must still submit a formal application. Competitive grants are either limited in the dollars available and/or they are allocated for special purposes, but schools are not required to compete for such grants.

It is important to note that federal grant monies cannot be used to supplant the budget (replace budgeted dollars). The monies must be used to add to (supplement) the budget. One abuse commonly found in some grant audits is that districts use funds to supplant the budget -- a corrupt act. What must also be reviewed is to see who the recipients of any funds are. Bogus entities (individuals and vendors) have been noted as the recipients of grant dollars, kickbacks schemes have been involved, and bogus contracts have been issued to "friends."

Since grants usually do not involve local dollars (some do require matching funds or resources) local oversight is shoddy at best. State and federal agencies are responsible for monitoring the grants, but they tend to be lax in uncovering corruption. This is the reason grants are so easily abused.

Proposed Solution: During each budget presentation, a list of grants that were available to the school district (entitlement and competitive) should be listed along with the dollar amounts involved. Each grant should indicate whether or not an application was submitted and those that were approved with dollar amounts. If some available grants were not applied for, the reason should be given.

Grants are public documents and should be forensically reviewed and analyzed to determine whether they have been used for the purpose intended. (*biblio #22*)

What taxpayers should be aware of is that any citizen can sue the district, board members or schools officials (as a person) if federal dollars have been misused and receive one-third of any recovered dollars. (*biblio #13*)

Question 5: Student Activity Funds

How are student activity funds and other cash collections monitored? Who monitors such funds? Are income and disbursements verified for accuracy and proper usage? Are bank statements reviewed monthly? Who conducts the review? Are internal and external audits conducted on a regular basis? Who reviews and analyzes the audit reports?

Background: Student activity accounts and other cash collections usually controlled at the building level only are an easy source of embezzlement and misuse. These accounts do not typically involve taxpayer dollars and, therefore, the monitoring of such funds leaves much to be desired. Administrators have stolen children's candy money, and one secretary responsible for a student activity fund embezzled \$483,000.

Proposed Solution: Although such funds are not part of the school budget, they should be. Each fund should be listed with its income, expenses, and balances as part of budget presentations. To provide proper oversight, the central office finance department should be required to oversee income and disbursements along with an internal audit committee. In addition, independent audit reviews must be conducted on a regular basis. This could be one of the responsibilities of a Forensic Auditing Committee. Software programs are available to track such funds. **However, under no circumstances should disbursements of student activity funds be controlled and authorized solely at the building level.** (*biblio #14*)

Question 6: Payroll

Are payroll records carefully and systematically monitored and audited to determine accuracy and legitimacy of each paid employee? How is payroll information reviewed and analyzed? Who does the monitoring and auditing?

Background: Payroll abuse has been documented as a pervasive source of corruption. Such abuse consists of fictitious (ghost) employees, falsified time sheets, overtime abuse, inappropriate step and scale placements, extra-duty assignment payments, etc. Since payroll dollars represent the bulk of school expenditures, the amounts can hide many abuses.

Proposed Solution: At the start of every school year and as part of any budget preparation documents, a list of all employees should be made available with their salary or pay rates, step and scale placement, benefit entitlement amount, and extra-duty assignment pay. In addition, those who have been paid over and above what was indicated the prior year, such as overtime pay or extra duty pay, should be indicated. In other words, what were each employee's total earnings the prior year, and what are the earnings expected to be in the current year? (*biblio #17*)

Question 7: No Bid Contracts

Which contracts (construction, insurance, consultants, etc.) have been awarded without competitive bid? What process was used to award such contracts? Who received such contracts? What school official was given the responsibility to oversee the proper completion or implementation of each contract? Was any form of nepotism or favoritism involved? Were board policies followed?

Background: No bid contracts are another source of abuse and fraud and, therefore, they need to be reviewed forensically. Even properly bid contracts can be suspect because bid requirements may have limited those who could apply, or kickbacks and favors can be involved.

Proposed Solution: The Internal Audit Committee or the board finance subcommittee must be given full information about every no bid contract, but the full board must decide whether to approve such contracts as part of regular board meetings. Furthermore, there must be effective oversight of any contracts to determine if the terms or conditions are being followed. (*biblio #7*)

Question 8: Staff Student Loads

What are the number of students each teacher has during each period of the day and the total number of students each teacher has during the course of the day and week? How many paraprofessionals are there to augment teacher loads and assignments?

Background: Staff allocation and assignment is perhaps the one category that accounts for a significant amount of waste and mismanagement. The proliferation of school aides (paraprofessionals) has added to school resources, yet the numbers are not used to indicate student-teacher ratios, and there is little or no documentation supporting their effectiveness.

Proposed Solution: A list of teacher assignments and teacher loads by period (augmented by paras) and by subject should be provided as part of every budget presentation. This computerized list then needs to be forensically examined to determine where there is possible waste and mismanagement in assignments and allocations. Although this a more difficult and time consuming task, the data would provide a plethora of information. (*biblio #19*)

Question 9: Non-Classroom Certified Staff

How are the time and workload of such staff (psychologists, social workers, counselors, speech therapists, etc.) monitored? How is the time of full time staff with reduced teaching loads (department chairpersons, supervising teachers, etc.) monitored?

Background: There is usually no documentation of how non-classroom staff use their time to determine if it is being used constructively and efficiently. How many students does a psychologist test and treat per day, how many students does a counselor see each day, what are the numbers of students a speech therapist treats each day, etc.? What do department chairs and supervising teachers do with their released time? Is it documented in some way? These questions demand credible and verifiable answers.

Proposed Solution: It is essential that documentation be required of each such staff member to verify how his or her time is spent each day. Such staff members are very reluctant to provide such information, but it is incumbent on the school administration and board to require proper documentation. Policies and guidelines must be developed for this purpose. There are no studies or reports to date that have monitored the daily activities and responsibilities of non-classroom staff, nor has there been any documentation to determine their effectiveness and efficiency. Therefore, each district must conduct its own monitoring and evaluation of such staff. One useful means to assist in such evaluations is to benchmark with several similar school districts.

Question 10: Benefits

Are retirees who are being paid their medical insurance by the school department entitled to the payments? Are there retirees listed who are deceased but still having their benefits paid? Is the list reviewed yearly to keep it updated? Do part-time employees pay for a proportional share of their insurance benefits and, if not, why not?

Background: School districts have a retiree list whose benefits are paid either by the school district or the retiree. Such lists have been shown to include retirees who are not entitled to the benefits, as well as retirees whose benefits are still being paid even though they are deceased.

Proposed Solution: An issue that needs to be addressed is whether a part-time employee should receive the same paid benefits as a full-time employee. Logically and fairly, a part-time employee should be required to pay for a proportional share of his or her benefits. For example, a 50% employee should pay 50% of the benefit cost.

Summary

The ten questions provide the framework to elicit credible and verifiable answers in order to determine if the school resources are being protected, maximized, and monitored effectively regarding loss and abuse. Then based on the responses, appropriate corrective action should be initiated.

This process will help boards and administrators do their jobs more responsibly with far more accountability and with full transparency. It will also help to improve negative school statistics, such as high dropout rates, poor testing scores, achievement gaps between white and minority students, and the thousands of schools listed as failing.

Of course, what is required is a management culture that protects, maximizes and effectively monitors human, financial, and physical resources, and programs and services. Such monitoring can only be effective if there is enough outside taxpayer knowledge and pressure to raise legitimate questions and demand credible and verifiable answers. (*biblio #14*)

Taxpayers need to understand that local boards have the power and obligation to adopt policies and practices to manage the school resources so that they are used wisely, ethically, and effectively, as well as protected from corrupt acts. No additional personnel are needed, no additional dollars are necessary, and no other approvals are required for action on their part.

However, there is a problem that school boards face, and it is not necessarily of their own making. Most state departments of education and their own professional associations have been derelict in their duty and obligation to provide critical skills, knowledge, and training for them to be more effective in protecting the school resources from waste, mismanagement, fraud, and stealing. This issue was certainly confirmed by the Suffolk County (NY) Special Grand Jury report on school corruption, and that is why New York State now mandates such training. Therefore, getting the needed information and skills requires that school boards must put forth more effort to become better informed and more skillful.

Another problem that plagues boards is that they cannot distinguish between needs and wants when the administration proposes its budget recommendations. The fact is that boards receive little, if any, training in

how to review and analyze a budget, what information to ask for, and how to monitor spending practices.

Fallacy of Fixed Costs

What must be contended with as part of the ten confirmation questions is the defensive argument widely used by school boards that 75%-80% of the budget represents fixed costs and that is why it is so difficult to control and cut school budgets. This is an extremely important assertion that must be addressed and challenged. ***Taxpayers should never accept such a statement because it is not accurate.***

The answer may seem credible, but it is not verifiable since fixed costs can be changed. It is true that there are fixed cost items (payroll, utilities, transportation, etc.), but the dollars attached to such items can be changed and, in fact, are changed (usually increased) every budget year.

The reason that budgeted amounts are not really fixed is because of the following assumptions that are false:

- Every school employee is essential.
- No consolidations of programs or services is possible.
- All programs and services are efficient and effective.
- Resources are managed with quality practices and procedures.
- Every school operation is performed with utmost efficiency and managed ethically.
- Personnel are trained and knowledgeable in utilizing resources effectively.
- Technology usage to improve administrative functions and classroom instruction is maximized.

Even boards that are prepared to challenge budgets by forensic review and to analyze every budget line item fall victim to the argument that, once adopted, many costs become unalterable contractual commitments. In fact, changes can always be made when contracts are renegotiated with employees, when other contracts are put out to bid, and when more cost effective practices can be implemented.

The fallacy of the “fixed cost” excuse is also demonstrated by the results of independent performance reviews conducted by a number of states, including California, Texas, Florida, and Pennsylvania. These reviews always find waste and mismanagement practices that, if corrected, would save precious dollars. (see *biblio* #8, #18, #23, #23)

Sadly, the number of school board members who can stand on principle and ethical behavior without the prodding of independent taxpayer groups seems to be small. The fact that so many taxpayer advocates are forced to use Freedom of Information (FOI) requests to obtain public information, which they are entitled to receive, is strong evidence that too many boards are reluctant to be accountable and transparent.

The following quote by Chester Finn sums up the problem:

“It's clearer than ever that any serious change for the better in education whether at the building, district, state or national level, hinges on effective, courageous and sustained leadership -- and it's clearer than ever that the system does its utmost to discourage, deter and deflect the sorts of people who might provide such leadership.”

But if the prevalence of school corruption is to be arrested, it will require taxpayer advocates who have the persistence, courage, and knowledge to enforce transparency and accountability. It will not be easy, but it can be done!

APPENDIX A -- FORENSIC AUDITING COMMITTEE

What is the purpose of a FAC?

The purpose of a FAC is to have a community based, independent, organized structure and system to help school boards become more responsible in reviewing and analyzing all school procedures, practices, and policies to determine if they safeguard and maximize school resources. This is the best means to achieve improved school performance without additional resources.

How is organized?

A FAC is an alliance representative of the taxpayers, parents, business leaders, senior citizens, community groups, town officials, educational professionals, and other key individuals who all have a stake in seeing that the school system achieves measurable and maximum value for the dollars being expended.

Membership

The number will depend to some degree on the size of the school district, but there should be a minimum of 13 and a maximum of 19 permanent members plus *ad hoc* members. Also, temporary members can be added who may be needed to help conduct specific assignments or activities.

Permanent Members

- Taxpayers (3-6)
- Elected town official (1)
- Senior citizens such as retired financial managers, business executives, auditors, insurance executives, management consultants, contractors (4-6)
- PTA/PTO (1-2)
- Chamber of Commerce (1-2)
- Retired educators (1-3)

Ad hoc Members

- School board (1)
- Central office (1)
- School administrator (1)
- Clergy (1)

What reasoning can be provided to support such a process?

The fundamental problem in any organization is that it is not really possible to objectively review and analyze what it does internally and, therefore, school boards cannot perform this critical responsibility alone. In addition, most boards lack the training and time to conduct effective monitoring activities. There must be an external group to provide unbiased, objective, and independent analysis of school operations and practices. Since a FAC is community based, volunteer group, it does not cost anything, and it will be a permanent and committed organization.

How to Get Started

Step 1: Get a small working group of taxpayers together who would be interested in forming a community based forensic auditing committee. Keep the entire process as free of politics as possible, and make every effort to work cooperatively with the school board and administration.

Step 2: Become fully knowledgeable of what needs to be done by learning from the resources and references provided in this manual.

Step 3: Decide on a tentative plan of action to have a discussion with the board about establishing a FAC with the hope of obtaining their support.

Step 4: Discuss the plan with the school board and the superintendent, emphasizing cooperation and support. Inform them that audit committees are now required in all New York State school districts, and that other districts nationwide have also adopted the practice. Hopefully, they will respond positively. However, since their permission is not needed (though it certainly would be welcomed), proceed with the next step.

Step 5: Decide on who should be represented (groups and individuals), following the suggestions for FAC membership above. An alliance approach would be most effective because it would provide for broad community participation and support.

Step 6: At the initial meeting, explain the purpose of a Forensic Auditing Committee (Alliance): *either to help the school board and superintendent (if they have been responsive) or to be a means to monitor board actions and school management to ensure that a school's financial, human, and physical resources are protected from loss and abuse and maximized through efficient and effective management operations and procedures.*

Present evidence supporting the value of a FAC, and explain how the school board responded to the initial request for support.

Step 7: Have each organizational representative go back to his or her respective group to determine if they want to be a member of the FAC.

Step 8: Wait 30 days, and call another meeting for the purpose of forming a FAC.

Step 9: Organize the FAC, select officers, and establish by-laws as to how it will operate. Take a survey of the members to determine what skills and interests they have. Based on this information, form teams that would concentrate on specific topics, issues, or activities. For example, one team can be assigned to follow-up on the confirmation questions, another team could be responsible for public relations and outreach, and still another could review and monitor the school budget.

Step 10: Communicate the plan to the school board and superintendent. At the same time, submit a written request to the School Board Chairperson that the FAC is interested in having ten questions answered. Also, provide a copy of this taxpayer manual to all board members to support the reason for the request.

Step 11: To start the process, begin by requesting that the board provide written responses to the first three questions only. They are easy questions to answer, so a quick response should be forthcoming, certainly no later than the next board meeting if not sooner.

Step 12: (a) If a response is forthcoming and the answers are credible and verifiable, proceed to get the next series of questions answered. Since they will have had time to read the manual, the board and superintendent will know what else will be expected of them. A positive response would indicate an interest on their part in establishing a working relationship with the taxpayer group, not only to provide answers, but also to take action where needed. (b) If a response is not forthcoming, determine which strategies to use to bring public awareness and pressure on the board (see Appendix C -- "Strategies to Use with Unresponsive Boards") to fulfill their duty and honor their responsibilities.

Step 13: Meet regularly and always have an established agenda.

Step 14: Since membership will change from time to time, and new information must constantly be reviewed and analyzed, it will be important to provide on-going training and education.

APPENDIX B -- REVIEW CHECKLIST

Any question answered with a "Yes" or "In Progress" must be supported by an attached document and/or written statement supporting the response. A "No" response should have a brief written explanation. This checklist should be completed every year to determine board progress.

1. School Assets: There is an effective management system in place to account for and monitor each asset on a yearly basis.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

2. Board Policies: Policies have been adopted that are comprehensive in managing resources effectively to prevent fraud, mismanagement, and other corrupt acts from taking place.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

3. Credit Cards: Board policy prohibits the issuance and use of credit cards or provides clear guidelines for their use.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

4. Grants: All available grants are publicly accounted for every year during the annual budget presentation and an effective management system is in place to monitor each grant for proper implementation.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

5. Student Activity Funds: The disbursement and receipt of such funds are monitored monthly and verified through bank statement reviews by at least one non-school building source.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

6. Payroll Records: Payroll documents are made public and show past complete payments made to every employee; in addition, there is a listing of the full amount to be earned for the current year.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

7. No Bid Contracts: Full disclosure of all no bid contracts is made to the board by the administration as they occur, and an effective monitoring system is in place to ensure that each contract has been completed according to the stated terms and requirements.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

8. Student Loads: The board annually reviews and analyzes the actual teacher-student workloads for waste and mismanagement.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

9. Non-Classroom Certified Staff: An effective management system is in place to account daily for the time and activities of such staff.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

10. Benefits: Employees pay for their portion of benefits according to the time actually worked, and the retiree benefits list is reviewed annually to confirm that only eligible employees are covered.

Yes (attachment # _____)

In Progress (attachment # _____)

No Explain _____

General Comments:

Date: _____

Prepared By: _____

APPENDIX C

TEN STRATEGIES TO USE IF A SCHOOL BOARD IS UNRESPONSIVE

Every effort should be made to work cooperatively with the board and administration. However, public pressure is the most effective means to deal with an unresponsive board.

Strategy 1

Use the Review Checklist to document what has or has not been done, and then have it published in the local paper, have copies distributed throughout town, give copies to town officials and legislators, and provide copies to radio, TV outlets, and local cable access channels.

Strategy 2

Support board members who are receptive in protecting school resources (letters to the editor, positive comments at board meetings, honoring them in some way, etc.), and support those who want to become responsible members of the board.

Strategy 3

Press legislators to pass legislation requiring board members and administrators to receive education and training in the effective use of school resources.

Strategy 4

Write a regular column for the local paper that deals with how effective (or ineffective) the board is in managing school resources that are free from fraud, mismanagement, and other corrupt acts.

Strategy 5

Enlist the support of the PTA/PTO, the local chamber of commerce, and other civic groups and organizations, since they all have a stake in having better schools.

Strategy 6

Use the local cable access channel to conduct informational sessions dealing with the problem and issues involved in managing schools resources more effectively.

Strategy 7

Develop a website so that information is readily available to the community.

Strategy 8

Have the local board of finance ask the ten questions since they are the body that approves a budget and should be entitled to have the answers.

Strategy 9

Get a local area radio host or TV personality to publicize the questions and the answers.

Strategy 10

If all efforts fail, conduct a sit-in at the board or superintendent's office.

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The Two Connecticuts: Public vs. Private Employment in the Nutmeg State
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The Value Gap: How Effective Is Your Local School District?
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RESOLUTION 2019/ _____

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NECESSARY DOCUMENTS FOR THE PURCHASE OF APPROXIMATELY 110 ACRES OF REAL PROPERTY KNOWN AS TAX MAP SERIAL NUMBER R200 010 000 0170 0000 AND ALSO KNOWN AS PINEVIEW.

WHEREAS, Seller wishes to sell and buyer wishes to buy the real property identified as R200 010 000 0170 0000 also known as Pineview, approximately 110 acres located in Northern Beaufort County, on Lady's Island; and

WHEREAS, the purchase of Pineview has been demonstrated to meet the Critical Lands Criteria of the Rural and Critical Lands program; and

WHEREAS, the proposal to purchase Pineview is for a fee simple purchase of \$2,980,000.00 which is below the appraised value of \$3,400,000 and the landowner has committed to a post-closing cash contribution of \$50,000 to Beaufort County be dedicated to passive park planning or improvements; and

WHEREAS, the proposed purchase of Pineview was presented to the Rural and Critical Land Preservation Board (RCLPB) at the September 12, 2019 meeting and the RCLPB unanimously recommended approval of the purchase; and

WHEREAS, the proposed purchase of Pineview was presented to the Natural Resources Committee at the September 16, 2019 meeting at which time it was referred to the Finance Committee; and

WHEREAS, the proposed purchase of Pineview was presented to the Finance Committee at the September 23, 2019 meeting and the Finance Committee unanimously recommended approval to County Council of the purchase of Pineview using Rural and Critical Lands program funds; and

WHEREAS, the project proposal and essential terms for the Purchase of Pineview are included in the attached Project Summary Sheet, Letter of Intent and Purchase Agreement and includes a fee simple purchase of approximately 110 acres at a price less than the appraised value and a post-closing cash donation from the seller; and

WHEREAS, County Council finds that it is in the best interest of the citizens and residents of Beaufort County for the County Administrator to execute the necessary documents for the purchase of Pineview.

NOW, THEREFORE, BE IT RESOLVED that Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute any and all documents necessary and consistent with the attached terms of agreement for the purchase **TMS# R200 010**

000 0170 0000 also known as Pineview, on Lady's Island in Beaufort County, South Carolina so long as the following contingencies are satisfied:

1. All personal property belonging to the Seller is removed from Pineview, and
2. Existing encroachments on Pineview identified on the County's survey are addressed to the satisfaction of the County, and
3. Title to Pineview's access road from Sams Point Road is resolved to the satisfaction of the County and the County's survey is finalized to reflect accurate ownership of the road.

Adopted this ____ day of _____, 20__.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council



LETTER OF INTENT
among
BEAUFORT COUNTY COUNCIL
and
PINEVIEW FARMS, LLC
CONCERNING ACQUISITION OF PINEVIEW TRACT
BEAUFORT COUNTY PARCEL R200 010 000 0170 0000

Statement of Purpose

THIS Letter of Intent (LOI) is made and entered into, by, and between Beaufort County Council (hereinafter referred to as County) and Gordon Wallace on behalf of Pineview Farms, LLC (hereinafter referred to as Owner).

WHEREAS, the County wishes to negotiate to acquire fee-simple title to and/or easement on lands that exemplify the natural, historic, and cultural characteristics of Beaufort County; and

WHEREAS, the County and Owner acknowledge the natural significance of the approximately 108 acres (hereinafter referred to as Property) to the people of Beaufort County; and

WHEREAS, it is the mutual desire of County and Owner to enter into an agreement to jointly cooperate to protect the ecological and recreational values of the Property.

NOW THEREFORE, in consideration of the above, the parties hereto mutually agree as follows:



Beaufort County
Rural & Critical
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The purpose of this LOI is to set out in general terms the agreed upon cooperative relationships the County and Owner regarding the Property.

This LOI establishes a framework that the parties may negotiate for the protection of the ecological and recreational values of the Property and shall become effective as of the date of the last signature.

Terms and Conditions

- The parties agree to negotiate for a purchase of the Property in fee simple.
- LOI and purchase shall be contingent upon a negotiated purchase price at or less than appraised value. The appraisal shall be conducted at the County's expense and by an appraiser of the County's choosing.
- The purchase of the Property is contingent upon a Phase I Environmental Assessment stating the Property is free from environmental contamination. The Assessment shall be conducted at the County's expense.
- The final acceptance of the negotiated terms and conditions of the sale is contingent upon approval by full Council via a written Resolution.
- The final purchase of the Property is contingent on the ability of the County to take the Property free of any mortgage or any other lien or encumbrance on the Property.
- For as long as the LOI is under effect, Owner agrees to cease negotiations with any other potential purchasers. Property may however remain in Active/Contingent status on the local MLS and other Real Estate websites. Negotiations shall remain confidential until the time a final Purchase Agreement has been executed by both parties.
- Each party shall be responsible for its own real estate closing costs and prorated expenses.
- This LOI shall continue in effect for six (6) months from the date of the last signature below.

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- This LOI may only be amended by mutual written agreement of both parties.

The above conditions and provisions are signed and agreed to by:

BEAUFORT COUNTY

Ashley M Jacobs 5.14.19
By: Ashley M. Jacobs Date
Title: County Administrator

Cheryl Harris
Witness 1

Princess B. Jackson
Witness 2

PINEVIEW FARMS, LLC

Gordon Wallace Mar 27, 2019
By: Gordon Wallace Date
Its: member

Hunter B. Jenkins
Witness 1
Samuel Rorasbaugh
Witness 2
SAMUEL RORASBAUGH



PINEVIEW
Beaufort County, SC
PROPOSAL FOR: FEE ACQUISITION

PROPERTY ID: R200 010 000 0170 0000
SELLER: Pineview Farms, LLC
ACREAGE: 110 acres
APPRAISED VALUE: \$3,400,000 (\$31,481 per acre)
PURCHASE PRICE: \$2,980,000 (\$27,091 per acre)
RCLPP FUNDS: \$2,980,000
SELLER CONTRIBUTION: \$50,000 cash donation to passive park development
ZONING: Lady’s Island Community Preservation
COUNCIL DISTRICT: 2 (Sommerville)

LOCATION: 484 Sams Point Road, Lady’s Island, SC, 29907

Property Characteristics:

- The property is an unimproved vacant parcel, primarily wooded with natural regeneration timber, water frontage on Rock Springs Creek and scenic road frontage on Sam’s Point Road. No structures exist on the property.
- The property was timbered approximately 15 years ago, naturally regenerated vegetation consists primarily of upland successional scrub-shrub, Atlantic coastal plain dry and dry-oak mesic forest and Atlantic coastal plain southern maritime forest.
- Vehicular access is from gated entrance off Sams Point Road on Lady’s Island. The road provides vehicular access from the western property boundary to the eastern property boundary then veers south and parallels the creek frontage. A number of walking trails exist on the property.
- Electricity and water available to site.
- Parcel’s entire northern property boundary is adjacent to 10-acre Open Land Trust-protected Miller Tract. Property’s waterfront is situated 700 feet across Rock Springs Creek from Holly Hall Plantation, 517 acres protected by The Nature Conservancy.





Critical Lands Criteria:

- Identified as land protection opportunity on Greenprint maps since 2006
- Significant development threat: One of the last undeveloped large-acreage parcels on Lady’s Island not zoned Planned Unit Development
- Adjacent to other protected properties: OLT-protected Miller Tract (10 acres), TNC-protected Holly Hall Plantation (517 acres) within 700 feet across Rock Springs Creek.
- Available at a purchase price at less than FMV
- High public access and recreation potential, includes potential water access and existing walking trails
- Reduction/deterrence of traffic congestion on Sams Point Road: 2017 SCDOT traffic data shows 4,800 vehicles per day north of the subject tract and 21,700/ day south of the tract toward Sea Island Parkway
- Protection of wildlife habitat: Undeveloped, naturally regenerated vegetation provides significant wildlife habitat functions including feeding, nesting and roosting areas for migratory songbirds and ground-nesting birds; feeding, nesting and brooding areas for wetlands-dependent game and non-game species; feeding, breeding and resting areas for native small game and non-game mammals; as well as feeding and breeding areas for amphibians and reptiles.
- Water quality protection:
 - 2,210’ tidal creek frontage on Rock Springs Creek draining into Lucy Creek, the Coosaw River and ultimately into St. Helena Sound
 - 7 acres freshwater wetlands
- 1,850’ feet scenic road frontage on Sams Point Road
- Provides an area for natural flood control/marsh migration: Creek frontage ranks as Priority 1 (highest) on Port Royal Mapping Analysis, indicating areas that will slowly transition to salt marsh as seas rise, helping to absorb the impacts of extreme weather and flooding.

Purchase and Cost Structure:

- Appraised Value: \$3,400,000
 - \$31,481 acre (December 2018)
- Purchase Price – RCLPP funds: \$2,980,000
 - \$29,091 acre
- Contributions toward project:
 - Landowner cash donation for park infrastructure \$ 50,000
 - Landowner donation of value (bargain sale) \$420,000





Future Cost Considerations:

- Economic impact on tax base of the County:
 - Foregone property tax revenue \$472 / year
- Costs of managing the property by the County:
 - Prescribed burning (CDD/SC Forestry) \$1,650 / year
 - Vegetation management (CDD/Public Works) \$1,375 / year
 - Invasive exotic vegetation control (CDD/Contractor) \$500 / year
 - Hardwood removal (CDD/Contractor) \$5,000
 - Longleaf Pine Reforestation (CDD/Contractor) \$15,000
- Passive Park planning costs (conceptual & civil) \$80,000
- Passive Park construction costs \$500,000
- Rollback taxes if use changed to non-agricultural in five years Unknown
- **Possible Revenue** - Timber Harvest (CDD/Contractor) market value

Project Analysis:

Purchase of the Pineview Tract offers Beaufort County the opportunity to protect one of the last two large-acre parcels of property on a relatively densely populated area of Lady’s Island. The property is adjacent to other protected properties along its entire northern property border and less than 700 feet across Rock Springs Creek.

Residents of Lady’s Island are strongly opposed to additional development affecting everyday quality of life such as traffic congestion. Pineview is currently zoned *Lady’s Island Community Preservation* with the potential for 220 new homes.

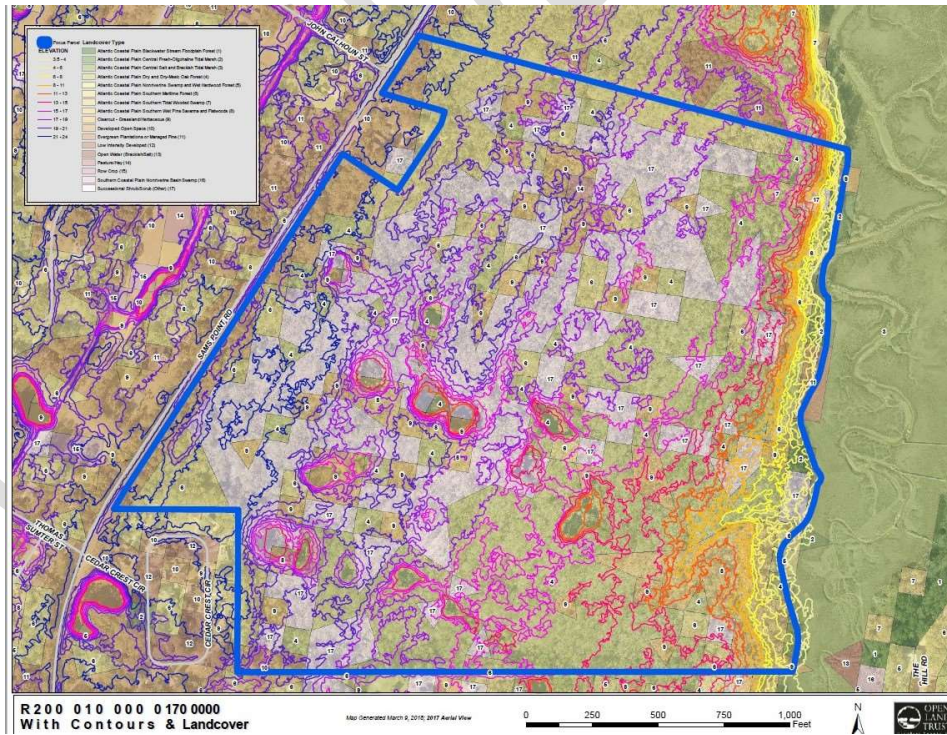
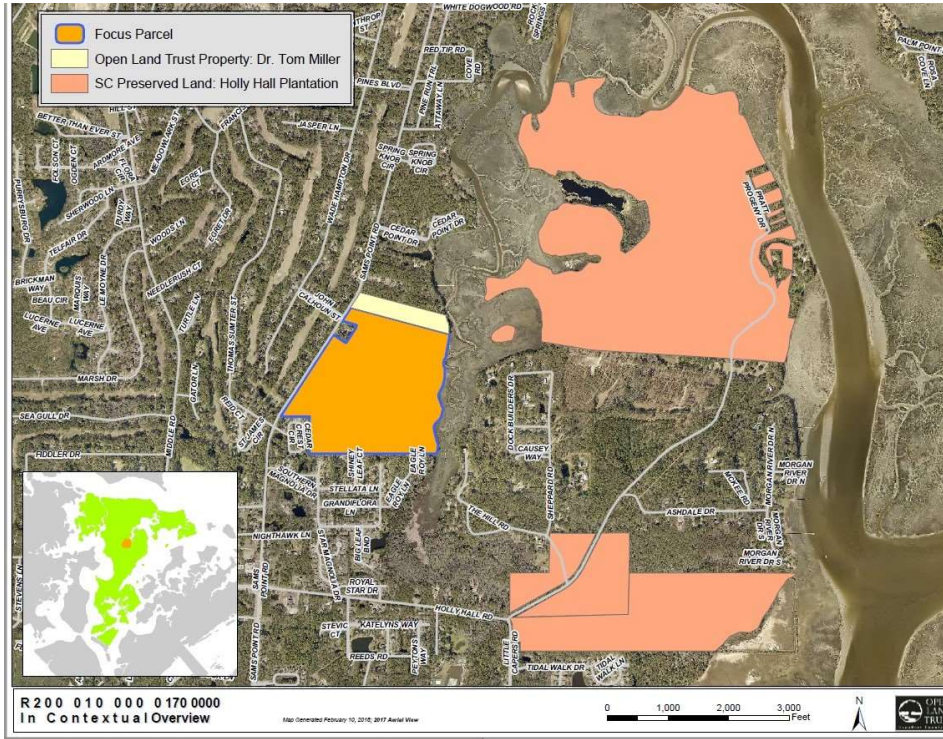
Pineview could provide excellent passive recreational potential for residents in close proximity to a number of relatively dense subdivisions. The extensive water frontage of Rock Springs Creek provides scenic views of the creek and could provide potential water access, possibly for kayaking. With existing walking trails and dirt roads in place, the purchase of Pineview could remain a natural, undeveloped area protecting natural habitats and also provide a place for residents of all ages to enjoy low-impact observation and use of this beautiful property.

Permanent Protection Recommendation:

- Either restrictions and covenants limiting the use of the park to passive park use or a conservation easement to be held by Open Land Trust.



Beaufort County Rural & Critical LAND PRESERVATION PROGRAM



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Rock Springs Creek – Low Tide



Sams Point Road

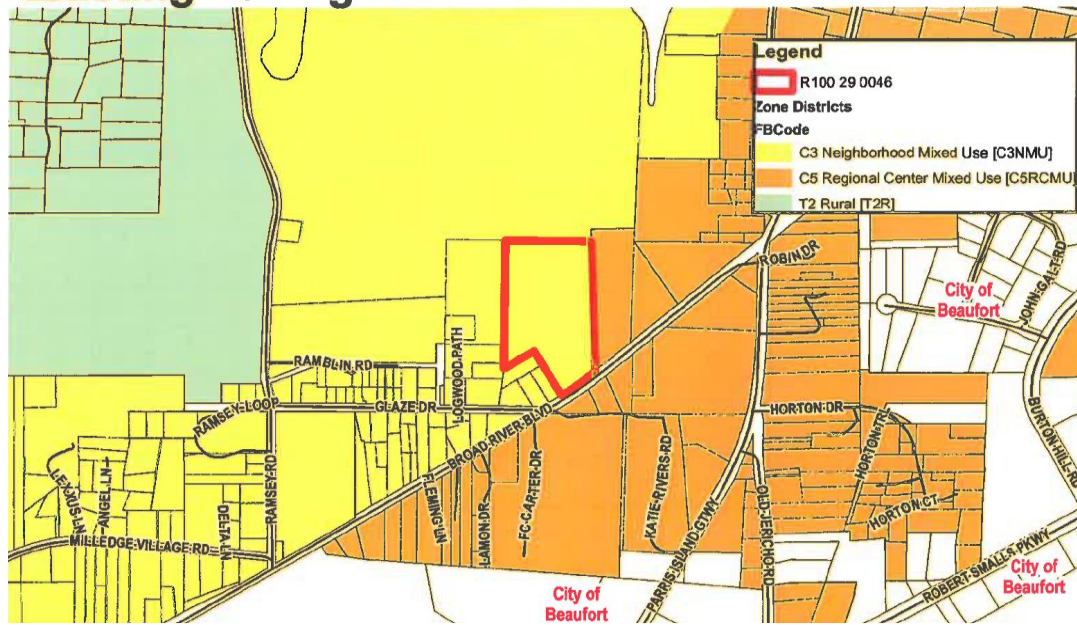


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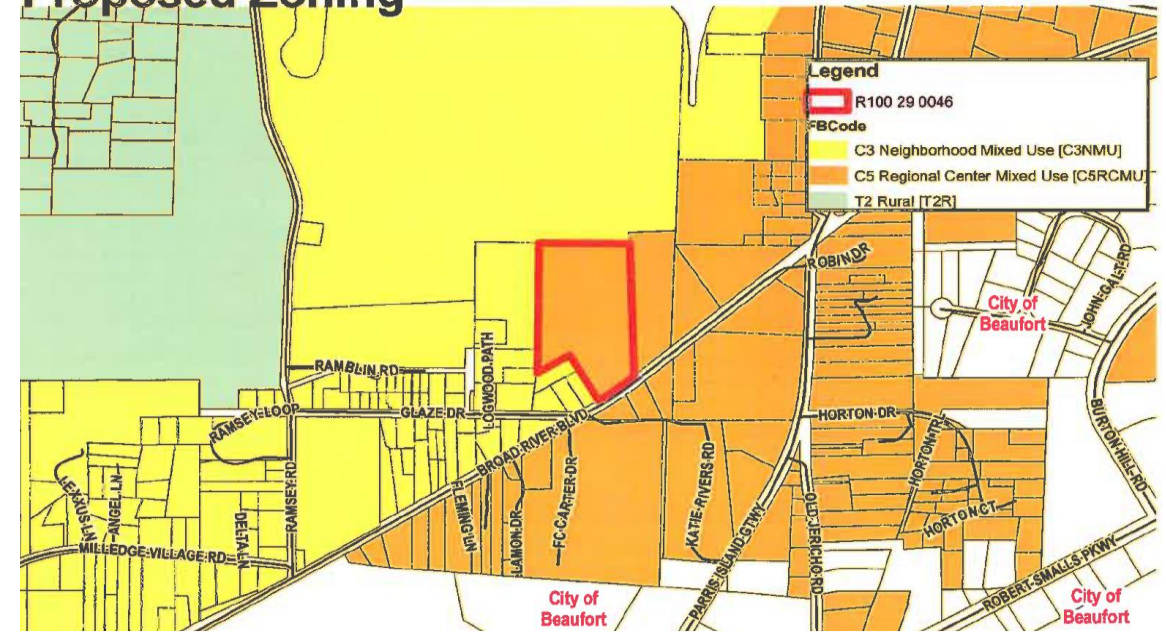


126 Broad River Boulevard Rezoning

Existing Zoning



Proposed Zoning



Request: C3 Neighborhood Mixed-Use to C5 Regional Center Mixed-Use