

# COUNTY COUNCIL OF BEAUFORT COUNTY

ADMINISTRATION BUILDING  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2180  
FAX: (843) 255-9401  
www.bcgov.net

WM. WESTON J. NEWTON  
CHAIRMAN

D. PAUL SOMMERVILLE  
VICE CHAIRMAN

## COUNCIL MEMBERS

STEVEN M. BAER  
RICK CAPORALE  
GERALD DAWSON  
BRIAN E. FLEWELLING  
HERBERT N. GLAZE  
WILLIAM L. McBRIDE  
STEWART H. RODMAN  
GERALD W. STEWART  
LAURA VON HARTEN

GARY KUBIC  
COUNTY ADMINISTRATOR

BRYAN J. HILL  
DEPUTY COUNTY ADMINISTRATOR

LADSON F. HOWELL  
COUNTY ATTORNEY

SUZANNE M. RAINEY  
CLERK TO COUNCIL

## AGENDA FINANCE COMMITTEE Monday, November 29, 2010 2:00 p.m. Executive Conference Room Administration Building

### Committee Members:

Stu Rodman, Chairman  
William McBride, Vice Chairman  
Steven Baer  
Brian Flewelling  
Paul Sommerville  
Jerry Stewart  
Laura Von Harten

### Staff Support

Bryan Hill, Deputy County Administrator  
David Starkey, Chief Financial Officer

**2:00 p.m.**

1. CALL TO ORDER
2. AUDIT SPECIAL PROCEDURES FINDINGS (PRESENTATION BY ELLIOTT DAVIS AND COMMENTS WELCOME FROM EACH DEPARTMENT):
  - County Financial Staff
  - County Treasurer
  - County Auditor
  - County Assessor
3. DISCUSSION / LEMMON TRACT PURCHASE FOR RELOCATION OF BLUFFTON FIRE DISTRICT STATION 30 ([backup](#))
4. CONSIDERATION OF REAPPOINTMENTS AND VACANCIES
  - [Accommodations Tax \(State 2%\) Board](#)
5. ADJOURNMENT

County TV Rebroadcast	
Monday	9:00 a.m.
Wednesday	1:00 a.m.
Thursday	7:00 p.m.

Finance		
Date	Time	Location
December 13	2:00 p.m.	ECR

A quorum of Council may be in attendance at all Committee meetings.  
Please silence your cell phone during the meeting

EMILY D. JOHNSON  
1959 CRANBOURNE COURT  
ATLANTA, GEORGIA 30338-3019  
770-901-9005 (H); 404-702-0315 (C);  
EMILYDJOHNSON@COMCAST.NET

October 5, 2010

Mr. Wm. Barry Turner, Fire Chief  
Bluffton Township Fire District  
357 Fording Island Road  
Bluffton, South Carolina 29910

Dear Chief Turner:

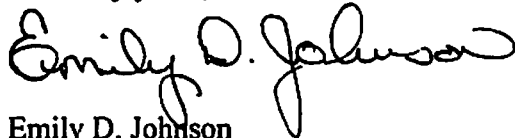
This is to inform you that I accept the September 10, 2010 summary appraisal of \$1, 200,000 for the property that I own, known as the Lemmon Tract, located at 199 Burnt Church Road, Bluffton, SC 29910.

My acceptance is contingent upon the contract for sale and receipt of the sale price no later than December 31, 2010. Additionally, I will not accept an offer to subdivide this property as I do not think this would be in the best use of this prime location nor in the best interest of the town of Bluffton.

I appreciate the hard work that you have done in your efforts to acquire this property for the Bluffton Township Fire District. This is an ideal location for a fire department for the present and the future.

You are to be commended for thinking about the short and long-term needs of the citizens of Bluffton!

Sincerely yours,

A handwritten signature in cursive script that reads "Emily D. Johnson". The signature is written in black ink and is positioned above the printed name.

Emily D. Johnson

## **Lemmon Tract Purchase for the Relocation of Fire Station 30 Bluffton Township Fire District, November 09, 2010**

Bluffton Township Fire District Station 30 is located at #2 Bridge Street in Bluffton Old Town. In 1979 the Beaufort County School District granted use of the property to the Bluffton Township Fire District for the construction of a volunteer fire station. A pre-engineered steel building was erected and the remaining construction was completed by the volunteer firefighters.

The existing Station 30 does not meet the needs of the Fire District due to being in a poor state of physical condition and having inadequate square footage. In June 2010, an engineering study was conducted to determine the structural integrity of the station. The results of this study indicated that due to the age and deterioration of the building structural repairs were required to maintain its structural integrity. The engineering firm conducting the study concluded the recommended work when completed would prolong the life of the station by an additional two (2) to three (3) years. The work was completed in July 2010. In addition to these structural condition issues, required firefighting tools and equipment have multiplied over the years and fire apparatus size has increased since the station was built. As a result the current station does not provide adequate space to meet the increased demand for services in the area served by Station 30.

Based on these facts relocation and construction of a new Station 30 in the FY2011-2012 timeframe was incorporated into Bluffton Township Fire District Strategic Plan as approved by the Bluffton Township Fire Department Fire Commission on February 16, 2010.

The Bluffton Township Fire District first researched the feasibility of rebuilding fire station 30 on the existing property. In response to our inquiry, The Beaufort County School District's official statement was *"The sentiment expressed by the Board was that they did not want the Fire District to expand onto the property outside the area currently being used. For example, if the building area and parking area currently used by the Fire District is 1 acre, it is their desire that the renovated building or new building not exceed 1 acre. The campus is quite congested and additional encroachment on the school property may cause some issues in the future."*

Based on this information, we contacted a site engineer to prepare a preliminary conceptual plan of our proposed prototype fire station on the existing property which is actually 0.77 acres. Several issues were discovered that could negatively impact construction on the existing site:

- Any plan would most likely damage or remove the large specimen trees, this would be difficult to permit and is not ecologically or morally sound
- There may be required underground detention due to the lack of space, which would be costly
- There may be numerous conflicts with existing utilities which would increase the construction cost much higher than building on a vacant site
- Substantial variances or modulations would be required for access/egress points on the existing property
- Substantial variances or modulations would be required for established current set back requirements

Based on this information it was determined that Station 30 should be relocated from its present site.

Station 30 is the District's busiest station located in the old downtown area of the district. Any relocation of the station must maintain its current response time and mileage performance profile in order to maintain current ISO ratings and therefore, the insurance rates for citizens and businesses located in the area it serves. This requirement limits the geographic area of land parcels to be considered.

As a first step in relocating Station 30, the Bluffton Township Fire District FY 2011 budget *included \$800,000 for the purchase of property.* This budget figure was based on prices of certain available tracts of land in the target relocation area. The 2011 fiscal year budget was approved by the Bluffton Township Fire Commission and the Beaufort County Finance Committee in May, 2010.

While evaluating available parcels of land, the Fire Department was approached by the Johnson family who offered the Lemmon Tract as a possible site for the new station. The Lemmon Tract is located at 199 Burnt Church Road. It is 9.24 acres of old growth, wooded, undeveloped property, predominately in a shape of a square. It is privately owned by Cliff and Emily Johnson who reside in Atlanta GA. The property was purchased by the Lemmon/Johnson family in the mid 1940's and has been in the family ever since. The property has a survey which indicates that no wetlands are on site and the entire site is suitable for construction. The property is located within unincorporated Beaufort County. The property fronts Burnt Church Road and Ulmer Road. The Johnson's are asking 1.2 million for the tract which is the exact appraisal price.

This property has been evaluated to determine the future developmental impacts from the Town of Bluffton and Beaufort County. No impact issues were noted during this evaluation.

The Lemmon Tract provides an optimal site for the relocation of Station 30 although it is larger than required for the relocated fire station. The shape of the property and frontage on both Burnt Church and Ulmer roads allows more options for future District

infrastructure needs as identified in its Strategic Plan. Some of these needs include a training facility and accompanying area(s), secured vehicle storage areas for department vehicles, emergency preparedness staging areas in coordination with the county (hurricane recovery, disaster recovery area), general centralized storage areas, and unforeseen emergency service related needs.

At its October 19, 2010, monthly meeting the Bluffton Township Fire District Commission voted to approve the purchase of the Lemmon Tract at a price not to exceed 1.2 million dollars.

The purchase of the property will be accomplished using monies from both the District's Impact Fee Fund and General Fund. In the approved Fiscal Year 2011 budget the District allotted \$300,000 to be spent from the Impact Fee Fund and an additional \$500,000 from the General Fund. After discussing the issue with the County, it was suggested the District use the remainder of its Impact Fee Fund then supplement the difference from the General Fund. This means the District will use \$763,885 from the Impact Fee Fund and \$436,115 from the General Fund to complete the purchase.

The District has carefully considered the financial impact of the purchase on the Fire District and community. Based upon information from several sources, including Beaufort County, a complete financing plan for the District's Capital Improvement Plan was completed and presented to the Fire Commission so an informed decision about the property purchase could be made. The Fire District has taken a very conservative approach to the assumptions made in the financing plan.

As with all businesses in the current economy it is very difficult to project future revenues. However, at this point in time the District is on firm financial standing. The District is not in a situation in which it must reduce its staffing levels, nor does the District foresee such actions as necessary. The District has considered, to the best of its ability, the impact of this purchase now versus the impact of such a purchase in the future when the needs of the District will require additional property, equipment, personnel, and resources. The District feels certain that this purchase is not only the most economically feasible option, but also is in the best interest of the taxpayers.

**VAUX & MARSCHER, P.A.**

Attorneys and Counselors at Law

P.O. Box 769

1251 May River Rd.

Bluffton, SC 29910

(843) 757-2888

FAX (843) 757-2889

[www.vaux-marscher.com](http://www.vaux-marscher.com)

AUTHOR'S EMAIL ADDRESS: [roberts.vaux@vaux-marscher.com](mailto:roberts.vaux@vaux-marscher.com)

ROBERTS VAUX  
WILLIAM F. MARSCHER, III

Of Counsel:  
JAMES P. SCHEIDER, JR  
MAC DUNAWAY, DC ONLY

Associates:  
ANTONIA LUCIA, SC & NY  
ROBERT CRAIG SMITH, LL.M, SC & OH  
MARK S. BERGLIND

November 11, 2010

Chief Barry Turner  
Bluffton Township Fire Department  
357 Fording Island Road  
Bluffton, South Carolina 29910

In Re: The Fire District site at the intersection of Burnt Church and Alljoy Roads

Dear Barry:

You have requested of this law firm an opinion of the rights of the Fire District to the improvements constructed on the property at the corner of Burnt Church and Alljoy Roads consisting of the buildings, but excluding any contents and non-affixed property.

**FACTUAL BASIS:**

There is a parcel of land located at the corner of Burnt Church Road and Bridge Street/Alljoy Road which is shown as Parcel Number R611 039 000 0057 0000 (the "Property"). The property is shown in the tax records of Beaufort County as being "Bluffton School". The Beaufort County School Board ("School Board") is the governmental entity which exercises control over the property and title to the property is presumptively in the School Board for purposes of this Opinion.

Located on the portion of the property which is closest to the intersection of Burnt Church Road and Bridge Street/Alljoy Road is a fire station operated by the Bluffton Township Fire District ("Fire District"). No map, plat, or drawing setting out the size and

DEL WEBB'S SUN CITY

OTHER OFFICE

OKATIE, SOUTH CAROLINA

Chief Barry Turner  
Page Two  
November 11, 2010

extent of the property utilized by the Fire District in operating this fire station is known to exist.

Based upon a review of the records of the Fire District (performed by the Fire District) and a review of the records of the School Board <sup>1</sup>(performed by the School Board ) neither entity has any record of a written agreement regarding the use of this property by the Fire District. Additionally, no institutional memory regarding this agreement is available from either the School Board or Fire District. The Fire District has been in actual possession of that portion of the property where the improvements are located for a period in excess of 25 years and possibly longer. No dispute over the occupation and use of the property has arisen between the School Board and the Fire District. Both parties agree the use has been permissive and not adverse for purposes of this Opinion.

Due to size and location limitations of the current fire station site, the Fire District is currently contemplating moving the fire station and all ancillary use to a different location and returning the use of the present site to the School Board.

**QUESTION PRESENTED:**

What rights, if any, does the Fire District have in the continued use of that portion of the School Property which it currently occupies and who is the owner of the improvements located on the occupied portion of the Property in the event the Fire District ceases to use the improvements.

**DISCUSSION:**

The relationship between the School Board and the Fire District is that of a tenancy at will. A tenancy at will is defined as "every person other than the owner of the real estate using or occupying the real estate without an agreement, either oral or in writing...". S.C. Code Ann. §27-33-10 (c). In this instance, neither the School Board nor the Fire District asserts the existence of any written or oral agreement establishing the Fire District's right to use and occupy the portion of the Property in question. Additionally, neither party asserts the occupancy was anything other than permissive. Therefore, the occupancy of the property constitutes a tenancy at will under the applicable statute.

Having established the legal relationship between the School Board and the Fire District, the next question which arises is the disposition of the buildings and other permanent or

---

<sup>1</sup> Sarah Robertson, Esq. of the McNair Law Firm conveyed that the Board of Education through Phyllis White can find no documents or other evidence memorializing any agreement between the District and the Board of Education.

Chief Barry Turner  
Page Three  
November 11, 2010

affixed structures which have been placed on the current site by the Fire District when the Fire District ceases to use the site or their tenancy is terminated.

The buildings and all other improvements to the fire station site made by the Fire District were done with the approval of the School Board, either tacit or express, since no objection to same has been noted by either party.

Improvements is a term of art utilized in South Carolina to describe "...something done or put upon the land which the occupant can not remove or carry away with him, either because it has become physically impossible to separate it from the land or because, in contemplation of law, it has been annexed to the soil and is therefore considered to be part of the freehold." *Dunham v. Davis* 232 S.C. 175, 101 S.E. 2d 278 (1957).

Likewise the term "fixture" is a defined term of art. South Carolina courts have defined a fixture as "an article which was a chattel, but by being physically annexed to the realty by one having an interest in the soil becomes a part and parcel of it." *Carson v. Living Word Outreach Ministries, Inc.*, 315 S.C. 64, 70, 431 S.E.2d 615, 618 (Ct.App.1993). However, "Mere affixation does not automatically render property a fixture." *Creative Displays, Inc. v. S.C. Highway Dep't*, 272 S.C. 68, 72, 248 S.E.2d 916, 917 (1978). The Courts have further found "In determining whether an item is a fixture, courts should consider the following factors: (1) mode of attachment, (2) character of the structure or article, (3) the intent of the parties making the annexation, and (4) the relationship of the parties." *Hyman v. Wellman Enters.*, 337 S.C. 80, 84, 522 S.E.2d 150, 152 (Ct.App.1999).

In this instance, the Fire District has constructed on the portion of the Property it utilizes buildings which are slab on grade, paved driveways and parking areas and other similar structures, which are not temporary or portable in nature. The improvements do not appear to have been constructed with the intention that at some date in the future they would moved to another location. Given the nature and mode of construction of the "improvements" it does not appear the Fire District had any plans with regard to the future removal of the "improvements" from the site. The structures, because of the style of construction and the method of construction are affixed to the ground, are permanent in nature and not capable of easily being removed from the property.

Because the buildings and other structures were constructed in a fashion which rendered them not capable of being moved by the District without significant damage to the property, they would most likely be deemed to be improvements and found to be part of the realty at the termination of the Fire District's tenancy on the site.



Chief Barry Turner  
Page Four  
November 11, 2010

**CONCLUSION:**

Therefore, in the event the Fire District leaves and ceases to use the portion of the Property it currently occupies or in the event their tenancy is properly terminated by the School Board, absent a written agreement between the parties to the contrary, the buildings and other permanent type structures and improvements would remain with the land and become the property of the School Board.

With best wishes, I remain,

Yours truly,



ROBERTS VAUX

RV:bc

\\VMSEVER2\Data\VM\Documents for Files\Open Files\Bluffton Fire District (General Council)\Opinion letter 1111110.doc



THIS MAP SHOWS THE BOUNDARY OF THE LANDS OWNED BY THE STATE OF SOUTH CAROLINA AND IS NOT TO BE USED AS A BASIS FOR ANY OTHER PURPOSE.

NOTES:  
1. THIS LOT APPEARS TO BE IN ZONE S, LOT A, SECTION 16, TOWNSHIP 38N, RANGE 7E, SOUTH CAROLINA. THE COUNTY RECORDS SHOW THE CORNER OF THIS LOT TO BE AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE 1/2 ACRES TRACT AND THE WEST LINE OF THE 1/2 ACRES TRACT.

LEGEND:  
SOLID LINE BOUNDARY OF LOT  
DASHED LINE BOUNDARY OF ADJACENT LOT  
DOTTED LINE BOUNDARY OF ADJACENT LOT  
... (Other symbols and their meanings)

REFERENCES:  
1. DEED BOOK 1, PAGE 123  
2. DEED BOOK 1, PAGE 124  
3. DEED BOOK 1, PAGE 125  
4. DEED BOOK 1, PAGE 126  
5. DEED BOOK 1, PAGE 127  
6. DEED BOOK 1, PAGE 128  
7. DEED BOOK 1, PAGE 129  
8. DEED BOOK 1, PAGE 130  
9. DEED BOOK 1, PAGE 131  
10. DEED BOOK 1, PAGE 132

A BOUNDARY SURVEY OF  
**8.24 ACRES**  
**BURNT CHURCH ROAD**

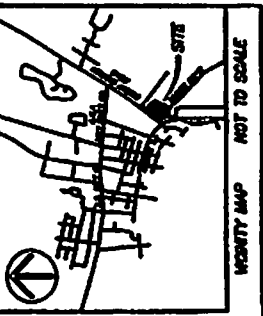
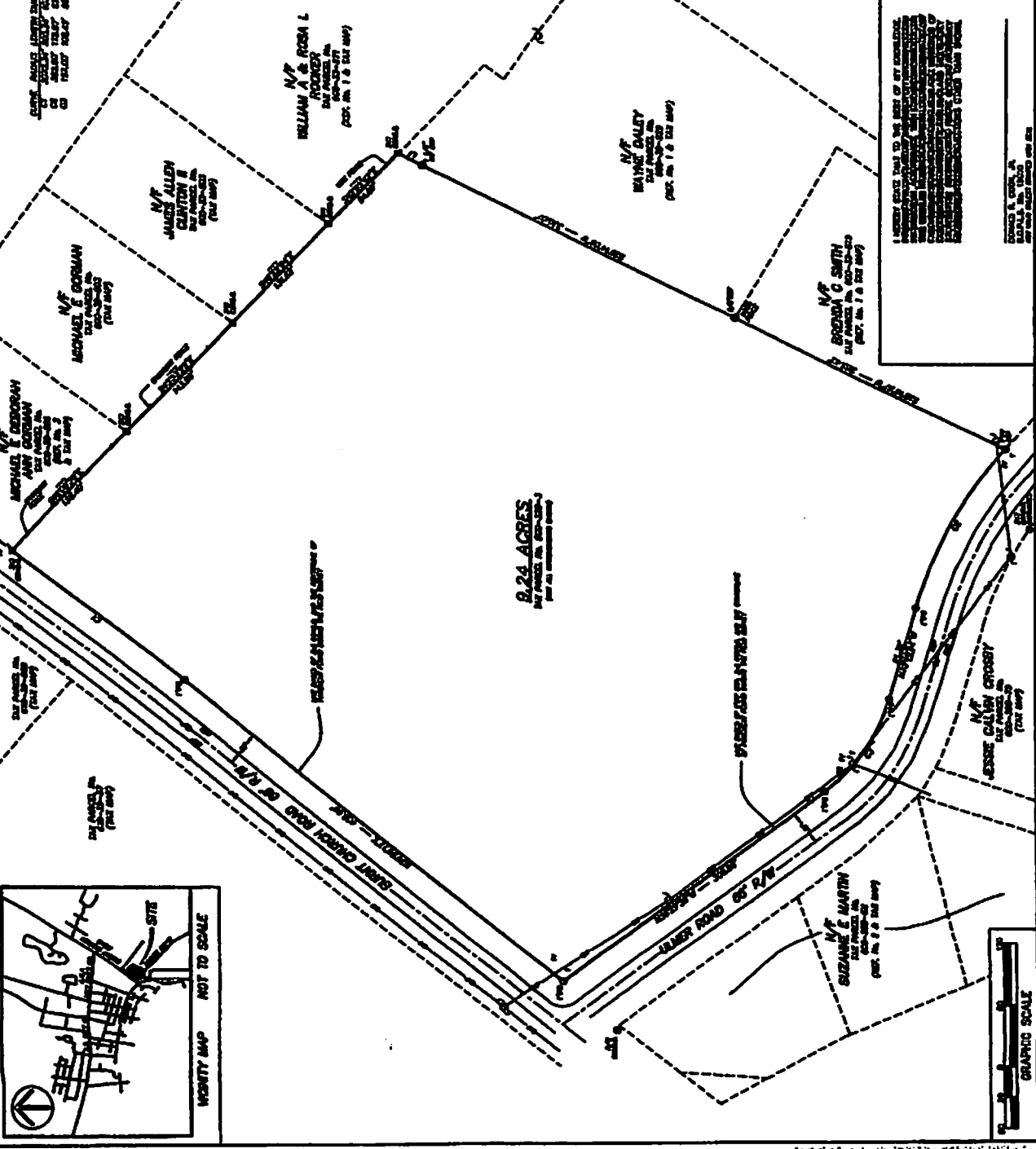
TAX PARCEL No. 000-350-3  
BLUFFTON TOWNSHIP, BEaufORT COUNTY,  
SOUTH CAROLINA

PREPARED FOR:  
**CLIFF JOHNSON**

**WARD EDWARDS, INC.**  
Surveyors • Planners • Engineers • Architects  
100 S. W. 5th St., Suite 100  
Fort Lauderdale, Florida 33301  
Tel: 305-561-1111  
Fax: 305-561-1112  
www.ward-edwards.com

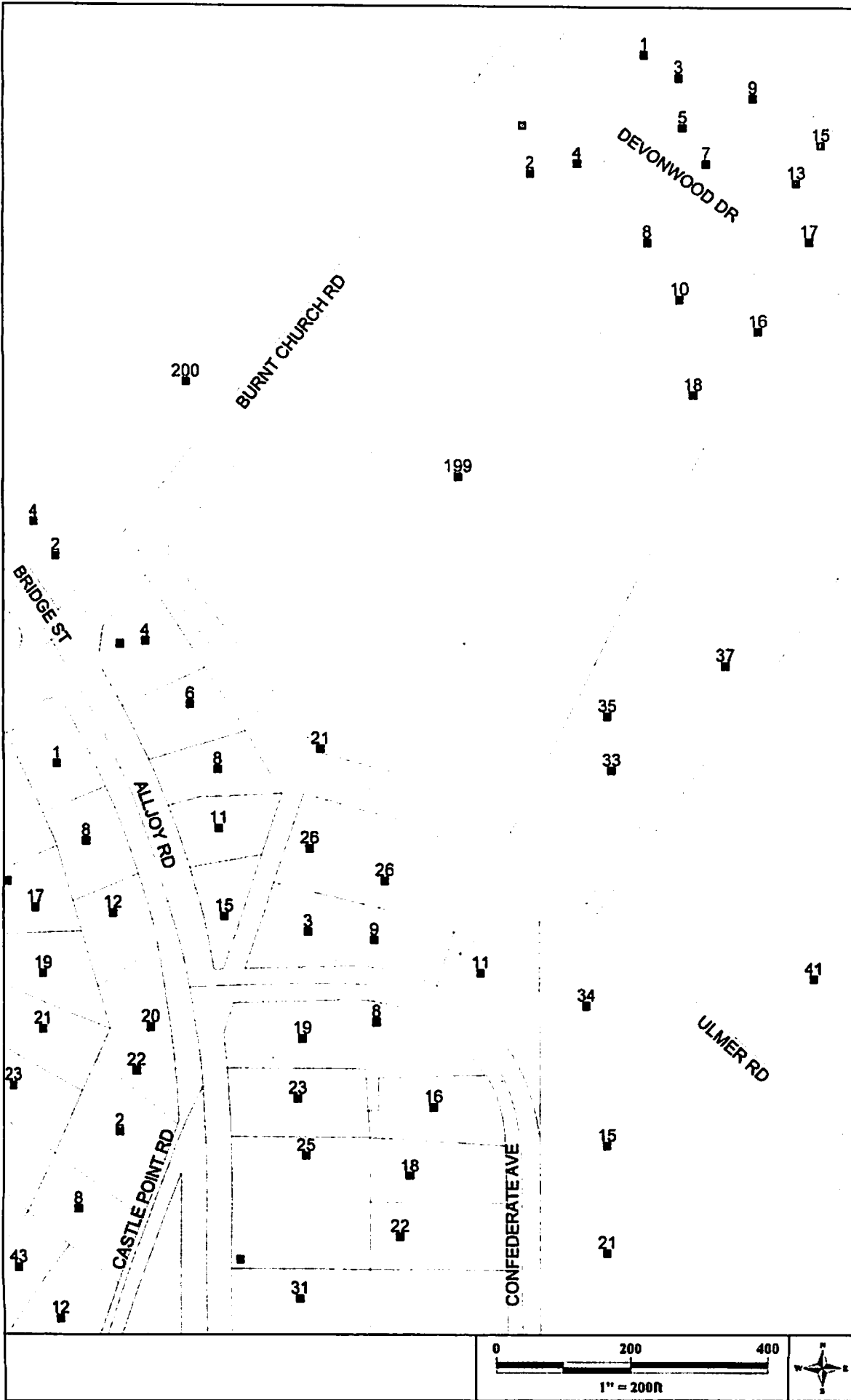
FIELD CHECKED BY: [ ]  
CHECKED BY: [ ]  
DRAWN BY: [ ]  
DATE: [ ]

SHEET 1 OF 1

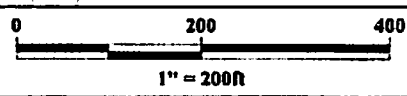


I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS SURVEY IS A TRUE AND CORRECT REPRESENTATION OF THE ACTUAL SURFACE CONDITIONS AS THEY EXIST AT THIS DATE.

SURVEYED BY: [ ]  
DATE: [ ]



- Parcels
- Streets
- Addresses
- Jasper Roads
- Hampton Roads
- shape-176089609
- Hampton Highway
- Hampton Roads(



**Accommodations (2% State) Tax  
(Candidates With Applications and Resumes on File)**

<b>Name</b>	<b>Council District</b>	<b>Ethnicity</b>	<b>Primary Interest or Expertise</b>	<b>Other ABC Interest</b>	<b>Date Application Received</b>
Bullen-Ennever, Jean	10	African-American	Hotel Night Auditor	Zoning - 2 Hospital - 3	April 2009
Dickson, David M.	10	Caucasian	Retired		July 2010
Fess, David	5	Caucasian	Teacher/Coach	Airports - 1 Northern - 2	January 2009
Irwin, Van	11	Caucasian	Retired - CFO of Healthcare System	Hospital - 1 Coastal - 2	September 2007
Novak, Douglas	9	Unknown	Attorney	Rural - 1 Sheldon - 2	May 2010
Peacock, Richard	4	Caucasian	Lawyer	LCOG - 1 Construction - 3	August 2008
Young, Olivia	4	Caucasian	Hospitality - Hotel Management		September 2010