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 ADMINISTRATION BUILDING  
 BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX

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 COUNTY ATTORNEY

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AGENDA  
 DEVELOPMENT AGREEMENT SUBCOMMITTEE  
 OF  
 NATURAL RESOURCES COMMITTEE

Thursday, June 30, 2016

9:00 a.m.

Executive Conference Room, Administration Building  
 Beaufort County Government Robert Smalls Complex  
 100 Ribaut Road, Beaufort

Committee Members:  
 Brian Flewelling, Chairman  
 Steve Fobes  
 Jerry Stewart

Staff Support: Tony Criscitiello

1. CALL TO ORDER – 9:00 A.M.
2. CONSIDERATION / DEVELOPMENT AGREEMENT PEPPER HALL PLANTATION ([backup](#))
3. EXECUTIVE SESSION
  - A. Receipt of legal advice regarding terms of possible development agreement on Pepper Hall Plantation
4. MATTERS ARISING OUT OF EXECUTIVE SESSION
5. ADJOURNMENT



## Keaveny, Thomas

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**From:** Barry Johnson <barry@jd-pa.com>  
**Sent:** Thursday, June 23, 2016 4:12 PM  
**To:** Flewelling, Brian; Stewart, Jerry; Fobes, Steve  
**Cc:** Sommerville, Paul; Stu Rodman; Cynthia Bensch; Keaveny, Thomas; Criscitiello, Anthony; Robert L. Graves; 'R. Ling Graves (linggravesconst@hargray.com)'; Joy Walker; Gay Reed  
**Subject:** Graves Rezoning -- a little history on the 45/68 acres split  
**Attachments:** 20151227\_Offer To DANC\_B LJ V2.docx; 20160110\_Reply Memo from DANC\_B Flewelling.pdf; 20160113\_Counter-Offer To DANC\_B LJ V3.docx; 20160125\_Counter-Offer To DANC\_B LJ V1.docx

Gentlemen of the Graves Development Agreement Negotiating Committee,

At our meeting with you on June 21, 2016, it became crystal clear that our negotiations went backwards, in part due to differing recollections by Chairman Flewelling and me of the history of these negotiations and in the apparent absence of formal Committee Minutes, related to the acreage split issue between zoning classifications.

I write to address that history, and I am copying Council Members and Staff who, as I recall, were also present on June 21, 2016, to clarify this issue to all of you, as follows:

1. The Graves Families presented to this Committee a Confidential Memorandum dated December 27, 2015, expressing their proposal for key Development Agreement elements, copy attached.
2. We then met with this Committee on January 8, 2016 to discuss the Dec. 27 Graves Proposal. I have detailed, contemporaneous, written notes of the discussion at that meeting. Chairman Flewelling reported that the Committee had met in executive session and had reviewed the Dec. 27 Graves Proposal. Chairman Flewelling then reported to us, what he called the consensus of the Committee as follows, on the Acreage Split, 45 acres in the front (south) and 68 acres in the rear (north): that the 20 acre medical option should come out of the 45 acres and the 68 acres in equal parts, as a "possible incentive" to use the medical option. This report by Chairman accepted the acreage split at 45/68, taking up to 10 acres out of each for the medical option if the Graves Families went with that option.
3. On January 10, 2016, Chairman Flewelling sent us his "redlined" Reply Memorandum, copy attached, in response to the Dec. 27 Graves Proposal. Therein, on the 45/68 acreage issue, he stated: "I believe those numbers should be 35 C.R., 58 Suburban, 20 Medical Tech Center (details to Discussed). Otherwise, 45/68 is ok."
4. On January 13, 2016, we responded ("January 13, 2016 Graves Response"), copy attached, to the Committee and to Chairman Flewelling's January 10, 2016 Reply Memorandum, by our further Confidential Memorandum, copy attached. On the 45/68 acreage issue, the Graves Families therein agreed to accept the medical option incentive with the following language: (" . . . {45/68; Provided, however, that this Owner/Developer has the option, in his/its discretion, to utilize up to 20 acres for a facility of medical and/or medical-related uses with acreage to be adjusted, pro-rata, from the Commercial Regional (45 acres) and Suburban (68 acres) Districts to accommodate same and with commensurate and requisite zoning on such Medical Tech Center."
5. On January 14, 2016, the Committee reconvened with us and, by my detailed, contemporaneous, written notes, Chairman Flewelling reported to us what he then called "the sense of the Committee" that the Committee was disappointed in the January 13, 2016 Graves Response, but disappointed in only three particulars, as follows:
  - A. the number of residential units proposed by the Graves Families on the 68 acres;

- B. the treatment proposed by the Graves Families of the 18 acres purchased by Beaufort County from R. Graves; and
- C. the proposed finances associated with improvements to Graves Road.

The "sense of the Committee", as stated then by Chairman Flewelling, expressed no disappointment with the January 13, 2016 Graves Response on the 45/68 acreage split. with Medical Tech Center option reserved to Graves. That "sense of the Committee", on those three points, was summarized in the January 25, 2016 Graves Response, copy also attached.

I realize the "sense of the Committee" may have changed since January 14, 2016 regarding the 45/68 acreage split, but I don't think so. I hope you will agree that these facts prove that this Committee, as a matter of good faith, needs to continue with the 45/68 acreage split, as a predicate for continued discussion of this matter. This factual recitation and documentation should also serve to refresh the memory of the Committee and those associated with them.

Hopefully, these materials and this historical review of the facts will enable us to have a better outcome, for all concerned, at our next meeting.

Regards,  
Barry  
June 23, 2016

Barry L. Johnson, Attorney at Law  
**JOHNSON & DAVIS, PA**  
The Victoria Building, Suite 200  
10 Pinckney Colony Road  
Bluffton, SC 29909  
(843) 815-7121  
(843) 815-7122 (facsimile)

Both Barry L. Johnson and JOHNSON & DAVIS, PA, intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Barry L. Johnson immediately at 843-815-7121. Thank you.

# JOHNSON & DAVIS, PA

## ATTORNEYS AND COUNSELORS AT LAW

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### CONFIDENTIAL MEMORANDUM

**TO:** Beaufort County Council DANC  
Brian Flewelling, Chairman

**COPIES**

**TO:** Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney

**FROM:** Barry L. Johnson

**DATE:** December 27, 2015

**RE:** Graves Rezoning – Offer for Elements of Development Agreement

---

#### Introduction:

We are concerned that our paths at the second meeting seemed to be diverging and not converging. We take some responsibility for that, in the interest of moving to convergence, and we apologize, but we do want you to have an appropriate explanation. What we indicated at the second meeting was in response to what we understood from the first meeting – that you were looking for our expression of what we wanted, and what we wanted was based on the recommendation from March 2013 of the Beaufort County Planning Commission. What we took away from the second meeting was your rejection of the recommendation of the Planning Commission and of the offer we made at our second meeting. We respect that.

Today, we have shaped our offer around the last draft of the proposed Development Agreement. If for some particular reason(s), you were to find that this offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer. We think this is the best format in which we might be able to move forward, without us having to speculate on your views. We also think that our mutual

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BCC DANC

Brian Flewelling, Chariman

December 16, 2015

Page 2

discussions can proceed better in a private format, even a mediation format, and that our discussions, in such a format, can proceed faster, which we think all of us want. Please advise of your consideration of that.

Offer:

I. ZDSO applies

II. Zoning Districts

- A. Commercial Regional – 45 acres northerly of US 278
- B. Suburban – 68 acres northerly of Commercial Regional District

III. Uses and Densities

A. Commercial Regional (CR) Zoning District

Permitted uses and densities are all as allowed within Commercial Regional District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district;
- upper floors used as residential, above commercial on first floor, do not count against density limitations;
- grocery stores are limited each to 55,000 SF of conditioned space on first floor;
- retail store structures are limited each to 35,000 SF of conditioned space on first floor;
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, “large” auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor;
- restaurant structures cannot exceed 10,000 SF of conditioned space on first floor;

- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road.

B. Suburban Zoning (S) District

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available;
- 68,000 SF commercial, ground floor, in the Suburban District; and

III. Provisions Applicable to Both CR and S Districts

- Residential Density for both Commercial Regional and Suburban Districts shall be limited to a base cap of 480 dwelling units provided that any surplus by-right commercial square footage may be converted to additional residential uses as follows: residential (single-family detached) at one d.u. per 2400 commercial square feet; and/or to residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or to institutional residential at one room per 864 commercial square feet;
- Riverfront Corridor Parcel to “count” (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that
  - (1) Owner/Developer, in consultation with the County, after agreement with the County on timing, cost, route and point of access, will pay cost of internal access road within the Property, combined with other uses for such road within the Property, to access the Riverfront Corridor Parcel, excluding improvements connecting such access to Graves Road or US Highway 278; and
  - (2) Owner/Developer, after its approval of the County’s final plan for development of the Riverfront Corridor Parcel as a public park, and at or within ninety days after the commencement of substantial

construction thereof by the County, will contribute \$100,000.00 to such costs.

- County to pay cost of improvements of Graves Road, including expansion of right of way as needed to meet applicable width standards, consistently with the approved Graves development plans, and the County will restore Graves Road to the County's Capital Improvements List;
- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping;
- Densities are counted at first floor uses only (understanding that they will be limited by other development criteria);
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees.

# JOHNSON & DAVIS, PA

ATTORNEYS AND COUNSELORS AT LAW

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## CONFIDENTIAL MEMORANDUM

**TO: Beaufort County Council DANC  
Brian Flewelling, Chairman**

### COPIES

**TO: Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney**

**FROM: Barry L. Johnson**

**DATE: January 13, 2016**

**RE: Graves Rezoning – Counter-Offer for Elements of Development Agreement**

---

### Introduction:

We have received Chairman Flewelling's Reply Memorandum, dated January 10, 2016, expressing his impression of the sense – not the vote, as no vote has been taken – of the Development Agreement Negotiating Committee.

Today, we have built from that Reply Memorandum and from all of our prior conversations, and are presenting a further counter-offer. If for some particular reason(s), you were to find that this counter-offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer or, at least, a further Reply Memorandum.



**Counter-Offer (Inclusive of Items On Which Agreement Appears):**

- I. **Applicable Code:** ZDSO applies, including with floor area ratio's and traffic impact analysis (-ses) at time of consideration of development permit application(s).

II. **Zoning Districts**

- A. Commercial Regional – 45 acres northerly of US 278;
- B. Suburban – 68 acres northerly of Commercial Regional District;
- C. Provided, however, that the Owner/Developer has the option, in his/its discretion, to utilize up to 20 acres for a facility of medical and/or medical-related uses with acreage to be adjusted, pro-rata, from the Commercial Regional and Suburban Districts to accommodate same and with commensurate and requisite zoning on such Medical Tech Center.

III. **Uses and Densities**

A. **Commercial Regional (CR) Zoning District**

Permitted uses and densities are all as allowed within Commercial Regional District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district, subject to the Conversion Rules below in Part IV;
- grocery stores are limited each to 55,000 SF of conditioned space on first floor;
- retail store structures are limited each to 35,000 SF of conditioned space on first floor;
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, "large" auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor;

- restaurant structures may not exceed 10,000 SF of conditioned space on first floor;
- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road;
- densities and uses are counted at first floor uses only.

B. **Suburban Zoning (S) District**

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available, as option to Owner/Developer, in his/its discretion;
- 68,000 SF commercial, ground floor, in the Suburban District, subject to the Conversion Rules below in Part IV; and
- Residential Density shall be limited to a base cap of 480 dwelling units, subject to the Conversion Rules below in Part IV. [Note that our unwillingness to move away from this base density cap of residential density is driven by the financial realities of the cost of infrastructure construction, the higher costs of building multiple smaller commercial buildings, and the very reluctant concession to reduce commercial square footage for the Property below 700,000 square feet. To sustain a fair investment opportunity, maintenance of this balance is essential.]

IV. **Provisions Applicable to Both CR and S Districts**

- Conversion Rules:

\*\*No more than a total of 75,000 additional commercial square footage within the Property may be added from conversion of residential density to commercial density; and

\*\*subject to the foregoing, densities may be converted on the following Conversion Ratio's: residential (single-family detached) at one d.u. per

2400 commercial square feet; and/or residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or institutional residential at one room per 864 commercial square feet;

- The Beaufort County Parcel (approximately 18 acres):

\*\* will “count” (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that the Owner/Developer will provide an off-setting contribution to the County, dedicated for use in development of the Beaufort County Parcel as a park, in the amount of \$10,000.00 per acre requested for such “count”, to be determined incident to development permit approval, and payable prior to issuance of certificate of compliance by the County; and

\*\* while not obliged to do so, the Owner/Developer, in consultation with the County, will work with the County regarding its desires for access to the Beaufort County Parcel; and

\*\* the Owner/Developer, and the County, and the Critical & Rural Lands Commission, will work in partnership to establish an agreed vision for the development of the Beaufort County Parcel as a park; and

\*\* the County will provide view easements across the Beaufort County Parcel and make reasonable provision for appropriate public access thereto.

- Since the right of way of Graves Road is not owned by the Graves Families, the County, in fulfillment of its duties to provide infrastructure to the public facilities of the County, will pay cost of improvements of Graves Road, including expansion of right of way as needed to meet applicable width and improvement standards of the County or other public entity with jurisdiction, consistently with the approved Graves development plans for curb cuts, etc.

BCC DANC

Brian Flewelling, Chariman

January 13, 2016

Page 5

- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping;
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees.

# JOHNSON & DAVIS, PA

ATTORNEYS AND COUNSELORS AT LAW

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## CONFIDENTIAL MEMORANDUM

This is a "redline" response to Mr. Johnson's memorandum of 12/27/15 per his request, written after our meeting of 1/8/16. Note no position stated in this note has been the subject of any vote of any Committee or Subcommittee of County Council, and are only my personal impressions based on conversations during Executive Sessions of the Development Agreement Subcommittee for Pepper Hall. No position is to be interpreted as a commitment until a vote has been taken. Like the original document, this response is confidential.

**Brian Flewelling**  
Chairman, Natural Resources Committee  
County Council of Beaufort County  
1/10/16

**TO:** Beaufort County Council DANC  
Brian Flewelling, Chairman

### COPIES

**TO:** Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney

**FROM:** Barry L. Johnson

**DATE:** December 27, 2015

**RE:** Graves Rezoning – Offer for Elements of Development Agreement

---

### Introduction:

We are concerned that our paths at the second meeting seemed to be diverging and not converging. We take some responsibility for that, in the interest of moving to convergence, and

we apologize, but we do want you to have an appropriate explanation. What we indicated at the second meeting was in response to what we understood from the first meeting – that you were looking for our expression of what we wanted, and what we wanted was based on the recommendation from March 2013 of the Beaufort County Planning Commission. What we took away from the second meeting was your rejection of the recommendation of the Planning Commission and of the offer we made at our second meeting. We respect that.

Today, we have shaped our offer around the last draft of the proposed Development Agreement. If for some particular reason(s), you were to find that this offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer. We think this is the best format in which we might be able to move forward, without us having to speculate on your views. We also think that our mutual discussions can proceed better in a private format, even a mediation format, and that our discussions, in such a format, can proceed faster, which we think all of us want. Please advise of your consideration of that.

Offer:

I. ZDSO applies

II. Zoning Districts

A. Commercial Regional – 45 acres northerly of US 278

B. Suburban – 68 acres northerly of Commercial Regional District

I believe these numbers should be 35 CR, 58 Suburban, 20 Medical Tech Center (details to Discussed). Otherwise, 45/68 is ok.

III. Uses and Densities

A. Commercial Regional (CR) Zoning District

Permitted uses and densities are all as allowed within Commercial Regional

District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district; This includes amounts converted from Residential to Commercial, maximum 75000 sqft.

- upper floors used as residential, above commercial on first floor, do not count against density limitations; **With floor area ratios and traffic impact calculations remaining per ZDSO.**
- grocery stores are limited each to 55,000 SF of conditioned space on first floor; **Yes.**
- retail store structures are limited each to 35,000 SF of conditioned space on first floor; **Yes.**
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, “large” auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor; **Yes.**
- restaurant structures cannot exceed 10,000 SF of conditioned space on first floor; **Yes.**
- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road. **Yes.**

B. Suburban Zoning (S) District

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available; **Yes.**
- 68,000 SF commercial, ground floor, in the Suburban District; **and I misspoke at the meeting, and suggest now that a majority of the Subcommittee agree this does not accrue to the overall Commercial use of the project.**

III. Provisions Applicable to Both CR and S Districts

- Residential Density for both Commercial Regional and Suburban Districts shall be limited to a base cap of 480 dwelling units provided that any surplus by-right commercial square footage may be converted to

additional residential uses as follows: residential (single-family detached) at one d.u. per 2400 commercial square feet; and/or to residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or to institutional residential at one room per 864 commercial square feet; This should be 208 d.u. and conversion from residential to commercial would be capped at 75000 sqft.

- ~~Riverfront Corridor~~ Beaufort County Parcel to “count” (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that Perhaps a “Transfer of Open Space Rights” with purchase of our rights starting at \$50,000 per acre, doubling per acre. (50/100/200/400, etc)

(1) Owner/Developer, in consultation with the County, after agreement with the County on timing, cost, route and point of access, will pay cost of internal access road within the Property, combined with other uses for such road within the Property, to access the Riverfront Corridor Parcel, excluding improvements connecting such access to Graves Road or US Highway 278; and

(2) Owner/Developer, after its approval of the County’s final plan for development of the Riverfront Corridor Parcel as a public park, and at or within ninety days after the commencement of substantial construction thereof by the County, will contribute \$100,000.00 to such costs. Red highlight removed at your request, but you are obliged to make reasonable accommodation for access to the County’s property. We all will have to discuss what this means at another meeting prior to finalization of an agreement.

- County to pay cost of improvements of Graves Road, including expansion of right of way as needed to meet applicable width standards, consistently with the approved Graves development plans, and the County will restore Graves Road to the County’s Capital Improvements List; Up to \$500,000 from impact fees collected. County will not “restore” Graves Road to County CIP list.



---

BCC DANC

Brian Flewelling, Chariman

December 16, 2015

Page 5

- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping; **OK.**
- Densities are counted at first floor uses only (understanding that they will be limited by other development criteria); **Note this applies in the CR District only.**
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees. **Yes.**

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## CONFIDENTIAL MEMORANDUM

**TO: Beaufort County Council DANC  
Brian Flewelling, Chairman**

### COPIES

**TO: Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney**

**FROM: Barry L. Johnson**

**DATE: January 25, 2016**

**RE: Graves Rezoning – Counter-Offer for Elements of Development Agreement**

---

### Introduction:

We have noted Chairman Flewelling's comments at our last meeting, reflective that his sense of the Negotiating Committee's position on our last Counter-Offer (made by Memorandum dated January 13, 2016) was agreeable to all points therein but three:

1. The Committee is unwilling to alter its position on funding improvements to Graves Road beyond what was in Chairman Flewelling's Reply Memorandum to us dated January 10, 2016.
2. The Committee remains reluctant to afford any "count" of the Beaufort County Parcel for open space, storm water retention and management, buffers, etc. (as outlined in our Memoranda), but remains willing to commit to do so if the Owner/Developer demonstrates a real need to do so, and if agreeable financial remuneration is paid to the County. At the last meeting, the parties were some distance apart on their ideas of financial remuneration.

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BCC DANC

Brian Flewelling, Chairman

January 25, 2016

Page 2

3. The Committee is willing further to consider the position of the Owner/Developer for inclusion in the Development Agreement of 480 residential units on the 68-acre Suburban Parcel, but wanted to see more of what that might look like, and what mix of units might be considered.

Today, we have built from that Reply Memorandum and from all of our prior Memoranda and conversations, and are presenting a further counter-offer on these three points. If for some particular reason(s), you were to find that this counter-offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer or, at least, a further Reply Memorandum. The Owner/Developer's new positions on these three points are set forth below in blue-colored font. In addition, we have enclosed an illustrative, conceptual plan (non-binding).

**Counter-Offer (Inclusive of Items On Which Agreement Appears):**

- I. **Applicable Code:** ZDSO applies, including with floor area ratio's and traffic impact analysis (-ses) at time of consideration of development permit application(s).

**II. Zoning Districts**

- A. Commercial Regional – 45 acres northerly of US 278;
- B. Suburban – 68 acres northerly of Commercial Regional District;
- C. Provided, however, that the Owner/Developer has the option, in his/its discretion, to utilize up to 20 acres for a facility of medical and/or medical-related uses with acreage to be adjusted, pro-rata, from the Commercial Regional and Suburban Districts to accommodate same and with commensurate and requisite zoning on such Medical Tech Center.

**III. Uses and Densities**

**A. Commercial Regional (CR) Zoning District**

Permitted uses and densities are all as allowed within Commercial Regional District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district, subject to the Conversion Rules below in Part IV;
- grocery stores are limited each to 55,000 SF of conditioned space on first floor;
- retail store structures are limited each to 35,000 SF of conditioned space on first floor;
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, “large” auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor;
- restaurant structures may not exceed 10,000 SF of conditioned space on first floor;
- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road;
- densities and uses are counted at first floor uses only.

B. **Suburban Zoning (S) District**

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available, as option to Owner/Developer, in his/its discretion;
- 68,000 SF commercial, ground floor, in the Suburban District, subject to the Conversion Rules below in Part IV; and
- Residential Density shall be limited to a base cap of 450 dwelling units, subject to the Conversion Rules below in Part IV. [Note that our unwillingness to move away from this base density cap of residential density is driven by the financial realities of the cost of infrastructure construction, the higher costs of building multiple smaller commercial

buildings, and the very reluctant concession to reduce commercial square footage for the Property below 700,000 square feet. To sustain a fair investment opportunity, maintenance of this balance is essential.] In further response to the Committee, one illustrative scenario (see attached Conceptual Plan) of residential mixes for the Suburban Parcel could include the following (subject to the Conversion Ratios provided herein): Condominiums: 242, Multi-Family: -0-, Institutional Residential: -0- , Single Family Detached: 151, Single Family Attached (Townhomes) 95, Commercial Apartments -0-, all of which in this scenario total 488 residential units.

IV. **Provisions Applicable to Both CR and S Districts**

- Conversion Rules:

\*\*No more than a total of 75,000 additional commercial square footage within the Property may be added from conversion of residential density to commercial density; and

\*\*subject to the foregoing, densities may be converted on the following Conversion Ratio's: residential (single-family detached) at one d.u. per 2400 commercial square feet; and/or residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or institutional residential at one room per 864 commercial square feet;

- The Beaufort County Parcel (approximately 18 acres):

\*\* will "count" (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that the Owner/Developer will provide an off-setting contribution to the County, dedicated for use in development of the Beaufort County Parcel as a park, in the amount of \$20,000.00 per acre requested for such "count", to be determined incident to development permit approval, and payable prior to issuance of certificate of compliance by the County; and

\*\* while not obliged to do so, the Owner/Developer, in consultation with the County, will work with the County regarding its desires for access to the Beaufort County Parcel; and

\*\* the Owner/Developer, and the County, and the Critical & Rural Lands Commission, will work in partnership to establish an agreed vision for the development of the Beaufort County Parcel as a park; and

\*\* the County will provide view easements across the Beaufort County Parcel and make reasonable provision for appropriate public access thereto.

- In the event that, at the instance of the Owner/Developer, Graves Road is expanded, paved and/or otherwise improved, the County will contribute \$500,000.00 of the costs thereof from impact fees collected and the County will assist with right-of-way acquisition.
- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping;
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees.

Re: Graves Rezoning

Subject: Position on CDC

---

The Negotiating Committee asked the Graves Families to consult with County Staff regarding the Graves' pending applications under the ZDSO to rezone these Graves' lands at Pepper Hall Plantation. In consulting with County Staff, it became very apparent to us that County Staff prefers that these Graves lands be rezoned under the CDC with the front property (Graves and the Negotiating Committee have agreed on 45 acres) zoned as C5 and the rear property (Graves and the Negotiating Committee have agreed on 68 acres) zoned as C3.

In considering the possibility of rezoning under the CDC, in place of the ZDSO, the Graves Families have been, and are, unwilling to "start over", or "go backwards, in terms of procedural steps. The Graves Families are unwilling to go back to Planning Commission or to file and process a new rezoning application under the CDC. We are in agreement with Tom Keaveney, Beaufort County Attorney, that under applicable law, the County Council can override the recommendations of the Planning Commission, and/or of this subcommittee, and/or of the Natural Resources Committee, and utilize through a Development Agreement the New Code instead of the Old Code.

Subject to that legal agreement and understanding, and after much study, these Graves Families have concluded that the C3 zoning, as C3 is now written, on the 68 acres is not workable, from perspectives of economics and product types, but that C4 zoning on the 68 acres would be workable. Thus, these Graves Families have agreed to accept residential density limitations available under the C4 zoning, to that 68 acres, under the C4 zoning to 480 dwelling units.

Taking all of the foregoing into consideration, the Graves Families at this time are willing to settle this matter as follows, giving the County the option to modify C3 or to go with C4 on the rear lands:

Front (southerly, along US Highway 278), 45 acres – C5

1. Rear (northerly, along Okatie River), 68 acres, Development Agreement to provide for:
  - A. C4 with residential density limitations available under the C4 zoning, to that 68 acres, to 480 dwelling units; **unless**
  - B. Within 6 months after the County's approval of the Development Agreement, the County, by a County-wide amendment of the CDC, amends C3 under the CDC as follows:
    1. To include "Apartment Buildings" as allowable C3 Building Types: and
    2. To modify the multi-family cap from 80 dwelling units to 480 dwelling units;

In which case, the C3 zoning on the rear lands would automatically change to C3 as amended.







Map County Base Map 2016 Aerial



**Draw and Measure**

Line Color Style **Solid**

Width **5** Alpha **1**

Show Measurements

Distance Units **Feet**

Font **Arial** **B** **I** Size **1**

[Clear](#)

100 m  
500 ft

# ADD-ONS

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

Topic: Graves Rezoning - A Little History on the 45/68 Acres Split  
Date Submitted: June 30, 2016  
Submitted By: Barry Johnson  
Venue: Natural Resources Committee - Development Agreement Subcommittee Pepper Hall Plantation

## Barry Johnson

---

**From:** Barry Johnson  
**Sent:** Thursday, June 23, 2016 4:13 PM  
**To:** Flewelling, Brian (brianf@bcgov.net); 'jstewart@bcgov.net'; Fobes, Steve (sfobes@bcgov.net)  
**Cc:** 'psommerville@bcgov.net'; Stu Rodman; Cynthia Bensch; Tom Keaveny, Beaufort County Attorney; Criscitiello, Anthony (tonyc@bcgov.net); Robert L. Graves; 'R. Ling Graves (linggravesconst@hargray.com)'; Joy Walker; Gay Reed  
**Subject:** Graves Rezoning -- a little history on the 45/68 acres split  
**Attachments:** 20151227\_Offer To DANC\_BJ V2.docx; 20160110\_Reply Memo from DANC\_B Flewelling.pdf; 20160113\_Counter-Offer To DANC\_BJ V3.docx; 20160125\_Counter-Offer To DANC\_BJ V1.docx

Gentlemen of the Graves Development Agreement Negotiating Committee,

At our meeting with you on June 21, 2016, it became crystal clear that our negotiations went backwards, in part due to differing recollections by Chairman Flewelling and me of the history of these negotiations and in the apparent absence of formal Committee Minutes, related to the acreage split issue between zoning classifications.

I write to address that history, and I am copying Council Members and Staff who, as I recall, were also present on June 21, 2016, to clarify this issue to all of you, as follows:

1. The Graves Families presented to this Committee a Confidential Memorandum dated December 27, 2015, expressing their proposal for key Development Agreement elements, copy attached.
2. We then met with this Committee on January 8, 2016 to discuss the Dec. 27 Graves Proposal. I have detailed, contemporaneous, written notes of the discussion at that meeting. Chairman Flewelling reported that the Committee had met in executive session and had reviewed the Dec. 27 Graves Proposal. Chairman Flewelling then reported to us, what he called the consensus of the Committee as follows, on the Acreage Split, 45 acres in the front (south) and 68 acres in the rear (north): that the 20 acre medical option should come out of the 45 acres and the 68 acres in equal parts, as a "possible incentive" to use the medical option. This report by Chairman accepted the acreage split at 45/68, taking up to 10 acres out of each for the medical option if the Graves Families went with that option.
3. On January 10, 2016, Chairman Flewelling sent us his "redlined" Reply Memorandum, copy attached, in response to the Dec. 27 Graves Proposal. Therein, on the 45/68 acreage issue, he stated: "I believe those numbers should be 35 C.R., 58 Suburban, 20 Medical Tech Center (details to Discussed). Otherwise, 45/68 is ok."
4. On January 13, 2016, we responded ("January 13, 2016 Graves Response"), copy attached, to the Committee and to Chairman Flewelling's January 10, 2016 Reply Memorandum, by our further Confidential Memorandum, copy attached. On the 45/68 acreage issue, the Graves Families therein agreed to accept the medical option incentive with the following language: (" . . . {45/68; Provided, however, that this Owner/Developer has the option, in his/its discretion, to utilize up to 20 acres for a facility of medical and/or medical-related uses with acreage to be adjusted, pro-rata, from the Commercial Regional (45 acres) and Suburban (68 acres) Districts to accommodate same and with commensurate and requisite zoning on such Medical Tech Center."
5. On January 14, 2016, the Committee reconvened with us and, by my detailed, contemporaneous, written notes, Chairman Flewelling reported to us what he then called "the sense of the Committee" that the Committee was disappointed in the January 13, 2016 Graves Response, but disappointed in only three particulars, as follows:

- A. the number of residential units proposed by the Graves Families on the 68 acres;
- B. the treatment proposed by the Graves Families of the 18 acres purchased by Beaufort County from R. Graves; and
- C. the proposed finances associated with improvements to Graves Road.

The "sense of the Committee", as stated then by Chairman Flewelling, expressed no disappointment with the January 13, 2016 Graves Response on the 45/68 acreage split, with Medical Tech Center option reserved to Graves. That "sense of the Committee", on those three points, was summarized in the January 25, 2016 Graves Response, copy also attached.

I realize the "sense of the Committee" may have changed since January 14, 2016 regarding the 45/68 acreage split, but I don't think so. I hope you will agree that these facts prove that this Committee, as a matter of good faith, needs to continue with the 45/68 acreage split, as a predicate for continued discussion of this matter. This factual recitation and documentation should also serve to refresh the memory of the Committee and those associated with them.

Hopefully, these materials and this historical review of the facts will enable us to have a better outcome, for all concerned, at our next meeting.

Regards,  
Barry  
June 23, 2016

Barry L. Johnson, Attorney at Law  
**JOHNSON & DAVIS, PA**  
The Victoria Building, Suite 200  
10 Pinckney Colony Road  
Bluffton, SC 29909  
(843) 815-7121  
(843) 815-7122 (facsimile)

Both Barry L. Johnson and JOHNSON & DAVIS, PA, intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Barry L. Johnson immediately at 843-815-7121. Thank you.

# JOHNSON & DAVIS, PA

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## CONFIDENTIAL MEMORANDUM

**TO:** Beaufort County Council DANC  
Brian Flewelling, Chairman

**COPIES**

**TO:** Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney

**FROM:** Barry L. Johnson

**DATE:** December 27, 2015

**RE:** Graves Rezoning – Offer for Elements of Development Agreement

---

### Introduction:

We are concerned that our paths at the second meeting seemed to be diverging and not converging. We take some responsibility for that, in the interest of moving to convergence, and we apologize, but we do want you to have an appropriate explanation. What we indicated at the second meeting was in response to what we understood from the first meeting – that you were looking for our expression of what we wanted, and what we wanted was based on the recommendation from March 2013 of the Beaufort County Planning Commission. What we took away from the second meeting was your rejection of the recommendation of the Planning Commission and of the offer we made at our second meeting. We respect that.

Today, we have shaped our offer around the last draft of the proposed Development Agreement. If for some particular reason(s), you were to find that this offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer. We think this is the best format in which we might be able to move forward, without us having to speculate on your views. We also think that our mutual

BCC DANC

Brian Flewelling, Chariman

December 16, 2015

Page 2

discussions can proceed better in a private format, even a mediation format, and that our discussions, in such a format, can proceed faster, which we think all of us want. Please advise of your consideration of that.

Offer:

I. ZDSO applies

II. Zoning Districts

- A. Commercial Regional – 45 acres northerly of US 278
- B. Suburban – 68 acres northerly of Commercial Regional District

III. Uses and Densities

A. Commercial Regional (CR) Zoning District

Permitted uses and densities are all as allowed within Commercial Regional District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district;
- upper floors used as residential, above commercial on first floor, do not count against density limitations;
- grocery stores are limited each to 55,000 SF of conditioned space on first floor;
- retail store structures are limited each to 35,000 SF of conditioned space on first floor;
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, “large” auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor;
- restaurant structures cannot exceed 10,000 SF of conditioned space on first floor;

- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road.

B. Suburban Zoning (S) District

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available;
- 68,000 SF commercial, ground floor, in the Suburban District; and

III. Provisions Applicable to Both CR and S Districts

- Residential Density for both Commercial Regional and Suburban Districts shall be limited to a base cap of 480 dwelling units provided that any surplus by-right commercial square footage may be converted to additional residential uses as follows: residential (single-family detached) at one d.u. per 2400 commercial square feet; and/or to residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or to institutional residential at one room per 864 commercial square feet;
- Riverfront Corridor Parcel to “count” (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that
  - (1) Owner/Developer, in consultation with the County, after agreement with the County on timing, cost, route and point of access, will pay cost of internal access road within the Property, combined with other uses for such road within the Property, to access the Riverfront Corridor Parcel, excluding improvements connecting such access to Graves Road or US Highway 278; and
  - (2) Owner/Developer, after its approval of the County’s final plan for development of the Riverfront Corridor Parcel as a public park, and at or within ninety days after the commencement of substantial



construction thereof by the County, will contribute \$100,000.00 to such costs.

- County to pay cost of improvements of Graves Road, including expansion of right of way as needed to meet applicable width standards, consistently with the approved Graves development plans, and the County will restore Graves Road to the County's Capital Improvements List;
- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping;
- Densities are counted at first floor uses only (understanding that they will be limited by other development criteria);
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees.

# JOHNSON & DAVIS, PA

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## CONFIDENTIAL MEMORANDUM

**This is a “redline” response to Mr. Johnson’s memorandum of 12/27/15 per his request, written after our meeting of 1/8/16. Note no position stated in this note has been the subject of any vote of any Committee or Subcommittee of County Council, and are only my personal impressions based on conversations during Executive Sessions of the Development Agreement Subcommittee for Pepper Hall. No position is to be interpreted as a commitment until a vote has been taken. Like the original document, this response is confidential.**

**Brian Flewelling  
Chairman, Natural Resources Committee  
County Council of Beaufort County  
1/10/16**

**TO:** Beaufort County Council DANC  
Brian Flewelling, Chairman

### **COPIES**

**TO:** Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney

**FROM:** Barry L. Johnson

**DATE:** December 27, 2015

**RE:** Graves Rezoning – Offer for Elements of Development Agreement

---

### Introduction:

We are concerned that our paths at the second meeting seemed to be diverging and not converging. We take some responsibility for that, in the interest of moving to convergence, and

---

BCC DANC

Brian Flewelling, Chariman

December 16, 2015

Page 2

we apologize, but we do want you to have an appropriate explanation. What we indicated at the second meeting was in response to what we understood from the first meeting – that you were looking for our expression of what we wanted, and what we wanted was based on the recommendation from March 2013 of the Beaufort County Planning Commission. What we took away from the second meeting was your rejection of the recommendation of the Planning Commission and of the offer we made at our second meeting. We respect that.

Today, we have shaped our offer around the last draft of the proposed Development Agreement. If for some particular reason(s), you were to find that this offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer. We think this is the best format in which we might be able to move forward, without us having to speculate on your views. We also think that our mutual discussions can proceed better in a private format, even a mediation format, and that our discussions, in such a format, can proceed faster, which we think all of us want. Please advise of your consideration of that.

Offer:

I. ZDSO applies

II. Zoning Districts

A. Commercial Regional – 45 acres northerly of US 278

B. Suburban – 68 acres northerly of Commercial Regional District

I believe these numbers should be 35 CR, 58 Suburban, 20 Medical Tech Center (details to Discussed). Otherwise, 45/68 is ok.

III. Uses and Densities

A. Commercial Regional (CR) Zoning District

Permitted uses and densities are all as allowed within Commercial Regional

District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district; This includes amounts converted from Residential to Commercial, maximum 75000 sqft.

- upper floors used as residential, above commercial on first floor, do not count against density limitations; **With floor area ratios and traffic impact calculations remaining per ZDSO.**
- grocery stores are limited each to 55,000 SF of conditioned space on first floor; **Yes.**
- retail store structures are limited each to 35,000 SF of conditioned space on first floor; **Yes.**
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, “large” auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor; **Yes.**
- restaurant structures cannot exceed 10,000 SF of conditioned space on first floor; **Yes.**
- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road. **Yes.**

B. Suburban Zoning (S) District

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available; **Yes.**
- 68,000 SF commercial, ground floor, in the Suburban District; **and I misspoke at the meeting, and suggest now that a majority of the Subcommittee agree this does not accrue to the overall Commercial use of the project.**

III. Provisions Applicable to Both CR and S Districts

- Residential Density for both Commercial Regional and Suburban Districts shall be limited to a base cap of 480 dwelling units provided that any surplus by-right commercial square footage may be converted to

additional residential uses as follows: residential (single-family detached) at one d.u. per 2400 commercial square feet; and/or to residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or to institutional residential at one room per 864 commercial square feet; **This should be 208 d.u. and conversion from residential to commercial would be capped at 75000 sqft.**

- **Riverfront Corridor Beaufort County** Parcel to “count” (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that **Perhaps a “Transfer of Open Space Rights” with purchase of our rights starting at \$50,000 per acre, doubling per acre. (50/100/200/400, etc)**

**(1) Owner/Developer, in consultation with the County, after agreement with the County on timing, cost, route and point of access, will pay cost of internal access road within the Property, combined with other uses for such road within the Property, to access the Riverfront Corridor Parcel, excluding improvements connecting such access to Graves Road or US Highway 278; and**

**(2) Owner/Developer, after its approval of the County’s final plan for development of the Riverfront Corridor Parcel as a public park, and at or within ninety days after the commencement of substantial construction thereof by the County, will contribute \$100,000.00 to such costs.** Red highlight removed at your request, but you are obliged to make reasonable accommodation for access to the County’s property. We all will have to discuss what this means at another meeting prior to finalization of an agreement.

- County to pay cost of improvements of Graves Road, including expansion of right of way as needed to meet applicable width standards, consistently with the approved Graves development plans, and the County will restore Graves Road to the County’s Capital Improvements List; **Up to \$500,000 from impact fees collected. County will not “restore” Graves Road to County CIP list.**

**JOHNSON & DAVIS, PA**

---

BCC DANC

Brian Flewelling, Chariman

December 16, 2015

Page 5

- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping; **OK.**
- Densities are counted at first floor uses only (understanding that they will be limited by other development criteria); **Note this applies in the CR District only.**
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees. **Yes.**

# JOHNSON & DAVIS, PA

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## CONFIDENTIAL MEMORANDUM

**TO:** Beaufort County Council DANC  
Brian Flewelling, Chairman

**COPIES**

**TO:** Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney

**FROM:** Barry L. Johnson

**DATE:** January 13, 2016

**RE:** Graves Rezoning – Counter-Offer for Elements of Development Agreement

---

### Introduction:

We have received Chairman Flewelling's Reply Memorandum, dated January 10, 2016, expressing his impression of the sense – not the vote, as no vote has been taken – of the Development Agreement Negotiating Committee.

Today, we have built from that Reply Memorandum and from all of our prior conversations, and are presenting a further counter-offer. If for some particular reason(s), you were to find that this counter-offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer or, at least, a further Reply Memorandum.

**Counter-Offer (Inclusive of Items On Which Agreement Appears):**

- I. **Applicable Code:** ZDSO applies, including with floor area ratio's and traffic impact analysis (-ses) at time of consideration of development permit application(s).

II. **Zoning Districts**

- A. Commercial Regional – 45 acres northerly of US 278;
- B. Suburban – 68 acres northerly of Commercial Regional District;
- C. Provided, however, that the Owner/Developer has the option, in his/its discretion, to utilize up to 20 acres for a facility of medical and/or medical-related uses with acreage to be adjusted, pro-rata, from the Commercial Regional and Suburban Districts to accommodate same and with commensurate and requisite zoning on such Medical Tech Center.

III. **Uses and Densities**

A. **Commercial Regional (CR) Zoning District**

Permitted uses and densities are all as allowed within Commercial Regional District with limitations following:

- 450,000 SF commercial, ground floor, in the CR district, subject to the Conversion Rules below in Part IV;
- grocery stores are limited each to 55,000 SF of conditioned space on first floor;
- retail store structures are limited each to 35,000 SF of conditioned space on first floor;
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, "large" auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor;



- restaurant structures may not exceed 10,000 SF of conditioned space on first floor;
- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road;
- densities and uses are counted at first floor uses only.

**B. Suburban Zoning (S) District**

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available, as option to Owner/Developer, in his/its discretion;
- 68,000 SF commercial, ground floor, in the Suburban District, subject to the Conversion Rules below in Part IV; and
- Residential Density shall be limited to a base cap of 480 dwelling units, subject to the Conversion Rules below in Part IV. [Note that our unwillingness to move away from this base density cap of residential density is driven by the financial realities of the cost of infrastructure construction, the higher costs of building multiple smaller commercial buildings, and the very reluctant concession to reduce commercial square footage for the Property below 700,000 square feet. To sustain a fair investment opportunity, maintenance of this balance is essential.]

**IV. Provisions Applicable to Both CR and S Districts**

- Conversion Rules:  
  
\*\*No more than a total of 75,000 additional commercial square footage within the Property may be added from conversion of residential density to commercial density; and  
  
\*\*subject to the foregoing, densities may be converted on the following Conversion Ratio's: residential (single-family detached) at one d.u. per

2400 commercial square feet; and/or residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or institutional residential at one room per 864 commercial square feet;

- The Beaufort County Parcel (approximately 18 acres):

\*\* will “count” (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that the Owner/Developer will provide an off-setting contribution to the County, dedicated for use in development of the Beaufort County Parcel as a park, in the amount of \$10,000.00 per acre requested for such “count”, to be determined incident to development permit approval, and payable prior to issuance of certificate of compliance by the County; and

\*\* while not obliged to do so, the Owner/Developer, in consultation with the County, will work with the County regarding its desires for access to the Beaufort County Parcel; and

\*\* the Owner/Developer, and the County, and the Critical & Rural Lands Commission, will work in partnership to establish an agreed vision for the development of the Beaufort County Parcel as a park; and

\*\* the County will provide view easements across the Beaufort County Parcel and make reasonable provision for appropriate public access thereto.

- Since the right of way of Graves Road is not owned by the Graves Families, the County, in fulfillment of its duties to provide infrastructure to the public facilities of the County, will pay cost of improvements of Graves Road, including expansion of right of way as needed to meet applicable width and improvement standards of the County or other public entity with jurisdiction, consistently with the approved Graves development plans for curb cuts, etc.

BCC DANC

Brian Flewelling, Chariman

January 13, 2016

Page 5

- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping;
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees.

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## CONFIDENTIAL MEMORANDUM

**TO:** Beaufort County Council DANC  
Brian Flewelling, Chairman

### COPIES

**TO:** Jerry Stewart, Member  
Steve Fobes, Member  
Thomas Keaveny, County Attorney

**FROM:** Barry L. Johnson

**DATE:** January 25, 2016

**RE:** Graves Rezoning – Counter-Offer for Elements of Development Agreement

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### Introduction:

We have noted Chairman Flewelling's comments at our last meeting, reflective that his sense of the Negotiating Committee's position on our last Counter-Offer (made by Memorandum dated January 13, 2016) was agreeable to all points therein but three:

1. The Committee is unwilling to alter its position on funding improvements to Graves Road beyond what was in Chairman Flewelling's Reply Memorandum to us dated January 10, 2016.
2. The Committee remains reluctant to afford any "count" of the Beaufort County Parcel for open space, storm water retention and management, buffers, etc. (as outlined in our Memoranda), but remains willing to commit to do so if the Owner/Developer demonstrates a real need to do so, and if agreeable financial remuneration is paid to the County. At the last meeting, the parties were some distance apart on their ideas of financial remuneration.

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3. The Committee is willing further to consider the position of the Owner/Developer for inclusion in the Development Agreement of 480 residential units on the 68-acre Suburban Parcel, but wanted to see more of what that might look like, and what mix of units might be considered.

Today, we have built from that Reply Memorandum and from all of our prior Memoranda and conversations, and are presenting a further counter-offer on these three points. If for some particular reason(s), you were to find that this counter-offer is not acceptable to a majority of your Committee, we would appreciate a specific response from your Committee in the form of a counter-offer or, at least, a further Reply Memorandum. The Owner/Developer's new positions on these three points are set forth below in blue-colored font. In addition, we have enclosed an illustrative, conceptual plan (non-binding).

**Counter-Offer (Inclusive of Items On Which Agreement Appears):**

- I. **Applicable Code:** ZDSO applies, including with floor area ratio's and traffic impact analysis (-ses) at time of consideration of development permit application(s).

**II. Zoning Districts**

- A. Commercial Regional – 45 acres northerly of US 278;
- B. Suburban – 68 acres northerly of Commercial Regional District;
- C. Provided, however, that the Owner/Developer has the option, in his/its discretion, to utilize up to 20 acres for a facility of medical and/or medical-related uses with acreage to be adjusted, pro-rata, from the Commercial Regional and Suburban Districts to accommodate same and with commensurate and requisite zoning on such Medical Tech Center.

**III. Uses and Densities**

**A. Commercial Regional (CR) Zoning District**

Permitted uses and densities are all as allowed within Commercial Regional District with limitations following:

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- 450,000 SF commercial, ground floor, in the CR district, subject to the Conversion Rules below in Part IV;
- grocery stores are limited each to 55,000 SF of conditioned space on first floor;
- retail store structures are limited each to 35,000 SF of conditioned space on first floor;
- no single building larger than 75,000 SF of conditioned space on first floor (thus eliminating concerns over big box stores like WalMart, Home Depot, “large” auto dealerships ,and auto malls), provided that no individual retail store within such a building shall exceed 55,000 SF of conditioned space on first floor;
- restaurant structures may not exceed 10,000 SF of conditioned space on first floor;
- structures may be oriented and accessed from internal streets within the Property in addition to US Highway 278 and Graves Road;
- densities and uses are counted at first floor uses only.

**B. Suburban Zoning (S) District**

Permitted uses and densities are all as allowed within S District with limitations following:

- TND Overlay available, as option to Owner/Developer, in his/its discretion;
- 68,000 SF commercial, ground floor, in the Suburban District, subject to the Conversion Rules below in Part IV; and
- Residential Density shall be limited to a base cap of 450 dwelling units, subject to the Conversion Rules below in Part IV. [Note that our unwillingness to move away from this base density cap of residential density is driven by the financial realities of the cost of infrastructure construction, the higher costs of building multiple smaller commercial

buildings, and the very reluctant concession to reduce commercial square footage for the Property below 700,000 square feet. To sustain a fair investment opportunity, maintenance of this balance is essential.] In further response to the Committee, one illustrative scenario (see attached Conceptual Plan) of residential mixes for the Suburban Parcel could include the following (subject to the Conversion Ratios provided herein): Condominiums: 242, Multi-Family: -0-, Institutional Residential: -0-, Single Family Detached: 151, Single Family Attached (Townhomes) 95, Commercial Apartments -0-, all of which in this scenario total 488 residential units.

#### IV. Provisions Applicable to Both CR and S Districts

- Conversion Rules:

\*\*No more than a total of 75,000 additional commercial square footage within the Property may be added from conversion of residential density to commercial density; and

\*\*subject to the foregoing, densities may be converted on the following Conversion Ratio's: residential (single-family detached) at one d.u. per 2400 commercial square feet; and/or residential (multi-family and/or condominiums) at one d.u. per 1200 commercial square feet; and/or institutional residential at one room per 864 commercial square feet;

- The Beaufort County Parcel (approximately 18 acres):

\*\* will "count" (pro-rata among acreages within the Property) towards open space, pervious-impervious cover ratio, setbacks, buffers, storm water retention and management, etc. for development of the Property, in consideration that the Owner/Developer will provide an off-setting contribution to the County, dedicated for use in development of the Beaufort County Parcel as a park, in the amount of \$20,000.00 per acre requested for such "count", to be determined incident to development permit approval, and payable prior to issuance of certificate of compliance by the County; and

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\*\* while not obliged to do so, the Owner/Developer, in consultation with the County, will work with the County regarding its desires for access to the Beaufort County Parcel; and

\*\* the Owner/Developer, and the County, and the Critical & Rural Lands Commission, will work in partnership to establish an agreed vision for the development of the Beaufort County Parcel as a park; and

\*\* the County will provide view easements across the Beaufort County Parcel and make reasonable provision for appropriate public access thereto.

- In the event that, at the instance of the Owner/Developer, Graves Road is expanded, paved and/or otherwise improved, the County will contribute \$500,000.00 of the costs thereof from impact fees collected and the County will assist with right-of-way acquisition.
- At the option of the Owner/Developer, all or parts of the Property will be treated and regarded as a Unified Development Plan under the ZDSO, to encourage more creative, seamless and efficient land and environmental planning, including moving uses and densities within the Zoning Districts within the Unified Development Plan, as well as interconnectivity for motor vehicles, pedestrian and bicycle traffic and landscaping;
- Impact Fees of all the various sorts will not exceed those currently in place but will be reduced as, and to the extent that, the County in the future reduces the levy of Impact Fees.



Topic: Section 3.3.30 Neighborhood Mixed Use Zoning Standards - Community Development Code  
Date Submitted: June 30, 2016  
Submitted By: Barry Johnson  
Venue: Natural Resources Committee - Development Agreement Subcommittee Pepper Hall Plantation

**3.3.30 Neighborhood Mixed Use (C3) Zone Standards**

**A. Purpose**

The Neighborhood Mixed Use (C3) Zone provides for high-quality, moderate-density (averaging under three dwelling units per acre) residential development, with denser areas of multi-family and mixed-use development to provide walkability and affordable housing options. The design requirements are intended to provide a suburban character and encourage pedestrian, as well as automobile, access. Open spaces shall be provided in sufficient quantity to ensure an open quality with a predominance of green space. Non-residential uses shall be limited to parcels having access to arterial or collector streets or within a Traditional Community Plan. This Zone provides for the lower densities of areas designated Neighborhood Mixed-Use in the Comprehensive Plan. It is intended to support the development of communities with a diverse range of housing types and uses.

**B. Building Placement**

**Setback (Distance from ROW/Property Line)**

Front	30' min. <sup>1</sup>
Side:	
Side, Main Building	10' min.
Side, Ancillary Building	10' min.
Rear	50' min.

<sup>1</sup>The minimum front setback for mansion apartments in a Multi-family community on internal streets is 15 feet.

**Lot Size**

Lot Size	10,890 SF min.
Width	70' min.

**Minimum Site Area**

Single Family and Duplex	10,890 SF
Multi-Family	21,780 SF

**Note:**

For development within a Traditional Community Plan meeting the requirements of Division 2.3, setback, minimum lot size and minimum site area requirements of the transect zone established and delineated on the regulating plan shall apply.

**C. Building Form**

**Building Height**

Single Family and Duplex	2.5 stories max.
Multi-Family	2.5 stories max.
Non-Residential Buildings	2 stories max.
Ground Floor Finish Level	No minimum
Multi-Family housing shall utilize the Mansion Apartment Building Type requirements in S.1.110.	

**D. Gross Density<sup>1</sup> and Floor Area Ratio**

**Gross Density**

Single Family Detached	2.6 d.u./acre
Two Family Unit	2.6 d.u./acre
Multi-Family Unit	12 d.u./acre, Maximum of 80 dwelling units
Traditional Community Plan	3.5 d.u./acre <sup>2</sup>

<sup>2</sup>Subject to the requirements in Division 2.3

**Floor Area Ratio**

Non-residential buildings	0.18 max.
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<sup>1</sup>Gross Density is the total number of dwelling units on a site divided by the Base Site Area (Division 6.1.40.F)

**E. Parking**

**Required Spaces: Residential Uses**

Single-family detached	3 per unit
Single-family attached/duplex	2 per unit
Multi-family units	1.25 per unit
Accessory dwelling unit	1 per unit
Community residence	1 per bedroom
Live/work	2 per unit plus 1 per 300 GSF of work area

**Required Spaces: Service or Retail Uses**

Retail, offices, services	1 per 300 GSF
Restaurant, Café, Coffee Shop	1 per 150 GSF
Gas station/fuel sales	1 per pump plus requirement for retail
Lodging: Bed and breakfast	2 spaces plus 1 per guest room
Lodging: Inn/hotel	1 per room

For parking requirements for all other allowed uses see Table 5.5.40.B (Parking Space Requirements).

**Division 3.3: Conventional Zones**  
**C3 Neighborhood Mixed-Use**

**G. C3 Allowed Uses**

Land Use Type <sup>1</sup>	Specific Use Regulations	C3	Land Use Type <sup>1</sup>	Specific Use Regulations	C3
<b>Agricultural</b>			<b>Offices &amp; Services</b>		
Agriculture & Crop Harvesting		P	General Offices & Services 3,500 SF or less	4.1.110	C
Agricultural Support Services	2.3	TCP	Animal Services: Clinic/Hospital	2.3	TCP
Seasonal Farmworker Housing	4.1.90	C	Day Care: Family Home (up to 8 clients)		P
Forestry		P	Day Care: Commercial Center (9 or More clients)	2.3	TCP
Commercial Stables	4.1.50	C	Lodging: Bed & Breakfast (5 rooms or less)	2.3	TCP
<b>Residential</b>			Lodging: Inn (up to 24 rooms)	2.3	TCP
Dwelling: Single Family Detached Unit		P	Medical Service: Clinics/Offices	2.3	TCP
Dwelling: Single Family Attached Unit		P	<b>Recreation, Education, Safety, Public Assembly</b>		
Dwelling: Two Family Unit (Duplex)		P	Community Oriented Cultural Facility (less than 15,000 SF)	2.3	TCP
Dwelling: Multi-Family Unit	4.1.170	C	Community Public Safety Facility		P
Dwelling: Accessory Unit	4.2.30	C	Meeting Facility/Place of Worship (less than 15,000 SF)	4.1.150	C
Dwelling: Group Home		P	Meeting Facility/Place of Worship (15,000 SF or greater)	4.1.150	C
Dwelling: Family Compound	2.7.40	C	Park, Playground, Outdoor Recreation Areas		P
Community Residence (dorms, convents, assisted living, temporary shelters)	2.3	TCP	Recreation Facility: Golf Course		P
Home Office	4.2.90	C	School: Public or Private		P
Home Business	4.2.80	C	School: Specialized Training/Studio		P
Live/Work	2.3	TCP	School: College or University	7.2.130	S
Manufactured Home Community	4.1.130	C	<b>Infrastructure, Transportation, Communications</b>		
<b>Retail &amp; Restaurants</b>			Infrastructure and Utilities: Regional (Major) Utility	4.1.210	C
General Retail 3,500 SF or less	2.3	TCP	Wireless Communications Facility	4.1.320	S
Gas Station/Fuel Sales	4.1.100	C			
Restaurant, Café, Coffee Shop	2.3	TCP			

**Key**

P	Permitted Use
C	Conditional Use
S	Special Use Permit Required
TCP	Permitted only as part of a Traditional Community Plan under the requirements in Division 2.3
---	Use Not Allowed

**End Notes**

<sup>1</sup> A definition of each listed use type is in Table 3.1.70 Land Use Definitions.

#### **Division 4.1: Specific to Use**

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- (3) Risks from any sub-surface materials to future restored use(s) is identified and mitigated.
  - (4) If surface water will be present, likely chemical water quality shall be identified.
  - (5) Where permanent water bodies are created as a result of surface mining, littoral shelves and wetland vegetation are encouraged to promote water quality and natural habitat.
6. **Final Excavation Plan.** Where surface water features remain, or a depressed area is created during mining/excavation, a final excavation plan shall be submitted that is consistent with the end use plan and approved as part of the Special Use Permit. The final excavation plan shall demonstrate that sufficient land will remain unexcavated and/or that the excavation will be done in a manner that allows the development to conform to this chapter's requirements without variances.
  7. **Escrow Account.** An escrow account or a yearly fee approved by the County Attorney and County Council as part of the Special Use Permit may be required to ensure that there are sufficient funds set aside for restoration.

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#### **4.1.170 Multi-Family Dwellings**

Multi-family dwellings shall comply with the following:

- A. **Specific to C3 District.** In the C3 District, multi-family dwelling units shall meet the Mansion Apartment building type standards (see Section 5.1.110, Mansion Apartment).
- B. Reserved.

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#### **4.1.180 Outdoor Maintenance / Storage Yard**

- A. **Storage Height.** Storage of any equipment may not exceed 12 feet in height from the lowest ground elevation.
- B. **Screening of Storage Areas.** All outdoor storage areas shall be screened with a solid wooden fence or masonry wall at least eight feet high. One evergreen shrub shall be installed for every five linear feet of fence or wall on the side of the fence or wall facing a neighboring property or public right-of-way.

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#### **4.1.190 Recreation Facility: Campgrounds**

Campgrounds shall comply with the following:

- A. **Buffers.** This use shall be screened with a visual buffer equal to a Type E Perimeter Buffer (see Table 5.8.90.D) next to all property lines.
- B. **Minimum RV Pad Size.** RV pads that shall be a minimum of 1,600 square feet.
- C. **Tree Requirement.** Existing trees shall be left between all campsites and/or RV pads, to the maximum extent practicable. If there are no trees between campsites or RV pads, at least two trees shall be planted between each campsite or RV pad.
- D. **Accessory Uses.** A camp store and entertainment area are allowed as accessory uses to a campground provided they do not exceed 3,000 square feet for every 200 camping spaces or RV pads, and are not advertised off-site.