

COUNTY COUNCIL OF BEAUFORT COUNTY
ADMINISTRATION BUILDING
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX
100 RIBAUT ROAD
POST OFFICE DRAWER 1228
BEAUFORT, SOUTH CAROLINA 29901-1228
TELEPHONE: (843) 255-2180
www.beaufortcountysc.gov

STEWART H. RODMAN
CHAIRMAN

D. PAUL SOMMERVILLE
VICE CHAIRMAN

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ALICE G. HOWARD
MARK LAWSON
LAWRENCE P. MCELYNN
JOSEPH F. PASSIMENT, JR.

ASHLEY M. JACOBS
COUNTY ADMINISTRATOR

SARAH W. BROCK
CLERK TO COUNCIL

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

1. **CALL TO ORDER REGULAR SESSION** – Chairman Stu Rodman 6:00 p.m.
2. **PLEDGE OF ALLEGIANCE AND INVOCATION** – Councilman Mark Lawson

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

3. **APPROVAL OF AGENDA**

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

5. **PROCLAMATIONS**

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

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

7. **ADMINISTRATOR'S REPORT**

8. **CHAIRMAN'S MINUTE**

9. **CONSENT AGENDA**

A. **Items Originating from the Finance Committee – Councilman Hervochon**

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



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

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

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

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

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

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

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

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

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

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

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

10. PUBLIC HEARINGS

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

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

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

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

C. Public Hearing of an Ordinance to adopt an amended and restated development agreement for River Oaks at Okatie Village (backup)

1. Consideration of Second Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. First Reading approved on September 23, 2019 / Vote 5:4
4. Natural Resources Committee recommended approval on August 19, 2019 / Vote 6:5

D. Public Hearing and Second Reading of an Ordinance authorizing the County Administrator to execute the Brewer Memorial park 2019 joint ownership agreement and operating policy with the Beaufort County Open Land Trust (backup)

1. Consideration of Second Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. First Reading approved on September 23, 2019 / 9:0
4. Natural Resources Committee recommended approval on September 16, 2019 / Vote 5:0

E. Public Hearing and Second Reading of an Ordinance authorizing the execution of a declaration of restrictive covenants on property located at 75 Confederate Avenue, also known as Bailey Memorial Park (backup)

1. Consideration of Second Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. First Reading approved on September 23, 2019 / 9:0
4. Natural Resources Committee recommended approval on August 19, 2019 / Vote 11:0

F. Public Hearing and Second Reading of a new Rural and Critical Lands Ordinance (backup)

1. Consideration of Second Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. First Reading approved on September 23, 2019 / 7:2
4. Natural Resources Committee recommended approval on September 16, 2019 / Vote 5:0

G. Public Hearing and Second Reading of an Ordinance amending the existing Rural and Critical Lands Board Ordinance (Division 5, Section 2, 281-290) (backup)

1. Consideration of Second Reading on October 14, 2019
2. Public Hearing on October 14, 2019
3. First Reading approved on September 23, 2019 / 8:1
4. Natural Resources Committee recommended approval on September 16, 2019 / Vote 5:0

11. ACTION ITEMS

A. Third Reading of an Ordinance regarding a Northern Beaufort County map amendment (change the zoning of the property from C3-NMU to C5-RCMU) (backup)

1. Consideration of Third and Final reading on October 14, 2019
2. Public hearing on June 10, 2019
3. Second reading approved on June 10, 2019 / Vote 9:1
4. First reading approved on May 28, 2019 / Vote 9:0
5. Natural Resources Committee recommended approval on May 20, 2019 / Vote 7:1

12. COMMITTEE REPORTS

Prior Meetings

1. Finance (October 7, 2019)

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

Upcoming Meetings

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

13. LIASION REPORTS

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

15. MATTERS ARISING OUT OF EXECUTIVE SESSION

16. ADJOURNMENT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Approval of Minutes

Council Committee:

County Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Issues for Consideration:

Approval of the County Council Minutes from September 9, 2019

Points to Consider:

Funding & Liability Factors:

None.

Council Options:

Approve, Modify or Reject

Recommendation:

Approve

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

September 9, 2019

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

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

Attendance

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

Absent: Vice Chairman Paul Sommerville

CALL TO ORDER

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

MOMENT OF SILENCE

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

PLEDGE OF ALLEGIANCE AND INVOCATION – Councilman Brian Flewelling

FOIA COMPLIANCE

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

APPROVAL OF AGENDA

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

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

PRESENTATION

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

APPROVAL OF MINUTES

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

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

CITIZEN COMMENTS

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

ADMINISTRATOR'S REPORT

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

CHAIRMAN'S MINUTES

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

CONSENT AGENDA

A. Items Originating from the Finance Committee – Councilman Passiment

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

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

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

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

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

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

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

UPDATE

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

PUBLIC HEARINGS AND SECOND READINGS

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

Chairman Rodman opened the floor for a public hearing.

No one came forward.

Chairman Rodman closed the public hearing.

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

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

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

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

Chairman Rodman opened the floor for a public hearing.

No one came forward.

Chairman Rodman closed the public hearing.

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

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

Chairman Rodman opened the floor for a public hearing.

No one came forward.

Chairman Rodman closed the public hearing.

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

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

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

ACTION ITEMS

Item: Adoption of the US 278 Corridor Guiding Principles

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

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

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

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

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

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

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

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

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

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

COMMITTEE REPORTS

Finance Committee, Chairman Passiment

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

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

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

Public Facilities Committee, Chairman Flewelling

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

Community Services Committee, Chairman McElynn

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

Natural Resources Committee, Chairwoman Howard

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

Governmental Committee, Chairman Sommerville

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

Upcoming Meetings

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

CITIZEN COMMENTS

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

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

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

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

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

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

EXECUTIVE SESSION

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

ADJOURNMENT

The meeting adjourned at 8:29 p.m.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council
Ratified:

DRAFT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Audit Committee

Council Committee:

Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Christopher Inglese, Deputy Administrator

Issues for Consideration:

Points to Consider:

Funding & Liability Factors:

Council Options:

Approve or deny

Recommendation:

Approve

ORDINANCE 2019/ ____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) *Duties, Purpose and responsibilities.*

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

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

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

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

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

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

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

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

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

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

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

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY:

Stewart H. Rodman, Chairman
Beaufort County Council

ATTEST:

Sarah W., Clerk to Council

Chronology

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



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Beaufort County and City of Beaufort purchase of Gray family land

Council Committee:

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

Meeting Date:

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

Committee Presenter (Name and Title):

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

Issues for Consideration:

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

Points to Consider:

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

Funding & Liability Factors:

Funding through Economic Development dedicated millage fund

Council Options:

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

Recommendation:

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

RESOLUTION 2019 _____

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

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

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

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

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

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

Adopted this _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____

Stewart H. Rodman, Chairman

APPROVED AS TO FORM:

Ashley Jacobs, County Administrator

ATTEST:

Sarah Brock, Clerk to Council

DRAFT

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

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

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

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

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

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

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

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

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

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

A portion of: DMP: R100 024 000 0410 0000

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

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

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

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

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

b) Seller's Affidavit.

c) Owner's Affidavit.

d) City Ordinance or Resolution Authorizing Sale.

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

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

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

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

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

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

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

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

TO SELLER:

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

AND ALSO:

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

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

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

And also to:

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

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

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

WITNESSES:

SELLER: **City of Beaufort**

By: William Prokop
Its: City Manager

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

WITNESSES:

PURCHSER:

Beaufort County

By: Ashley Jacobs
Its: Administrator



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

August 21th, 2019

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

Dear Ashley,

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

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

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

Sincerely,

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

John A. O'Toole, CECD
Executive Director

Beaufort County Economic Development Corporation

110 Traders Cross, Bluffton, SC 29909

Office (843) 705-8414

INVOICE NO. 20181919

AUGUST 21, 2019

BILL TO

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

Post Office Drawer 1228,
Beaufort, SC 29901

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

Thank you!

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



Beaufort Commerce Park

Update September 18, 2019

Background

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

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

Recently Absorbed Properties

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

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0265

B. Type of Loan

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

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

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

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

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

F. NAME OF LENDER:
ADDRESS:

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

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

I. SETTLEMENT DATE: 09/26/2019

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

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

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

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

TIN: SELLER 1 / SELLER 2 SELLER(S) SIGNATURE(S): SELLER 1 / SELLER 2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

File Number: P-25916-19

PAGE 2

SETTLEMENT STATEMENT

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

HUD CERTIFICATION OF BUYER AND SELLER

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

The City of Beaufort

Venture, Inc of Beaufort

By: Herbert G. Gray, CEO

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

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

By: _____ DATE _____



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Resolution Authorizing Exemption of Property from Ad Valorem Taxation

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II County Attorney

Issues for Consideration:

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

Points to Consider:

See above.

Funding & Liability Factors:

None

Council Options:

Approval based on contractual obligations.

Recommendation:

Approve

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

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

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

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

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

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

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

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

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

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

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

DONE this _____ day of September, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman
Chairman

ATTEST:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Resolution for 2006 1 Cent Transportation Sales Tax Program Remaining Funds

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

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

Issues for Consideration:

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

Points to Consider:

The casings were intended to be installed but were omitted.

Funding & Liability Factors:

Remaining 2006 1 Cent Transportation Sales Tax Funds

Council Options:

Approve or disapprove the request.

Recommendation:

Staff recommends Council approve the request.

RESOLUTION

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

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

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

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

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

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

Adopted this _____ day of September, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

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

Attest:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

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

Council Committee:

County Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Robert Merchant, Community Development Deputy Director

Issues for Consideration:

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

Points to Consider:

See above.

Funding & Liability Factors:

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

Council Options:

Award or not award the contract.

Recommendation:

Award the contract to Design Workshop.



**COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT**

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

David L Thomas, Purchasing Director

dthomas@bcgov.net 843.255.2353

TO: Council Chairman Stu Rodman

FROM: David L Thomas. CPPO. Purchasing Director

SUBJ: New Contract as a Result of Solicitation
RFQ 061719, Coordinated Comprehensive Master Planning Services

DATE: 10/14/2019

BACKGROUND:

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

VENDOR INFORMATION:

COST:

1. Design Workshop, Inc., Asheville, NC	\$295,000*
2. Benchmark, Charlotte, NC	\$300,000
3. Opticos Design, Inc., Berkeley, CA	\$525,000
4. McBride Dale Clarion, Cincinnati, OH	\$300,000
*The budget for Design Workshop has been revised to reflect Bluffton not participating in the plan.	

FUNDING:

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

Funding approved: By: Date:

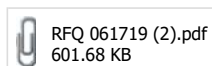
FOR ACTION:

County Council meeting on October 14, 2019.

RECOMMENDATION:

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

Attachment:



 No file attached

cc: Ashley Jacobs, County Administrator

Approved: Date:

Check to override approval: ☐ Overridden by:

Override Date:

Alicia Holland, Assistant County Administrator, Finance

Approved: Date:

Approved: Date:

Check to override approval: ☐ Overridden by:

Override Date:

ready for admin: ☒

After Initial Submission, Use the Save and Close Buttons



COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT
102 Industrial Village Road, Bldg 2—Post Office Drawer 1228
Beaufort, South Carolina 29901-1228

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

FROM: Dave Thomas, CPPO, Purchasing Director

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

DATE: September 16, 2019

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

VENDOR INFORMATION AND RANK ORDER

COST

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

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

FUNDING:

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

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

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

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

Attachments: RFQ Scoring Summary

Beaufort County Coordinated Comprehensive Plan with The Town of Port Royal and the Town of Bluffton, South Carolina				
RFQ 061719				
Summary Score Sheet				
Evaluators	Name of Company	Name of Company	Name of Company	Name of Company
	Benchmark	Design Workshop	McBride Dale Clarion	Opticos
L. Bridges	68	80	68	60
E. Greenway	75	87	72	76
R. Merchant	76	94	80	81
B. Semmler	69	67	55	59
TOTALS:	288	328	275	276
1. Design Workshop	328			
2. Benchmark	288			
3. Opticos	276			
4. McBride Dale Clarion	275			



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

--

Council Committee:

--

Meeting Date:

--

Committee Presenter (Name and Title):

--

Issues for Consideration:

--

Points to Consider:

--

Funding & Liability Factors:

--

Council Options:

--

Recommendation:

--

ORDINANCE 2019/___

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

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

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

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

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

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

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

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

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

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

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

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah Brock, Clerk to Council

3rd Reading: _____

2nd Reading: _____

Public Hearing: _____

1st Reading: _____

Public Facilities Committee: June 3, 2019

Exhibit A

Property Description

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

TMP: R100-016-000-0238-0000

LEASE AGREEMENT

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

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

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

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

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

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

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

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

and expense, provide any furnishings for the Leased Premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Atty. W. Bradshaw
Witness
Chris Hume
Witness

Approved as to form:
[Signature]
Beaufort County Attorney

LESSOR:
Beaufort County
By: [Signature]
Gary T. Kubic, County Administrator

LESSEE:

[Signature]
Gene Bardo

[Signature]
Witness

[Signature]
Witness



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

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

Council Committee:

Public Facilities

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II, County Attorney

Issues for Consideration:

Points to Consider:

Funding & Liability Factors:

N/A

Council Options:

Approve or deny the request.

Recommendation:

Staff recommends Council approve the request.

ORDINANCE 2019 / _____

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

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

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

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

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

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

This _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah Brock, Clerk to Council

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



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

River Oaks

Council Committee:

County Council

Meeting Date:

September 23rd, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

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

Points to Consider:

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

Funding & Liability Factors:

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

Council Options:

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

Recommendation:

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

ORDINANCE 2019/___

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

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

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

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

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

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Chairman

ATTEST:

Clerk to Council

First Reading:

Second Reading:

Public Hearing:

Third and Final Reading:

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

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

**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
(RIVER OAKS AT OKATIE VILLAGE)**

RECITALS

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

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

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

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

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

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

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

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

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

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

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

AMENDED AGREEMENT

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

SECTION 1. INCORPORATION.

The above recitals are hereby incorporated into this Amended Agreement.

SECTION 2. DEFINITIONS.

As used herein, the following terms mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. TERM.

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

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SECTION 4. DEVELOPMENT REQUIREMENTS AND DEVELOPMENT OF THE PROPERTY.

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

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

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

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

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

Development of the Property.

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

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

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

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

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

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

SECTION 5. **DEVELOPMENT SCHEDULE.**

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

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

SECTION 6. VESTED RIGHTS; EFFECT OF FUTURE LAWS.

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

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

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

SECTION 7. INFRASTRUCTURE AND SERVICES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. FEES AND RELATED AGREEMENTS.

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

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

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

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

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

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

SECTION 10. PERIODIC REVIEWS.

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

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

SECTION 11. DEFAULTS.

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

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

SECTION 12. MODIFICATION OF AGREEMENT.

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

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

SECTION 13. NOTICES.

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

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

With Copy to:

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

And to the Owner at:

BBII Holding Company, LLC

With Copy to:

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

SECTION 14. ENFORCEMENT.

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

SECTION 15. GENERAL.

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

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

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

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

effect.

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

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

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

G. **Successors and Assigns.**

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

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

assignee subject to the following requirements:

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

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

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

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

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

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

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

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

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

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

SECTION 16. STATEMENT OF REQUIRED PROVISIONS.

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

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

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

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

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

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

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

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

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

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

SECTION 17. RECORDING.

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

SIGNATURES FOLLOW ON NEXT PAGE.

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____

Name: _____

Title: _____

STATE OF SOUTH CAROLINA)

) PROBATE

COUNTY OF BEAUFORT)

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

First Witness Signs Again Here

SWORN to before me this

___ day of _____, 2019

Notary Public Signs AS NOTARY

Notary Public for South Carolina

My Commission Expires: _____

List of Exhibits

Exhibit A – Property Description, River Oaks at Okatie Village

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

Exhibits B-1 and B-2- Lot Standards

Exhibit C – Zoning Regulations

Zoning Regulations

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

Exhibit D – Development Schedule

Exhibit E – Population ~~??~~

Exhibit F – Design Guidelines

Exhibit G - Trail and Open Space Plan

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BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Brewer Memorial Park 2019 JOA and Operating Policy

Council Committee:

Natural Resources Committee - September 16, 2019

Meeting Date:

September 23, 2019

Committee Presenter (Name and Title):

Stefanie M. Nagid, Passive Parks Manager

Issues for Consideration:

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

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

Points to Consider:

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

Funding & Liability Factors:

None

Council Options:

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

Recommendation:

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

ORDINANCE 2019/ ____

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

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

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

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

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

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah Brock, Clerk to Council

BREWER MEMORIAL PARK

(aka Factory Creek Vista)

JOINT OWNERSHIP AGREEMENT

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

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

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

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

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

1. JOINT OWNERSHIP

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

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

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

2. INTENDED USAGE

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

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

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

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

3. INSURANCE

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

4. MONITORING AND INSPECTIONS

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

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

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

5. NOTICE

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

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

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

6. BREACH OF CONTRACT

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

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

7. TERMINATION

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

8. OTHER PROVISIONS

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

SO AGREED this ____ day of _____, 2019.

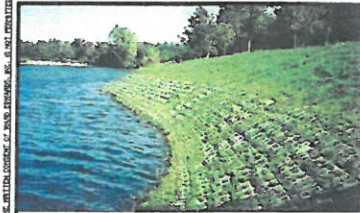
WITNESSES:

BEAUFORT COUNTY

By: _____
Name: Ashley Jacobs
Title: County Administrator

BEAUFORT COUNTY OPEN LAND
TRUST

By: _____
Name: Kristin Williams
Title: Executive Director



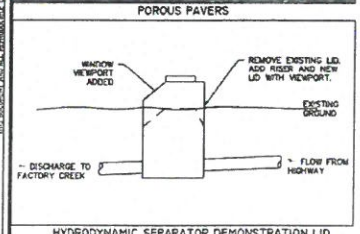
ARMORED TURF



PERMEABLE CONCRETE



POROUS PAVERS



HYDRODYNAMIC SEPARATOR DEMONSTRATION LID

NOTE: EDUCATIONAL SIGNAGE TO BE INSTALLED AT EACH BMP



LIVING SHORELINE



FILTERRA BIORETENTION



GRAVEL DRIVE



WOODEN BULKHEAD



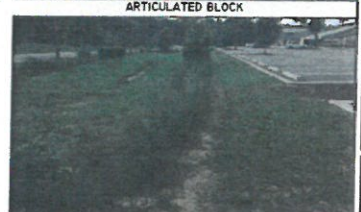
INFILTRATION TRENCH



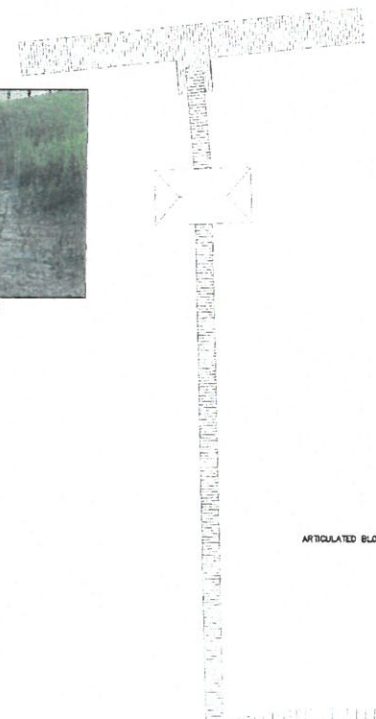
RIP RAP



ARTICULATED BLOCK



BIORETENTION / RAIN GARDEN



ARTICULATED BLOCK SLOPE ARMOR

CREATE LIVING SHORELINE

RIP RAP BANK STABILIZATION

WOODEN BULKHEAD

ARTICULATED BLOCK SLOPE ARMOR

ARMORED TURF STABILIZATION

FILTERRA BIORETENTION BOX WITH UNDERSTORY TREE

18" STANDARD CURB & GUTTER

PERMEABLE CONCRETE

EMERGENCY OVERFLOW STRUCTURE & OUTFLOW PIPE

POROUS PAVERS

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PERMEABLE CONCRETE

GRAVEL PAVING

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INFILTRATION DITCH

ADJUST EXISTING GRATE INLET TO SERVE AS EMERGENCY OVERFLOW STRUCTURE
FILTERRA BIORETENTION BOX WITH TREE
18" STANDARD CURB & GUTTER
CONVERT EXISTING GRATE INLET TO JUNCTION BOX

12" FLUSH HEADER CURB
APPROXIMATE LOCATION OF EXISTING STORMWATER & SCOOT OUTFALL STRUCTURE TO BE LOCATED & SURVEY. TOP TO BE REMOVED AND REPLACED WITH DEMONSTRATION LID.

BREWER MEMORIAL PARK STORMWATER BMP IMPROVEMENTS



NO.	DESCRIPTION	DATE
1	PLAN REVISIONS	
2		
3		
4		
5		
6		
7		

Ward Edwards
ENGINEERING
P.O. BOX 381, BEAUFORT, SOUTH CAROLINA 29919
TEL: 843/735-2338
WWW.WARDENG.COM

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

NOT FOR CONSTRUCTION
RELEASED FOR CONSTRUCTION

PROJECT #	1700001
DATE	09/15/19
DESIGNED BY	DJM
CHECKED BY	PM
SCALE	AS SHOWN

SHEET
EX.01

BREWER MEMORIAL PARK

(aka Factory Creek Vista)

OPERATING POLICY

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

PROPERTY DESCRIPTION

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

USE OF PROPERTY

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

HOURS OF OPERATION

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

ROUTINE MAINTENANCE BY BCOLT

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

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

Routine maintenance shall be provided by BCOLT.

ROUTINE MAINTENANCE BY COUNTY

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

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

MINOR REPAIR

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

MAJOR REPAIR OR MAINTENANCE

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

MAJOR ALTERATIONS AND CAPITAL IMPROVEMENTS

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

EDUCATIONAL EVENTS

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

SECURITY

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

TERMINATION

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

BEAUFORT COUNTY

By: Ashley Jacobs

Title: County Administrator

Date: _____

WITNESSES:

BEAUFORT COUNTY OPEN LAND TRUST

By: Kristin Williams

Title: Executive Director

Date: _____

WITNESSES:

EXHIBIT A

Parcel R200 015 000 143C 0000

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

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

Parcel R200 015 000 0142 0000

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

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

EXHIBIT B

Brewer Memorial Park Stormwater Demonstration Site Project Plans



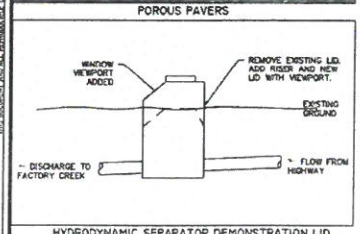
ARMORED TURF



PERMEABLE CONCRETE



POROUS PAVERS



HYDRODYNAMIC SEPARATOR DEMONSTRATION LID

NOTE: EDUCATIONAL SIGNAGE TO BE INSTALLED AT EACH BMP



LIVING SHORELINE



FILTERRA BIORETENTION



GRAVEL DRIVE



WOODEN BULKHEAD



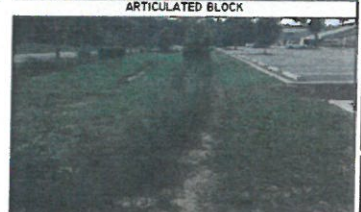
INFILTRATION TRENCH



RIP RAP



ARTICULATED BLOCK



BIORETENTION / RAIN GARDEN



ARTICULATED BLOCK SLOPE ARMOR

CREATE LIVING SHORELINE

RIP RAP BANK STABILIZATION

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APPROXIMATE LOCATION OF EXISTING STORMWATER & SCOOT OUTFALL STRUCTURE TO BE LOCATED & SURVEY. TOP TO BE REMOVED AND REPLACED WITH DEMONSTRATION LID.

BREWER MEMORIAL PARK STORMWATER BMP IMPROVEMENTS



NO.	DESCRIPTION	DATE
1	PLAN REVISIONS	
2		
3		
4		
5		
6		
7		

Ward Edwards
ENGINEERING
P.O. BOX 381, BEAUFORT, SOUTH CAROLINA 29919
TEL: 843/724-2338
WWW.WARDENG.COM

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

NOT FOR CONSTRUCTION
RELEASED FOR CONSTRUCTION
PROJECT # 2015-01
DATE 09/15/15
DESIGNED BY J.N.
CHECKED BY J.N.
SCALE 1"=50'
SHEET EX.01



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

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

Council Committee:

Natural Resources

Meeting Date:

August 19, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

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

Points to Consider:

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

Funding & Liability Factors:

None.

Council Options:

Approve, modify, or reject

Recommendation:

Staff recommends Council approve the request.

ORDINANCE 2019/_____

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

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

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

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

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

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

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

Adopted this _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council

First Reading:

Second Reading:

Public Hearing:

Third and Final Reading:

EXHIBIT A

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSES:

Beaufort County:

(Witness #1)

Ashley M. Jacobs
Beaufort County Administrator

(Witness #2/Notary Public)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **ACKNOWLEDGEMENT**

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

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

Notary Public for _____
My Commission Expires _____

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

EXHIBIT A

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



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

RCLP Program Ordinance (NEW)

Council Committee:

County Council

Meeting Date:

October 14, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

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

Points to Consider:

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

Funding & Liability Factors:

N/A

Council Options:

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

Recommendation:

Staff recommends to approve the ordinance as written.

2019/___

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

Chapter 26 – COMMUNITY DEVELOPMENT

ARTICLE II – RURAL AND CRITICAL LANDS PRESERVATION PROGRAM

SECTION 26-26: TITLE

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

SECTION 26-27: PURPOSE

It is the purpose of this ordinance to:

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

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

SECTION 26-28: FINDINGS

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

SECTION 26-29: DEFINITIONS

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

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

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

SECTION 26-30: IN GENERAL

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

SECTION 26-31: TYPES OF ACQUISITIONS

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

A. Purchase of Development Rights (PDR)

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

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

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

B. Purchase of Fee Simple Interests (PFSI)

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

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

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

SECTION 26-32: GENERAL PROCESS

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

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

SECTION 26-33: DUE DILIGENCE

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

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

SECTION 26-34: CONSERVATION EASEMENTS

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

SECTION 26-35: COVENANTS AND RESTRICTIONS

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

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

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

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

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

Additionally, the following will apply:

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

Secs. 26-37 – 26-49. Reserved

This ordinance supersedes and repeals Resolution 2006-3.

Adopted this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman, Chairman

APPROVED AS TO FORM:

Thomas J. Keaveny, II, Esquire
Beaufort County Attorney

ATTEST:

Sarah Brock, Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

RCLP Board Ordinance

Council Committee:

Natural Resources

Meeting Date:

September 16, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

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

Points to Consider:

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

Funding & Liability Factors:

N/A

Council Options:

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

Recommendation:

Staff recommendation is to approve revisions as written.

DIVISION 5. – COUNTY RURAL AND CRITICAL LANDS PRESERVATION BOARD

Sec. 2-281. – Appointment.

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

Sec. 2-282. – Officers.

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

Sec. 2-293 – Terms.

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

Sec. 2-284 – Compensation.

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

Sec. 2-285. – Conflicts of interest.

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

Sec. 2-286. – Rules of procedure.

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

Sec. 2-287. – Powers and duties.

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

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

Sec. 2-288. – Board Report

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

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

Cross reference – Administration, ch. 2.

Secs. 2-28~~89~~9 – 2-290. – Reserved.

DIVISION 5. – COUNTY RURAL AND CRITICAL LANDS PRESERVATION BOARD

Sec. 2-281. – Appointment.

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

Sec. 2-282. – Officers.

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

Sec. 2-283 – Terms.

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

Sec. 2-284 – Compensation.

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

Sec. 2-285. – Conflicts of interest.

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

Sec. 2-286. – Rules of procedure.

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

Sec. 2-287. – Powers and duties.

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

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

Sec. 2-288. – Board Report

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

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

Cross reference – Administration, ch. 2.

Secs. 2-289 – 2-290. – Reserved.



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

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

Council Committee:

Natural Resources

Meeting Date:

May 20, 2019

Committee Presenter (Name and Title):

Robert Merchant, AICP, Assistant Community Development Director

Issues for Consideration:

See staff report

Points to Consider:

See staff report

Funding & Liability Factors:

Council Options:

Approve or disapprove

Recommendation:

Approval



MEMORANDUM

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

STAFF REPORT:

A. BACKGROUND:

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

B. SUMMARY OF REQUEST:

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

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

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

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

1. ***Is consistent with and furthers the goals and policies of the Comprehensive Plan and the purposes of this Development Code:***
The proposed amendment is not consistent with the future land use map of the Beaufort County Comprehensive Plan and would require an amendment to the plan itself. The Comprehensive Plan advocates the development of affordable housing. This zoning amendment has the potential to foster the development of affordable housing in a centrally located area with relatively close proximity to employment and retail.
2. ***Is not in conflict with any provision of this Development Code, or the Code of Ordinances:***
As stated above, the proposed zoning district of C5-RCMU is not consistent with Table 1.4.10.A of the CDC for parcels that are designated as Urban Mixed-Use in the Comprehensive Plan.
3. ***Addresses a demonstrated community need:***
The proposal has the potential to foster the development of affordable housing.
4. ***Is required by changing conditions:***
The character of the surrounding area has not changed significantly in the last 10 years.
5. ***Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zone and uses for the land.***
There is a mix of uses along Broad River Boulevard in the vicinity of this parcel. These uses include small warehouses, private social clubs, churches, a small mobile home park, and single-family residential.
6. ***Would not adversely impact nearby lands.***
Properties located to the east and across from Broad River Boulevard from this parcel are zoned C5-RCMU and would not be adversely impacted by amending the zoning of this parcel.
7. ***Would result in a logical and orderly development pattern.***
See item 6 above.
8. ***Would not result in adverse impacts on the natural environment – including, but not limited to, water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.***
Approximately one half of the parcel is wetland that would be required to be preserved. There should be no adverse impacts assuming that applicable local, state, and federal

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

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

The proposed rezoning is located in close proximity to utilities and public facilities.

Sewer is available on Parris Island Gateway; water lines are available along Broad River Boulevard.

D. NORTHERN BEAUFORT COUNTY REGIONAL PLAN

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

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

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

E. STAFF RECOMMENDATION:

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

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

F. BEAUFORT-PORT ROYAL METROPOLITAN PLANNING COMMISSION

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

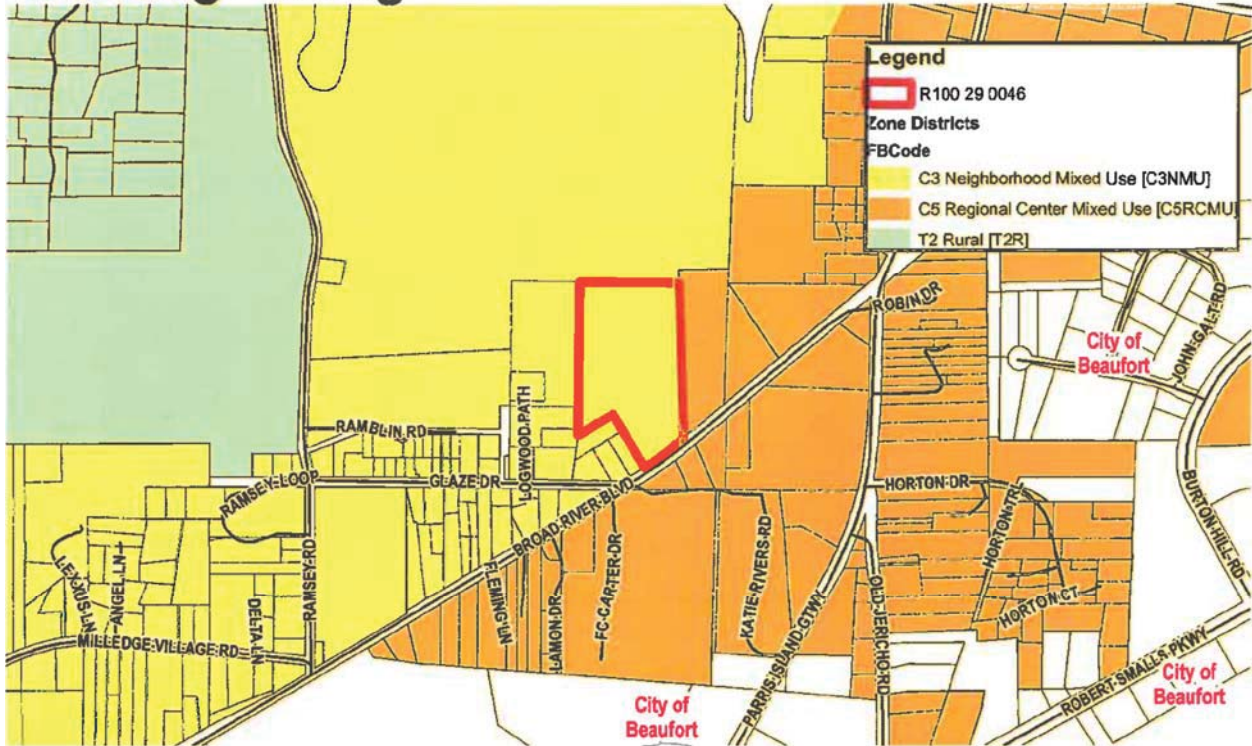
G. BEAUFORT COUNTY PLANNING COMMISSION RECOMMENDATION:

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

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

H. ATTACHMENTS: Zoning Map (existing and proposed)

Existing Zoning



Proposed Zoning

