

Committee on Real Estate

April 12, 2021

A meeting of the Committee on Real Estate was held this date beginning at 2:04 p.m. over video conference call.

Notice of this meeting was sent to all local news media.

Present: Councilmember Shahid, Chair, Councilmember Appel, Councilwoman Jackson, Councilmember Waring, and Mayor Tecklenburg **Also Present:** Allen Davis, Stirling Halversen, Chip McQueeney, Susan Herdina, Rick Jerue, Bethany Whitaker

The meeting was opened with a moment of silence by Councilmember Appel.

Approval of Minutes

On the motion of Councilwoman Jackson, seconded by Mayor Tecklenburg, the Committee voted unanimously to approve the minutes of the March 22, 2021 meeting.

An ordinance authorizing the Mayor to execute on behalf of the City a First Amendment to the Development Agreement with HPH Properties, LP, dated August 1, 2015, pertaining to lands located in the West Ashley area of the City comprising approximately 299 acres and bearing Charleston County TMS Nos 301-00-00-033, 301-00-00-042, 301-00-00-043, 301-00-00-054, 301-00-00-057, and 301-00-00-114.

Chairman Shahid said he wanted to state for the record that his wife represented HPH Properties on permitting issues dealing with wetland matters. Those were not issues/items before the City. He checked with an Ethics Professor to ensure it wasn't a violation. He could recuse himself, but he wasn't planning on doing that unless someone had an objection and wanted him to.

Ms. Halversen said she would give a brief summary of the changes included in this amendment. The property that was subject to this development agreement included 299 gross acres of land in the West Ashley area. It was owned by the Hipp Family and Shea Kuhn, a family member, was in attendance with the developer, Taylor Bush, if they had any questions. The original development agreement was executed on August 1, 2015 and the term was for five years. They had been negotiating for many months to finalize the agreement on the terms for this first amendment which would extend the development agreement for another five years. The new term of the development agreement pursuant to this first amendment would be August 1, 2020 to August 1, 2025. She stated she would highlight the big changes. The first section dealt with stormwater management and the first amendment would clarify that the development of the property would be subject to the City's current stormwater regulations that were in effect at the time of submission of a completed construction activity application. Those words were not expressly included in the original development agreement and the stormwater department had advised they include that as an express provision. They believed it would be subject to the regulations anyway, but wanted to make it clear. This would apply to each phase of the development if done in phases. The other major stormwater change was that the developer had agreed to construct a 17.5 acre stormwater retention pond that would serve the property. It would be constructed as part of the first phase of development. In the beginning, it would be an advantage for the City because it would hold excess water from the Church Creek Basin area and provide a short-term retention solution for the

Church Creek Basin. The design and location of pond would be subject to the City's Design Review Committee for approval and the developer would also convey recreational easements around the pond, so the public could use it. The final change included in the amendment had to do with the parks. In the original development agreement, the City had the obligation to purchase up to 25 acres of land to be reserved for the City to purchase at a fair-market value. In consideration for the benefits of the 17.5 acre pond that the developer has now agreed to construct, the City has agreed to contribute 10 of the original 25 acres of reserved park space to be contributed for the pond acreage. The remaining 15 acres would still be reserved for the City to purchase for park space. The developer and owner had agreed to sell that at a discounted price based on a park use appraisal rather than fair-market value. It was an option to purchase, not an obligation. The City would very much like to have this property specifically for active park space such as athletic fields. It could be one 15-acre park or two separate parks of 10 and 5 acres each. The hope was that the City would be able to create recreational facilities similar to those at the Bees Landing complex which was about 5-10 acres. This would be the only in-neighborhood active park space in the area, so the City was hopeful to have athletic fields there because that was a need shown in the Parks Comprehensive Study. The City had the option to purchase the property within three years of the recording date of the final subdivision plat. They had put a lot of terms in about the developability of the 15 acres to be perfect for athletic fields. All other terms of the original agreement would remain unchanged.

Councilmember Waring asked if this was part of the Long Savannah Tract. Ms. Halversen said there were two tracts that were similarly called 'Long Savannah'. The one they were referring to was also known as Village Green. There was a larger tract known as Long Savannah that was owned by a different owner and had a different development agreement. That agreement was executed on August 1, 2015, just like this one, but it was a 20-year agreement for over 1,000 acres. The parcel they were referring to was for a 299 acre parcel adjacent to that. Councilmember Waring asked if it was correct that the City bought and set aside a few hundred acres on the larger tract for parks. Ms. Halversen said that was correct. A large piece was sold to the County and a large piece was sold to the City. She believed they used the Green Belt funding for that. That park space was mostly passive space. There as a lot of swamp and wouldn't be athletic fields. That space was already paid for.

Councilwoman Jackson said that in the memo it said that once the agreement expired on August 1, 2020, that both parties had been negotiating in good faith to work through some of the changes in the first amendment. She thought it would be good to have that explanation on record. Ms. Halversen said that the owner reached out to the Legal Department about a year ago, but because of Covid and other obstacles, it had slowed the process down. She had worked with multiple departments on this including Planning, Stormwater and Parks. There were a lot of moving pieces to try to pull together. She wanted to honor the extension to go back to August 1, 2020 through the present because they had been negotiating in good faith the entire time. Councilwoman Jackson said that was an important explanation because people may ask what incentivized them to give this extension because it had expired.

Ms. Halversen referred to her screen share and stated it was what was called the 'regulating plan'. The dark green space was the County's space and it would be used as park space. The light green was what the City purchased from the larger Long Savannah development which she believed was from Neighborhood 1 on the left all the way to Neighborhood 10 on the right. Neighborhood 11 in the upper corner was what was called Village Green or the HPH Long Savannah property. That was the 299 acres they were talking about. The rest of the area including the City and County parks was all subject to the

20 year development agreement. Both the larger and smaller tracts had very similar terms and conditions. There were just some minor differences between the two agreements. Because of the State statutes, the size of the acreage really determined how long the agreement would be for. Chairman Shahid asked what would happen if they didn't approve the amendment. Ms. Halversen said they would still have the PUD that was also approved in 2015. There would be no changes to that unless the City made a change. The PUD did include some of the terms and regulations also included in the agreement, but some of the extra things, such as the 15-acre park space, would not be included. The PUD was really just a bare bones regulatory document for developing, but the development agreement had a lot more detail fleshed out. She would say it was beneficial to the City and the owner and developer to have that agreement in place. The new stormwater retention pond would be beneficial, as well as the park space, which would not be included in the PUD.

Mayor Tecklenburg thanked Ms. Halversen for all her many hours of work on this. The primary moving piece in all this was the stormwater component in this special protection area of the Church Creek Basin. To make clear that the property was subject to the current regulations was critical. If the older regulations had applied, they may not have even been able to build the retention pond. This would be a big benefit to the Church Creek Basin. Neighborhood 11 where this was located was mostly high ground and they had learned through the Dutch Dialogues process that even with high ground, if you could create storage for water and let it drain off at a slower rate, it benefitted everyone. The developers had recognized that this would be a benefit to the whole basin and the idea for enlarging the pond came from them. But, it did not negate the need for recreational facilities which led to a lot of discussion back and forth between different departments. This agreement would also help with connectivity as well. They had worked in good faith and he recommended they approve this. There was good benefit all the way around.

Councilmember Appel said it was a good idea for them to lock in the applicability of the new stormwater regulations. It was his understanding that the City's default position on this issue was that if someone hadn't submitted a CAA prior to July 1, 2020, they would be held to the new regulations. With the development agreement, that may not be that analysis because the whole purpose of the agreement was to freeze the regulations in effect at the time. He saw the value in enshrining that requirement for this to undergo the new stormwater regulations. They knew where he stood on developments in the more sprawl category. They were making it a better development with these amendments.

Councilmember Shealy said that it was technically District 10, but did border his district. He could see how this could help the Basin, but he was concerned about giving up the additional acres of recreation spaces and what that would do for the Comprehensive Recreation Plan. It was something he would want to look at further and also hear Jason and Laurie's thoughts about. Councilwoman Jackson said she knew of Councilmember Shealy's dedication to recreation. Her assumption was that during negotiating, staff decided it was worth giving up the 10 acres of recreation space for the stormwater improvements. She would like to know if that assumption was correct. She would also like to make sure they understood the actual process and what would be required of the developer and what their responsibilities were in upholding that land-use development process. She knew they had the PUD, which was a permanent fixture. They could ask the developer to change the PUD, but that wasn't something they could require. She asked if they decided they wouldn't approve this amendment if that would cancel the development agreement because it had already expired. She asked if the developer would then be incentivized to come back with a new development agreement. She asked if when they were negotiating if they were

only looking at the agreement as it was today and picking out things staff thought would be beneficial to put into some sort of amendment document. She asked if they could describe the holistic process and what their responsibility was as a Council.

Ms. Halversen said that to answer the first question, that Councilmember Shealy also brought up, Jason Kronsberg and Laurie Yarbrough were both very involved in the negotiations. They talked a lot about the types of parks they could use for the 15 acres, what configuration that could be, and what it took to build athletic fields. They would love to have the 25 acres, but they felt comfortable with the 15 acres and felt they could get some good, in-neighborhood, athletic field space. She had tried to vet this out through all departments. A development agreement touched on every single department in the City. Planning and Stormwater had the most input because of the proposed pond and stormwater regulations. Those were the items they thought would be crucial to including in the first amendment if they were going to extend it for five more years. This really grew out of stormwater concerns and with the pond being as big as it is, it was a matter of trying to figure that out but also keep as much park space for the City as they could. They really analyzed all the park space in this area and tried to weigh it with the stormwater concerns. Those were the two biggest items they looked at as they reviewed it. This would be passed by ordinance, so they would have second and third readings and a public hearing at the next meeting. If not approved by the City, the developer and owner would have the option of either trying to negotiate a new development agreement or possibly coming back with a revision that would make everyone happy. She wasn't really sure where they would be if it wasn't approved. They would be back to square one and keep working on it. But, they did have the PUD which did include most of the land uses and all of those types of regulations on it.

Mayor Tecklenburg said he was happy to get Jason and Laurie on the call to weigh in if they were available. One of the things to point out was that they considered Colonial Lake a park, but they didn't just count the sidewalk around it. There was the beautiful open space with a pond full of water. The same thing would apply with the 17.5 acre pond. The perimeter of the pond would be a public space and public use. They didn't think it was feasible to have all 25 acres as fully developed active athletic space anyway. If you counted the pond as public space, you ended up with more than the original 25 acres. The 15 acres was sized specifically to account for enough active recreation space as they would put in a neighborhood this size. Planned in the right places and developed in the right way, they felt like what they asked for was what was needed.

Mr. Kronsberg said that per the Mayor, that recreational space that would be accommodated around the pond with trails was part of the whole idea. This would give them the ability to develop some multi-use fields, ball courts, and neighborhood park amenities. The five and ten acres should accommodate that, in addition to the space around the pond. Ms. Yarbrough said they tried to make sure that the land was high land and that it would be what they were going to use and not be wetlands, things that they could use as active spaces, understanding that the neighborhood and residents may have some different needs than what they saw today. It would be multi-purpose in nature, but would allow for those types of activities they would be offering, programs or places families could go to play a game of kickball. Councilwoman Jackson said she did feel very responsible to make sure that whatever they were talking about was clear to the public, especially by the time they got to the public hearing. If they didn't approve the amendment, the developer could come back and add a few things or ask them to consider new terms that they would potentially approve. She asked if none of that happened, if the developer had the opportunity to then build under the PUD without other deliberations. She asked if they could

avoid getting a development agreement with the City. Ms. Halversen said they would be able to go forward under the PUD.

Councilmember Waring asked how many acres they had at the soccer fields off of Mary Ader Boulevard, at Governor's Park on Daniel Island, and at Grand Oaks Park. Mr. Kronsberg said he could pull that up. At West Ashley Park, they had a lot of natural area. Councilmember Waring said he was asking that question because they didn't have any idea of the size in population explosion they were talking about when this area would get developed. He could remember in 2015 when they were talking about this and talking about population potentially equating to Daniel Island once it was developed. Hammering out the parks areas and getting the connectivity were big parts of this. He was hesitant to give up park space on this one. Less than 10% of the property was being used on the entire property for public parks. He wouldn't vote to support this one for that reason. So much of West Ashley was developed in years past that didn't have the vision to allocate public space. When you looked at Inner West Ashley, there was very little forethought in planning for stormwater and parks.

Chairman Shahid said he thought these concerns were very well-expressed and played. He was in that area recently and he was getting a visual as to the number of recreational opportunities on this side of West Ashley. There was a huge gap in between West Ashley park and Mary Ader. This would fulfill some of the need for more recreation. If they kept the whole 25 acres, they would have to pay for it. For West Ashley Park, the first four sets of fields you came up on when you entered the parking lot was about 12 acres. That didn't include the ball fields on the other side of the park. The Bees Landing Recreation Complex was about 10 acres and that was the developed land. Governor's Park was about 25 acres including ball fields, multi-purpose fields, dog park, and playground. Councilmember Shealy said they had this comprehensive plan and it had to be calling for additional acreage and there had to be some requests. He asked if this was cutting them short on their needs. Mr. Kronsberg said they hadn't seen the draft report of the master plan yet. They did have the property on the other side of the map which was about 200 acres and about 80 of it was highland. There hadn't been a plan developed for that property. He thought the intention was that it would always be a mix of uses. There could be a natural area that tied into the County area and that trail system. It had been years and some of the wetland rules had changed. He thought they always anticipated having some athletic fields there. Councilmember Shealy said he assumed from a stormwater perspective there had to be something similar to the 17 acre pond. Ms. Halversen said the 17.5 acre pond would definitely go towards meeting those requirements. She wasn't sure if it would meet the requirements one-hundred percent. It would be serving the development when fully built-out, but they would also have the benefit from it in the beginning because it would be helping the whole Church Creek area.

On a motion of Mayor Tecklenburg, seconded by Councilmember Waring, the Committee voted to approve the above item. The vote was not unanimous. Councilmember Waring and Councilwoman Jackson voted nay.

Request authorization for the Mayor to execute a Second Addendum to the Memorandum of Agreement (the "MOA") dated October 9, 2018, between the City of Charleston and the Lowcountry Lowline, also known as the Friends of the Lowcountry Lowline (the "FLL") governing the use by the FLL of \$250,000 toward surveys, environmental reports, construction budgeting, and other design and engineering expenses for the first phase of the improvement and construction of the Lowline Park.

Mr. McQueeney said the original MOU was passed in October of 2019 and it set forth all the conditions for the relationship between the City and the Lowline. When the City purchased the Lowline property, it was from the Friends of the Lowcountry Lowline. They paid about \$5 million for the property and the City paid them half their purchase price. It was subject to a separate Memorandum of Agreement that anticipated the parties working together and cooperating in order to come up with a planning document for the property. One of the important parts was something the City didn't really do which was that the Friends would also fundraise and take some burden off the City as far as paying for improvements once it was up and running. In October of 2019 they passed a MOU that set forth a lot of the same conditions and requirements and also went through things related to the Friends work on the property such as insurance requirements and environmental requirements. He had attached that document along with the first addendum which was adopted to fund the design of the first phase done by the Friends. That design was presented to City Council in December and they approved the Concept Master Plan. AT this point, they were at the final design, engineering and construction phase. The Lowline had come to the City, as they did about a year ago for Phase 1 and requested additional monies to advance the final design, engineering and construction for the first phase of the Lowline improvements. The benefit to the City of this relationship was they had a group of people who were all over this. It was a huge project. When he handled the closing, it was probably the most complicated real estate transaction he had ever seen. It was probably one of the most complicated projects he had ever seen because of SCDOT's interest, the affordable housing piece, environmental issues, the skate park, and all the different groups involved in this. They had come to the City and requested an additional \$250,000. If they didn't find eligible expenses in a year, it reverted back to the City. It would come from the Cooper River Bridge TIF or another fund identified by the CFO. Before they spent any of the monies, the CFO and Corporation Counsel would have to approve it as eligible under the second MOU and they would have to approve the agreements. The agreements would be with the Friends. If there was an agreement that needed the City to be a party, it would go to City Council. They would submit request for payments based upon the approved contracts and could get up to \$250,000 for expenditures consistent with the second MOA. It had been a good relationship so far.

Councilmember Waring asked for explanation on the CFO and Corporation Counsel approving amounts requested. Mr. McQueeney said they would have to approve the contracts before the money spent in those contracts would be eligible for reimbursement. The contracts would have to be part of the final design, engineering and construction budgeting for the Phase 1 portion talked about in the concept master plan. Councilmember Waring asked how that would be handled under the current agreement. Mr. McQueeney said if they had what they thought would be eligible expenses, if they wanted to incur money from those funds they would need to present whatever contractor agreement they planned to enter into to Amy and Susan. That contract would have to meet that phase 1 requirements but also the requirements in the MOA such as the insurance and environmental requirements. In the initial MOA, the City would also oversee those expenses. Councilmember Waring said he was for building the Lowline. He did have a problem in putting the CFO and Corporation Counsel in more of a political situation than they have been in before. He said that the Mayor had countless meetings with the Friends and maybe the CFO and Corporate Counsel. Those meetings weren't transparent and Council didn't get copies of minutes for those meetings. If they didn't have transparency, that meant the public didn't have that transparency. The Friends were wonderful allies to the linear park. To place their CFO and Corporation Counsel in a stakeholder meeting was a poor way to handle taxpayers dollars. If they didn't handle this bucket of money efficiently, it came at the expense of drainage and affordable housing. When an

influential donor came to the Mayor and said they needed X amount of money and the CFO or Corporation Counsel felt that was flawed, it put them in a vice they shouldn't be in when handling the City finances. The CFO's best advice should be based on financial fundamentals, not politics. This agreement right now put them in a position of wanting to please and put them in the political process. One good thing about their bid process was that it removed capital projects away from that and that worked to the taxpayers benefit. This project, from an engineering standpoint, was nowhere near as complex as the Low Battery Wall or curve. He had yet to see what the reasoning was to give taxpayer dollars to private entities for them to go out and do the bidding. He asked what the big advantage was for them to have no bid contracts. Once they approved the money, they didn't have to worry about competitive bidding. They could do single-source contracts with taxpayer money and that didn't work in their interest.

Mayor Tecklenburg said that the Friends had been working on this well before he became Mayor. They wouldn't be at this opportunity without their engagement, money and efforts over the last ten years. They had enjoyed a very solid partnership with them which had been very transparent. If they kept a ledger on the money, they could argue that the City owed them money because they put private dollars that they raised into the purchase of the property. They had all approved this and believed that the benefits for drainage and affordable housing would help the City accomplish a good thing. They just wanted to continue a partnership that would help move the ball down the field. It didn't even make a commitment for millions of dollars at this point. It just got it designed and to a point where they affirmed what the initial budget would be which would be very helpful for the Friends to continue to raise private dollars and give them the ammunition needed to apply for grants and federal funding. They were at a juncture where Congress had determined they would reinstate something called earmarks. The City believed they had good potential to apply for some federal dollars to help long-term with this project. When those big dollar amounts got thrown around, they weren't defined as they needed to be and they included other things like drainage improvements and affordable housing. He viewed the partnership they had with the Friends as an extension of their City efforts which helped them get more good things done for their residents and similar things had been done with other projects such as getting the Moultrie Playground done with the Parks Conservancy. He said he would like to hear from Ms. Wharton about her perspective on the accountability and transparency of this. She agreed, and could say for herself, that the document Mr. McQueeney drew up was accountable and transparent. They had saved money through their relationship with the Friends, by them pursuing this project and raising money. They were committed to continuing that effort and he saw that as a benefit to their taxpayers.

Councilwoman Jackson said she appreciated the dialogue and would support this second amendment. Councilmember Appel said he agreed with Councilmember Waring that there was unanimous support for this project. They all wanted to make sure this was done in a transparent and fair process. He also thought the Mayor hit the nail on the head that public-private partnership was becoming how business was done when it came to infrastructure. There was a lot of value that the private sector could provide. It was important that the City made sure that all the necessary precautions and safeguards and transparency mechanisms were in place. To the extent they could leverage outside resources to help supplement the City's capacities and drive these projects was a win-win while making sure that everything was transparent, which he thought this framework accomplished. That was something they would see a lot more of. The sooner they could get the Lowline moving, the more investment they

would see in their TIF district and the more money they would see for drainage and affordable housing. This was the engine and catalyst for that whole TIF and it was time to get that started.

Ms. Wharton said the way Mr. McQueeney wrote this was the way they did most of the reimbursements for TIF's and development agreements they had, to where everything had to come through them and they had to make sure all the documentation was there before they reimbursed for the expenses. In addition, she knew Mr. Kronsberg's team would be watching the project and they would also have a Project Manager for the Cooper River Bridge TIF, so to the extent that this was paid for out of that TIF, they would also be watching that project as well. It would have a lot of reviews and eyes on it before it came to her for approval of expenditures. Councilmember Waring asked if she could address the competitive bid process. He asked how they got the competitive bid on the taxpayers dollars not after the expense had occurred but before contracts were awarded under this agreement. Ms. Wharton said she didn't honestly know that, in terms of that was where she and Ms. Herdina would look at it to make sure that it was according to what they thought was okay. In the more detailed MOU, they would incorporate more detail into that that would have more of the procurement side in it. This was just talking about the design work and not the construction contracts. Councilmember Waring said he was thinking this was the template they were operating off of for the entire project. Ms. Wharton said there would be a more detailed MOU coming to Council for the more detailed items. This was for the smaller items like design. Mr. McQueeney said they could spend it on engineering, but he didn't think that would engineer the entire project. This would mostly be for final design and surveying. The main thing was to move the ball forward to get to a place where they could have a more extensive agreement to work out with them. This was capped at \$250,000 and it would have to come back to City Council to approve anything more. Keeping the ball rolling in this respect allowed them to fundraise without the City committing millions of dollars right now. At some point, those private contributions would need to kick in for this to move as fast as everyone wanted it to. Councilmember Waring asked when the larger portion of the agreement came through if it would be different than what they were seeing right now. Mr. McQueeney said that was correct. Councilmember Waring said he would vote for this then. He didn't want to set a parameter where millions of dollars would be spent this way and not competitively bid and putting their CFO and Corporation Counsel in a political place. This current agreement did do that.

Ms. Herdina said that this agreement said if the City would be a party to anything, it had to come back to City Council for approval. In the larger agreement they were working on, they were talking about the procurement issues and the need to include minority business requirements. Councilwoman Jackson thanked Councilmember Waring. She was glad they could satisfy his very conscientious questions. As much as they could get it right to have a longstanding private-public partnership would be beneficial. Chairman Shahid asked if they had a finance scheme in the agreement for how, as they progress, how that funding would be accomplished. Mr. McQueeney said it didn't. They had the bigger agreement to bring. Right now, they didn't have the funds identified to bring that bigger agreement. The first agreement set the bare minimum of what anybody doing work on City property had to do including the contracting and environmental. There was a provision that they would both work to identify monies but that they all understood it would take private and public monies to get done. To the extent they were spending City funds, they were just allowed what was in the first and second addendum. Chairman Shahid said that a checklist of different phases and movement may help them so they could see that they were moving this project along. That way, they didn't have to keep having the same discussions.

There was 100 percent support for this on Council and he didn't want something to happen to derail that.

On the motion of Councilwoman Jackson, seconded by Mayor Tecklenburg, the Committee voted unanimously to approve the above item.

Consider the following annexation:

- *3919 Savannah Highway (1.83 acres) (TMS# 285-00-00-205), West Ashley, (District 5). The property is owned by Lillie and Carl Smalls.*

On the motion of Councilwoman Jackson, seconded by Councilmember Appel, the Committee voted unanimously to approve the above item.

Executive Session in accordance with 30-4-70(a)(2) of the South Carolina Code, to receive legal advice regarding the Charleston School of Law transaction. (Deferred for discussion at City Council)

This would be taken up at City Council.

Having no further business, the Committee adjourned at 3:27 p.m.

Bethany Whitaker
Council Secretary