
AGENCY: Division of General Services

SUBJECT: Sale of State Ports Authority Real Property in Port Royal

The SC Code of Laws Section 54-3-700 requires certain actions concerning the State Ports Authority (SPA) and its marine terminal at Port Royal consisting of 51.6 acres of highland and 265 acres of marsh (tidelands). In addition to the cessation of marine operations, the statute directs the SPA to sell its real and personal property in Port Royal in a "manner that is financially responsible and advantageous to the State Ports Authority." Another statutory requirement of the sale is that the property must first be "appraised and then sold at fair market value" on an "open-bid basis, and no bid may be accepted which is less than the property's fair market value as shown by the appraisal." Since the property was not sold by December 31, 2009, the property has been transferred to the Budget and Control Board (Board) for sale. The Board is vested with all of the SPA's fiduciary duties to the SPA and SPA bondholders. The sale proceeds are to be retained by the SPA unless, upon petition by the Town of Port Royal, the Board allocates up to five percent of the funds to pay for infrastructure needs directly associated with and necessitated by the closing and sale of the terminal.

In accordance with the statute, the Port Royal properties were initially appraised for a total market value of \$21,900,000 to \$22,900,000 as of March 8, 2007. In a letter dated December 15, 2009, the appraisal was reduced to a present value because of the "current economic climate" and "current market conditions." A discount rate of 12 percent was selected and applied for a three year period which resulted in a reduction of approximately 29 percent in the current market value of the property to \$15,589,000 to \$16,301,000. The discount in the market value of the property was "to provide developers/investors with compensation for a holding period from the time of purchase until anticipated recovery of the economy and real estate market."

The properties were put out for bid by the SPA in 2007 and one bidder met the minimum criteria. A contract was negotiated, approved by the Board and executed by the SPA. Closing on the sale failed to occur because of the withdrawal of the lender from the transaction due to financial market conditions which were deteriorating rapidly at the time. The property was then placed with a commercial real estate broker who advertised nationally, through a website, and in December 2009 and January 2010 the broker solicited bids or proposals regarding the sale of the property in the state publication, South Carolina Business Opportunities (SCBO). The current proposed purchaser initiated discussions through the SPA's broker and negotiations were ongoing in December 2009. At its meeting on December 15, 2009, the Board authorized the SPA and its staff to serve as agents of the Board and to work with the Division of General Services to continue the effort to market the Port Royal property, effective December 31, 2009. In February 2010, a Letter of Intent for the purchase and sale of the property was executed between the SPA and the purchaser.

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A contract was thereafter negotiated with the purchaser, and on May 18, 2010, the SPA approved a resolution for the sale of the Port Royal property, subject to this Board's approval, upon the following terms and conditions: The property is to be sold in two phases. The first phase includes approximately 50 percent of the property and is 29.51 acres of highlands and 47.98 acres of tidelands and will close after a specified due diligence and inspection period at a price of \$8,375,000. The closing on the remainder of the property, 21.93 acres of highlands and 217 acres of tidelands, is at the option of the purchaser and may take place up to three years from the closing of the first phase at a price of \$8,375,000 (total purchase price of \$16,750,000). A commission will be paid to the real estate broker upon the closing of phase one. If the purchaser elects not to close on phase two of the property by the third anniversary of the closing date of phase one, the purchaser will forfeit the sum of \$250,000 and no further real estate commission will be due.

By Summons and Complaint served on July 6, 2010, the SPA initiated an action against the State seeking a declaratory judgment from the court that the Authority has the sole power to transfer the (457.45) 265 acres of Tidelands to a private party as a part of the transaction for which the Board's approval is sought and ". . . declaring that the State is forever barred from any claim to ownership of the marshlands and declaring that any clouds on the marshlands associated with any claim of right of the State to ownership of the marshlands is forever removed."

BOARD ACTION REQUESTED:

Approve the contract for sale of the Port Royal property as negotiated by the State Ports Authority.

ATTACHMENTS:

Agenda item worksheet; Map; SC Code of Laws Section 54-3-700

BUDGET AND CONTROL BOARD AGENDA ITEM WORKSHEET

Meeting Scheduled for: September 29, 2010

Regular Agenda

1. Submitted by:

(a) Agencies: General Services Division / State Ports Authority

(b) Authorized Official Signature:


M. Richbourg Roberson, Director

2. Subject: Sale of State Ports Authority Real Property in Port Royal

3. Summary Background Information:

The SC Code of Laws Section 54-3-700 requires certain actions concerning the State Ports Authority (SPA) and its marine terminal at Port Royal consisting of 51.6 acres of highland and 265 acres of marsh (tidelands). In addition to the cessation of marine operations, the statute directs the SPA to sell its real and personal property in Port Royal in a "manner that is financially responsible and advantageous to the State Ports Authority." Another statutory requirement of the sale is that the property must first be "appraised and then sold at fair market value" on an "open-bid basis, and no bid may be accepted which is less than the property's fair market value as shown by the appraisal." Since the property was not sold by December 31, 2009, the property has been transferred to the Budget and Control Board (Board) for sale. The Board is vested with all of the SPA's fiduciary duties to the SPA and SPA bondholders. The sale proceeds are to be retained by the SPA unless, upon petition by the Town of Port Royal, the Board allocates up to five percent of the funds to pay for infrastructure needs directly associated with and necessitated by the closing and sale of the terminal.

In accordance with the statute, the Port Royal properties were initially appraised for a total market value of \$21,900,000 to \$22,900,000 as of March 8, 2007. In a letter dated December 15, 2009, the appraisal was reduced to a present value because of the "current economic climate" and "current market conditions." A discount rate of 12 percent was selected and applied for a three year period which resulted in a reduction of approximately 29 percent in the current market value of the property to \$15,589,000 to \$16,301,000. The discount in the market value of the property was "to provide developers/investors with compensation for a holding period from the time of purchase until anticipated recovery of the economy and real estate market."

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A contract was thereafter negotiated with the purchaser, and on May 18, 2010, the SPA approved a resolution for the sale of the Port Royal property, subject to this Board's approval, upon the following terms and conditions: The property is to be sold in two phases. The first phase includes approximately 50 percent of the property and is 29.51 acres of highlands and 47.98 acres of tidelands and will close after a specified due diligence and inspection period at a price of \$8,375,000. The closing on the remainder of the property, 21.93 acres of highlands and 217 acres of tidelands, is at the option of the purchaser and may take place up to three years from the closing of the first phase at a price of \$8,375,000 (total purchase price of \$16,750,000). A commission will be paid to the real estate broker upon the closing of phase one. If the purchaser elects not to close on phase two of the property by the third anniversary of the closing date of phase one, the purchaser will forfeit the sum of \$250,000 and no further real estate commission will be due.

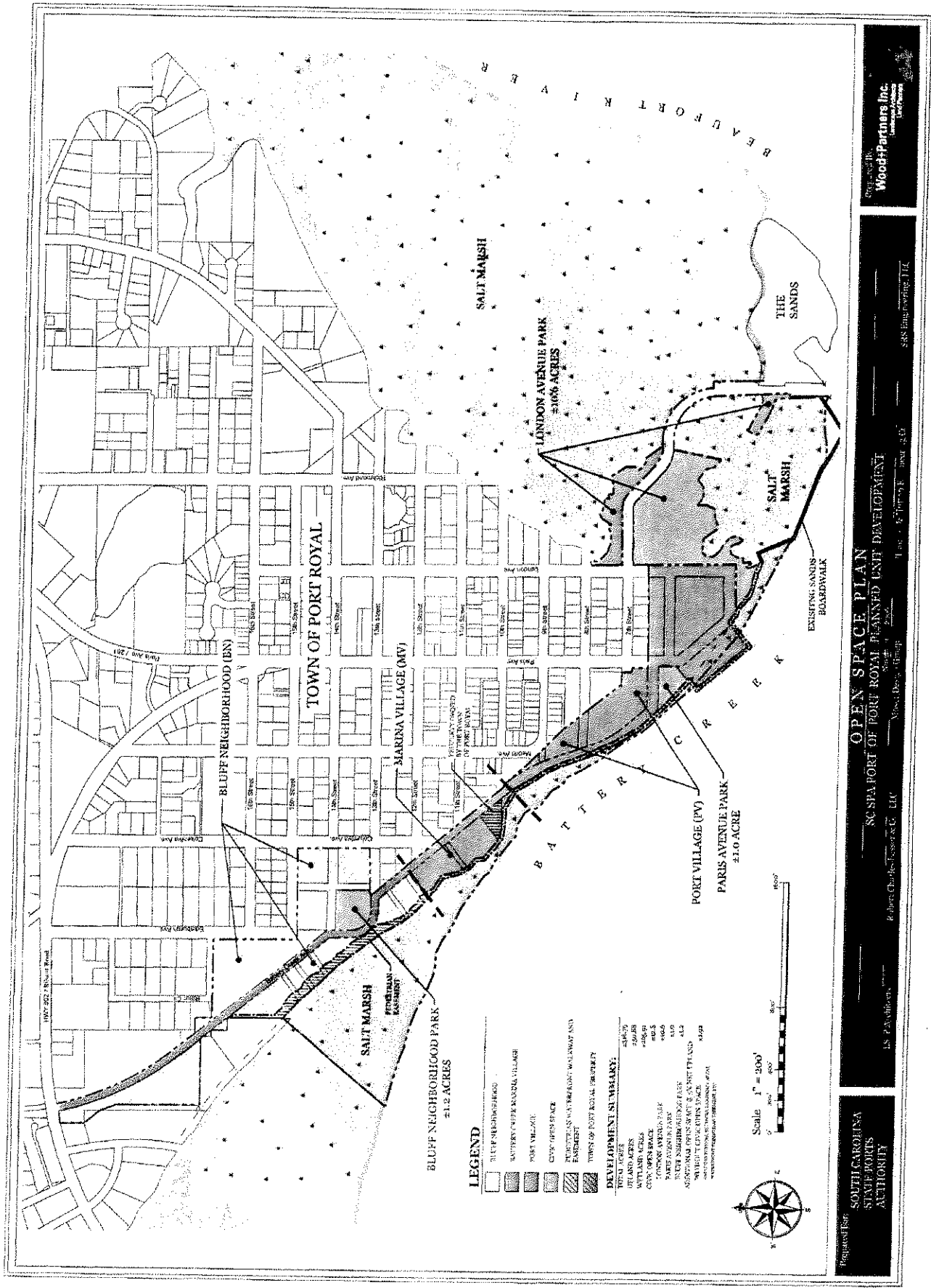
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4. What is the Board asked to do? Approve the contract for sale of the Port Royal property as negotiated by the State Ports Authority.

5. What is recommendation of the General Services Division? Consider the request by the State Ports Authority to approve the contract for sale of the Port Royal property.

6. List of Supporting Documents:

- (a) Map
- (b) SC Code of Laws Section 54-3-700



LEGEND

- BLUFF NEIGHBORHOOD
- WATERFRONT MARINA VILLAGE
- PORT VILLAGE
- EXISTING OPEN SPACE
- PROPOSED OPEN SPACE
- PROPOSED WATERFRONT WALKWAY AND BOARDWALK
- TOWNSHIP OF PORT ROYAL PROPERTY

DEVELOPMENT SUMMARY

TOTAL ACRES	2,112
BLUFF NEIGHBORHOOD	2,112
WATERFRONT MARINA VILLAGE	200
PORT VILLAGE	110
EXISTING OPEN SPACE	110
PROPOSED OPEN SPACE	110
PROPOSED WATERFRONT WALKWAY AND BOARDWALK	110
TOWNSHIP OF PORT ROYAL PROPERTY	110

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Prepared for:
**SOUTH CAROLINA
 STATE PARKS
 AUTHORITY**

OPEN SPACE PLAN
 SC STATE PORT OF PORT ROYAL PLANNED UNIT DEVELOPMENT

Prepared by:
WoodPartners Inc.
 1000 Wood Partners Blvd.
 Charleston, SC 29405

SECTION 54-3-700. Cessation of marine terminal operations at Port Royal; sale of property.

(A) Upon the effective date of this section:

(1) the State Ports Authority has no statutory responsibility to operate a marine terminal at Port Royal; and

(2) marine operations at Port Royal shall cease as soon as practicable.

(B) The State Ports Authority is hereby directed to sell all its real and personal property at Port Royal upon the effective date of this section, but in a manner that is financially responsible and advantageous to the State Ports Authority.

(C)(1) The State Ports Authority, in its discretion, shall determine the manner of the sale, but in no event shall terms of the sale extend beyond December 31, 2009, except for parcels under long-term contract, in which case the South Carolina Ports Authority is directed to terminate these leases as soon as possible through "lease purchases", "buy outs", or other lawful means.

(2) The property must be transferred to the State Budget and Control Board for sale if the authority is unable to complete the sale by December 31, 2009. The State Budget and Control Board is vested with all of the board's fiduciary duties to the authority and the authority's bondholders if the property is transferred to the State Budget and Control Board for sale. The acceptance of any sales price by the State Budget and Control Board must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner. The State Budget and Control Board may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority.

(D) Any real or personal property at Port Royal which is to be sold must be first appraised and then sold at fair market value. The real property appraiser must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising marine terminal facilities. The appraisal of the real property should include its future development opportunities and those of the surrounding properties. The State Ports Authority Board of Directors shall exercise its lawful discretion in the acceptance of any sales price with due regard to its fiduciary duties to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including conversion of a nonperforming asset into revenue in the most expeditious manner. The sale of the real property shall comply with all state procedures, must be approved by the State Budget and Control Board, and must be on an open-bid basis, and no bid may be accepted which is less than the property's fair market value as shown by the appraisal. All proceeds from the sale of real and personal property at Port Royal must be retained by the State Ports Authority; except that the Town of Port Royal may petition the State Budget and Control Board for a portion of the net proceeds from a sale and may be allocated a portion of these net proceeds in an amount not to exceed five percent of the net proceeds upon showing the allocation is necessary to pay for infrastructure needs directly associated with and necessitated by the closing of the port as Port Royal. These funds must be expended at the direction of the Town Council of Port Royal with the approval of the State Budget and Control Board, solely for infrastructure, and shall have priority over all other expenditures except usual and necessary closing costs attributable to a sales contract.