

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO. 3545

ORDINANCE COUNCIL SERIES NO. 07-

COUNCIL SPONSOR: BAGERT/DAVIS

PROVIDED BY: PRESIDENT/LEGAL

INTRODUCED BY: _____

SECONDED BY: _____

ON THE ____ DAY OF _____ 2007

ORDINANCE TO ADOPT A VOLUNTARY DEVELOPMENTAL AGREEMENT AND RATIFY THE ACTIONS OF THE PARISH PRESIDENT WITH RESPECT TO THE DONATION OF IMMOVABLE PROPERTY BY ABITA SPRINGS TIMBER COMPANY, LLC.

WHEREAS, the Abita Springs Timber Company, LLC, has agreed to enter into a voluntary developmental agreement with the Parish of St. Tammany, and did so on or about March 20, 2007; and

WHEREAS, the developmental agreement with Abita Springs Timber Company is in the best interest of the Parish; and

WHEREAS, the St. Tammany Parish Council does hereby conclude that said agreement is mutually acceptable and binding on all parties.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS, that it accepts and enters into said voluntary developmental agreement and hereby ratifies the actions of the Parish President with respect to the donation of immovable property by Abita Springs Timber Company, LLC.

BE IT FURTHER ORDAINED that the agreement shall be recorded within the records of the St. Tammany Parish Clerk of Court and a copy of this ordinance shall serve as an attachment thereto.

REPEAL: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective immediately or as per law, which ever is earlier.

MOVED FOR ADOPTION BY _____ SECONDED BY _____

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS:

NAYS:

ABSTAIN:

ABSENT:

Ord Cal 3540 Exhibit 'n

DEVELOPMENTAL AGREEMENT

This Agreement is made and entered into this 20th day of March, 2007, pursuant to L.S.A. - R.S. 33:4780.21 through 33:4780.33 relative to local zoning and planning, and authorizing Parishes or municipalities to enter into developmental agreements with private Developers, and any other constitutional and statutory authority, by and among the following Parties:

THE PARISH OF ST. TAMMANY, a political subdivision created, organized and existing under the laws of the State of Louisiana, herein represented and appearing the Honorable **KEVIN C. DAVIS**, the President of St. Tammany Parish, duly authorized pursuant to the Parish charter, as well as by specific Ordinance of the Parish Council to sign and enter into this agreement on behalf of the Parish;

AND

ABITA SPRINGS TIMBER COMPANY, L.L.C., a company organized and legally operating in the State of Louisiana, herein represented by its duly authorized representative, J. Ollie Edmunds, its mailing address is 1440 Canal Street, Suite 1500, New Orleans, LA 70112;

The above captioned Parties hereinafter may be collectively referred to as "**Parties**", the Parish of St. Tammany may be hereinafter referred to as "**Parish**", and Abita Springs Timber Company, L.L.C. may be hereinafter referred to as the "**Developer**".

WITNESSETH

WHEREAS, the St. Tammany Parish Police Jury enacted Ordinance No. 92-1655 which authorized the Parish of St. Tammany to enter into Developmental

Agreements with Developers of land; and to provide for the contents, periodic review, enforcement and applicability of said agreements; for amendment, cancellation, modification and/or suspension; and

WHEREAS, the lack of certainty and the approval of development projects can result in a waste of resources, escalate the cost of development to the consumer, and discourage investment and commitment to comprehensive planning. However, assurances made by the Parish to the Developer that it may proceed with the project in accordance with existing policy, rules, and regulations, will facilitate the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development; and

WHEREAS, it is the intent of the Parties to enter into future agreement(s) which specify the permitted uses of the property, the density and intensity of use, and any other such provisions deemed appropriate by the Parties; and

WHEREAS, said future agreement(s) may include terms, restrictions and requirements for subsequent discretionary actions by the Parish, provided that said actions shall not prevent the development of the land for Developer nor diminish the current density, intensity, and/or variety of use of the land.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained within this Agreement, the Parties hereby and henceforth agree to bind themselves as follows:

ARTICLE I. PREAMBLE

Developer is the owner of approximately 8,000 acres of contiguous land in St. Tammany Parish, Louisiana ("Developer's Remaining Property").

Parish is the Owner of St. Tammany Regional Airport ("Airport"), which is contiguous to Developer's Remaining Property. Parish desires to expand Airport to improve air service to St. Tammany Parish so as to increase aircraft handling capacity and to promote the economic growth and prosperity for the Parish.

Parish has requested the donation of approximately 316.37 acres of Developer's land to facilitate and make possible the expansion of the Airport, including runway expansion and the construction of new hangars and other airport infrastructure.

Developer is willing to donate such land to Parish for no direct cash compensation, but wishes to derive future consideration from Parish in exchange for the donation, including the recognition of certain benefits and credits in the future, as described below.

Parish is willing to obligate itself to provide those benefits and credits in the future in return for the current donation of land for the airport expansion.

NOW THEREFORE, the Parties do hereby contract, covenant, and declare, for and in the mutual considerations recited herein, including the execution of the DONATION OF IMMOVABLE PROPERTY of the approximate 316.37 acres by Developer to Parish on March 20, 2007, as follows, to-wit:

ARTICLE II. TERMS AND CONDITIONS

1. Developer will receive from Parish a credit of equal monetary value to the market value ("Market Value") of the land donated by Developer to Parish on March 20, 2007. The amount of credit shall be determined as agreed below.
 - A. Market Value shall be determined through an appraisal process that will include each Party procuring its own MAI certified appraiser, one selected by Developer, and one selected by Parish, each selection to be confirmed in writing by each Party within 60 days of the execution of this Agreement. The two appraisers will jointly select and agree on the comparables to be used for each appraisal based on the highest and best use, as further specified below. Each appraiser

will then conduct an independent appraisal of the property. Upon completion, each appraiser will furnish its appraisal to the other for review. If the two appraisals are within 15% in value of each other, the two values will be averaged, thereafter establishing the mutually agreed fair market value of the property as of March 20, 2007. If however, the discrepancy between the two appraisals is greater than 15%, the two appraisers will meet, review, and discuss their appraisals in an attempt to reach an agreement as to the value of the property. If, after 30 calendar days, no agreement has been reached, then the parties to this agreement (Developer and Parish) will attempt to reach an agreement among themselves as to the value of the property. If, after an additional period of 30 calendar days, the parties have not reached an agreement as to the value of the property, the matter will be submitted to the American Arbitration Association for determination of value, which determination will be final and binding on both parties.

- B. The land that was donated is immediately adjacent to and fronts on Highway 36, is contiguous to both the eastern and southern boundaries of the existing, operating Airport, and is currently zoned industrial and/or commercial. Therefore, in performing the appraisal, the selected appraisers will determine the value of the property based on the condition that its highest and best use is as an Airport expansion and/or other developed industrial or commercial use. The appraisers will also take into account the planned Interstate 12/La. Highway 1088 interchange, and the planned construction of St. Highway 3241 across Developer's Remaining Property north of Highway 1088 and south of and connection to Highway 36.

2. Once the Market Value of the donated property has been determined as described above, said value shall determine the credit owed by the Parish to the Developer, which amount shall remain constant for the first twelve months until March 20, 2008, and thereafter the credit (or any unused portion thereof) shall increase on an annual basis based on the performance of the Consumer Price Index for the prior twelve months. Accordingly, on each anniversary date (March 20 of the following year) thereafter, the unused portion of the credit shall likewise increase based on the performance of the Consumer Price Index for the prior twelve months until the credit has been fully utilized by Developer.
3. The credit established above can be used at any time by Developer, its successors or assigns, and may be specifically assigned (in writing) by Developer to any third party(s) at any time, for any future charges or fees assessed by Parish in conjunction with the development of Developer's Remaining Property or any portion thereof, including, but not limited to, impact fees for transportation and/or drainage, any other impact fees, building permits, zoning, subdivision, and/or resubdivision application fees, or any other administrative charges and/or costs assessed by Parish of any type or character.
4. In addition to the credits received for Market Value above, Developer may also seek and procure any other credits against any impact fees for stormwater drainage improvements on Developer's Remaining Property and/or public road improvements as allowed by existing and/or future ordinances, as well as any other impact fee credits which may become available from Parish in the future, by ordinance or by mutual agreement with the Parish. Any such credits shall be available to Developer regardless of the method of development financing used by Developer to make project

improvements, including, but not necessarily limited to, project/development financing through a Community Development District ("CDD") or other methods as allowed by Louisiana law.

ARTICLE III. LAND USE PLAN AND ZONING

In connection with the development of the remaining property of Developer, Developer and Parish agree to make all good faith and reasonable efforts to consult and cooperate in a joint effort to determine future land uses (zoning and subdivision) in hopes of establishing a comprehensive plan for the development of Developer's Remaining Property. The parties envision that Developer will submit a proposed plan of development for approval by Parish (through its Zoning Commission, Planning Commission, and Council ordinary process) after review and consultation with Parish Administration and Staff, and if possible, the parties agree to make best efforts to incorporate the Developer's proposed plan of development as a component of the proposed Parish comprehensive rezoning of the geographic region (of which Developer's Remaining Property is a part). If Developer seeks to create a CDD in connection with the development of Developer's Remaining Property, the Parish will make all best efforts to assist, cooperate, and facilitate the creation of a CDD. . Furthermore, Developer's donation to Parish will allow for the expansion of the Airport for public use, including additional open space around the airport facilities, but will result in Developer's loss of the zoning within the donated property. Parish agrees to assist and cooperate in providing comparable zoning of a similar size adjacent to the airport on Developer's Remaining Property. In no event shall the Developer's Remaining Property have less density, intensity, and/or variety of uses from its current zoning designations, but in no event shall this provision be construed to constitute a grant, contract, or guarantee of zoning by Parish. The objective of this provision is to promote the orderly development of Developer's Remaining Property in concert with the Parish comprehensive plan for the region.

ARTICLE IV. ENFORCEMENT

The Parties hereto pledge their mutual cooperation in complying with the terms and conditions of this Agreement. In the event of breach and/or dispute hereunder, if the parties can not amicably resolve their differences, said dispute(s) shall be resolved by the 22nd Judicial District Court for St. Tammany Parish, Louisiana, with the prevailing party being entitled to the recovery of reasonable attorney's fees and costs after final and non-appealable judgment.

ARTICLE V. TERMINATION & BINDING NATURE

1. This agreement shall be binding upon the Parties hereto for such period until the entire credit has been utilized by the Developer, its successors, and/or assigns.
2. This Agreement may be amended from time to time by mutual written consent of all Parties made a part hereof, and shall be binding upon and shall inure to the benefit of the Parties hereto, and its successors and/or assigns.

ARTICLE VI. CONTRACTUAL VALIDITY

In the event that any one or more provisions of this Agreement is for any reason held to be illegal or invalid, the Parties shall attempt in good faith, to amend the defective provision in order to carry out the original intent of this Agreement. Furthermore, all Parties shall agree to negotiate in good faith, refrain from challenging the validity or legality of this Contract, and join in the defense of any legal challenge to this Contract by any third party. To the extent that any one or more provisions of this Agreement is for any reason held to be illegal or invalid, and if the parties are unsuccessful in their good faith attempts to amend the defective provision(s) in order to carry out the original intent of this Agreement, the parties reserve the right to make a claim(s) for monetary damages, including the recovery of reasonable attorney's fees and court costs in connection therewith.