

ORDINANCE 4359

AN ORDINANCE AUTHORIZING THE SALE OF TAX MAP PARCEL NUMBER 056-09-03-004 LOCATED AT 559 WEST CAROLINA AVENUE CONSISTING OF 1.81 ACRES (+/-).

BE IT ORDAINED by the Mayor and City Council of the City of Hartsville, South Carolina in council assembled that:

Section 1. Findings of Fact

The City Council of the City of Hartsville (the “**City Council**”), the governing body of the City of Hartsville, South Carolina (the “**City**”), has made the following findings of fact:

(A) The City is a municipal corporation of the State of South Carolina (the “**State**”) located in Darlington County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State of South Carolina to such public entities.

(B) The Boykin Properties, LLC, a South Carolina limited liability company (the “**Developer**”), is investigating options and initiating preliminary diligence for the future development of the former armory building (the “**Project**”) located at 559 West Carolina Avenue, Hartsville, South Carolina, identified as TMS No. 056-09-03-004 and more clearly depicted on Exhibit A hereto (the “**Property**”).

(C) The Property is currently vacant and has fallen into a state of disrepair. Absent the investment by the Developer through the implementation of the Project, the Property is an unlikely to be developed.

(D) The City believes that the Project, if successful, will serve as a catalyst to further growth and development in the City as well as increased tourism, quality of life enhancement and community vitality. As such, the City seeks to offer incentives to the Developer to develop the Project.

(E) Under the laws of the State, the City is authorized to sell, alien, convey, lease or otherwise dispose of real property.

(F) The City has negotiated an option to purchase the Property with the Developer, the form of which is attached hereto as Exhibit B. (the “**Agreement**”).

(G) Certain terms of the Agreement provide for the Developer to purchase the Property for the sum of \$2.00, a cost that is substantially less than the fair market value of the Property. The City is cognizant that its authority to dispose of real property is limited by a fiduciary duty to act in the best interest of the public.¹ The City has a fiduciary duty to receive consideration of “reasonably equivalent value” in exchange for its sale or conveyance of real property.² In

¹ *Haesloop v. City Council of Charleston*, 115 S.E. 596, 600 (S.C. 1923).

² *Id.*

determining what constitutes “reasonably equivalent value,” a municipality is not limited to considering the monetary value received for the property but may also “consider indirect benefits resulting to the public in determining what is a fair and reasonable return for disposition of its properties....”³

(H) The City is mindful of and has considered the requirements of *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986) and *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000) (the “**Byrd Test**”), wherein public purpose of the proposed incentives is determined by the following four-part test: (1) what is the ultimate goal or benefit to the public intended by the project; (2) are public parties or private parties the primary beneficiaries; (3) is the benefit to the public speculative; and (4) what is the probability that public interest shall be served and to what degree.

(I) The City Council is enacting this Ordinance in order to:

- (1) evidence the City’s approval of the Project;
- (2) authorize the sale of the Property to the Developer; and
- (3) authorize the execution of and delivery by the City of the Agreement.

Section 2. Ratification of the Byrd Test; Recital of Indirect Benefits

(A) The City reaffirms the criteria set forth by the South Carolina Supreme Court when it established the Byrd Test. The City, in negotiating the Agreement with the Developer as an incentive for the future development of the Project, complies with the objective provisions of the Byrd Test as described in Section 2(B).

(B) With regard to the Byrd Test recited above, the City believes that:

(1) the development of the Project is integral to the growth of the City and the Project shall serve as a catalyst for future development in the area;

(2) although some benefits inure to the Developer, the City is the primary beneficiary because the Project shall provide a direct economic impact to the City through increased tax levies, growth in property valuations, and the creation of jobs, and shall provide indirect economic impacts by attracting businesses, investment and patronage into the area and enhancing quality of life and enjoyment for City residents by developing blighted or vacant areas in the community, increasing property tax revenues within the areas surrounding the Project and increased demand in property and property values in the vicinity of the Project;

(3) while the development of the Project is speculative as the Developer is still performing its diligence and determining whether to make its investment, the terms of the Agreement provide for the City to increase the purchase price for the Property in the event

³ Quoting *McKinney v. City of Greenville*, 203 S.E.2d 680, 688 (S.C. 1974).

another interested purchaser makes an offer on the Property, thusly protecting the public's interest in the development of the Property; and

(4) the public interest shall be greatly served, as the Project is expected to generate investment within the City and create jobs. The direct investment of capital and the potential creation of jobs are beneficial to the success of the City and its general welfare.

Section 3. Authorization for Agreement

A. The City Council has reviewed existing drafts of the Agreement and agrees that the inducements provided therein are beneficial to the City.

B. The Agreement shall be executed and delivered on behalf of the City by the City Manager. Upon such execution, the City Council shall be timely informed of the execution of the Agreement and informed as to any material deviation of terms in the current draft. The consummation of the transactions and undertakings described in the Agreement, and such additional transactions and undertakings as may be determined by the City Manager, in consultation with legal counsel to be necessary or advisable in connection therewith, are hereby approved.

Section 4. Other Documents; Ratification of Prior Actions

In connection with the execution and delivery of the Agreement as well as all other deliverables authorized thereunder, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as she shall deem necessary or advisable. Any actions previously undertaken by the City Manager, City Council or City staff in connection with the execution and delivery of the Agreement prior to the enactment of this Ordinance are ratified and confirmed.

Section 5. Severability

If any one or more of the provisions of this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 6. Repealer

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 7. Inconsistency

All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 8. Effect

This Ordinance shall be enacted upon final reading by the Hartsville City Council in meeting duly advertised and assembled the 12th day of February, 2019.

Carl M. (Mel) Pennington IV, Mayor

[SEAL]

ATTEST: _____
Sherron L. Skipper, City Clerk

First Reading: January 8, 2019
Public Hearing: February 12, 2019
Final Reading: February 12, 2019

Exhibit A

Depiction of The Property

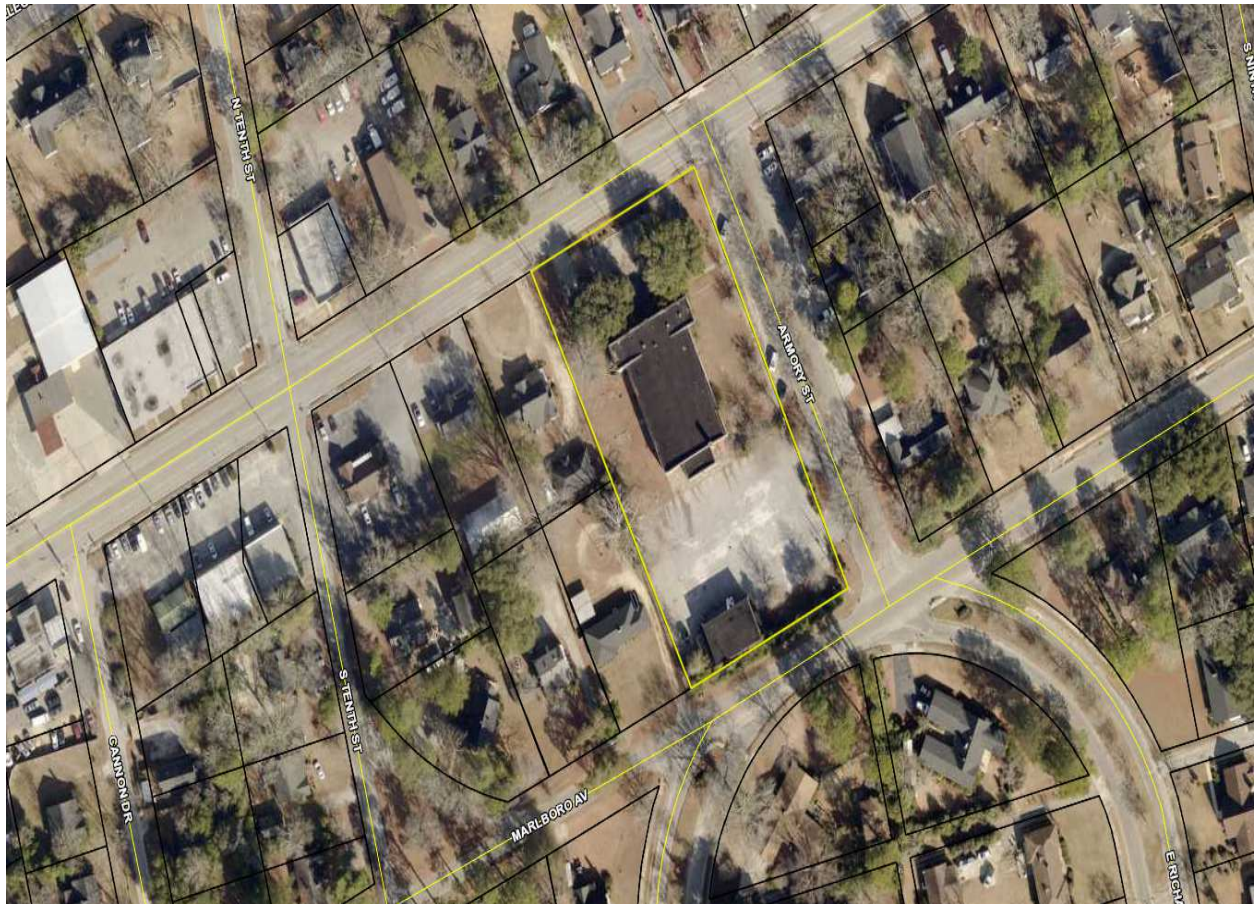


Exhibit B

Form of the Agreement