Fish, Game and Forestry Committee

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VIA E-MAIL DELIVERY
Mr. Kevin B. Mack, Vice Chairman
Beaufort County Zoning Board of Appeals
100 Ribaut Road
Beaufort, South Carolina 29902

Dear Mr. Mack:

We have communicated with Governor McMaster's office in recent months regarding the proposed development at Bay Point. We concur in the Governor's attached letter to you dated August 18, 2020, and incorporate his concerns by reference.

Additionally, we would like to point out that the Beaufort County Community Development Code, under its requirements for ecotourism, contains a highly unusual and perhaps even a constitutionally suspect provision that essentially delegates requisite material findings to an unelected third-party private entity that apparently no longer exists. This is troubling on several fronts, not the least of which is even if the third-party entity does currently exist, it is unelected and therefore unaccountable to the citizens of Beaufort County.

The suspect provision is contained in Section 4.1.330 of the development code, which provides, "operators of ecotourism uses shall adhere to the stewardship, research, and education principles promoted by The Ecotourism Society (TES)." The South Carolina Supreme Court has held numerous times — most recently in 2013 in Hampton v. Haley — that it is constitutionally impermissible for a legislative body to delegate legislative authority to another, which Section 4.1.330 appears to do.

Notwithstanding this threshold constitutional concern, the organization known as TES apparently ceased to exist in the mid-1990s—creating uncertainty over which entity Beaufort County is now supposed to look to for guidance on whether requisite TES principals have been met. This may render the ordinance incapable of application on a rational basis.

We observed the virtual staff meeting on a proposal for the development of Bay Point Island on May 5. It appeared The International Ecotourism Society (TIES) claimed to be the successor entity to TES, and consequently the definitive custodian of the ecotourism principles that Beaufort is required by ordinance to apply. There certainly is a question as to whether this assertion has been sufficiently established. Even if it is established, a question remains whether it satisfies the requirement in the ordinance that principles promoted by TES, and no other entity, be adhered to.

TIES holds itself as the successor to TES and is led by its executive director, Mr. Jon Bruno. The approval by Mr. Bruno of the development plans seemingly weighed heavily upon the staff-level decision to reverse its prior finding that the plans did not qualify as ecotourism. In a letter to Beaufort County, Mr. Bruno stated, "We can state definitively that the Bay Point Island development plan meets the definition of ecotourism as defined by TIES." Based on documents submitted to the Attorney General and later forwarded to me upon request, significant questions should be answered if the county is to give weight to the endorsement of TIES in its evaluation of the current plan for Bay Point Island.

Troubling allegations raised in the documents received from the Attorney General's Office include:

1. TIES lost its federal tax exempt status in 2015 for failing to provide information required by the IRS for three consecutive years, and it may no longer be a registered entity in the United States.

2. Mr. Bruno lacks any accreditation as an expert on ecotourism, and his role with TIES prior to becoming its executive director in 2015 was solely in a financial capacity.

3. The resignation of the entire TIES Advisory Board in 2015 due to the lack of transparency, absence of ethical guidance, and financial anomalies at TIES.

4. The TIES website includes potentially false claims of memberships and partnerships.

The information provided to us from the Attorney General's office is available for download at the website below.

We want to emphasize these are allegations at this point and they have yet to be definitively established. But they certainly appear to rise to the level of warranting further analysis before such a monumental decision is made that affects one of the most iconic and pristine undeveloped barrier islands in the Lowcountry.

On a final note, the ordinance in question clearly attributes an excessive amount of weight to the discretion of an unelected entity. This is not prudent public policy. It potentially sets in motion a dynamic whereby developers who must be "anointed" by a singular private entity as meeting certain standards before they may proceed have no choice but to "pay to play" for the anointment or be out of compliance with Beaufort's ordinance. This point is driven home by the fact that Senator Campsen's staff has searched other county ordinances and can find no similar provisions in South Carolina or elsewhere in the nation. Once this particular project is behind us, we strongly recommend Beaufort County amend this ordinance to eliminate the questionable discretion it assigns to an unelected and therefore unaccountable entity — that technically no longer exists.

Thank you for your service to the citizens of beautiful Beaufort County.

Respectfully,

Senator Chip Campsen

Representative Shannon Erickson

Enclosures: Governor McMaster's Letter to Vice Chairman Mack dated August 18, 2020
Documents submitted to Attorney General available at:
https://www.dropbox.com/s/fzd1vuxuoagohak/Enclosure.pdf

CC: Governor Henry McMaster
Beaufort County Legislative Delegation
Beaufort County Council