

RESOLUTION NO. 3110

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY TO AUTHORIZE THE MAYOR TO ENTER INTO, ON BEHALF OF THE CITY OF SALISBURY, AN AMENDED AND RESTATED ANNEXATION AGREEMENT WITH THE FAITH BAPTIST CHURCH OF SALISBURY, MARYLAND AND JEFFREY L. CLEMENS AND KELLY B. CLEMENS, SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE ANNEXATION AND DEVELOPMENT OF ALL THAT CERTAIN REAL PROPERTY IDENTIFIED AS: (i) MAP 0021, GRID 0019, PARCEL 0184; (ii) MAP 0021, GRID 0019, PARCEL 0040; AND (iii) MAP 0021, GRID 0019, PARCEL 0182.

WHEREAS, pursuant to Resolution No. 1466, dated February 12, 2007, the Council of the City of Salisbury (the “**Council**”) approved the City’s annexation of all that certain real property identified as: (i) Map 0021, Grid 0019, Parcel 0184 (Maryland Account Identifier (“**SDAT Account No.**”) 05-091470), consisting of 25.1800 acres more or less, having a premises address of Dagsboro Road, Salisbury, Maryland 21804 (“**Parcel 184**”); (ii) Map 0021, Grid 0019, Parcel 0040 (SDAT Account No. 05-121027), consisting of 4.1300 acres more or less, having a premises address of 30505 Dagsboro Road, Salisbury, Maryland 21804 (“**Parcel 40**”); and (iii) Map 0021, Grid 0019, Parcel 0182 (SDAT Account No. 05-090431), consisting of 15.07 acres more or less, having a premises address of 30505 Dagsboro Road, Salisbury, Maryland 21804 (“**Parcel 182**”) (Parcel 184, Parcel 40 and Parcel 182 are hereinafter referred to collectively as the “**Annexed Property**”); and

WHEREAS, as a condition of the City’s annexation of the Annexed Property as aforesaid, the City and The Faith Baptist Church of Salisbury, Maryland and Vernon Esham Land Development, Inc. (constituting the owners of the Annexed Property at such time) entered into an Annexation Agreement, dated February 5, 2007 and recorded among the Land Records of Wicomico County in Liber 2828, Folio 457 (the “**Original Agreement**”), which set forth the terms and conditions governing the annexation of the Annexed Property and the development thereof; and

WHEREAS, The Faith Baptist Church of Salisbury, Maryland and Jeffrey L. Clemens and Kelly B. Clemens, constituting the owners of the Annexed Property as of the date and year of this Resolution (collectively “**Petitioners**”), desire to sell Parcel 184 and Parcel 40 to a third-party buyer for development of the such property, however, due to changes in the market occurring since the date of the Original Agreement, the City and Petitioners have determined the terms and conditions set forth in the Original Agreement make such sale and development of Parcel 184 and Parcel 40 infeasible; and

WHEREAS, the City, pursuant to the authority contained in the MD Code, Local Government, Section 4-101, et seq., and Petitioners have agreed to amend the terms and conditions contained in the Original Agreement as more particularly set forth in the Amended and Restated Annexation Agreement (the “**Amended Agreement**”) attached hereto and incorporated herein as **Exhibit A**; and

WHEREAS, by this Resolution, the Council hereby approves the Amended Agreement (attached hereto and incorporated herein as **Exhibit A**) and hereby authorizes the Mayor’s execution thereof on behalf of the City, and, upon the Mayor’s execution of the Amended Agreement, all of the terms set forth in the Amended Agreement shall be deemed and otherwise construed to supersede and replace the Original Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. The Mayor is hereby authorized to execute, on behalf of the City of Salisbury, that certain Amended and Restated Annexation Agreement, by and between the City of Salisbury and The Faith Baptist Church of Salisbury, Maryland and Jeffrey L. Clemens and Kelly B. Clemens, attached hereto and incorporated herein as **Exhibit A** (the “**Amended Agreement**”).

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Resolution shall be deemed independent of all other provisions herein.

Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Resolution shall remain and shall be deemed valid and enforceable.


Section 4. The recitals set forth hereinabove are incorporated into this section of the Resolution as if such recitals were specifically set forth at length in this Section 4.

THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 14th day of June 2021 and is to become effective immediately upon adoption.

ATTEST:

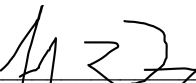


Kimberly R. Nichols, City Clerk



John R. Heath, City Council President

Approved by me, this 22nd day of June, 2021.



Jacob R. Day, Mayor



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda Pollack, P.E., Director of Infrastructure and Development
Date: May 26, 2021
Re: Faith Baptist Church Annexation Agreement

AP

The Faith Baptist Church Re-stated Annexation Agreement was discussed at the May 17, 2021 work session. The terms of the attached agreement have not been modified since the meeting. The agreement has been executed by the property owners.

Unless you or the Mayor has further questions, please forward a copy of this memo and the related documents to the City Council.

Memorandum

To: Amanda Pollack, Director, City of Salisbury Department of Infrastructure & Development

From: Michael P. Sullivan

Date: 5/10/2021

Re: *Faith Baptist Annexation – Development Assessments under Proposed Amended & Restated Annexation Agreement*

Review of Request for Amended & Restated Annexation Agreement:

In February 2007, the City of Salisbury (the “**City**”) approved the annexation of approximately 44.38 acres of property located on Dagsboro Road adjacent to the Faith Baptist Church, being all that same real property more particularly identified as Map 0021, Parcel 0184, Map 0021, Parcel 0040 and Map 0021, Parcel 0182 (collectively the “**Annexed Property**”). The Petition for Annexation was submitted by Faith Baptist Church of Salisbury, Maryland (“**Faith Baptist**”) and a third-party land developer Vernon Esham Land Development, Inc. (“**Esham**”). Currently: Parcel 182 is owned exclusively by Faith Baptist; and, Parcel 184 and Parcel 40 is owned by Faith Baptist and Jeffrey L. Clemens and Kelly B. Clemens (collectively the “**Clemens**”) as tenants in common with the right of survivorship (with respect to Parcel 184 and Parcel 40, Faith Baptist holds a 93% ownership interest in each property and the Clemens hold the remaining 7% ownership interest in each property).

The Annexed Property was originally planned for intensive residential development. To facilitate such development, municipal water and wastewater service was required; and, the demand for public utilities necessary to serve the proposed project led Faith Baptist to seek the City’s annexation of the Annexed Property.

As with any other annexation, the City’s annexation of the Annexed Property was conditioned upon the execution of an Annexation Agreement providing the terms and conditions governing the City’s annexation of the Annexed Property. An Annexation Agreement, dated February, 2007, was entered into by Faith Baptist, Esham and the City and was recorded with the Land Records of Wicomico County at Liber 2828, folio 457 (the “**Original Agreement**”) (A copy of the Original Agreement is attached for your review). About one year after the City had annexed the Annexed Property, the real estate market bottomed-out and development of the Annexed Property, as had been proposed, was infeasible. Consequently, the Annexed Property did not get developed as intended originally and the property has remained unimproved since its annexation 12+ years ago. Pursuant to the terms contained in Section 6 of the Original Agreement, no taxes on the Annexed Property have been paid to the City.¹

In the Summer of 2020, representatives for Faith Baptist approached the City’s Administration about the status of the Annexed Property and requested the City revisit the Original Agreement. Despite the improved real estate market, Faith Baptist expressed to the City that the terms of the Original Agreement made development of the Annexed Property infeasible. A review of the Original Agreement indicated there were several significant obligations imposed by the City thereunder that not only would make development of the Annexed Property infeasible but are also inconsistent with the type of obligations the City currently imposes upon property owners requesting annexation. Accordingly, the parties agreed to pursue an Amended and Restated Annexation Agreement that would serve and

¹ The terms contained in Section 6 of the Original Agreement have been amended and are now set forth in Section 4(b) of the Amended Agreement.

protect the City's interests with respect to annexing such a large tract of land and providing municipal service to it, while also creating a feasible pathway for developing the Annexed Property, whether by Faith Baptist or a third-party buyer of the land.

Moving Forward:

Faith Baptist has identified the terms governing the "Development Assessments" due the City under Sections 7(F) and 7(G) of the Original Agreement as particularly making development of the Annexed Property infeasible.² The \$399,920.00 Development Assessment proposed under the Amended Agreement represents a significant reduction in the development assessments and related fees required under the Original Agreement currently in effect. Likewise, overall, the terms proposed under the Amended Agreement reflect a recognition of the challenges the Original Agreement unintentionally created for future development of the Annexed Property thirteen years after the parties executed the document

City staff agrees with Faith Baptist that development of the Annexed Property is the ultimate goal for all parties involved, including the community at large. Accordingly, to facilitate development of the Annexed Property, while also recognizing the impact the Development Assessments provided in the Original Agreement and revised under the Amended Agreement have on the feasibility and marketability of any potential development of the land, below is a proposal for the City consideration's that focuses on incentivizing development of the Annexed Property in return for forgiveness of the Development Assessment:

Faith Baptist has indicated it has no intentions to sell the property identified as Parcel 182 for development. Therefore, the Section 8(c) of the Amended Agreement which governs payment of the Development Assessments only pertains to the "**Development Property**" (i.e. Parcel 184 and Parcel 40). Section 8(c)(i) of the Amended Agreement provides a sliding scale for payment of the Development Assessments based on development of the Annexed Property. For example: Using the amount \$399,920.00 as the amount of the Development Assessment due from the Owner (as defined in the Amended Agreement) of the Development Property, payment of such Development Assessment would be proportionately forgiven based on the Owner of the Development Property meeting certain development milestones as follows:

- Within 12 months from the execution of the Amended Agreement, the Owner of the Development Property (at such time) must make payment to the City in amount of \$99,980.000.
- Within 18 months from the execution of the Amended Agreement, the Owner of the Development Property will submit a comprehensive development plan to the City which depicts the development plans for all buildable space on the Development Property.
- Provided not less than one-third of all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work within thirty-six (36) months following the execution of the Amended Agreement, the City shall waive payment of one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property (or its successor-in-interest) on the 3rd anniversary of the execution of the Amended Agreement.

² Section 7 of the Original Agreement provides the fees to be paid to the City in connection with annexation and development of the Annexed Property, which are summarized as follows:

1. The terms contained in Section 7(F) of the Original Agreement provide in pertinent part: "The Developer agrees to pay a development assessment of \$3,000.00 per dwelling unit..."
2. The terms contained in Section 7(G) of the Original Agreement provide in pertinent part: "The Developer also agrees to pay a development assessment to the City of \$2,000.00 per residential dwelling unit for ninety-four (94) percent of the dwelling units in the proposed development."

May 10, 2021

- Provided not less than two-thirds of all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work within forty-eight (48) months following the execution of the Amended Agreement, the City shall waive payment of an additional one-quarter of the Development Assessment (i.e. \$99,980.00, such that the City will have waived payment in the total amount of \$199,960.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property (or its successor-in-interest) on the 4th anniversary of the execution of the Amended Agreement.
- Provided all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work, within seventy-two (72) months following the execution of the Amended Agreement, the City shall waive payment of the final one-quarter of the Development Assessment (i.e. \$99,980.00, such that the City will have waived payment in the total amount of \$299,940.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property, at such time, on the 6th anniversary of the execution of the Amended Agreement, and no building permit for development of the Development Property may be issued until any and all amount(s) of the Development Assessment have been paid to the City.

Development of the Annexed Property is in the long-term fiscal interests of the City, as improvements to the Annexed Property will result in higher assessments and, consequently, a significant increase in the amount of revenue the City collects from the (currently unimproved) Annexed Property. Connecting payment of the Development Assessment to the completion of development milestones is as close to a win-win for the City and the Petitioners (as defined in the Amended Agreement) as available. If the development milestones set forth in Section 8(c) of the Amended Agreement are met: the Owner of the Development Property can avoid paying some or all of the Development Assessment; and, likewise, the City's interests are served because the Development Property is fully (or at least partially) developed and the revenue generated from tax assessments imposed on the Annexed Property (including the Development Property) are increased, thereby off-setting any revenue lost from the City's conditional waiver of the Development Assessment.

Thank you for your time and consideration of this matter. It is greatly appreciated.

Michael P. Sullivan