



## **Kiawah River Plantation and Tax Increment Financing**

### **Introduction**

Kiawah River Plantation (KRP) is a new planned development at the southwest end of rural Johns Island that was approved by the Charleston County Council in 2009. The developer, The Beach Company, has requested the County Council also approve a “Tax Increment Financing” (TIF) district to allow up to \$85 million in government bonds to help finance the building of the development’s infrastructure.

The Johns Island Conservancy took a particular interest in this project when the developer publicly said the project qualifies for public assistance as a “conservation area”. As the Conservancy looked more closely into the issues of tax increment financing and this particular project, we realized it was a complex subject. So we commissioned Dan Conover, an award Charleston winning journalist, to research the topic and produce a report. The following is a result of the collaboration between Mr. Conover and Colin Cuskley, the Conservancy’s Executive Director. It is presented with intent of educating the public and encouraging you to make your own judgment.

### **The Rise of the TIF**

Tax Increment Financing Districts, or TIFs, originated in the 1950s as a “tool to help eliminate blight in American cities.”<sup>1</sup> Because a TIF offers developers several advantages, cities and towns across the country have used them to attract investment to critical redevelopment projects that the market would otherwise not support.

A TIF works by having a city or county issue municipal bonds to reimburse the developer for the cost of infrastructure such as sewers and roads. The incremental tax revenue the project is estimated to generate is then used to pay off the bonds. The government issues the bonds and reimburses the developer after the property starts generating enough new tax dollars to cover the bond interest payments.

The TIF district repays developers for infrastructure costs they would otherwise have to pay themselves and recover through the sale of the project’s properties. Developers like TIFs because it improves a project’s chance of financial success by reducing the price they can offer properties at or increasing their profit margin. Proponents also credit the system with producing jobs and public improvements. But TIFs sometimes spark controversy, and critics around the country have blamed TIF agreements for reducing revenues to school districts and other institutions that depend on property taxes. California, which passed the first TIF law in 1952, effectively banned them in 2011<sup>2</sup>.



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In South Carolina, the trend over the past 13 years has been toward expanding the use of TIFs. The state's first tax increment financing law in 1984 applied only to municipalities, but in 1999 the Legislature added a TIF law for counties. Additional changes in 2005 and 2008 expanded the county TIF statute to allow districts on rural agricultural lands that are "Vast expanses of land located at considerable distances from municipalities and urban and suburban development"<sup>3</sup>.

As the government entity that collects and distributes property taxes, Charleston County has participated in other TIFs that were sponsored by municipalities within the County. However, the Kiawah River Plantation TIF would be the county's first time sponsoring such a district. The County Council's staff has been studying The Beach Company's TIF proposal in detail for months, and is expected to make its recommendation to the Council soon.

The Beach Company says that its plan for Kiawah River Plantation is contingent upon reaching a TIF agreement. The company's current TIF proposal would use \$85 million of the estimated increased tax revenue to pay off the bonds over 40 years. In addition, the developer would provide some funds for specific projects including a ladder truck for the St. Johns Fire Department and a playground for the school district.<sup>4</sup>

### **Planning and Negotiations**

Beach Company CEO John Darby said the company didn't begin publicly discussing plans for the property until 2007. The process included public meetings, conversations with the county's planning staff, an archaeological and historical survey<sup>5</sup>, and consultation with the Coastal Conservation League.

The Beach Company's original plans for Kiawah River Plantation always included a TIF district, Mr. Darby said. However, after discussions with the county's planning staff in December 2009, the development agreement as approved by the County made no mention of a TIF. Dan Pennick, Charleston County's director of planning, said the staff had advised the company that county council was not yet prepared to entertain a TIF proposal in 2009.

The Beach Company delivered its original TIF proposal in 2011<sup>6</sup>. County planners, citing their own lack of experience with sponsoring TIFs, hired consultants, including TIF experts Municap Inc.<sup>7</sup>, to review The Beach Company's terms and projections. Because the proposed TIF agreement would make the county the owner and operator of the development's sewer system, much of the county's study has gone into exploring alternatives and best practices for sewer systems.

Planners were also concerned about the tax classification of homes in the district. Vacation homes are taxed at 6 percent, two points higher than primary residences.



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Should KRP result in more “4 percent development” than projected, Pennick said, the TIF would fail to generate the necessary revenue.

As the county staff’s review moved forward, The Beach Company began reaching out to other taxing entities that would be affected by the TIF. The majority of the TIF bond repayment funds, \$65 million, would come from taxes that would otherwise be allocated to the Charleston County School District. Mr. Darby believes this is an appropriate use of these tax revenues because “the development will generate very few public school students”<sup>8</sup> as many of the anticipated buyers will be retirees and second homeowners. The company offered school officials a per-student annual payment of \$7,500 to cover any child from KRP that may enroll. While discussions continue with the School Board, negotiations with the Johns Island Fire District proved more difficult.

The Beach Company initially agreed to buy the fire district a new ladder truck<sup>9</sup>, but the company also wants a new fire station built on the KRP property. Darby said KRP needs the new station to qualify for its desired insurance rating, but he failed to persuade fire district commissioners. They rejected the proposed agreement in August, prompting criticism from Mr. Darby over the handling of the vote.

Determined to find another way to pay for a fire station, The Beach Company proposed the idea of creating their own fire department through a public service district that would cover only the KRP development<sup>10</sup>. State law permits the creation of public service districts if a majority of residents vote in favor; the property currently has only one resident. In subsequent discussions with county officials, Mr. Darby said, it was determined that adding sewer service to the proposed PSD might be the best option for all parties.

In September, County Councilman Joe Qualey came out against further county study of the TIF<sup>11</sup>, saying that there was no support for it in his district, which includes neighboring Kiawah, Seabrook and parts of Johns and James Island. His proposal to end the County’s consideration of the TIF failed to get any support from the other council members. Nevertheless, Mr. Darby responded to Councilman Qualey’s opposition with a hand-delivered, eight-page letter<sup>12</sup> that criticized the councilman, expressed frustration with the process and described what he called misinformation in the media and by the Coastal Conservation League. Mr. Darby also distributed the letter to the media.

### **The Letter of the Law, the Spirit of the Law.**

There are those who would prefer to see the Mullet Hall tract developed differently – or not developed at all. But there’s no high-profile critic or group today



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opposing the development itself. Instead, the big questions surrounding the project regard its plans for tax-increment financing and its implications for Johns Island and the whole County.

“We worked with them on the project, on the design of it, about two years ago,” said Dana Beach, director of the Coastal Conservation League. “And we felt like the design they came up with was a lot better than a standard full-build-out-type deal. But we didn’t say ‘Therefore you need to go ask for public subsidies to build it.’”

Traditional TIF districts have been used for public-minded purposes in blighted urban areas for 60 years, and proponents of Kiawah River Plantation point to Charleston County’s involvement in 10 local TIFs as proof that the concept is far from novel. But the idea of a TIF to encourage private development on prime waterfront, quality agricultural land on Johns Island is not only new to Charleston County, it raises many questions:

- Why does The Beach Company need a TIF for this development when it has successfully completed other projects without one?
- Why is this development different than others in the area like Kiawah, Seabrook and Kiawah River Estates, which provided their own financing for infrastructure?
- Is the financial benefit a TIF gives the developer an unfair advantage over others, including developers as well individual property owners who may be trying to resell their property?
- Should government be in the business of subsidizing the development of high end, second homes often bought by new residents from out of state?
- Is it appropriate that school tax revenues be allocated to other purposes on the basis that people living there don’t have children in the schools?
- Would the normalization of rural TIFs accelerate the urbanization of rural Charleston?
- What guarantees does the county get? What happens if the development fails?
- Does the project even qualify under the specifics of the law?
- And, most importantly, what best serves the public interest?

One of Councilman Qualey’s concerns about the KRP TIF is the role of government. He’s opposed to Charleston County subsidizing private developments with taxpayer funds. Mr. Beach makes a similar argument, “To the extent that they can’t make this project successful without public investment, public subsidies, then it shouldn’t happen. We shouldn’t be providing public dollars to convert land on Johns



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Island from rural to urban uses. It's important for Johns Island, because at the very least you don't want to be providing a situation where there's a financial and public incentive to develop land.

“(Beach Company CEO John Darby) came over to meet with us, and he said ‘If we can't get public funding to make these projects successful, then they won't happen.’ We were happy to hear that. He said the real estate market will not support unsubsidized second-home development, to which we said ‘So be it.’ It also won't support unsubsidized bowling alleys or unsubsidized strip joints or unsubsidized go-cart tracks. But we aren't in the business of subsidizing those things because we don't think they have any public benefit. And in this case there's actually a public detriment.”

Mr. Darby of the Beach Company bases his case for the TIF on quality, revenue and commerce. “Basically it's an opportunity to generate an enormous amount of revenue for the county, which everybody would benefit from,” he said. “We had Clemson University do an external economic analysis ... and at the end of the day you'll have over \$1 billion of improvements on this property, and imagine the taxes that would generate. But you gotta give a little to get there, and that's what the whole TIF is about. So do you want no taxes forever, or do you want to forego those taxes for a period of time so that you'll have those eventually?”

Mr. Darby points out that many of the area's most successful developments, including Kiawah, have passed through bankruptcy, and says the risks accrue primarily to the company, not the county.

“Everyone asks me, ‘if you don't get (the TIF), are you going to do it?’ And my response has been I cannot build the plan that was proposed and approved and promised to the community and all those special restrictions we put on ourselves without something. It won't make economic sense, and when I say it won't make economic sense, you're negotiating against something with a crystal ball. Who would have ever thought that Seabrook Island would ever go broke? So part of it is protection to make sure we're not going to go broke.

“I think nothing would make (Dana Beach of the Coastal Conservation League) more happy than for nothing to get developed there. They're in the business of conserving land and they're clearly anti-development on a lot of issues. But if we had the attitude that we don't want any parcels to be developed, the economy would go backward, we won't have new taxes generated, employment, tourism. If we had that attitude throughout the region it would have an effect on our quality of life.”



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### **Next Steps**

County planners are expected to make their final recommendations to the Council soon. The Council staff has been continuing negotiations with the Beach Company and may make recommendations significantly different than what has been previously proposed. Depending on the staff report, the Council must then vote on two issues. The first is the establishment of the TIF district itself. The second is authorization of some amount of bonds, previously reported as \$11 million, for sewer construction from the County's portion of the projected tax revenues. If the Council votes against the establishment of the TIF district, TIF bonds cannot be issued by the County, the School Board or the St. Johns Fire Department.

Councilman Qualey has proposed a two week delay between the presentation of the staff report and consideration by the Council<sup>13</sup>. This will give the public time to properly consider all the issues involved.

### **Conclusion, The Conservancy's View**

The Johns Island Conservancy believes the use of Tax Increment Financing for the Kiawah River Plantation planned community is NOT in the best interests of Johns Island or the rest of Charleston County. The idea that an exclusive development, on open farm land bordering the salt marsh is a "conservation" project or merits public assistance just does not make sense. Fortunately, the requirements of the law are very specific and a TIF for Kiawah River Plantation does not meet the requirements of the law.

The Beach Company's TIF proposal is based on more than the TIF being a "conservation" project. In addition to "conservation", The Beach Company selects the words "rural", "sprawl area" and "agricultural" from the South Carolina TIF law to justify the desire for public financing. The Municap report refers to the same section of the law defining sprawl area as the legal qualification for this TIF<sup>14</sup>.

But Mr. Darby and others seem to have missed or ignored the context of those words. That part of the TIF law specifies a "sprawl area is a rural redevelopment zone ... consisting of a minimum of one thousand contiguous acres"<sup>15</sup>. The KRP development only has 810 acres in the rural zone, not 1,000. The other 460 acres are in the County's "Urban Growth Zone". That is how the development is defined in the 2009 agreement<sup>16</sup>. The portion of KRP that is zoned for quarter acre density in the urban zone was the basis for allowing the combined high density included in the 2009 agreement in the first place. This same distinction between a rural and an urban section cannot then be ignored to justify the project as a rural sprawl area. Kiawah River



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Plantation does not meet the requirements of this section of the TIF law [SC Code 31-7-30 Definitions, section (3) (c)]

If the County Council can look past the legal issues, they are still not required to approve the TIF. Tax increment financing is an optional tool government may use for development IF it is in the public interest. Even if a development meets the requirements of the TIF law, a developer does not have to be given government financing simply because they request it. The use of government financing in this case serves no public purpose except maybe the oft dangled revenue increase. The state law does say that incremental tax revenues can be a benefit to local governments. But estimated revenue alone should not be sufficient justification for government involvement in private enterprise especially because there are no guarantees. Indeed there is significant risk, as shown by Mr. Darby's inventory of failed developments<sup>17</sup>.

This TIF raises basic questions about the role of government. Should it be the goal of the County to simply maximize its own revenue? Should government provide financial advantages to one private enterprise over others? And over private property owners who paid for their own sewers and roads AND have been paying their taxes to the County and schools? Should public financing be used to subsidize high end resort and suburban development as opposed to helping truly blighted area?

In their efforts to promote their plan the developers also claim that growth will not occur on Johns Island and tax revenue will not increase unless this TIF is granted. This is simply untrue. Sales and the development of property in the area will be determined by market demand and because Johns Island is a highly desirable place to live. A TIF will not change either of those factors; it will mainly improve the financial prospects of the developer and whoever they sell to.

Our research shows there are many other problems with this TIF idea in addition to the key ones defined here. There are even more, tedious but significant, technical financial details which are not covered in our report (build out rates, projected property values, amount and duration of the financing, marketability of TIF bonds, default risks etc.). The Beach Company says they are continuing to negotiate these details with the County. The basic and numerous problems with this TIF should eliminate it completely from consideration; it should not continue to be "let's make a deal" - again. The Beach Company got a good deal with the original development agreement. They won their negotiation when the County Council modified the zoning of their property in 2009 and allowed them to build Kiawah River Plantation at all.

Enough is enough. If the free market cannot sustain this venture, then the County should not be bailing out the Beach Company.



## Kiawah River Plantation and Tax Increment Financing

### Footnotes

To use the footnote links please go to the online PDF version of this report at

[www.jicsc.org/documents/KRP\\_TIF\\_Report.pdf/](http://www.jicsc.org/documents/KRP_TIF_Report.pdf/)

Or view the online version of the report at [www.jicsc.org/KRP\\_TIF\\_Report](http://www.jicsc.org/KRP_TIF_Report)

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- 1 *Tax Increment Financing Best Practices Guide*, Council of Development Finance Agencies, 2007 [LINK](#)
  - 2 *TIF at a Turning Point: Defining Debt Down*, Lincoln Institute of Land Policy, State Tax Notes, May 2, 2011 [LINK](#)
  - 3 South Carolina Code of Laws, Section 31-7-25. Additional findings. [LINK](#)
  - 4 Post and Courier, December 13, 2009, Article by Davis Slade [LINK](#)
  - 5 *Cultural Resources Survey Of Mullet Hall Plantation, Johns Island*. Chicora Foundation, Inc. 2008 [LINK](#)
  - 6 The Post and Courier, June 27, 2012, Editorial / Opinion by W. Kurt Taylor, Charleston County Administrator [LINK](#)
  - 7 *Analysis of Kiawah River Plantation's Tax Increment Financing Proposal* Municap, Inc, May 14, 2012 [LINK](#)
  - 8 Letter to Councilman Joe Qualey from John Darby, September 5, 2012. Published in the Post and Courier [LINK](#)
  - 9 Kiawah River Plantation Development Agreement with Charleston County, December 22, 2009. [LINK](#)
  - 10 *One vote could launch public service district for Beach Co. development*, Post and Courier, Diane Knich, October 16, 2012 [LINK](#)
  - 11 *Qualey: No support for TIF district*, Post and Courier, August 31, 2012 [LINK](#)
  - 12 Letter to Councilman Joe Qualey from John Darby, September 5, 2012. Published in the Post and Courier [LINK](#)
  - 13 *Qualey: No support for TIF district*, Post and Courier, August 31, 2012. [LINK](#)
  - 14 *Analysis of Kiawah River Plantation's Tax Increment Financing Proposal*, Municap, Inc, May 14, 2012 [LINK](#)
  - 15 SC Code 31-7-30 Definitions, section (3) (c) [LINK](#)
  - 16 Kiawah River Plantation Development Agreement with Charleston County, December 22, 2009. [LINK](#)
  - 17 Letter to Councilman Joe Qualey from John Darby, September 5, 2012. Published in the Post and Courier [LINK](#)