




Memorandum



Miami-Dade County Office of the Inspector General
A State of Florida Commission on Law Enforcement Accredited Agency
601 NW 1st Court ♦ South Tower, 22nd Floor ♦ Miami, Florida 33136
Phone: (305) 375-1946 ♦ Fax: (305) 579-2656
Visit our website at: www.miamidadeig.org

To: The Honorable Daniella Levine Cava, Mayor, Miami-Dade County
The Honorable Oliver G. Gilbert, III, Chairman,
and Members of the Board of County Commissioners

From: Felix Jimenez, Inspector General 

Date: February 6, 2023

Subject: Potential Add-On Agenda Item to the Board of County Commissioners Meeting, February 7, 2023 – Proposed Sale and Purchase of 23.85 Acres of County Land to Homestead Town Center, LLC; IG 22-0004-O

INTRODUCTION

The Office of the Inspector General (OIG) is aware there is the potential for an Add-On item to the Board of County Commissioners' (BCC) Meeting of February 07, 2023, regarding the sale of 23.85 acres of real property located at the southwest corner of the intersection of SW 280th Street and SW 127th Avenue. The item proposes to sell the parcel to Homestead Town Center, LLC (HTC) for \$12,466,872. In the event the item is not added to the BCC's agenda, this memorandum will also serve as an update on the status of negotiations (or of the sale of the property).

This proposed sale is a non-competitive conveyance, which is authorized by Florida Statutes Section 125.045. The County's Guidelines and Procedures for the Sale, Lease, and Conveyance of County Real Property is codified in Implementing Order (IO) 8-4. If presented, the item will require a waiver of IO 8-4 as certain requirements of the IO have yet to be completed.

The proposed conveyance is sponsored by District 9, as the parcel of land is located in that district. This conveyance is intended to inject and stimulate economic development activities through the creation of an entertainment district, consisting of a container park and associated recreational facilities. The subject parcel is a portion of a much larger parcel that is located adjacent to the Homestead Air Reserve Base and was conveyed to the County by the United States Air Force (USAF) in 2004. There are several deed restrictions contained in the conveyance from the USAF that limit the use of the land.

The OIG has been monitoring the negotiations between the County and HTC since February 2022. Since that time, the OIG has attended several negotiation meetings, reviewed documents provided by the County and HTC, and conducted our own open-source research. Pursuant to our enabling authority under the Code of Miami-Dade

County, we take this opportunity to share our observations regarding the negotiations and the proposed transaction.¹

Following a brief background, the remainder of this memorandum will provide the OIG's observations and comments regarding the proposed land sale, in the following areas:

- The Permit Agreement
- Declaration of Restrictions
- Implementing Order 8-4

BACKGROUND

The proposed sale of the land to HTC for a container park project was first listed on the Agenda (Item 2B) for the November 8, 2021, Recreation and Culture Committee. The committee meeting was cancelled due to a lack of quorum, and the item was advanced to the BCC meeting (Item 11A11) of December 1, 2021. It was, however, withdrawn prior to the meeting.

Learning of the District 9 sponsored land sale, the County's Office of Economic Development (OED) in the Regulatory and Economic Resources Department (RER) prepared a memorandum providing its analysis and evaluation of the proposal. The OED memorandum, dated January 18, 2022, laid out a number of concerns.²

On January 19, 2022, the BCC adopted Resolution R-61-22 (Agenda Item 11A5 Substitute) that in brief, directed the County Mayor or County Mayor's Designee to effectuate an economic development conveyance to HTC for two parcels of vacant land totaling approximately 47 gross acres. The land would be used to further job creation in entertainment, commercial, and light industrial uses and shall not be used by the County as a transit bus maintenance and repair depot.

On January 29, 2022, the Mayor, under the provisions of Section 2.02.D of the Miami-Dade County Home Rule Charter, vetoed R-61-66. The Mayor's veto message provides several reasons for her veto, however, the two main points involved the expressed prohibition against using the land within the portfolio for the County's transit needs and that the best return on public assets being maximized to achieve economic

¹ Section 2-1076(d)(4) of the Code of Miami-Dade County states: "The [OIG] shall have the power to report and/or recommend to the Board of County Commissioners whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Any review of a proposed project or program shall be performed in such a manner as to assist the Board of County Commissioners in determining whether the project or program is the most feasible solution to a particular need or problem. . . ."

² Even though the evaluation was of Legislative File No. 220014, which was subsequently vetoed by the Mayor, many of the concerns identified by OED still resonate with the current proposed conveyance as it stands today.

development benefits would be gained through a competitive, transparent process rather than a no-bid conveyance.

On February 1, 2022, the BCC considered an override of the Mayor's veto (Agenda Item 2A1). They discussed both the importance and need for economic development activities in the South Dade area and that any such plans should not adversely impact the advancement of the SMART Plan, specifically, the South Dade Transitway that will utilize new 60-foot, level boarding, electric buses. During the discussion, the Mayor stated her willingness and intent to "start from scratch with a clean slate" to discuss the project with the understanding that sufficient acreage (20 acres) will be used for transit purposes. Following this discussion, a motion to overturn the Mayor's veto failed.

PERMIT AGREEMENT

The first negotiation meeting with HTC took place on February 14, 2022. Attended by the OIG, HTC expressed its desire to have a container park, with food services and entertainment facilities, fully operational in time for the October 2022 NASCAR event at the Homestead-Miami Speedway. Thus, in order to accomplish readiness by October 2022, and to pursue the purchase of the property, a two-phase approach was agreed to between County staff and HTC. Phase 1 involved agreeing to a Permit Agreement to facilitate temporary use (45 days) of the property in time for the October NASCAR event; Phase 2 was the concurrent negotiations for the sale and purchase of the land.

During the summer months, when asked, HTC verbally assured the County that there was still time to have the container park ready for the October NASCAR event. However, no site preparations were underway. The Permit Agreement was executed on September 14, 2022; no facilities of any kind were installed for the October NASCAR event.

With regards to HTC's performance under the Permit Agreement, the OIG observed that:

- Between September 2022 to January 2023, HTC was late in remitting four of five monthly rent payments and, as a result, incurred late payment fees.
 - Rent payments are currently up to date.
- Despite monthly requests and numerous reminders, HTC failed to provide the County with the required Certificates of Insurance pursuant to the Permit Agreement. These certificates were required on Day 1 of the Permit Agreement.
 - Insurance accords were just provided on February 1, 2023.³
- For the intended NASCAR event, HTC submitted an incomplete application for a temporary business permit to RER. As such, it was not eligible to be

³ Insurance accords are binding quotes for insurance. The policy is not executed until payment is issued. Accords are not evidence of an existing policy.

processed. Moreover, the earliest date a signature was notarized on the application was October 28, 2022—well after the NASCAR event in mid-October.

- While HTC has stated its intention to have the container park operational in time for the Air Show at the Homestead Air Reserve Base, which is scheduled for April 1-2, 2023, an application for a new temporary business permit has not been submitted. This event is a mere seven weeks away. There has been no preparation work at the site and no containers have been delivered even though the permit agreement was executed almost five months ago.

DECLARATION OF RESTRICTIONS

The proposed Sale and Purchase Agreement to HTC contains a Declaration of Restrictions (DoR). This is due to the fact that the conveyance of the subject property from the USAF to Miami-Dade County is encumbered with certain deed restrictions.⁴ In addition, the County has placed its own deed restrictions to ensure the property is used for economic development, i.e., a container park and entertainment district as proposed.

When the County received the property in 2004, the property was encumbered by a restriction that strongly disfavors residential development. The property is to be used for economic development, which in turn equates with permanent job creation. To place a residential development on the property, the property owner must seek a waiver of the encumbrance from the USAF. The County does not have the ability to waive that restriction.

The DoR from Miami Dade County has a term of 15 years from the effective date.⁵ Upon the expiration of this 15-year period, HTC would no longer be subject to these specific requirements. However, within this period, there are certain defined milestone dates that must be met, such as:

- Commencement Deadline – on or before 18 months from the effective date, HTC must, among other things, commence construction. (Section 3.1)
- Completion Deadline – on or before 36 months from the effective date, HTC shall substantially complete the required improvements. (Section 3.2)
 - Within 30 days of Completion Deadline, HTC shall invest and expend no less than \$12 million. (Section 3.3)
 - No later than 6 months after Completion Deadline, the project must be opened to the public and commence operations with no less than 90% occupancy of all containers. (Section 3.5)

⁴ See BCC Resolution No. R-909-04 regarding Economic Development Conveyance Agreement for the transfer of surplus property at the former Homestead Air Force Base.

⁵ The effective date is the date the deed and DoR is recorded in the public records of Miami-Dade County.

Failure to satisfy these deadlines would result in the property reverting back to the County.

While these economic development milestones would ensure the initial viability of the project, there are other provisions in Section 2.4 that have the potential to change the original and approved concept of the project.

- If HTC is in full compliance with all other terms and conditions, any time after four years from the date of Substantial Completion, HTC may modify the initial development concept with only approval from the Mayor or Mayor’s designee. The review and approval of the BCC is not required. (Section 2.4)
 - No less than 12.2 acres must continue to be used for a container park. (Section 2.4(a))
 - The remaining 11.65 acres would be available for any other use ancillary to the container park. (Section 2.4(b))
- HTC may petition the BCC, at any time prior to the expiration of 15 years, to modify the DoR, “including but not limited to, changing or expanding the Permitted Uses, which shall only be approved in the sole discretion of the Board and, with respect to residential purposes and housing, shall also require the binding approval of the United States of America pursuant to the Federal Contracts.” (Section 2.4(c) – last paragraph)

An updated proposal provided by HTC in October 2022 presented Phase II of the project as consisting of “Mixed-Use development incorporating commercial and residential (between 775 and 1,200 units) to maximize greatest land usage.” Based on this updated proposal, the BCC and County administration should expect a petition from HTC to seek a modification pursuant to Section 2.4 and waiver from the federal government.

The OIG also notes that in the same updated October 2022 proposal, HTC stated that it “has modeled Phase I (Temporary Container Park) as a lost leader [sic] and projects [that it] will not be able to recoup the principal investment of \$5.89 million unless absorbed into the multi-phase development.” As such, it is unclear how long HTC intends to operate a container park and entertainment district.

IO 8-4 – GUIDELINES AND PROCEDURES FOR THE SALE, LEASE, AND CONVEYANCE OF COUNTY REAL PROPERTY

On January 12, 2022, the Chairman’s Council of Policy considered an item to rescind Implementing Order IO 8-4 and to adopt a new and revised Implementing Order IO 8-4 pertaining to guidelines and procedures for the sale or lease of county-owned real property. During that meeting, a number of amendments were made among which was a new requirement that “The Commission Auditor shall independently and simultaneously review and comment on the proposed leasing and conveyance of

County property prior to the submission of an agenda item or agenda items to the Board. No agenda item shall be placed on an agenda of the Board without the foregoing reviews by the County Mayor or Mayor's designee, subject to the exception set forth herein, and the Commission Auditor."

On February 1, 2022, the BCC considered this item and after additional amendments adopted Resolution R-129-22 to effectuate the new IO 8-4. The new IO also makes clear that Commissioners may sponsor items for the sale or lease of County-owned property, and that it is County staff's responsibility to negotiate the final proposed contract, conduct the required due diligence, and verify ownership composition of the requesting party.

In an attempt to expedite compliance with the IO 8-4 provision requiring the Commission Auditor's review, draft copies of the Purchase and Sale Agreement and the Declaration of Restrictions were sent to him on Friday, February 3, 2023, at 12:12pm with a request to review. It is noted that, in this unusual move, these documents have not yet been accepted or executed by HTC.

With respect to completing the due diligence on financial responsibility, as required by IO 8-4, RER staff has advised the OIG that, despite repeated requests throughout negotiations, most recently on January 31, 2023, and again on February 2, 2023, HTC has not provided the County with documentation regarding:

- A detailed description of the plan to finance the Project to include the manner in which HTC intends to finance the acquisition of property, development, operations and maintenance in accordance with the Declaration of Restrictions.
- A Financing Letter of Intent from a financial institution which provides funding for the entire project scope to include acquisition costs and capital investment in accordance with the requirements of the Declaration of Restrictions.

The OIG is aware that IO 8-4 provides that the requesting Commissioner may request a waiver of these requirements. However, the OIG encourages the BCC to follow its own rules by complying with the requirements of IO 8-4, especially since they were recently amended to ensure a more comprehensive and transparent process.

Regarding ownership, IO 8-4 states in part that "It is further the policy of this County that it desires to contract to sell, lease or dispose of County-owned real property to responsible entities, and to know the ownership composition of all entities to whom it contracts to sell, lease or dispose of County-owned real property." It continues with the definition that "The term 'ownership composition' as used in this Implementing Order means the identification of all persons with an ownership interest in such entity in excess of five percent."

To fulfil this requirement, the County requires that a notarized “Ownership Disclosure Affidavit”⁶ be provided by the proposed purchaser that would identify all owners having more than five percent interest. In addition, as part of its due diligence, County staff also reviews other open-data sources, such as Florida’s Department of State, Division of Corporations’ Sunbiz web page to verify this information.

The OIG review of various documents submitted by HTC and research of other open-source databases reveals a changing ownership composition as outlined in OIG Schedule A. We observe that in HTC’s Project Proposals various individuals are listed as Partners which typically indicates some type of ownership interest. However, in the course of a little over one year, many of the partners listed in the earlier proposals no longer appear in the latest version.

The OIG also observes that HTC is a Florida LLC and its Manager is, itself, another LLC—Homestead Town Center Investment Partners, LLC (HTCIP)—but the Managing LLC is not registered in Florida. HTCIP is a Delaware LLC, and HTC has not provided County staff with copies of its Articles of Incorporation and other records filed in Delaware.⁷ Florida law requires all entities doing business in the State to be registered with the Division of Corporations.

Last, while the Sale and Purchase Agreement requires BCC prior approval on HTC’s ability to assign the contract to another entity, it does not place any pre-conditions on the HTC membership composition. In other words, HTC’s members may sell all of their equity to other individuals without knowledge or prior consent of the BCC. The OIG believes that similarly requiring the BCC’s approval prior to any changes involving more than 20% of ownership shares would be in the best interest of the County.

In closing, the OIG notes that IO 8-4 was only amended one year ago. It provides enhanced due diligence and independent review by the Commission Auditor. The BCC’s updated procedures serve to standardize the process for conveying County-owned land and to protect the interest of county residents. At only a year old, these procedures have barely been implemented. As there is no urgency for this conveyance, and especially because it involves such a large tract of vacant land, the OIG believes it is imperative that IO 8-4 be followed. This matter should not be considered by the BCC, until RER, the Internal Services Department (ISD), and the Commission Auditor have received all requested documentation and have had sufficient time to perform their reviews.

⁶ The Ownership Disclosure Affidavit requires only that the Affiant’s name and signature be notarized.

⁷ The OIG did receive a copy of a Limited Liability Company Agreement dated November 29, 2022. Section 3.04 of the Agreement identified a Mr. Herbert Battle as the Manager of the Company (HTCIP). Mr. Battle has not been identified on any of the other ownership affidavits executed by HTC, nor is he identified as a Member of HTCIP. See OIG Schedule A for further details.

The OIG wishes to express its appreciation and thanks representatives of the Office of the Mayor, RER, ISD, County Attorney's Office, and Homestead Town Center, LLC for the courtesies extended.

Attachment – OIG Schedule A

Cc: Geri Bonzon-Keenan, County Attorney
Gerald Sanchez, First Assistant County Attorney
Jess McCarty, Executive Assistant County Attorney
Edward Marquez, Chief Financial Officer
Jimmy Morales, Chief Operations Officer
Lourdes Gomez, Director, Regulatory and Economic Resources Department
Alex Muñoz, Director, Internal Services Department
Cathy Jackson, Director, Audit and Management Services Department
Yinka Majekodunmi, Commission Auditor, Office of the Commission Auditor
Jennifer Moon, Chief, Office of Policy and Budgetary Affairs
Homestead Town Center, LLC

Schedule A
Homestead Town Center, LLC
Homestead Town Center Investment Partners, LLC

Ownership Information Compiled by The Miami-Dade County Office of the Inspector General

	Ahmand Johnson	Jossua Parini	Yrene Tamayo	Joanne Broders	Timothy Dunlap	Kaven Jean-Charles	Dylan Parker	HTCIP	Herbert Battle	Northwest Registered Agent	Harvard Business Services
--	----------------	---------------	--------------	----------------	----------------	--------------------	--------------	-------	----------------	----------------------------	---------------------------

Homestead Town Center, LLC

Project Proposal											
Original	(X)	(X)	(X)	(X)	(X)						
Update, 10/14/22	(X)	(X)	(X)								
Update, 01/04/23	(X)	(X)									
State of Florida, Sunbiz											
Articles of Organization, 10/07/21											
Manager								(X)			
Registered Agent							(X)				
Authorized Representative						(X)					
Annual Report, 03/15/22											
Manager								(X)		(X)	
Registered Agent									(X)		
Authorized Representative	(X)										
Ownership Disclosure Affidavit											
10/14/22	84%	8%	8%								
11/29/22	92%	8%									

Homestead Town Center Investment Partners, LLC (HTCIP)

State of Delaware											
LLC Registration, 10/04/21											
Registered Agent											(X)
LLC Agreement, 11/29/22											
Manager	(X)								(X)		
Members	92%	8%									
Ownership Disclosure Affidavit											
11/29/22	92%	8%									

Sources of Information

HTC: Project Proposals, Ownership Disclosure Affidavits, Limited Liability Company Agreement
 Florida Sunbiz: Articles of Organization, Annual Reports | State of Delaware, Division of Corporations