

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 3 May 2010

SUBJECT: Tuxedo Mill order

ATTACHMENT(S): Draft Order

SUMMARY OF REQUEST:

Attached is a draft Order of the Board of Commissioners resulting from the Tuxedo Mill matter. This will allow staff to proceed as directed therein.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the draft order.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the draft Order directing staff regarding the Tuxedo Mill.

STATE OF NORTH CAROLINA

BEFORE THE BOARD OF COMMISSIONERS

COUNTY OF HENDERSON

In the Matter of Real Property Owned by
BRITTAIN HOLDINGS, INC., an Indiana
Corporation.

ORDER

The Board of Commissioners of Henderson County finds as follows:

1. Parcel Number 9956157 (PIN 9575642488, referred to herein as “the Property”) in Henderson County has the record owner “Brittain Holdings, Inc.” (sometimes, “the Owner”). According to Henderson County tax records, the address for Brittain Holdings, Inc., is 2021 W. Clinton County Road, Frankfurt, Indiana 46041.

2. Brittain Holdings, Inc., is an Indiana corporation. The records of the Indiana Secretary of State show the following:

A. A status of “Admin Dissolved” for “Brittain Holdings, Inc.”

B. An address for Brittain Holdings, Inc., of “2021 West County Road 0 N-S, Frankfurt, Indiana 46041.

C. The president and secretary of Brittain Holdings, Inc., is “Richard W. Brittain”, whose address is shown as “1009 S. Williams Road, Frankfurt, Indiana 46041.”

3. Richard W. Brittain and Etta S. Brittain filed Chapter 7 bankruptcy in the Southern District of Indiana in 2008. In their bankruptcy filing, they indicated that they were co-debtors with Brittain Holdings, Inc., in certain debts. They claimed no ownership interest in Brittain Holdings, Inc.

4. The record lienholder on the property is G.E. Capital Small Business Finance, along with the United States Small Business Administration.

5. The Property is a former industrial site, formerly a textile mill, but most recently a recycling center.

6. There exist on the property certain violations of the Henderson County Nuisance Ordinance, and the Henderson County Building Code.

7. The Owner, Richard W. Brittain, and the record lienholder (and its agent) have been given repeated notices of the violations of the Nuisance Ordinance, but have taken no action to remedy the same. Notice pursuant to N.C. Gen. Stat. §153A-140.2 has been given this calendar year.

8. Under Section 126-12 of the Henderson County Code and N.C. Gen. Stat. §153A-140.2, the County “may without further notice remedy a violation and charge the expense of the clean-up action as a lien against the chronic violator’s property.” Pursuant to N.C. Gen. Stat. §153A-140.2, “the expense of the action shall become

a lien upon the property and shall be collected as unpaid taxes.”

9. Due to the former industrial use of the Property, a part of the clean-up of the Property should include environmental assessments of the Property of the sort frequently required prior to financed construction.

From the foregoing, the Board of Commissioners makes the following conclusions:

1. The Board has the power to affect the clean-up of the nuisances of the Property without further notice.

2. Such clean up should include environmental assessment of the property, and may include remediation of any problems discovered as a result of such assessment.

3. Henderson County staff should proceed with obtaining such assessment, and with obtaining cost estimates for cleanup.

IT IS THEREFORE ORDERED:

1. Henderson County staff and its agents shall enter upon the Property for the purpose of obtaining an environmental assessment of the Property.

2. Henderson County staff and its agents shall enter upon the Property to obtain firm estimates of the costs of remediation of the nuisances on the property and any problems discovered as a result of the environmental assessment.

3. The estimates shall be brought back to this Board for award of contract for remediation.

4. A copy of this Order shall be mailed by certified mail to:

- A. Brittain Holdings, Inc.
- B. Richard W. Brittain
- C. The lienholder, and its agent.
- D. The Secretary of State of Indiana.

Adopted by unanimous vote, this the 3rd day of May, 2010.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
William L. Moyer, Chair

Attest:

Secretary to the Board