

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: Memorandum of Agreement with Tommy's Hauling, Inc. (Staff recommends approval).

REQUESTED ACTION: Approve Memorandum of Agreement with Tommy's Hauling, Inc.

Work Session (Report Only) **DATE OF MEETING:** 11/22/2011
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: Planning

BUDGET IMPACT: _____
 Annual **FUNDING SOURCE:** _____
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

On November 8, 2011, the Board approved a Major Special Use for Tommy's Hauling, Inc. to operate an excavation pit (S2011-0002). The subject property is five (5) acres located at the end of CR 526 in Sumterville.

A condition of the Board's approval of the Special Use was for Tommy's Hauling, Inc. enter into a Memorandum of Agreement with Board that details the conditions for the operation of the excavation pit.

Staff prepared the attached Memorandum of Agreement following the guidance of the Board provided at the November 8, 2011, public hearing. Frank Arenas, Attorney for Tommy's Hauling, Inc., reviewed the Memorandum of Agreement and has accepted the conditions contained within.

Staff recommends the Board approve the Memorandum of Agreement with Tommy's Hauling, Inc.

MEMORANDUM OF AGREEMENT

The Parties to this Memorandum of Agreement (“AGREEMENT”), dated **November 22, 2011**, are the **SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS**, whose address is 7375 Powell Road, Wildwood, Florida, 34785 (“COUNTY”), and **TOMMY’S HAULING, INC.**, whose address is 1190 South Main Street, Wildwood, Florida, 34785 (“OWNERS”).

WHEREAS, OWNERS are the fee simple owners of certain real property located in Sumter County, Florida, more particularly described as: Lot 6 of Barwicks Addition, recorded in Plat Book 1, Page 21, Official Records of Sumter County, Florida, also known as Parcel #J24A009 (the “Property” or “subject parcel”); and,

WHEREAS, OWNERS submitted a major special use zoning application for an excavation operation, S2011-0002, to COUNTY, which was approved by COUNTY after a properly noticed quasi-judicial hearing, on November 8, 2011; and,

WHEREAS, the approval by the COUNTY of the OWNERS’ major special use zoning application was subject to the requirement that OWNERS shall enter into a separate agreement with the COUNTY in order to implement specific conditions which shall be incorporated into the major special use permit in order to protect the health, welfare, and safety of the citizens of Sumter County; and,

WHEREAS, COUNTY staff has conferred with the OWNERS and have negotiated a series of conditions for which the major special use will be subject to, as more particularly described herein, to regulate the operation of the major special use approved by the COUNTY; and,

WHEREAS, this after consideration, discussion, debate and vote of approval of this AGREEMENT at a properly noticed meeting of the Sumter County Board of County Commissioners, the Parties desire to enter into this Memorandum of Agreement and record the same within the Public Records of Sumter County, Florida, for purposes of setting forth certain terms and conditions to be enforced against OWNERS and their successors and assigns, all as is more particularly set forth hereinafter.

NOW THEREFORE, in consideration of the foregoing recitals and adopting them as true and as if fully stated herein, and with the intention they be legally bound to the requirements stated herein, the Parties agree as follows:

1. Recitals. The above recitals are agreed by the Parties to be true and correct and incorporated herein by reference, *in haec verba*.
2. Memorandum of Agreement. The terms and conditions set forth in this AGREEMENT memorializes the intent of the Parties as to the operation of the major special use, S2011-0002, approved by the COUNTY at a properly noticed quasi-judicial public hearing on November 8, 2011.
3. Conditions. The following are the conditions that the major special use shall be subject to and which shall be adhered to by the OWNERS:

- a. The OWNERS shall cease all excavation activities on the Property until the following conditions are met:
 - i. The OWNERS shall provide COUNTY with a current boundary survey for the Property.
 - ii. The OWNERS shall provide a geotechnical report for the Property, prepared by a Florida licensed geologist or professional engineer, indicating the depth at which limerock is present on or under the Property, as well as the seasonal high water table for the Property.
 - iii. The OWNERS shall provide revised engineered excavation plans for the Property, prepared by a Florida licensed professional engineer, which includes, but is not necessarily limited to, the following information:
 - a. Engineering to show how the OWNERS will fill a portion of the existing excavation area to provide a minimum 50 foot setback from the subject parcel's property lines to the edge of the excavation. The area within the 50 foot setback, with the exception of any required berms, must be similar to the existing elevation of the properties adjacent to the subject parcel.
 - b. Calculation of total area and volume already excavated and planned for future excavation on the Property.
 - c. Engineering to verify the side slopes of the excavation activities are not more than one (1) foot vertical to three (3) feet horizontal. If the side slopes do not meet this standard, then the OWNERS shall provide engineering to demonstrate how the appropriate side slope will be obtained.
 - d. Screening to provide a visual barrier along the eastern, northern, and southern property lines of the Property. If a berm is used for screening, then the berm shall be engineered, by a Florida licensed professional engineer, to assure the berm will not cause a safety hazard for the adjacent properties. The berm shall be sodded to prevent erosion, and shall incorporate vegetation to improve the aesthetics of the berm. The design of the berm shall be coordinated with the property owners along the eastern boundary of the subject parcel.
 - e. An appropriate method of securing the excavation site on the Property from unauthorized access.
 - f. A reclamation plan for the excavation site that provides for the use of the subject property consistent with the existing land use of the Property and adjacent area.

every condition herein set forth., It is understood that pursuant to Section 3.c., the major special use approval, S2011-0002, applies only to Tommy's Hauling, Inc. as the operator. Any other operator shall require an amendment to S2011-0002 and approval by the COUNTY

- 6. Enforcement. Enforcement of this Memorandum of Agreement shall be through the Sumter County Board of County Commission. Specifically, the COUNTY reserves the right to enforce the terms and conditions of this AGREEMENT against OWNERS for any legal claim it may have. Failure to immediately take action against OWNERS for any breach of this AGREEMENT shall not be considered as a waiver of any of COUNTY'S rights under this AGREEMENT. The Parties agree that venue for any action brought to enforce the terms of this AGREEMENT shall lie exclusively in Sumter County, Florida. Furthermore, the Parties agree that the prevailing party in any action brought to enforce the terms of this AGREEMENT shall be entitled to recover their reasonable attorney's fees and costs, including reasonable costs and attorney's fees incurred for any appellate proceedings.
- 7. Entire Agreement. This AGREEMENT constitutes the entire understanding of the Parties. Any change or amendment to the terms or conditions of this AGREEMENT must be in writing, and executed by each party.

IN WITNESS WHEREOF, the hands and seals of the parties on the date set forth above.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA**

BY: _____
Gloria R. Hayward, Clerk

BY: _____
Don Burgess, Chairman

Approved as to form and content by
Sumter County Attorney

George G. Angeliadis, Esquire

WITNESSES:

TOMMY'S HAULING, INC.

Sign Name

James T. Gough, President

Print Name

STATE OF FLORIDA
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this _____ day of _____, 2011, by Don Burgess, Chairman, of and on behalf of the Board of County Commissioners, Sumter County, Florida, for the purposes expressed herein.

SEAL

Notary Public

Print Name

Serial/Commission No.

Commission Expires

STATE OF FLORIDA
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this _____ day of _____, 2011, by James T. Gough, President, Tommy's Hauling, Inc., who is personally known to me or produced _____ as identification, for the purposes expressed herein.

SEAL

Notary Public

Print Name

Serial/Commission No.

Commission Expires

 You replied on 11/16/2011 10:43 AM.

Cornelius, Brad

From: Frank B. Arenas [freeflight@cfl.rr.com] **Sent:** Wed 11/16/2011 10:35 AM
To: Cornelius, Brad
Cc: Frank B. Arenas
Subject: Re: 2011_11_07 ltr to Sumter County.pdf
Attachments:

Thanks Brad - we accept these modifications - appreciate your work on this -

Frank B. Arenas, Esq.
P.O Box 600
Coleman, FL 33521-0600
(352) 748-6629/FAX 748-3681
freeflight@cfl.rr.com
www.frankarenas.com

----- Original Message -----

From: [Cornelius, Brad](#)
To: [Frank B. Arenas](#)
Cc: [Webb, Aimee](#)
Sent: Tuesday, November 15, 2011 5:19 PM
Subject: RE: 2011_11_07 ltr to Sumter County.pdf

Frank,

See the revised MOA based on the County Attorney changes and your comment below. The County Attorney changes are simple clarifications. Please look at the conditions regarding the fill material. I think this meets the intent.

Please let me know if you are OK by 10 am tomorrow.

Thanks,

Brad C.

Brad Cornelius, AICP, CPM, LEED Green Assoc.
Director, Planning & Development
352.689.4460

From: Frank B. Arenas [mailto:freeflight@cfl.rr.com]
Sent: Tue 11/15/2011 10:59 AM
To: Cornelius, Brad
Cc: Frank B. Arenas
Subject: Re: 2011_11_07 ltr to Sumter County.pdf

Brad - I spoke to Mr. Gough; at this time he wants to get Mr. Robinson's input when you, he and Mr. Gough meet at the site Friday at 8:30 a.m. - meanwhile, we would exclude "contaminated fill, organic materials such as trees, etc." - Mr. Robinson has the knowledge of the local sand/dirt that can be put on a list - hopefully this is acceptable to you and Mr. Arnold until Friday, thanks,

Frank B. Arenas, Esq.
P.O Box 600
Coleman, FL 33521-0600
(352) 748-6629/FAX 748-3681
freeflight@cfl.rr.com
www.frankarenas.com

----- Original Message -----

From: [Cornelius, Brad](#)
To: [Frank B. Arenas](#)
Cc: [Arnold, Bradley](#) ; george@hoganlawfirm.com ; [Webb, Aimee](#)
Sent: Monday, November 14, 2011 6:29 PM
Subject: RE: 2011_11_07 ltr to Sumter County.pdf

Thanks. One last hiccup....Mr. Arnold would like to include the list of material as part of the Agreement instead of waiting 30 days. Can you get that list together so I can include it?

Brad C.

Brad Cornelius, AICP, CPM, LEED Green Assoc.

Director

Sumter County

Division of Planning & Development

352.689.4460

brad.cornelius@sumtercountyfl.gov

***** Important Notice *****

The Board of Sumter County Commissioners is a public agency subject to Chapter 119 of Florida Statutes concerning public records.

From: Frank B. Arenas [mailto:freeflight@cfl.rr.com]
Sent: Monday, November 14, 2011 6:23 PM
To: Cornelius, Brad
Cc: Frank B. Arenas
Subject: Re: 2011_11_07 ltr to Sumter County.pdf

Sorry it's after 5, but we accept this MOA - thanks you - PS - typo in the 4th whereas clause - OWNER

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----- Original Message -----

From: [Cornelius, Brad](#)
To: [Frank B. Arenas](#) ; [Webb, Aimee](#)
Sent: Sunday, November 13, 2011 11:33 PM
Subject: RE: 2011_11_07 ltr to Sumter County.pdf

Frank,

Attached is the proposed MOA between Tommy's Hauling and the BOCC. Please review and let me know if this is acceptable. I believe this addresses the concerns of your letter and the direction of the BOCC on 11/8. If you can let me know by 5 pm on Monday (11/14) that would be great. I would like to get this over to the County Attorney on Tuesday for his review and submit on Wednesday for the 11/22 BOCC agenda.

Thank you!

Brad C.

Brad Cornelius, AICP, CPM, LEED Green Assoc.
Director, Planning & Development
352.689.4460

-----Original Message-----

From: Frank B. Arenas [<mailto:freeflight@cfl.rr.com>]
Sent: Mon 11/7/2011 3:49 PM
To: Cornelius, Brad; Webb, Aimee
Cc: Frank B. Arenas
Subject: 2011_11_07 ltr to Sumter County.pdf

Hello - please see the attached letter for my hearing tomorrow on Tommy's Hauling SUP; thank you -

Frank B. Arenas, Esq.
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