SOUTH BROWARD DRAINAGE DISTRICT
BOARD OF COMMISSIONERS MEETING

AGENDA

THURSDAY, JANUARY 30, 2014 AT 8:00 A.M.

NOTE: BOARD MEMBERS, PLEASE TURN YOUR MICROPHONES ON

01. CALL TO ORDER/PLEDGE OF ALLEGIANCE

02. PUBLIC COMMENT

03. APPROVAL OF DECEMBER 19, 2013 SOUTH BROWARD DRAINAGE DISTRICT (SBDD) BOARD OF COMMISSIONERS MEETING MINUTES

04. DIRECTOR'S REPORT
    - A. VACATION REQUEST FOR A PORTION OF PARCEL "B", PEMBROKE FALLS PHASE 3 (MERCEDES BENZ PROPERTY)
    - B. VACATION REQUEST FOR A PORTION OF NORTH 29 ASSOC. PLAT (SHOPPES OF SILVER ISLES – STARBUCKS PROPERTY)
    - C. PRESENTATION OF DRAFT SBDD FINANCIAL STATEMENT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2013 BY BARRY FINK, CPA
    - D. DISCUSSION AND ACTION ON SBDD UNDESIGNATED FUNDS
    - E. OTHER

05. ATTORNEY'S REPORT:
    - A. UPDATE ON PEMBROKE FALLS / HOT WIRE PERMIT FOR USE OF SBDD LAKE MAINTENANCE EASEMENT

06. APPROVAL OF LEGAL BILLS

07. BOARD MEMBERS QUESTIONS/COMMENTS

08. OTHER

09. MEETINGS:
    - **A.** NEXT REGULAR BOARD MEETING WILL BE HELD ON **THURSDAY, FEBRUARY 27TH AT 8:00 A.M.**

10. ADJOURNMENT

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ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH HEARING/MEETING MAY NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE MAY WISH TO INSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD IS TO BE USED FOR TESTIMONY AND EVIDENCE UPON WHICH AN APPEAL WOULD BE BASED.

IN ACCORDANCE W/THE AMERICANS W/DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS W/DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE DISTRICT AT (954) 680-3337 AT LEAST 48 HOURS PRIOR TO THE PROCEEDINGS FOR ASSISTANCE.

SOUTH BROWARD DRAINAGE DISTRICT
GOVERNING BOARD MEETING MINUTES

JANUARY 30, 2014

Present:

Scott Hodges, Chairperson
James Ryan, Vice Chairperson
Vicki Minnaugh, Treasurer
Robert E. Goggin, IV, Secretary
Alanna Mersinger, Commissioner
Thomas Good, Commissioner

Kevin M. Hart, District Director
Douglas R. Bell, Legal Counsel
Freddy Fisikelli, SWR Councilman
Reina Muniz, Recording Secretary
General Public: See Attached List

Absent:
Mercedes Santana-Woodall, Commissioner

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01. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chair Hodges called the SBDD Board Meeting to order at 8:14 A.M., with Vice Chair Ryan, Commissioner Minnaugh, Commissioner Mersinger, and Commissioner Good present; followed by the Pledge of Allegiance.

02. PUBLIC COMMENT

None.

03. APPROVAL OF MINUTES

Commissioner Minnaugh moved for approval of the minutes of the December 19th, 2013, South Broward Drainage District Board meeting. Motion was seconded by Commissioner Mersinger and was carried unanimously by the Commissioners present.

Commissioner Goggin joined the meeting at approximately 8:25 A.M.

04. DIRECTOR'S REPORT

A. VACATION REQUEST FOR A PORTION OF PARCEL "B", PEMBROKE FALLS PHASE 3 (MERCEDES BENZ PROPERTY)

District Director Hart stated that South Broward Drainage District (SBDD) received a request to vacate a 40-foot Drainage Easement in the "Pembroke Falls Phase 3" Plat (aka: Mercedes Benz). This easement was previously dedicated by separate instrument, and the property is owned by AN Luxury Imports of Pembroke Pines, Inc.

As part of this request, the property owner will be dedicating a new 40-foot Drainage Easement to SBDD to replace the drainage easement being vacated.

The reason for the request is to place the 40-foot DE in the proper location. The vacation and rededication of the easement did not occur when the property was originally developed, and as a result, the existing DE is located over the existing car dealership building. This process will clean up and correct this previous oversight.

There are no financial impacts to this Agenda Item, other than SBDD administrative costs; all other costs will be incurred by the property owner.

SBDD staff has no objection to this vacation request, subject to the following conditions:

- Dedication of a new 40-foot DE over the existing 60" RCP pipe.
- Property owner to enter into a Maintenance & Indemnification Agreement with SBDD to include the responsibility for the maintenance of the 60" RCP.

Commissioner Minnaugh moved for approval of the vacation of a portion of Parcel "B", Pembroke Falls Phase 3 (Mercedes Benz Property). Motion was seconded by Vice Chair Ryan.

Discussion ensued.

Commissioner Good had concerns that the new drainage easement was being dedicated as a "non-exclusive" easement as opposed to an "exclusive" easement. He commented that the original document was dedicated as an "exclusive" easement to the District and he asked District Director Hart, why the District would give up exclusive rights for the new easement? District Director Hart stated that the new easement was consistent with the District's standard easement form and he deferred to Attorney Bell for further clarification. Attorney Bell stated that the original easement, which was dedicated back in 1996, was intended to be released at some time in the future; and that is what is being done at this time. As far as the language, the way it reads now, it is non-exclusive, but the property owner would still need District approval for any other improvements to be placed within that easement, and would be subject to the Indemnification Agreement.

Commissioner Good commented that he does not necessarily agree that the District is free and clear of anything. He feels that the District could be affected in several ways if it does not have exclusive rights on its easements. He also expressed concern with the language in the easement form that states: "such approval by the District shall not be unreasonably withheld or denied".

He asked that if at any time the District does not want someone to co-locate in a District easement, does the District have absolute power to deny that right. District Director Hart replied, no. He said that the District does not own the property, or have fee simple rights to it, but that the District does have rights under the easement. He said that there will be an agreement in addition to the easement that will give the District rights and restrictions on the use of the easement, and that there is language in the agreement that delineates the purpose of the easement and the owner's responsibilities; and as far as "exclusive" vs. "non-exclusive", he believes that the District is protected for the intended purpose of the easement. He said that there are many easements throughout the District that allow the property owner to use the easement area for other purposes without impeding the District's use of the easement. Attorney Bell added that the District can place whatever restrictions they want on these easements; and if the property owner wants to use these easements for some other purpose, the applicant would still have to come to the District for a permit and approval; and the District can allow it, or, if they want to, impose whatever restrictions the District wants on it, and

make the property owner liable for any damages, etc.; but the property owner cannot just go in and place what they want in the easement area.

Attorney Bell commented that the language in the District's easements changed a number of years back in response to an objection by a developer and there was a thought process that went into it and it was carried forward.

Commissioner Minnaugh agreed with Commissioner Good in that if the property owner needs a release, give them a release, but the District does not need to go and reinvent the language, and if it's exclusive, keep it exclusive. Commissioner Good has concerns that in moving forward this could affect other issues. Attorney Bell then stated that if desired, the District could unreasonably withhold approval.

Mr. Jason Gunther, representative on behalf of AutoNation, expressed his concerns that making the easement exclusive would deny the property owner the right to have water services or other utilities through the easement. He also said that the non-exclusive language would not give AT&T or Comcast the right to go in and use this easement, unless they were going to use the easement for drainage purposes.

Attorney Bell said that if there are other easements currently in place over this area (water, sewer, etc.), these would be superior to the District's easement, regardless of the language placed in the conveyance document; and the District would be subject to having to get approval from those easement holders to put in any new lines. District Director Hart added that on a private development property, the utility service lines are not typically under an easement. He deferred to Attorney Bell to answer the question, if an exclusive easement would prevent any private utility lines from crossing. Attorney Bell stated yes; but, if they were already in there, that may be an issue; but if the easement is exclusive and the District has not granted them the right to go in there, the District has a right to tell them to vacate, even if it predated the District's agreement.

Commissioner Goggin explained to Mr. Gunther why it is important to use the word "exclusive" versus "non-exclusive" in the documentation. He said that in the past the District has had issues where state and federal regulations allow easements to possibly be used for other purposes; and that by using the word "exclusive", it protects the District, and the business or resident.

Commissioner Good inquired if the back-up information describes what improvements are located in the District's new easement. Attorney Bell replied it does not. Commissioner Good asked, would there not be a responsibility to have that information presented to the Board? Attorney Bell said that it would be helpful; and that normally the easement document would have language in it that says, "subject to existing improvements"; so that for any new improvements, the request would come before the District for its approval; and the District would have to approve those existing improvements to make sure that there are no potential conflicts; and if there is, the District is covered by the Indemnification Agreement, and that in the case of private services, the way it reads now, the District has the right to say "remove them".

Commissioner Good commented that apparently there is an existing condition in this case, but his concern is the exclusivity versus non-exclusivity. His concern is that the District should not be doing non-exclusive easements.

District Director Hart said that as part of a future Criteria update, the District will be including all standard easement forms in the Criteria Manual, so that the language could be updated and modified to meet the Board's approval as far as exclusivity. He said that in this particular case, the approval of the drainage easement is not part of the agenda item; however, the dedication of the new drainage easement is a condition of approval for the vacation request. He recommended that the motion be amended to say "subject to approval of an exclusive drainage easement"; and that way, the language within the drainage easement document (to be executed by the property owner) will be modified to replace the language of "non-exclusive" with "exclusive", and it would then be up to them whether or not they want to execute. This would retain the District's rights that are currently in place over the existing easement to be vacated; and the District will work out the language as far as the existing improvements within the easement.

Discussion ensued regarding the mechanism for addressing existing and future improvements within the easement document.

District Director Hart restated staff's recommendations for conditions of approval, and indicated that the language regarding "unreasonably withheld or denied" would be removed from the "exclusive" easement document. Attorney Bell suggested that rather than remove that language, it should be modified to read "such approval by the District can be unreasonably withheld or denied".

Commissioner Minnaugh modified her motion to replace the new drainage easement language from "non-exclusive" with "exclusive", and to change the wording to state that the District could "unreasonably withhold any approval", and for the property owner to enter into a Maintenance & Indemnification Agreement with SBDD. Motion was seconded by Commissioner Good and was carried unanimously as amended.

B. VACATION REQUEST FOR A PORTION OF NORTH 29 ASSOC. PLAT (SHOPPES OF SILVER ISLES – STARBUCKS PROPERTY)

District Director Hart stated that in May, 2013 South Broward Drainage District (SBDD) approved the vacation of a portion of a 30-foot Drainage Easement (DE) in the "North 29 Associates" Plat (aka: Shoppes of Silver Isles). This easement had been previously dedicated by separate instrument and was vacated due to the proposed development plan for the property. As a condition of approval, the property owner was required to dedicate a new 30-foot DE and enter into a Maintenance & Indemnification Agreement with SBDD. The approval also involved the relocation of an existing 48" RCP lake inter-connect pipe.

SBDD was informed recently that the new 30-foot DE, has changed and needs to be re-dedicated. Therefore, the property owner is requesting that the District vacate the recently dedicated 30-foot DE in order to dedicate a new, corrected 30-foot DE. The property is owned by the Shoppes at Silver Isles, Inc.

District Attorney Bell has advised that this is the proper procedure for updating the easement. SBDD staff has no objection to this vacation request, subject to the following conditions:

- Dedication of new 30-foot DE

- Property owner to be responsible for the inspections and maintenance of the new 48" RCP to be relocated.
- Property owner to enter into a Maintenance & Indemnification Agreement with SBDD.

District Director Hart informed the Board that in light of the previous discussion, the easement that had been recently dedicated was in line with the District's standard easement form; it is a non-exclusive easement. Attorney Bell also indicated that the original easement that the Board had vacated was a non-exclusive easement as well.

There are no financial impacts to this Agenda Item, other than SBDD administrative costs; all other costs will be incurred by the property owner.

Attorney Bell made the Board aware that the original easement (vacated by SBDD) also includes a dedication to the public, as the easement is providing drainage for Dykes Road and Miramar Parkway. The District only vacated its interest in this easement, and the property owner may have to go to Broward County to have their interest vacated as well.

Commissioner Mersinger made a motion for approval to vacate a portion of North 29 Assoc. Plat (Shoppes of Silver Isles – Starbucks Property) with the new drainage easement language to include "exclusive" in place of "non-exclusive" and Property owner to enter into a Maintenance & Indemnification Agreement with SBDD. Motion was seconded by Commissioner Goggin.

Mr. Reed McLane, Development Manager for GL Commercial, had questions regarding the new wording in the easement document. He has concerns on how this would affect their property and future uses within the easement area. Chair Hodges explained that the District will just have a stronger foothold in regards to what crosses the easement and that SBDD will need to approve those uses. Attorney Bell explained that the easement language will provide for future improvements and existing improvements to be placed within the easement area. If the District makes it exclusive, that means that nothing further can be placed in that easement without District approval.

Mr. McLane also wanted to know if other municipalities would be okay with SBDD having exclusive easements. He had concerns that there could be a conflict regarding the exclusive rights of the easement. Chair Hodges and Attorney Bell did not feel that this would be a problem as there will need to be coordination and possible consents between the affected agencies. Commissioner Goggin stated that he did not see any issues with allowing improvements that customarily belong within these easement areas.

The question was called, and the motion was carried unanimously.

C. PRESENTATION OF DRAFT SBDD FINANCIAL STATEMENT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2013 BY BARRY FINK, CPA

A draft report of the SBDD Financial Statement for the Fiscal Year Ending September 30, 2013 has been prepared by the District's accounting firm, Margolies, Fink and Wichrowski, Certified Public Accounts (MFW). Barry Fink, CPA, a partner with MFW, presented an overview of the draft report.

Mr. Fink said that as in prior years there is no scope limitation, no restrictions, and it is a clean opinion. He also stated that in one section of report the format and language of the opinion has changed. In the past, there was a statement that everyone knew as a "Balance Sheet", and for government agencies it was called the "Statement of Net Assets"; and under GASB-63 which became effective for the fiscal year starting October 1, 2012, that statement will now be known as the "Statement of Net Position". There are no comments in the management letter with respect to control issues. He thanked Susan Iratzoqui, District Director Hart and SBDD Staff in following the accounting guidelines that have been established over the years.

Commissioner Good had a question regarding the District Highlights shown on pages 5 and 6. He likes that the District highlights the work that was performed during the fiscal year, but suggested that the report distinguish between CIP projects and general maintenance projects. District Director Hart agreed and indicated that he would update that section.

Commissioner Good also asked for a clarification on disclosures of any fund balance policies. Mr. Fink replied that the financial statements are not written in such a way as to disclose policies, and he said that GASB does not require a disclosure of District policy in the financial statement. The report is written so that it discloses information that is necessary to the reader to understand the financial statement. He said that the purpose of GASB-54 was not in setting policies, but in providing the District with definitions of its different funds. It is up to the Board to adopt certain policies as to how things are done and approved. Mr. Fink explained other issues related to GASB and clarified any confusion regarding the language.

District Director Hart thanked Mr. Fink for his work on the Financial Report and indicated that the Final Report would be presented to the Board at the February Board meeting.

D. DISCUSSION AND ACTION ON SBDD UNDESIGNATED FUNDS

District Director Hart stated that based on the draft Annual Financial Statements for the fiscal year ending September 30, 2013, SBDD has a total of $1,760,040 in unassigned or undesignated funds. These funds are available to the District for use in future year budgets as an Appropriation of Fund Balance, or for designated purposes as approved and directed by the Board. For example, a portion of the undesignated fund balance could be designated for future Capital Improvement Projects (CIP) and transferred to the District's Capital Improvements Fund.

District staff recommends that a minimum balance of cash-on-hand equal to 3 months of projected expenses or $750,000 remain in the General Operating account at the beginning of each fiscal year. This will allow the District to operate on a loan free basis during the first three months of each fiscal year (October – December), which is the time period when cash reserves are typically at their lowest and projected tax revenues have not yet been received.

With this recommended value in mind, a remaining balance of $1,010,040 of undesignated funds would be available to designate for specific purposes.

District Director Hart then reviewed the District's current 5-year CIP. The total budget for the CIP is $2,697,500. The current balance in the SBDD CIP Account is $759,785, which will fund the CIP through a portion of fiscal year 2014-2015. If designated and approved by the Board, these undesignated funds could help fund the CIP through a portion of fiscal year 2016-2017.

District Director Hart stated that for future years, the Board may want to consider the following guidelines as part of the District's annual budgeting process:

- The Appropriation of Fund balance shall not exceed 10% of the total budget, unless otherwise approved by the Board.
- The District will strive to maintain a minimum cash-on-hand balance of $750,000 at the beginning of each fiscal year.
- During the first quarter of each calendar year, the District Director will make recommendations to the Board on designating and transferring undesignated funds for specific purposes, based on the on-going needs of the District.

District Director Hart stated that previously, back in July, there was discussion regarding a policy and providing the District Director with some tools for use during the budgeting process. Commissioner Good had raised some good points and it was decided to defer this discussion until the presentation on the District's annual financial report, which was done today. District Director Hart commented that the District has many needs and uses for these undesignated funds. The District is an aging District. He said that SBDD has a 5-year capital plan that the District is implementing; and has continuing needs for future years as far as pump stations, facilities, culvert, pipes, etc. He said that it is good that these funds are available for future use.

Commissioner Minnaugh commented that she was pleased that this issue was brought forward and she has discussed this issue with District Director Hart. She likes that SBDD is proactive on its maintenance issues and pointed out the District has buildings that are 40 years old which will require an ongoing maintenance. She believes it is good for the District to continue partnering with other cities on cost-sharing; where there is a win-win for everyone involved. She feels that it is better to have this money categorized as to where it is going rather than remaining undesignated.

Commissioner Good commented that the Board could help the District Director by preparing these issues in a more formal way. He suggested that the Board establish a policy so that the District Director may operate in a better way and make a recommendation for an assessment that covers a 5-year operating plan, a 5-year capital plan, etc. He took the liberty to copy examples of two different financial policies, which he handed out to the Board members for review.

Commissioner Minnaugh agreed with Commissioner Good, but said that she would like the Board to designate this undesignated money under a heading to be earmarked for the CIP so when the District Director is preparing the policy, the Board knows that this money is available for a specific use, as opposed to still having it in undesignated funds.

Commissioner Minnaugh suggested that District Director Hart review Commissioner Good's documents and present the Board with recommendations for a policy based on this document.

Commissioner Minnaugh made a motion that the District take from the undesignated fund balance of approximately $1,760,000 and prepare an appropriation of fund balance not to exceed 10% of the total budget; and strive to keep a minimum balance of cash-on-hand of $750,000 at the beginning of each fiscal year which starts on October 1st, 2013; and to designate that $1,010,040 be transferred to the CIP; and for the Board to have meetings in

order to develop policies so that each of the District's funds will be defined on how it will be used, and a general policy of operating the accounts (Best Practices). Commissioner Goggin seconded the motion.

Commissioner Good asked Commissioner Minnaugh to modify her motion because, although he agrees with the movement of undesignated funds to Capital funds, he feels that the Board should defer the action on the $750,000 to the future discussion of the policy, because he does not believe that money is needed at this time.

Commissioner Minnaugh withdrew her previous motion.

Commissioner Minnaugh modified her motion to say that the District move $1,010,040 from undesignated funds to Capital Improvement funds and for the Board to have meetings in order to develop policies so that each of the District's funds will be defined on how they will be used. Commissioner Goggin seconded the motion.

The question was called and it was carried unanimously.

E. OTHER

At this time, Commissioner Good excused himself from the Board meeting.

District Director Hart mentioned the following items:

- ***Broward Days Meeting*** – A Broward Days function will be held on February 24, 2014. It is a local function.

- ***Update on Numeric Nutrient Criteria*** – After years of litigation and debate, a U.S. District Court of the Northern District of Florida issued an order granting EPA's motion to modify the consent decree. EPA has agreed with the States petition to take over numeric nutrients criteria and they are amending the consent decree.

- ***Future Outreach Functions***

    - *Florida League of Mayors Everglades Tour* – District Director Hart said that on February 7, 2014 there is a tour taking place out at the Everglades Holiday Park Pavilion and the County invited him to speak at that event on the perspective of a local 298 district, which is a good opportunity for the District.

    - *Workshop for Maintenance and Education for Industrial Properties* – This came about as a result of feedback from the Board on how the District can help commercial properties to eliminate some of the flooding within their properties. The District has submitted the workshop to the state for accreditation for continuing education credits for property managers which will make it a more valuable program for some of these properties. The District hopes to present that program sometime in April or May. The first one will be held here at SBDD. There will be limited seating.

    - *Paper to Landscape Architect Association* – District Director Hart said that he submitted a paper to the Florida Landscape Architect Association to talk about stormwater management and drainage in relationship to landscaping. This would

be presented at their annual meeting in June. He thought it would be a great opportunity for the District to be able to speak to landscape architects about the compatibility of drainage and landscaping, because this is an issue that comes up all the time in the District's easements and he presented an outline for a paper on that topic. He said he is waiting to hear back from them as to whether or not they will approve the paper.

- ***Performance Evaluation of District Director Hart*** - Chair Hodges said that in reviewing the evaluations of District Director Hart, he was rated highly effective, strong leader, organized, proactive and manages outside staff very effectively, etc. On fiscal representation, Chair Hodges said that District Director Hart's general marks were very strong, and he is doing an above average job.

05. ATTORNEY'S REPORT:

A. UPDATE ON PEMBROKE FALLS / HOT WIRE PERMIT FOR USE OF SBDD LAKE MAINTENANCE EASEMENT

Attorney Bell said that the Representative of Hotwire was not able to be present at today's meeting. He said that the retainer fee for legal fees has been paid. District Director Hart and Attorney Bell spoke to an outside attorney to get on board to be a consultant. Attorney Bell will be preparing the agreement and submitting that to him. He said that he is still waiting on documentation from Hotwire as to all the various permitting issues. The one issue that he made representation on was that all the property owners are satisfied and happy with the restoration work, subject to the agreement. Attorney Bell spoke to one property owner, who is an attorney, who indicated that he is now satisfied. District Director Hart added that after the last Board meeting, he spoke to Hot Wire's project manager and that his focus was restoration, based on comments from the Board about lack of proper restoration, and he got a commitment from them that all restoration issues will be addressed. District Director Hart said that he understands that they went house-to-house to discuss with the homeowners, not only the work, but the restoration; and he feels that this took care of any issues, not only on the physical restoration side of it, but also the concept of Hotwire being in the community and providing cable service. District Director Hart says there are still many questions as to the sequence and process they went through. He said that the next step is for Attorney Bell to work together with their attorney, because SBDD still needs to issue a permit. District Director Hart said that Attorney Bell will be presenting an agreement to the Board for approval.

B. UPDATE ON TAFT STREET PROJECT

District Director Hart said that Taft Street project is under construction by the City and they have been slowed down because of the weather. They started January 6, 2014 and the District is out there keeping an eye on it, and so far, everything is going well. The work the District did in advance has been helpful, and has accomplished what the District hoped. There are no issues that he is aware of.

Commissioner Goggin suggested that with a project like this it would be nice to take pictures and show a before and after of how the District has come together with the City of Pembroke Pines and performed a joint venture; and saved the taxpayers money. District Director Hart added that the District is looking at the possibility of doing work similar to what they did on Taft Street at other locations, as far as the grapple truck.

06. APPROVAL OF LEGAL FEES

Commissioner Goggin moved for approval of the legal bills. Motion was seconded by Commissioner Minnaugh and it was carried unanimously.

07. BOARD MEMBER'S QUESTIONS/COMMENTS

None.

08. MEETING DATE(S)

A. The Next Regular Board Meeting will be held on **Thursday, February 27th at 8:00 a.m.**

Adjournment at 10:08 A.M.

Respectfully submitted,

Robert E. Goggin IV, Secretary
South Broward Drainage District

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