

Town of Braintree
Town Auditor – Petersen Pool Trust Report

History/Facts:

A former tugboat captain (August Petersen) bequeathed approximately \$65,000 to the Town of Braintree (Town) back in 1963 for the purposes of constructing a swimming pool and necessary incidental buildings and equipment on Watson Park with the swimming pool to be named “The Petersen Memorial Pool.” These funds were accepted by the Town on March 23, 1964 to accomplish the purposes intended by the donor.

For various reasons (i.e., land condition, construction of other fields and courts, etc.) a determination was made on August 16, 2000 by the Board of Parks and Playgrounds Commission that the Petersen Memorial Pool could not be located at Watson Park. This decision was later supported by the established Petersen Pool Siting Committee who also reached the same conclusion on March 15, 2002. The issue now became that Captain Petersen’s will had no alternative location for the pool, which meant the court would have to weigh in on a possible solution. On November 26, 2002, the Town received the decision from the Norfolk Probate and Family Court granting the amendment to the Petersen Trust document eliminating the location restriction. Years later the Town went back to the Norfolk Probate and Family Court to allow the trust fund to fund the operational and maintenance expenses associated with the Petersen Memorial Pool, which was granted by the court on December 12, 2006.

In addition to Captain Petersen’s will, the Special Act (Act) passed on November 3, 2011 allowed the Town to lease land for the construction of a new recreational facility to consist of a pool and skating rink. This allowed the Town the authority to enter into a public/private partnership and lease the land (for a period of 50 years with an extension option).

To this point this fund remained untouched, allowing the fund to grow to over \$2,100,000 by the start of fiscal year 2013 (see [Appendix A](#)). This fund paid for the Petersen Splash Pad in Watson Park that opened in 2013, which cost approximately \$393,000. Although Captain Petersen’s will did not mention the use of funds for a splash pad, the Town, once again, went in front of the Norfolk Probate and Family Court who granted permission on January 10, 2012 to allow these costs to be expended from the trust fund. Permission was also granted that the construction of the Petersen Memorial Pool be overseen by the Mayor of the Town of Braintree and funds from the Petersen Trust be used for the construction, operation and maintenance of the Peterson Memorial Pool to be expended by the Mayor, in conjunction with the Director of Municipal Finance.

In 2014, the Town published a request for proposals (RFP) as called for in the Act and the recreation facility and pool project. Only one vendor submitted a proposal to the RFP, and thus the contract was awarded to 5 Capital Management of 521 Mount Hope Street (5 CM) through David Boucher, Paul Brooks and other partners in the business. On April 15, 2015, the Town and 5 CM signed an agreement titled “Lease and Development Agreement Components” (Components Agreement). Signatories for 5 CM included, again, David Boucher and Paul Brooks. The Components Agreement set out the preliminary terms of the lease, including the Town’s financial contribution towards the design and construction of the Petersen Pool and related facilities and the corresponding milestones.

This agreement called for the design, engineering and plans of operations for the recreational facility, which would include a swimming pool and skating rink. The swimming pool would operate year round and be at least the size of a Junior Olympic pool. The skating rink would consist of at least one ice surface 200 feet long and 85 feet wide. The payment details in this agreement called for the Town to pay 5 CM a total of \$1,500,000 in the following amounts at the following milestones:

1. \$250,000 at the signing of the agreement to develop preliminary plans for the design and engineering of the recreational facility.
2. \$250,000 upon the completion of the design and engineering plans required for permitting and form approved by the Town. Plans needed to be completed within 90 days of the signing of the contract. Failure would be a breach and may be able to recover the initial payment.
3. \$500,000 at the signing of the lease agreement.
4. \$500,000 at the issuance of building and planning permits sufficient to commence construction.

At some point after the Components Agreement was signed, 5 CM essentially became BSC Partners, LLC (BSC). The parties remained the same, as did their business address. All subsequent filings and agreements reference BSC Partners and David Boucher and/or Paul Brooks. To date the Town has paid a combination of 5 CM and BSC a total of \$1,000,000 as part of this agreement from the period of March 2015 through February 2018. It should be noted that the Ground Lease signed by BSC on February 28, 2018 contained the following schedule of performance and anticipated start dates:

1. Install erosion and sediment controls – Anticipated Start Date: August 2018
2. Remove existing pavement and structures in designated areas – Anticipated Start Date: August 2018
3. Rough grade site – Anticipated Start Date: September 2018
4. Install storm water management system and site utilities – Anticipated Start Date: September 2018
5. Install building foundation – Anticipated Start Date: October 2018
6. Place binder coat pavement and bring drainage system on line with inlet protection installed for all newly installed appurtenances – Anticipated Start Date: Mid-October 2018
7. Install mitigation plantings along northern border, if seasonally appropriate – Anticipated Start Date: April 2019
8. Fine grade site and loam and seed all disturbed areas – Anticipated Start Date: Mid-August 2019
9. Install remaining landscaping – Anticipated Start Date: Mid-August 2019
10. Place top coat payment – Anticipated Start Date: Mid-August 2019
11. Project close out – Anticipated Start Date: End of August 2019
12. Certificate of occupancy – Anticipated Start Date: September 2019

None of these anticipated start dates were actually hit, as again, financing could not be secured and during the March/April of 2019 time frame the Town tried to terminate the BSC agreement. Eventually, E Street LLC was brought in to take over the assignment and relieve BSC of their duties. E Street signed the agreement in August of 2019 and will forgo the additional \$500K estimated to be paid by the Town (per #4 on page 2 of this report). Even with E Street now taking over the job 5 CM/BSC are not off the hook in terms of possible breach of contract until the following are satisfied:

1. Assignment is executed
2. BSC satisfies all financial obligations
3. E Street obtains financing
4. E Street obtains building permits
5. Project construction obtains weather type status

In addition, PMA Consultants (PMA) has been hired by the Town to be the Owner's Project Manager (OPM) for this project on January 31, 2019 with all services to be performed by May 1, 2019. An amendment to this agreement with PMA subsequently occurred extending all services to be performed by December 31, 2020.

As it currently stands trees have been cleared along with the top layer and excavation has begun in order to lay drainage and install underground utilities before the pouring of foundation will start; however, there is no set time frame for the completion of the project, especially given the current global pandemic.

Appendix A

Town of Braintree

Financial History of August Petersen GL Funds (Since FY13)

Fund	Type	Activity Description	Dates	FY20	FY19	FY18	FY17	FY16	FY15	FY14	FY13
			Start of Year (SOY)	853,007	855,571	1,149,021	1,308,989	1,547,320	1,780,112	1,758,011	2,124,357
81	Revenue	Interest revenue	6/23/2013	-	-	-	-	-	-	-	26,653
81	Revenue	Revenue	6/30/2013	-	-	-	-	-	-	-	300
81	Expense	Splash Pad	6/30/2013	-	-	-	-	-	-	-	(393,300)
81	Revenue	Interest revenue	Monthly	-	-	-	-	-	-	22,101	-
81	Expense	Five Capital Management	3/25/2015	-	-	-	-	-	(250,000)	-	-
81	Revenue	Interest revenue	Monthly	-	-	-	-	-	17,208	-	-
81	Expense	Five Capital Management	9/2/2015	-	-	-	-	(125,000)	-	-	-
81	Expense	Five Capital Management	12/2/2015	-	-	-	-	(125,000)	-	-	-
81	Revenue	Interest revenue	Monthly	-	-	-	-	10,573	-	-	-
81	Revenue	Revenue	8/7/2015	-	-	-	-	1,096	-	-	-
81	Expense	Five Capital Management	10/12/2016	-	-	-	(65,000)	-	-	-	-
81	Expense	Five Capital Management	6/13/2017	-	-	-	(103,063)	-	-	-	-
81	Revenue	Interest revenue	Monthly	-	-	-	8,095	-	-	-	-
81	Expense	Five Capital Management	12/28/2017	-	-	(29,601)	-	-	-	-	-
81	Expense	BSC Partners LLC	2/28/2018	-	-	(302,337)	-	-	-	-	-
81	Revenue	Interest revenue	Monthly	-	-	38,487	-	-	-	-	-
81	Revenue	Interest revenue	Monthly	-	14,011	-	-	-	-	-	-
24	Expense	PMA consultants	5/8/2019	-	(9,180)	-	-	-	-	-	-
24	Expense	PMA consultants	5/22/2019	-	(1,785)	-	-	-	-	-	-
24	Expense	PMA consultants	6/27/2019	-	(5,610)	-	-	-	-	-	-
24	Expense	PMA consultants	7/31/2019	(5,160)	-	-	-	-	-	-	-
24	Expense	PMA consultants	8/28/2019	(4,745)	-	-	-	-	-	-	-
81	Expense	Studio Troika	8/28/2019	(15,000)	-	-	-	-	-	-	-
24	Expense	PMA consultants	9/25/2019	(6,975)	-	-	-	-	-	-	-
24	Expense	PMA consultants	10/30/2019	(8,975)	-	-	-	-	-	-	-
24	Expense	PMA consultants	1/2/2020	(5,350)	-	-	-	-	-	-	-
24	Expense	PMA consultants	1/2/2020	(10,535)	-	-	-	-	-	-	-
81	Expense	Studio Troika	1/2/2020	(50,000)	-	-	-	-	-	-	-
24	Expense	PMA consultants	1/29/2020	(4,840)	-	-	-	-	-	-	-
24	Expense	PMA consultants	3/4/2020	(11,016)	-	-	-	-	-	-	-
24	Expense	PMA consultants	6/10/2020	(15,517)	-	-	-	-	-	-	-
24	Expense	PMA consultants	6/25/2020	(11,788)	-	-	-	-	-	-	-
81	Revenue	Interest revenue	Monthly	7,988	-	-	-	-	-	-	-
			End of Year (EOY)	711,094	853,007	855,571	1,149,021	1,308,989	1,547,320	1,780,112	1,758,011

Town of Braintree

August Petersen GL Fund Expenditures (Since FY13)

<u>Vendor</u>	<u>Amount</u>	<u>Service provided</u>
BSC/5 Capital.....	(1,000,000)	Lease/development agreement
PMA consultants.....	(74,171)	OPM services
Studio Troika.....	(65,000)	Architectural drawings
Total	<u><u>(1,139,171)</u></u>	

<u>Description</u>	<u>Amount</u>
Splash Pad.....	<u>(393,300)</u>
Total Expenses	<u><u>(1,532,471)</u></u>