

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Jun 29 2021**

**SC Court of Appeals**

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179  
Appellate Case No. 2021-000136

Robert DeCiero, a resident of Long Bay Estates Subdivision,  
Myrtle Beach, South Carolina .....Appellant,

v.

Horry County, State of South Carolina.....Respondent.

**RECORD ON APPEAL**

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*Attorney for Appellant*

*Attorney for Respondent*

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STATE OF SOUTH CAROLINA ) ) COUNTY OF HORRY )	) ) )	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-26-8179
Robert Deciero, a resident of Long Bay ) Estates Subdivision, Myrtle Beach, ) South Carolina, ) ) Plaintiff, ) v. ) ) Horry County, State of South Carolina, ) Defendant )	) ) ) ) ) ) ) ) )	Order (ending action)

TRIAL DATE:	August 20, 2020
PRESIDING JUDGE:	Benjamin H. Culbertson
PLAINTIFF'S ATTORNEY:	Thomas C. Brittain
DEFENDANT'S ATTORNEY:	Elise F. Crosby
COURT REPORTER:	Natalie Dahl

This matter comes before the court on Plaintiff's Complaint, filed November 13, 2015. The Complaint was dismissed under Rule 12(b)(6), SCRCPP, appealed. The South Carolina Court of Appeals remanded the case for trial as a petition for Writ of Mandamus. *DeCiero v. Horry County*, 2018-UP-433 (S.C. Ct. App. December 5, 2018.)

The parties were present at the non-jury trial and the court took testimony from the Plaintiff and the Defendant's two witnesses. Both parties introduced exhibits for the Court's consideration. After hearing the testimony and reviewing the evidence, the Court makes the following findings of fact and conclusions of law:

Plaintiff's neighborhood is zoned SF-6, which permits single family homes and duplexes. Under Horry County Zoning Ordinance Section 431, a "family" is "an individual, or two (2) or more persons related by blood, marriage, or adoption, living together as a single household unit, or a group of not more than five (5) persons not related by blood, marriage, or adoption, living together as a single household unit."

Plaintiff believes homeowners in his neighborhood rent their homes out on a weekly basis. He presented photographs of rental signs in front of beach houses. He believes some have "seven or eight bedrooms." Horry County's previous and current planning directors testified Horry County has no restriction on short-term rental in Plaintiff's zoning district. They also testified there

is no maximum occupancy in Plaintiff's zoning district, and five large families unrelated to one another meet the Horry County definition of family, as written.

Horry County Zoning Ordinance Section 1306 states "Whenever a violation of this ordinance occurs or is alleged to have occurred, any person may file written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator." The Planning Director testified the county offers a voluntary form for complaint allegations, created while the case was pending, which complies with the requirement for a written report. He testified if the county receives an investigable complaint—whether on the form or otherwise in writing--about an address and date of an alleged violation, he would initiate an investigation.

Other than one 2004 zoning complaint made by Plaintiff, resolved to his satisfaction, Plaintiff has not made a specific complaint alleging a zoning violation. Plaintiff did not offer any evidence or testimony that he had submitted any investigable complaint to the county. He alleged houses were "rented on a weekly basis...to large groups of people, that greatly exceed the number of occupants allowed by this ordinance." The county has not received a complaint from the Plaintiff identifying a parcel, or a date, or a violation. Without a specific complaint, there is no basis for investigation, much less enforcement.

I find there was no specific allegation of zoning violation ripe for investigation at the time of filing or at trial. Thus, there was no failure to enforce for the court to review. "The existence of an actual, justiciable controversy is essential... a real and substantial controversy which is ripe and appropriate for judicial determination..." *Eagle Container v. County of Newberry* 666 S.E.2d 892 (2008.)

The Writ of Mandamus is available to this Court to direct a party to perform a ministerial act. Plaintiff made no request for a ministerial act. The county's testimony was there is no such act, and the court has not identified a duty to perform any ministerial act in this case. Mandamus "is the highest judicial writ known to the law.... The primary...function of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty." *Willimon v. City of Greenville*, 243 S.C. 82, 86-87 (1963). The petitioner must show: (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 437, (1994) (citing *Willimon, supra*). The duty to perform an act must be indisputable. *Central South Carolina Chapter, Society of*

*Professional Journalists v. U.S. District Court*, 551 F.2d 559, 562 (4th Cir. 1977). Whether to issue the writ lies within this court’s sound discretion. *Charleston Co. School Dist. v. Charleston Co. Election Comm’n*, 336 S.C. 174 (S.C. 1999.)

First, the County has no duty to investigate in the absence of a complaint. Plaintiff supplied no information as to time, location, or basis for any alleged violation of the Zoning Ordinance. Second, there is no ministerial act being sought, and none to direct, in the absence of a duty. Third, the Plaintiff has no specific legal right to marshal county zoning inspectors to “enforce” without there being something specific to investigate and determine to be in violation. Lastly, the Plaintiff acknowledged he did not want to pursue other legal remedies, such as enforcement of private restrictive covenants, or zoning ordinance amendment.

The Plaintiff has made no investigable complaint to the County in 16 years. There is no “alleged violation” to remedy. This claim is not ripe. He has also failed to establish the county has an imperative duty enforceable by a writ of mandamus, and his petition is therefore DENIED and this case is DISMISSED.

Nothing herein is intended to prejudice the Plaintiff in making a written complaint about suspected specific zoning violations in the future, compliant with the County’s Zoning Ordinance.

AND IT SO ORDERED.

---

Benjamin H. Culbertson  
Presiding Judge, 15<sup>th</sup> Judicial Circuit

\_\_\_\_\_, South Carolina  
September \_\_\_\_, 2020



Horry Common Pleas

**Case Caption:** Robert DeCiero , plaintiff, et al VS Horry County , defendant, et al  
**Case Number:** 2015CP2608179  
**Type:** Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-09-23 10:54:08 page 4 of 4

ELECTRONICALLY FILED - 2020 Sep 23 1:29 PM - HORRY - COMMON PLEAS - CASE#2015CP2608179

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP2608179

Robert DeCiero et al  
PLAINTIFF(S)

Horry County et al  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

The plaintiff's Motion to Reconsider dated 9/29/2020 is DENIED.

ORDER INFORMATION

This order  ends  does not end the case.  See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/14/2021 .

South Carolina State of  
Long Bay Estates Subdivision  
Horry County

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Horry Common Pleas

**Case Caption:** Robert DeCiero , plaintiff, et al VS Horry County , defendant, et al  
**Case Number:** 2015CP2608179  
**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-01-14 12:45:23 page 3 of 3

ELECTRONICALLY FILED - 2021 Jan 15 8:26 AM - HORRY - COMMON PLEAS - CASE#2015CP2608179

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Robert DeCiero, a resident of Long Bay Estates Subdivision, Myrtle Beach, South Carolina,

Plaintiff,

v.

Horry County, State of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No.: 2015-8179

**SUMMONS**  
(Non-Jury Trial Demanded)

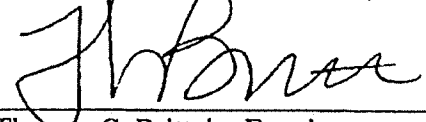
2015 NOV 13 PM 1:38  
Horry County  
CLERK OF COURT  
MELANIE HARRIS-WARD

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorney, Thomas C. Brittain, at The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina on the 12<sup>th</sup> day of November, 2015.

THE BRITTAIN LAW FIRM, P.A.

  
Thomas C. Brittain, Esquire  
4614 Oleander Drive  
Myrtle Beach, SC 29577  
(843) 449.8562  
(843) 497.6124 (Fax)  
Attorney for Plaintiff

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
Robert DeCiero, a resident of Long Bay  
Estates Subdivision, Myrtle Beach, South  
Carolina,

Plaintiff,

v.

Horry County, State of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No.:

2015-8179

**COMPLAINT**  
(Non-Jury Trial Demanded)

2015 NOV 13 PM 1:38  
MELANIE HUGHES-WARD  
CLERK OF COURT  
HORRY COUNTY

NOW COMES the Plaintiff, by and through his undersigned attorney, Thomas C. Brittain, hereby complaining of the Defendant, would allege and show unto this Court as follows:

1. That Plaintiff, Robert DeCiero, a resident of Long Bay Estates Subdivision, Myrtle Beach, South Carolina (hereinafter referred to as "Plaintiff") is a long-time citizen and resident of the State of South Carolina, County of Horry.

2. That Defendant Horry County, State of South Carolina (hereinafter referred to as "Defendant") is a governmental entity, operated as a political subdivision of the State of South Carolina, with its principal place of business in Horry County.

3. That Long Bay Estates Subdivision, a once sleepy little neighborhood, is tucked away close to the ocean between the King's Highway and the Atlantic.

4. That it contains many retirees and wonderful family groups.

5. During its creation as a subdivision over fifty years ago residential restrictions were placed on the subdivision and, for many years now, the viability of those restrictive covenants has been litigated and has been resolved in the favor of the legitimacy and validity of those covenants.

6. That Defendant is a body politic of long, great standing in South Carolina famously known as the Independent Republic of Horry operating under a council-manager form of

government that each and every council member is duly elected and functions under the constitution of the State of South Carolina.

7. That throughout the years and with increasing impact on the neighborhood setting of Long Bay Estates new property owners have constructed larger homes and began to rent on a weekly basis to large numbers of individuals, thereby creating traffic nightmares, late-night parties, congestion, excessive noise levels, etc., all detrimental to the peace and quiet of the neighborhood.

8. Upon information and belief, each and every home in the Long Bay Subdivision is currently zoned as a SF6 residential district and, as such, is to be comprised of single family and duplex family dwellings. That scores of owners support this Complaint and Plaintiff as their representative.

9. Furthermore, that according to Article IV Section 431 of the Horry County Zoning Ordinance, a family is defined as “an individual or two or more persons related by blood, marriage or adoption living together as a single household unit, or, a group of not more than 5 persons not related by blood, marriage, or adoption, living together as a single family household unit”. It is clear that the single family and duplex family homes located in Long Bay Estates that are currently being rented on a weekly basis are renting to large groups of people, many unrelated, certainly in excess of 5 (some of the homes have 7 bedrooms) that greatly exceed the number of occupants allowed by this ordinance. These large groups bring with them to this subdivision excessive traffic, excessive noise and excessive trash all of which is a nuisance to the homeowners in the area and all of which is to be prevented by the enforcement of the Horry County Zoning Ordinances.

10. Further, under Article XIII Section 1300 of the Horry County Zoning Ordinance it clearly states that “The Horry County Council shall fund sufficient personnel to administer and enforce the provisions of this ordinance. If the Zoning Administrator shall find that any of the

provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alter alterations, or structural changes, discontinuance of any illegal work being done: or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provision.”

11. Furthermore, based on numerous complaints, County personnel have been aware of the violations of these ordinances for quite some time in the Long Bay Estates area.

12. That on numerous occasions the Plaintiff and others have presented to the very fine and responsible administrative staff of Defendant hard evidence and proof of the violations of these zoning ordinance provisions and asked for enforcement of the same. These violations continue unabated.

13. Further, this Plaintiff is prepared to show that there have been repeated violations in the past and that they continue on a weekly basis at the following residences located within Long Bay Estates Subdivision: 4903 Southern Exposure, LLC, Black Magic Beach Property, LLC, Edward J. Edelen, III, Gibson Long Bay, LLC, James and Patricia Turek, Long Bay Investments, LLC, No Egrets, LLC, Reginald Brasington, et al, Timothy and Amy Wilson, Anil Om, et al, Danny Perdue, et al, Frank and Sandra Holley, Glenmark Holding Limited Liability Company d/b/a Glenmark Holding, LLC, Janet Nease, Kevin and Deborah Riddett, Mariposa, LLC, Orders, LLC, Saleema S. Cobb, Ann B. Engles, Demetrio Katsudas, et al, Geneva Johnston, Heather Hall Martin Swift, et al, Long Bay Investment Properties, LLC, Merrill E. Gershwin, et al, Paul and Barbara Lewis and Susan Martin.

14. Further, that such action includes renting to more than 1 family unit within the terms of the ordinance, also on a repetitive basis, all in violation of the applicable ordinances.

15. Further, that this Plaintiff seeks enforcement by the Defendant pursuant to Article XIII Section 1300 of the zoning ordinance.



---

Thomas C. Brittain, Esq.  
THE BRITTAIN LAW FIRM, P.A.  
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Myrtle Beach, SC 29577  
(843) 449-8562 (Telephone)  
(843) 449-6148 (Fax)  
Attorney for the Plaintiffs

November 12, 2015  
Myrtle Beach, South Carolina

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD  
2 COUNTY OF HORRY ) CASE NO.: 2015-CP-26-08179

3 ORIGINAL

4 -----

5 August 20, 2020

6 BEFORE: The Honorable Benjamin Culbertson

7 -----

8 Robert DeCiero,

9 Plaintiff,

10 vs.

11 Horry County,

12 Defendant.

13 -----

14  
15 APPEARANCES:

16  
17 Thomas C. Brittain, Esq.  
18 Appearing for the Plaintiff.

19 Elise Crosby, Esq.  
20 Appearing for Defendant.

21  
22  
23 Official Court Reporter:  
24 Natalie Dahl, RPR

25  
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## I N D E X

## WITNESSES

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## PLAINTIFF'S EXHIBITS

		MARKED	ADMITTED
1	Packet with pictures	4	24
2	Picture	4	24
3	Picture	4	24
4	Picture	4	24
5	Picture	4	24
6	Picture	4	24
7	Picture	4	24
8	1300 & 1301 ordinance	4	24
9	SF-6	4	24
10	Zoning district sheet	4	24
11	Deft's Response Plf's request	4	24
12	Notice	4	24
13	Letter 4-16-04 Edelen/Meyer	4	24
14	Letter 6-2-15 Carter/Brittain	4	24
15	Letter 6-12-15 Brittain/Carter	4	24
16	Letter 6-19-15 Carter/Brittain	4	24
17	Letter 8-8-05 Brittain/Carter	4	24
18	Memorandum	4	withdrawn
19	Letter 9-21-15	4	24
20	Memorandum	22	--
21	Redaction of Exh. 20	60	60

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only\*\*

## 1 DEFENDANT'S EXHIBITS

2			MARKED	ADMITTED
3	1	Legal notice	4	36
	2	Restriction	4	29
4	3	Letter 7-25-05	4	44
	4	Letter 8-8-05 Brittain/Carter	4	57
5	5	Letter 1-13-06	4	--
	6	Letter 6-1-11 DeCiero/Benson	4	57
6	7	Letter 6-26-17	4	37
	8	Map	4	85
7	9	Letter Edelen/Meyer	4	--
	10	5-6-04 minutes	4	85
8	11	Letter 6-2-15 Carter/Carotti	4	85
	12	Letter 6-12-15 Brittain/Carter	4	85
9	13	Letter 6-19-15 DeCiero/Brittain	4	85
	14	Letter 9-17-15 Carter/Carotti	4	--
10	15	Letter 9-21-15 Brittain/Carter	4	--
	16	Phone message 6-16-11	4	--
11	17	Ordinance 23-19	4	--
	18	Complaint form	4	109
12	19	Section 6-29-1145	4	--
	20	1300 Code	110	--
13	21	1306 Code	110	--

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: It's a little early. Good morning.  
3 Since we had one witness that was appearing via video,  
4 I wanted to get that going.

5 (A discussion was had off the record.)

6 (Plaintiff's Exhibits 1-19 marked.)

7 (Defendant's Exhibits 1-19 marked.)

8 THE COURT: This is Case 2015-CP-26-8179, Robert  
9 DeCiero, resident of Long Bay Estates Subdivision,  
10 Myrtle Beach, South Carolina versus Horry County State  
11 of South Carolina. Matter is before the Court for  
12 trial. Present at the call of the case is Thomas C.  
13 Brittain, plaintiff's counsel; Elise Crosby as  
14 defendant's counsel.

15 Anything pretrial that we need to address?

16 MR. BRITTAIN: You know, I think this is really  
17 simple and short. I don't think it takes very long.  
18 I think the issues are clear. I don't know.

19 THE COURT: Any pretrial motions or anything we  
20 can stipulate to?

21 MR. BRITTAIN: She has defenses, but I don't  
22 think they are in the form -- I'll let her speak for  
23 herself, but I don't think there are any motions that  
24 won't take place as part of the trial.

25 THE COURT: I got you.

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1 MS. CROSBY: I agree with that, Your Honor. My  
2 only issue pretrial is yet another technology issue,  
3 which was turning my volume down, and we've taken care  
4 of that.

5 THE COURT: All right.

6 Ms. Carter, can you hear everything all right?  
7 I'll have to un-mute you, I apologize.

8 MS. CARTER: Yes. I can't hear the attorneys  
9 quite as well as I can you, but I can hear.

10 MR. BRITTAIN: Can we have a little opening  
11 statement?

12 THE COURT: Yeah.

13 MR. BRITTAIN: I think I can shorten some of the  
14 issues explaining what our position is. Going back  
15 and looking at some of the complaint and discussions  
16 back and forth, there may be some confusion that I  
17 think I can clear up, and so you know where I'm headed  
18 with my case.

19 THE COURT: Right.

20 MR. BRITTAIN: This is an old neighborhood. I  
21 don't think -- if you have been out to Long Bay, it is  
22 a nice spot between the ocean and 17, just south of  
23 Myrtle Beach State Park. I've been representing them  
24 for 20-something years. There has been all kinds of  
25 litigation over there. Judge Cross issued all sorts

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1 of orders trying to preserve the nature of the  
2 neighborhood.

3 What has happened in the last 10 or 15 years is  
4 there is major construction of some gigantic houses.

5 MS. CROSBY: I don't have any explanation, it's  
6 just testimony.

7 MR. BRITTAIN: Well, I'm just trying to give you  
8 background. But, anyway, we have photographs and  
9 personal observations of numerous people, a  
10 substantial number of people, on a regular basis  
11 staying in those homes, you know, with seven, eight  
12 cars outside, that sort of thing. So there was  
13 discussion about short-term rentals in this case. I'm  
14 not seeking a writ or requirement based on short-term  
15 rentals. I believe a fair interpretation of the  
16 zoning ordinances would tend to say there shouldn't be  
17 short-term rentals, but it is not clearly stated. So  
18 this is the conversation that Ms. Carter and I had  
19 over the years, and Mr. DeCiero. I'm not asking this  
20 Court to rule that there is a zoning ordinance in  
21 Horry County that prevents short-term rentals.

22 What we're asking the Court to do is look at the  
23 zoning ordinance that applies to these properties.  
24 SF-6, which states -- and I have a copy of it for you.  
25 It states that in a residential zone in this zoning,

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1 there will be no multifamily use. It defines family  
2 as a number of five. So it is a density oriented  
3 zoning ordinance.

4 THE COURT: There is no more than five not  
5 related by blood or marriage?

6 MR. BRITTAIN: That's right.

7 THE COURT: You can have more than five if you  
8 are related by blood or marriage; in other words, you  
9 can't rent -- your argument is you can't rent out a  
10 house to more than five people?

11 MR. BRITTAIN: Right. I mean, ball teams where  
12 they have buses that pull in there and, you know, 20  
13 kids get out and go in there day in and day out, you  
14 know.

15 So then there is another part of the ordinance  
16 legislation there, which says that, you know, the  
17 County, once they are confronted with an allegation of  
18 this, they have an obligation to use substantial force  
19 or whatever is necessary to enforce the zoning  
20 ordinance. So that is all I'm in here trying to do.  
21 There is no claim for damages. You know, the public  
22 duty rule has no application here. We're not seeking  
23 damages. You seek that in negligence cases.

24 THE COURT: I guess my question is: The zoning  
25 ordinance, SR-6, basically defines, as I know -- and I  
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1 may be wrong, but as I understand it, that zoning  
2 ordinance tells what can be built, single-family units  
3 and duplexes.

4 MR. BRITTAIN: Let me read it to you. I'll find  
5 it in a second. Here it is. This is 707 SF-6,  
6 residential district. Everyone admits that is what  
7 applies here; that is not an issue.

8 "It is the intent of the district to provide  
9 areas for medium density, one and two family  
10 residential purposes. Encroachment by high density,  
11 multifamily residential, commercial, industrial, or  
12 other uses incapable with or capable of adversely  
13 affecting the residential care of this district shall  
14 be discouraged." That is what we're saying. We're  
15 saying that you have an obligation to make sure if you  
16 are going to enforce your zoning, that a bus with 20  
17 kids can't come in and stay in one of those beach  
18 houses.

19 THE COURT: What are you saying that the County  
20 should do that they are not doing?

21 MR. BRITTAIN: Well, what I'm saying the County  
22 should do first is investigate and advise. Now, we  
23 have here -- way back in the day, Roland Meyer was the  
24 zoning administrator, and he sent a notice to one of  
25 the people down there and told them that evidence has

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1     come to light that you are misusing it based on this  
2     SF-6, and the numbers of people in there. It said in  
3     there we can't stop you from renting on a weekly  
4     basis, but we can stop you from having multiple  
5     parties and groups in there. That is part of this  
6     case. That notice was sent years ago. So all we've  
7     been asking them to do is return to that process.

8             THE COURT: But, I mean, other than sending a  
9     letter, what is it you are saying that the County  
10    should do?

11            MR. BRITTAIN: I'm saying the letters first; and  
12    if not, they have all sorts of power. They can order  
13    cease and desist, you know. There is -- this is --  
14    this is really -- and Elise picked this up, she did it  
15    better than I did, but this is a writ of mandamus, is  
16    what this is, and this is what the court of appeals  
17    said this is.

18            THE COURT: Excuse me for interrupting, but a  
19    writ of mandamus is you are saying you should do  
20    something that you are legally obligated to do, that  
21    you are not doing?

22            MR. BRITTAIN: That's right.

23            THE COURT: I know you are saying they should  
24    enforce it. How should they enforce it? Are you  
25    saying send police out there and arresting them, or?

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1 MR. BRITTAIN: That would be the last resort.

2 THE COURT: What would the penalty be for someone  
3 you arrested?

4 MR. BRITTAIN: To stop. To -- I mean, we're not  
5 looking for damages from anyone. The remedy is here  
6 is what the zoning ordinance says, there is evidence  
7 you are violating it, stop doing it. If you don't  
8 stop, we'll take additional action to see that you  
9 stop.

10 THE COURT: But what is that additional action?

11 MR. BRITTAIN: Well, I think the next thing would  
12 be they would come into court, and if you or some  
13 other circuit judge says, look, there is proof you  
14 have been doing this, you have been notified you are  
15 doing it, and I'm ordering you to cease and desist  
16 from this type of use of the property because it  
17 violates the zoning ordinance. If they didn't do what  
18 you told them, call them back in and cite them for  
19 contempt. Somewhere along the line, that effort to  
20 enforce would probably work.

21 The main thing about this opening statement is  
22 not to get off on short-term rental issues, because  
23 she's right about that, and I'm conceding to that. It  
24 bothers them that they have weekly turnover in there,  
25 but there is no fair argument to be made under the

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1 zoning ordinances, that I see. I think Ms. Carter has  
2 been right that short-term rentals, you can't do  
3 anything about it based on the zoning ordinances; but  
4 density, we can. So that is all I'm asking, that the  
5 County be required to investigate, and when there is  
6 violations, notify and do what is within their legal  
7 authority to stop these things. That's all we're  
8 asking.

9 THE COURT: All right. Ms. Crosby, anything you  
10 want to say?

11 MS. CROSBY: Thank you, Your Honor. Just  
12 briefly. I think that Mr. Brittain has given me a  
13 little more credit than I was entitled to. It was not  
14 I that discovered the writ of mandamus as what he pled  
15 out to the court of appeals. So I think that is what  
16 we're back here on, that the court of appeals has  
17 determined that there is an implied cause of action  
18 for a writ of mandamus. That is a ministerial act  
19 that the government has a duty to perform, and I  
20 submit to the Court that at the end of the testimony  
21 and evidence, that this Court can make a determination  
22 that there may be several different paths for  
23 Mr. DeCiero to seek the relief he wants, but that this  
24 courtroom with this particular defendant seeking some  
25 ministerial act to be done is not the proper place.

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1 THE COURT: All right.

2 Mr. Brittain, call your first witness.

3 MR. BRITTAIN: Mr. DeCiero.

4 (ROBERT DeCIERO, having been duly sworn,  
5 testified as follows:)

6 THE WITNESS: Robert DeCiero.

7 THE COURT: All right. If you could, speak up  
8 good and loud.

9 DIRECT-EXAMINATION

10 BY MR. BRITTAIN:

11 Q Bob, give us your background. Where are you  
12 from? When did you move to Horry County, and what did  
13 you do in your life before you moved down here?

14 A Well, I spent 25 years on the Massachusetts State  
15 Police. I have a master's in criminal justice. I was  
16 down at Lakewood Campground for years, and then I  
17 stayed at the Myrtle Beach Resorts. When I was staying  
18 at Myrtle Beach Resort, we were up on the highrise and  
19 I could see there were homes up there. So I drove up  
20 the road, and I saw a sign at the entrance saying  
21 "private residential neighborhood." I said, This would  
22 be the place to live. So I drove in and ended up  
23 buying a home from Mr. Barnes, who said it was SF-6  
24 residential. And so....

25 Q When was that?

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1 A '91.

2 Q You have a wife, Sandy. And you all lived there  
3 since '91?

4 A I do.

5 Q You all right?

6 A Yeah (witness crying).

7 Q Now, you have been in here and heard what the  
8 nature of the lawsuit is, at least what I'm claiming  
9 the nature of the lawsuit is concerned. Do you have  
10 other members of the Long Bay Estates that are  
11 supporting you in this?

12 A Yes. The voluntary association has chipped in a  
13 lot of money.

14 Q But you are acting on behalf of many others who  
15 have the same complaints about what is happening in  
16 Long Bay?

17 A Yes.

18 Q Have you had an opportunity over the years to  
19 have any meetings or communication with county  
20 officials about the conduct that you complain of down  
21 there?

22 A Yeah, Judge Cross and Judge Howe.

23 Q Those are the judges, but let's talk about county  
24 officials that you have contacted in some way, shape,  
25 fashion, or form and made your complaints about what

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1 was happening down there?

2 A Yeah. Yes. John Weaver never returned messages.

3 Q You had conversations with John Weaver about this  
4 problem?

5 A I tried.

6 Q And when you were having these conversations,  
7 were you telling him what was going on?

8 A Yes.

9 Q Were you complaining about it?

10 A I was complaining because they were building  
11 eight bedroom, eight bathroom homes down on Ocean  
12 Boulevard, and that is clearly defined in SF-6.

13 Q Have you made a practice to go down there and see  
14 what is happening?

15 A Oh, yes.

16 Q Let me hand you what is marked Plaintiff's  
17 Exhibit No. 1. If you could go through that entire  
18 exhibit and explain to us what these pictures show.

19 MS. CROSBY: Mr. Brittain, which one is 1?

20 MR. BRITTAIN: Oh, I'm sorry. The big one.

21 Yeah, that's it.

22 MS. CROSBY: Okay.

23 A It just shows 20 and 30 cars parked at each unit  
24 every day during the week. Buses dropping off people  
25 and staying at the units. And they had street parties

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1 up at Dr. Terrid's (phonetic) house. And the Vilagios  
2 (phonetic), I have records where they had strippers  
3 coming in and everything else. It is everything but  
4 residential. I have all of the proof.

5 Q (MR. BRITTAIN) Did you make any of that  
6 information known to John Weaver, Janet Carter, any of  
7 the county public officials?

8 A Janet Carter was aware of what is going on, and  
9 she even said it was never meant for transient  
10 accommodations.

11 Q Have you -- listen to my question. Have you  
12 discussed with county officials the problem with the  
13 misuse down there by too many people being in the  
14 homes?

15 A Yes.

16 Q You made that clear on numerous occasions?

17 A Yes. The signs out in front of the homes, that  
18 is not residential.

19 Q I'll get to that.

20 (A brief pause in the proceedings.)

21 Q (MR. BRITTAIN) Let me show you what is marked or  
22 submitted as Plaintiff's Exhibit No. 12; are you  
23 familiar with that document?

24 A Yes, I am.

25 Q It says it is a notice to all Horry County

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1 homeowners and business owners; were you involved in  
2 any way in having that notice provided by Mr. Meyer?

3 A Well, it all started with a bus that was parked  
4 on Dogwood Drive, and it ended up that there were a  
5 busload of people down at one of the residence homes,  
6 and that is what prompted him to come over.

7 Q Okay. So in response to what was happening, he  
8 sent out this notice to all Horry County homeowners and  
9 business owners; is that correct?

10 A Yes. As far as I know, yes.

11 Q And in it he sets forth what types of groups can  
12 be in a particular building in that area; is that  
13 correct?

14 A That's correct.

15 Q I'll hand you Plaintiff's Exhibit 13 and ask if  
16 you recognize that?

17 A Yes.

18 Q Who is Ed Edelen?

19 A Ed Edelen is a homeowner down on Ocean Boulevard.

20 Q In the Long Bay subdivision area?

21 A Yes. Yes.

22 Q And you listed him in your complaint as one of  
23 the properties you were complaining about?

24 A Yes.

25 Q And you notified Roland Meyer with the problems

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1 he had at his place?

2 A Right.

3 Q What does that show there? Who is that from?

4 A This is from Roland Meyer.

5 Q To who?

6 A To Ed Edelen.

7 Q Last sentence: "This letter serves as a warning  
8 for any future violations. Violation of this section  
9 may result in citations and associated fines," right?

10 A Yes.

11 Q Let me show you Plaintiff's Exhibit No. 14.

12 A Yes.

13 Q Do you remember that?

14 A Yes.

15 Q At some point in time, did you retain Brittain  
16 Law Firm to pursue this matter?

17 A Yes.

18 Q And this letter dated June 2, 2015 to Ms. Janet  
19 Carter and Arrigo P. Carotti was a result of a  
20 conversation you and I had and a request you made to  
21 me?

22 A Yes.

23 Q And does it refer to that? This is a formal  
24 complaint regarding violations of Horry County Code  
25 Ordinance?

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1 A Yes. If I remember correctly, I accompanied you  
2 over there.

3 Q Okay. I'll hand you what is marked as  
4 Plaintiff's Exhibit No. 15; if you can identify that  
5 for us?

6 A Yes.

7 Q And that is the response from Janet Carter?

8 A Yes.

9 Q Exhibit No. 16, what is that?

10 A I received your correspondence regarding Long  
11 Bay -- (witness continues to read to himself).

12 Q So we were asking to have a meeting?

13 A Yes.

14 Q Did we have a meeting?

15 A Yes.

16 Q Where we discussed these issues?

17 A Yes.

18 Q With both the attorney for the County and  
19 Ms. Carter?

20 A That's correct.

21 Q As we sit here today, is this conduct still  
22 occurring?

23 A Yes.

24 Q We've been in a summer season; have you been down  
25 there to see what is going on?

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1 A Yes. Fireworks at night, just hell.

2 Q And so, obviously, what we complained about --  
3 this lawsuit was filed 2015, been up to the court of  
4 appeals, and it has come back. So there is questions  
5 about exactly what the conduct was that we're  
6 complaining about in terms of timing, but the same  
7 thing is happening today down there; isn't that  
8 correct?

9 A That's correct.

10 Q So none of that has changed?

11 A No.

12 Q So what are you asking the Court to do,  
13 Mr. DeCiero?

14 A We would like to bring it more or less back to a  
15 residential neighborhood.

16 Q And what do you expect them to do?

17 A I really don't know what to do with these big  
18 seven bedroom, seven bathroom homes. Maybe some doctor  
19 or an attorney may want to buy it, make a law library  
20 or whatever, but, I mean, this has to end.

21 Q Are you asking someone from the County to enforce  
22 the zoning ordinance?

23 A Yes. Yes.

24 Q And have you done all you think you can do to  
25 apprise them of what the problems are?

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1 A Yes.

2 Q All right, sir.

3 MR. BRITTAIN: Your Honor, I'll move to introduce  
4 all of these exhibits. I didn't go through some of  
5 them with him.

6 THE COURT: I mean, I have 1, 13, 14. What else  
7 has he testified to?

8 MR. BRITTAIN: We have 19 -- these are basic  
9 communications between me and the County. There was a  
10 memorandum sent to the County. 17, 18, 19, 2. What's  
11 the problem?

12 MS. CROSBY: I'm trying to look at what they are.

13 THE WITNESS: Can you show the judge -- it is  
14 right in the bottom here, these here, that these are  
15 in front of all of the homes?

16 MR. BRITTAIN: Yeah, I'm asking to put those in.

17 THE WITNESS: Okay.

18 THE COURT: The ones that were not referenced in  
19 the testimony are what numbers?

20 MR. BRITTAIN: Say again, Judge? The ones that  
21 were referenced?

22 THE COURT: I have 1, 13 and 14, is what he  
23 testified to, is the only ones I have that he  
24 testified to.

25 MR. BRITTAIN: I know he testified as to 12.

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1 THE COURT: I may have missed the second one he  
2 testified to.

3 MR. BRITTAIN: This one was not in there. I  
4 didn't ask him to go through that. This one wasn't in  
5 there; that is the list of the zoning.

6 MS. CROSBY: I have no issues to the zoning or  
7 county ordinance. We can stipulate to all --

8 THE COURT: Tell me which ones you object.

9 MS. CROSBY: The only one is the memorandum.

10 MR. BRITTAIN: Yeah, okay. Let's talk about  
11 that.

12 THE COURT: Which one is that?

13 MS. CROSBY: With regard to the pictures, I have  
14 no objection to any of these on behalf of the County,  
15 but I don't think the pictures were authenticated as  
16 for the date and who took them, so I ask -- I can do  
17 that on cross.

18 MR. BRITTAIN: I know I saw it right there.

19 MS. CROSBY: If you don't have it, that's fine.

20 MR. BRITTAIN: Oh, no, I want you to see it.

21 MS. CROSBY: I read it.

22 MR. BRITTAIN: I want the Judge to see it,  
23 because we have to talk about whether that can go in  
24 or not.

25 Here it is. My theory on this --

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1 THE COURT: What is that? How is it marked? Get  
2 it marked.

3 COURT REPORTER: Plaintiff's 20.

4 (Plaintiff's Exhibit 20 marked.)

5 MR. BRITTAIN: August 17, 2015. It is a  
6 memorandum to Horry County from me. One of the  
7 allegations that the defense is making is we really  
8 haven't told them enough, we haven't really  
9 complained, we haven't given them a basis to go out  
10 there and do anything. So this document, along with  
11 many of those I've introduced, is designed to show  
12 that we have engaged them with substantial  
13 information.

14 THE COURT: I understand. Before you go too far,  
15 we're in the trial of the case and they haven't  
16 brought that issue up yet. So if she objects, I'm  
17 going to sustain her objection and not let that come  
18 in. Now, if in her defense she makes that argument  
19 that you haven't done enough, that you haven't  
20 complained enough and stuff, that might render it  
21 admissible at that point, but as far as right now, I  
22 don't know that it is ripe to come in.

23 MS. CROSBY: Thank you, Your Honor.

24 Q (MR. BRITTAIN) Bob, before I let you go, those  
25 pictures that you --

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1 A These things, they are in front of every  
2 residential home there.

3 Q Plaintiff's 2, what is that?

4 A It is one of the Beach Realty signs that says  
5 "Paradise Found," and it gives a number to call and  
6 everything else, so that if people driving through  
7 there, they call and make a reservation and then you  
8 end up with another 15 cars in the driveway.

9 Q All of these pictures are of the -- you have  
10 several pictures like that in here?

11 A Yes, every one of them.

12 MR. BRITTAIN: That is all I have.

13 THE COURT: Let's identify what exhibits you are  
14 tendering into evidence.

15 MR. BRITTAIN: How many do we have?

16 COURT REPORTER: Altogether, 20.

17 MR. BRITTAIN: I'm tendering all 20.

18 THE COURT: I have already sustained her  
19 objection to 20.

20 I'll hear from you on Exhibits 1 through 19.  
21 Come up and look at Plaintiff's Exhibits 1 through 19  
22 and let me know what you object to.

23 MS. CROSBY: Your Honor, I don't have any  
24 objection to admissibility.

25 THE COURT: All right. Plaintiff's Exhibits 1

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1 through 19 are admitted without objection. Exhibit 20  
2 is sustained at present.

3 MS. CROSBY: Thank you.

4 (Plaintiff's Exhibits 1-19 admitted.)

5 MR. BRITTAIN: That's it, Your Honor.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. CROSBY:

9 Q Mr. DeCiero, I spent a lot of time with your  
10 information and I'm not unsympathetic being a resident  
11 myself on Highway 17, but you live in this  
12 neighborhood, and I believe you testified that you  
13 lived there since 1991?

14 A I bought the house in '91. My wife was there  
15 with my mother, who had Alzheimer's, and I retired in  
16 '95.

17 Q Your home was built when? Do you know when your  
18 home was built?

19 A '86.

20 Q And you know that this neighborhood -- you've  
21 characterized it as a sleepy neighborhood in '91; is  
22 that still your characterization?

23 A Yeah. That was after Hugo, and there really was  
24 nothing -- Hugo wiped out everything, except my home  
25 and some of the others that were elevated at 15 feet.

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1 Q You testified that it was SF-6, but it was  
2 actually SF-7 at that time, correct?

3 A No. It was always SF-6. I know there is  
4 documents that say SF-7. SF-7 is upper Long Bay where  
5 it's just single family residences, and SF-6 allowed  
6 for a duplex, and there is only, like, two duplexes in  
7 the whole place.

8 Q All right. So your neighborhood, Long Bay  
9 Estates, is really single family homes?

10 A Yes.

11 Q So these homes in the pictures are single family  
12 homes, aren't they?

13 A Not the one down on the Boulevard. They don't  
14 live on them year round. There are people from Canada  
15 that owns them, people from -- I know there is a guy  
16 from Los Angeles. There is people from all over the  
17 place that own them.

18 Q All right. When I say "single family home," are  
19 you trying to challenge that the building permits were  
20 issued for those residences?

21 A Obviously, the building permits they didn't  
22 recognize the fact that it is a seven bedroom, seven  
23 bathroom home being built, and it is obviously not for  
24 residential purposes.

25 Q Mr. DeCiero, you know it is true that a single  
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1 family can have seven bedrooms and seven bathrooms and  
2 still meet the Horry County construction standards for  
3 a single family house, right?

4 A Okay. Okay. But not....

5 Q Right?

6 A Yeah.

7 Q And that is true for even eight bedrooms or eight  
8 bathrooms, right?

9 A (Witness nods head.)

10 Q And in your neighborhood, Long Bay Estates, you  
11 have specific setbacks. I mean the County in the  
12 zoning ordinance puts setbacks and building  
13 restrictions on what you can place, and in SF-6 there  
14 are setbacks; is that correct?

15 A Yes.

16 Q And you have challenged -- you know how to do  
17 this -- you've actually challenged appeals for  
18 variances to setbacks on at least one occasion; is that  
19 correct?

20 A I would assume so.

21 Q Do you remember that?

22 A I don't remember which one it would be.

23 Q Do you remember going to the Board of Zoning  
24 Appeals and objecting to --

25 A Oh, yes.

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1 Q -- to setback variances? And those weren't  
2 granted; isn't that right?

3 A As far as I know.

4 Q Okay. And then your home -- briefly, on rentals;  
5 you can rent your home, right?

6 A That is not what it is there for. I would sell  
7 it first to a neighbor.

8 Q But you can. There is no law; isn't that right?  
9 You can rent your home?

10 A Yeah. Not on a weekly basis.

11 Q As a matter of fact, Mr. DeCiero, you could rent  
12 it on a weekly basis, and it looks like or sounds like,  
13 from your brief testimony, that there is a good bit of  
14 demand in your oceanfront neighborhood?

15 A I don't live on the oceanfront.

16 Q Your neighborhood is on the ocean; isn't it?

17 A Long Bay Estates is on the ocean, but I have  
18 letters that the developers and the Lewis family --

19 Q Are you talking from the '50s?

20 A Talking about letters that I just have back in my  
21 box there.

22 Q The Lewis family, is that the developers in the  
23 '50s?

24 A They were the ones that owned all of the land in  
25 there.

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1 Q So it was developed in the '50s. You know that  
2 because you have looked at restricted covenants and  
3 spent a lot of time going to Columbia to talk about the  
4 HOA Enforcement Bill, the Restrictive Covenant  
5 Enforcement legislation in South Carolina, and you are  
6 familiar with your neighborhood's private covenants;  
7 are you not?

8 A Yes.

9 Q And those private covenants -- let's see, No. 2.  
10 It might be premarked as Defense 2. I'm showing you  
11 what is marked as Defense 2 and ask if you recognize  
12 that?

13 A Oh, yeah; that is the deed restrictions from the  
14 developer.

15 Q Okay. And those apply to your lot and all of the  
16 other properties in your oceanfront neighborhood,  
17 right?

18 A That's correct.

19 Q And included in those are references to -- and  
20 this is a private agreement -- references to the  
21 ownership and the -- I guess -- what does it say? Let  
22 me direct you to this, Number D?

23 A Uh-huh.

24 Q If you could just read D and E, please, sir.

25 A D: This property shall be used only for private

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1 residential purposes and no more than one dwelling  
2 containing not more than two apartments or living units  
3 each for the occupancy and use of not more than one  
4 family with necessary outbuildings shall be erected  
5 thereon. No garage or apartments except for use of  
6 occupancy of servants -- back then, in those days -- on  
7 the premises may be included in a garage building.

8 MS. CROSBY: I move Defense 2 into evidence.

9 THE COURT: Any objection?

10 MR. BRITTAIN: No objection.

11 (Defendant's Exhibit 2 admitted.)

12 Q You have actually litigated over the restrictive  
13 covenants. You've brought a case on that document,  
14 correct?

15 A Yeah; Tommy Brittain brought a case.

16 Q And tell the Court about that.

17 A We brought a case against the Ammons family  
18 because they backfilled the pond and were going to put  
19 units on the property, and he went to court and we won  
20 the case.

21 Q That was a private enforcement of restrictive  
22 covenants; is that correct?

23 A Yes. And then we had another case on Woodview  
24 Lane, and we went to court and went up to the appellant  
25 court, and it was upheld there.

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1 Q That was a private case regarding the enforcement  
2 of those restrictive covenants?

3 A Yes.

4 Q And the restrictive covenants, in your view, are  
5 designed to maintain value in your neighborhood; is  
6 that fair to say?

7 A It is there to maintain residency.

8 Q Do you have -- one of those restrictive covenants  
9 is pre-design or review of houses that are going to be  
10 built in your neighborhood; do you do that?

11 A No one submits anything to me; I'm a homeowner.

12 Q "Plans for structures to be erected shall first  
13 be approved by the grantors before construction  
14 start" --

15 A I'm not the grantor. The Lewis family were the  
16 grantors.

17 Q Do people do that?

18 A They don't do anything. They do whatever they  
19 want.

20 Q So those are the private homeowners, and they are  
21 doing what they want?

22 A Scalese (phonetic) and Nestle (phonetic), they  
23 came in there after Hugo and put all of those big units  
24 in there. Even my friend that owned a home in there  
25 moved to California because he couldn't take it

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1 anymore.

2 Q You've described the neighborhood as "sleepy,"  
3 but let's talk about exactly where you are. Where is  
4 your house in that neighborhood?

5 A About 1500 feet back from the ocean sitting 15  
6 feet above sea level, and it survived Hugo.

7 Q All right. So in your neighborhood -- Long Bay  
8 Estates is where, just to put that in perspective; it  
9 is across from the Harley Davidson store?

10 A That's correct.

11 Q And next to it is a campground?

12 A Pirateland is on the south side; a state park is  
13 on the left.

14 Q So you are in a commercial area; is that fair to  
15 say?

16 A No; it is residential.

17 Q Your neighborhood is residential. Is your  
18 neighborhood gated?

19 A No. It is not a mandatory association. It was  
20 an association created by Lloyd Chinness (phonetic),  
21 and it's in the Secretary of State's Office.

22 Q You know you could if you wanted. If you as a  
23 group wanted to change it, you could add that as a  
24 restrictive covenant, some private gate, right?

25 A No.

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1 Q Do you employ private security officers?

2 A No.

3 Q No. But you could, couldn't you?

4 A No. They did it to me. They hired Titan  
5 Security, Lee Hewitt and them.

6 Q Who is "they"?

7 A The people that rent down on the Boulevard. They  
8 were hoping I would walk on the properties and they  
9 would send police in, but I wasn't stupid enough to  
10 fall for it with a master's in criminal justice.

11 Q Fair to say that the Ammons family is not one of  
12 the multiple families that you are testifying to  
13 support to, even though they are not plaintiffs?

14 A The Ammons family has a home on the property now,  
15 and Steve Ammons lives in the house.

16 Q Is it fair to say that the Canadians are not  
17 supportive of your --

18 A No. They are not supportive of anything, but  
19 they don't care because no one has ever come in to help  
20 me.

21 Q The California folks, not supportive of your  
22 case?

23 A No.

24 Q You are the only plaintiff in this case?

25 A I'm a plaintiff in the case to bring the County

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1 before the Court to fix the mess.

2 Q And you know how to bring a case against your  
3 private co-property owners, because you've done that in  
4 the past, right?

5 A Yes.

6 Q But it hasn't solved what your issues are, which  
7 is that you don't like --

8 A We want it to be residential; that is what it was  
9 designed to be by the developers.

10 Q And it is your testimony that these big, giant  
11 seven bedroom, seven bath houses shouldn't be allowed?

12 A No, they shouldn't be there.

13 Q Okay.

14 A You can look for yourself on the pictures and  
15 look at all of the cars in the driveway and buses.

16 Q Back in 2002, you sent what you called a "legal  
17 notice." I'll show you what is marked as  
18 Defendant's 1.

19 MR. BRITTAIN: No objection.

20 Q Do you recognize that? What is that, sir?

21 A This is the one that Tommy Brittain had with Stan  
22 Cross, ruled in favor of the plaintiff, numerous Long  
23 Bay property owners concerning the 1958 restrictive  
24 covenants. Basically, the judge makes it clear that  
25 all of the lots along the subdivision without

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1 exception. This decision also points to the language  
2 in the Adams case. This case cost some of the property  
3 owners \$70,000. That is just one of the many cases  
4 that we've had to spend money on.

5 Q So this -- but who signed that, please, sir?

6 A I signed it.

7 Q So this wasn't from Tommy Brittain; it was from  
8 you?

9 A Yeah.

10 Q What is it titled?

11 A "Legal notice."

12 Q "Legal notice"?

13 A That legal notice -- I think I have a box back  
14 there with probably 2,000 pages that I sent to every  
15 single property owner -- properties have changed hands  
16 since then -- and they ignored it. If you want to see  
17 them, I can pull it out of the box.

18 Q No, sir. I believe you. On this legal notice,  
19 you talk about setback provisions and instruct the  
20 homeowners to request that you place a copy of this  
21 letter in the restrictive covenants with their deed?

22 A Yeah.

23 Q And it doesn't say anything about don't rent your  
24 house out or count the number of people in your house,  
25 or anything?

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1 A What is the date?

2 Q July 18, 2002.

3 A Right. That is a long time ago. That is before  
4 everything started going whacky down there.

5 Q 2002 was prior to that?

6 A That is -- 2002 is three years after Hugo, and  
7 there -- it was obliterated after Hugo.

8 Q So this is --

9 A There was only eight homes that survived Hugo  
10 down on that Ocean Boulevard.

11 Q 2002 is before everything went whacky, but you  
12 already sued to stop people from doing something,  
13 right?

14 A I didn't sue anyone. I sent out a legal notice  
15 that we're going to hire an attorney to do something if  
16 you don't.

17 Q Well -- so you had testified on direct that you  
18 had orders from Judge Cross and Judge Howe; is that  
19 when you say "On March 14, 2000, Honorable J. Statton  
20 Cross ruled in favor of the plaintiffs"? You were one  
21 of the plaintiffs, weren't you?

22 A He ruled for the homeowners.

23 Q If there weren't any problems at this point, what  
24 were the problems you were suing at that time?

25 A He was going to divide the lot into 13 lots, and

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1 it says no lot should be subdivided, so Tommy Brittain  
2 went to court, and we won.

3 Q So this subdivision of lots, this is one of the  
4 multitude of notices you sent to --

5 A No. Oh, no. I sent them to people that weren't  
6 residents.

7 Q Property owners, is that right, homeowners?

8 A I sent them to people that were in the market of  
9 buying a house, and I sent it to them so that they  
10 would be aware that that document exists.

11 Q "Dear Property Owner," right?

12 A I'm a property owner, yes.

13 MS. CROSBY: I move Defense 1 in evidence.

14 MR. BRITTAIN: No, sir.

15 THE COURT: Defendant's 1 admitted without  
16 objection.

17 (Defendant's Exhibit 1 admitted.)

18 A They were sent return receipt, so I have copies  
19 of all of them.

20 Q So you've testified that you sent numerous  
21 documents to the other residents; in fact, you sent one  
22 as recently as 2017?

23 A You have to tell me who it was.

24 Q If you could -- No. 7. Take a look, and I'll ask  
25 you if you recognize that and what is that?

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1 A This is from Tommy Brittain.

2 Q Do you recognize it?

3 A Yeah, he sent this.

4 Q What is that, and how does that involve you?

5 A It involves me because I turned around and sent  
6 this letter out, return receipt letter, to the people  
7 that were buying property in there; that is the best  
8 way to explain it.

9 MS. CROSBY: I move 7 into evidence.

10 THE COURT: Any objection?

11 MR. BRITTAIN: No objection.

12 THE COURT: Defendant's Exhibit 7 admitted into  
13 evidence without objection.

14 (Defendant's Exhibit 7 admitted.)

15 Q So this letter you sent certified return receipt  
16 requested to the people buying property or the property  
17 owners?

18 A To anyone that was going to be purchasing  
19 something, and then I had return receipt requested so I  
20 could put it in the envelope so I could say they  
21 received notice, and they are all back there in the  
22 box.

23 Q In this letter, it says: "I'm representing  
24 residential property owners in Long Bay Estates. Now  
25 that we have a ruling, which has been upheld by the

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1 South Carolina Court of Appeals, that the restrictive  
2 covenants and deed restrictions in Long Bay Estates are  
3 enforceable and have been so since recorded on May 5,  
4 1958."

5 Do you know what South Carolina Court of Appeals  
6 decision this was referring to?

7 A I think it was -- I'm pretty sure it was  
8 regarding the development on Woodview Lane that we went  
9 up to the appellant court, and I testified at the  
10 appellant court in Columbia.

11 Q And that was a private case that didn't involve  
12 the County?

13 A No. It involved a property owner that was going  
14 to try to build seven homes on this street that was  
15 wetland, and the guy thought that he could do it, but  
16 it ended up that it was wetlands and he couldn't build  
17 seven homes on it.

18 Q And you prevailed in that; is that fair to say?

19 A Yes, we prevailed.

20 Q So you know that the date restrictions in place  
21 can be privately litigated, right?

22 A Yeah.

23 Q Let's go to the County's involvement, because in  
24 this case you -- and nobody else -- you have sued the  
25 County, and you are seeking for the County to do

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1 something to help you get, what? It is my  
2 understanding from your testimony that you don't like  
3 the homes that are renting out to other people because  
4 they have fireworks and too many people and causes  
5 problems, right?

6 A They've ruined the residential complexion of the  
7 neighborhood.

8 Q All right. Let's go to --

9 A The pictures and everything will speak for  
10 themselves.

11 Q Well, let's talk about the pictures. They are  
12 all in evidence. Here they are. Let's just look at  
13 Exhibit 1. If you can look at your Exhibit 1. Who  
14 took all of those pictures?

15 A I probably did.

16 Q You probably did? If you probably took them, who  
17 else might have taken them?

18 A Nobody else. I would have taken them.

19 Q And tell the Court over the course of what number  
20 of years you took these pictures?

21 A I've been taking pictures whenever I see flagrant  
22 violations of residents using homes.

23 Q And the car models are different in all of those?

24 A Yeah. Yeah.

25 Q Have you been taking pictures since '91?

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1 A Sure, ever since we started winning the lawsuits.

2 Q And the first time you approached the County had  
3 to do with the bus, and that testimony is in evidence  
4 with regard to the Edelens, correct?

5 A Yes.

6 Q And the bus picture is in there, right?

7 A No. That was a bus parked on Dogwood Drive.  
8 That was before I even got into the cameras and stuff.

9 Q Okay. Tell me about the Edelen bus. In what  
10 way, if at all, were you disappointed in the County's  
11 response?

12 A I wasn't disappointed in Roland Meyer's response.

13 Q And you made a complaint to the County about what  
14 you suspected was a specific --

15 A And he came over and saw the bus parked on the  
16 side of Dogwood Drive where the Ammons house is, and he  
17 went down there and cited them because they had a  
18 busload of kids in there.

19 Q All right. Then in 2005 -- let's go to 2005.  
20 You sent -- this may be in evidence.

21 MS. CROSBY: Is that July 25, 2005 in evidence?

22 MR. BRITTAIN: Which one is that?

23 MS. CROSBY: The Johnny Weaver --

24 MR. BRITTAIN: I don't think it was put in.

25 MS. CROSBY: This one.

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1 MR. BRITTAIN: I don't believe so.

2 Q In 2005, you sent something to Johnny Weaver.  
3 I'll show you what is marked as Defense 3 and ask if  
4 you recognize that?

5 A Right. A lot of these homes have changed hands  
6 and stuff.

7 Q What is that?

8 A Huh?

9 Q What is that document, please, sir?

10 A The document that went to John Weaver, and he  
11 never returned a response to us.

12 Q Was it from you?

13 A I guess it was, if it was written from me --  
14 well, it was from me, it was from John and Peggy Musak  
15 (phonetic), it was from John and Pam Pelarino  
16 (phonetic), it was from Rich and Ellen Sperling  
17 (phonetic). It was from all of us.

18 Q That was from four couples to the County?

19 A That's right.

20 Q And your complaint in that document was that  
21 there are some seven bedroom -- a number of seven  
22 bedroom, seven bathroom houses have recently been  
23 constructed with the intent to be used for summer  
24 vacation rentals, along with homes that are being used  
25 for purposes other than residential. Clearly, the

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1 majority of residents in the Long Bay subdivision feels  
2 -- it says R-7 -- zoning law is being ignored by rental  
3 agencies and property owners renting their properties  
4 as vacation rentals on a weekly basis in our  
5 neighborhood.

6 So this was a complaint to the County, correct?

7 A Yes.

8 Q And you identified -- if I could direct you to  
9 Page 3 of the document. It is a list of names and  
10 addresses, right?

11 A Yeah. Yeah.

12 Q And what does it say at the top?

13 A "Weekly renters." Those were the lists of the  
14 weekly renters.

15 Q And 2005 was after you had gone to the County I&R  
16 Committee meeting regarding short-term rentals?

17 A Was that the one with Liz Gilliam? They put the  
18 case off until the following day and didn't do  
19 anything? Is that the one when Natasha Hanna and all  
20 of them were over there in Garden City Realty showed up  
21 with Lee Hewitt; is that the one?

22 Q Well, tell us what you remember about that. Did  
23 you go to more than one I&R committee?

24 A Yeah. I went over to that and -- and there was  
25 one other councilman that couldn't believe what he was

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1 hearing, and he wanted to respond to it that day, and  
2 Liz Gilliam stood up and said, We'll put it off until  
3 tomorrow, and it went away. They never did anything.

4 Q Who was she?

5 A County chairman, I guess, at the time.

6 Q She was on the county council?

7 A She was the chairman, or whatever you want to  
8 call it.

9 Q So she was an elected official of the Horry  
10 County government at the time?

11 A Yes.

12 Q So you did bring your desire for zoning changes  
13 and amendments to the County?

14 A Right. Right. Yet, we had one other county  
15 councilman that wanted to address it, and she pushed it  
16 off.

17 Q Do you remember if there was a motion for  
18 investigating this or looking into this that died for  
19 lack of a second?

20 A She just pushed it off until the following day,  
21 and it died.

22 Q So after you didn't have success through the  
23 political process back in 2004, you then contacted the  
24 County in that 2005 letter complaining about short-term  
25 rentals and seven bedroom homes, as far as the

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1 timeline?

2 A This is July 25, 2005.

3 Q Right. So on my timeline, that is after you had  
4 gone to get the change from the county council?

5 A Yeah, and it ended up that they just buried it.  
6 They didn't want to address it.

7 Q And then in --

8 MS. CROSBY: I move Defense 3 in evidence.

9 MR. BRITTAIN: No objection. I have no objection  
10 to any of the documents I've seen. I think every one  
11 she's introduced so far, I've seen.

12 THE COURT: Defendant's 3 admitted into evidence  
13 without objection.

14 (Defendant's Exhibit 3 admitted.)

15 Q Are you familiar with Janet Carter?

16 A Yes.

17 Q She was the zoning administrator at that time?

18 A Yeah.

19 Q She responded to that?

20 A I have a sealed envelope out there if you people  
21 would like to read it.

22 Q You have a sealed envelope?

23 A Yeah. The stenographer told me not to open it up  
24 unless you were in court.

25 Q Oh, okay. That is not one of my exhibits. I was

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1 going to show you the response, which I think is....

2 A She did mention in the letter that it was never  
3 intended to allow for transient accommodation.

4 Q I'll show you Defense 4; that is probably the  
5 letter you're talking about. What is that, please?

6 A I don't remember this, but, I mean, it went to  
7 Tommy Brittain. He probably gave me a copy at one  
8 time. I mean, I have copies of everything.

9 Q Is it fair to say that you've corresponded with  
10 Janet Carter on this issue, and that she's made it  
11 clear that Horry County had no restrictions on  
12 transient rentals or short-term rentals, that that is  
13 not in place in the County?

14 A I don't know that she said -- she just never  
15 acted on -- on what we asked.

16 Q Okay. In all of these documents and what you  
17 asked, you didn't have a specific complaint after the  
18 bus with the team in 2002; isn't that correct?

19 A Back in 2002, but that wasn't until after that  
20 that they started building all of the huge places and  
21 renting them out. There is at least four, five people.  
22 A guy from Canada owns two of the units. There is  
23 people -- there's people from California that own two  
24 of the units. I mean, there is people from anywhere  
25 outside of there that -- if the seller can make a

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1 hundred or two hundred thousand, he dumps it off to  
2 someone else and gets out.

3 Q Has your property values gone up since 1991 on  
4 your home?

5 A I would assume so, since 1991.

6 Q And what about property taxes?

7 A Taxes in the neighborhood are minor.

8 Q So it is your testimony that if short-term  
9 rentals were banned, you would like to see those big,  
10 giant seven, eight bedroom homes owned by some kind of  
11 a lawyer or doctor or someone that would want a big,  
12 giant home?

13 A That's correct.

14 Q Because no one else could afford the taxes or  
15 mortgage on such a thing?

16 A Taxes are not much in Carolina. The insurance is  
17 a nightmare; opposite of New England.

18 Q So you did go in 2011 -- you know you had the  
19 restrictive covenant option, and you lobbied. Did you  
20 go to Columbia to track the HOA bill?

21 A You are talking about the one with Paula Benson?

22 Q Yes, sir.

23 A No -- yeah, Paula Benson sent the letter to me  
24 explaining that unless we were to reverse something,  
25 then it wouldn't be allowed.

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1 Q What wouldn't be allowed?

2 A What is going on there. I mean, you're looking  
3 at the letter, not me.

4 Q I'll let you look at the letter, marked as  
5 Defense 6.

6 A She's the staff attorney for the Senate Judiciary  
7 Committee.

8 Q Is that the letter she sent to you?

9 A Thank you for speaking with me. In an  
10 application for a permit, the local planning agency  
11 must inquire in the application or by written  
12 instructions to the applicant whether the tract or  
13 parcel is restricted by any recorded covenant that is  
14 contrary, conflicts, or prohibits the permitted  
15 activity. If the planning agency has actual notice or  
16 restrictive covenant on a tract -- they are not  
17 permitted to do it.

18 Q And that is her corresponding to you regarding  
19 your, what, inquiry about that legislation?

20 A Yeah. Because somewhere in here I -- actual  
21 notice is not constructive notice. I'm sure you have  
22 it somewhere. I just -- basically, she's saying that  
23 unless we were to release the restrictive covenant,  
24 they can't do it.

25 Q Right. So you've tracked suing the neighbors,

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1 you've followed up with state legislation, and that is  
2 the state law regarding --

3 A I'm trying to find the law to send the right  
4 notices to the people. If that's the law; that's the  
5 law.

6 Q Right. All right. Have you sought rezoning for  
7 your neighborhood?

8 A No. We don't want to rezone the neighborhood.  
9 We want everyone else out of there.

10 Q All right. Have you gone to zoning meetings  
11 other than that I&R council meeting?

12 A No.

13 Q Have you spoken to county council about the  
14 changes you would like to see?

15 A As far as I know, Attorney Brittain and I have  
16 talked to everybody.

17 Q Have you pursued an overlay zone or text  
18 amendments to the zoning ordinance, or anything like  
19 that?

20 A We're not going to change any of the ordinances.  
21 Why would we want to do that?

22 Q Your neighborhood sits right next to Pirateland?

23 A Yes.

24 Q And that is a vacationer's place?

25 A Yep.

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1 Q And you testified you came down here yourself and  
2 stayed at?

3 A At Lakewood.

4 Q And Pirateland is not in unincorporated Horry  
5 County, correct?

6 A It is my understanding that the Lewis family owns  
7 the land in Pirateland, and Pirateland leases it to  
8 some mattress family, that leases it from Pirateland.

9 Q It is not ownership I'm asking about; I'm asking  
10 about jurisdiction. Do you know if it is Surfside  
11 Beach or Horry County?

12 A It is -- I don't know if it is in Surfside Beach.  
13 It is just in Horry County. I live in Horry County. I  
14 don't -- Pirateland would be in Horry County.

15 Q So the only ordinances that apply to your  
16 neighborhood are the Horry County zoning ordinances?

17 A That's correct.

18 Q Have you sought annexation or anything?

19 A No. No.

20 Q You like the ordinances the way they are, you  
21 just don't like what your neighbors are doing?

22 A My neighbors are great. They gave me over  
23 \$200,000 on lawsuits in 23 years. My neighbors are not  
24 the problem.

25 Q Well, at the last hearing on this particular

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1 case, do you recall -- do you recall the argument that  
2 you could pursue the private land owners, but you don't  
3 want to go against seven or eight of them because that  
4 would be expensive, and so you wanted to go to the  
5 County and get the County to do something?

6 A It's the County's responsibility; not ours.

7 Q Have you run for office?

8 A No.

9 Q So tell me -- tell me all of the specific reports  
10 that you have made regarding what you contend are  
11 zoning violations since 2002.

12 A Do you want me to get the little box and count  
13 them all?

14 Q If you could just testify to the specific reports  
15 you made of zoning violations to the County. I don't  
16 want to know about setbacks. I want to know about what  
17 you brought this case on.

18 A Brought this case on weekly rentals in a  
19 residential neighborhood.

20 Q Those are the ones I'm asking you about. What  
21 are the specific complaints you've made about weekly  
22 rentals in your neighborhood?

23 A Look at them.

24 Q Okay. These pictures, are these the complaint?

25 A Sure.

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1 Q Go through the pictures and identify all of the  
2 ones that you delivered and made a written complaint to  
3 the County to investigate some type of violation.

4 A This is when Attorney Brittain and I met with  
5 Attorney Carotti and everyone at the council.

6 Q When was that?

7 A I don't know. Tommy would know.

8 Q That is the one meeting; is that what you are  
9 talking about?

10 A Yeah.

11 Q And at that meeting, you met with Janet Carter  
12 and Mr. Carotti?

13 A With Tommy, Attorney Brittain.

14 Q Yes. And as far as short-term rentals, you were  
15 made aware there is no such ordinance to investigate,  
16 and that was your complaint?

17 A You are making that statement, not us. We feel  
18 it should be dealt with, and that is why Tommy is still  
19 representing me -- or Attorney Brittain is still  
20 representing me.

21 Q Your wife -- tell me about your family, if you  
22 will. I'm not trying to get into anything personal.  
23 Are you married?

24 A Yeah. She's sitting back there.

25 Q Do you have children?

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- 1 A Yes, a son and a daughter.
- 2 Q Grown?
- 3 A Huh?
- 4 Q Are they grown?
- 5 A Yes.
- 6 Q Grandchildren?
- 7 A Yes.
- 8 Q Have you ever hosted your family in your home?
- 9 A Yes.
- 10 Q Did your kids grow up there?
- 11 A No.
- 12 Q No?
- 13 A No.
- 14 Q So that --
- 15 A It wasn't until after I retired from the state  
16 police.
- 17 Q But your grandchildren have been there?
- 18 A Yes.
- 19 Q Have you had a birthday party or anything at your  
20 house?
- 21 A They don't come down here for birthday parties,  
22 just visit when -- she's a teacher, so they fit it into  
23 their schedule.
- 24 Q Have they come down with a friend, visited your  
25 house with a friend?

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1 A Yeah.

2 Q Are you a member of any social clubs that meet at  
3 your house?

4 A No.

5 Q You don't play cards or anything?

6 A No.

7 Q Book clubs, nothing?

8 A No.

9 Q You don't have people coming to your house?

10 A No, not unless it is a neighbor or something that  
11 wants to come over.

12 Q And in your neighborhood -- you have walked  
13 around in your neighborhood and questioned the people  
14 walking around, walking their dogs; isn't that true?

15 A Walking their dogs?

16 Q People walking around your neighborhood -- have  
17 you, Mr. DeCiero --

18 A No. There is people in my neighborhood that have  
19 dogs, and I know Julio is one dog. Dr. Dedavy  
20 (phonetic) has Wolf. I know everybody. I know Max. I  
21 know they all have dogs. I know their names. I walk  
22 every day.

23 Q You walk every day and know your neighbors?

24 A Yes.

25 Q What about the vacationers, the renters, you

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1 don't know those people?

2 A Don't know any of them.

3 Q Have you ever gone up to any person on your walks  
4 that you don't know and ask them questions about where  
5 they are staying?

6 A Well, no. But what I can say is this: The  
7 developers deeded us all the oceanfront accesses to the  
8 beach, and if we wanted to, we could shut the renters  
9 down on the other side of the street from getting onto  
10 our properties, but we've been polite enough to let  
11 them go and use our accesses until this case is  
12 resolved.

13 Q So that might work as a private thing. If you  
14 have the ability to shut down the beach, that might  
15 work?

16 A We can't shut down the beach. The ones on the  
17 beach, they just go out their back door onto the beach,  
18 but on the other side of the street, we could  
19 technically shut them all down, but we didn't want to  
20 do that. We would rather do it through the judicial  
21 system.

22 Q All right. And do you know some of your  
23 neighbors -- Mr. McElveen, do you know that gentleman?

24 A He's with -- Dennis McElveen and Lee Hewitt  
25 jumped out of that, and they have their house for sale

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1 right now.

2 Q Do you know Mr. Cobb, Mr. Black?

3 A I know Mr. Cobb. I don't know Mr. Black.

4 Q Are you aware, Mr. DeCiero, that the Cobbs have  
5 rented out their home --

6 A Yes.

7 Q -- since the 1950s?

8 A Yes.

9 Q They've rented out their beach home for  
10 short-term rentals?

11 A Yes. Yes -- well, not the '50s.

12 Q Since they lived in there, since the '50s, from  
13 day one?

14 A They haven't been there since the '50s. Hugo  
15 took everything out in 1989.

16 Q He's not one of the plaintiffs in this case, is  
17 he?

18 A Who?

19 Q Mr. Cobb.

20 A No. I know him. He didn't own his property back  
21 then.

22 MS. CROSBY: Court's indulgence, Your Honor.

23 A I'll send you pictures of Hugo.

24 Q I know. I lived at the coast during Hugo myself.  
25 You talked about the meeting you had the one time that

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1 you spoke to the County about your complaints, was that  
2 in that personal meeting that you referred to?

3 A You mean with Carotti and Attorney Brittain?

4 Q Yes, sir, that is the one.

5 A Yes.

6 Q And isn't it correct that they suggested some  
7 legislative tactics or alternative routes for you to  
8 pursue to get the relief you wanted to stop the weekly  
9 rentals in your neighborhood?

10 A I don't recall that at all.

11 Q Do you recall saying to them that you were not  
12 interested in going on the legislative route?

13 A I don't recall doing any of that. That is why I  
14 have an attorney with me.

15 Q If Horry County had a short-term rental  
16 ordinance, that could help you; is that fair to say?

17 A No, because it is residential. It is  
18 residential.

19 Q So you have no problem with the rental issue?

20 A We have a lot of issues with the rental issue.  
21 We want it to be residential.

22 Q Right. And you've liked Myrtle Beach's; in fact,  
23 you have looked at Myrtle Beach's transient rental  
24 ordinance; have you not?

25 A The one up on the Golden Mile?

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1 Q I don't know what the "Golden Mile" is.

2 A That is beyond the Sea Captain. There was a case  
3 there; I won't get into it.

4 Q But Myrtle Beach has one. Do you know Myrtle  
5 Beach's transient ordinance, because you submitted it  
6 to the County?

7 A I didn't submit anything to the County.

8 Q All right. The truth is you don't believe that  
9 Horry County wants to help you with this issue; is that  
10 fair to say?

11 A That's fair to say.

12 MS. CROSBY: Nothing further at this time, Your  
13 Honor.

14 THE COURT: All right. I'll allow direct  
15 examination, cross, redirect only as to matters  
16 addressed on cross that were not on direct.

17 MS. CROSBY: If I failed to move anything into  
18 evidence -- I might have.

19 THE COURT: The only thing I have is Defendant's  
20 Exhibit 6 and 4.

21 MS. CROSBY: I move those into evidence.

22 MR. BRITTAIN: No objection.

23 THE COURT: 4 and 6 are admitted into evidence.

24 (Defendant's Exhibits 4 and 6 admitted.)

25 THE COURT: Mr. Brittain.

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## REDIRECT-EXAMINATION

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BY MR. BRITTAIN:

Q There is no question that this property we are talking about is SF-6, is there?

A It is SF-6.

Q The government admitted that to us as part of this case?

A Right.

Q And you weren't looking for a zoning change; isn't that right?

A That's correct.

Q You are looking for the existing zoning to be enforced?

A That's correct.

Q Now, have you made it a practice, through you or me, to try to get our information across to the council officials?

A Yes.

MR. BRITTAIN: Judge, this memorandum we were talking about -- Let me ask you about this -- well, there are four, five paragraphs that don't have anything to do with the law. All they have to do with is notice to the County. So, you know, Ms. Crosby kept making it look like we haven't gotten it in writing, haven't put down what the problem was, we

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1 were talking about short-term rentals. These  
2 paragraphs make clear what notice we gave them and  
3 what we complained about. This was official  
4 notification from an attorney on behalf of Mr. DeCiero  
5 which sets forth what the complaints are. So I would  
6 like to put into evidence the fourth paragraph on Page  
7 2; the fifth paragraph on Page 2; and the first  
8 paragraph on Page 3. That is on Plaintiff's Exhibit  
9 20.

10 MS. CROSBY: No objection to those paragraphs.

11 THE COURT: You have to redact everything except  
12 for the fourth, fifth, and what?

13 MR. BRITTAIN: Fourth full paragraph on Page 2;  
14 fifth paragraph on Page 2; first section paragraph on  
15 Page 3. What I would suggest, I can just find a pair  
16 of scissors and cut everything out.

17 THE COURT: She's already marked that for  
18 identification, the whole thing. Do you have another  
19 copy?

20 MR. BRITTAIN: Yeah, I'm sure I have another  
21 copy.

22 THE COURT: Let's get a copy. Go ahead and cut  
23 out everything except the fourth and fifth paragraph on  
24 Page 2, and the first paragraph on Page 3. We'll make  
25 that Plaintiff's 21.

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1 MR. BRITTAIN: I don't know what your schedule  
2 is, Judge. I believe once I introduce this into  
3 evidence, I will be through with our presentation.

4 THE COURT: And you don't have any objection to  
5 that, Ms. Crosby?

6 MS. CROSBY: That's correct, Your Honor.

7 MR. BRITTAIN: I left that there.

8 MS. CROSBY: That's fine.

9 MR. BRITTAIN: I left the top part. She said it  
10 was fine.

11 MS. CROSBY: That's fine.

12 MR. BRITTAIN: It tells when it happened.

13 THE COURT: Mr. Brittain, anything further?

14 MR. BRITTAIN: No, that's it.

15 THE COURT: You may step down.

16 Call your next witness.

17 MR. BRITTAIN: I'm done. That's it.

18 THE COURT: Let's take a short break. She'll  
19 have to clean the witness stand.

20 (A recess was taken.)

21 (Plaintiff's Exhibit 21 marked and admitted.)

22 THE COURT: Thank you.

23 MR. BRITTAIN: As a housekeeping matter, the  
24 memorandum which we cut up has been put in evidence  
25 twice as Exhibit 18 and 20. So now 18 and 20 are out,

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1 and 21 is in.

2 THE COURT: Well, now, 20 I would not allow that  
3 in.

4 MR. BRITTAIN: No, that's not coming in. All I'm  
5 telling you is that for some reason that memo got  
6 marked twice; there is an 18 and 20.

7 THE COURT: So we're taking 18 out?

8 MS. CROSBY: I agree.

9 MR. BRITTAIN: What is left is a cut-up version.  
10 I guess you should preserve these as --

11 THE COURT: They'll stay with the court reporter,  
12 so by stipulation of the parties, Plaintiff's 18 comes  
13 out.

14 MR. BRITTAIN: 18 and 20.

15 THE COURT: Withdrawn.

16 MR. BRITTAIN: Right.

17 THE COURT: Is that correct, Ms. Crosby?

18 MS. CROSBY: Yes, sir, Your Honor.

19 THE COURT: Anything else?

20 MR. BRITTAIN: No, sir.

21 THE COURT: All right. Plaintiff has rested  
22 their case.

23 Ms. Crosby.

24 MS. CROSBY: I have a motion for a directed  
25 verdict. Similarly, I feel like what I argued the

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1 first time where it was just pled and decided on the  
2 pleadings, but now we have the plaintiff's entire  
3 testimony. Based on the entire testimony of the  
4 plaintiff, all of the evidence and inferences viewed  
5 in the light more favorable to the non-moving party,  
6 his only testimony is that he took a meeting on  
7 July 13, 2015 at Horry County in which there is no  
8 testimony about a specific complaint of any violation  
9 having been made.

10 Your Honor, if this is a writ of mandamus, he has  
11 to be asking this Court to direct the County to do  
12 something. The elements are that the County has a  
13 duty to perform the act that he's requesting. There  
14 is ministerial nature of this act, signing something,  
15 issuing something, doing something, that he has a  
16 specific legal right requiring the County to do that,  
17 and -- and -- so these are not "ors," but "ands" --  
18 and there is a lack of other legal remedy. He has  
19 availed himself plenty over the course of the years,  
20 and I submit to the Court that all of his evidence and  
21 testimony viewed in the light most favorable to him,  
22 there is no issue to move forward with regard to  
23 issuing a writ directing the County to do anything; in  
24 fact, by his own testimony, he's not asking the County  
25 to issue anything.

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1 THE COURT: All right. Mr. Brittain.

2 MR. BRITAIN: Your Honor, I don't understand  
3 much of that. The record is clear and replete with  
4 efforts on his part to bring this matter to the  
5 attention of the County. In Exhibit No. 21, it is  
6 stated very clearly -- let me get this one, too. This  
7 is the one I'm using. This was written to the County,  
8 to Horry County Zoning, on August 17, 2015. Part of  
9 this document has been admitted into evidence. It  
10 says: "Further, Long Bay is currently zoned as an  
11 SF-6 residential district, and as such, is comprised  
12 of single family and duplex family dwellings according  
13 to Article 4, Section 531 of the Horry County zoning  
14 ordinance. A family is defined as an individual or  
15 two or more persons related by blood or marriage or  
16 adoption living together in a single household unit,  
17 or not more than five persons not related by blood or  
18 marriage or adoption living together as a single  
19 family household unit. It is clear -- this is the  
20 notice part -- it is clear that the single family,  
21 duplex family homes located in Long Bay Estates that  
22 are currently being rented on a weekly basis are  
23 renting to large groups of people, many unrelated,  
24 that greatly exceed the number of occupants allowed by  
25 this ordinance. These large groups bring with them

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1 subdivision, excessive traffic, excessive noise,  
2 excessive trash, all which is a nuisance to the  
3 homeowners in this area."

4 Now, if you have a lawyer send that notice to the  
5 County, that is notice. I mean, I don't understand  
6 these previous meetings he has. Like I said, they had  
7 a lot of problems out there. We're not in here today  
8 on the short-term rentals. All the questions she  
9 asked about meetings with short-term rentals, that is  
10 not --

11 THE COURT: I mean, his testimony was his  
12 complaint is the weekly rentals; that is what he  
13 testified to.

14 MR. BRITTAIN: He's complained about the weekly  
15 rentals, but that is just part of his complaint. What  
16 I'm telling the Court is that part won't fish. That  
17 is not a valid complaint. But the complaint clearly  
18 sets forth the density issue.

19 THE COURT: And I understand that, but I also  
20 recognize the court of appeals reversed me and sent it  
21 back saying this is a writ of mandamus action. Writ  
22 of mandamus means that you are asking somebody to do  
23 something that they are legally obligated to do, that  
24 they are not doing. What is he asking the County to  
25 do?

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1 MR. BRITTAIN: It is clearly set forth in the  
2 complaint and in these notices.

3 THE COURT: Which is what?

4 MR. BRITTAIN: Investigate the violation of the  
5 ordinance in this area with these places. They are  
6 named in the complaint, and if they are not complying,  
7 send them notice they are not complying. If they  
8 don't comply, take whatever actions necessary to see  
9 they are complying.

10 Remember, in this case we have one such notice.  
11 The County did that one time back in 2004. The zoning  
12 administrator sent a notice saying that density -- you  
13 can rent it on a weekly basis, but density, you still  
14 have responsibility for, look at SF-6 and the  
15 enforcement provisions. Now, I know it is a daunting  
16 task. I -- it may not be. It might be the letters  
17 down there create the proper use of the facilities,  
18 but that is -- I'm asking the public official -- I'm  
19 asking the Court to require the public official,  
20 zoning administrator, county administrator, the proper  
21 official to uphold the zoning ordinance by  
22 investigation, notice, and corrective action; that is  
23 what we're asking.

24 Now, there is clearly enough in the record to  
25 establish that. I mean, I've asked him what he wants

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1 them to do. He told me. It is in the complaint. I  
2 mean, that's the action we're seeking. It is not  
3 damages. It is not money. It is, hey, you are the  
4 County, you abide by your own laws and ordinances, not  
5 just us, and your ordinance says when this is going on  
6 and you hear about it, you have to investigate and  
7 take corrective action. To not rule in that way would  
8 be saying that the County is above the law. The  
9 County doesn't have to follow their ordinances, even  
10 when it clearly states that is a job they have to do.

11 We're in here talking about whether they got  
12 notice or not or how clear was his complaint; all that  
13 will do is start this all over again. Let's get to  
14 the issue. There is plenty of evidence in here for  
15 you to rule that the County knew about it, and they  
16 knew enough specificity, and they knew what he was  
17 asking them to do. There is the legal issue that  
18 maybe they don't have an obligation to do it, but it  
19 won't serve us any purpose to claim that there is --  
20 wasn't enough notice, and those types of things,  
21 because I don't believe that that is what the case is.  
22 So I'm asking you not to direct a verdict.

23 THE COURT: Anything in reply?

24 MS. CROSBY: Briefly in reply, Your Honor, with  
25 regard to notice and specificity; that is exactly what

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1 we're talking about. If there is no notice and no  
2 specificity, there is no action for the County to  
3 take.

4 With regard to the memorandum that is in  
5 evidence, that is in August of 2015, right after the  
6 July 13, 2015 meeting that Mr. DeCiero, the plaintiff,  
7 testified was when he provided notice to the County,  
8 based on his interpretation, that there were beach  
9 houses renting weekly on a weekly basis, and this was  
10 the memorandum from his lawyer sent the following  
11 month on the same basis. There is no specificity in  
12 either Mr. DeCiero's testimony or in that memorandum.

13 THE COURT: Well, I'm going to deny your motion,  
14 because I think there is enough notice where he is  
15 saying you can't rent to more than five people and you  
16 are doing it. Now, whether or not you can rent to  
17 more than five people, I don't know. That is the  
18 critical question to me. Does the zoning prohibit  
19 renting to more than five people that are not related  
20 by blood or marriage? I know that that is the  
21 definition as to what you can build out there, but  
22 whether or not that restricts the use to that, I don't  
23 know. I think that is the point, so I deny your  
24 motion.

25 MS. CROSBY: Thank you, Your Honor.

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1 THE COURT: Anything else?

2 All right. Ms. Crosby, you can call your first  
3 witness.

4 MS. CROSBY: Judge, my witness is Ms. Janet  
5 Carter, the Webex witness. Will I be taking that  
6 testimony from this location?

7 THE COURT: Yeah, you can do that.

8 (JANET CARTER, having been duly sworn,  
9 testified as follows via WebEx:)

10 THE COURT: Ms. Crosby, go ahead.

11 MS. CROSBY: Good morning. I appreciate you --

12 THE COURT: Let me start the recording. I  
13 apologize. All right. I apologize, Ms. Carter.  
14 Raise your right hand again.

15 (JANET CARTER, having been duly sworn,  
16 testified as follows:)

17 THE COURT: All right, Ms. Crosby.

18 DIRECT-EXAMINATION

19 BY MS. CROSBY:

20 Q Can you tell the Judge your past employment  
21 history as it relates to this case?

22 A Yes. I worked for Horry County for 20 years. I  
23 retired in May of 2018. During that time, I worked in  
24 the County Attorney's Office for, you know, a period at  
25 the beginning of my tenure, and then I also supervised

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1 planning and zoning and code enforcement for a couple  
2 of years, and then I became the planning director and  
3 the division -- I'm sorry, and the attorney for the I&R  
4 Division.

5 Q So you are a licensed attorney?

6 A Yes.

7 Q What is the I&R Division?

8 A I'm a retired attorney at this time.

9 Q We all aspire to that. What is the I&R Division?

10 A It's the Infrastructure and Regulation Division,  
11 which is made up of several county departments,  
12 engineering, storm water, maintenance, code  
13 enforcement, planning, zoning.

14 Q So in 2002 to -- when did you retire?

15 A May of 2018.

16 Q Okay. You were the I&R counsel, and you were the  
17 zoning --

18 A My title was Planning Director, slash, I&R  
19 Counsel. So that meant, basically, that I managed the  
20 Planning and Zoning Department. I also provided legal  
21 advice and counsel to the departments in the  
22 Infrastructure and Regulation Division.

23 Q Are you familiar with the Horry County ordinance  
24 that was in place at that time?

25 A Yes, I was very familiar with it at that time.

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1 Q How did you first become involved with this case  
2 with Mr. DeCiero and the Long Bay Estates issue?

3 A Well, it's been going on for a number of years  
4 and, you know, I heard the testimony about the bus; I  
5 think that was 2002. I was not involved at that time,  
6 but I heard about that later. But about 2004, the  
7 residents, the four couples mentioned earlier in  
8 Mr. DeCiero's testimony, did come to the I&R committee  
9 and bring up the issue that, you know, has been  
10 discussed today. I guess that was probably my first  
11 real involvement with it.

12 Q And the I&R committee was doing what at that  
13 time? That was a meeting?

14 A Yes, it was a subcommittee of county council, and  
15 it met monthly.

16 Q Were you present for that meeting?

17 A Yes.

18 Q I'm showing you I think -- have you received  
19 copies of the defense's proposed exhibits?

20 A Yes.

21 Q All right. This was premarked by our court  
22 reporter as No. 10, but on mine it was also No. 10.  
23 It's the minutes of Horry County Council Infrastructure  
24 and Regulation Committee meeting; have you seen that?

25 A Yes.

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1 Q And I know that --

2 MS. CROSBY: You're stipulating to the  
3 authenticity?

4 MR. BRITTAIN: Yes.

5 Q (MS. CROSBY) Are these the accurate minutes that  
6 you are testifying to right now?

7 A Yes.

8 Q And Mr. DeCiero, he was there?

9 A Yes, he was.

10 Q And was there any motion made with regard to the  
11 County looking into the short-term rental issue?

12 A Yes. Councilman Schwartzkopf made a motion. I  
13 would have to look back at the minutes, but it failed  
14 for lack of second. So council basically chose to take  
15 no action.

16 Q That is the only government -- is that the only  
17 Horry County Council action or time where this was  
18 addressed by county government, to your knowledge?

19 A The only one that I'm aware of.

20 Q Okay. And after that, were you -- did you  
21 receive any more correspondence from Mr. DeCiero?

22 A I've received letters from Mr. DeCiero's  
23 attorney, but I don't recall any particular letter from  
24 Mr. DeCiero.

25 Q And did you meet with him in July of 2015? Do

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1 you recall that? He testified about such a meeting.

2 A Yes, I did.

3 Q What is your recollection of that meeting?

4 A It was on July 13, 2015. Mr. Carotti and I met  
5 with Mr. Attorney Brittain and Mr. DeCiero to talk in  
6 general about the issues that have been talked about  
7 today. Again, there was no specific information about  
8 any particular property or owners mentioned.  
9 Mr. Brittain brought up how the City of Myrtle Beach  
10 was handling short-term rentals and provided me with  
11 copies of portions of the City's ordinances. Of course  
12 I explained to him that there was nothing of that sort  
13 in the County ordinance and, you know, it would be very  
14 difficult for the County to adopt such an ordinance  
15 because the zoning SF-6, or SF zoning in general. It  
16 is very common across the county areas, like Garden  
17 City, where you have -- you know, in one particular  
18 part of Garden City you have four rows of oceanfront  
19 type of rental property. Of course the oceanfront row  
20 and then three other rows behind it were all also SF-6  
21 and have been rented as beach rentals since the time of  
22 construction. It's never been prohibited, and anything  
23 that would affect Long Bay with their SF-6 would have  
24 the same effect in other areas of the county. So this  
25 was a big issue. There wasn't enough in the zoning

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1 ordinance to address it. I suggested that they take  
2 the legislative approach. Go to council. You know,  
3 see if the council would be willing to enact an  
4 ordinance similar to Myrtle Beach's or something like  
5 that, but there has been little to no interest.

6 Q What was their response?

7 A Since I was with the County? I don't know what  
8 happened since I left.

9 Q What was Mr. DeCiero's response to your  
10 suggestion that he take the legislative approach?

11 A I just -- there just wasn't any interest.

12 Q Okay. You talked about Garden City, so I'm  
13 showing you what is premarked as Defense 8, the  
14 two-page map.

15 A Yes.

16 Q Are you familiar with that?

17 A Yes, I am.

18 Q Is the handwriting on this map yours?

19 A Yes, it is.

20 Q All right. And you've identified -- what does it  
21 show? What is in the yellow shading?

22 A What it shows is the zoning in the Garden City  
23 beach area. You can see down in the left corner at the  
24 bottom, you see all of those lots there, those are all  
25 SF-6 lots. There are other single family lots, some

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1 SF-6 and some other SF designations, throughout Garden  
2 City. The legend at the top of the map shows that  
3 there is about 530 total acres of SF property in the  
4 Garden City area. A great deal of that is also being  
5 used in the same way as short-term rentals.

6 Q You are personally familiar with that, the Garden  
7 City beachfront neighborhoods are SF-6 and that many of  
8 those homes are rented on a weekly basis in the summer?

9 A Yes. There are quite a lot. I mean, there are a  
10 variety of districts in Garden City, but, like I said,  
11 at the time this map was printed, I think it was about  
12 2016, there were about 500 -- over 530 acres of either  
13 SF or MSF zoning in that area. MSF is the same as SF,  
14 except it also allows manufactured housing.

15 Q Move on to Page 2 of that map where Long Bay  
16 Estates is depicted.

17 A Yes.

18 Q That is the same zoning?

19 A Is it the same what?

20 Q Zoning.

21 A Oh, it shows some MSF zoning, not right on the  
22 ocean, but also illustrates the location of Long Bay  
23 Estates, which is between the campground and Myrtle  
24 Beach State Park.

25 Q Long Bay Estates is SF-6 zoned; that is a fact,  
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1 correct?

2 A That's correct.

3 Q Have you been down in there yourself? Are you  
4 familiar personally with Long Bay Estates?

5 A You've been down at least once in -- maybe twice.

6 Q It is comprised -- is it fair to say it is  
7 comprised of single family homes?

8 A Yes.

9 Q So, Ms. Carter, what is the Horry County zoning  
10 ordinance construction standard for single family  
11 homes?

12 A Well, I'm not thoroughly familiar with the  
13 building code, but, you know, I know typically they  
14 only allow them to have one kitchen, and of course meet  
15 all of the residential requirements of the  
16 International Residential Code.

17 Q What is the difference between the single family  
18 home and the duplex?

19 A Well, duplex has -- it is also actually  
20 considered residential, but you are allowed to have two  
21 units within a single building.

22 Q By two units, is that going back to the kitchen,  
23 the single kitchen?

24 A You would have to -- each unit would have its own  
25 kitchen.

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1 Q The Horry County zoning ordinance defines  
2 "family." There is a definitional section where family  
3 is defined; are you familiar with that?

4 A Yes. I think the section was put in the  
5 ordinance in 1987 when it was originally drafted.

6 Q Okay.

7 A I'm not aware of it ever having been amended.

8 Q Have you, during your duration with the County,  
9 had any enforcement issue with the family definitional  
10 section? Is there a way to enforce a definition in  
11 Horry County, in your experience?

12 A Not really. It is very difficult. You know the  
13 definitions are there and help for reference, but as  
14 far as enforcing a definition, you know, it kind of  
15 goes back to how do we enforce? Because it is easy to  
16 say the County needs to enforce the ordinance, but  
17 specifically what is the County being asked to do? You  
18 know, when there is a violation, and the violation is  
19 not resolved after a warning, then the enforcement  
20 method is the issuance of a uniformed summons, which  
21 basically charges the recipient with a misdemeanor.  
22 The County then must go to magistrates court and prove  
23 this criminal case beyond a reasonable doubt, and we  
24 need some language in our ordinance to rely on in doing  
25 that. People need to know what the law is and what the

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1 penalty for noncompliance is, and that is what is  
2 missing in the zoning ordinance the way it is now.  
3 There is just no clear language there that advises  
4 people what they can and cannot do, or no clear section  
5 of the code that we can cite to in order to charge  
6 someone with a misdemeanor to prove our case beyond a  
7 reasonable doubt.

8           For that reason, that's why I suggested or have  
9 said numerous times that if the County is going to  
10 restrict short-term rentals, whether it is using the  
11 definition of "family" in there, or however it decides  
12 to go about it, there just needs to be more clear  
13 language in the ordinance and an amendment will need  
14 to be made.

15 Q       What was your role with regard to the prosecution  
16 when you were with the County?

17 A       Well, as the I&R counsel, when the staff needed  
18 help with prosecution of a case in magistrates court, I  
19 would be the person to prosecute those cases. I had to  
20 get the approval of Jimmy Richardson, of course, the  
21 Solicitor, and the Solicitor prior to him had also  
22 given me that same authority. But, you know, we go to  
23 court and, you know, if there was a jury trial or if  
24 there were attorneys involved, I would be there with  
25 the staff to handle the prosecution. If there was no

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1 jury involved or if there was no attorney involved,  
2 then typically the staff would handle those  
3 prosecutions on their own.

4 Q All right. And have you -- let's go back to kind  
5 of my earlier question. Have you ever prosecuted a  
6 definitional violation in your time with the County?

7 A No, I have not. You know, it's very difficult  
8 sometimes to prosecute a zoning violation in this  
9 demeanor, because the zoning ordinance is just not  
10 written like a lot of criminal ordinances, or, you  
11 know, it doesn't say it shall be unlawful to do this,  
12 or it shall be unlawful to do that. You know, it's --  
13 you have to sometimes pull out multiple sections and  
14 try to explain how the ordinance prohibits what is the  
15 conduct that is occurring.

16 So, you know, zoning staff has to be, one, sure  
17 that there is language in the zoning ordinance that  
18 will justify the bringing of the case against someone.  
19 You know, preferably you would like to know who you  
20 are supposed to bring that case against. So it should  
21 be unlawful for the owner, unlawful for the occupants,  
22 it should be unlawful for the real estate agent -- we  
23 need to know who is responsible, who will be charged,  
24 what we would have to prove beyond a reasonable doubt  
25 in order to prosecute a violation. The zoning

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1 ordinance gives us little to no help with that in  
2 cases like this.

3 Q So this is -- but you are speaking about a  
4 prosecution proving a criminal case against somebody,  
5 some party, as a hypothetical, if something were  
6 brought to you that was a violation of the Horry County  
7 zoning ordinance, right?

8 A That's correct. The zoning ordinance requires  
9 that, first, you know, the inspector or the zoning  
10 administrator representative goes out and issues -- you  
11 know, assess the situation, issues a written warning,  
12 if, in fact, they see a violation, and then they either  
13 give or refer the person to the zoning administrator to  
14 give a time period for correcting the situation, and  
15 then if the situation is not corrected, the next step  
16 is to issue Form 7s.

17 Q Let me go back to before you investigate; you  
18 have to receive a specific complaint, correct?

19 A That's correct. Because if you are going to do  
20 zoning enforcement, you have to do it against someone.  
21 There is not general zoning enforcement. Like I said,  
22 these are misdemeanors. We're proving a case beyond a  
23 reasonable doubt. You know, we have to have a  
24 defendant, and the zoning ordinance doesn't give us any  
25 instruction as to who that defendant would be. So

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1 there would be a lot of blanks that staff would have to  
2 fill in, or the attorney would have to fill in, that  
3 just aren't specified as a zoning ordinance in order to  
4 move forward with prosecution in a situation like this;  
5 not to mention, if you are talking about, you know, the  
6 definition of "family," and that is what you are going  
7 to enforce, the definition of "family," there are a lot  
8 of issues there. Like, you know, no more than five  
9 persons unrelated by blood or marriage, you know, I'm  
10 familiar with that language, but what degree of  
11 relationship? Can they all be cousins? And what  
12 authority does the zoning inspector have to require  
13 that information? If the zoning inspector even gets a  
14 specific complaint like that, goes up to the door and  
15 knocks on the door and the people inside refuse to talk  
16 to them and offer no information about relationships --  
17 you know, they don't carry DNA kits. You know, that  
18 becomes very difficult as far as hanging prosecution on  
19 the definition of "family."

20 Q Let me ask you about maximum occupancy. How, if  
21 at, all Horry County regulate maximum occupancy  
22 anywhere for a single family home?

23 A The County doesn't recommend -- I'm sorry,  
24 doesn't regulate occupancy. There is a zone around  
25 Coastal Carolina that has some occupancy limits, but it

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1 is not enforced by the County. It was originally  
2 intended to be enforced by the Coastal Carolina Police,  
3 but it is my understanding that they've not been able  
4 to enforce it either.

5 Q And that was related to maximum occupancy like  
6 separate leases, or what was that?

7 A I believe it was no more than four persons to a  
8 residence, one to a bedroom. I don't have the exact  
9 language in front of me and haven't looked at it in  
10 awhile, but it was something along those lines.

11 Q Any zoning district in Horry County is subject to  
12 text amendment or zoning amendment; isn't that correct?

13 A That's correct.

14 Q And to your knowledge, when you were with the  
15 County, did Long Bay Estates -- did Horry County want  
16 zoning amendments or changes or text amendments to Long  
17 Bay Estates?

18 A Not specifically Long Bay Estates. I mean, there  
19 is a lot of zoning that makes it each and every year in  
20 the zoning ordinances. I don't want to complicate the  
21 issue, but SF-6 used to have a different name; I think  
22 it was R7. So that general amendment would have  
23 applied to Long Bay Estates like everything else, but  
24 I'm not aware of any other particular zoning amendments  
25 that would have had any impact on that area.

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1 Q All right. Let me take you back earlier in your  
2 testimony to correspondence you, I guess, received  
3 correspondence with the plaintiff or his attorney. I'm  
4 going to direct your attention to what is premarked for  
5 ID as Defense 6 -- no, not 6. 7, that's already in,  
6 11, 12, and 13.

7 A Can you tell me -- June 2?

8 Q June 2, 2015 is addressed to Janet Carter and  
9 Arrigo Carotti from Thomas Brittain. June 11, 2015,  
10 addressed to Thomas Brittain from you, and that is 12.  
11 13, Thomas Brittain to you and Mr. Carotti, June 19,  
12 2015.

13 A Sorry, could you tell me the last one again?

14 Q June 19, 2015.

15 A From Thomas Brittain?

16 Q I can show you. Maybe that is helpful.

17 A I can pull it up. What exhibit number was it?

18 Q On my chart -- I think you saw -- it was 11. So  
19 it was premarked as 11. It's on Brittain Law Firm  
20 letterhead, June 19, 2015.

21 A Yes. Okay. I have that. I'm sorry.

22 Q And No. 12 on Horry County letterhead.

23 A Yes, I've got that.

24 Q Finally, 13, which is on Brittain Law Firm  
25 letterhead.

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1 A Yes. September 17<sup>th</sup>?

2 Q No; that is June 19<sup>th</sup>.

3 A Oh, okay. You said that was number what?

4 Q 13.

5 A Okay. Yes, ma'am. I've seen those.

6 Q Could you take a look at No. 11, the first one,  
7 the letter dated June 2, 2015?

8 A Yes, I have that in front of me.

9 Q Is there a complaint for you to investigate  
10 contained in that letter?

11 A No, there really isn't. It's very general. It  
12 says that it is a formal complaint, but then cites to  
13 an Horry County code section that is not relevant to  
14 this in any way, a code section that is a general  
15 amendment regarding parking, I think. Then it talks  
16 about deed restrictions and talks about weekly vacation  
17 stays being in direct violation of the law, but does  
18 not give me any specific property or any specific  
19 person or any specific dates for when these violations  
20 are alleged to have occurred.

21 Q And you've responded to that; is that Exhibit 12,  
22 the letter from you?

23 A Let's see. June 2, and then, yeah, responded on  
24 June 12<sup>th</sup>.

25 Q Could you take a look at that, Ms. Carter, and

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1 see if you still agree with your response at that time?

2 A Yes. Yes, I still agree with this.

3 Q What was your response?

4 A Well, my response was, again, saying that Horry  
5 County has no specific ordinance prohibiting short-term  
6 rentals; that there have been previous discussions  
7 about the matter, but that, you know, there were  
8 several concerns about bringing litigation -- I'm  
9 sorry, litigation -- bringing such an amendment forward  
10 because, you know, there was some question as to how  
11 could the County police keep up with it since the  
12 County doesn't require any permitting or licensing for  
13 that. How would any such change in zoning ordinance  
14 affect other properties? And informing him that, you  
15 know, a lot of other developments in the County share  
16 that same zoning, and specifically mentioning the  
17 Garden City situation where you had oceanfront, second,  
18 third, and fourth row homes that have been vacation  
19 rentals for years.

20 I did tell them that covenants and restrictions  
21 were the most effective way to deal with an issue like  
22 this where, you know, maybe it would be unique to  
23 their situation, but that was a private matter between  
24 the HOA and homeowners and not something that the  
25 County could enforce.

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1 Q Ms. Carter, is there any ministerial act that the  
2 County can do as a result of this complaint?

3 A No. Again, there is no specific complaint.  
4 Again, you know, there is no -- nothing happening. The  
5 complaint has been general in nature, and there really  
6 is nothing I know of that the County is called upon to  
7 do, that it could do as of a ministerial nature. Any  
8 kind of prosecution of zoning violation would be a  
9 discretionary act. So I'm at a loss as to what exactly  
10 it is that they are asking for.

11 MS. CROSBY: Thank you. Nothing further. I move  
12 8, 10, 11, 12, and 13 into evidence.

13 THE COURT: Any objection?

14 MR. BRITTAIN: No objection.

15 THE COURT: Okay. Defendant's Exhibits 8, 10,  
16 11, 12, and 13 are admitted into evidence without  
17 objection.

18 (Defendant's Exhibits 8, 10-13 admitted.)

19 THE COURT: Can you hear Mr. Brittain?

20 MS. CARTER: I can. Not quite as well.

21 MR. BRITTAIN: How are you doing, Janet?

22 (A brief pause in the proceeding.)

23 CROSS-EXAMINATION

24 BY MR. BRITTAIN:

25 Q Good morning, Ms. Carter, how are you?

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1 A Doing good. How are you?

2 Q I'm doing good. Let me read you something that  
3 has been introduced into evidence, since I haven't sent  
4 you any exhibits. This is part of a memorandum that  
5 purports to be from me to you on August 17, 2015. You  
6 don't happen to have that by any chance, do you?

7 A I do.

8 Q I'm referring you to a portion of it, because  
9 only a portion of it has been admitted into evidence,  
10 and this would begin at the third paragraph -- I think  
11 it is the third full paragraph on Page 2. It begins  
12 with the word "further."

13 A I'm sorry, which one -- okay, I see that. Go  
14 ahead.

15 Q On the second page?

16 A Yes, I see that.

17 Q In that paragraph, isn't it clear that we are  
18 expressing our concern because of the number of  
19 occupants in these houses?

20 A That seems to be one component of your concern,  
21 yes. It talks about the definition of "family," which  
22 is included in the zoning ordinance.

23 Q Right. Then it goes on to say: "It is clear  
24 that the single family, duplex family homes in Long Bay  
25 Estates that are currently being rented on a weekly

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1 basis, or renting to large groups of people, many  
2 unrelated, greatly exceeds the number of occupants  
3 allowed by this ordinance."

4           You received this, right?

5     A     Yes, I did.

6     Q     What had happened here is you really had  
7 convinced us that short-term rentals was not something  
8 that the ordinance could be enforced. I mean, we had  
9 that exchange with you early on. That was a problem,  
10 but there is still an ordinance that deals with  
11 occupancy and density that limits the amount of people  
12 that can be in a particular house and SF-6, isn't  
13 there?

14    A     No, I don't agree with that. Because, you know,  
15 even if you look at the definition of "family," how  
16 about a family reunion? I don't think Mr. DeCiero  
17 would be very happy with that either. You know, the  
18 definition for "family" is there, I'm just not sure how  
19 you would apply it to bring some sort of enforcement  
20 action.

21    Q     Well, it sounds to me what you are saying is  
22 because there are some difficulties in moving forward  
23 with it, you just don't -- you decide that you are not  
24 going to uphold the ordinance requirement.

25    A     No, I'm not saying that. I think that to try to  
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1 enforce actions based solely on definition is next to  
2 impossible, if not impossible.

3 Q Well, if --

4 A It is not a case I would want to prosecute.

5 Q Well, let me ask you this question: If you have  
6 a SF-6 zoning and certain people are having 12 cars, a  
7 bus, a team on a regular basis renting those  
8 properties, isn't that worth the zoning officials for  
9 Horry County to go and investigate that circumstance?  
10 I mean, isn't that something that you ought to have  
11 someone go down there and ask questions about and all?  
12 I mean, you would want to do that, wouldn't you?

13 A If a specific complaint was received about an  
14 ongoing, like, current violation that could be checked  
15 into, then, you know, there is a good likelihood that  
16 someone would be sent out to see what is going on.  
17 Now, when they get there, what can they do? Well, they  
18 can observe the number of cars, attempt to talk to the  
19 occupants, but they don't have any real authority or  
20 power to, you know, demand answers or see the contract  
21 for the rental of the property or anything of that  
22 nature.

23 So, you know, they can go out and observe the  
24 conditions and come back and discuss it with the  
25 zoning administrator and determine if there is enough

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1 going on there to bring an action, but we've not  
2 received any complaints of that type or -- I mean,  
3 this is all speculation.

4 Q You have all of the County resources at your  
5 disposal. It looks to me like you could investigate a  
6 consistent complaint of a zoning violation. You didn't  
7 have the staff or the money to do it, or was it just so  
8 difficult to do it, that it wasn't done? Why wasn't it  
9 done? I know you said "no specific complaint."

10 A It wasn't done -- well, for I -- I mean, the  
11 primary reason it wasn't done is because we've never  
12 received a specific complaint of the current violation  
13 with regard to any particular property, that I'm aware  
14 of.

15 Q The properties are listed in the --

16 A I mean, we can't just go down to Georgetown and  
17 work our way up the coastline knocking on doors asking  
18 who is staying here and what is your relationship.

19 Q The properties are listed in the complaint,  
20 aren't they? You read the complaint? It lists --

21 A It's been awhile since I read the complaint.

22 Q That is notice. I mean, you could have gotten  
23 that complaint with the specifics in it and said, hey,  
24 someone go down to this area down here and see if there  
25 are 30 cars under this house, because if there are,

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1 we're going to stop that.

2 A By the time -- we're talking about the complaint  
3 that was filed in this case, and I'm assuming those  
4 would not have been current violations, something that  
5 happened in the past. You know, if someone called and  
6 said right now today this is the situation, and it  
7 sounded as though something was going on in violation  
8 of the zoning ordinance, we could send someone out to  
9 check it. But you can't give a blanket there are  
10 things going on in this neighborhood that don't comply  
11 with the zoning ordinance. You know, we need  
12 specifics, and then we need to sit down with whatever  
13 facts that the complainant or caller gives.

14 I think these days there is a written form that  
15 you make a complaint on and, you know, work the case.  
16 There's been no case to work in this situation. So  
17 everything we're talking about is speculation.

18 Q Did you -- as a result of whatever communications  
19 you received from me or from Mr. DeCiero, did you ever  
20 authorize or require anyone to go down there and  
21 investigate the activity?

22 A No, not that I recall.

23 Q Now, Roland Meyer did something about this when  
24 he was in charge of zoning, didn't he?

25 A Well, as I said, I really wasn't involved in it

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1 back in those days, but I have seen the letter that was  
2 discussed earlier.

3 Q Well, what has been introduced into evidence --  
4 here again, this is my first trial where someone is  
5 somewhere else and I can't show you the exhibit, but  
6 there is an exhibit in this case that has been admitted  
7 from Roland Meyer that he wrote a letter to Ed Edelen.

8 A I've seen that letter.

9 Q You've seen that letter? Okay. And what he says  
10 in there is that there was reported violations of your  
11 use -- he says, just like you've always said, you can  
12 rent your house on a weekly basis. I mean, I quickly  
13 learned that was the case and moved away from that, but  
14 he said you have to watch the occupancy; that is where  
15 you are doing wrong. He said this is sent to you as a  
16 warning, and if you don't -- if you do it again, there  
17 are other actions, such as citations, that take place.

18 So isn't that the way that it is supposed to  
19 operate? I know you say there is no specific  
20 complaint, but fair to let the judge decide if there  
21 is enough information if you look into it or not. But  
22 my point is you have to try to enforce the law; isn't  
23 that true? You can't just talk about he can talk to  
24 them or not talk to them; you have to try to enforce  
25 the law.

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1 A Well, the law needs to be clearly stated, and I  
2 understand what Mr. Meyer's letter said, but I also see  
3 that Mr. Meyer apparently never went any further with  
4 it or followed up on it, and it doesn't look like he  
5 consulted with an attorney prior to sending it.

6 So, like I said, I wasn't involved in it, and all  
7 I can do is look at the letter and take it for face  
8 value.

9 Q Does the County have an enforcement section in  
10 the zoning area?

11 A There is an enforcement section that says any  
12 violation of a zoning ordinance is a misdemeanor  
13 punishable up to 30 days in jail and a fine not to  
14 exceed \$500, I believe; something along those lines.

15 Q I mean do you have a group of people that are,  
16 quote, enforcement officers?

17 A Yes -- well, they are not officers, but they are  
18 called "inspectors."

19 Q How many times --

20 A Law enforcement -- they have no law enforcement  
21 training. They just work with the zoning administrator  
22 to enforce the zoning ordinance.

23 Q How many times did you use the court system to  
24 enforce a zoning violation?

25 A Well, the inspectors themselves did quite a few.

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1 I really don't have those numbers, but I think it was  
2 frequent, but as far as me, as an attorney, needing to  
3 go with them, it was not that frequent. Maybe three,  
4 four times a year.

5 Q So you were set up with the personnel that if you  
6 chose to, you could have sent someone down to this  
7 location and had them take a look at what was going on?

8 A Yes, I could have sent a staff member out if I  
9 received a specific complaint.

10 Q In any of those letters that you sent back to  
11 him, did you tell him the complaint wasn't specific?

12 A I didn't --

13 Q I mean the letters speak for themselves, don't  
14 they?

15 A Right. Specific complaints were not the subject  
16 matter. The subject matter is -- the way I was reading  
17 it, it was general. They had a complaint in general.

18 Q You wrote back about short-term rentals and all  
19 of that. You didn't write saying, look, we need more  
20 specifics from you if we're going to go down and look  
21 at this; that was not in any of your communication?

22 A That was never discussed that I can recall.

23 Q You know he testified that it is happening.  
24 Right this minute it is still occurring. So we now  
25 know exactly what we talked about. We have identified

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1 the homes, put the people in here. You have pictures  
2 of what is going on down there. He told you everything  
3 he could tell you. I know you are not working for the  
4 County anymore. But, I mean, my point is what good  
5 does it do to avoid responsibility because you didn't  
6 have enough of a complaint? You turn right around and  
7 get one tomorrow.

8 A You also need a specific section of the ordinance  
9 to charge someone with a violation, and in my opinion,  
10 that is what has been missing. There is just not  
11 enough there to charge someone with a criminal offense.

12 Q But all of that was obvious in terms of what you  
13 were saying about short-term rentals, wasn't it? That  
14 is what this discussion was about for so long between  
15 us.

16 A I mean, I said repeatedly that in order to deal  
17 with short-term rentals in Horry County, we need a  
18 specific ordinance similar to what Myrtle Beach has,  
19 which specifies the zoning districts, where they are  
20 allowed, where they are not allowed, which says no  
21 leases or rentals for whatever period, and Myrtle  
22 Beach, I think, is 30 days. But there is just none of  
23 that in that zoning ordinance -- well, at least there  
24 wasn't in May of 2018. I don't know what has happened  
25 since I retired.

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1 Q Sure. I understand that. But my point is you  
2 didn't tell him or write him and say, hey, look,  
3 Mr. DeCiero, you are not giving us enough information  
4 here. We need a date, time, so-and-so, such-in-such,  
5 so-and-so. All you sent back is tell him that there  
6 was no short-term rental problem, they could do that.  
7 You know, you didn't send him a form he had to fill out  
8 that would constitute a specific complaint, and even  
9 after he filed a lawsuit this has been his testimony.  
10 It is a continuing circumstance down there.

11 I did hear you say that it is happening all over  
12 the place?

13 A Well, you know, unincorporated parts of the  
14 county that are oceanfront and several rows back, yes.  
15 I mean, you ride through Garden City and you'll see the  
16 realty signs. I think it is common knowledge that the  
17 beach houses in the Garden City area are rented. They  
18 are vacation rentals. It is not a secret.

19 Q I'm talking about density, occupation density.  
20 Garden City, everybody over there wants that to happen;  
21 isn't that right? I mean, that is a similar use  
22 section that you referred to. Long Bay has two  
23 sections. It has that old-timey-leave-it-to-Beaver  
24 section that is away from the ocean, and they have  
25 these big, fancy houses down there close to the ocean.

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1 Can't you understand why the people who have regular  
2 neighborhood activity don't want more trash, more cars,  
3 more motorcycles than would justify the definition of  
4 "family and/or five unrelated by blood"? Can't you  
5 understand why there would be a concern?

6 A I can understand, you know, what they are  
7 concerned about; however, their zoning is exactly the  
8 same as zoning in other parts of the county where this  
9 is occurring regularly with no issues and no problems,  
10 and that is one of the reasons that I suggested a  
11 better way to deal with this situation, through  
12 covenants and restrictions that are applicable to this  
13 community, which, you know, may have a totally  
14 different situation going than Garden City or other  
15 areas of the county.

16 Q He didn't want to change. He wanted an  
17 enforcement. He didn't need a change. All he needed  
18 is to make sure that those large numbers of people  
19 weren't allowed to stay in those homes.

20 A Well, I'm a little unclear as to -- I think he  
21 is, too -- as to what his real complaint is, because  
22 while we're relying on the definition of "family," he  
23 talks about the number of people staying in these  
24 homes. Well, I mean, five families could vacation  
25 together, and I assume he would have no objection to

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1 that; but, yet, he seems to be saying that he would,  
2 because he keeps coming back to the number of people.

3 So, I mean, if the definition of "family" is  
4 applied, as you keep suggesting, then we need to know  
5 if all of these people staying there are related or  
6 not.

7 Q I just don't understand that position. Sounds  
8 like because there is some complication with it, you  
9 just don't try to do anything about it?

10 A Because the ordinance is not specific enough and  
11 doesn't give clear guidance. You know, the County has  
12 to make a determination as to whether or not this is a  
13 violation and a case that the County wants to bring  
14 forward.

15 Q You didn't have enough information to have  
16 someone investigate this?

17 A I have not, to the best of my knowledge, had any  
18 specific complaint at all, and certainly not one that  
19 is ongoing at the time to where the County could go  
20 down and try to, you know, gather information and see  
21 what was happening; I'm not aware of that ever having  
22 been done.

23 Q You never asked for it? It seems like the  
24 conversation would have been, Mr. DeCiero, we can't do  
25 anything for you because we don't have enough

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1 specifics, here is a --

2 A I said that repeatedly.

3 Q I don't see it anywhere.

4 A That it would need to be amended.

5 Q I don't see it anywhere that you said that. You  
6 were always talking about short-term rentals.

7 Let me move on from that. What do we do now?  
8 You are not working here anymore. Is the thing for  
9 Mr. DeCiero to do is to go and make a more specific  
10 complaint to the County again and discuss whether it  
11 is specific enough, so then they will go forward and  
12 try to stop what's going on?

13 MS. CROSBY: Objection, calls for speculation.

14 THE COURT: Overruled. I'll allow it.

15 A Well --

16 Q (MR. BRITTAIN) I'm trying to go forward with it.

17 A My opinion would be for Mr. DeCiero and you to go  
18 before county council and convince them that an  
19 ordinance needs to be adopted that addresses this issue  
20 and give staff the direction that it needs. As far as  
21 a particular complaint about a particular property,  
22 even if you provide that and the County decides to go  
23 out and investigate -- and I use "investigate" loosely  
24 because zoning inspectors have very limited authority  
25 in that regard -- the question then is: Is there

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1 enough in the ordinance to prove a violation?

2 Q You don't know unless you investigate, do you?

3 A That is something their attorney would have to  
4 speak to. I don't know what has happened in the last  
5 two years and three months.

6 Q What changed since Roland Meyer wrote a letter to  
7 one of these offenders and warned them? What's changed  
8 since then? Nothing really has changed, has it?

9 A That was 2002, 18 years; a lot has changed. I'm  
10 not really sure how to answer that question. The  
11 definition of "family" has not changed, as far as I  
12 know.

13 Q I can't see you well, so I'm talking on top of  
14 you, I apologize; so you finish. Yes, ma'am, one of  
15 the provisions that hasn't changed is the  
16 administration and enforcement provision. It says that  
17 Horry County Council shall fund sufficient personnel to  
18 administer and enforce a provision of the ordinance.  
19 If the zoning administrator shall find that any of the  
20 provisions of this ordinance are being violated, he  
21 shall notify in writing the person responsible for such  
22 violations, indicating the nature of the violation, and  
23 ordering the action necessary to correct it. He shall  
24 order discontinuance of illegal use of land, structure,  
25 buildings, or structures, removal of illegal buildings

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1 or structures, or illegal additions, alterations,  
2 structural changes, discontinuance of any illegal work  
3 being done.

4 So that is an ordinance that says that Horry  
5 County Council shall do these things, but the Horry  
6 County Council didn't do those things in this case,  
7 primarily because you say there was not enough  
8 information given to you to investigate the claims of  
9 Mr. DeCiero?

10 A Yes. I mean, is that a question?

11 MR. BRITTAIN: I couldn't hear what she said.

12 MS. CROSBY: She said, "Is that a question?"

13 Q (MR. BRITTAIN) Yes. Well, I intended it to be.  
14 It is probably a combination of a statement and a  
15 question. What I'm trying to get at is your  
16 testimony, which seems to me like you admit that the  
17 County has an obligation to enforce zoning ordinances,  
18 don't you?

19 A Yes. The County has an obligation to enforce  
20 zoning ordinances, but there is a lot of discretion  
21 involved in that, and it is not purely a ministerial  
22 act. It has to be clear that there is a violation. It  
23 is not always clear that, you know, which provision of  
24 the zoning ordinance has been violated. I mean, it's  
25 complex.

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1 Q And the problem with this case, from your  
2 standpoint, is that you never got enough specific  
3 information about what was happening down there?

4 A Well, that is one problem, certainly. I mean, as  
5 far as complaints go, there has never been, as far as I  
6 know, a specific complaint about an ongoing violation  
7 or a violation happening at that moment to where the  
8 County can go out and check it out. But even if we  
9 had, we're still back to: What is going on the  
10 property in violation of the ordinance; and if so, what  
11 section? If you are going to undertake enforcement,  
12 you need to be ready to cite, chapter, verse, and go to  
13 court and prove it beyond a reasonable doubt.

14 Q Those are difficulties, but those aren't reasons  
15 not to fulfill the requirements of Section 1300, are  
16 they?

17 MS. CROSBY: Objection.

18 THE COURT: Sustained. Just ask your question.

19 MR. BRITTAIN: I'm sorry.

20 Q (MR. BRITTAIN) What you discussed is the  
21 difficulties associated with enforcement, right?

22 A Well, I've discussed the impossibilities in some  
23 situations because, you know, whether or not there is a  
24 violation, is the violation clear enough that we can  
25 take it to court and prove it? Do you have the

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1 language in the statute to rely on -- or in the zoning  
2 ordinance to rely on, hang your hat on and prove your  
3 case? You know, the County has to review all of these  
4 issues on a case-by-case basis and make a decision if  
5 some sort of enforcement action is warranted.

6 Q After the lawsuit was filed, was there any effort  
7 to determine whether or not the complaint of activity  
8 was continuing?

9 A I'm not aware of anything that has been done  
10 since the lawsuit began; but, again, I've been gone for  
11 a good while from working for the County.

12 Q Okay.

13 MR. BRITTAIN: That is all I have. Thank you  
14 very much.

15 THE COURT: Redirect?

16 MS. CROSBY: Briefly, Your Honor.

17 REDIRECT-EXAMINATION

18 BY MS. CROSBY:

19 Q Ms. Carter, Horry County Council, the elected  
20 officials in the governing body, determined the  
21 direction of the County as far as policy, procedure,  
22 and the zoning ordinances; is that correct?

23 A That's correct.

24 Q And did you, during your tenure, see any appetite  
25 to change the short-term rental or any occupancy

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1 restrictions? You said there are no maximum occupancy  
2 limits?

3 A Other than the one discussion in 2004, I don't  
4 really recall any discussions with council committees  
5 or council pertaining to that issue. I mean, it may  
6 have happened since I left, because I think, you know,  
7 there is some interest in it. Among the public, I hear  
8 talk of it, but whether county council has taken it up,  
9 I don't know. Mr. Schwerd would have to answer that  
10 for you.

11 MS. CROSBY: Nothing further, Your Honor.

12 THE COURT: Thank you very much. Call your next  
13 witness.

14 MS. CROSBY: We call David Schwerd.

15 THE COURT: If you will.

16 (DAVID SCHWERD, having been duly sworn, testified  
17 as follows:)

18 THE COURT: Could you spell your last name?

19 THE WITNESS: David Schwerd, S-C-H-W-E-R-D.

20 DIRECT-EXAMINATION

21 BY MS. CROSBY:

22 Q Could you tell the Court what your employment is  
23 and in what capacity?

24 A I'm currently the Horry County Planning Director.  
25 I supervise the Planning and Zoning Department.

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1 Q How long have you held that position?

2 A Since Ms. Carter retired in '18.

3 Q Previous to that, how, if at all, did you serve  
4 in the County?

5 A I was deputy director for several years, and  
6 prior to that I was the principal planner, and prior to  
7 that I was senior planner. I've been with Horry County  
8 since 2004.

9 Q And so you are a professional planner; do you  
10 hold any credentials?

11 A Um, there are no credentials. I do not have an  
12 NICP, no, but I am a professional planner and have been  
13 doing it since '97.

14 Q With regard to zoning, what are your  
15 responsibilities with regard to zoning administration  
16 and enforcement?

17 A As a director, I supervise several principal  
18 planners and deputy director, and underneath the  
19 principal planners, the zoning administrator works  
20 under the principal planner.

21 Q All right. And are you funded by Horry County  
22 Council?

23 A We are.

24 Q And do you make those budget requests?

25 A We do. As a department head, I do prepare those

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1 budget requests.

2 Q Do you have anything budgeted in your budget  
3 requests for enforcement of the zoning ordinance?

4 A We have a chief zoning inspector and three  
5 inspectors, so a total of four, which has been  
6 increased over the years.

7 Q Have they funded those requests upon your  
8 requests for that?

9 A Yes, they have.

10 Q And in your position and capacity, do you see  
11 that your zoning enforcement inspectors can meet the  
12 need for zoning enforcement in Horry County?

13 A With our current level of demand, yes.

14 Q Let me ask you about the zoning in Long Bay  
15 Estates. You're familiar with that neighborhood?

16 A I am.

17 Q Are you familiar with your zoning ordinance and  
18 your use districts?

19 A I am.

20 Q What is SF-6?

21 A It is residential zoning district that allows one  
22 family and duplex units, as well as several other  
23 conditional uses.

24 Q Have you been there?

25 A In Long Bay?

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1 Q Uh-huh.

2 A Yes.

3 Q From what you have observed personally, yourself,  
4 did there appear to be any violations of the zoning  
5 ordinances as far as what is constructed in Long Bay?

6 A Not as far as construction. They all appear to  
7 be single family structures with a couple duplexes.

8 Q We've been talking about the definition of  
9 "family," are you familiar with that?

10 A I am.

11 Q What is the definition of "family" in Horry  
12 County?

13 A I believe it is no more than five unrelated  
14 individuals that are blood, marriage, or adoption,  
15 something along those lines, living together as a  
16 single household unit.

17 Q Is there a maximum occupancy limit?

18 A In terms of the number of individuals in the  
19 house, no.

20 Q And let me ask you if Horry County has regulated  
21 occupancy during your tenure, to your knowledge?

22 A Have we regulated occupancy?

23 Q Occupancy.

24 A In terms of the total number of people?

25 Q Sure.

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1 A No.

2 Q And is there any way you could -- let me ask you  
3 about complaints. During your tenure, have you  
4 received complaints of violations of the Horry County  
5 zoning ordinance?

6 A Yes, many.

7 Q On a general level. Now, on a little more  
8 specific level, have you received any complaints  
9 regarding occupancy?

10 A Yes.

11 Q Tell us about those, please.

12 A At least in the last several years since I've  
13 been director, we had, I believe, five of those  
14 complaints. The majority of those are where they were  
15 individuals where an individual rented the entire house  
16 and then turned around and rented the house out in  
17 individual leases to summer workers where there was  
18 seven, eight, nine, ten people who are renting from the  
19 renter.

20 Q And you received a specific complaint about that?

21 A They were specific to the address, written as  
22 required by the zoning ordinance. We do provide a form  
23 on that. They submit them online. They are anonymous.  
24 We go out and investigate. They tell us the address  
25 and if they believe there is more than that. When we

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1 go out, we knock on the door and see if anyone answers.  
2 We don't have the power to go in or on the property  
3 other than that. The only times that we've been  
4 successful in any of those have been the individuals  
5 came out, and it's usually someone who was a  
6 disgruntled former tenant and provided copies of  
7 independent leases for each individual tenant or  
8 occupant in there.

9 Q So that was --

10 A Generally, usually, they were summertime workers  
11 or hotel workers, yes.

12 Q You referenced, Mr. Schwerd, that there is a  
13 complaint form process required by the zoning process;  
14 what is the process of making a complaint of a zoning  
15 violation?

16 A There is a written complaint form. We'll fax it  
17 to you or e-mail it or it is available for download on  
18 our Website. You fill it out and fax it in. Of  
19 course, in these times, we do everything digital, so if  
20 it is faxed in, you know, it goes in the next day. If  
21 it is brought in paper, it is dropped off and we see it  
22 in three days so that it goes through the proper time  
23 period so we don't cross contaminate. We schedule an  
24 investigation as soon as we get it, which involves  
25 looking at what the property is zoned at, seeing who

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1 owns the property, and typically go out to the property  
2 and see if there is any specific violations that are  
3 easy to notice, and then we will knock on the door to  
4 see if anyone is there, if the situation seems safe and  
5 appropriate. Sometimes we have to ask for police  
6 escorts in some of these situations, but generally we  
7 go out there and knock on the door and introduce  
8 ourselves and tell them that we received a complaint  
9 and ask for them to comply in terms of tell us if they  
10 are in violation or not, and that is about as far as we  
11 can go with most of these.

12 Q I'm showing you what is marked as Defense 18 and  
13 ask if you recognize this.

14 A This is a copy of our written complaint form.

15 Q That is what you use that initiates an  
16 investigation by the zoning?

17 A That is correct.

18 MS. CROSBY: I offer 18 into evidence.

19 MR. BRITTAIN: No objection.

20 (Defendant's Exhibit 18 admitted.)

21 Q (MS. CROSBY) And that process you described is  
22 actually codified; is it not?

23 A It is.

24 Q You have been in the courtroom the entire time  
25 and you heard Mr. Brittain read that code section?

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1 A I believe it was. I definitely have seen it.

2 Q I'll show you what is marked as ID, Defense 20,  
3 and ask you if you recognize that code section in your  
4 ordinance?

5 (Defendant's Exhibits 20 & 21 marked.)

6 A Yes. This is an Article 13, Section 1300 under  
7 the zoning ordinance. Those are Sections 1306 and 1309  
8 of the same section Article 13.

9 Q Those are part of the Horry County ordinance?

10 A They are.

11 Q And where is the requirement for the written  
12 complaint?

13 A In 1306 it states that any person may file a  
14 written complaint.

15 Q And the zoning, what you said, your investigatory  
16 process is laid out in Section 1300?

17 A 1300, yes.

18 Q And what is the part where it talks about -- if  
19 you could read that?

20 A The entirety?

21 Q Well, the part --

22 MS. CROSBY: Excuse me, Your Honor.

23 Q (MS. CROSBY) How do you find out about a  
24 violation or a supposed violation or request for an  
25 investigation?

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1 A How do we find out about it?

2 Q What does that ordinance say?

3 A "If the zoning administrator shall find that any  
4 of the provisions of this ordinance are being violated,  
5 he shall notify in writing the person responsible for  
6 such violations indicating the nature of the violation  
7 and ordering action."

8 Q So if you shall find that there was a  
9 violation -- so the process starts under that  
10 subsection. Someone files a written complaint to be  
11 investigated that alleges a violation. Then, the next  
12 step is whether or not you all find that there is any  
13 violation; is that right?

14 A That is correct.

15 Q SF-6 allows single family homes and duplexes?

16 A One family dwellings and duplexes.

17 Q And some of the special exceptions include --  
18 permitted uses: Duplexes, golf courses, churches,  
19 temples, places of worship, and daycare centers and so  
20 forth that are allowed?

21 A Daycare centers are one of those.

22 Q Do you know if there are any daycare centers?

23 A I'm not aware of any, no.

24 Q There has been a little bit of testimony about  
25 restrictive covenants and private enforcement and how

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1 this works, as opposed to what Horry County zoning  
2 enforcement is. How are restrictive covenants related  
3 to zoning enforcement, if at all?

4 A The only way they are related to zoning  
5 enforcement is per state law we must ask on an  
6 application whether or not the use being asked for is  
7 in violation of the covenants and restrictions. If we  
8 are provided such notice, then we are not able to issue  
9 that permit. That does not apply to the actual  
10 construction of the building permit itself, only to  
11 those in planning and zoning.

12 Q So then there is a specific question: Is there  
13 any kind of occupancy permit issued by your department  
14 with regard to a single family home?

15 A Our department does not.

16 Q And a building permit is something different,  
17 right?

18 A A building permit, yes.

19 Q And a building permit comes from who?

20 A It is issued by the Code Enforcement Department.

21 Q And that is prior to the construction of the  
22 single family home?

23 A That's correct.

24 Q Are you aware, or would you even be aware, if  
25 there are any allegations of violations that building

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1 permits are being issued in error?

2 A Not any specific complaints.

3 Q With regard to this neighborhood, there is no  
4 occupancy permit that you even can issue, right?

5 A Not from planning and zoning, no.

6 Q Zoning districts in Horry County. This is SF-6,  
7 and we know from Ms. Carter's testimony that SF-6 is in  
8 a few different places. What are the beach/oceanfront  
9 zoning sections in Horry County, unincorporated Horry  
10 County?

11 A There is multiple sections. There is SF-6, which  
12 is a highest density single family residential and  
13 duplex units, but there are other districts, resort  
14 commercial, resort residential, which is what most of  
15 the campgrounds are zoned, that are along the  
16 oceanfront.

17 Q Which you use the term "density" as a planning  
18 and zoning term of art, what does that mean?

19 A Density is in terms of the number of dwelling  
20 units.

21 Q So that has nothing to do with human beings; it  
22 is dwelling units?

23 A That is correct.

24 Q And occupancy, there is no maximum occupancy,  
25 right?

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1 A That is correct?

2 Q So have you -- you've been to Long Bay Estates?

3 A I have.

4 Q And as a planner, is SF-6 consistent with what  
5 you are seeing in Long Bay and what the use of it now  
6 actually is?

7 A It is.

8 Q And are there any multi-unit condos in there?

9 A None that I'm aware of.

10 Q Any apartment buildings that you have seen in  
11 there?

12 A None that I'm aware of.

13 Q Have you had any complaints of the independent  
14 leases for separate leases with separate rooms with  
15 itinerate workers?

16 A I'm not aware of any that have happened.

17 Q And as a planner you attend training on a regular  
18 basis?

19 A That is correct. It is mandated by state.

20 Q And in your regular planning training, has it  
21 come up that short-term rental ordinances have been  
22 discussed popularly, you know, in America?

23 A It is a nationwide trend. In fact, there are  
24 many software providers who provide that service to  
25 government entities who wish to track short-term

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1 rentals in order to enforce them.

2 Q And Horry County Council has not given any of you  
3 all direction to initiate such an ordinance in Horry  
4 County?

5 A Not for zoning.

6 Q Let's go back to that complaint form. Had you  
7 ever received a complaint from Mr. DeCiero?

8 A Not that I'm aware of.

9 Q And you have been there since 2018?

10 A Since Ms. Carter.

11 Q Do you know if your department has received any  
12 complaint from the Long Bay Estates regarding the  
13 definition of "family"?

14 A We have not received any regarding the definition  
15 of "family."

16 Q Have you received any complaint at all?

17 A Yes. We did receive a complaint of a real estate  
18 sign that was backlit, which was in violation of the  
19 zoning ordinance. We went out there, contacted the  
20 real estate company, and they renovated it and removed  
21 the backlighting.

22 Q You don't know if that came from Mr. DeCiero?

23 A They are anonymous, so.

24 Q So you have not received a complaint and,  
25 therefore, you have not investigated it?

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1 A I have not received a complaint for Long Bay  
2 other than the sign.

3 Q Do you have a duty to issue violations -- do you  
4 have a duty to conduct criminal prosecution?

5 A No. I have a duty to investigate.

6 Q Is there any ministerial act, meaning something  
7 you can issue from the County, any ministerial act you  
8 can do as county zoning administrator? Is there  
9 anything you are required to do, any duty you have as  
10 county zoning administrator to do something  
11 independently to notify an individual of how they need  
12 to go about making a complaint?

13 A None that I'm aware of.

14 MS. CROSBY: Nothing further, Your Honor.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. BRITTAIN:

18 Q Can you pronounce your last name?

19 A Schwerd.

20 Q Nice to meet you, sir.

21 A Nice to meet you.

22 Q Have you ever investigated any complaints that  
23 weren't made on that form?

24 A Personally, I have not investigated any that  
25 haven't been made on that form. We do have complaints

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1 that were done by other staff, and that is  
2 definitely -- but, personally, no. Since I've been  
3 director, we required all complaints that come in to be  
4 on a written form.

5 Q When did you become director?

6 A In 2018.

7 Q So not back in 2015 when this suit was filed?

8 A I was not director at that time.

9 Q Did you find when you got there that from time to  
10 time complaints were received by your predecessor and  
11 were investigated?

12 A There were complaints that came in through phone  
13 and voice. In fact, while my predecessor was there,  
14 that is when we instituted the requirement for the  
15 written form.

16 Q So after these complaints that this lawsuit was  
17 filed is when you put in that requirement for that  
18 requirement for that form?

19 A No. That is when we created the form to allow  
20 for the submittal. The requirement was in the  
21 ordinance since '99.

22 Q But it was just written, right? It didn't have a  
23 particular form until you created that form.

24 A Until that form was created, that is correct.

25 Q What I'm saying is Bob DeCiero couldn't fill out

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1 that form because it didn't exist when he filed his  
2 complaint?

3 A It did not exist in 2015.

4 Q This case may be getting real easy for us,  
5 because as I sat here listening to you -- I want to ask  
6 you this: If Bob DeCiero fills out one of those forms  
7 just like you want it filled out, would you then go  
8 down and investigate the fact that more than two family  
9 units are staying in those houses then?

10 A We would investigate.

11 Q So, I mean, that is all we've been asking for, is  
12 an investigation. So if that complaint comes in, you  
13 wouldn't say immediately it is too hard to do because  
14 we don't know if it is a family or not; you would look  
15 into the rental history of the place and do an  
16 investigation and an on-site visitation of the  
17 activities down there, right?

18 A We would definitely investigate.

19 Q And would there be a situation where if you saw,  
20 for example -- I'll hand you Plaintiff's Exhibit No. 1.  
21 There is a bunch of cars like that, not saying it is  
22 the end of the world, but that would pique your  
23 attention about there being more than two families?

24 A As I stated, we would knock on the door and ask  
25 them.

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1 Q Would that be the end of the investigation?

2 A Depends on the answer.

3 Q If they said, We're not going to tell you?

4 A Then that is when we would have to contact the  
5 attorney to determine what to do next.

6 Q As you sit there right now, you are telling me  
7 that if Mr. DeCiero fills out that form, you will  
8 perform a conscientious investigation of his complaint  
9 about there being more than two family units in these  
10 homes?

11 A Yes.

12 MR. BRITTAIN: Judge, that is all I want. That  
13 is my case. If he's going to do that, we get what  
14 we're looking for, which is an investigation. Now, if  
15 we want to go forward about what happens after the  
16 investigation, but I have to get an investigation  
17 first. So that is what I've been seeking. He tells  
18 me he'll do that. We didn't have the form. We sent  
19 in paragraphs and legal documents, you know, but I'm  
20 saying I don't see why to go forward if the Court  
21 require -- I'm not saying Mr. Schwerd wouldn't do it,  
22 but if he tells me that under oath, we'll fill out  
23 that form and see if that solves the problem.

24 THE COURT: Any more questions?

25 MR. BRITTAIN: No.

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1 THE COURT: Redirect?

2 MS. CROSBY: Briefly.

3 REDIRECT-EXAMINATION

4 BY MS. CROSBY:

5 Q When he says "two families," that is not what the  
6 definition is, is it? When he said two -- I think he  
7 asked you if you would investigate. You would  
8 investigate if there is a specific complaint made to  
9 you in writing of violations of the ordinance, right?

10 A If there was a specific complaint.

11 Q Two families can live in a single family home or  
12 can occupy a single family home if not more than five  
13 people are unrelated?

14 A If not more than five.

15 Q But there is no maximum occupancy if you have  
16 families?

17 A If they are families.

18 RECROSS-EXAMINATION

19 BY MR. BRITTAIN:

20 Q I didn't mean to imply that. I meant family  
21 units. The way I understand the ordinance, anyone  
22 related by blood or marriage -- so if you have 30  
23 people in there, maybe 20 of them are kin, and then the  
24 second group of unrelated people can only be five; is  
25 that correct?

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1 A I would have to talk to my attorney on that. As  
2 far as I'm aware, it is more than five unrelated. So  
3 20 are related, and five weren't, I mean.

4 Q But if you found a violation of that part of the  
5 zoning ordinance, you would take action to correct it?

6 A We would attempt to take action, if we found a  
7 violation.

8 Q And you will investigate a written complaint that  
9 you get from Mr. DeCiero?

10 A We investigate all written complaints whether  
11 they are from him or anyone else.

12 Q Yeah. Yeah. But, I mean, even now, at this  
13 stage, if we make the request to investigate, that is  
14 something you are prepared to do?

15 A That is what we do with all complaints.

16 MR. BRITTAIN: Thank you.

17 EXAMINATION

18 BY THE COURT:

19 Q Let me ask you this: Does SF-6 zoning limit  
20 occupants to no more than five unrelated people?

21 A That is the County's interpretation, but that is  
22 up to the Court to decide.

23 Q Because I'm trying to decide what building  
24 ordinance that restricts what kind of structure, and  
25 whether or not there is an occupancy restriction;

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1 because the definition of the building --

2 A The building code definition states that it is a  
3 place for eating, sleeping, and preparing a food. It  
4 does not list the number of occupants in the building  
5 code until you get above 16.

6 Q So SF-6 limits the number of occupants?

7 A It does not limit the total number of occupants.  
8 It limits the total number of unrelated family. So if  
9 you have one family -- for instance, my family and my  
10 wife's family goes on vacation together and rent a  
11 beach home and we're all related, we all have kids,  
12 there could be 25 people in an individual structure,  
13 but we're all family.

14 So occupancy is defined as -- is that how many  
15 people are staying there, and if it is, there is still  
16 more than 25 people, but we're all related, so it is  
17 not a violation.

18 Q If you find a violation from your investigation,  
19 what do you do?

20 A In the cases we have found a violation where one  
21 of the tenants provided us with evidence, we have  
22 provided notice to the person who was both living there  
23 and provided written notice to the person that they  
24 were renting from per the evidence, as well as the  
25 property owner. None of those have actually made it

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1 past that point because the individuals decided to come  
2 into compliance because they did not want to go to  
3 court or even face that potential, so we haven't had to  
4 try that issue in court.

5 THE COURT: Any questions in response to mine?

6 MS. CROSBY: None, Your Honor.

7 MR. BRITTAIN: No, sir.

8 THE COURT: You may step down.

9 It's a quarter to 1:00; do we need to break for  
10 lunch?

11 MS. CROSBY: That's the County's case.

12 THE COURT: All right. Do you have anything in  
13 reply?

14 MR. BRITTAIN: No, sir.

15 THE COURT: All right. Let's take a ten-minute  
16 recess and let me come back, okay.

17 MR. BRITTAIN: Yes, sir.

18 (A recess was taken.)

19 THE COURT: We've been back in chambers awhile  
20 discussing everything, and I think we are all pretty  
21 much on the same page, but I said we would come back  
22 in and let you make a brief summation as to what you  
23 are requesting and what kind of relief.

24 MR. BRITTAIN: Yes, Your Honor. Simply, I think  
25 that based on what Mr. Schwerd said, we have,

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1 essentially, the relief we are seeking. We want the  
2 County to engage in determining whether there are any  
3 zoning violations in this area. We heard throughout  
4 today that the complaints we made weren't specific  
5 enough and maybe weren't good enough. We have learned  
6 there is a form, which I honestly didn't know about  
7 the form. That form was created in 2018, so. If the  
8 Court were to rule on the issues beyond what happens  
9 with Mr. Schwerd's investigation, if the Court was to  
10 rule on the issues we have in the case, I'd make the  
11 following observations; that is a fairly disingenuous  
12 argument.

13           You will see the exhibits. It is clear that  
14 there was an exchange of information here. There was  
15 no request coming back, I don't think, that you'll see  
16 saying, hey, how about give me this date and that date  
17 and that day. They didn't want it investigated  
18 because they knew it was happening and they are going  
19 to have a problem enforcing it. So we believe if you  
20 go into the decision-making, you read SF-6, you have  
21 it with you, you determine whether or not the multiple  
22 use you have seen and heard described is violative of  
23 SF-6 or worthy of investigation, and whether or not  
24 the complaint that was made was sufficient.

25           Now, even if there was a sufficient complaint, we

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1 can't investigate until tomorrow anyway. So what I  
2 heard on the witness stand -- I mean, let's say you  
3 rule everything with me, it would be conduct an  
4 investigation, determine whether or not there is a  
5 violation; that is all I can ask for. Do I need you  
6 to require him to do what he swore under oath to do?  
7 I don't think so. I think that man will do that. So,  
8 essentially, in his testimony, the County is agreeing  
9 to do what I've been asking them to do. But if you  
10 get into the merits of the case, I think we still have  
11 a legitimate argument that we gave them information  
12 they needed to at least conduct an investigation. So  
13 if you rule on those issues, I would like you to rule  
14 for me; but I have gained my relief with an  
15 investigation.

16 THE COURT: All right. Thank you.

17 Ms. Crosby.

18 MS. CROSBY: Thank you, Your Honor. May it  
19 please the Court. I do not disagree a bit with Mr.  
20 Brittain's assessment of Mr. Schwerd's testimony, that  
21 the zoning administrator will do what the zoning  
22 administrator is obligated to do, which is investigate  
23 a specific complaint.

24 In his complaint, Mr. DeCiero said that he was  
25 prepared to show a zoning violation, and I submit to

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1 the Court that he did not do so today, and he has not  
2 done so, so far. There has not been evidence in this  
3 specific complaint made of a zoning violation that  
4 could be investigated. There was no date, no identity  
5 of the individuals or bases for suspicion that they  
6 were in somehow in violation of the zoning ordinance.  
7 So there has not been a specific complaint made. So  
8 that goes to the ripeness of this case being before  
9 this Court at this time. I would argue it is not  
10 ripe, and it should be dismissed based on that.

11 I need to go with what is before the Court, which  
12 is the writ of mandamus. The first element is there  
13 is a duty to perform the act requested. So that goes  
14 back to my argument about ripeness. There is no duty.  
15 If tomorrow the plaintiff -- tomorrow is after today  
16 -- if tomorrow the plaintiff submits a request for an  
17 investigation of a specific complaint of violation of  
18 the zoning ordinance, that would then be ripe, but  
19 there is nothing before this Court, I submit, that is  
20 ripe, so there is no duty to perform an act under the  
21 requirements for writ of mandamus, because there is no  
22 complaint that the plaintiff has shown.

23 Also, I go to the public duty rule. The  
24 government does not have an obligation or duty to this  
25 private individual to do what it is he wants us -- the

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1 public duty rule says the government doesn't owe the  
2 duty to a specific individual as opposed to the public  
3 at large.

4 Secondly, ministerial act, when we think about  
5 writ of mandamus, that is what we think about. Is  
6 there some ministerial act? I think the testimony  
7 from the government officials is there really,  
8 literally, is no ministerial act that they can be  
9 compelled to perform.

10 Specific legal right, this is the third element.  
11 Specific legal right requiring the discharge of a  
12 duty. Mr. DeCiero has no right to be personally in  
13 charge of zoning enforcement. That is part of those  
14 separation of powers, police power issues. He has no  
15 right to dictate what the County does. The County's  
16 own ordinance dictates what we will do, and if we have  
17 a specific complaint, it will be investigated. But  
18 there is no specific legal right requiring the  
19 discharge of a duty.

20 Finally, lack of other legal remedy. So that was  
21 pled in the County's answer as an affirmative defense,  
22 his failure to exhaust administrative remedies and  
23 that there are other legal remedies.

24 So the way it goes is report, investigation,  
25 decision, and then appeal or prosecution. So

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1 prosecution is the discretionary part of it. Report  
2 requires investigation, and that there is no question  
3 that that will happen. The decision is then  
4 appealable. Well, right now he's never objected to  
5 what the County has done in any way, other than suing  
6 the County to force the Court to make the County do  
7 something that they will do if there is a ripe case to  
8 do it. So he hasn't made an appeal to the BZA, and  
9 more critically maybe, and that is another avenue, if  
10 there is a decision you disagree with, what you do is  
11 exhaust the administrative remedy. You appeal to the  
12 Court of Zoning Appeals.

13 There are also restrictive covenants in this  
14 case, and I think that is one of the most important  
15 things. There are private contracts, private  
16 restrictive covenants on this land. He has the  
17 option, which he's availed himself on several  
18 different occasions, was the testimony, of bringing  
19 private actions to enforce restrictive covenants, and  
20 the County's duty is not to enforce those private  
21 restrictive covenants for him.

22 So I think that under all of the elements of writ  
23 of mandamus, there is just not a case for it here.  
24 But the County will, of course, if there is a specific  
25 complaint made, comply with its ordinance and

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1 investigate any alleged violation. Thank you, Your  
2 Honor.

3 THE COURT: All right. As we discussed, I'll  
4 take it under advisement and let you know my decision  
5 if things are not remedied prior to then. Thank you  
6 very much.

7 (Whereupon, the proceedings concluded.)  
8  
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25 CERTIFICATE OF REPORTER

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only\*\*

1 State of South Carolina)  
2 County of Horry )

3  
4 I, Natalie Dahl, Official Court Reporter for the  
5 State of South Carolina, do hereby certify that the  
6 foregoing is a true, accurate and complete Transcript  
7 of Record of the evidence introduced in the hearing of  
8 the above-captioned case, relative to appeal, in the  
9 Court of Common Pleas for Horry County, South  
10 Carolina, on the 20th day of August, 2020.

11 I do further certify that I am neither of kin,  
12 counsel, nor interest to any party hereto.

13

14 February 22, 2021

15

16

17 Natalie Dahl, RPR

18 Court Reporter

19

20

21

22

23

24

25

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THE BRITTAIN LAW FIRM

s/Thomas C. Brittain  
Thomas C. Brittain (SC Bar #893)  
4614 Oleander Drive  
Myrtle Beach, South Carolina 29577  
843-449-8562 (Telephone)  
843-497-6124 (Facsimile)  
**Attorney for Plaintiff**

September 29, 2020  
Myrtle Beach, South Carolina



THE BRITTAIN LAW FIRM

s/Thomas C. Brittain  
Thomas C. Brittain (SC Bar #893)  
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843-497-6124 (Facsimile)  
**Attorney for Plaintiff**

October 2, 2020  
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2015-CP-26-8179
Robert Deciero, a resident of Long Bay	)	
Estates Subdivision, Myrtle Beach,	)	
South Carolina,	)	
	)	Defendant's Reply Brief in Opposition to
Plaintiff,	)	Plaintiff's Motion to Reconsider Order
v.	)	
	)	
Horry County, State of South Carolina,	)	
Defendant	)	

The Defendant respectfully submits this Reply in opposition to the Plaintiff's Motion to Reconsider the trial court's September 23, 2020, Final Order in this case.

The Plaintiff states there was a "larger issue"<sup>1</sup> in the case and in his Motion requests the trial court amend its Order to include specific language imposing a court-ordered duty on Horry County to take certain action regarding *any citizen's* complaint.

The Order denied relief in the Plaintiff's case, as pled and tried, finding he failed to establish an imperative duty owed to him by the Defendant under the facts presented. He was the sole plaintiff.

"The purpose of Rule 59(e), SCRCF, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits." *Elam v. SCDOT*, 361 S.C. 9, 25 (2004) citing *Arnold v. State*, 309 S.C. 157 (1992); *Curcio v. Caterpillar, Inc.*, 355 S.C. 316 (2003).

There is no basis for this Court to alter or amend its judgment. Therefore, the Defendant respectfully requests the Motion to Reconsider be denied.

s/ Elise F. Crosby  
 Elise F. Crosby  
 Crosby Law Firm, LLC  
 405 Dozier Street  
 Georgetown, S.C. 29440  
 SC Bar 7077

Georgetown, South Carolina  
 October 7, 2020

---

<sup>1</sup> Memorandum in Support of Motion to Reconsider. p. 1

**RECEIVED**

**Feb 09 2021**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179

Robert DeCiero, a resident of Long Bay Estates Subdivision,  
Myrtle Beach, South Carolina .....Appellant,

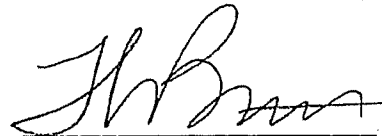
v.

Horry County, State of South Carolina.....Respondent.

NOTICE OF APPEAL

Robert DeCiero appeals the Order Ending Action of the Honorable Benjamin H. Culbertson dated September 23, 2020 and, further, the Form 4 Order Denying Plaintiff's Motion to Reconsider dated January 15, 2021. Appellant received written notice of entry of this Form 4 Order on January 15, 2021.

February 2, 2021



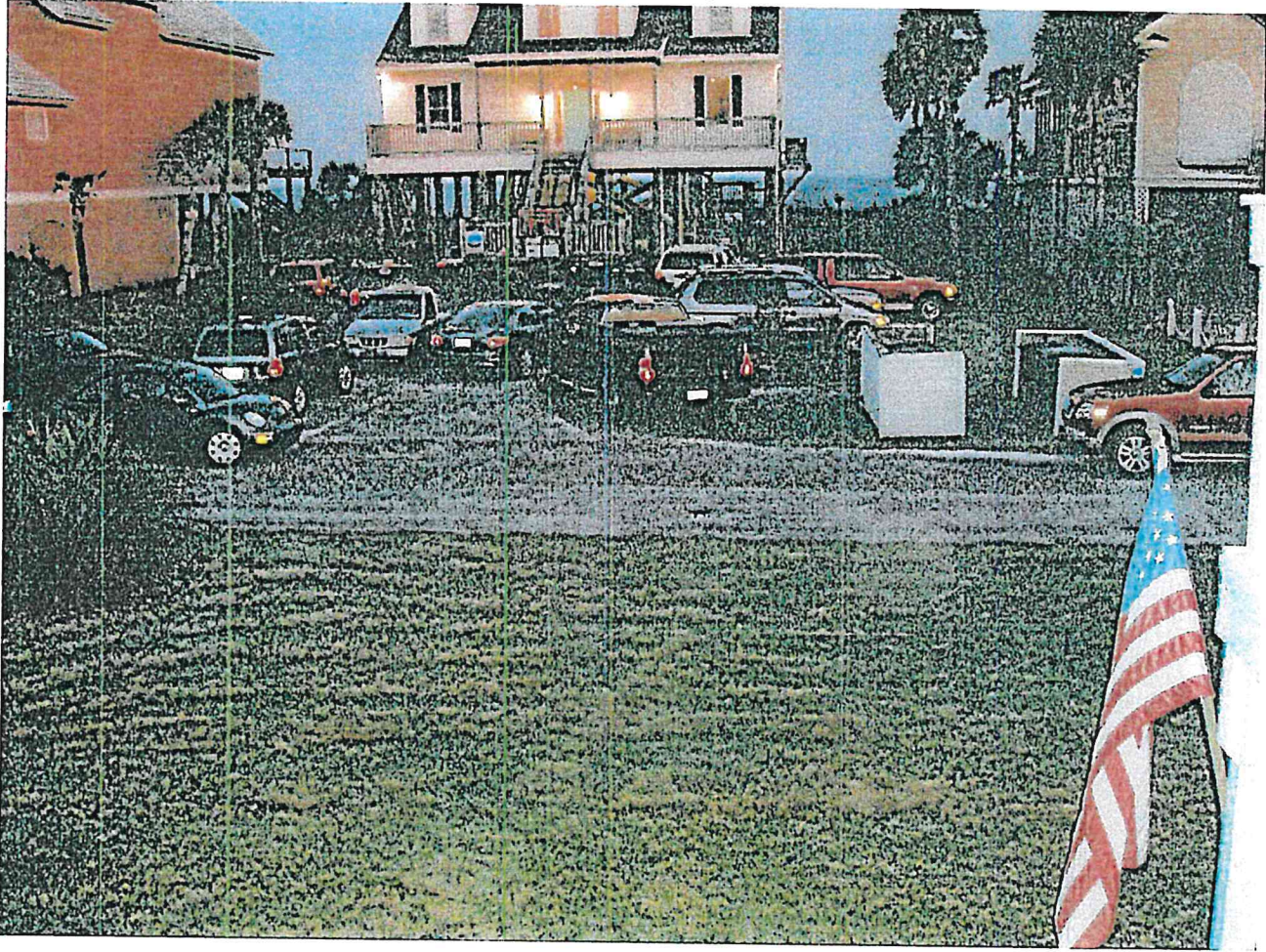
Thomas C. Brittain, Esq.  
The Brittain Law Firm, P.A.  
4614 Oleander Drive  
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843-449-8562  
Attorney for Appellant

Other Counsel of Record:  
Elise F. Crosby, Esquire  
Crosby Law Firm, LLC  
405 Dozier Street  
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843-546-3103  
Attorney for Respondent











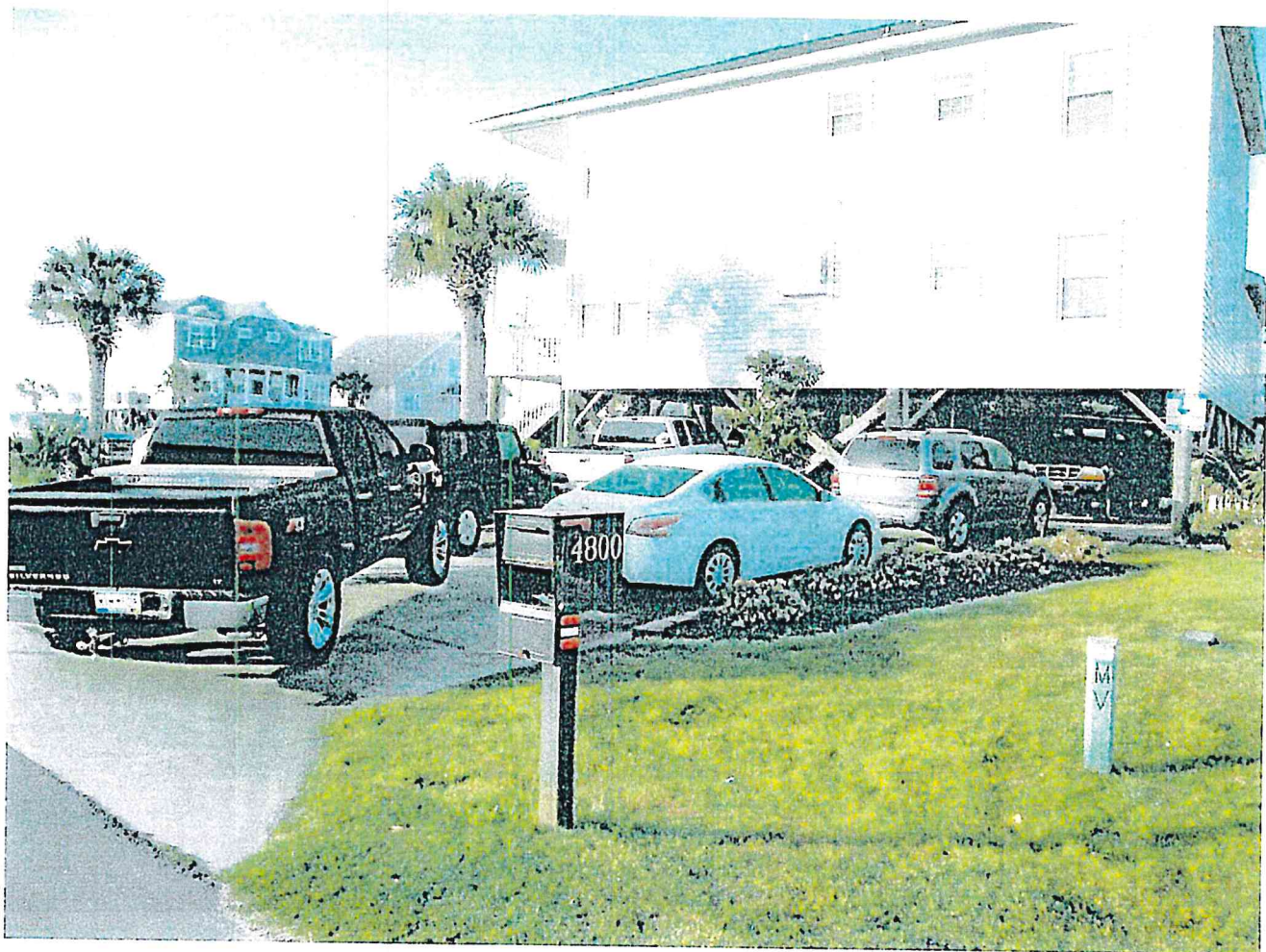






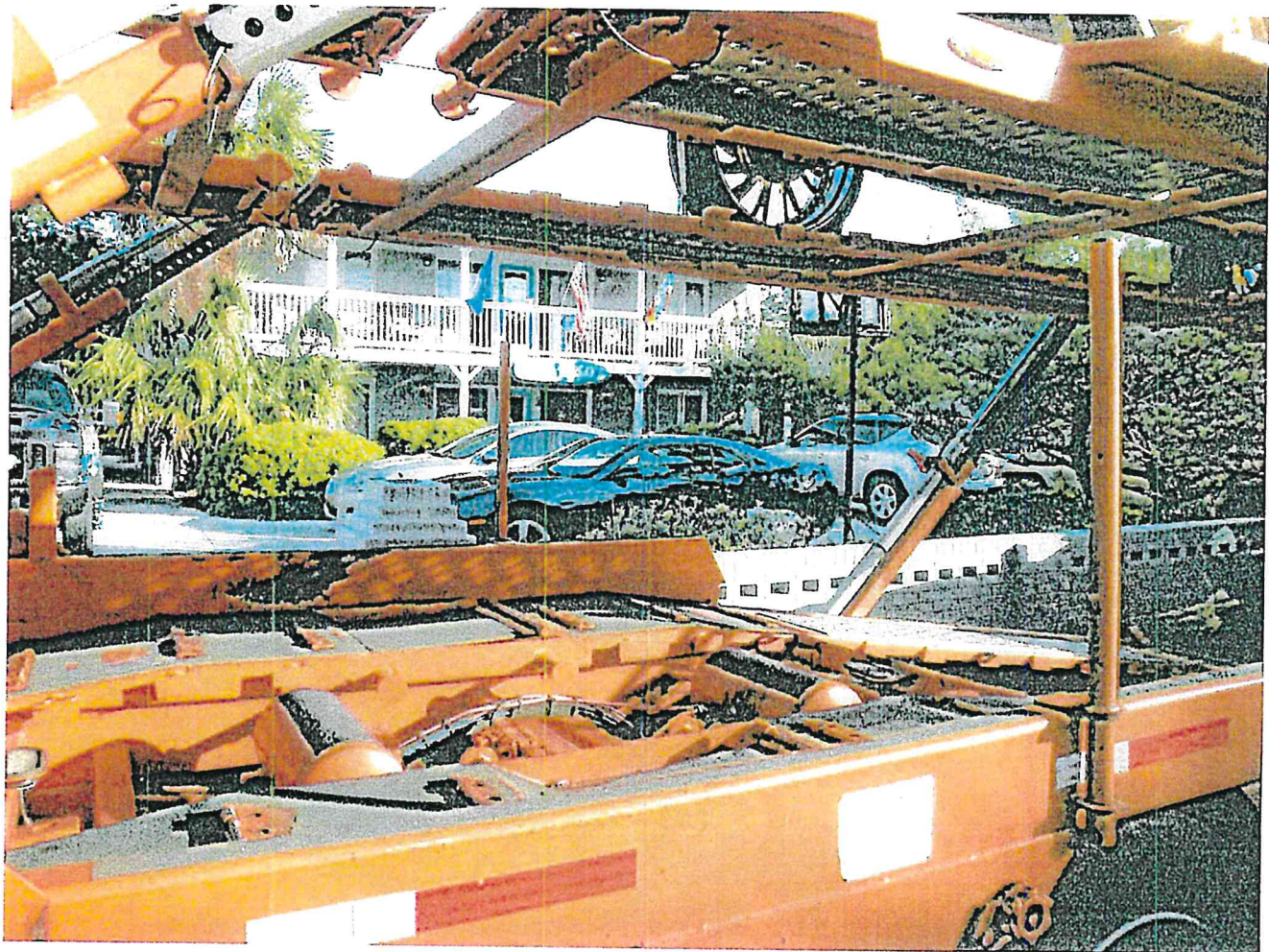






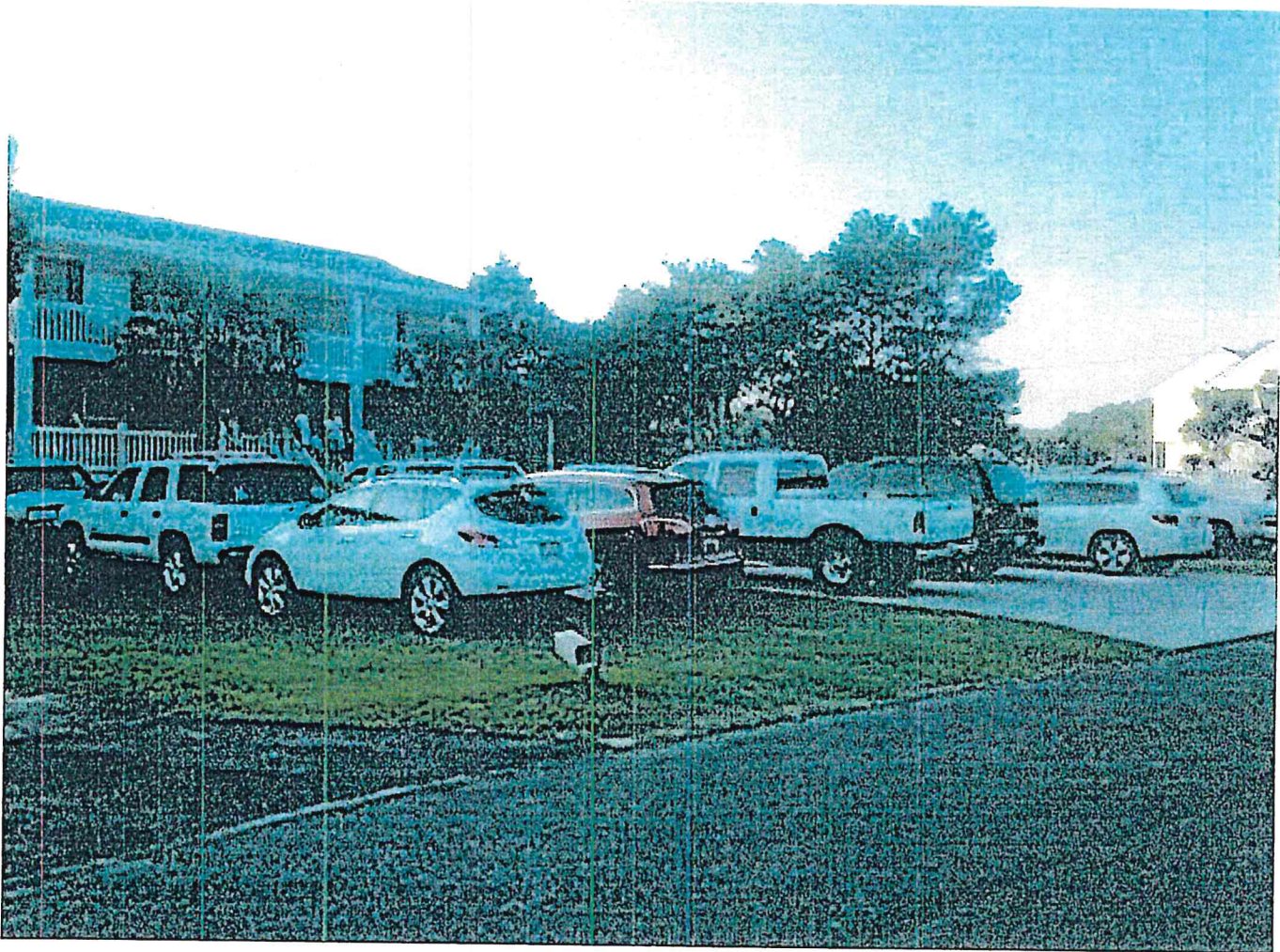


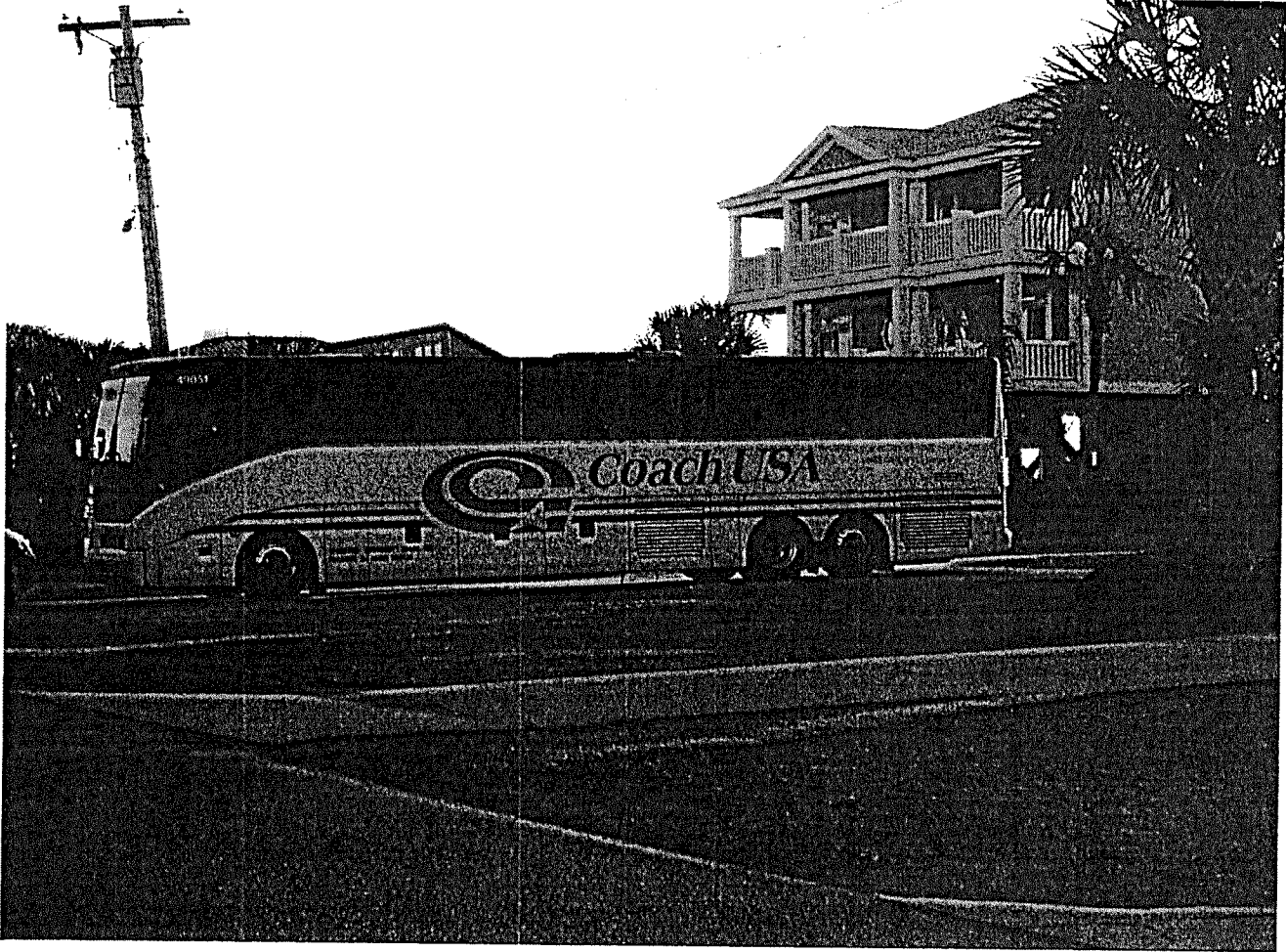
















PLAINTIFF'S  
EXHIBIT  
2  
NO 8/20/20



PLAINTIFF'S  
EXHIBIT  
3  
NO 8-20-20



tabbies  
PLAINTIFF'S  
EXHIBIT  
4  
110 8-23-20



PLAINTIFF'S  
EXHIBIT  
5  
NO. 8, 2020



PLAINTIFF'S  
EXHIBIT  
6  
NO 7-20-20



tabbies  
PLAINTIFF'S  
EXHIBIT  
7  
NO 8-20-20

1300. - Administration and enforcement.

The Horry County Council shall fund sufficient personnel to administer and enforce the provisions of this ordinance. If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes, discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

(Ord. No. 51-99, § 31, 12-7-99)

1301. - Building and sign permits required.

No building, mobile home, sign or other structure shall be erected, located, moved, added to, or structurally altered without a certificate of zoning compliance therefor issued by the Zoning Administrator. No building, mobile home, or sign permit shall be approved by the Zoning Administrator except in conformity with the provisions of this ordinance, unless he is so directed by the Board of Appeals as provided by this ordinance. No building permit issued under the provisions of this ordinance for land use or construction in the jurisdictional area of this ordinance shall be considered valid unless approved by the Zoning Administrator through a certificate of zoning compliance.

(Ord. No. 51-99, § 31, 12-7-99)



707. - SF 6 Residential District (SF 6).

*Intent.* It is the intent of this district to provide areas for medium density one- and two-family residential purposes. Encroachment by high-density multi-family residential, commercial, industrial, or other uses incompatible with or capable of adversely affecting the residential character of this district shall be discouraged.

*707.1 Permitted Uses:*

- (A) One-family dwellings, excluding mobile homes;
- (B) Duplexes;
- (C) Golf courses; and
- (D) Accessory uses.
- (E) Churches, synagogues, temples, and other places of worship subject to the provisions of Article 12.



*707.2 Single-Family and Two-Family Dwelling Requirements.* Unless otherwise specified elsewhere in this ordinance, single-family and duplex dwellings shall meet the following requirements:

- (A) *Front yard setback:* Twenty (20) feet;
- (B) *Side yard setback:* Ten (10) feet
- (C) *Rear yard setback:* Fifteen (15) feet;
- (D) *Minimum lot area:*  
Single-family: Six thousand (6,000) square feet;  
Two-family: Eight thousand (8,000) square feet;
- (E) *Minimum lot width at building line:* Sixty (60) feet;
- (F) *Maximum height of structure:* Thirty-five (35) feet from grade (not to exceed three (3) stories); and,
- (G) *Building coverage:* Not to exceed thirty-five (35) percent of the lot.

(Ord. No. 15-02, § 1, 2-19-02)

*707.3 Conditional Uses:*

- (A) Reserved.
- (B) Publicly owned buildings, facilities, or lands, provided the review as required by Section 6-29-540 of South Carolina State Law is complete.
- (C) Publicly or privately owned utility substations or sub-installations, including water towers, provided the review as required by Section 6-29-540 of the South Carolina State

Law has been completed.

- (D) Private educational facilities, nurseries, or day care centers, provided that:
1. Such uses shall meet the minimum standards set forth for such facilities by the Department of Social Services and other state departments.
  2. Such uses shall meet the area requirements of the residential district in which it is to locate.
  3. Reserved.
  4. A buffer strip may be required if deemed necessary in order to reduce the noise factor generated by the day care facility.
  5. Day/child care centers shall meet the requirements established in section 525.
- (E) Accessory living quarters in conformance with the requirements of Article V, Section 509.

(Ord. No. 67-88, 4-18-89; Ord. No. 137-97, §§ 4, 10, 12-2-97; Ord. No. 51-99, §§ 15, 20, 12-7-99; Ord. No. 26-01, § 1, 3-20-01; Ord. No. 114-01, § 1, 9-4-01; Ord. No. 138-04, § 2(Att. 1), 2-1-05; Ord. No. 21-08, § 1, 2-19-08; Ord. No. 35-18, § 13, 5-1-18)

*707.3.1 Special Exceptions.* Owing to their potential negative impact on the community, the Board of Zoning Appeals may approve the following use(s) as a special exception:

Bed and breakfast establishments (B&Bs) subject to the following conditions:

1. That the special exception complies with all applicable development standards.
2. That the special exception will be in substantial harmony with the area in which it is to be located.
3. That the special exception will not be injurious to adjoining property.
4. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
5. That the special exception will not discourage or negate the use of surrounding property for uses(s) permitted by right.
6. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgement, will enhance the siting of the proposed special exception.

(Ord. No. 87-01, § 1, 7-10-01)

*707.4 Other Requirements:*

- (A) All allowed uses shall be required to conform to the standards set forth in Article VIII.
- (B) Signs permitted in SF 10 Residential Districts, including the conditions under which they may be located, are set forth in ~~Article~~ Article X.

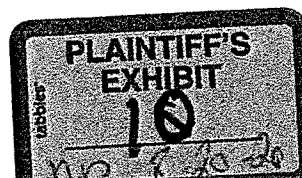
§ 1-1

(Ord. No. 67-07, § 1, 5-1-07)

## Zoning Districts

(Highlighted districts are no longer available for use in the rezoning of property)

AG1	Agriculture	Businesses for the raising, care and harvesting of trees, plants, animals and crops
AG2	Commercial Agriculture	Farm related businesses characterized as agriculture-commercial in nature
AG3	Agricultural Community Services	Intended for businesses that meet the needs of the rural community
AG4	Agricultural Estate	Residential development of five acres or greater with non-commercial farming activities, horses and limited farm animals
AG5	Agricultural Manufactured Estate	Residential development of five acres or greater including manufactured, modular and mobile homes with non-commercial farming activities, horses & limited farm animals
AG6	Agricultural Ranchettes	Residential on two acres or greater with non-commercial farming activities & horses
AG7	Manufactured Agricultural Ranchettes	Residential development of two acres or greater including manufactured, modular and mobile homes with non-commercial farming activities
LFA	Limited Forest Agriculture	Agriculture, low-density residential, forestry uses as well as limited commercial (agriculturally related), social, cultural, recreational, and religious uses
FA	Forest Agriculture	Agriculture, forestry, low-density residential, limited commercial (maximum size of 4,500 sq.ft.), social, cultural, recreational and religious uses
CFA	Commercial Forest Agriculture	Agriculture, forestry, low-density residential, commercial, social cultural, recreational and religious uses
CP	Conservation/Preservation	Preserves environmentally sensitive or scenic lands
CO1	Conservation/Preservation	Preserves environmentally sensitive areas, such as wetlands, bays, creeks etc.
BO1	Boating/Marine Commercial	Businesses reliant on the ocean, rivers and streams
RE	Rural Estates	Rural family farms with minimum 1-acre lots excluding mobile home and including livestock and limited commercial
SF40	Residential, no mobile homes allowed	Minimum lot size - 40,000 sq. ft.
SF20	Residential, no mobile homes allowed	Minimum lot size - 20,000 sq. ft.
SF14.5	Residential, no mobile homes allowed	Minimum lot size - 14,500 sq. ft.
SF10	Residential, no mobile homes allowed	Minimum lot size - 10,000 sq. ft.
SF8.5	Residential, no mobile homes allowed	Minimum lot size - 8,500 sq. ft.
SF7	Residential, no mobile homes allowed	Minimum lot size - 7,000 sq. ft.
SF6	Residential, no mobile homes allowed	Minimum lot size - 6,000 sq. ft. (SF) or 8,000 sq. ft. (duplex)
MSF40	Residential, including mobile homes	Minimum lot size - 40,000 sq. ft.
MSF20	Residential, including mobile homes	Minimum lot size - 20,000 sq. ft.
MSF14.5	Residential, including mobile homes	Minimum lot size - 14,500 sq. ft.
MSF10	Residential, including mobile homes	Minimum lot size - 10,000 sq. ft.
MSF8.5	Residential, including mobile homes	Minimum lot size - 8,500 sq. ft.
MSF7	Residential, including mobile homes	Minimum lot size - 7,000 sq. ft.
MSF6	Residential, including mobile homes	Minimum lot size - 6,000 sq. ft. (SF) or 8,000 sq. ft. (duplex)
MHP	Mobile Home Park	Mobile home developments in which lots are leased
MRD 1	Multi-Residential One	Allows for mixed residential development in the <i>rural</i> areas of the county as identified on the future land use map.
MRD 2	Multi-Residential Two	Allows for mixed residential development in the <i>suburban</i> areas of the county as identified on the future land use map
MRD 3	Multi-Residential Three	Allows for mixed residential development in the <i>urban</i> areas of the county as identified on the future land use map
GR	General Residential	High density development including apartments and condominiums
GRn	General Residential "n"	One, two, multi-family, apartment and condominiums at a specified density per acre. No mobile homes are allowed.

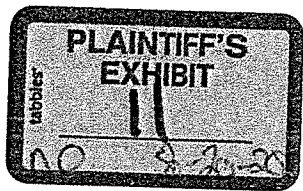


RR	Resort Residential	Hotels, motels and resort condominiums
RC	Resort Commercial	Hotels, motels, condominiums, and marinas
RH	Resort Housing	Medium to high-density housing for transient population
AC	Amusement Commercial	Businesses providing entertainment as its primary activity
AM1	Indoor Amusement Commercial	Amusement related uses within buildings or facilities
AM2	Outdoor Amusement Commercial	Amusement related uses generally located outside buildings or facilities
NC	Neighborhood Commercial	Businesses intended to serve the surrounding neighborhood
CC	Community Commercial	Pedestrian-oriented commercial centers
HC	Highway Commercial	Automobile-oriented commercial development
CR	Commercial Recreation	Allows uses focused on commercially operated recreational activities
EIO	Education, Institution, Office	Allows uses focused on providing services that meet the education, medical, personal, professional, religious, and social needs of the community
RCS	Retail Consumer Services	Allows uses focused on commercially operated recreational activities public consumes, purchases or participates in as part of their day-to-day activities
TRS	Transportation Related Services	Allows uses that are auto reliant or focused on providing services for autos, public or private transportation facilities, services and communication facilities
RE1	Neighborhood Retail Services	Retail business or services with limited impacts intended to serve immediate neighborhood
RE2	Community Retail Services	Retail Business uses near communities or along transportation corridors
RE3	Convenience & Auto-related Services	Retail and service uses located adjacent to arterials or collector streets
RE4	High Bulk Retail	Retail or services businesses requiring outdoor storage areas
PA1	Passenger & Product Transportation	Intended for businesses that move people or goods within Horry County or to other destinations
OPI	Office/Professional/Institutional	Office developments, hospitals, and nursing homes
PR1	Office-Professional	Office or institutional uses
PR2	Campus Institution, Office & Research	Research, institutional & light industrial uses that are developed in "park" settings
ME1	Inpatient Medical Services	Inpatient and outpatient medical services (doctor's office, clinics etc.)
ME2	Outpatient Medical Services	Intense outpatient medical services (drug treatment centers, counseling facilities etc.)
LI	Limited Industrial	Industries not considered objectionable in terms of smoke noise, etc.
HI	Heavy Industrial	Large scale manufacturing, processing, and assembling operations
MA1	Limited Manufacturing and Industrial	Industries that do not pose potential environmental or safety hazards
MA2	General Manufacturing and Industrial	Industrial and manufacturing uses that may require outdoor storage
MA3	Heavy/Intense Manufacturing and Industrial	Intense manufacturing and industrial uses not appropriate in proximity to commercial or residential uses
PDD	Planned Development District	Allows for mixture of residential, commercial, office, industrial uses on a single site provided a written narrative and conceptual plan are submitted (PDD replaces the PUD district)
DP	Destination Park	Recreational sites for travel trailers and campers

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 )  
 Robert DeCiero, a resident of Long Bay, )  
 Estates Subdivision, Myrtle Beach, South )  
 Carolina, )  
 )  
 PLAINTIFF, )  
 )  
 vs. )  
 )  
 Horry County, State of South Carolina, )  
 DEFENDANT. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2015-CP-26-8179

DEFENDANT'S RESPONSES TO  
 PLAINTIFF'S REQUEST TO ADMIT



TO THE PLAINTIFF AND HIS ATTORNEY THOMAS C. BRITTAIN, ESQ.:

Defendant answers Plaintiff's Request to Admit as follows:

1. That Long Bay Estates Subdivision, located in Myrtle Beach, South Carolina, is zoned within and subject to the jurisdiction of Defendant.

**Admitted**

2. That Long Bay Estates Subdivision is governed by and subject to the Horry County Code of Ordinances.

**Admitted**

3. That it is Defendant's duty to uphold the Horry County Code of Ordinances.  
**Defendant denies a duty of care towards an individual member of the public and craves reference to the public duty rule.**

4. That Long Bay Estates Subdivision is not zoned for Resort Housing.

**Admitted only that the property is zoned SF6.**

5. That Article VII, Section 749.1(E) & (F) of the Horry County Code of Ordinances states that "Hotels, motels, tourist homes, and convention facilities with lodging" and "Multi-family housing" are permitted uses within a Resort Housing District.

**Admitted. Defendant craves reference to the ordinance which speaks for itself**

6. That Long Bay Estates Subdivision is currently zoned as an SF6 Residential District and, as such, is comprised of single family and duplex family dwellings.

**Admitted as to SF6 zoning and that Long Bay Estates includes single family dwellings. Defendant is without sufficient information to admit or deny if that particular neighborhood has duplexes.**

7. That Article IV, Section 431 of the Horry County Code of Ordinances defines family as, "an individual or two or more persons related by blood, marriage or adoption living together as a single household unit, or, a group of not more than 5 persons not related by blood, marriage, or adoption, living together as a single family household unit."

**Admitted. Defendant craves reference to the ordinance which speaks for itself**

8. That Defendant has been notified that some of the homes located in Long Bay Estates Subdivision are being rented, on a weekly basis, to large groups of people greatly in excess of the number of occupants allowed by Article IV, Section 431 of the Horry County Code of Ordinances.

**Denied. Plaintiff and his attorney made general unsubstantiated statements to the county to this effect without identifying specific properties.**

9. That, in accordance with the Horry County Code of Ordinances, renting homes to large groups of people on a weekly basis would be a permitted use within a Resort Housing District.

**The county has no regulations pertaining to short term rentals**

10. That, in accordance with the Horry County Code of Ordinances, renting homes to large groups of people on a weekly basis would not be a permitted use within an SF6 Residential District.

**The county has no regulations pertaining to short term rentals. Any other inferences or conclusions are denied.**

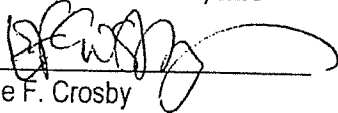
11. That Article XIII, Section 1300 of the Horry County Code of Ordinances states, "The Horry County Council shall fund sufficient personnel to administer and enforce the provisions of this ordinance. If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alter alterations, or structural changes, discontinuance of any illegal work being done: or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provision."

**Admitted. Defendant craves reference to the ordinance which speaks for itself.**

12. That upon receiving notification(s) of these zoning ordinance violations, Defendant did not act in compliance with Article XIII, Section 1300 of the Horry County Code of Ordinances.

**Denied. The county has not received any notifications regarding specific properties that are in violation of the zoning ordinance.**

CROSBY LAW FIRM, LLC

  
Elise F. Crosby

Attorney for the Defendant

405 Dozier Street

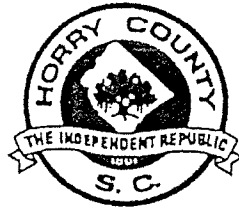
Georgetown, South Carolina 29440

Phone: (843) 546-3103

Facsimile: (843) 546-0747

Mar 25, 2016  
Georgetown, South Carolina

ZONING DEPARTMENT  
1301 2nd Avenue  
Room: 1D09  
Conway, SC 29526



(843) 915-5490  
FAX (843) 915-6090



## NOTICE TO ALL HORRY COUNTY HOMEOWNERS & BUSINESS OWNERS

This is to inform you that the Horry County Zoning Ordinance regulates the number of unrelated persons living/renting in a single family home.

Article IV Section 431 of this Ordinance defines family as; an individual or two or more persons related by blood, marriage, or adoption, living together as a single household unit, or, a group of not more than 5 persons not related by blood, marriage, or adoption, living together as a single family household unit.

Please be advised that zoning regulations do not prevent renting of your home, just the number of unrelated persons renting the home.

This letter serves as a notice only. Violations of this section may result in citations and associated fines.

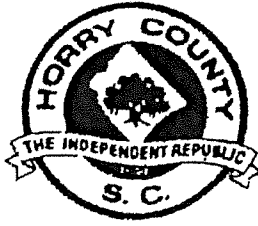
If you have any questions, please contact the Horry County Zoning Department at 843-915-5490

Sincerely

A handwritten signature in black ink, appearing to read "Roland Meyer".

Roland Meyer  
Zoning Administrator

ZONING DEPARTMENT  
1301 2<sup>nd</sup> Avenue Room 1 D 09  
Conway, SC 29526



Phone: (843) 915-5490  
Fax: (843) 915-6490

*Edelen Warning*  
*NMT 5*  
*4/16/04*

April 16, 2004

Mr. Ed Edelen  
P. O. Box 2073  
Myrtle Beach, SC 29575

Re: TMS# 186-15-01-006 – Long Bay Estates  
Zoning Violation

Dear Mr. Edelen:

This is to inform you that the Horry County Zoning Ordinance regulates the number of unrelated persons living/renting in a single family home.

Article IV, Section 431 of the Horry County Zoning Ordinance defines family as; an individual or two or more persons related by blood, marriage, or adoption, living together as a single household unit, or a group of not more than five (5) persons not related by blood, marriage, or adoption, living together as a single family household unit.

An inspection of the above referenced property on April 8, 2004, determined that a bus load of ball team members were residing/renting at this location. More than 5 unrelated team members were staying in each unit.

Please be advised that zoning regulations are not preventing you from renting, just limiting the number of unrelated persons in a single family home, whether owned or rented.

This letter serves as a warning for any future violations. Violations of this section may result in citations and associated fines.

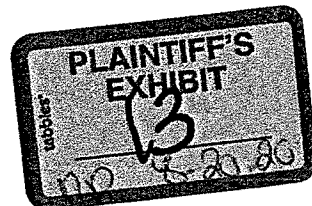
If you have any questions regarding this matter, please contact me at 843-915-5490.

Sincerely,

A handwritten signature in black ink, appearing to read "Roland Meyer".

Roland Meyer  
Zoning Administrator

cc: Long Bay Estates Home Owners Association ✓



**CERTIFIED MAIL**



ZONING DEPARTMENT  
1301 2nd Avenue  
Room 1D09  
Conway, SC 29526



7099 3400 0021 1736 9292

Bob Deciero  
4800 Yaupon Circle  
Long Bay East  
Myrtle Beach, SC 29575

29575+4308 2A



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If you have any questions regarding this matter, please contact me at 843-915-5490.

Sincerely,

Roland Meyer  
Zoning Administrator

cc: Long Bay Estates Home Owners Association ✓

THE BRITTAIN LAW FIRM, P.A.

ATTORNEYS AT LAW  
4614 OLEANDER DRIVE  
MYRTLE BEACH, SOUTH CAROLINA 29577

THOMAS C. BRITTAIN  
MARY MADISON BRITTAIN LANGWAY  
A. PRESTON BRITTAIN  
T. CASE BRITTAIN, JR.

843-449-8562  
FAX 843-497-6124  
www.brittainlawfirm.com

June 2, 2015

Ms. Janet Carter  
Planning and Zoning Department  
1301 Second Avenue Ste. 1D09  
Conway, SC 29526

Arrigo P. Carotti, Esq.  
P.O. Box 1236  
Conway, SC 29528



**RE: Long Bay Estates Zoning Enforcement**

Dear Sir and Madam:

This is to advise you that my office has been retained to represent certain residents of the Long Bay Estates subdivision situated near the south end of Myrtle Beach in Horry County.

Please consider this as a formal complaint regarding violations pursuant to Horry County Code Ord. No. 51-99, § 31, 12-7-99.

After reviewing the relevant zoning district as set forth by your office, we believe that several homeowners are in violation of the substance of the zoning and planning ordinances for that area.

It is believed that Long Bay Estates, a private neighborhood, is zoned as a Residential District (SF 7) suitable for single-family residences. (Ord. No. 84-03, § 2, 10-7-03; Ord. No. 67-07, § 1, 5-1-07).

Moreover, the 1958 deed restrictions placed on each and every lot in Long Bay strictly states that the land use "shall be used only for private residential purposes...and use of not more than one family..." per dwelling. (Plat Book 25, page 22, recorded May 5, 1958).

Multiple homeowners in Long Bay advertise their property as what is commonly referred to as a "beach house" for weekly vacation stays in Myrtle Beach. This is a direct violation of the law.

The continued operation of the above-described severely conflicts with the original intent of the subdivision and is a nuisance to the law abiding residence of the same.

Pursuant to Code, please immediately investigate this matter and enforce the provisions of the ordinances of Horry County in order to assure compliance. (Ord. No. 51-99, § 31, 12-7-99.)


Ms. Janet Carter  
Arrigo P. Carotti, Esq.  
June 2, 2015  
Page 2

Please take notice that we intend to file an action in the Horry County Court of Common Pleas to contest the land use on these grounds and others if I do not heard from you by June 30, 2015.

Thank you for your prompt attention in this matter.

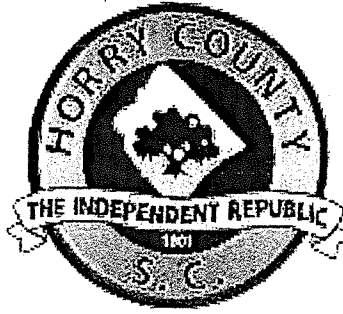
Yours truly,

THE BRITAIN LAW FIRM, P.A.



Thomas C. Brittain  
TCB/all

Horry County Government  
PLANNING & ZONING DEPARTMENT  
www.horrycounty.org



Horry County Government & Justice Center  
1301 Second Avenue  
Conway, South Carolina 29526  
Phone 843.915.5340 || Fax 843.915.6340

June 12, 2015

Thomas C. Brittain, Esquire  
The Brittain Law Firm, PA  
4614 Oleander Drive  
Myrtle Beach, SC 29577

Re: Your Letter of June 2 re Long Bay Estates

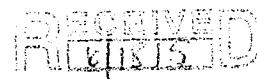
Dear Mr. Brittain:

Horry County has no specific ordinance prohibiting short-term rentals in established neighborhoods. There have been previous discussions regarding the matter, but no ordinance was brought forward due to several concerns, including the inability of the county to police rental terms and enforce such an ordinance, as well as the fact that there are short term rentals in residentially zoned communities all along the Strand. Some of these developments were built specifically as resorts and mixed-use communities, while others are oceanfront, second, third and fourth row homes that have been vacation rentals for years. Many of these properties have the same zoning as Long Bay Estates, SF6.

Covenants and Restrictions are the most effective way to deal with his issue. However, that would be a private matter between the HOA and the home owners, and not something the county could enforce.

Sincerely,

Janet Carter  
Planning Director/I&R Counsel



THE BRITTAIN LAW FIRM, P.A.  
ATTORNEYS AT LAW  
4614 OLEANDER DRIVE  
MYRTLE BEACH, SOUTH CAROLINA 29577

THOMAS C. BRITTAIN  
MARY MADISON BRITTAIN LANGWAY  
A. PRESTON BRITTAIN  
T. CASE BRITTAIN, JR.

843-449-8562  
FAX 843-497-6124  
www.brittainlawfirm.com

June 19, 2015

Ms. Janet Carter  
Planning and Zoning Department  
1301 Second Avenue Ste. 1D09  
Conway, SC 29526

Arrigo P. Carotti, Esq.  
P.O. Box 1236  
Conway, SC 29528

**RE: Long Bay Estates Zoning Enforcement**

Dear Sir and Madam:

I have received your June 12<sup>th</sup> correspondence regarding Long Bay Estates. I appreciate your response to my earlier correspondence discussing this matter.


I would like to sit down with both of you and with Robert DeCiero to discuss this matter in further detail before proceeding with any legal actions.

Please let me know if you are agreeable to a meeting. If so, please contact my office with your availability. You can contact me by phone (449-8562) or by e-mail ([tommyb@brittainlawfirm.com](mailto:tommyb@brittainlawfirm.com)).

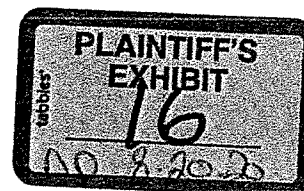
I look forward to hearing from you. Thank you.

Yours truly,

THE BRITTAIN LAW FIRM, P.A.

  
Thomas C. Brittain  
TCB/all

cc: Robert DeCiero



RX Date/Time

07/13/2015 15:29 18432381031

P.001

FROM : DeCiero

FAX NO. : 18432381031

Jul. 14 2015 02:41PM P1

~~Electronic Mail Only: No Insurance Coverage Provided~~

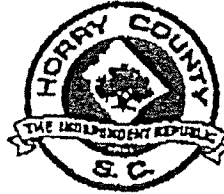
AUG-16-2005(TUE) 16:54

HEARN, BRITTAIN & MARTIN

(FAX) 843 4976124

P. 002/002

Janet L. Carter  
I&R Counsel  
1301 Second Avenue  
Room 1D09  
Conway, SC 29526



Conway: (843) 915-5340

Myrtle Beach: (843) 205-5340

Conway Fax: (843) 915-6340

Email: [carterj@horrycounty.org](mailto:carterj@horrycounty.org)

August 8, 2005

Thomas C. Brittain, Esquire  
Hearn Brittain & Martin, PA  
4614 Oleander Drive  
Myrtle Beach, SC 29577

*Rental  
Case  
Reply  
from  
County*

Re: Letter from Long Bay Estates Residents Dated July 25, 2005

Dear Mr. Brittain:

John Weaver provided me with a letter from several residents in the Long Bay Estates subdivision pertaining to short term rentals and requested that I send you a letter explaining Horry County's position in this matter. The owners from Long Bay subdivision are requesting that the County apply the definition of family, "a group of not more than five (5) persons not related by blood, marriage, or adoption, living together as a single household unit," to restrict owners from renting single-family structures to groups of tourists vacationing together.

Horry County has no specific ordinance prohibiting short-term rentals in established neighborhoods. Even if it did, it would be impossible for the county to police rentals in order to determine whether the occupants were related by blood or marriage. Having discussed the issue at Council's I&R Committee in May 2004, it was the general consensus that this is an issue best handled through covenants and restrictions and not something the county could police. In any event, it would require an ordinance prohibiting such rentals. I do not believe that is a realistic possibility because there are vacation rentals in residentially zoned communities all along the Strand. Some of these developments were built specifically as resorts and mixed-use communities.

I regret that the Long Bay property owners are experiencing these problems, but it is not something the county can address for them. If you have questions or would like to discuss this issue further, please feel free to call.

Sincerely,

*Janet L. Carter*  
Janet L. Carter



ON FILE IN Horry County Clerks Office  
 ATTACHED TO MAP IN PLAT BOOK 25, PAGE 22, RECORDED MAY 5, 1958

Restrictions to be imposed on the Residential Property in the Long Bay Estates Subdivision,  
 Myrtle Beach, Horry County, South Carolina

These Protective Covenants are recorded as Blanket Covenants covering all lots in Blocks 1  
 through 27, as shown on the Plat of Long Bay Estates dated May, 1955, compiled by Robt. L. Bellamy,  
 Engineer.

(a) No lot shall be subdivided and no building, including porches or projections of any kind, shall  
 be erected at a distance less than 40 feet from the front line on blocks one (1) through five (5) and not less  
 than 20 feet from the front line on blocks six (6) through twenty-seven (27), ten feet from any side line  
 and 20 feet from the rear.

As to all unsold lots, the Grantors reserve the right to change the boundary lines and the building  
 lines thereof.

(b) No surface toilet shall be permitted on this property, but the purchaser shall construct and  
 install at his own expense for any residential building on the said property, a septic tank of a type and  
 character approved by the State Board of Health. Waste water from the premises, including that from the  
 kitchen and bath, shall not be discharged or deposited upon the surface of the premises, but shall be  
 disposed of so as not to create a nuisance or be offensive to sanitation. All garbage cans used on the  
 premises shall be kept concealed.

(c) An easement and right of ingress and egress is hereby reserved in, upon and across a strip of  
 land five (5) feet wide at the rear line of this lot for water pipes and for poles, wires, cables or other lines  
 for transmission of electric current or telephone or other public utility services. These rights may be  
 assigned by the Grantors.

→ (d) This property shall be used only for private residential purposes and no more than one  
 dwelling containing not more than two apartments or living units each for the occupancy and use of not  
 more than one family, with necessary outbuildings, shall be erected thereon. No garage apartments except  
 for the use and occupancy of servants employed on the premises may be included in a garage building.

Plans for any building or structures to be erected on the property shall be first approved by the  
 Grantors, before construction is started.

(e) The property hereby conveyed shall be kept free from any nuisance or from any objectionable  
 condition or use which the Grantors find to be offensive or dangerous to the neighborhood.

(f) It is understood and agreed that any change in sidewalk, or street or driveways into this  
 property, which changes are desired by the purchaser, are to be made at his expense and in accordance  
 with plans acceptable to the Grantors.

(g) No one story residence shall be erected on this lot which contains less than 1200 square feet  
 of floor area nor a two story residence containing less than 1600 square feet of floor area excluding  
 porches, garages and storage space. No residence building shall be built more than two stories in height.

(h) No wells for water will be permitted to be dug or driven in the property, unless water facilities  
 prove inadequate, or any private well dug to be done only with permission of Grantors.

(i) In addition to use for private residential purposes as set forth herein, the Grantors may use,  
 lease or convey property within the bounds of lands herein described as Blocks 1, 2, and 3 for the  
 following purposes:

Schools, Churches, Libraries and Community Center

(j) The Grantees shall preserve as many of the existing trees as possible in order to retain the  
 wooded character of the community

FROM : DeCiero

FAX NO. : 18432381031

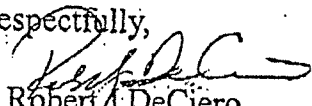
Jul. 14 2015 02:43PM P3

January 12, 2006

I would also like to take this opportunity to inform you that the Brittain Law firm has been retained and is currently in the process of having Paragraph (D) addressed by the courts. The residents in this development consider this matter to be of extreme importance.

If you have any questions concerning this matter you should contact your legal representative or the Brittain Law Firm.

Respectfully,



Robert J. DeCiero  
4800 Yaupon Circle  
Long Bay Estates  
Myrtle Beach, SC 29575

## LEGAL NOTICE

July 18, 2002

Dear property owner,

On March 14, 2000 the Honorable J. Stanton Cross, Master of Equity for Horry County ruled in favor of the plaintiffs (*numerous* Long Bay Estates Property Owners) concerning the 1958 Restrictive Covenants for Long Bay Estates and their current applicability to the properties located in our subdivision. These covenants are found in Plat Book 25, Page 22, Office of the Horry County Clerk.

Basically, the judgement makes it clear that all lots in the Long Bay Estates subdivision are subject to the 1958 restrictive covenants (*without exception*).

This decision also points to language found in the Adams case # 37417 from 1972 which makes it clear that blocks 28, 29, 30, 31, 32, and 33 are also bound by the 1958 restrictive covenants. *Enclosed please find a copy of the restrictive covenants for Long Bay Estates for your records.*

This case cost *some* of the property owners *over \$70,000.00* and was taken to protect the interests of *all* of the property owners of Long Bay Estates. The plaintiffs take this decision seriously and any attempt to violate these restrictive covenants will result in court action. *Any legal fees and costs associated with these actions would assessed to the defendant.*

Also, any attempt to subdivide lots or breach the set back provisions of these restrictive covenants will be *immediately* brought before the court. It should be noted that *the set back provisions* of these covenants and all properties in Horry County begin at the property line (*not the road*). This matter was raised recently and Horry County Zoning states that "all set back provisions begin at the owner's property line".

At this time I would respectfully request that you place a copy of this letter and the restrictive covenants with your deed.

*This letter has been forwarded to all property owners, return receipt requested.*

Respectfully,

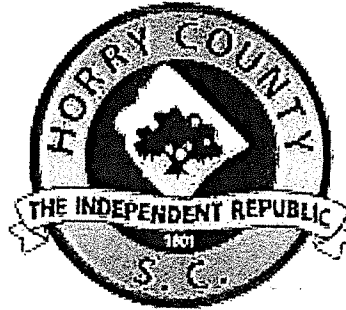
Robert J. DeCiero

4800 Yaupon Circle

Long Bay Estates

Myrtle Beach, SC 29575

Horry County Government  
PLANNING & ZONING DEPARTMENT  
www.horrycounty.org



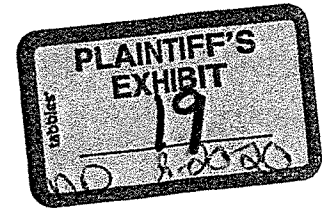
Horry County Government & Justice Center  
1301 Second Avenue  
Conway, South Carolina 29526  
Phone 843.915.5340 || Fax 843.915.6340

September 21, 2015

Thomas C. Brittain, Esquire  
The Brittain Law Firm, PA  
4614 Oleander Drive  
Myrtle Beach, SC 29577

Re: Your Memorandum of August 17, 2015 re Long Bay Estates

Dear Mr. Brittain:



I have reviewed your memorandum and offer these comments in response. In order to regulate short term rentals and transient accommodations Horry County would need to amend the zoning ordinance to identify the districts where short term rentals are allowed/prohibited and specify the minimum rental period allowed in these districts. There have been previous discussions regarding the matter, but no ordinance was brought forward because this issue can be handled through enforcement of covenants and restrictions if they prohibit such rentals. There were also concerns regarding the county's ability to police rental terms and enforce such an ordinance. There are short term rentals occurring in residentially zoned and mixed use communities all along the Strand. An ordinance of this type would have broad reaching effects and economic impacts to many property owners outside Long Bay Estates.

If activity is occurring in Long Bay Estates that violates the applicable Covenants and Restrictions as your memorandum states, an action to enforce those Covenants and Restrictions is the remedy currently available to your client.

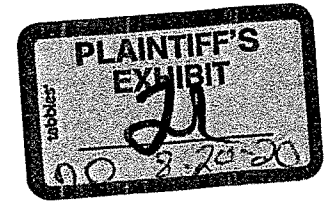
Sincerely,

A handwritten signature in cursive script that reads "Janet Carter".

Janet Carter  
Planning Director/I&R Counsel

9/28/15

MEMORANDUM



**To:** Horry County Zoning

**From:** Thomas C. Brittain, Esquire, The Brittain Law Firm, P.A.

**Date:** August 17, 2015

**RE:** Long Bay Estates Subdivision, Myrtle Beach, Horry County, South Carolina

violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alter alterations, or structural changes, discontinuance of any illegal work being done: or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provision.”

Further, Long Bay is currently zoned as an SF6 Residential District and, as such, is comprised of single family and duplex family dwellings. According to Article IV Section 431 of the Horry County Zoning Ordinance, a family is defined as “an individual or two or more persons related by blood, marriage or adoption living together as a single household unit, or, a group of not more than 5 persons not related by blood, marriage, or adoption, living together as a single family household unit.” It is clear that the single family and duplex family homes located in Long Bay Estates that are currently being rented on a weekly basis are renting to large groups of people, many unrelated, that greatly exceed the number of occupants allowed by this ordinance. These large groups bring with them to this subdivision excessive traffic, excessive noise and excessive trash; all of which is a nuisance to the homeowners in this area.

I understand that policing these rental homes to ensure they are complying with all applicable ordinances is a daunting task and one the County would prefer to avoid, however, under Article XIII Section 1300 of the Zoning Ordinance it clearly states that “The Horry County Council shall fund sufficient personnel to administer and enforce the provisions of this ordinance. If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the

EXHIBIT

tabbies

8-26-20

LEGAL NOTICE

July 18, 2002

property owner,

On March 14, 2000 the Honorable J. Stanton Cross, Master of Equity for Horry County ruled in favor of the plaintiffs (*numerous* Long Bay Estates Property Owners) concerning the 1958 Restrictive Covenants for Long Bay Estates and their current applicability to the properties located in our subdivision. These covenants are found in Plat Book 25, Page 22, Office of the Horry County Clerk.

Basically, the judgement makes it clear that all lots in the Long Bay Estates subdivision are subject to the 1958 restrictive covenants (*without exception*).

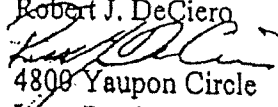
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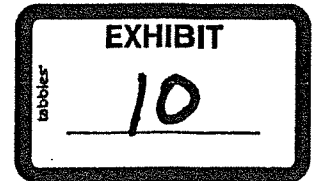
This case cost *some* of the property owners *over \$70,000.00* and was taken to protect the interests of *all* of the property owners of Long Bay Estates. The plaintiffs take this decision seriously and any attempt to violate these restrictive covenants will result in court action. *Any legal fees and costs associated with these actions would assessed to the defendant.*

Also, any attempt to subdivide lots or breach the set back provisions of these restrictive covenants will be *immediately* brought before the court. It should be noted that *the set back provlsons* of these covenants and all properties in Horry County begin at the property line (*not the road*). This matter was raised recently and Horry County Zonin states that "all set back provlsons begin at the owner's property line".

At this time I would respectfully request that you place a copy of this letter and the restrictive covenants with your deed.

*This letter has been forwarded to all property owners, return receipt requested.*

Respectfully,  
Robert J. DeCiero  
  
4808 Yaupon Circle  
Long Bay Estates  
Myrtle Beach, SC 29575



MINUTES  
Horry County Council  
Infrastructure & Regulation Committee Meeting/Budget  
Council Conference Room  
May 6, 2004  
2:00 p.m.

**MEMBERS PRESENT:** Gene Smith, Chairman; Carl Schwartzkopf; Kevin Hardee; and Howard Barnard.

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Danny Knight; Pat Hartley; Steve Gosnell; Janet Carter; Tommy Lee; Tom Garigen; Roland Meyer; Michelle Shumpert; and Lisa Bourcier.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

**CALL TO ORDER:** Mr. Smith called the meeting to order at approximately 2:00 p.m.

**CHANGES TO AGENDA:**

Mr. Smith stated staff requested to add an Update on the Home Occupation Ordinance and Discussion on Rental Property- Five Person Limit.

Mr. Smith stated staff requested to defer the report on Waccamaw Medical Park Road & William Finlayson Road Update.

Mr. Smith requested to remove the Resolution to reallocate road fee funds to Long Leaf Drive because the matter was handled at the Council meeting.

Mr. Barnard **moved to approve the changes**, seconded by Mr. Hardee. The motion passed unanimously.

**APPROVAL OF AGENDA:** Mr. Schwartzkopf **moved to approve the agenda as amended**, seconded by Mr. Hardee. The motion passed unanimously.

**PUBLIC INPUT:** There was none.

**APPROVAL OF MINUTES:** April 8, 2004. Mr. Hardee **moved to approve the minutes as submitted**, seconded by Mr. Schwartzkopf. The motion passed unanimously.

**ADMINISTRATION & DEPARTMENT HEAD REPORTS:**

Status of easement acquisition and construction for Years 1-7. Mr. Smith deferred this item to the next meeting.

**Update on Home Occupation Ordinance.** Mr. Meyer presented the ordinance with the changes.

The following people spoke:

1. Renee Jones.
2. Franklin Hughes.
3. Nancy Clark.
4. Jimmy Day.
5. Walt Faulk.
6. Pam Creech.
7. Larry Bratcher.
8. Renee Hughes.
9. Bill Sarvis.
10. Joanne Dollar.

Mr. Hardee moved to defer to the Planning Commission with the members of the I&R Committee meeting with them, seconded by Mr. Barnard. Mr. Schwartzkopf asked that they advertise and have public input. The motion passed unanimously. Chairman Gilland spoke about communication between Council and the community. Ms. Carter stated those interested in being on the mailing list for agendas could sign up in the Planning Department.

Mr. Smith called a recess at 3:20 p.m. The meeting reconvened at 3:30 p.m.

**Rental Properties.** Mr. Gosnell spoke about group housing and enforcement. The following people spoke:

1. Natasha Hanna, Hearn, Brittain & Martin Law Firm. She requested deferral.
2. John Musik.
3. Walter Sera.
4. John Pelarito, Long Bay Estates.
5. Howell Bellamy.
6. Bob DeCiero.

Mr. Schwartzkopf moved that the committee empower staff to make a decision and act and carry it out. The motion died for lack of a second.

**PARTNERS Presentation/ Pine Ridge Business Center Offer.** Mr. Woodle stated he had been approached by Western Horry Land & Timber, LLC to purchase 3.3 acres. The purchase price was \$100,000, and upon execution of the contract, Horry County guaranteed in writing that the remaining sites in the Pine Ridge Business Center wouldn't be sold for uses such as vending car wash and/or automotive service type facilities. Mr. Woodle stated the offer was substantially below the appraised value. He had an appraisal dated March 2004 on two acres beside the entrance, which was \$120,000 or \$60,000 per acre. Mr. Barnard moved to decline, seconded by Mr. Schwartzkopf. The motion passed unanimously.

**Update on the status of the PDD changes.** Ms. Carter presented the proposed amendments and the draft that was being considered by the Planning Commission. The PDD Committee had met several times and still had issues to be discussed such as submittal requirements, 25 ft. perimeter buffer, reversion clause, etc. Mr. Smith stated it may be on the June I&R Committee agenda.

**GSW&SA request to purchase.** Mr. Hardee recused himself from discussion. The issue was should Horry County negotiate a grant/sale of one (1) acre of land at Carolina Forest Recreation Site #3 to Grand Strand Water & Sewer Authority for an elevated water tank site. Mr. Lee stated they recommended asking GSW&SA to look elsewhere and if they came back and said they absolutely couldn't find anything else then he thought it was worthwhile. Mr. Schwartzkopf moved to accept Mr. Lee's recommendation, seconded by Mr. Barnard. The motion passed unanimously.

### **RESOLUTIONS/ORDINANCES:**

**A resolution to accept roads and drainage in Avalon Plantation/ID; A resolution to accept roads and drainage in Pebble Creek/ID; A resolution to reallocate road fee funds to Gary Road; and A resolution to remove a section of a road on the approved Year 6 through 11 paving improvement list and substitute certain other roads in District 8.** Mr. Hardee moved to approve, seconded by Mr. Barnard. The motion passed unanimously.

**An ordinance granting Santee Cooper a utility easement across Spoil Basin 13B.** Mr. Smith recused himself from discussion. Mr. Schwartzkopf moved to approve, seconded by Mr. Barnard. The motion passed unanimously.

**A resolution to approve the Stormwater Utility Credit Manual as approved by the Stormwater Advisory Board.** The issue was the Horry County Stormwater Utility Fees Ordinance (Ord. 44-00) called for the creation of a credit system and adoption of a credit manual. The credit manual had been prepared and the Stormwater Advisory Board had voted in favor of recommending adoption by Horry County Council. Mr. Schwartzkopf moved to approve and to amend regarding the semiannual. The motion as amended passed unanimously.

**Resolution regarding beach renourishment.** The issue was a change in the Federal Administration's policy regarding cost sharing on-going beach renourishment projects around the nation. Staff recommended the approval of the resolution but no participation in the lawsuit. Mr. Smith requested a small presentation on the impact. Mr. Barnard moved to recommend Option B including the background information of not pursuing the lawsuit, seconded by Mr. Hardee. The motion passed unanimously.

### **BUDGET PRESENTATIONS:**

**I&R; Engineering; Stormwater; Public Works (470 & 471); Parks & Recreation; and Fund 06.** Mr. Gosnell presented a slide presentation and stated all the criteria they asked for was met in the General Fund. They developed a list of things that could be funded out of Fund Balance. They came up with the top ten things they felt should be funded. This would go to full Council at the budget workshop for discussion and voting.

Mr. Schwartzkopf moved to accept the budget as presented at the last meeting and to approve the priority list as presented, seconded by Mr. Barnard. The motion passed unanimously.

Mr. Gosnell gave a brief overview of each department.

Mr. Smith suggested looking at a tax increase of a mil to balance the budget for Fund 06.

Mr. Barnard suggested they go back to Council with what staff had put together with the options and recommendations. Mr. Gosnell stated they would put the information together and provide that to Council.

Mr. Barnard **moved to accept staff's recommendations with the changes in recreation, which was combining Parks & Recreation three funds into one fund by project and increasing the city and municipality funding from \$100,000 to \$200,000**, seconded by Mr. Smith. The motion passed unanimously.

Mr. Gosnell stated regarding Fund 6, staff would present the history of the milage showing the impacts based on Council's direction, the fact that the minimum was two-thirds of a mil and staff recommended one mil and then they would address some of the areas in the County that had no service such as Mr. Lazarus' area and also try to address the cost per ton equity issue.

Mr. Barnard **moved to adjourn**, seconded by Mr. Smith. The motion passed. The meeting adjourned at 7:10 p.m.

EXHIBIT  
7  
tabbles

THE BRITAIN LAW FIRM, P.A.  
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NORFOLK BEACH, SOUTH CAROLINA 29577

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June 26, 2017

~~Long Bay Estates Property Owner~~

RE: Long Bay Estates Subdivision

Dear Sir or Madam:

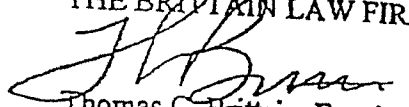
I am writing this letter to inform you that I am representing the residential property owners in Long Bay Estates now that we have a ruling, which has been upheld by the South Carolina Court of Appeals, that the Restrictive Covenants and Deed Restrictions in Long Bay Estates are enforceable and have been so since recorded on May 5, 1958.

After a 2000 decision was handed down by the lower court every property owner in Long Bay Estates received a certified return receipt letter in the mail informing them that all of the deed restrictions would be enforced and included in that mailing was a copy of the deed restrictions recorded in Plat Book 25, Page 22, Recorded May 5, 1958. We have the return receipts validating that this was done. Paragraph (d) of the deed restrictions clearly states that "This property shall be used only for private residential purposes and no more than two apartments or living units each for the occupancy and use of not more than one family, with necessary outbuildings, shall be erected thereon." In the letter you received it also went on to say that if you have any questions to contact the Britain Law Firm.

If you have a weekly rental and do not want to be named in the upcoming lawsuit then you or your attorney need to contact my office as soon as possible. If I do not receive an answer you may be named as an interested party.

With warm regards, I am  
Yours truly,

THE BRITAIN LAW FIRM, P.A.

  
Thomas C. Brittain, Esquire  
TCB/all



Deed BK: 4199 PG: 3431 Doctype: 057  
04/17/2019 at 01:27:42 PM, 1 OF 9

Marion D. Foxworth III  
HORRY COUNTY, SC REGISTRAR OF DEEDS

COUNTY OF HORRY )  
STATE OF SOUTH CAROLINA )

ORDINANCE 23-19

AN ORDINANCE TO AMEND APPENDIX B, ZONING ORDINANCE OF THE HORRY COUNTY CODE OF ORDINANCES PERTAINING TO BOARDING OR ROOMING HOUSES.

WHEREAS, Horry County Planning and Zoning has been approached about permitting boarding houses; and,

WHEREAS, there is no zoning district available for rezoning which allows boarding houses; and,

WHEREAS, the current definition of a boarding house is ambiguous and does not set clear guidelines to distinguish from other similar uses; and,

WHEREAS, it is the intent of the Horry County Council to reconcile the standards of the zoning ordinance.

NOW THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

1. Amendment of Appendix B, Zoning Ordinance, Article IV, Section 412. Section 412 of the Zoning Ordinance is hereby amended as follows:  
(All text in ~~strikethrough~~ shall be deleted and all text shown underlined and bolded shall be added)

412. Boarding or rooming houses.

~~A building containing a single dwelling unit and more than five (5) guest rooms with lodging provided with or without meals for compensation.~~

An establishment with lodging provided with or without meals for compensation for six (6) or more, but not exceeding sixteen (16), persons. Total number of bedrooms shall not exceed eight (8), with no more than two (2) occupants per room. The occupants must not have separate cooking facilities provided for any boarder. No separate exterior doorways for individual boarding rooms shall be permitted. "Boarding or rooming house" shall not include similar uses such as bed and breakfast, hotels or motels, healthcare facilities, group homes, halfway houses, hospitals, rehabilitation facilities or rescue missions.

2. Amendment of Appendix B, Zoning Ordinance, Article VII, Section 709.6 (A). Section 709.6 (A) of the Zoning Ordinance is hereby amended as follows:  
(All text in ~~strikethrough~~ shall be deleted and all text shown underlined and bolded shall be added)

709.6 Conditional Uses:

(A) Boarding homes, provided that:

1. There shall be ~~one thousand (1000) square feet~~ one (1) acre of land area for each ~~rental room~~ boarding house;
2. The maximum number of occupants per house shall be sixteen (16), including any live-in personnel who are responsible for management and operation.

3. The quarters to be utilized by the boarders and the occupants of the premises shall be in the principal residential structure. Separate structures, accessory buildings and garages are not permitted to be used as boarding rooms.
4. Maximum of two (2) boarding houses per parcel, regardless of the total number of acres.
5. Food service facilities shall accommodate only boarders of said establishment and their guests;

Where food is provided there shall be fifty (50) square feet of dining area for each rental room.

3. Amendment of Appendix B, Zoning Ordinance, Article VII, Section 752. Section 752 of the Zoning Ordinance is hereby amended as follows:  
(All text in ~~strikethrough~~ shall be deleted and all text shown underlined and bolded shall be added)

C. Conditional Uses.

1. Boarding Houses, provided that:
  - a. The maximum number of occupants per house shall be sixteen (16), including any live-in personnel who are responsible for management and operation.
  - b. The quarters to be utilized by the boarders and the occupants of the premises shall be in the principal residential structure. Separate structures, accessory buildings and garages are not permitted to be used as boarding rooms.
  - c. Maximum of two (2) boarding houses per parcel, regardless of the total number of acres.
  - d. Food service facilities shall accommodate only boarders of said establishment and their guests.

Table 1: MRD Standard Boarding House Density & Area Requirements

	<u>Standard Boarding House Requirements</u>	
	<u>Maximum Units per area*</u>	<u>Minimum Lot Area</u>
<u>MRD-1</u>	<u>NA</u>	<u>NA</u>
<u>MRD-2</u>	<u>1 unit</u>	<u>1 (acre)</u>
<u>MRD-3</u>	<u>1 unit</u>	<u>.75 (acre)</u>

\*Unit equivalent to One (1) Boarding House

- G. D. Accessory living quarters. Accessory living quarters, within an existing dwelling or in a separate structure, are permissible provided:
1. The accessory living quarters meets all setback requirements for the parcel.
  2. The primary dwelling unit shall be owner-occupied.
  3. The accessory living quarters shall have a bathroom and cooking facilities.

4. The accessory living quarters, if within the primary dwelling unit, may have a separate entrance.
  5. The construction of the accessory living quarters, within existing structures, shall not alter the appearance or character of the structure. When detached from the primary dwelling unit, no less than twenty (20) feet or applicable zoning district setbacks shall separate it and;
  6. Adequate off-street parking is provided per Article XI.
- ~~D~~: E. *Special exceptions*. Owing to their potential negative impact on the community, the board of zoning appeals may approve the following uses as a special exception.
1. Offices subject to the following conditions:
    - a. That the special exception complies with all applicable development standards.
    - b. That the special exception will be in substantial harmony with the area in which it is to be located.
    - c. That the special exception will not be injurious to adjoining property.
    - d. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
    - e. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
    - f. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgment, will enhance the siting of the proposed special exception.
  2. Bed and breakfast establishments (B&B) subject to the following conditions:
    - a. That the special exception complies with all applicable development standards.
    - b. That the special exception will be in substantial harmony with the area in which it is to be located.
    - c. That the special exception will not be injurious to adjoining property.
    - d. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
    - e. That the special exception will not discourage or negate the use of surrounding property for uses(s) permitted by right.
    - f. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgment, will enhance the siting of the proposed special exception.

~~E~~: F. *Dimensional Standards*. The following dimensional standards shall apply to permitted uses:

Table 4 2: MRD District Yard and Height Standards

Use	Setbacks		

	<i>Front</i>	<i>Side</i>	<i>Rear</i>	<i>Corner</i>	<i>Building Separation<sup>1</sup></i>	<i>Maximum Height</i>
Single and duplex dwellings, patio homes, quadruplex, townhomes and zero or developments	25' <sup>(1)(2)(3)</sup>	10' <sup>(1)(2)(3)</sup>	15' <sup>(1)</sup>	15'	20'	40'
Tiny Homes	NA	NA	NA	NA	NA	25' (no more than 2 stories high)
Multi-family	30' <sup>(1)(2)(3)</sup>	20' <sup>(1)</sup>	25' <sup>(1)</sup>	30'	20'	Rural: 45' Suburban: 65' Urban: 120'
<b>Boarding Houses</b>	<b>30'</b>	<b>20'</b>	<b>25'</b>	<b>30'</b>	<b>20'</b>	<b>40'</b>
1. A 5' reduction in the setback is allowed for projects meeting two (2) sustainable development criteria. 2. A 10' reduction in the setback is allowed for projects meeting three (3) sustainable development criteria. 3. No side yard setback is required where common walls are located. 4. A 10' reduction in the building separation for projects meeting two (2) sustainable development criteria.						

**F. G. Development standards.** The standards enumerated below establish the criteria by which a request to rezone property to the MRD district shall be evaluated. The standards follow the generally accepted densities associated with rural, suburban and urban type land uses described in the Land Use Element of the Envision 2025 Comprehensive Plan and the Future Land Use Map of Horry County. These districts and their associated densities are detailed in Table 2 3. Table 3 4 lists the Standard Density and Area Requirements for each district. Requests to rezone to MRD in any area of the county shall adhere to the Land Use Districts of the Future Land Use Map.

Table 2 3: Future Land Use District Density Characteristics

Land Use District	Rural Density	Suburban Density	Urban Density
Conservation/Preservation			
Rural Areas	X		
Rural Communities	X		
Rural Corridors	X		
Transitional Growth Areas	X	X	
Suburban Corridors	X	X	
Urban Communities		X	X
Urban Corridors		X	X
Economic Activity Centers		X	X

1. *Rural density (MRD-1) development requirements.* Rural density areas support three (3) or fewer units per acre. An exception to this density is permissible when three (3) or more sustainable development standards listed in section 752(G) are incorporated into the development. Lot or unit area requirements shall adhere to the standards shown in Table 3 4.
2. *Suburban density (MRD-2) development requirements.* Suburban density is herein defined as no greater than six (6) units per acre. An exception to this density is permissible when three (3) or more sustainable development standards listed in section 752(G) are utilized. Lot or unit area requirements shall adhere to the standards shown in Table 3 4.
3. *Urban density (MRD-3) development requirements.* Urban density is herein defined as no greater than fifteen (15) units per acre. An exception to this density is permissible when three (3) or more sustainable development standards listed in section 752(G) are utilized. Lot or unit area requirements shall adhere to the standards shown in Table 3 4.

Table 3 4: MRD Standard Density and Area Requirements

	Maximum Gross Density	Standard Development Area Requirements (in square feet)						
		Single Family	Duplex	Semi-detached	Patio Home	Townhome	Multi-family	Tiny Home *
MRD-1	3 du/ac	14,520 **	10,000	5,000 *	NA	NA	NA	1,200
MRD-2	6 du/ac	7,000 **	9,000	4,500	6,000	1 (acres)	1.5 (acres)	1,200
MRD-3	15 du/ac	6,000 **	8,000	4,000	4,000	.75 (acres)	1 (acres)	1,200

\* Tiny home lots are not required to meet the minimum frontage requirements in the Horry County Land Development Regulations. 1.5 parking spaces are required per home, and parking may be provided anywhere in the development, either on individual or shared lots, or a separate parking area.

\*\* Minimum lot size required for a rezoning request.

G. H. *Sustainable development standards.* A thirty (30) percent increase in the allowable gross density shall be granted when three (3) or more of the sustainable development standards below are implemented. Table 4 5 lists the density and area requirements for requests meeting the sustainable development standards. In no instance shall meeting the requirements of one standard be applicable to the requirements of another. The requested density increase shall in no way decrease the sustainability of the proposal and the Standards listed herein. In order to qualify for a thirty (30) percent maximum density increase, proposed developments shall meet three (3) or more of the following criteria.

1. Site design: Each counts as one (1) standard:
  - a. Twenty (20) percent of the gross acreage shall remain in a natural vegetated state post-development and owned in common. This increase is in addition to the buffer and landscape requirements in section 527, and any existing

wetlands, marshes, swamps, lakes or ponds. Required open space per Article 4 of the land development regulations shall not count towards this increase;

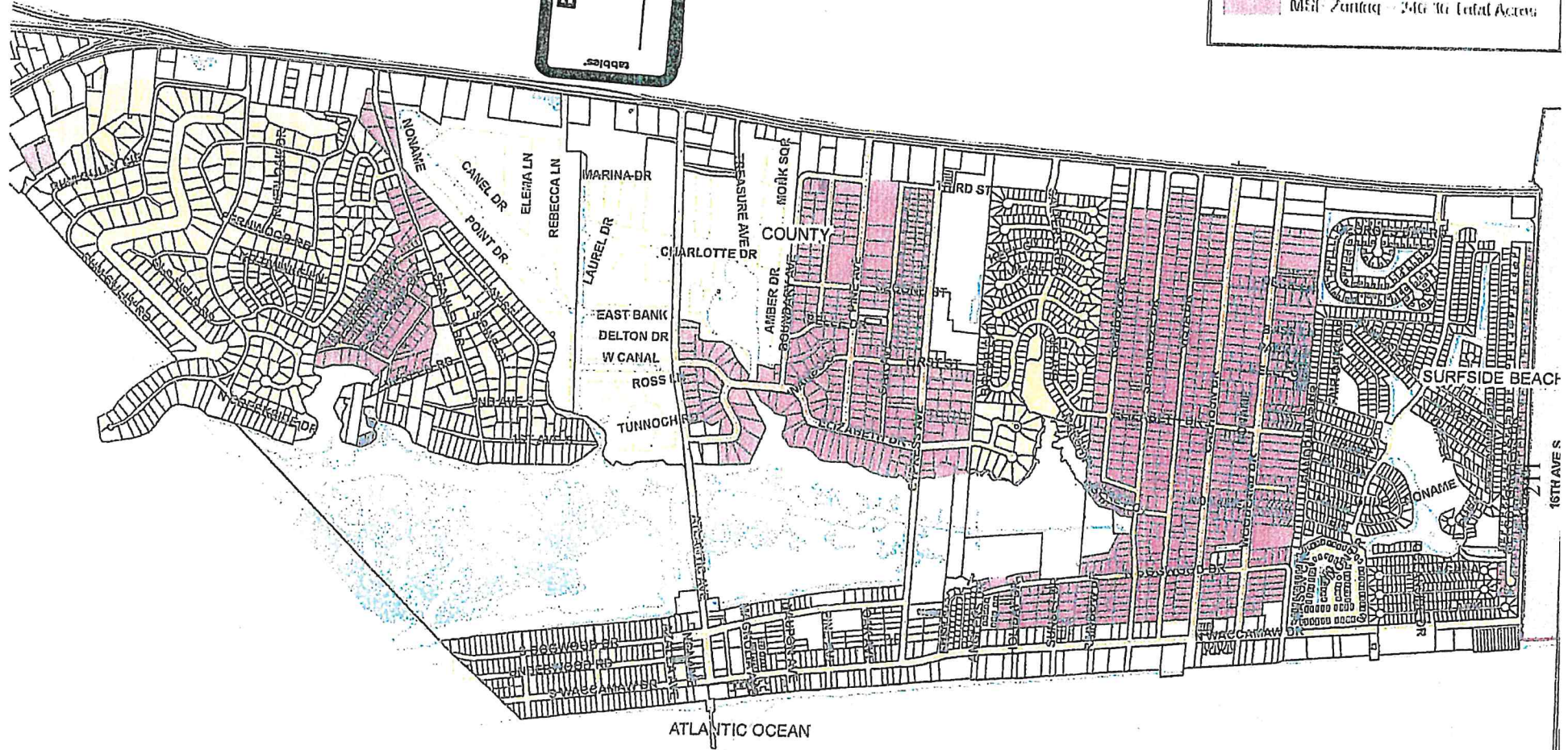
- b. All residential lots shall abut active or passive recreational open space as defined by the open space requirements in Article 4 of the land development regulations on at least one (1) side. A road internal to the development may separate lots from the open space. Sidewalks more than four and one-half (4½) feet in width shall count as recreational open space so long as such walkways are adjacent, or located directly across the street, to all residential lots. Easements for ponds, lakes and wetlands shall not count as recreational open space.
2. Recreational space: A one hundred (100) percent increase in the required active recreational open space as defined by the open space requirements, article 4, section 6-2 (B) of the land development regulations. Only fifty (50) percent of said increase shall count towards the site design requirements listed in 1a and 1b above if utilizing these standards.
  3. Design with trees: Conduct a pre-development tree inventory and keep thirty (30) percent of the canopy tree inventory post-development. Pre-development canopies shall cover at least seventy-five (75) percent of the proposed rezoning. If canopy trees have not reached a mature height, the thirty (30) percent requirement shall be applied using the median diameter at breast height (dbh) calculation. The requirement shall be met when eighty (80) percent of the specimens to be kept are greater than the median dbh. Said trees shall be owned in common and kept in perpetuity unless doing so directly imposes a threat on the health, safety or general welfare of the public or personal property.
  4. Community gardening: A one thousand (1,000) square foot plot for every twenty-five (25) units. If less than twenty-five (25) units are proposed, one (1) one thousand (1,000) square foot plot shall suffice. The community garden shall be centrally located and accessible from all proposed residential units. Community gardens shall adhere to the standards of the American Community Gardening Association publication titled "Starting a Community Garden." The publication is available at the planning department. Said garden/s shall be owned in common and kept in perpetuity. Maintenance shall be the responsibility of the common ownership.

Table 4 5: MRD Sustainable Density and Area Requirements

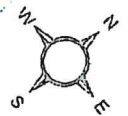
	Maximum Gross Density	Sustainable Development Area Requirements (in square feet)						
		Single Family	Duplex	Semi-detached	Patio Home	Townhome	Multi-family	Tiny Home
MRD-1	4 du/ac	7,000	8,000	4,000	5,000	0.75 (acres)	1 (acres)	1,200
MRD-2	8 du/ac	5,000	7,000	3,500	3,500	0.5 (acres)	0.75 (acres)	1,200
MRD-3	20 du/ac	5,000	5,000	2,500	2,500	0.25 (acres)	0.5 (acres)	1,200

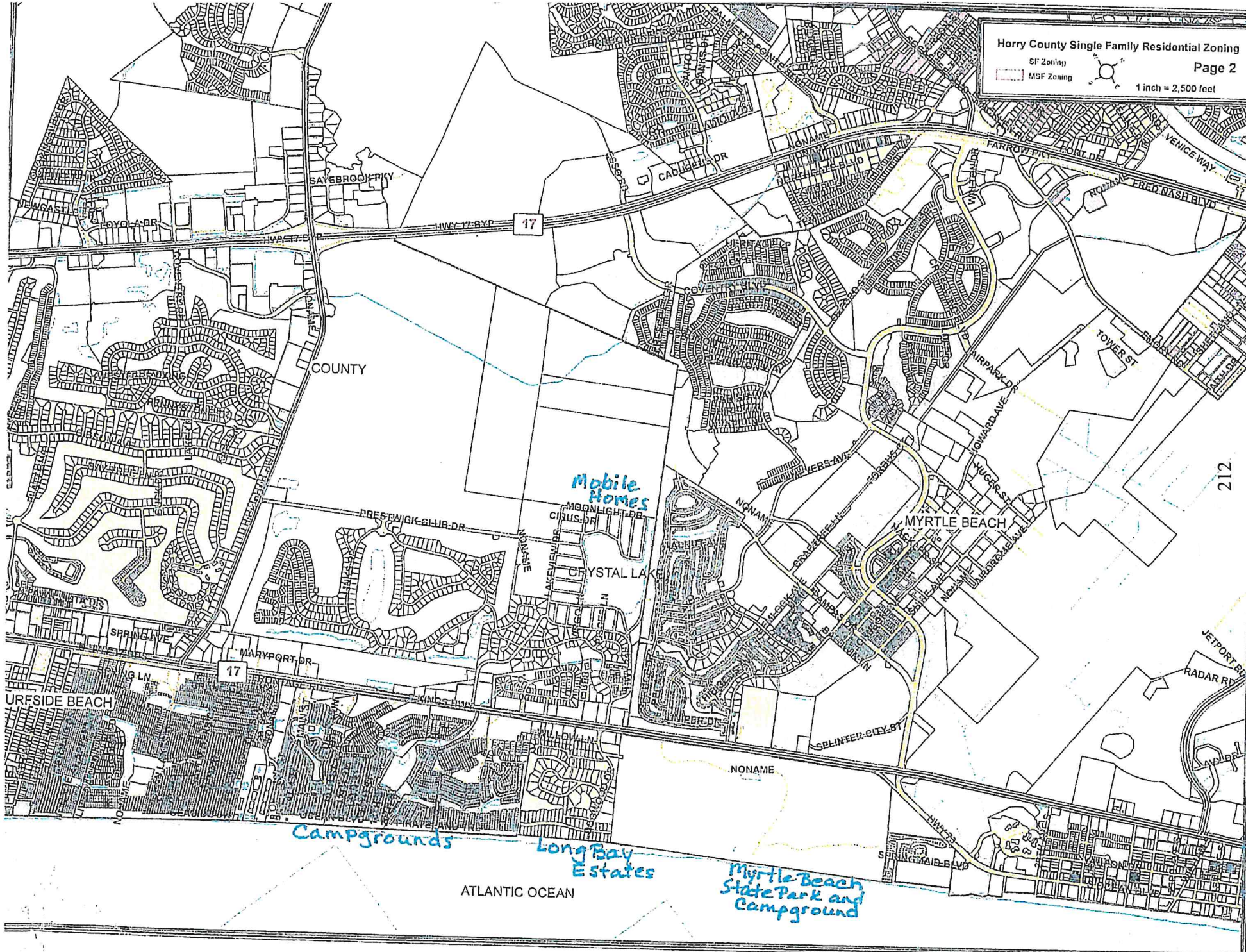
EXHIBIT 8  
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Clay County  
Clay County Board of Commissioners  
County of Surfers Beach  
S1 Zoning - 20000 Total Acres  
M10 Zoning - 24000 Total Acres



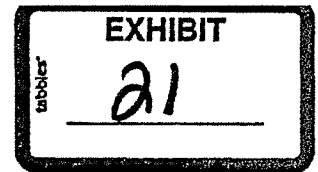
Garden City Beach





212

ATLANTIC OCEAN



1306. - Complaints regarding violations and remedies.

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate, and take whatever action is necessary to assure compliance with the ordinance.

1309. - Appeal from decision of the Zoning Administrator.

It is the intention of this ordinance that all questions arising in connection with the enforcement of the ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Zoning Administrator as provided for in Article XIV.

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2015-CP-26-8179  
Appellate Case No. 2021-000136

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Robert DeCiero, a resident of Long Bay Estates Subdivision,  
Myrtle Beach, South Carolina .....Appellant,

v.

Horry County, State of South Carolina.....Respondent.

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**CERTIFICATE OF COUNSEL**

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I hereby certify, pursuant to Rule 210(g), SCACR, that the Record on Appeal contains all materials designated to be included by any of the parties and not any other material.

Respectfully submitted,

**THE BRITTAIN LAW FIRM, P.A.**



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