

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Maite Murphy, Circuit Court Judge

Appellate Case No. 2020-001387
Case No. 2017-CP-10-5493

Shem Creek Development Group, LLC, ... Respondent,

v.

The Town of Mount Pleasant, South Carolina, ... Appellant.

RECORD ON APPEAL - VOLUME 3 OF 4
(pp. 863-1279)

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Index

Volume I

Order for Case Assignment to the Business Court Pilot Program, filed March 7, 2018.....	1
Order, filed June 26, 2019.....	2
Order Granting Plaintiff's Motion to Strike Defendant's Expert Witness, filed January 8, 2020.....	9
Order Denying Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and, in the alternative, Compel the Production of the Same Documents in Response to Defendant's Subpoena to Related Entity, 101 Coleman Partners, LLC, filed January 22, 2020.....	16
Final Order filed July 13, 2020.....	27
Order Denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, filed September 17, 2020	73
Order Awarding Plaintiff Attorney Fees and Costs, filed January 11, 2021	88
Complaint, filed October 23, 2017	98
Answer, filed December 27, 2017	113
Defendant's Notice of Motion and Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and, in the Alternative, Compel the Production of the Same Documents in Response to Defendant's Subpoena to Related Entity, 101 Coleman Partners, LLC, with attached exhibits, filed October 22, 2019.....	136
Exhibit A: Plaintiff's Second Supplemental Answers to Defendant's First Set of Interrogatories to Plaintiff, dated July 23, 2019.....	146
Exhibit B: Defendant's Second Request for Production, dated August 5, 2019.....	153
Exhibit C: Letter from Brandon Gaskins and Plaintiff's Responses to Defendant's Second Set of Requests for Production, dated August 8, 2019.....	157
Exhibit D: Deposition Excerpts of Tyler Flesch.....	169

Exhibit E:	August 26, 2019 letter from Grayson Lambert to Julia Copeland	173
Exhibit F:	Parking License Agreement (pp. 1-3).....	177
Exhibit G:	Rule 30(b)6) Deposition Excerpts of Robert Small and Tyler Flesch	181
Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel Plaintiff to Produce Documents Responsive to Defendant's Second Request for Production and, in the Alternative, Compel the Production of the Same Documents in Response to Defendant's Subpoena to Related Entity, 101 Coleman Partners, LLC with exhibits, filed November 27, 2019		186
Exhibit 1:	Robert Scott Small, Jr. April 24, 2019 Deposition Excerpts	208
Exhibit 2:	Eric DeMoura April 29, 2019 Deposition Excerpts.....	242
Exhibit 3:	Parking License Agreement § 1.10.....	284
Exhibit 4:	Draft Parking License Agreement § 6.01	299
Exhibit 5:	Email from David Pagliarini to Tyler Flesch re: Shem Creek Parking Garage License Agreement REVISED	302
Exhibit 6:	Revised Parking License Agreement § 6.01	304
Exhibit 7:	Tyler N. Flesch August 8, 2019 Deposition Excerpts	308
Exhibit 8:	Christianne Farrell May 2, 2019 Deposition Excerpts.....	335
Exhibit 9:	Kent Prause May 1, 2019 Deposition Excerpts	341
Exhibit 10:	Tyler N. Flesch April 24, 2019 Deposition Excerpts.....	346
Exhibit 11:	November 11, 2014 Letter from Eric DeMoura to Gray B. Taylor of Buist Byars & Taylor, LLC	368
Exhibit 12:	Portion of February 10, 2015 Town Council Meeting Minutes.....	372
Exhibit 13:	LLC Agreement of 101 Coleman Partners	383
Exhibit 14:	June 23, 2015 Termination Notice Letter from Gary B. Taylor to David G. Pagliarini.....	389

Exhibit 15: Shem Creek Development Group, LLC's Responses to Defendant's Second Set of Requests for Production, dated September 20, 2019	392
Exhibit 16: South Carolina Secretary of State Information for 101 Coleman Partners, LLC	402
Exhibit 17: 101 Coleman Partners Promissory Note	404
Exhibit 18: 101 Coleman Partners Business License	410
Exhibit 19: 101 Coleman Partners Indemnification and Hold Harmless Agreement.....	412
Exhibit 20: Town of Mount Pleasant's Notice of Supplemental Deposition (<i>duces tecum</i>) of 30(b)(6) Deponent	418
Defendant's Motion for Reconsideration of Order Denying Defendant's Motion to Compel and Memorandum in Support, with attached exhibits, filed January 30, 2020	421
Exhibit A: Parking License Agreement.....	427
Exhibit B: Tyler N. Flesch August 8, 2019 Deposition Excerpts	442

Volume 2

Motion and Supplemental Memorandum of Defendant for Involuntary Dismissal of Action Under SCRCP 41(B) and Entry of Judgment Under SCRCP 52, filed February 6, 2020.....	445
Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, filed July 20, 2020.....	470
Plaintiff's Response in Opposition to Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, filed August 4, 2020	488
Affidavit of Attorneys' Fees and Costs, with attached Exhibit, filed August 11, 2020.....	510
Exhibit A: Moore & Van Allen, PLLC's Spreadsheet of Attorneys' Fees, Paralegal Fees, and Costs.....	514
Defendant's Opposition to Attorney's Fee Award and Objections to Plaintiff's Attorney Fee Affidavit, filed August 24, 2020	540

Objections by Defendant to Plaintiff's Proposed Order Denying Defendant's Motion for New Trial and to Reconsider, Alter or Amend Order, filed September 17, 2020	544
Notice of Filing Affidavit of Attorneys' Fees and Costs, with attached Affidavit and Exhibit, filed September 17, 2020.....	551
Exhibit 1: G. Hamlin O'Kelley, III's Affidavit of Attorney Fees and Costs.....	552
Exhibit A: BB&T's Spreadsheet of Attorneys' Fees, Paralegal Fees, and Costs.....	556
Trial Transcript	565
Tyler Flesch	
Direct Examination By Mr. Gaskins.....	567
Cross Examination By Mr. Pagliarini.....	718
Redirect Examination By Mr. Gaskins	789
Robert Small	
Direct Examination By Mr. Gaskins.....	798
Cross Examination By Mr. Pagliarini.....	829
Redirect Examination By Mr. Gaskins	859
<u>Volume 3</u>	
Eric Demoura	
Direct Examination By Mr. Gaskins.....	863
Cross Examination By Mr. Pagliarini.....	890
Kent Prause	
Direct Examination By Mr. Gaskins.....	934
Cross Examination By Mr. Pagliarini.....	936
Christiane Farrell	

Direct Examination By Mr. Gaskins.....	974
Cross Examination By Mr. Pagliarini.....	988
Redirect Examination By Mr. Gaskins	1035
Jeff Johnston	
Direct Examination By Mr. Gaskins.....	1040
Cross Examination By Mr. Pagliarini.....	1081
Redirect Examination By Mr. Gaskins	1109
Brad Morrison	
Direct Examination By Mr. Pagliarini.....	1155
Plaintiff's Trial Exhibit #1	1161
Plaintiff's Trial Exhibit #2	1164
Plaintiff's Trial Exhibit #6.....	1185
Plaintiff's Trial Exhibit #7	1200
Plaintiff's Trial Exhibit #8.....	1214
Plaintiff's Trial Exhibit #13.....	1220
Plaintiff's Trial Exhibit #14.....	1223
Plaintiff's Trial Exhibit #15.....	1231
Plaintiff's Trial Exhibit #18.....	1238
Plaintiff's Trial Exhibit #20.....	1239
<u>Volume 4</u>	
Plaintiff's Trial Exhibit #24.....	1280
Plaintiff's Trial Exhibit #32	1282
Plaintiff's Trial Exhibit #37	1284

Plaintiff's Trial Exhibit #38.....	1287
Plaintiff's Trial Exhibit #39.....	1290
Plaintiff's Trial Exhibit #42.....	1305
Plaintiff's Trial Exhibit #43.....	1307
Plaintiff's Trial Exhibit #44.....	1310
Plaintiff's Trial Exhibit #47.....	1314
Plaintiff's Trial Exhibit #50.....	1316
Plaintiff's Trial Exhibit #53.....	1317
Plaintiff's Trial Exhibit #59.....	1318
Plaintiff's Trial Exhibit #60.....	1319
Defendant's Trial Exhibit #4.....	1320
Defendant's Trial Exhibit #7.....	1328
Defendant's Trial Exhibit #8.....	1343
Defendant's Trial Exhibit #12.....	1379
Defendant's Trial Exhibit #20.....	1423
Defendant's Trial Exhibit #21.....	1424
Defendant's Trial Exhibit #23.....	1429
Defendant's Trial Exhibit #26.....	1431
Defendant's Trial Exhibit #28.....	1472
Defendant's Trial Exhibit #31.....	1473
Defendant's Trial Exhibit #32.....	1477
Plaintiff's Answers to Defendant's First Interrogatories, dated November 28, 2018.....	1478
Defendant's Proposed Order.....	1507

Defendant’s Notice of Appeal, filed October 16, 2020 1544

Certificate of Counsel

Certificate of Compliance

1 witness.

2 MR. GASKINS: Plaintiff calls Eric DeMoura.

3 Thereupon,

4 ERIC DEMOURA

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 THE COURT: Your witness.

8 DIRECT EXAMINATION

9 BY MR. GASKINS:

10 Q Good afternoon, Mr. DeMoura.

11 A Good afternoon.

12 Q We, of course, met before. Can you state your
13 name for the record please?

14 A Eric Michael DeMoura.

15 Q And what is your position with the Town of Mt.
16 Pleasant?

17 A I'm the town administrator.

18 Q How long have you been in that position?

19 A Almost a decade.

20 Q Now, during your tenure, the Town of Mt. Pleasant
21 has had its fair share of controversial developments.
22 Wouldn't you agree with me?

23 A I would.

24 Q Okay. And wouldn't you agree with me that this
25 Shem Creek garage development has been the most

1 controversial?

2 A Yes.

3 Q But it wasn't always controversial, was it?

4 A No.

5 Q Okay. The, the town identified the site at the
6 corner of Coleman Boulevard and Mill Street as a potential
7 location for structured parking in its Coleman and Ventura
8 Boulevards revitalization master plan, correct?

9 A Correct.

10 MR. GASKINS: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. GASKINS:

13 Q I've handed you what has been marked as
14 plaintiff's Exhibit 1, which I will represent to you is the
15 cover page and two pages of excerpts from the Coleman and
16 Ventura Boulevards revitalization master plan. Would you
17 agree with that?

18 A Yes.

19 Q Okay. And you're familiar with this document,
20 correct?

21 A Correct.

22 Q And this was adopted by the town in 2008?

23 A Correct.

24 Q And in this plan it has discussion about
25 revitalizing Coleman Boulevard and Ventura Corridor to

1 provide parking decks, correct?

2 A Yes.

3 Q Okay. If you could, Laura, please go to the
4 second page and pull out the middle column, and this
5 highlighted portion includes the discussion regarding
6 parking decks, correct?

7 A Yes.

8 Q Okay. And it recommends that the town pursue
9 opportunities to provide parking decks through
10 public/private partnerships, correct?

11 A Yes.

12 Q Okay. And if you turn to the next page, Laura?
13 And if we look at this map, the Coleman Ben Sawyer Boulevard
14 master plan actually identifies this specific site as a
15 potential site for a parking deck, correct?

16 A Correct.

17 Q Okay. And that would be right here where the
18 circle is drawn, correct?

19 A Correct.

20 MR. GASKINS: We would move to admit Exhibit No.
21 -- Plaintiff's Exhibit No. 1 at this time.

22 THE COURT: Any objection?

23 MR. PAGLIARINI: No objection.

24 THE COURT: All right. It's in.

25 *(Whereupon, Plaintiff's Exhibit No(s). 1 marked*

1 *for identification and received in evidence.)*

2 BY MR. GASKINS:

3 Q Now, the findings in this document regarding
4 structured, structured parking was one of the factors that
5 led to the Town's decision to partner with Tex and Tyler and
6 their group in pursuing the project, right?

7 A Yes.

8 Q And you viewed this arrangement with Shem Creek
9 Development Group as a partnership, didn't you?

10 A Yes.

11 Q In fact, you included that in several documents
12 that you prepared in relation to the garage over the years,
13 isn't it true?

14 A Yes, we rely on many partnerships to run a city,
15 that's correct.

16 MR. GASKINS: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. GASKINS:

20 Q I'm handing you what's been pre-marked as
21 Plaintiff's Exhibit 37. Do you recognize this document?

22 A Yes.

23 Q And what is it?

24 A It is an email from Paul Gawrych to myself.

25 Q Okay. And that's dated February 27th, 2014, is

1 the ordinance, correct?

2 A If we had chosen to build a parking garage
3 ourselves, yes.

4 Q And if the town would have paid rent, that rent
5 still would have been paid by the accommodations tax,
6 correct?

7 A That's correct.

8 Q So, all those facts were true regardless of the
9 ordinance impact on the number of spaces in the garage,
10 correct?

11 A It's possible.

12 Q Which ones are impossible?

13 A The document you're referring to -- let me go
14 back. The exhibit that I'm looking at is Exhibit 35, which
15 is a, is a piece to defend town council as to why they made
16 a decision when they made it, and why they get into the
17 agreement, the opportunities that were for public input, how
18 it was being paid for. So, I mean I don't know what else to
19 tell you about it besides what I already mentioned.

20 Q Okay. In any case, when you wrote something to
21 defend town council, you didn't mention anything about these
22 benefits being uncertain, did you?

23 A No.

24 Q All right. Well, let's back up before May, 2014
25 and when town council ultimately approved the Parking

1 License Agreement in October of 2013. Is that the date that
2 you recall when it was approved?

3 A Yes.

4 Q And you were involved in the preparation of that
5 written agreement, right?

6 A Yes.

7 Q And before the agreement was approved by town
8 council, it was first considered by the council's police,
9 judicial, and legal committee, right?

10 A Yes.

11 Q And that meeting would have been in December,
12 2013---

13 A Yes.

14 Q ---or somewhere around in there, and you were
15 present at that meeting, right?

16 A Yes.

17 MR. GASKINS: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, sir.

20 Q I'm handing you what's been premarked as
21 Plaintiff's Exhibit 4. Do you recognize this document?

22 A Yes.

23 Q And what is that?

24 A Minutes from the meeting.

25 Q The PGL committee---

1 A Yes.

2 Q ---meeting that we were just referring to?

3 A Yes.

4 Q I'm gonna ask you to turn to Pages 5 and 6 and
5 review them, and this reflects a discussion, and ultimate
6 approval of the Parking License Agreement by the PGL
7 committee, correct?

8 A That's correct.

9 Q And if you look on Page 6, you and Mr. Pagliarini
10 addressed questions raised by town council, correct?

11 A Yes.

12 Q And during that discussion, you identified many of
13 the same benefits that you and I have discussed here today,
14 correct?

15 A Yes.

16 Q And town council approved the Parking License
17 Agreement unanimously in that meeting, is that right?

18 A The subcommittee did, yes.

19 Q The subcommittee. I'm sorry. Is this a
20 subcommittee or a committee?

21 A It's a subcommittee of council members.

22 Q Okay. But a committee of council?

23 A It is, yes. The same thing.

24 Q And the process would be you get approval at the
25 committee level, and then you go to full council, correct?

1 A Yes.

2 Q And it ultimately went to full -- before I do
3 that, I would move to admit Plaintiff's Exhibit 4.

4 MR. PAGLIARINI: No objection, Your Honor.

5 THE COURT: All right. It is admitted.

6 *(Whereupon, Plaintiff's Exhibit No(s). 4 marked*
7 *for identification and received in evidence.)*

8 BY MR. GASKINS:

9 Q And so the next step in the process would be for
10 it to go to town council for final approval?

11 A Yes.

12 Q And it did that in October of 2013?

13 A Correct.

14 Q And it was approved unanimously at that meeting,
15 correct?

16 A Yes.

17 Q (By Mr. Gaskins) May I approach?

18 THE COURT: Yes, sir.

19 Q I'm handing you what's been marked -- premarked as
20 Plaintiff's Exhibit 6. Please review it and let me know
21 when you're finished.

22 A Yes.

23 Q Are you familiar with this document?

24 A I am.

25 Q What is it?

1 A The Parking License Agreement.

2 Q Okay. What is at the beginning of the Parking
3 License Agreement?

4 A A resolution.

5 Q And it is a resolution passed by town council and
6 signed by the mayor approving the attached Parking License
7 Agreement, correct?

8 A Yes.

9 Q Okay. And this would be reflective of town
10 council's position on the Parking License Agreement as
11 expressed during that October, 2013 meeting?

12 A Yes.

13 MR. GASKINS: We would move to admit Plaintiff's
14 Exhibit No. 6 at this time.

15 MR. PAGLIARINI: No objection.

16 THE COURT: All right. It is admitted.

17 *(Whereupon, Plaintiff's Exhibit No(s). 6 marked*
18 *for identification and received in evidence.)*

19 BY MR. GASKINS

20 Q All right. Let's walk through this agreement.
21 Let's read the first whereas clause. It says that the Shem
22 Creek area and the Town of Mt. Pleasant is a vibrant and
23 busy public gathering area enjoyed by residents and
24 tourists. Do you see that?

25 A I do.

1 Q And that was town council's position as of
2 October, 2013, correct?

3 A Yes.

4 Q In the second one, it says the need for accessible
5 and safe public parking is evident. That was town council's
6 position as of October of 2013, correct?

7 A Yes.

8 Q And the next one says a parking garage located in
9 the area will contribute to the growth of the Shem Creek
10 area while providing safe and convenient access to residents
11 and tourists. That was town council's position as of
12 October, 2013?

13 A Yes.

14 Q Next, Shem Creek Development Group, LLC seeks to
15 construct, maintain, and operate a parking facility on Shem
16 Creek. Was that town council's position---

17 A Yes.

18 Q ---in October of 2013? And then, finally, it says
19 it is in the best interest of the Town of Mt. Pleasant to
20 reserve parking spaces within the proposed parking facility
21 for the public, and was that town council's position as
22 of --

23 A Yes.

24 Q -- October, 2013? This resolution does not
25 identify any specific number of spaces tied to the interest

1 of the town in this resolution, does it?

2 A Correct.

3 Q Do you know who drafted this resolution?

4 A Likely our legal department.

5 Q Is that who typically drafts your resolutions?

6 A Yes.

7 Q Okay. And do you find this resolution clear and
8 understandable?

9 A Yes.

10 Q Do you have any doubts or uncertainties about what
11 town council intended by this resolution?

12 A No.

13 Q Okay. There's nothing vague in this resolution,
14 is there?

15 A No.

16 Q Let's turn to that last paragraph. Can you please
17 read that aloud?

18 A This is on the resolution?

19 Q Yes.

20 A Now, therefore, be of resolve, by the mayor and
21 council members of the municipality of Mt. Pleasant, and
22 council assembled, that Exhibit A attached hereto, or a
23 substantially similar agreement, is formally and officially
24 approved and adopted.

25 Q Okay. And this would have been language drafted

1 by your attorneys, the Town's attorney?

2 A Yes. Yeah.

3 Q And there's nothing vague about that, right?

4 A Correct.

5 Q Okay. And it says the town is approving the PLA
6 or something "substantially similar," correct?

7 A Yes.

8 Q So, nothing vague about that?

9 A No.

10 Q All right. Let's turn to what has already been
11 admitted into evidence as Plaintiff's Exhibit 7. I know you
12 got a mess up there, and, with permission, I'll approach --
13 oh, you got it. Are you familiar with this document?

14 A Yes.

15 Q And this is a document that you helped negotiate,
16 correct?

17 A Yes.

18 Q And this is a document that you reviewed during
19 the drafting stage, correct?

20 A Yes.

21 Q And this is a document that you approved of,
22 correct?

23 A Yes.

24 Q It's a document you believe was clear and
25 understandable, correct?

1 A Yes.

2 Q And you, in fact, read this agreement and found it
3 to be clear and understandable, correct?

4 A Yes.

5 Q And if you had any concerns about any provisions
6 being vague, you would have identified that to council,
7 correct?

8 A Yes.

9 Q All right. Let's turn to Section 1.05 and 1.06.
10 These sections state that the garage will be comprised of
11 276 total spaces, and 132 public spaces, correct?

12 A Yes.

13 Q And these were numbers that were proposed by Shem
14 Creek Development Group, is that right?

15 A That's right.

16 Q And the town never insisted on a definite number
17 of spaces, did it?

18 A I don't follow.

19 Q Did the town ever insist on the -- on Shem Creek
20 Development Group providing a number of spaces? Did it say,
21 Tex, Tyler, you have to deliver 276 spaces?

22 A No, those are the numbers given to us.

23 Q Okay. And the town never conducted any analysis
24 to determine whether 276 total spaces were needed to address
25 demand in the area, did it?

1 Q If you could please refer back to your deposition
2 transcript that I handed you yesterday.

3 A There it is.

4 Q All right. Please turn to Page 83, line 18. I'm
5 going to read the question. Please read the answer allowed.

6 So are you there yet? Sorry.

7 A I am, yes.

8 Q So we mentioned the December 2013 zoning amendment
9 as something that the town did to collaborate with the
10 developer to make the project a reality.

11 Between December 2013 and February 2015, what
12 other actions did the town take to cooperate with the
13 developer and make it a reality?

14 A This is post the zoning amendments?

15 Q Post the zoning amendment.

16 A I can't recall any.

17 Q Thank you, Mr. DeMoura.

18 And without that cooperation from the town,
19 Shem Creek Development Group was only able to design the
20 garage with 234 total spaces and 117 public spaces, correct?

21 A Well, you are referring to cooperation to mean
22 changes in the law. If cooperation means fielding phone
23 calls, taking meetings with your client, we surely did that.
24 I'm sure that happened from time to time.

25 Q Did Mr. DeMoura --

1 A Well, I recall the amendment. I don't recall to
2 what extent we worked together on it.

3 Q Okay. Were you here for Mr. Small's testimony
4 yesterday about that issue?

5 A Yes.

6 Q Do you dispute Mr. Small's account?

7 A I don't recall exactly what Mr. Small said
8 yesterday.

9 Q And ultimately, an amendment was drafted, a
10 proposed amendment was drafted and presented to town
11 council, correct?

12 A Yes.

13 Q And that was considered at the town council's
14 meeting in February of 2015; is that right?

15 A That's right.

16 Q And you were at that meeting, right?

17 A Yes.

18 Q And during that meeting, you provided town council
19 with the presentation of your analysis consistent with what
20 you included in your November of 2014 letter?

21 A Yes.

22 Q And after your presentation, town council voted to
23 endorse your letter, correct?

24 A Yes.

25 Q And it also rejected the proposed amendment of the

1 parking license agreement?

2 A They chose not to act.

3 Q Didn't the town council indicate that town
4 government should not be involved with assisting the project
5 with government money?

6 A I don't know. One council member, I believe, said
7 that.

8 Q And then he made a motion to that effect, and it
9 was adopted unanimously, correct?

10 A Yes. But as any council members' comments prior
11 or after a motion, what's in the motion is what's germane.
12 Comments leading up to or after are not. It don't reflect
13 the majority of council.

14 Q Mr. DeMoura, you are aware that the town video
15 records its town council meetings?

16 A Yes.

17 Q And it posts those videos on YouTube; is that
18 correct?

19 A Yes.

20 Q Okay. And are you aware that in response to
21 discovery requests for videos of the town council's
22 meetings, that the town's attorneys refer to those YouTube
23 posts as the source of where we could -- where we could
24 locate and get possession of the videos of town council
25 meetings; were you aware of that?

1 inaccurate?

2 MR. PAGLIARINI: I'm sorry. No, ma'am. I'm
3 saying the minutes are absolutely complete as to what
4 constitutes --

5 THE COURT: Well, then you should not be
6 prejudiced. If they are accurate as to what happened
7 on the video, they should be in compliance with each
8 other. Any motivation that goes with my previous
9 ruling, I will not consider that.

10 But if they are accurate with what's in the
11 minutes, you should not be prejudiced by me looking at
12 the light version of it, asking what's in the minutes.
13 I'll allow it.

14 MR. GASKINS: Thank you, Your Honor.

15 (Video played.)

16 BY MR. GASKINS:

17 Q Do you recall that meeting, Mr. DeMoura?

18 A Yes.

19 Q Was there anything omitted from that video that
20 occurred that wasn't played here today?

21 A No. A video is a video.

22 Q Okay.

23 MR. GASKINS: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 BY MR. GASKINS:

2 Q I have handed you what has been pre-marked as
3 Plaintiff's Exhibit 15.

4 Would you agree with me that this is a copy
5 of the PowerPoint presentation that you delivered in the
6 February 10th, 2000 meeting that we just reviewed on the
7 video?

8 A Yes.

9 Q I want to go to Page 3 of your presentation.

10 MR. GASKINS: Your Honor, we'd move to admit
11 Plaintiff's Exhibit 15 at this time.

12 MR. PAGLIARINI: No objection.

13 THE COURT: All right. It is in.

14 *(Whereupon, Plaintiff's Exhibit No(s). 15 marked*
15 *for identification and received in evidence.)*

16 BY MR. GASKINS:

17 Q Turning to Page 3 of this presentation, you
18 conducted a calculation of what annual rent came to for the
19 spaces that were being rented under the parking license
20 agreement, correct?

21 A Yes.

22 Q And how did you come up with that figure?

23 A It appears that the total space is divided into
24 the number you see at the bottom.

25 Q So you were using the total spaces to come up with

1 this per space calculation, correct?

2 A Yes.

3 Q Not the public spaces.

4 A Correct.

5 Q And if you use the public spaces, that per space
6 figure would have been higher, correct?

7 A Yes.

8 Q All right. Now, let's go to Page 5. And again,
9 this is analysis that you conducted dealing with surface
10 lots and Red's and Tavern that we discussed earlier,
11 correct?

12 A Yes.

13 Q And here you come to the conclusion that the --
14 and this is a presentation about the parking license
15 agreement, correct?

16 A Yes.

17 Q And Reds is not a party to the -- the landlord or
18 owner of Reds is not a party to the parking license
19 agreement, was it?

20 A That's correct.

21 Q And nor was the owner or operator of Tavern and
22 Table, correct?

23 A Correct.

24 Q But you conduct some type of analysis and
25 calculation to figure out what the town is paying for these

1 excess spaces that you calculated based on looking at
2 surface parking and Reds and Tavern and Table, correct?

3 A Yes.

4 Q And based on that number, \$670 per space, 45
5 excess spaces, you calculated that there was \$30,163 per
6 year. Is that what it reflects?

7 A Yes.

8 Q And were you implying that the town was paying
9 \$30,000 a year for this parking that Reds and Tavern and
10 Table were going to provide?

11 A I was implying that that would be -- based on what
12 was submitted by your client, that would be the value of
13 what the spaces were to the town, and that would be the cost
14 multiplied by the 670-dollar figure cap.

15 Q But you didn't do the simple calculation of taking
16 the 670-dollar per space figure and multiplying it by 234,
17 did you?

18 A No.

19 Q And you didn't multiply it by 117, did you?

20 A No.

21 Q No. Instead, what you did on the next page is you
22 juxtaposed that to what was being requested in the proposal,
23 correct?

24 A It was provided by the client, yes.

25 Q And that is not an apples to apples comparison, is

1 it?

2 A You would have to explain it better.

3 Q Well, in any case, what you went through on Page 5
4 of this presentation was not relevant to your ultimate
5 conclusion that Shem Creek Development Group was not
6 satisfying its obligations, correct?

7 A It is relevant because in the follow-up proposal
8 by your client they were utilizing those hundred spaces, so
9 I had to make some mention of it in the analysis that you
10 see.

11 However, the bottom line is, as evidenced in
12 the video, the 276 spaces could not be provided, they could
13 not be provided in the structure, and clearly, as we all had
14 to witness, council felt it just wasn't the public value to
15 move forward with the project.

16 Q Okay. If you could, Mr. DeMoura, we discussed
17 this topic at your deposition. Let's refer back to that
18 transcript. And I would ask that you turn to Page 147.

19 Are you there?

20 A Uh-huh. (Indicating affirmatively.)

21 Q All right. I'm gong to start at Line 3. I'm
22 going to read the question, please read back your answer.

23 "Looking at the Page 5 of the agreement -- or
24 not the agreement, the presentation -- with the title,
25 Project Current Design.

1 A Yes.

2 Q And it is my understanding from your earlier
3 testimony that this analysis of whether adequate spaces were
4 being provided for Tavern and Table and Reds was really not
5 germane to your determination that Shem Creek Development
6 Group was not in compliance with the parking license
7 agreement; is that correct?

8 A It was addressed because it was being brought into
9 the analysis by your client, when they said there was
10 additional parking spaces at Reds.

11 Q Okay. But not relevant to your determination of
12 compliance?

13 A "Right. My determination was totally based on 276
14 of the structure as written in --"

15 Q Now, when reaching your conclusions, did you
16 conduct any analysis to determine whether 234 total spaces
17 and 117 public spaces were adequate to meet the parking need
18 in the area?

19 A Yes. Your client did.

20 Q What analysis are you referring to?

21 A My memory was, once your client had provided a new
22 alternative, showing the hundred-space surface outside
23 structure, that we had followed up, if my memory is correct,
24 to see in what way those restaurants would be utilizing
25 those spaces.

1 I believe we asked for that information from
2 your client. And then we received back information that
3 Tavern and Table needed X spaces to support their customers,
4 and so did Reds. And so then it became very clear that
5 those 100 spaces, extra spaces, surface spaces being
6 provided by your client, we could not count on them truly
7 for public use because they were required use by the
8 adjacent restaurants.

9 Q You are referring to the ULI analysis that
10 Mr. Flesch reviewed yesterday?

11 A Correct.

12 Q And that information showed that at peak demand on
13 weekdays, there would be in excess of 102 spaces, correct?

14 A Perhaps. And I don't disagree with that.

15 Q Okay. So you would agree that there was
16 sufficient capacity to meet the parking demand in the area,
17 based on 234 spaces, total spaces in the garage, wouldn't
18 you?

19 A I can't agree to that. I don't know if that would
20 be possible, because the restaurants are in business in the
21 evening, we are providing X amount of public spaces after
22 work, Monday through Friday, all day during the weekends, as
23 you know. So I can't imagine all those spaces would be
24 available.

25 Be that as it may, there were not 276 spaces

1 in this project."

2 Q Now, when I asked you in your deposition, you
3 admitted that you had not conducted any analysis at that
4 time, correct?

5 A The town, as far as I remember, it was not us that
6 initiated the analysis. That information was provided by
7 your client.

8 Q And during your presentation to town council, you
9 didn't present any analysis of whether -- whether 234 spaces
10 was inadequate to meet the demand, did you?

11 A I don't follow.

12 Q In your presentation to town council, did you
13 present town council with any information addressing whether
14 the 234 spaces were inadequate to meet the demand in the
15 area?

16 A Oh, sure. The analysis clearly showed they were
17 42 spaces short. That was in the presentation.

18 Q I'm asking you about parking demand.

19 A Uh-huh. (Indicating affirmatively.)

20 Q What suggested in this analysis that there was
21 inadequate parking supply to meet that demand?

22 A If you are asking whether the town conducted an
23 analysis, no. But you don't have to conduct an analysis to
24 know that the restaurant is going to need those spaces in
25 the evening. So those spaces would not be provided to the

1 town -- to the public, which is what we signed up for in the
2 agreement.

3 Q Okay. And that's depicted in the ULI analysis,
4 correct?

5 A If you -- that is not what I'm referring to in my
6 comments.

7 Q And if there were inadequate spaces based on that
8 ULI analysis, the town would have never issued a permit for
9 the project, would it?

10 A Why wouldn't they?

11 Q Because zoning code requires certain parking
12 requirements to meet parking demand.

13 A Right, but that has nothing to do with the
14 agreement. If you're searching for a permit for their
15 project, the parking garage project that contains the office
16 buildings, the office use of the parking has to be met.

17 So I don't know what that has to do with the
18 council's willingness or unwillingness to continue to
19 support the PLA.

20 Q Maybe it does, maybe it doesn't. I'm just asking
21 if you have seen any analysis on parking demand and whether
22 the 234 spaces that were going to be delivered was going to
23 be sufficient to meet that demand.

24 A I don't recall.

25 Q And it's true that you never conducted any

1 analysis, correct?

2 A That's correct.

3 Q Mr. DeMoura, do you remember when we talked about
4 this issue of whether the analysis of whether the garage was
5 going to be adequate to address the parking demand for Shem
6 Creek, in your deposition?

7 A I don't recall, no.

8 Q Well, I'll ask you to refer back to your
9 deposition transcript, please.

10 Okay. And I will ask that you turn to
11 Page 142. Actually, go to 141. And we will start at Line
12 18, I'll read the question. Please provide your answer.

13 "Okay. Have you seen any type of studies
14 that would suggest that 234 spaces could not satisfy the
15 peak demand for Shem Creek during the weekdays or during the
16 weekday nights or weekends?"

17 A "Have I seen any studies? I don't think so."

18 Q "So do you have any reason to believe that 234
19 spaces would be inadequate to meet the parking demand for
20 Shem Creek during the weekends or the nights and weekdays?"

21 A "I don't know the council's decision whether to
22 accept the amendment or not was based on a quantitative
23 analysis. It was probably more qualitative than anything
24 else."

25 Q "And I'm not asking that you. I'm asking, have

1 you seen anything to suggest that 234 spaces would be
2 inadequate to meet the parking demand for Shem Creek?"

3 A "No."

4 Q And regardless of what studies you have seen, you
5 would have reached the same conclusion that you reached, no
6 matter what?

7 A Which conclusion?

8 Q The conclusion that --

9 A The one that was reached in the letter?

10 Q Yes, the conclusion that you reached in the
11 letter.

12 A That's correct.

13 Q Okay. And that is because 276 means 276, correct?

14 A It is because your client agreed to provide 276
15 spaces, and they couldn't meet it, period.

16 Q And you would have reached the same conclusion if
17 they presented a design that only provided 275 total spaces,
18 correct?

19 A I would have presented that information to
20 council, and they would have had to determine whether it met
21 the PLA or not.

22 Q Mr. DeMoura, you were delegated with the task of
23 reaching a conclusion, not just taking information to
24 council, correct?

25 A Yes.

1 So if you could, please keep going.

2 (Video played.)

3 BY MR. GASKINS:

4 Q And here, Mr. Glasson is representing that his
5 understanding is that the space would have 144 spaces for
6 office use and approximately 120 more for public spaces,
7 correct?

8 A He may be.

9 MR. GASKINS: Please continue.

10 (Video played.)

11 BY MR. GASKINS:

12 Q And you didn't correct him that his math was wrong
13 and produce less than 276 spaces at that time, did you?

14 A I did not.

15 MR. GASKINS: That is all I have right now,
16 Your Honor.

17 THE COURT: Okay. We will take a brief morning
18 recess. We'll take about ten minutes and then we will
19 continue with cross examination.

20 (Recess.)

21 THE COURT: Your witness.

22 MR. GASKINS: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. PAGLIARINI:

25 Q Good morning, Mr. DeMoura.

1 A Good morning.

2 Q You mentioned prior your position at the town of
3 Mount Pleasant is what, your position?

4 A The town administrator.

5 Q And you have been town administrator for ten
6 years -- over ten years; is that correct?

7 A Getting close, yes.

8 Q What is your role and responsibility as town
9 administrator?

10 A To oversee the general operations of the town,
11 daily operations, and to implement policy as set forth by
12 town council.

13 Q So you don't make policy decisions; is that
14 correct?

15 A That's correct.

16 Q And council approves those policy decisions as
17 they approved in October 2013 the parking license agreement,
18 correct?

19 A That's correct.

20 Q And so no matter what anyone on staff or anyone's
21 opinion or whatever anyone may think, council's approval of
22 that document is what matters; is that correct?

23 A That's correct.

24 Q Mr. DeMoura, I would like for you, if you could,
25 to go to the notebook and look under Defendant's Exhibit

1 No. 18, which is the parking license agreement.

2 A Yes.

3 Q And if you would go to that agreement, Page 8.

4 MR. GASKINS: Your Honor, sorry to interrupt, but

5 I would prefer that Plaintiff's Exhibit No. 7 be used.

6 I think there are some -- Exhibit No. 18 is not

7 executed. I don't believe it is the final version.

8 It is the version that was attached to the

9 resolution, and I think the best thing is to use the

10 actual version.

11 MR. PAGLIARINI: That is fine, Your Honor.

12 However you want to do it, whatever number that is.

13 THE COURT: Seven.

14 BY MR. PAGLIARINI:

15 Q Seven. Okay.

16 A The PLA?

17 Q Yes, sir. Do you have that?

18 A I have most of it. There is a lot of paper up

19 here.

20 Q Okay. If you can find Page 8.

21 A Yes.

22 Q Section 8.04.

23 A Yes.

24 Q What is the title of that paragraph?

25 A It says, "Entire Agreement."

1 Q Can you read that provision into the record,
2 please?

3 A "The license and the exhibits and rider, if any,
4 attached hereto and forming a part hereof, set forth all the
5 covenants, promises, agreements, conditions, and
6 understandings between licensor and licensee concerning the
7 premises, and there are no covenants, promises, agreements,
8 conditions or understandings, either oral or written,
9 between them other than as are here and set forth. Except
10 as herein otherwise provided, no subsequent alteration,
11 amendment, change, or addition to this license shall be
12 binding upon licensor or licensee unless reduced to writing
13 and signed by them."

14 Q So let's take the last part first.

15 Were there any other writings written,
16 changes approved and signed, to your knowledge?

17 A No.

18 Q Did town council approve the resolution as
19 written?

20 A Yes.

21 Q Mr. Gaskins asked you a question about that
22 resolution, which is Plaintiff's Exhibit 7 and, again, I'm
23 sorry to ask you to hunt around for that, but that would be
24 Resolution 131.02. And do you have that up there?

25 Excuse me. Plaintiff's Exhibit 6.

1 A Yes, I believe I saw that a moment ago.

2 Here it is. Okay.

3 Q And you are looking at Plaintiff's Exhibit 6?

4 A Yes.

5 Q And at the bottom of the first page, there is a
6 paragraph that begins, "Now, therefore, be it resolved by
7 the mayor and council members that Exhibit A attached
8 hereto" --

9 Do you see that paragraph?

10 A I do.

11 Q All right. And there is a provision there that
12 says, "or substantially similar agreement". Do you see that
13 part?

14 A Yes.

15 Q And that part is commonly written into these
16 resolutions and agreements that means -- at this time, the
17 PLA was unsigned. It was not executed; is that right? At
18 the time the resolution was passed, there was no signed
19 agreement; is that correct?

20 A Correct, yes.

21 Q Meaning it would be signed at a later time, right?

22 A That's correct.

23 Q And sometimes between signing and -- or, excuse
24 me, approval and signing, there might be things like date
25 changes or signature changes or something minor,

1 corrections; is that your understanding?

2 A Yes.

3 Q And so in that provision, in that provision where
4 it says substantively similar agreement, typically that
5 means that whoever is authorized to execute that agreement
6 cannot change the important or major or substantive terms;
7 is that correct?

8 A Yes.

9 Q Now, Mr. DeMoura, you recall negotiating on behalf
10 of the town of Mount Pleasant with Mr. Small regarding the
11 PLA; is that correct?

12 A Yes.

13 Q Mr. Small led those negotiations for the
14 Plaintiff, right?

15 A Yes.

16 Q And in that, as I believe it's been testified, it
17 was the town's expectation based on the Plaintiff's
18 representation that 276 parking spaces would be provided; is
19 that right?

20 A Yes.

21 Q And those parking spaces would be in the
22 structure; is that right?

23 A Correct.

24 Q So if you have that PLA in front of you, the
25 parking license agreement --

1 A Yes.

2 Q -- I would ask you to go to Page 4, and this is
3 Section 2.01 B.

4 A Yes.

5 Q And would you read that 2.01 B? It is just one
6 sentence.

7 A "The premises shall include only the public spaces
8 and necessary appurtenances specifically granted in this
9 license and shall not include any adjacent buildings, docks,
10 or surface parking areas."

11 Q And when you talked earlier in your discussion
12 with Mr. Gaskins, you said no surface parking areas were to
13 be part of the 276. Is this the provision you were thinking
14 about or relying on?

15 A It is one of two, yes.

16 Q Okay. When you were negotiating, or at least
17 discussing with Mr. Small, because you don't have the
18 ability to agree to a -- anything final, there was
19 negotiation or discussion about the rent amount; is that
20 correct?

21 A Yes.

22 Q Originally Mr. Small was looking at a higher
23 number and you were looking at a lower number than was
24 ultimately agreed to; is that correct?

25 A That's correct.

1 Q And the 185,000 per year for 15 years is
2 ultimately what you presented to council, correct?

3 A Yes.

4 Q And council approved that number; is that correct?

5 A Yes.

6 Q There seems to be no doubt that the Plaintiff said
7 that they could deliver 276 spaces; is that correct?

8 A Yes.

9 Q And did you have any thought or concern as to the
10 value for those spaces? Meaning, was the rent amount you
11 were negotiating tied to the number of spaces?

12 A Oh, yes.

13 Q And why was that? I mean, what made the value
14 important?

15 A Well, because it was -- that is how we measured
16 the public value that we were receiving by getting those
17 spaces.

18 Q All right. Are these public dollars at stake
19 here?

20 A Yes, taxpayer dollars.

21 Q Do you have the ability to randomly spend or
22 adjust rent amounts as you see fit?

23 A No.

24 Q Let's talk about the committee meeting minutes,
25 and I'm asking you to reference the police judicial and

1 legal committee of September 30th, 2013, and that is in the
2 notebook -- excuse me.

3 A September 10th.

4 Q No, it wouldn't be.

5 MR. PAGLIARINI: Julie, do we have that?

6 A Oh, I see it. No. 27.

7 Q Yeah, there you go, 27.

8 A Is that it -- okay.

9 Q Watching yourself on television when you are
10 substantially fatter than you are today --

11 All right. So let's look at the PJI minutes
12 from September 30th, 2013. Do you have those under Tab 27?

13 A I do.

14 Q I'm asking you to go to Page 5 of those minutes
15 and the heading says, "Approval of the Shem Creek Parking
16 Agreement;" is that correct?

17 A Yes.

18 Q And you attended this meeting?

19 A I did.

20 Q All right. And the -- it appears that this was
21 discussed on Pages 5 and 6; is that your understanding?

22 Page 5, and it carries over to Page 6 in
23 those minutes; is that correct?

24 A Yes.

25 Q All right. So I would ask you to look at -- at

1 the information that was provided to council, specifically
2 on Page 6, in the first full paragraph that starts with
3 "Mr. Carrier."

4 Do you see that provision?

5 A I do.

6 Q Okay. And can you, to yourself, just read that
7 for a minute before I ask you a question.

8 A Okay.

9 Q Do you see any equivocation of the information
10 that was provided to committee about the number of spaces?

11 A No.

12 Q And ultimately, committee approved the PJI and
13 moved it on to council; is that correct?

14 A Yes.

15 Q And that town council meeting would have been
16 October 2013; is that your understanding?

17 A Yes.

18 Q And Mr. DeMoura, specifically, the October 8th,
19 2013 town council minutes, which are Tab No. 4, can you turn
20 to that?

21 A Okay.

22 Q Is this the provision, or is it at this council --
23 excuse me.

24 All right. Tab No. 4, do you have those
25 council minutes?

1 A I do.

2 Q And that is October 8th, 2013; is that correct?

3 A Yes.

4 Q Is this the council meeting where town council
5 approved the resolution to -- for the PLA?

6 A Yes.

7 Q And I believe that is on Page 7 of 8; is that
8 correct?

9 A Yes.

10 Q All right. And it says, "A resolution to enter
11 into a license agreement regarding public access and use."

12 And did that motion carry unanimously?

13 A Yes.

14 Q Sorry to jump back and forth, but I wanted to try
15 to establish and assist the Court with a time line as well.

16 To your understanding, were the number of
17 parking spaces, both two -- and the numbers 276 as well as
18 the number of public -- as well as the number of public
19 parking spaces, and as well as the number of reserved
20 spaces, 132 public and 144, were those precise numbers?

21 A Yes.

22 Q Was there anything fluid, flexible, or conceptual
23 about them?

24 A No.

25 Q I point you to Section 1.05 of the PLA, which is

1 entitled "Project."

2 A Yes.

3 Q And the project is comprised of 276 total parking
4 spaces; is that correct?

5 A Yes.

6 Q Now, I point you to Section 1.06. If you look in
7 the first line under premises, that the premises is 132 of
8 276 total spaces; is that correct?

9 A Correct.

10 Q Now, let's -- if the developer had constructed
11 more than 276 spaces, would that have affected the town of
12 Mount Pleasant's lease agreement? Meaning, in your thought,
13 would it have nullified or violated the terms of this PLA?

14 A No.

15 Q I want to point you to Section 3.01 -- or, excuse
16 me, 3.02 of the agreement.

17 Do you have that? That is on Page 5.

18 A Yes.

19 Q And does that provision at least provide when the
20 spaces would be available and the time frames, and when the
21 public could use certain spaces and when certain spaces were
22 reserved?

23 A It does.

24 Q And I'm looking at 3.02 A. And that says the
25 public spaces; is that correct?

1 A Yes.

2 Q Now, I know we have to jump around, but going back
3 to 1.06, public spaces 132 spaces; is that correct?

4 A Yes.

5 Q And that 13 is specified clearly in 1.06; is that
6 right?

7 A Yes.

8 Q And then it goes on to say, "The remaining 144
9 spaces are referred to as the reserve spaces;" is that
10 correct?

11 A Correct.

12 Q And is there any equivocation of the number 144?

13 A No.

14 Q Now, what is the number of parking spaces a
15 material or key term of this agreement?

16 A Absolutely.

17 Q Do you need a solid specific number to take to
18 council?

19 A Yes.

20 Q And is that at least in part because this is
21 taxpayer dollars going toward the rent of those spaces; is
22 that correct?

23 A Absolutely.

24 Q Did the town exert any influence over the
25 Plaintiff to promise a minimum or specific number?

1 A Exert any influence?

2 Q Right. Did you say --

3 A Not more than agreeing to the signing of the
4 agreement.

5 Q Right. That the rent was tied to those spaces; is
6 that correct?

7 A Yes.

8 Q And as you said, you negotiated rent with
9 Mr. Small. Initially they demanded \$200,000 a year in rent;
10 is that correct?

11 A Yes.

12 Q And the term of the rent, term of the rent would
13 be paid over 15 years; is that correct?

14 A Yes.

15 Q And would it be paid \$185,000 annually on a
16 specific date; is that your understanding?

17 A Correct.

18 Q But the term of the license was for 30 years,
19 meaning the access that the public would have to these
20 spaces was 30 years; is that right?

21 A Yes.

22 Q At the time that the PLA was executed, and we are
23 still in October of 2013, the Plaintiff had not submitted a
24 design or parking layout for the garage and office building;
25 is that correct?

1 A That's correct.

2 Q Now, you heard Mr. Small, and I believe you
3 answered, testified, that he provided you with something,
4 some sort of plan or plans, and I'm not sure what they were.

5 Other than the attachment to the parking
6 license agreement, which is the Exhibit A, which is the
7 conceptual drawing, did you see any parking plan or building
8 development plan?

9 A No.

10 Q And was it incorporated into the -- was anything
11 other than the conceptual plan incorporated into the
12 agreement?

13 A No.

14 Q Now, Mr. DeMoura, I would like you to look at
15 Exhibit A on the PLA. Do you have that?

16 A I do.

17 Q Does that indicate to you how many parking spaces,
18 just by looking at this document, how many parking spaces
19 would be located in the building and where they would be
20 located?

21 A No.

22 Q Is this a conceptual design?

23 A Yes.

24 Q And in your mind, was a conceptual design, at
25 least how the building was going to look and what it was

1 going to look like; is that correct?

2 A Yes.

3 Q Do you see anything on this document indicating
4 that there would be parking spaces in a certain point or
5 location within this structure that -- for example, can you
6 tell whether there would be parking spaces on the third
7 floor?

8 A No.

9 Q Can you tell whether there would be parking spaces
10 on the fourth floor?

11 A No.

12 Q Can you tell whether they would be on the first
13 floor, fronting Coleman Boulevard?

14 A Don't know.

15 Q Other than the requirements, other than the
16 ordinance and development requirements, the developer had
17 the flexibility to design as they saw fit. Of course,
18 subject to development guidelines; is that correct?

19 A The idea being somewhere in that structure is 276
20 spaces.

21 Q So we are in October of 2013, there had been
22 negotiation, and at this time, are you aware that during
23 that negotiation, prior to the approval of the PLA,
24 Mr. Small had made some requests to change some provisions
25 in the urban corr -- overlay district; is that your

1 understanding?

2 A Yes.

3 Q And as the Court has already heard, some of those,
4 at least two of them, related to height. One of them was
5 height; is that correct?

6 A Correct.

7 Q And one of the others was having to have no
8 commercial in the first floor of the building; is that
9 correct?

10 A Yes.

11 Q So I want to clarify, just because I think it was
12 confusing, in December of 2013, the height in the UCOD in
13 this area, at least in this specific area that affected this
14 building and possibly others, was increased to 55 feet; is
15 that correct?

16 A Yes.

17 Q Now, there was some discussion in your
18 conversation with Mr. Gaskins, that at some point down the
19 line that number was again reduced to 45 feet; do you
20 remember that?

21 A Yes.

22 Q All right. But I want to be clear on this. This
23 building was built with 55 feet; is that correct?

24 A Yes.

25 Q And that later reduction to 45 feet did not affect

1 the developer's ability to build this building up to
2 55 feet; is that correct?

3 A Yes.

4 Q Is it fair to say that you did not review any
5 plans, at least until -- well, at least until April of 2014
6 of the proposed PLA?

7 A It was sometime considerably after the PLA.

8 Q Considerably after. Now, when I say "plans," you
9 got into a discussion with Mr. Gaskins about plans versus
10 conceptual and all that context. Are you aware that the
11 submittal of plans was in June of 2014?

12 A I don't dispute that.

13 Q It was sometime --

14 A Sure.

15 Q Many months after the PLA was executed; is that
16 correct?

17 A Yes.

18 Q After the December 2013 amendments; is that
19 correct?

20 A Correct.

21 Q And after the overlay district amendments in
22 April of 2014; is that correct?

23 A Yes.

24 Q Let's talk, and we'll with Ms. Farrell, and I
25 don't want you to get into her business if you don't want

1 to, but she was the planning director at that time, correct?

2 A Yes.

3 Q And is it fair to say that when plans are
4 submitted, it would be reviewed by the planning department;
5 is that right?

6 A That's correct.

7 Q So I would like you to turn and go back to the PLA
8 and look at Section 3.04, under licensor's work. Do you see
9 that?

10 A Yes.

11 Q And it says that licensor's conceptual -- it says
12 that licensee has inspected the licensor's conceptual plans
13 for the project. Do you see that part?

14 A Yes.

15 Q Are you aware that -- well, first of all, would
16 you ever review conceptual plans at any time during the
17 process?

18 A No. That is not my role.

19 Q And I believe you said yesterday that would be
20 planning; is that correct?

21 A Yes.

22 Q Do you know whether planning looked at conceptual
23 plans showing parking spaces, showing parking spaces prior
24 to the execution of this document?

25 A No, they did not.

1 Q So -- but to your knowledge, the only document
2 that was in the town's possession was the Exhibit A, a
3 rendering; is that correct?

4 A Yes.

5 Q And Section 3.04 doesn't indicate or relate to
6 parking spaces at all, does it?

7 A No.

8 Q It doesn't indicate that there had been plans
9 reviewed as it relates to parking spaces?

10 A Correct.

11 Q Mr. DeMoura, in the continuing on with the PLA, I
12 would like you to go to Page 8. Okay?

13 A Yep.

14 Q I had already asked, and we have discussed
15 Section 8.04. I would like to talk about Section 8.05. Can
16 you read that portion into the record, please?

17 A It is titled, "No Partnership."

18 "By execution or performance of this license
19 or any related agreement, licensor does not in any way or
20 for any purpose become a partner of licensee in the conduct
21 of its business or otherwise, or joint venture or member of
22 a joint enterprise with licensee."

23 Q So you got into a very lengthy discussion about
24 emails and whatnot with Mr. Gaskins about use of that word
25 "partnership", and you agree that in many emails, you used

1 that term; is that correct?

2 A Yes.

3 Q What is your understanding of how you utilized the
4 term "partnership" in looking at all your emails and
5 discussing these? Because he didn't ask you that question.

6 A In my field of work, we have what I would consider
7 many partnerships. If I may, any community just doesn't
8 rely on one of its institutions, so it's not just the town
9 government that helps a community run. It is really a
10 network or series of partners that help a community to be
11 healthy and successful.

12 Some of those partners may be healthcare
13 providers, may be faith based organizations, certainly the
14 business community, public education community. So several
15 different partners we rely on in order to help as best as we
16 can build a strong community.

17 Q So when you use the term, "partnership," do you
18 mean in a legal sense?

19 A I leave that to you and the other attorneys. That
20 is what it means to me, what I just described.

21 Q But you don't have the authority to utilize --
22 your utilization of terminology does not supersede what
23 town's council agreed to in this PLA, does it?

24 A No it does not.

25 Q And as the provision you just read, specifically

1 and unambiguously says that there is no partnership; is that
2 right?

3 A Correct.

4 Q Did the town have any development authority over
5 how the garage would be developed?

6 A No.

7 Q And of course, with the obvious exception that it
8 would be subject to --

9 A Review.

10 Q -- rules and regulations, right?

11 A Yes.

12 Q But we are not going to tell them, the town, how
13 to spend their money, correct?

14 A Correct.

15 Q Did Mr. Small or his partner, Mr. Flesch, ever
16 come to you for advice about how they are going to design
17 and build their garage?

18 A No.

19 Q Do you know if they ever went to town council and
20 sought such advice?

21 A No, I'm not aware.

22 Q So you are aware of the -- I want to move forward
23 a little bit. We are still stuck around October 2013, and I
24 would like to go to December 2013.

25 And I believe we already discussed that

1 that's when the height limit -- or, excuse me, the height
2 was adjusted as well as the no commercial on the first
3 floor; is that correct?

4 A Yes.

5 Q And are you aware that Mr. Small had had
6 conversations with Ms. Farrell, the town's planning
7 director, about certain -- those and other zoning
8 requirements and other building requirements that would need
9 to be met?

10 A At what month and year?

11 Q As of December 2013.

12 A I would assume so.

13 Q You are aware that Mr. Small had authored two
14 letters to the planning committee requesting some changes;
15 is that correct?

16 A Yes, yes.

17 Q All right. So let's move into 2014, and you are
18 aware that town council enacted certain zoning amendments
19 that ultimately -- ultimately were approved at final reading
20 in April 2014; is that your understanding?

21 A Yes.

22 Q The ordinance that enacted those amendments was
23 the result of months long process where the town studied an
24 ultimately enacted district wide zoning amendments; is that
25 your understanding?

1 A That's true.

2 Q So let's talk about that process.

3 You're aware that the initial idea to review
4 what ultimately became Ordinance 14022 started in
5 December 2013 at that council meeting; is that correct?

6 A Yes.

7 Q And that is the same council meeting where council
8 approved the height variation; is that right?

9 A Yes.

10 Q That council, those folks sitting at that table,
11 certainly weren't unfriendly or opposing the request that
12 Mr. Small gave on -- or wanted at that time, were they?

13 A No.

14 Q Do you recollect another project in the Old
15 Village area that was garnering some public opposition at
16 that point?

17 A I do.

18 Q And what project was that?

19 A It was the Earl's Court residential project.

20 Q Earl's Court?

21 A Yes.

22 Q Is it your understanding that at least the seeds
23 of what became Ordinance 14022 were started because of the
24 Earl's Court project, and those setbacks and the like; is
25 that correct?

1 A That's true.

2 Q At that time, the public wasn't necessarily in
3 mass appearing at these council meetings opposing the
4 parking garage project; is that right?

5 A Right.

6 Q And, in fact, at that point, no plans had been
7 made provided to the town or even made public at all as to
8 what the parking garage would look like; is that right?

9 A Yes.

10 Q There was no approval to even build an office
11 building parking garage at that point; is that correct?

12 A Right, yes.

13 Q So following that December 10th, 2013 council
14 meeting, you are aware that on December 19th, just one week
15 later, or just over a week later, there was a special
16 planning committee to discuss the study, or at least the
17 motion that was made at the December 10th meeting; is that
18 correct?

19 A Yes.

20 Q And we have gone through this list with
21 Mr. Flesch, and I don't want to really go through it again,
22 but are you aware that there were several planning committee
23 meetings before the ordinance was actually enacted; is that
24 right?

25 A Yes.

1 Q And there was a planning commission meeting, which
2 was publicly noticed that this was discussed, correct?

3 A Yes.

4 Q And two meetings of council; is that correct?

5 A Correct.

6 Q Are you aware, do you know of any discussion
7 within the town of Mount Pleasant where there was any effort
8 to provide legislation that would specifically thwart or
9 hinder the design and construction of the developer's
10 project?

11 A No.

12 Q Would you even have known how to thwart or hinder
13 their project if you hadn't seen plans at that time?

14 A No.

15 Q And they had not provided any plans; is that
16 correct?

17 A Correct.

18 Q Now, understanding that, there is an entire
19 difference between public opposition; is that correct?

20 A Yes.

21 Q And the public appearing at these meetings, as
22 Mr. Small testified, maybe starting around March of 2014,
23 that did increase as the months went on; is that correct?

24 A Yes.

25 Q To your knowledge, did town council, between

1 December 2013 and the ultimate time of -- that 14022 was
2 enacted, take any other actions, any other votes, any other
3 actions that would have affected the parking license
4 agreement?

5 A No.

6 Q And the December 2014 -- or, excuse me, the
7 April 2014 amendments to the UCOD, to your knowledge, at
8 that time -- would they have affected the Plaintiff's
9 ability to develop their project in a way they saw fit?

10 A I didn't believe it did.

11 Q Why didn't you believe it? I mean, what is your
12 basis for saying that you didn't believe it?

13 A Well, it was, as earlier mentioned, what was
14 proposed and later agreed to, affected the Earl's Court
15 project and how things were being developed there. And so,
16 you know, frankly I was surprised later to hear about any
17 potential impacts on the parking garage project.

18 Q Now, Mr. Small testified that he asked you whether
19 there would be any effect of this ordinance. Do you
20 recollect whether he asked you?

21 A If he did, not before. It either came -- it was
22 likely to come after. And if he did, as I mentioned to my
23 surprise, I would have told him I didn't believe there was.
24 Because that is what I believed to be true at the time.

25 Q And we have covered this, but I just want to

1 maintain the time line because now we are in the spring of
2 2014, specifically, April 8th at the time that the UCOD
3 amendment was passed at final reading. At that time, had
4 the Plaintiff submitted any site specific plan that would
5 have entitled it to a vested right?

6 A No.

7 Q To your knowledge, did the amendment in 2014,
8 Ordinance 14022, follow the process required by state law
9 for enacting an ordinance?

10 A Yes.

11 Q To your understanding, did the town do anything
12 illegal?

13 A No.

14 Q Have you ever heard, either in this lawsuit or any
15 other time, that the action was illegal?

16 A No.

17 Q Was notice given to the public as required?

18 A Yes.

19 Q And were public hearings held?

20 A Yes.

21 Q Did any member of town council instruct you, or to
22 your knowledge any employee of the town, to prepare this
23 ordinance in such a way as to negatively impact the Shem
24 Creek office building garage project?

25 A No, never.

1 Q And as the town administrator, the employees of
2 the town report to you; is that correct?

3 A That's correct.

4 Q So who would have drafted the Ordinance 14022, who
5 would have been responsible for doing that?

6 A It would have generated from the planning
7 department.

8 Q And do you instruct, ever, anyone to draft this
9 ordinance in such a way as to negatively impact the proposed
10 project?

11 A No, never.

12 Q And when I say "proposed project," did you even
13 know at the time what the proposed project would be,
14 necessarily?

15 A No, no.

16 Q Have you seen or heard anything, prior or since
17 the institution of this lawsuit, that would lead you to
18 believe that this ordinance was in any way intended to
19 thwart the development of the Shem Creek office park office
20 building and garage?

21 A No.

22 Q I'm sorry?

23 A No.

24 Q Does the town have a process that allows a party
25 to seek a variance from application of a zoning ordinance?

1 A Yes.

2 Q Does that process, to your knowledge, comply with
3 state law?

4 A Yes.

5 Q In fact, it's been exercised over your term by
6 many -- many, many times by many members of the public and
7 those requesting to construct a project within the town of
8 Mount Pleasant; is that correct?

9 A That's correct.

10 Q To your knowledge, as far as any part of this
11 project, anything related, did the plaintiff ever seek a
12 variance from the application of the Ordinance 14022 or any
13 decision that was made by staff?

14 A I don't believe so.

15 Q Ultimately, at some point, you learned that the
16 developer was unable to provide 276 spaces; is that correct?

17 A Correct.

18 Q And how many spaces did they offer?

19 A 234.

20 Q And as was asked by Mr. Gaskins, do you believe
21 that the 234 complied with the expressed terms of the
22 parking license agreement?

23 A No.

24 Q Was it your opinion, or is it your opinion, that
25 in order to move forward, town council would have to approve

1 a new or amended license agreement; is that correct?

2 A That's correct.

3 Q Do you know of any provision in this license
4 agreement requiring town council to agree to such an
5 amendment?

6 A No.

7 Q And this was the meeting that was played on the
8 video, I believe. That meeting wasn't -- the lengthy video
9 was in early 2015; is that correct?

10 A Yes.

11 Q So this is after your letter to the developer that
12 they had provided 200 -- were able to provide 234 spaces,
13 and your response that that didn't meet the terms of the
14 agreement, correct?

15 A That's right.

16 Q So that meeting was held to specifically discuss
17 the amendment; is that right?

18 A Yes.

19 Q Now, let's talk about how you knew that they could
20 get to 234 spaces. And we talked about a submittal. That
21 would have occurred by the Plaintiff submitting their actual
22 plan to the town of Mount Pleasant; is that your
23 understanding?

24 A That's correct.

25 Q And that plan basically said we can provide 234

1 spaces; is that right?

2 A Yes.

3 Q So that was their plan, that said that they would
4 provide 234; is that correct?

5 A That's correct.

6 Q So you didn't come to any independent counting of
7 spaces or conclusion that 234 was a number, it was based on
8 what they provided you; is that right?

9 A That's right.

10 Q So your letter is issued in late 2000 -- or your
11 letter is sent in late 2014; is that correct?

12 A Yes.

13 Q And at that time, were there discussions about,
14 and I say "discussions," did either Mr. Small or any of his
15 representatives discuss a proposed amendment?

16 A Well, it appears so because they proffered one,
17 yes.

18 Q And Mr. Gaskins asked you as to whether you, at
19 any time after April of 2014 cooperated or worked with, in
20 good faith, the developer; is that right?

21 A Yes.

22 Q And, in fact, that amendment was brought forward
23 to town council; is that right?

24 A Yes.

25 Q You didn't block them from trying to seek any

1 amendment, did you?

2 A No.

3 Q And as was shown on that video, you provided
4 council with a number of options that they had as to what to
5 do with that amendment; is that right?

6 A That's correct.

7 Q They could have approved the amendment, right?

8 A Yes.

9 Q They could have taken no action; is that right?

10 A Correct.

11 Q They could have denied it; is that right?

12 A That's right.

13 Q Or they could have essentially gone back and
14 continued to negotiate; is that correct?

15 A Yes.

16 Q Let's go back to that February 2015 meeting, some
17 year and a half after the execution of the PLA, the meeting
18 that we just discussed that was played on the video.

19 Can you go to those meeting minutes,
20 Mr. DeMoura, and specifically I am looking at -- I don't
21 know the Plaintiff's exhibit number. Were you provided
22 the -- do you have that exhibit number?

23 A The 2015 meeting?

24 Q Yes. Yes, you can just use Defendant's book
25 Exhibit 12, if you would.

1 A Yes.

2 Q And are those the minutes from the February 10th,
3 2015 meeting?

4 A Yes.

5 Q And that was at least one of the ones that played
6 on the video; is that correct?

7 A That's correct.

8 Q I would like you to go to Page 7 of 44. Is that
9 your understanding, from where the motion is made, or at
10 least the first motion is made?

11 A Yes.

12 Q And it says that, Mr. Gawrych moved to accept an
13 endorsement letter that Mr. DeMoura wrote to the applicants
14 stating that project does not meet the contract
15 requirements, and that in 2013, and that was seconded.

16 Is that your understanding of the motion that
17 was made?

18 A Yes.

19 Q Was that motion approved by council?

20 A It was.

21 Q Did that motion, in your mind, terminate the
22 agreement?

23 A No.

24 Q Did it simply say, we are not going to -- or we
25 agree with the math and the information that you provided

1 that the 234 spaces proposed by the developer did not meet
2 what was in the PLA?

3 A Correct.

4 Q Now, let's go to -- there's a second motion made,
5 and I believe that is on Page 11 of -- excuse me, 10 of 44,
6 up at the top of the page. Do you see that?

7 A Yes.

8 Q And how does that motion read?

9 A "Mr. Gawrych moved to deny any new proposal that
10 may be put forward or submitted by the developer applicant
11 pertaining to this contract. Motion seconded by Mister
12 (inaudible)."

13 Q Was that motion ultimately approved?

14 A It was.

15 Q Now, if by some measure there was the ability, or
16 the developer came with 276 spaces, the funding still would
17 have been there for that to meet the terms of the agreement;
18 is that correct?

19 A That's correct.

20 Q It didn't remove any funding, did it?

21 A No.

22 Q And it didn't terminate the agreement, did it?

23 A No.

24 Q In fact, termination came when the Plaintiff
25 attorney sent a letter sometime later terminating the

1 agreement; is that correct?

2 A Yes.

3 Q Can you look in the book to Page 20 in the
4 Defendant's exhibits, to Page 23. Excuse me, Tab 23.

5 A Okay.

6 Q And this is a letter that was discussed, and in
7 fairness I want to represent to you that this letter is
8 dated June 23rd, 2015. But I believe the parties are in
9 agreement that this was a scrivener's error, that that
10 should have been June 23rd, 2016. Do you have any reason to
11 dispute that?

12 A I don't.

13 Q And this is a letter from Gray Taylor, who
14 represented the Plaintiffs; is that correct?

15 A Yes.

16 Q And Mr. Taylor, by this letter, notified the town
17 that -- first of all, did you receive a copy of this letter?

18 A Yes.

19 Q What is your understanding of what the letter
20 meant or purported to do?

21 A It serves as termination.

22 Q At that time, had a certificate of occupancy been
23 issued for the building?

24 A Oh, gosh, I can't recall.

25 Q Was the CO issued sometime -- well, we will ask

1 Ms. Farrell about that.

2 At this point, when you received his, was it
3 your understanding that the developer did not wish to move
4 forward with the parking license agreement at that time; is
5 that right?

6 A Yes.

7 Q In fact, they had submitted plans some two years
8 earlier and were moving forward with development at that
9 time; is that right? Is that correct?

10 A Yes.

11 Q And their development was going to provide 234
12 parking spaces; is that right?

13 A Yes.

14 Q Mr. DeMoura, do you have a position as to whether
15 the parking license agreement specifically provided that the
16 developer was to provide 276 spaces?

17 A That is my position.

18 Q Do you believe your position in reviewing the PLA,
19 that any number less than that would have been acceptable as
20 far as meeting the terms of the PLA?

21 A That's correct.

22 Q And let's assume that it was a lesser number, and
23 in fact, 234 was provided. Would that have been council's,
24 town council's, discretion to amend the agreement to accept
25 such a number?

1 A That's correct.

2 Q And, in fact, town council was provided with such
3 an amendment; is that correct?

4 A Yes.

5 Q If I told you that 234 spaces was roughly
6 85 percent of 276, does that sound reasonable?

7 A Yes.

8 Q Do you believe it appropriate for taxpayers to pay
9 100 percent of rent when only 85 percent of spaces are
10 provided?

11 A No.

12 Q Do you believe that is at all an appropriate use
13 of taxpayer dollars?

14 A No.

15 Q And is that at least in part because of what was
16 openly, in a public meeting, agreed to by town council in
17 the public parking license agreement was a set number of
18 spaces for a set amount of rent; is that correct?

19 A Correct.

20 Q Do you have any ability to renegotiate on your
21 own, the terms of the PLA?

22 A No.

23 Q Now, again, there was a lengthy discussion between
24 you and Mr. Gaskins as to cooperation, and he asked you
25 about staff's reading, or staff's interpretation, of certain

1 zoning ordinances and regulations; do you remember that?

2 A Yes.

3 Q Do you believe it appropriate for staff to take a
4 position in favor of any applicant for any reason depending
5 on some agreement or other agreement that might affect a
6 project?

7 A No.

8 Q Or is it their requirement to follow the law and
9 the regulations as they see fit?

10 A Yes, to follow the law.

11 Q Well, tell the Court, do you believe that staff in
12 any way should work to assist someone by making a more
13 favorable ruling to assist with the development of a
14 project?

15 A Of course not.

16 Q Is there an appellate system set up to deal with
17 agreements or disagreements by any developer submitting any
18 project or any request in the town of Mount Pleasant?

19 A Yes.

20 Q Mr. DeMoura, I would like you, if you still have
21 Plaintiff's Exhibit 35 in front of you in that stack, if you
22 could pull that. This is the fact versus fiction document.

23 A I think that was the -- I think that was the
24 document that we had to bring up on screen because it's
25 unable to be found.

1 Q Oh, you didn't have it?

2 A Well, I'm not saying I don't have it, it's just
3 lost.

4 Q Okay. If I hand you the fact --

5 MR. PAGLIARINI: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. PAGLIARINI:

8 Q Is this the fact versus fiction sheet?

9 A Yes.

10 Q Now, Mr. Gaskins asked you if you used an
11 approximate number in the first section. I want you to go
12 to the second section of that fact versus fiction.

13 Did you equivocate in any way about the
14 number of spaces required in that section?

15 A No.

16 Q What does it say?

17 A Access to all 276 parking spaces.

18 Q That is your language, right?

19 A That is, yes.

20 Q So you were providing accurate information to
21 council despite the accusations of Mr. Gaskins; is that
22 right?

23 A Yes.

24 Q And to follow up on what you told him, when you
25 get into public meetings, there are sometimes dozens of

1 issues that need to be handled by council; is that right?

2 A Yes.

3 Q Are you intimately familiar with the terms and
4 specific conditions of every contract that you have to deal
5 with?

6 A No.

7 Q And so when you did those, did you have a copy of
8 the PLA handy at all times when you were asked questions
9 about the agreement?

10 A No.

11 Q Mr. DeMoura, do you have handy Plaintiff's Exhibit
12 3, which you discussed with Mr. Gaskins?

13 A Yes.

14 Q Okay. And I believe Plaintiff's Exhibit 3 is
15 dated April 2013, Shem Creek Parking Proposal; is that
16 right?

17 A Hold on, sir. I'm looking at the wrong. I was
18 looking at Defendant's book two.

19 What is the title, Mr. Pagliarini?

20 Q Shem Creek Parking Proposal.

21 A Is it a presentation?

22 Q It is a memo by you. It is also on Tab 29 of
23 Defendant's exhibits, if you can locate it easier that way.

24 A Okay.

25 Q And do you see that? That is dated April 2013.

1 A Yes.

2 Q And are these your notes?

3 A Yes.

4 Q In the first section, it says, "total spaces,"
5 correct?

6 A Yes.

7 Q And what is the number?

8 A 276.

9 Q And what is the cost per space?

10 A 16,775.

11 Q Under use terms, what are the use terms?

12 A "276 spaces, 144 reserved, 132 available Monday
13 through Friday 6:00 to 5:00 p.m. All 276 available after
14 hours Monday through Friday and all day Saturday and Sunday.

15 Q Now, was this document used and notes made from
16 your negotiations with Mr. Small?

17 A Yes.

18 Q Are that, in that use term section, is there any
19 equivocation as to number of spaces?

20 A No.

21 Q Is it fair to say that Mr. Small didn't provide to
22 you any evidence that the number would be around or
23 somewhere close to 276?

24 A Correct.

25 Q Look under the next section, Developer Request.

1 What is the developer request?

2 A 200,000 over 15 years.

3 Q And is that related to rent?

4 A Yes.

5 Q Under the next section, "town of Mount Pleasant
6 Counter Proposal," what does that say?

7 A "185,000, over 15 years, negotiated and agreed
8 to."

9 Q And was 185,000 ultimately the amount of annual
10 rent you brought to the town of Mount Pleasant; is that
11 right?

12 A That's right.

13 Q Now, the next section that says, "Deduct pro rata
14 share of revenue from annual payment negotiated and agreed
15 to." Do you see that portion?

16 A Yes.

17 Q And if you flip over to the last page, the second
18 page, it says, stipulations. What does that say?

19 A Request full disclosure on construction costs.

20 Q And what is the bullet point, if you can read that
21 out loud?

22 A "If costs are less, or the interest rate is lower,
23 then reduce the total commitment. Negotiated and agreed
24 to."

25 Q And total commitment would be essentially, the

1 town could get a decrease in rent; is that right?

2 A Correct, yes.

3 Q And I want you to look at that, because it says,
4 "If costs are less or the interest rate lower," is that
5 right?

6 A Yes.

7 Q It doesn't say anything about spaces being lower,
8 does it?

9 A That's right.

10 Q It says "costs," right?

11 A Yes.

12 Q Is there anything in this document that would
13 indicate that the developer was promised, or at least
14 negotiated, anything less or anything fewer than 276 spaces?

15 A No.

16 MR. PAGLIARINI: Can I have one moment, Your
17 Honor? I believe I'm wrapped up. I would like to be
18 able to just take a moment before we break, if that's
19 okay.

20 THE COURT: Sure.

21 (Pause.)

22 MR. PAGLIARINI: That is all that we have,
23 Your Honor.

24 THE COURT: Any redirect?

25 MR. GASKINS: Yes, Your Honor. I shouldn't take

1 have gladly explained it to him.

2 Q Mr. Prause, that was a very long-winded answer to
3 a question that was simply asking you to confirm the fact
4 that there's nothing in these code provisions that supported
5 your interpretation. And because you stated that we
6 discussed this in the deposition and you were able to answer
7 it a little more concisely, let's just turn there.

8 If you could, please turn to Page 163 of your
9 deposition.

10 A I'm there.

11 Q All right. And let's look at -- let's start at
12 Line 9, I'll read the question, you provide the answer.

13 "And in adopting this interpretation, what
14 specific code provision were you relying on?"

15 A Answer, "The section of 156.170 through where they
16 end, I think it's probably six, thereabouts."

17 Q "And that code provisions actually does not
18 require, at least explicitly or expressly, that the parking
19 be provided on a free basis; isn't that correct?"

20 A Mr. Tackett objects to form.

21 Answer, "It does not speak to payment of
22 parking spaces, it does speak to required parking spaces for
23 particular uses."

24 Q "Okay. But it doesn't address whether they must
25 be provided on a no-cost basis, does it?"

1 A Answer, "No. Well, no, not specifically."

2 Q Thank you.

3 And this letter that we were just reviewing,
4 prompted a response or prompted a letter from Shem Creek
5 Development Group's attorney pointing out that your
6 interpretation was not supported by any provision of the
7 code, correct?

8 A Repeat that for me, please. What document are we
9 looking at?

10 Q Your letter that was sent on May 1st, it's not
11 this document, but isn't it true that your letter that you
12 sent on May 1st, conditioning a foundation permit on
13 providing free parking prompted a letter from Shem Creek
14 Development Group's attorney pointing out that your
15 interpretation was not supported by any provision of the
16 code?

17 A Do we have that? If I could see it.

18 MR. GASKINS: Sure. Sure.

19 If you could please pull up Plaintiff's Exhibit
20 No. 40.

21 THE WITNESS: It appears -- it appears the letter
22 to which you refer was sent to Mr. Pagliarini.

23 BY MR. GASKINS:

24 Q Okay. And after this letter, the town ultimately
25 caved on this point and issued the foundation permit because

1 your decision was not legally supportable; isn't that true?

2 A I don't think so.

3 Q Well, it caved; isn't it true? No -- a foundation
4 permit was issued without requiring Shem Creek Development
5 Group to provide free parking to patrons?

6 A It was issued after the parking covenant agreement
7 was recorded.

8 Q Okay. And there's nothing in that agreement that
9 requires Shem Creek Development Group to provide free
10 parking to restaurant patrons; isn't that correct?

11 A Well, it states that it will provide all current
12 town parking requirements.

13 Q It's a simple yes or no question, Mr. Prause. Yes
14 or no, does this agreement that you are referring to,
15 require Shem Creek Development Group to provide free parking
16 to restaurant patrons?

17 A If you want me to answer yes or no, I'll have to
18 answer no, and I'll be happy to explain why.

19 MR. GASKINS: Okay. That is all I have for now.

20 THE COURT: Cross examination.

21 CROSS EXAMINATION

22 BY MR. PAGLIARINI:

23 Q Good afternoon, Your Honor, good afternoon
24 Mr. Prause.

25 A Good afternoon.

1 Q Mr. Prause, I'd like to ask you -- initially, you
2 were asked questions about Section 156.008. You recollect
3 that question from Mr. Gaskins?

4 A I do.

5 Q Mr. Prause, I'm going to, if I could, approach
6 Your Honor and hand up a copy of this ordinance.

7 THE COURT: Yes.

8 MR. PAGLIARINI: And for Your Honor's edification,
9 if I may provide it to the Court as well.

10 THE COURT: Thank you.

11 BY MR. PAGLIARINI:

12 Q Mr. Prause, you were asked to comment on this -- I
13 don't believe you were provided a copy of this ordinance
14 prior, were you?

15 A I was not.

16 Q You were asked to comment on the first section,
17 which says, "It is not intended by this chapter to interfere
18 with or abrogate or annul any easements, covenants, or other
19 agreements between parties;" is that correct?

20 A Yes. That would be Paragraph B of Section
21 156.0208.

22 Q All right. Are there other provisions in that
23 Section B?

24 A Yes, there are.

25 Q And what does that say?

1 A After agreements between the parties, there's a
2 semicolon says and continues, "Provided, however, where this
3 chapter imposes a greater restriction upon the use of
4 buildings or premises or upon height of buildings or
5 requires more open space than required by other resolutions,
6 ordinances, rules, or regulations, or by easements,
7 covenants, or agreements, the provisions of this chapter
8 shall govern."

9 Q Do you believe that it is within your purview to
10 ignore zoning requirements and restrictions when they are
11 present?

12 A No.

13 Q All right. Mr. Prause, let's move forward, and I
14 would like to ask you a little bit about your involvement in
15 the ordinances that were discussed. Do you recollect your
16 involvement in Ordinance 13077, which was passed in December
17 of 2013?

18 A Could you briefly describe the contents of that?

19 Q Sure, I would. Mr. Prause, if you would go to the
20 exhibit book. There should be a Defendant's exhibit book
21 right in front of you, and it is Tab 21, which is ordinance
22 13077.

23 A I see it.

24 Q Okay. And is this the ordinance entitled, An
25 Ordinance to Amend Various Provisions of Section 156.329,

1 and moving on, Pertaining to Regulations for Parking
2 Structures Located in a Flood Zone in the UCOD, Urban
3 Corridor Overlay District. Is that your understanding?

4 A Yes, it is.

5 Q All right. Are you aware that one of Plaintiff's
6 principals, Mr. Tex Small, sent letters to the town
7 requesting certain changes to the UCOD?

8 A I am.

9 Q And did this ordinance codify those changes
10 requested?

11 A They did as to what was ultimately adopted.

12 Q All right. So let's look at what was ultimately
13 adopted by council. And, Mr. Prause, you are the zoning
14 administrator. This is only a five-page ordinance, so if I
15 don't direct you to the appropriate spot, please do so.

16 Do you know if the subject project was in
17 area C1A? And I'm looking at the chart on Page 2 of 5 of
18 the ordinance.

19 A Yes. It would have been my reason for stating
20 that is because the maximum building height allowed is 55
21 feet, whereas in C1B, it's 45. And the request was to
22 increase the building height from 45 to 55 feet.

23 Q Right. Now, there was some discussion earlier
24 today with Mr. DeMoura about an additional 100 spaces, a
25 parking requirement. Can you explain to the Court what that

1 additional 100 spaces was and how it fits into this
2 ordinance?

3 A I can. As expressed in this deposition testimony,
4 the genesis of this was that -- and you are speaking now as
5 to the flood proof aspects.

6 Q Correct.

7 A Not the height.

8 Q Correct.

9 A That was a requirement of the development entity
10 to have the ordinance amended so as to not require that.

11 And the initial, I guess, draft language was
12 provided by a civil engineering firm, CSE, Civil Site
13 Environmental, which was under contract with the development
14 entity to provide civil engineering services, and which it
15 basically said that if you have a building in a flood zone
16 and provide parking on the ground floor, you can provide it,
17 you don't have to flood proof it. And that wasn't really
18 what we wanted to see because as has been testified
19 previously, we wanted to have an activity zone and wanted to
20 have pedestrian traffic and activity and light and street
21 shade.

22 So we went through, Ms. Farrell and I and
23 other staff members went through a fairly lengthy exercise
24 of mapping where these commercial lots would be in flood
25 zones, and what it would pertain to.

1 And similarly, the way we treated the height
2 amendment, we wanted to narrow it down to certain districts
3 that say a small half-acre lot could just elevate a building
4 and park underneath it. We wanted it to be for larger
5 parcels aggregated more together. We wanted it to, in lieu
6 of this, of having specific ground floor commercial activity
7 in the flood zone, to have other things which have also, I
8 believe we have mentioned, of artwork, fountains, bus stops,
9 benches, things of that nature.

10 And the hundred spaces was really to require
11 anybody that would utilize this provision in the instant
12 sense and going forward would have to aggregate parcels, and
13 it would provide a meaningful benefit to the public in
14 return for that consideration.

15 Q Right. So more public activity. If the building
16 were intended to have more public activity, there needed to
17 be more parking spaces; is that correct?

18 A That is correct.

19 Q All right. So let's fast forward to the
20 discussion, because we are talking about two different time
21 frames here.

22 Let's talk about 2015, when you got into the
23 discussion about the ULI parking study and the like. Do you
24 recall that?

25 A I do.

1 Q And so when you were discussing the calculations
2 for the amount of parking necessary for the nearby
3 restaurants and other buildings, this 100-space additional
4 requirement came into play; did it not?

5 A Yes, it did. It was a requirement that they
6 provided in this building in consideration for not having to
7 provide that, the commercial space on the ground floor.

8 Q Sure. So if the developer didn't have to provide
9 commercial space on the first floor, as was the previous
10 requirement, they would have to provide that 100 additional
11 spaces; is that correct?

12 A That's correct.

13 Q All right. And just for clarification, we are not
14 talking about the requirements of the parking license
15 agreement or anything of that nature, are we?

16 A As I have testified before, I had no knowledge of
17 any specific requirements of a parking license agreement.

18 Q These parking requirements would be for any
19 building structure, any development in this area, and for
20 the purpose of avoiding having to build commercial
21 development on the first floor; is that correct?

22 A Correct.

23 MR. GASKINS: Your Honor, I'm going to object to
24 this testimony, as I don't think it's relevant as Mr.
25 Prause just responded. It doesn't have anything to do

1 with the parking license agreement.

2 Mr. DeMoura testified earlier that his analysis
3 was based solely on how many spaces were in the garage.
4 So I just don't think it's relevant.

5 THE COURT: I'll allow it on cross examination.

6 MR. PAGLIARINI: And, Your Honor, just for
7 clarification, this is intended, there was discussion
8 about ULI parking agreement and neighboring businesses.
9 And in my opinion, those two items are getting
10 confused, and this is just an attempt to clarify
11 general parking requirements under law versus the
12 number in the parking license agreement was a very
13 different thing. So I won't be long, and I'll end it
14 very briefly.

15 BY MR. PAGLIARINI:

16 Q All right. We talked about that. Also, there are
17 other requirements in 13077 including, as you previously
18 mentioned, that the parking must provide added features such
19 as public art, fountain, bus stop, or similar features to
20 promote and maintain pedestrian activity in the activity
21 zone, with the arrangement of these features configured so
22 as to eliminate dead space; is that correct?

23 A It is.

24 Q And is that what is known or we referred to as the
25 activity zones?

1 A Yes.

2 Q Now, let me ask you this question. Were those
3 activity zones required on The Boulevard side as well as the
4 side streets?

5 A They were.

6 Q Okay. I want to bring to your attention, if you
7 could look at that -- in the exhibit book, to Exhibit
8 No. 20, Tab 20.

9 And are you at Tab 20, sir?

10 A I am.

11 Q You see a letter from *AvTex July 23rd, 2013?

12 A I do.

13 Q Who is that letter from?

14 A Signed by Robert S. Small, Junior, CEO AvTex
15 Commercial Properties, Inc.

16 Q At some point, were you made aware of this letter?

17 A Yes.

18 Q I want to point you to the third paragraph, where
19 it says, "It is our intent to work with staff to provide
20 open spaces and people oriented design details to ensure the
21 integrity of the activity zones on our adjoining streets."

22 Is that correct?

23 A Yes.

24 Q So here is what I want to ask you. This letter,
25 July 23rd, 2013, it was ultimately passed by town council at

1 Ordinance 13077, did the ordinance codify what Mr. Small had
2 requested in his letter?

3 A Can you help me out here a little?

4 Q Sure. Sure. Was Mr. Small asking and promising
5 that he would deliver activity zones on the side streets?

6 A Yes, adjoining streets.

7 Q And adjoining streets. Did Ordinance 13077 codify
8 that and make that a requirement in this development? And
9 when I say "this," I mean the activity zones?

10 A Let me explain it a little better.

11 Q Sure.

12 A The activity zones were absolutely required on
13 Boulevard streets at this particular time.

14 Maybe not as a requirement on side streets,
15 particularly ones that have a setback. That is not to say
16 that it could not be provided. That was subsequently
17 amended by future ordinances that put in a requirement for
18 an activity zone and prohibited activity zones on other side
19 streets.

20 Q So is it fair to say that certainly after
21 Ordinance 13077, those side street activity zones in this
22 location would have been required?

23 MR. GASKINS: Objection, Your Honor. I believe
24 that the witness just testified that that ordinance did
25 not create an activity zone. It was done in the later

1 amendment, so he's mischaracterizing the testimony.

2 BY MR. PAGLIARINI:

3 Q What were the activity zone requirements after
4 this ordinance was passed by town council?

5 A What were the activity zone --

6 Q Yes. What were the activity zone requirements for
7 this project after Ordinance 13077 was approved by town
8 council?

9 A They hadn't changed.

10 Q Okay. So he was required to have them; is that
11 right?

12 A On Coleman Boulevard, yes.

13 Q Right. Okay. When he developed the project, when
14 the plans were submitted in 2014, did it include activity
15 zones?

16 A When the plans were --

17 Q Submitted to the town of Mount Pleasant in 2014,
18 did he include activity zones? Were they included in the
19 project?

20 A Can you be more specific as to which plans to
21 which you refer? Were those the ones that were initially
22 DRV, pre-planning?

23 Q That were ultimately submitted. Not pre-planning,
24 that were ultimately submitted. Did they include activity
25 zones?

1 A The plans that were made as far as part of formal
2 submittal?

3 Q Yes, sir.

4 A Yes, they did.

5 Q And was it ultimately approved with the activity
6 zones?

7 A Yes.

8 Q All right. Let's talk about the setbacks that
9 were in place at the time of Ordinance 13077. And what I,
10 again, we're at Tab 21, in Page 2 of 5 of the ordinance
11 13077, is there a development guidelines chart?

12 A There is.

13 Q All right. On Coleman Boulevard or Ben Sawyer,
14 was there a build-to line requirement in this area?

15 A The build-to requirement in this chart that is
16 Page 2 of 5 of Ordinance 13077 pertains to the C1A area on
17 Coleman Boulevard.

18 Q And what was the build-to line?

19 A Twenty to 30 feet.

20 Q All right. What about front or side setback or
21 build-to lines on other streets in the district?

22 A There is no build-to requirement on either C1A or
23 C1B. There is only a requirement for a 20-foot setback with
24 a footnote.

25 Q Okay. And what about -- and then the rear and the

1 internal side were both 5 feet; is that correct?

2 A That is correct.

3 Q All right. Now, what I want to go to is -- or
4 tell you, is there -- at this time, not necessarily in
5 13077, was there an ability to reduce, specifically as far
6 as Church Street, and Church Street was considered a side
7 setback; is that correct?

8 A That is correct.

9 Q What was the setback requirement on Church Street
10 at the time that this ordinance was enacted?

11 A Based upon the -- it being considered a -- it
12 would have been -- excuse me. Let me look at this for a
13 moment.

14 Q Sure.

15 A Can you repeat that question, please?

16 Q Sure. If we are looking at the subject project,
17 the parking garage office building, at the time, December
18 2013, what were the setback requirements on Church Street?

19 A It would have been a 20-foot setback.

20 Q Okay. Was there a possibility of achieving a
21 5-foot setback at that time?

22 A There was.

23 Q All right. And what were the conditions, if you
24 know, what were the conditions to achieve a 5-foot setback?

25 A They would have been approval through the design

1 review board process. It would have been providing a 5-foot
2 wide sidewalk, certain street tree plantings along the
3 street, and also providing adequate site distance.

4 Q All right. So do you know if that is an absolute
5 or what -- how does it -- what is the process like, if you
6 could explain to the Court how an applicant would go about
7 achieving that to get from 20 feet down to 5 feet?

8 A They would submit plans for consideration and
9 demonstrate compliance with those requirements.

10 Q All right.

11 A For review.

12 Q And it would be for review by whom?

13 A Through the design review board process, or design
14 review process, which would either be the board itself or
15 staff.

16 Q So those details would have to be considered and
17 reviewed; is that correct?

18 A That's correct.

19 Q And it's not automatic, is it?

20 A No, it says "may."

21 Q All right. May. So it could not even happen even
22 if they did meet or come close to the requirements,
23 depending on the situation; is that correct?

24 A Yeah, I believe that -- yes, I believe that's what
25 "may" implies.

1 Q All right. Mr. Prause, are you familiar with the
2 term "vested rights"?

3 A I am.

4 Q And is that defined in the South Carolina State
5 code?

6 A It is.

7 Q And specifically, does the town of Mount Pleasant
8 have its own vested rights provision as well?

9 A It does.

10 Q To your knowledge, does the town vested rights
11 provision comply with the State code requirements?

12 A They did.

13 Q And in general, just for all here, what is a
14 vested right?

15 A A vested right is the ability to proceed with a
16 project in the face of changing ordinance or regulatory
17 standards.

18 Q All right. And, Mr. Prause, you have experience
19 with the town of Mount Pleasant code provision on vested
20 rights, which is 156.049; is that correct?

21 A May I interrupt you for a moment, Mr. Pagliarini?

22 Q Yeah.

23 A I think -- I need some clarification on testimony
24 I have already provided, if you don't mind.

25 THE COURT: What specifically are you asking for?

1 THE WITNESS: This ordinance specifically, I think
2 I have gotten that ordinance, 13077, confused with the
3 other one, the 14022, in which subsequent amendments
4 were made that had different provisions for these
5 setbacks.

6 THE COURT: Do you have a copy of the other?

7 BY MR. PAGLIARINI:

8 Q Do you have -- 14022 is Tab 25 in your book.
9 Okay?

10 A That appears to be a drawing.

11 THE COURT: It's 26.

12 MR. PAGLIARINI: It's 26. I'm sorry.

13 THE WITNESS: If you don't mind, I could take a
14 moment.

15 THE COURT: Yes, sir, you may.

16 (Pause.)

17 THE WITNESS: Sorry for this. I just wanted to
18 make sure I'm giving accurate testimony.

19 Thank you. I thought I made a mistake here. I'm
20 satisfied and ready to go.

21 BY MR. PAGLIARINI:

22 Q If there's anything you would like to correct,
23 please advise.

24 MR. PAGLIARINI: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes, sir.

2 MR. PAGLIARINI: I want to hand up this

3 Section156.049. And Your Honor, if I may approach, I

4 have a copy for the Court as well.

5 THE COURT: Thank you.

6 BY MR. PAGLIARINI:

7 Q Mr. Prause, this is the town vested rights

8 rdinance; is that correct?

9 A It is.

10 Q And is it fair to say that -- well, you had

11 testified earlier, Mr. Gaskins had asked you if an applicant

12 or developer has a right to rely on existing town ordinances

13 related to zoning; is that correct?

14 A That's correct.

15 Q And they do have a right to rely on that, correct?

16 A Yes, they do.

17 Q Right. But does the town, or any government,

18 municipality, county, whoever have the right to change its

19 zoning ordinances?

20 A Absolutely.

21 Q And is the vested rights State law and

22 corresponding town ordinance meant to protect applicants,

23 landowners, developers against certain changes; is that

24 right?

25 A That's correct.

1 Q All right. So what triggers a vested right in
2 accordance with the Town's ordinance? What is it that an
3 applicant or developer has to do to make sure that they get
4 the benefit of the existing zoning laws and requirements?

5 A They need approval of what is known in both the
6 statute and the ordinance as an approval of site specific
7 development plan.

8 Q Right. And once they have approval of that site
9 specific development plan, then theoretically they are
10 protected against changes to zoning moving forward; is that
11 correct?

12 A Correct.

13 Q Now, I would like you to look at the second page
14 of that ordinance. And does the town ordinance have
15 specific requirements for what consists of a site specific
16 development plan that provides a vested right?

17 A They do.

18 Q All right. And if you could explain to the Court
19 what those are, what you need to get in order to get a
20 vested right?

21 A They are under Section 156.049E1, A through H.
22 Would you like me to read those?

23 Q If you could for all persons in the courtroom
24 explain what those site specific development plans are.

25 A Sure. A, is town council approved plan

1 development districts. You don't want me to explain what a
2 plan development district is, do you?

3 Q Is it applicable to anything you have heard in
4 this case so far?

5 A No.

6 B, town council approved impact assessments,
7 which also are inapplicable to anything I have heard in this
8 courtroom today.

9 Q Right.

10 A C, planning commission approved sketch plans or
11 preliminary plats. No, nothing was submitted to the
12 planning commission.

13 D, board of zoning appeals, approved
14 variances or special exception uses, no, nothing was -- no
15 variance was requested nor any special exception use was
16 requested.

17 E, final planning staff approvals and design
18 review board final approvals regarding commercial design in
19 the overlay district applications. That would apply once a
20 plan had been approved.

21 F, Old Village Historic District commission
22 approved certificates appropriate. This is inapplicable.

23 And G, is conditional uses and signed permits
24 approved by the zoning administrator as her designee. I
25 guess to the extent that a signed permit was approved for

1 the project, that would apply.

2 H, staff approved preliminary plats is
3 inapplicable.

4 Q Okay. So let's ask the general question. Let's
5 go to April 8th, 2014, which is the Ordinance 14022, which
6 is the second ordinance we are talking about in this
7 circumstance. You would agree with me that that was -- that
8 had final reading on April 8th, 2014 or around that time?

9 A Yes.

10 Q All right. To your knowledge, any of those items
11 that you read directly from that ordinance had any of those
12 items even been submitted at that time by the Plaintiff?

13 A No.

14 Q And as they were not submitted, certainly there
15 were no approvals of anything like that at that time,
16 correct?

17 A Correct.

18 Q Would those submittal of any of those and approval
19 created a vested right, if they had done that and it was
20 approved?

21 A Yes.

22 Q But they hadn't done that, right?

23 A Correct.

24 Q So as a practical matter, during the time, all the
25 way up until they submitted plans and those plans were

1 approved, they would not have a vested right; is that
2 correct?

3 A That is correct.

4 Q All right. So I left you off at April 2014, and
5 the submittal was made around -- in June 2014; is that
6 correct?

7 A Excuse me. The final plans for DRV review.

8 Q Yes.

9 A I'm not certain of the specific date, but that
10 sounds correct.

11 Q And ultimately those plans gained approval some
12 time later in 2014; is that correct?

13 A It did.

14 Q Is there any possible way that the developer in
15 this case, for their project, could have had a vested right
16 under town ordinance in South Carolina law?

17 A No.

18 Q All right. Mr. Prause, you were asked, and I
19 believe you cited -- you had a lengthy conversation with
20 Mr. Gaskins about side setbacks; is that correct?

21 A Yes.

22 Q And you had a building -- you had a building --
23 you had a discussion about building and yard setbacks and
24 the differences or similarities between the two?

25 A Yes.

1 Q All right. I believe you cited the chapter of the
2 definition of side setbacks; is that correct?

3 A I cited -- yes, 156007.

4 Q And I have handed you a portion of 156007
5 definitions; is that correct?

6 A Yes.

7 Q And is that the definition of yard, comma, side,
8 as you have described to Mr. Gaskins?

9 A I did. I think it was really more with respect to
10 the yard, comma, rear rear.

11 Q I'm sorry, yard, comma, rear. That is right. And
12 what is a yard, comma, rear setback?

13 A It is a yard situated between the rear building
14 line and the rear lot line and extending the full width of
15 the lot.

16 Q And that is the type of setback that you
17 determined after the pre-submittal meeting with Mr. Johnston
18 in April of 2014 was the type of setback -- excuse me, the
19 side setback applied on Church Street; is that correct?

20 A Well, let me make sure I get this completely
21 right.

22 Q Sure.

23 A What we had been discussing, what was in the
24 email, I believe, with respect to Church Street is he was
25 representing that the Church Street setback should have been

1 a rear yard setback.

2 Q Right.

3 A What I was saying is that, no, that the urban
4 corridor overlay setbacks take precedence over what would
5 normally be considered a rear yard setback, or in this case
6 the rear yard setback in whatever column that was that was
7 specified as having been 5 feet, and rather the side street
8 setback applied, which was 20 feet.

9 Q Right. Right. And so --

10 A It's complicated.

11 Q Right. But I guess the point is, you explained it
12 to Mr. Gaskins, these are the definitions that you cited
13 when you were discussing with him, that matter with him; is
14 that correct?

15 A Those are the ones we discussed, yes.

16 Q Right. Okay. Mr. Prause, let's go to the April
17 -- what I believe is April 11th, 2014 pre-planning meeting.
18 What is a pre-submittal -- yeah, a pre-submittal meeting, I
19 guess, is what you referred to it earlier. What is that?

20 A It is a meeting in which the applicants, in many
21 instances or most instances are designed, professionals in
22 the employment of builders or developers, meet with staff.
23 And sometimes the development and the builders or the owners
24 attend as well, in which we go over their plan drawings in a
25 preliminary review situation so that we can see what they

1 have to submit and review them in a preliminary context to
2 point out what might need to be done going forward, to put
3 those plans in better shape so that once they get to the
4 formal design review process, either board or staff, that
5 all of the preliminary kinks have been worked out.

6 If there are fundamental issues, then they
7 often would remain and be decided during the formal process.
8 But this is a preliminary process to try and weed out those
9 aspects that are best addressed in that format, so that they
10 don't have to be addressed in a subsequent formal
11 presentation.

12 Q All right. And when you testified earlier that
13 Mr. Johnston, the architect, and a number of others maybe
14 from --

15 A Davis and Floyd.

16 Q -- Davis and Floyd, excuse me, were present at
17 that meeting; is that correct?

18 A Correct.

19 Q And that is the meeting that generated the series
20 of emails between you and Mr. Johnston as to the rear
21 setback, side setback issue; is that correct?

22 A That's correct.

23 Q And I think as you testified earlier it was at
24 that meeting that that was the first time you had seen any
25 design plans or anything related to parking, as far as this

1 project was concerned; is that right?

2 A Yes.

3 Q Now -- so for the benefit of the Court, that is
4 not when they submitted the plan, is it? That's not when
5 there was an actual submittal; is that correct?

6 A That was not their formal submittal for review for
7 the formal process to lead to building permit issues.

8 Q That was made sometime later; is that correct?

9 A Yes.

10 Q And as you said, I believe it was an informal
11 meeting generally to answer questions and get everybody --
12 so that everybody understands at least the rules; is that
13 right?

14 A Yes.

15 Q All right. When the submittal was -- the formal
16 submittal was made, to your knowledge, and I realize that
17 this is -- if you need clarification, let me know.

18 When it was submitted, I'm talking about the
19 formal submittal, did the formal submittal generally comply
20 with the zoning rules and regulations that were contemplated
21 and approved in Ordinance 14022 that was approved in
22 April of 2014?

23 A They did.

24 Q And by that, when I say rules, did it comply with
25 the build-to line requirements on Mill Street?

1 A It did. They did.

2 Q How about on Church Street?

3 A Yes.

4 Q All right. So when they actually sent the formal
5 submittal in, it was in compliance with 14022; is that
6 right?

7 A With those elements you mentioned, yes.

8 Q With those elements, correct. And the building
9 was within the 55-foot height limit; is that right?

10 A Yes.

11 Q How about the activity zone requirements? I think
12 I had asked you earlier about that. Did it meet those?

13 A Yes, the plans were in compliance.

14 Q Were there minor things or other things that
15 needed to be resolved prior to approval of the plans in
16 final form?

17 A There were.

18 Q Such as what? What kind of things?

19 A I specifically recall some of the landscape
20 treatments in those plans needed to be worked out.

21 Q So landscaping issues -- landscape issues; is that
22 correct?

23 A That was one. There may have been a few others,
24 but they were more minor. I think one other detail had to
25 deal with the location of an electrical switch gear

1 component from SC&G.

2 Q And is it typical, at very least, in any submittal
3 to have minor issues that need to be worked out?

4 A It is. It's fairly rare to receive a complete and
5 accurate submittal at one time, unless it's a very simple
6 project.

7 Q All of these minor issues were resolved and the
8 plan that they submitted was approved; is that correct?

9 A Yes. The building is built today.

10 Q Following your pre-submittal meeting, where you
11 met with Mr. Johnston and others, and you exchanged the
12 emails and discussed the Church Street -- I'll call it the
13 Church Street setback requirement, so as not to confuse
14 everybody including me. The Church Street setback, did you
15 receive any requests to change your opinion or alter your
16 opinion, to change your thought on what type of setback
17 applied on Church Street?

18 A Would you restate that for me, please?

19 Q Sure. You had a position on what setback applied
20 on Church Street; is that correct?

21 A Yes, as reflected in the email to Mr. Johnston.

22 Q All right. Following that series of emails, did
23 you receive any request to change or alter your position on
24 the Church Street setbacks?

25 A Formal request to meet personally in the role as

1 the zoning administrator, no.

2 Q Did you receive any appeal notices?

3 A No.

4 Q So what is the town's procedure for appealing the
5 decision that you as the zoning administrator make?

6 A They would make an application to the Board of
7 Zoning Appeals, stating forth the reasons that they felt the
8 opinion or interpretation or determination was incorrect,
9 and specifying what they thought the correct interpretation
10 should be.

11 Q All right. So did they appeal your decision based
12 on the Church Street setback issue?

13 A No.

14 Q And in fact, as I think as you testified just a
15 few minutes ago, when they made their formal submittal, that
16 setback requirement, or that build-to requirement, was in
17 conformity with Ordinance 14022; is that right?

18 A Yes.

19 Q Now, were you ever asked to offer an opinion on
20 whether the building, the project, the building was
21 considered a civic use?

22 A To me personally or specifically, no.

23 Q That was Ms. Farrell, correct?

24 A Well, no. I believe the letter, as reflected in
25 the exhibits, it was sent by their attorney, Gray Taylor,

1 was addressed to the mayor and council.

2 Q That's right. But ultimately, you have an opinion
3 on whether the building and the project was considered a
4 civic use?

5 A Not a formal response to them or to anyone else,
6 just in casual conversation.

7 Q You are aware that a response was provided to the
8 applicant; is that correct?

9 A I am.

10 Q All right. And that was through legal council,
11 right?

12 A Correct.

13 Q Did you ever see any appeals about the civic use
14 application to the project?

15 A No.

16 Q Now, let's talk about these appeals, because I
17 don't want to say what -- why, or repeat testimony as to why
18 they didn't get or may have appealed. You have been doing
19 this for quite a long time; have you not?

20 A Yes.

21 Q Has any of your decisions ever been appealed?

22 A Yes.

23 Q And they would appeal the appeal to the Board of
24 Zoning Appeals; is that correct?

25 A Correct.

1 Q If you could explain to the Court the make-up of
2 the Board of Zoning Appeals in the town of Mount Pleasant.
3 For example, is it appointed citizens or elected officials?
4 What is it comprised of?

5 A Quasi judicial board that is made up of lay
6 citizens of the Town of Mt. Pleasant. There are no specific
7 requirements other than maybe residents of the town of Mount
8 Pleasant.

9 Q Have any of your decisions ever been overturned by
10 the Board of Zoning Appeals?

11 A They have.

12 Q Many times over the years?

13 A Probably not as many as have been upheld. But,
14 yes, they have definitely been overturned.

15 Q You are familiar with the Earl's Court project, I
16 think that you discussed earlier or mentioned in your
17 responses to Mr. Gaskins' testimony; is that right?

18 A Yes, yes.

19 Q And that is a project that is nearby, it was in
20 relative terms nearby the office building parking garage; is
21 that correct?

22 A Yes. It's within two or three blocks.

23 Q And, in fact, some of your decisions in that
24 matter have been appealed to the Board of Zoning Appeals; is
25 it not?

1 MR. GASKINS: Objection. I don't see what the
2 matter of Earl's Court has to do with this case and
3 whether they appealed or not and what happened.

4 THE COURT: Where are you going with this, Mr.
5 Pagliarini?

6 MR. PAGLIARINI: Your Honor, there were questions
7 asked, at least in Mr. Flesch's testimony. He gave
8 reasons why they didn't appeal. Apparently he said
9 that they wouldn't be fruitful, and it wouldn't have
10 mattered. And that's not verbatim. I think that was
11 his testimony as to what he said why they didn't
12 appeal.

13 And I think it's important to understand that
14 these appeals were made all the time. And that was the
15 only question I had on the issue, so I'm happy to
16 withdraw it, if you like, or he can answer the
17 question.

18 THE COURT: Well, he's already answered it, and
19 he's been overturned.

20 MR. PAGLIARINI: Okay. Fair enough, Your Honor.
21 That is all I was asking.

22 BY MR. PAGLIARINI:

23 Q Mr. Prause, were you ever told by anyone at the
24 town, whether employee, senior person, elected official, or
25 anybody to make certain decisions, or any decisions, as to

1 this project?

2 A No.

3 Q Were you ever forced or threatened or coerced in
4 any way?

5 A No.

6 Q Let me ask you about a decision about -- that was
7 made sometime in 2015 that you did make relative to this
8 project, and I believe that was -- I call it the 30-foot
9 extension.

10 Do you remember deciding a matter that would
11 have extended a lease -- or excuse me, a boundary line of a
12 zoning district 30 feet?

13 A I do.

14 Q So if you can explain to the Court what the issue
15 was and how you handled it.

16 A Well, as I previously testified, at one time there
17 were multiple property lines on the subject property with
18 various users. There were also multiple lease lines on the
19 property that did not necessarily correspond to property
20 lines.

21 There were also zoning district boundaries on
22 the property with respect to underlying zoning district
23 classifications, and two separate overlay zoning district
24 classifications on the property.

25 Q So let me ask you this, do you see that this is

1 the subject project right here?

2 A Yes.

3 Q All right. And this is Shem Creek, correct?

4 A Yes.

5 Q Coleman Boulevard, right?

6 A Yes.

7 Q Mill Street, right? And then is Church.

8 A Right.

9 Q And then Church Street/Ronnie Boals; is that
10 correct?

11 A That is correct.

12 Q So do you recollect that somewhere in here,
13 between the building and Shem Creek, there was a purported
14 zoning line; is that correct?

15 A Yes.

16 Q And what were the -- were there two different
17 zoning districts, one on either side of that line?

18 A Yes.

19 Q What were the zoning districts? What was the one
20 closer to the creek?

21 A The marine district and the Shem Creek overlay
22 district.

23 Q And what was the one closer to Mill Street?

24 A The AB area wide business district, and the urban
25 corridor overlay district.

1 Q So essentially AB and marine on either side of the
2 line; is that correct?

3 A Yes.

4 Q All right. So what was the issue -- well, first
5 of all, were you able to determine where the line, the
6 zoning line, actually was located?

7 A No. There was some dispute over that matter.

8 Q Okay. Now, we had mentioned -- you had heard some
9 testimony, and you may have mentioned earlier about a lease
10 line. What is a lease line?

11 A A lease line would be a line laid out over
12 property that would -- that would grant certain uses to --
13 from the lessor to the lessee.

14 Q All right.

15 A In simple terms.

16 Q Is there any relation, as far as the zoning code
17 is concerned, between a zoning line and a lease line?

18 A Only with respect to if they were one and the
19 same, clearly delineated, then as with a property line.
20 But, no, there's no real correlation otherwise.

21 Q So in this case, was the zoning line and the lease
22 line, did they -- were they the same line? Were you able to
23 determine whether they were precisely the same?

24 A I wasn't exactly sure where the lease line was. I
25 mean, at least for absolute definitive purposes.

1 Q And so what was the remedy, or what did you
2 review, and what was the remedy that you decided?

3 A Well, there is a provision in our zoning code
4 under Chapter 156. And, again, I don't know it right off
5 the top of my head.

6 It has multiple provisions to it, too. And
7 it basically says, or the provision that is most relevant,
8 upon which I relied, that said if you have what I'll refer
9 to as split zone property -- that is not the terminology
10 that is used in the code -- but where there's more than one
11 zoning district classification on one piece of property that
12 is in single or multiple ownerships, and then it gets a bit
13 complicated. I have to read it to be exact what it is.

14 But it basically allows, or it actually
15 provides the zoning district with the lesser intensity must
16 protrude no more than 30 feet into the zoning district of
17 higher intensity, if the property is on a road that abuts
18 both zoning district classifications.

19 Q Okay. So you had AB, and then you had the marine.
20 Which one was the lower intensity zoning?

21 A The marine -- oh, excuse me, the lower intensity?

22 Q Yes, yes.

23 A The AB and the urban corridor overlay was less
24 intense or more lenient than the marine district.

25 Q It was more lenient, right?

1 A Right.

2 Q Meaning, could this project have been built as it
3 was in the marine district?

4 A Parking could have; the office could not have.

5 Q Well, that's what I'm saying. As comprised,
6 parking and office, it could not have been built in this
7 marine district.

8 A Correct.

9 Q And was there some concern that the building was
10 spilling over into the marine district; is that correct?

11 A Oh, yes. Absolutely.

12 Q All right. And so you mentioned, was there an
13 additional 30 feet toward the creek afforded the developer
14 the opportunity to build and construct this building; is
15 that right?

16 A That's correct.

17 Q And I know they mentioned that they had other
18 issues about that 30 feet. But from a legal perspective,
19 they were allowed to shift the building 30 feet away from
20 Mill Street; is that correct?

21 A Yes. That is what -- the plans that were
22 submitted for approval that were ultimately approved. The
23 building permit that was issued on the building was built,
24 yes.

25 Q And that's a good point. You determined this

1 issue when the plans were submitted; is that correct?

2 A Yes.

3 Q And you were not able to determine whether that
4 was an issue before they were submitted because you didn't
5 know where the building would be situated; is that correct?

6 A That's correct.

7 Q So as part of the design review board process, in
8 your review you found that problem and found a solution; is
9 that correct?

10 A Well, I applied the ordinance and, yes, it
11 resulted in a solution, or it resulted in a decision.

12 Q Were you doing anybody any favors?

13 A No.

14 Q Were you applying the ordinance?

15 A Yes.

16 Q And is that what you did in all of the decisions
17 you had in relation to this project?

18 A Absolutely.

19 Q So to say from the time the submittal was made in,
20 let's say, June, and then you found this issue to where the
21 30-foot shift had to happen, was the developer, the
22 applicant, required to shrink their building at all as far
23 as the width? When I say "width," the width of Mill Street
24 to the creek. Was there any note that it was required to be
25 shrunk?

1 A Help me out here a little bit with that then.

2 Q Sure.

3 A Are they -- are you suggesting that the width of
4 the building changed from --

5 Q No. I'm asking you, did it have to change?

6 A From?

7 Q From when they submitted.

8 A From when they submitted for the plans for formal
9 review for the building permit that was ultimately issued?

10 Q Yes.

11 A No. None of the building dimensions changed after
12 that.

13 Q Correct. Because it had all been submitted in
14 compliance with the specific requirements of 14022; is that
15 right?

16 A And other regulations.

17 Q And other regulations. Thank you, Mr. Prause.
18 That is all I have for you. There may be follow-up
19 questions.

20 THE COURT: Any redirect?

21 MR. GASKINS: Yes, Your Honor. My questions will
22 be few. I cannot promise you responses will be brief.

23 THE WITNESS: I'll try to make them as brief as
24 possible.

25 REDIRECT EXAMINATION

1 called him Tex, right?

2 A Uh-huh, yeah.

3 Q And you've always found him to be a gentleman,
4 haven't you?

5 A Uh-huh, yes.

6 Q In the summer of 2013, you learned that the town
7 was entering into a public private partnership with Tex and
8 is his partners to provide public parking in the garage on
9 Shem Creek, correct?

10 A Correct.

11 Q In the summer of 2013 or around that time, you met
12 with Tex because he was requesting a zoning amendment that
13 was needed to make the project feasible, right?

14 A Correct.

15 Q And you understood that he needed additional
16 height to provide two levels of office space, correct?

17 A I don't know that if we got that -- I don't
18 remember that specifically. But, yes, he had a -- I guess,
19 a plan in mind that would not conform to the 45 feet, which
20 was what was required there at the time, and he was
21 interested in seeking an amendment to the code for 55 feet.

22 Q And he needed that change to make the project
23 economically feasible, correct?

24 A I know that is what he has spoken to. He needed
25 that to accomplish the -- I guess, the four floors he was

1 looking to accomplish.

2 Q And you don't have any reason to dispute that, do
3 you?

4 A No, I don't.

5 Q And you also understood that he needed the
6 elimination of certain requirements on the first floor so
7 that he could use it for parking, correct?

8 A We talked extensively about that particular
9 request.

10 Q And you understood that he needed these changes to
11 maximize the number of spaces in the garage, correct?

12 A Initially our conversation was really, I think,
13 more related to the flood proofing aspect. That particular
14 property is located within a flood zone, and I do distinctly
15 remember conversations with him about the cost of flood
16 proofing because I -- well, it was interest on my part in
17 terms of the Coleman revitalization plan of any opportunity
18 that we could have to still maintain some sort of commercial
19 on the ground floor.

20 And so we did talk about that, the cost of
21 flood proofing and then, I'm sure as part of the
22 conversation, he may have talked about maximizing the
23 parking. That is certainly something that he brought
24 forward as he went through the process with the planning
25 committee.

1 Q So through that process, you understood that, that
2 that is what he is trying to do, maximize the number of
3 spaces that he could get on those two floors, correct?

4 A And well, also, not flood proof anything on the
5 ground floor.

6 Q Yeah. I'm not saying that wasn't a factor, but
7 you understood that maximizing spaces, maximizing the use of
8 that site for parking spaces on those two floors was his
9 goal, right?

10 A He expressed that in his communication. Certainly
11 I think perhaps in that letter to Mr. Marshall (phonetic) or
12 in meetings, in minutes.

13 Q And you don't have any reason to dispute that, do
14 you?

15 A No. Like I said, he and I talked extensively
16 about that, because we talked extensively about the
17 importance of trying -- the importance of that corner,
18 coming straight into Coleman Boulevard. Mill Street is
19 really the first intersection as you come in, and what we
20 were trying to accomplish with Coleman Boulevard, to have a
21 strong public realm, a lot of activity, and how important
22 that commercial was to the ground floor.

23 So we -- we talked a lot about and it, we --
24 you know, I even tried to explore the idea, like, Tex, can
25 you make a coffee shop or something down there. This is

1 kind of a crucial corner, as we are coming down off of Shem
2 Creek into kind of the entrance, sort of, to Coleman. And
3 in the end, obviously, he chose to pursue an amendment that
4 would not allow, or not require any sort of ground floor
5 residential or commercial.

6 Q And so that is what he requested, he took it to
7 the planning committee and they approved his request,
8 correct?

9 A They directed it then towards the planning -- the
10 rest of the planning process. The planning committee was
11 the first, that had been my recommendation to him, and let's
12 get this in front of a committee of council, see if they're
13 going to be amenable before we begin the process with the
14 planning commission or a public hearing would be required,
15 and then work its way back up into an ordinance with town
16 council.

17 Q And you helped shepherd the ultimate ordinance
18 that affected the zoning amendment through that process,
19 correct?

20 A To the extent that you -- that's planning
21 responsibility is to kind of facilitate that process.

22 Q And you participated in the zone amendment -- in
23 the drafting of the zoning amendment that would accomplish
24 the goals for the project as requested?

25 A I did.

1 Q Okay. And you did this by increasing the height
2 for properties in the Area C-1 that were on Coleman
3 Boulevard, correct?

4 A Yes. That was obviously one part of it. Besides
5 the commercial on the ground floor, we kind of did an
6 analysis, certainly couldn't in my opinion anyway, change
7 the building height for one piece of property.

8 So in looking at it, we ultimately determined
9 in terms of trying to meet his request and what was directed
10 from the planning committee, it was ten parcels that fronted
11 in that vicinity along Coleman Boulevard, and kind of at the
12 corner of Mill Street that would be allowed an increase to
13 55 feet, if approved.

14 Q Okay. And you also created a new sub area, where
15 the height would not be increased, correct?

16 A Right. We did have to -- that area of C-1, it
17 kind of extended out further. Especially on the Church
18 Street side, where the residential area ultimately
19 determined that that would not be appropriate to extend that
20 that increased height that far over.

21 I know Mr. Small spoke yesterday that that
22 had been, I think, a recommendation, too, of Mr. Swails, I
23 didn't remember that. But regardless, it was isolated to
24 those properties that fronted along Coleman Boulevard
25 portions.

1 So that was why it was necessary for C-1 to
2 have a footnote. Because with Mill, the business street,
3 that does no residence and doesn't lead directly into a
4 residential area, could have the build-to line, could have
5 the activity zone, but it was necessary to call it out as a
6 footnote because the setback was still going to apply on
7 Church and Live Oak, which were going straight into the
8 neighborhoods.

9 Q You were creating this footnote to create an
10 activity zone directly on Mill Street, correct?

11 A To allow for one, yes.

12 Q And that changed -- the addition of that footnote
13 applied only to two, three, or four properties, correct?

14 A Probably. If we are in that section, just on Mill
15 Street. As I said, it was other streets.

16 Q And I believe your testimony a minute ago was that
17 this was a district wide thing. We were looking at the
18 whole, I guess, urban corridor overlay district, right?

19 A We were.

20 Q But isn't it true that the activity zone that
21 applied to Mill Street was intentionally created to apply to
22 this garage project?

23 A It was intentionally created to apply to Mill
24 Street.

25 Q And it wasn't intentionally created for the garage

1 project?

2 A No. It was intentionally created to apply to Mill
3 Street. Now, it certainly is supportive of the language
4 that had been added to the code regarding that public realm
5 and that public area along Mill Street, if the garage was
6 going to be built there.

7 Q And we discussed -- I took your deposition on May
8 2nd, 2019; do you recall that?

9 A Uh-huh, right.

10 Q And we discussed the origination of the creation
11 of the footnote that established an activity zone on Mill
12 Street, correct?

13 A Right.

14 Q I'm handing you a copy of your sealed deposition
15 transcript.

16 Ms. Farrell, if you could, please, turn to
17 Page 130 of your deposition.

18 A Okay.

19 Q And I will read the question, and if you could
20 read your answer aloud, begin on Line 12.

21 "And we talked about the footnote, how it
22 specifically applies to Mill Street, and your testimony
23 earlier was that -- was that was put in there specifically
24 because we were contemplating this development."

25 A Okay. There is an objection, and then my answer

1 was: "The build-to line on Mill Street."

2 Or, I guess, that was a question that I asked
3 for clarification.

4 Q Yes.

5 A "Yes, that was in order to be able to accomplish
6 what was written for the parking garage."

7 Q So that footnote was inserted to accomplish the
8 parking garage, correct?

9 A I said what was written for the parking garage.
10 And so that is basically what I just said to you a second
11 ago in my response.

12 You know, when we re-wrote the code, in order
13 to eliminate the commercial on the ground floor, we provided
14 a different requirement to not have the dead space where all
15 the public improvements needed to concern -- I mean -- I
16 don't know why I said that. All the public improvements
17 needed to be constructed.

18 Q So, yes, you created this activity zone to
19 accomplish whatever you were trying to do with the parking
20 garage, correct?

21 A With the previous amendment for the --

22 Q Right. And this previous amendment was drafted
23 solely at the request of Shem Creek Development Group and
24 solely for this project, correct?

25 A No. It applies to any parking garage anywhere.

1 Q That is not what I asked. I asked that that's why
2 it was requested, and it was requested for this specific
3 project, correct?

4 A He requested it, yes, obviously for his project.
5 But once the code was written, it applied to any parking
6 garage that was going to be built in a flood zone that
7 didn't have a ground floor use.

8 Q Okay. But the footnote only applies to Mill
9 Street, right?

10 A The footnote, no. This --

11 Q Let's pull up the footnote.

12 A I just explained all of this.

13 MR. GASKINS: If you could go to Page 20 -- or
14 Exhibit 20, Laura. And I'd ask that you turn to
15 Page 21?

16 THE WITNESS: Are you asking me to turn to
17 Page 21?

18 MR. GASKINS: No. I'm asking Laura to pull that
19 up for us. You have the exhibit there in front of you,
20 but you also have a lot of paper. So I think the
21 easier thing to do is pull it up.

22 All right. Actually, go to the previous page,
23 Laura.

24 BY MR. GASKINS:

25 Q And just to be clear, what we are discussing is

1 Footnote 5 here, correct?

2 A Well, that's the old Footnote 5. That is the one
3 with the setback, right? I don't know which you are looking
4 at. I don't know which version you've got up.

5 Q What is pulled up, and you are welcome to confirm
6 this by the exhibits that are in front of you, is
7 Plaintiff's Exhibit 20, which is the Ordinance No. 14022,
8 adopted by the town of Mount Pleasant on April 8th, 2014.
9 And if you want to confirm that, you are welcome to, but --

10 A Well, if I see the next page, I can definitely
11 tell you which one it is.

12 Q Area is C-1, right?

13 A Yeah.

14 Q So whatever footnote is going to apply to those
15 areas in C-1 including the project site, correct?

16 A Uh-huh. (Indicating affirmatively.)

17 Q All right. Go to the next page. And blow up or
18 pull out Footnote 5.

19 A Right. And that was specific to Mill Street, as I
20 explained, that because there were other side streets
21 located within C-1. And so Mill Street was called out so
22 that it would have the ability to have the activity zone,
23 where the other two that went into the residential areas
24 were protected and could only have a setback.

25 Q Okay. So we have C-1, which only applies to two

1 or four properties, then we have Mill Street which only
2 applies to -- or Mill Street only -- this footnote affects
3 only two to four properties is what you said earlier, and
4 then your earlier testimony was, is that this footnote was
5 intended to effectuate what had been previously adopted in
6 Ordinance 13077, correct?

7 A For consistency, maybe too consistent.

8 Q Yes. And the only garage project in C-1 on Mill
9 Street is this project, right?

10 A Right.

11 Q I mean, I'm not asking you to admit something that
12 is farfetched. This footnote is for this project, correct?

13 A This footnote was for Mill Street and, yeah, this
14 is pretty much the only project on Mill Street. There's a
15 couple of other things on the other side of the street that
16 haven't redeveloped.

17 Q Right.

18 A But otherwise, this property takes pretty much the
19 whole extent, the whole block.

20 Q Okay. Thank you.

21 Now, you were involved in the drafting of the
22 amendments in Ordinance 14022, correct?

23 A Yes.

24 Q You oversaw it, you directed your staff to
25 accomplish what you wanted to do; is that right?

1 Carrier moved for the removal of the footnote, allowing for
2 reduction of setback in the UCOD."

3 A Uh-huh, right.

4 Q Do you see that?

5 A Yes.

6 Q And that's what we are talking about now.

7 A Yes.

8 Q The deletion of the footnote.

9 And Mr. Smith asked a question of you, and
10 you provided a very succinct response. What was your
11 response about what the negative aspect would be of removing
12 the footnote?

13 A I said that it would reduce the buildable area,
14 which is what I just said to you as well.

15 Q All right. So at this time, when you are
16 knowingly taking actions that are going to reduce the
17 buildable area and provide further limitations on the
18 project by creating an activity zone, you knew at that time
19 that Mr. Small and his partners were trying to maximize the
20 usable area of their project, correct?

21 A They had presented that at some meetings. We
22 hadn't seen any plans, if that is where this is going. We
23 didn't have any plans yet.

24 Q Well, isn't that kind of the point of picking up
25 the phone and saying, hey, I know you are a partner in this

1 project. We haven't seen your plans, how are these
2 potential changes going to affect the project, and how that
3 could affect not only the project but the town, who looks at
4 this project as being necessary for the revitalization of
5 Coleman Boulevard? Wouldn't it make it more imperative to
6 pick up the phone call and provide notice than if you
7 already had plans and could just look and see what the
8 effects were?

9 A No. That would be me just kind of guessing as to
10 what their plans were going to look like.

11 Q Exactly. And you didn't have to guess, did you?
12 All you had to do was pick up the phone and say, hey, Tex,
13 this is what we are contemplating.

14 A Oh, you know, the reverse is true as well. We had
15 a lot of public meetings on this. And we were not contacted
16 by the design team throughout this process.

17 Q And based on your earlier testimony, if you had
18 gone through all of those meetings, you would never once
19 heard that they were just considering creating an activity
20 zone on Mill Street, would you?

21 Well, it wasn't advertised that way, but it
22 certainly was in all the draft documents that were presented
23 and posted online, which is the way we handle our business.
24 They are busy folks. I mean, certainly they can get on the
25 Internet and check it out. But they got to pull it up, see

1 what version it is. Where's this little footnote?

2 It is real easy just to pick up the phone and
3 said, hey, how is this going to affect your project? You
4 didn't do it, did you?

5 A And I didn't call anybody else either.

6 Q And you are not aware of any other projects at
7 this time where the town had committed to pay \$185,000 a
8 year. Are you aware of any other projects like that, that
9 would garner your attention?

10 A No, I don't think we had any other obligations
11 like that.

12 Q So this one is a little bit different, isn't it?

13 A No, not from a zoning perspective. We would treat
14 it like we treat any other project from a zoning and
15 approval process.

16 Q I'm not asking about the approval process, I'm
17 just saying as a planning perspective, the town has
18 recognized this project as something that's important.

19 A I wouldn't -- you know, it didn't even cross my
20 mind that it would be problematic.

21 Q And another change in this Ordinance 14022 that
22 was adopted in April 2014 is that it required parking spaces
23 to be no less than 9 feet wide; isn't that right?

24 A That's always been in the code. Actually, I know
25 what you are talking about is because we had not had that

2-5-2020 PROCEEDINGS

2-6-2020 PROCEEDINGS

THE COURT: Good morning. Everyone ready to proceed?

Ms. Farrell, please come back upon the witness stand. Ma'am, you are still sworn in so we don't need to swear you in again.

Your witness.

MR. PAGLIARINI: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. PAGLIARINI:

Q Good morning, Ms. Farrell.

A Good morning.

Q Yesterday I believe you mentioned that during the time frame that we are discussing all of these events, 2012 essentially through 2017, you served as the planning director for the town of Mount Pleasant?

A Correct.

Q How long have you been employed with the town of Mount Pleasant?

A Twenty years.

Q Let's go back to mid 2013. And during that time, you had a meeting or meetings with Mr. Tex Small related to his proposal about the office space -- excuse me, office building parking garage project; is that correct?

A That's right.

1 Q And out of those meetings, did you suggest to
2 Mr. Small that he provide some sort of request to council or
3 committee as to what he wanted?

4 A Yes. After he and I had an opportunity to talk
5 through everything, and he shared the things that he had
6 realized might be necessary for what he was hoping to build,
7 we were able to identify the sections of the code that his
8 plans would not comply with, and those were the ones that I
9 offered to him, he should context Ms. Stokes-Marshall in
10 writing for the opportunity for the planning committee to
11 consider those amendments.

12 Q And he did so by way of two letters that we've
13 discussed earlier in this case; is that correct?

14 A That's right.

15 Q And those are the two letters to
16 Ms. Stokes-Marshall?

17 A That is right.

18 Q All right. You have a Defendant's Exhibit book up
19 there in that notebook, and I believe that the first letter
20 is Exhibit 20.

21 A Okay. And that's the July letter?

22 Q Yes. Do you have that?

23 A I do.

24 Q All right. Is that dated July 23rd, 2013?

25 A That's correct.

1 Q And it's addressed to Ms. Thomasina
2 Stokes-Marshall, who is the chair of the planning committee;
3 is that correct?

4 A Yes, correct.

5 Q And, again, not to -- this has been gone over, but
6 one of the major items Mr. Small's request was to increase
7 the height restrictions in this area of the UCOD; is that
8 correct?

9 A Right. He obviously was looking for a uniqueness
10 to his project, but as -- after he and I discussed, we
11 discussed it would be more appropriate to ask for it to be
12 considered kind of for that area, which staff ultimately
13 identified kind of the appropriate properties. There were
14 ten of them that increased from 45 feet to 55 feet.

15 Q And just to close the loop on this issue, at some
16 point through the ordinance in December, the height, when it
17 was raised to 55 feet; is that correct?

18 A Right.

19 Q And, again, the actual project as it sits today
20 was built to that standard; is that right?

21 A That's right.

22 Q And we did cover, I believe, through another
23 witness, that at some point down the line, the height was
24 moved back to 45 feet in that area, but that did not affect
25 this project; is that right?

1 A It didn't, because this project was already
2 vested.

3 Q The other item was the detail or removal of the
4 requirement for retail upon the ground floor, correct?

5 A That's right.

6 Q And the third item, I point to the Exhibit 20 in
7 the third paragraph. And can you read that sentence, "It is
8 our intent," please.

9 A "It is our intent to work with staff to provide
10 open spaces and people oriented design details to ensure the
11 integrity of the activity zones on our adjoining streets."

12 Q So this has been discussed, and I want to put it
13 in perspective as to what did that mean to you, and how do
14 you know how that got in this letter?

15 A It -- well, came as, I think, a result of
16 conversation in the meeting that Mr. Smalls and I had. And
17 it really kind of fits back up with that other amendment
18 request, which was related to the removal of the commercial
19 requirement on the ground floor.

20 Actually, the way the ordinance was still
21 written to this day is that if you have a parking structure,
22 80 percent of the street frontage is required -- it could be
23 commercial or residential. It could be sort of a
24 combination. Obviously at this particular location, it
25 would have been not expected that it would be residential,

1 it would be commercial.

2 So in his request to remove that requirement,
3 and I'll clarify, too, that applied to any street. It
4 wasn't just the boulevard streets, that requirement applied
5 to a side street as well, if there was a parking structure.

6 So in talking about that and the removal of
7 that requirement, we continued to talk about the importance
8 of just having that connection between the pedestrian and
9 the buildings and trying to ensure that we were meeting the
10 goals of the Coleman overlay district, and the vibrancy, and
11 the public realm and pedestrian oriented environment.

12 So that was -- really kind of the thought is,
13 okay, well, this can be a condition. And ultimately it
14 became a condition within the ordinance. But if you did not
15 build something on the ground floor of the parking garage,
16 that instead, one of the conditions was that there had to be
17 improvements/enhancements along the street in kind of that
18 sidewalk area to create interest and vibrancy and ensure
19 there wasn't any kind of dead space.

20 Q So is it fair to say that the reason that
21 commercial development in the first place was required in
22 the first floor was to enhance that public experience; is
23 that correct?

24 A That was, right.

25 Q And so if Mr. Small, and through that back area of

1 the district it was removed, it had to be replaced somehow;
2 is that correct?

3 A We still wanted to meet that goal. And so this
4 was a way to accomplish that goal if this exemption for not
5 having the commercial on the ground floor was allowed.

6 Q Right. And in his letter of July 23rd, 2013,
7 Mr. Small suggests the integrity of the activity zones on
8 adjoining streets; is that correct?

9 A That's right.

10 Q Did you take that request to mean streets, meaning
11 more than one?

12 A Well, I would say that. And, of course, the
13 ordinance ultimately was written in that fashion as well.

14 Q And if you need to get up, please do so, but -- if
15 this is helpful. So once again, the surrounding streets are
16 Church Street and Mill Street and Coleman Boulevard; is that
17 correct?

18 A Right, correct.

19 Q Let's follow that through because there -- he uses
20 the term, "activity zone," and there was a good bit of
21 discussion yesterday about what is an activity zone and what
22 isn't an activity zone.

23 There was an activity zone requirement prior
24 to 13 -- the December 2013 amendment on Coleman; is that
25 correct?

1 A That's right.

2 Q All right. And from a -- let's just use the
3 precise definition. In the ordinance change, in 2013, with
4 the height limit and the commercial in the first floor, were
5 there activity zones put in on Mill Street and Ronnie Boals?

6 A No. The amendment instead provided that if there
7 was going to be a parking structure that was constructed,
8 that was exempt from the requirements of that street
9 frontage, it didn't matter where it was. And this could
10 have been on Johnnie Dodds Boulevard just as easily as on
11 Coleman, or off of Coleman, that there would be a
12 requirement for improvements.

13 And I think -- I think the text actually
14 says, it references activity zone. Maybe not like the
15 capital A, capital Z activity zone, but it was anticipated
16 that there would still be the same type of goals and intent
17 in place.

18 Q So in splitting hairs, even though it's not
19 technically called activity zone with a capital A, it had
20 the same characteristics and requirements; is that correct?

21 A The same intent. Same goals.

22 Q Right. Same goals. And moving down the line into
23 April of 2014, when the second amendment, or the second
24 ordinance we are talking about in this case, was that
25 actually codified into activity zones?

1 A It was specific to Mill Street.

2 Q Right.

3 A Because we spent a lot of time with that
4 particular amendment. I explained a little bit yesterday
5 that what we were really looking to do was largely a
6 protection of the residential areas. So that meant having
7 to come back and revisit a lot of things that were in the
8 overlay itself, and some of it was related to different and
9 new development standards, if there was residential
10 development within the overlay.

11 But a lot of it affected the commercial areas
12 as well. And so to that end, we kind of did an analysis of
13 street by street throughout the entire overlay of where was
14 it appropriate to have an activity zone and where it wasn't,
15 and we went on to explicitly, within defining the activity
16 zone, say that it cannot be where there is a setback.

17 And so went through a pretty in-depth process
18 identifying the streets that led straight into the
19 residential areas and made sure that they had a setback, so
20 that they could not have the activity zone. And then other
21 streets that were really more commercially developed, that
22 they would have a build-to line, so that they could have the
23 opportunity for an activity zone.

24 Q Well, is it fair to say that the area along Mill
25 Street was subject to additional requirements as of

1 December 2013; is that correct?

2 A I don't know if I would even call it additional.
3 If it was going to be built as a parking garage that didn't
4 have ground floor commercial, then it was going to have to
5 make improvements that were very much the same as we've
6 already talked about to the requirements of an activity
7 zone.

8 The -- actually, creating a build-to line and
9 calling this an activity zone really complimented what was
10 already going to be required, if there was a parking garage
11 without the ground floor commercial.

12 Q Ms. Farrell, can you go to Exhibit 21 in the book?
13 And that is Ordinance 13077.

14 A Okay.

15 Q Can you point out for the Court a language that
16 you are talking about that discusses or, at least, provides
17 these requirements?

18 A Okay. Yes. There was, as I said, the ordinance
19 required that there should be some sort of development in a
20 parking garage. But then we add -- following Mr. Small's
21 request, we wrote in some exemptions. If a parking garage
22 was located in a flood zone, so it was specific to also a
23 parking garage in a flood zone, we wrote a couple of
24 exemptions. I mean, we wrote -- provided for exemption if
25 certain conditions were met.

1 And the conditions included that there had to
2 be additional 100 spaces, parking spaces, that were
3 available to the general public. But then, in keeping with
4 what we were just discussing, the other thing that was --

5 Q And, Ms. Farrell, can you explain to the Court, in
6 which section of the ordinance you are reviewing?

7 A Oh, this is in the urban corridor, the section
8 that speaks specifically to parking requirements. More
9 specifically, to the design of a parking garage.

10 Q Okay.

11 A But the section that was added, that talks about
12 the activity, did you want me to read that?

13 Q Can you just -- what is the number of subsection?

14 A Well, I don't know what the whole -- it's probably
15 an awfully long section. It's in 156.329.

16 Q Are you looking at Exhibit 21?

17 A I am.

18 Q Okay.

19 A It's M52D.

20 Q Right. M52D is Page 4 of 5; is that correct?

21 A Yeah, I'm sorry. That would have been easier to
22 say, wouldn't it?

23 Q All right. So, yes, what does that section say?

24 A It says, "The parking garage must provide added
25 features such as public art, a fountain, a bus stop, or

1 similar features to permit and maintain pedestrian activity
2 in the activity zone, with the arrangement of these features
3 configured so as to eliminate any dead space, with the
4 activity, parenthesis, commercial residential, fronting the
5 parking garage to the extent possible on the Boulevard and
6 side street sides."

7 Q So that included the boulevard as well as the side
8 streets; is that correct?

9 A That's right.

10 Q And are there any other provisions relevant to the
11 boulevard side and the side streets for the added features?

12 A No, I don't -- I don't think so.

13 Q Do you -- well, let's talk about the process then.

14 MR. PAGLIARINI: And, Your Honor, I think in order
15 to -- if I could take this moment, and I have spoken
16 with counsel, we have a serious planning committee
17 meeting minutes, council minutes, planning commission
18 minutes that we have on our list, and I believe, by
19 agreement, we have just agreed to admit them all.

20 In fact, everything in our book, if it's an
21 appropriate time, I just move to admit Defendant's
22 exhibits that have been submitted to the Court, 1
23 through 33, with the exception of Exhibit No. 18, which
24 is the PLA. We are using Plaintiff's Exhibit 7 for
25 that purpose. And so I'd move to admit these into

1 evidence.

2 THE COURT: Any objection?

3 MR. GASKINS: No, Your Honor.

4 THE COURT: All right. They are admitted.

5 *(Whereupon, Defendant's Exhibit No(s). 1-17, 19-33*

6 *marked for identification and received in evidence.)*

7 BY MR. PAGLIARINI:

8 Q So, Ms. Farrell, just briefly, Mr. Small wrote a
9 second letter; is that your understanding?

10 A He did.

11 Q And that is Exhibit 32. Can you turn to that
12 briefly?

13 A Okay.

14 Q And do you -- have you seen this letter dated
15 August 28th, 2013?

16 A Yes.

17 Q And what are the -- how does this match up or
18 compare to the initial letter that Mr. Small sent to
19 councilwoman Thomasina Stokes-Marshall?

20 A It is really almost exactly the same. I think
21 that maybe some specificity was added in that second
22 paragraph to, like, further explain the section number,
23 wherever that exhibit was. Something was added, because the
24 paragraph is a little bit longer there.

25 But, anyway, I think it was just -- it was a

1 little more specific than the previous letter, but it was
2 the same. It was really the same request there.

3 Q Did Mr. Small reiterate the request to work with
4 staff to provide open spaces and people oriented --

5 A Yes. That was what I was saying. The third
6 paragraph, that sentence is the same, and then he added some
7 additional examples of how that could be accomplished by
8 potentially coordinating further with the cultural arts and
9 pride commission, which is a citizen appointed commission of
10 our town.

11 So -- and I think that really -- if you go
12 back to, like, that -- there was a -- was it August planning
13 committee meeting? There was some discussion about that,
14 about how this could be accomplished, and that was one of
15 the suggestions that I think one of our council members, or
16 maybe it was even Mayor at the time, I don't recall, that
17 suggested those was maybe an additional way to try to ensure
18 that there was some sort of activity added.

19 Q Mr. Small sends his initial request by letter, and
20 what followed were a series of public meetings to discuss
21 proposed amendments to the UCOD; is that correct?

22 A Correct.

23 Q All right. And if you need help with the dates,
24 that is fine. I don't want to -- the minutes are in
25 evidence. But do you recollect the -- and all these are in

1 the book, so if you need me to refer to them, there was a
2 planning committee meeting, at least the first planning
3 committee meeting was August 5th, 2013 to start discussion
4 about these amendments?

5 A That sounds right.

6 Q And those are Exhibit No. 1 in the book. So if
7 you need to verify that, please do so.

8 A No, that sounds right.

9 Q All right. Exhibit 2, does that reflect a
10 September 3rd, 2013 planning committee meeting to discuss
11 the proposed amendments?

12 A Yes. They didn't take action, they deferred the
13 item, but it was on that committee meeting.

14 Q So let's talk about that August 5th, 2013 and
15 September 3rd. There was no action taken at those meetings;
16 is that correct?

17 A No. There was, I think, probably discussion at
18 the August one. It doesn't appear that there was really any
19 discussion at the September one.

20 Q And if you review those minutes, is there any
21 evidence that Mr. Small was at that either August 5th, 2013
22 or September 3rd meeting?

23 A Well, I have the September one in front of me, he
24 was not present at that meeting. I know he wasn't present
25 in the first one either, I just don't know where it says so

1 in the minutes.

2 Q So the first two meetings, by your account and
3 review of the minutes, he did not appear to discuss these
4 issues with committee; is that right?

5 A No, he was not there.

6 Q All right. And next in the series, we have his
7 second letter, which is August 28th, 2013; is that correct?

8 A Yes.

9 Q And then there are in the minutes, which is
10 Defendant's Exhibit No. 3, there was another planning
11 committee meeting on September 10th, 2013; is that correct?

12 A That's correct.

13 Q And at that meeting, did the committee vote to
14 recommend the amendments, which would eventually result in
15 Ordinance 13077?

16 A They did. They had discussion that evening and
17 directed us to proceed through the process, which would
18 include going to the planning commission and holding a
19 public hearing.

20 Q Did any of these requests, these amendments, made
21 by Mr. Small, that we are talking about now, that eventually
22 became 13077, did he ever request a reduction in the town's
23 ordinance defining width of parking spaces?

24 A No.

25 Q Did he ever ask you about that?

1 A No.

2 Q After the planning committee, would it have been
3 the next logical step to go to the planning commission?

4 A Correct, yes.

5 Q After the planning committee voted to move the
6 amendments forward, and I'm specifically looking at
7 Defendant's Exhibit No. 5, are those planning commission
8 minutes from October 23rd, 2013?

9 A Yes.

10 Q Is the -- and if you could just briefly describe a
11 planning commission. And those are citizen appointees; is
12 that correct?

13 A They are. Our planning commission has nine
14 members, and they are appointed by town council to serve
15 four-year terms. There are not any specific seats, so they
16 don't have any requirements to have, you know, say, an
17 architect or anything like that. So they are kind of
18 at-large. They just have to be residents of the town.

19 Q And why, is there any legal requirement that the
20 matter go to the planning commission before it went to
21 council?

22 A Yes. That is a requirement of the State of South
23 Carolina. It is part of the process for any rezoning
24 requests or text amendment requests before it gets in front
25 of the elected body.

1 Q There is a public hearing at the planning
2 commission; is that right?

3 A We conduct the -- the town conducts their public
4 hearings at the planning commission level. Some other legal
5 governments choose to do it at the elected body level, but
6 we do ours at planning commission.

7 Q But the importance of a public hearing is that in
8 a public hearing, it's required at some point by state law?

9 A It's required -- it's required regardless. We
10 hold ours at the planning commission.

11 Q And that is publicly noticed and publicly
12 advertised; is that right?

13 A Put it in the newspaper 15 days prior.

14 Q So in the newspaper, and matters -- all the items
15 are presented online. So citizens and anyone can find out
16 what is going on with the agenda; is that right?

17 A That's correct.

18 Q And citizens have a right to speak at those
19 meetings; is that correct?

20 A They do. It's a public hearing.

21 Q So at the September 10th -- excuse me,
22 October 23rd, 2013 planning commission meeting, amendments
23 that eventually became 13077 were considered; is that
24 correct?

25 A Yes.

1 Q Did the planning commission hold a vote?

2 A They did.

3 Q What was the result of that?

4 A Well, they had a -- a lot of motions on it that
5 kept failing. And so the ultimate -- after I think about
6 three or four failed motions, ultimately the minutes reflect
7 that the requests will move forward to the planning
8 committee with no recommendation.

9 Q Okay. So the planning commission doesn't have
10 authority to stop legislation in this circumstance, but only
11 to provide a recommendation; is that correct?

12 A Right. They are required -- actually, they've got
13 a time frame in which they have to make a recommendation,
14 and obviously they couldn't agree on one so it was forwarded
15 without one.

16 Q And no recommendation was made?

17 A That's right.

18 Q Looking at the exhibits, it appears that
19 Exhibit 6, November 4th, 2013 planning committee meeting
20 minutes -- do you see that under Exhibit 6?

21 A Yes, I see the committee minutes.

22 Q Following the planning commission meeting, the
23 items went back to the planning committee; is that right?

24 A Yes.

25 Q And did planning committee approve the proposal at

1 that time?

2 A They did, and that was unanimous. Planning
3 committee is four members of town council.

4 Q So at that step, after that, then the next step
5 would be to go to full town council, all nine council
6 members at a council meeting; is that right?

7 A Yes.

8 Q And the town of Mount Pleasant requires two
9 readings of the ordinance; is that right?

10 A Correct.

11 Q Is it fair to say that the first reading was held
12 on November 12th, 2013?

13 A Yes, 13077 -- it was first reading and it was, it
14 looks like, an eight to one vote in favor for approval.

15 Q And this is Exhibit No. 7 in the book; is that
16 correct?

17 A Yes.

18 Q All right. Those are the town council minutes
19 from November 12th, 2013?

20 A Yes.

21 Q So it moves forward at first reading; is that
22 right?

23 A Yes.

24 Q And then the next meeting is the Decemer 10th,
25 2013 meeting, which is the next month's town council

1 meeting, correct?

2 A Correct.

3 Q And this is where the ordinance was approved at
4 final reading; is that correct as well?

5 A Yeah. I'm just looking for the page. It would
6 have been.

7 Q Yeah, that's fine. It is Exhibit No. 8, the
8 December 10th, 2013 town council minutes; is that right?

9 A It is. I'm just trying to find the page with the
10 actual ordinance.

11 Q I can help you there.

12 A Okay.

13 Q Exhibit 8.

14 A We had a really long meeting that night.

15 Q It was.

16 A I found it. So it is on Page 26.

17 Final reading, and it was -- again, it was
18 approved. It was the same vote, it was an eight to one vote
19 for approval of final reading.

20 Q So the amendments that Mr. Small had requested,
21 including the building height, exemption from commercial
22 development on the first floor, and the -- and the street
23 side, side street, front street requirements were codified
24 at that point; is that correct?

25 A Yes.

1 Q Now, I want to bring your attention to earlier in
2 that December 10th meeting. And if you could point -- if I
3 could point you to Page 14 of 36.

4 A Okay.

5 Q And I'm looking at the very last paragraph, you
6 don't need to read it out loud, but if you could, for your
7 own information, read that motion.

8 A Okay.

9 Q And that is a motion by Ms. Stokes-Marshall; is
10 that correct?

11 A It was, and she was planning committee chairman.

12 Q And what was she -- what was she asking or
13 requesting to happen by way of that motion?

14 A It was that the planning committee, which I just
15 stated she was the chairman, and there were three other
16 members, was basically go back and kind of review, do some
17 sort of analysis of the -- well, she calls it the main
18 street revitalization effort, but it's also what we have
19 been talking about, which was the Coleman, Ben Sawyer,
20 ultimately the urban corridor overlay district, and she
21 listed a number of things that the group would study related
22 to parking and setbacks and other development standards, and
23 they gave themselves a 60-day time frame to come back with
24 some potential modifications.

25 Q All right. There's a lot in that motion, and if

1 you could help all of us who don't do what you do, what was
2 the -- what was the concern at that time regarding the Old
3 Village?

4 A Well, the Old Village, and we probably can --

5 Q If you need to step down, that's fine.

6 A You can kind of see it on that map. But it's --
7 yeah, it's not showing up very well. But the --

8 THE COURT: Do you want to bring it closer to her?

9 MR. PAGLIARINI: Either way.

10 And you can show the Judge.

11 A I'll turn it the other way. I'm used to looking
12 at it from north.

13 So, again, this is Coleman Boulevard right
14 here. This is Shem Creek, the property that we are
15 discussing is right here. This area back here is a
16 residential development. Everybody refers to it as the Old
17 Village.

18 The green outline is actually the historic
19 district of the Old Village. There's portions of it that
20 are not part of the historic district. But to -- do you
21 want me to keep this up here?

22 Q You can hand it back or just slide it over here.

23 A But to answer your question, there was concern
24 about the impact of development along Coleman with having on
25 the Old Village -- and they don't really say it here, but

1 there's obviously residential areas on the opposite side of
2 Coleman Boulevard as well that could or would be potentially
3 impacted by the development. And that was kind of -- I
4 think the main focus of it was to go back and to try to
5 lessen unintended and negative impacts that could result
6 from some of the revitalization efforts.

7 Q Is it a fairly common concern in planning, that
8 any time that've got commercial next to residential, those
9 people who live right next to the commercial have concerns
10 about it?

11 A Always. Yeah. Yeah, even if it was already
12 there.

13 Q Even if it was there, right. And so, just in
14 layman's terms, was it to try to develop a better way to
15 transition from the commercial to the residential?

16 A It was. And so, as Ms. Stokes-Marshall made her
17 motion and outlined some of the elements that they wanted us
18 to review, it kind of really focused on where we had seen
19 some concerns and heard some concerns. Parking was one of
20 them, and so we ended up, just, for example, changing our
21 standards for multi-family parking requirements as a result
22 of this effort.

23 Setbacks, densities, we looked at that. We
24 looked at development standards for residential development
25 within the urban corridor, were all things that had kind of

1 risen to the top as we saw sort of our first two larger
2 developments, which were -- we talked about them before,
3 Earl's Court and the boulevard, both of which happened to be
4 on the Old Village side of Coleman Boulevard.

5 Q And so was that motion that Ms. Stokes-Marshall
6 made at the December 2013 council meeting related to
7 concerns about those two projects that you mentioned, the
8 boulevard and Earl's Court?

9 A Those are what prompted the concerns. And so I
10 think that from that, they wanted to come in and address, as
11 we were going to see additional development in the overlay
12 district, to make sure that we kind of addressed a few
13 things and made modifications to the ordinances to reduce
14 any negative impacts.

15 Q And we will get to it. But ultimately, as you
16 move forward from December 2013, there were a series of
17 public meetings that culminated in the April 2014 ordinance,
18 14022; is that correct?

19 A There were a lot. As I just mentioned in the
20 motion, the planning committee gave themselves a 60-day time
21 frame, and -- which was right at Christmas. It was December
22 10th. So we ended up having a lot of special meetings, some
23 before Christmas, some right after New Year's. But then
24 ultimately, yes, it ended up with final reading, I think, in
25 April.

1 Q April. Well, let's stop right there in the time
2 line for just a minute.

3 As of -- as of, and we will say that the
4 setbacks, build-to lines, whatever they were, and I'll go
5 through that in a moment, on Coleman, Mill, and Church did
6 not change as a result of the December ordinance, which is
7 13077; is that correct?

8 A Right. It was just the building height and the
9 exemption for the garage.

10 Q So prior to that time, and through December, what
11 were the requirements as far as a setback build-to line on
12 Coleman Boulevard?

13 A It was a build-to line, and 20 to -- it was a
14 range, so the developer could choose, but it was a range of
15 20- to 30-foot build-to line. And that is, as I explained
16 yesterday, that's measured from the back of curb to the
17 front of the building.

18 Q They had to build up to that line?

19 A They had to build to the line.

20 Q All right. On Mill Street, it was a 20-foot
21 setback; is that correct?

22 A That's right.

23 Q And the possibility of reducing that to a 5-foot
24 setback; is that correct?

25 A Right. There were -- that would be the minimum

1 that it could be reduced to. It was a may, and there were
2 certain conditions that we have discussed. These, I know,
3 several times what those conditions were regarding a 5-foot
4 sidewalk, street trees, and then, of course, a line of sight
5 thing was really just to make sure that we didn't create any
6 kind of situations where a driver couldn't see around the
7 corner.

8 Q That was, of course, not automatic. They had to
9 meet the requirements, and the staff had to approve it; is
10 that correct?

11 A Yeah. Or whoever the design review -- whoever had
12 the function of design review at the time, which staff was
13 in charge of design review at the time, not the board.

14 Q And the same standard was for Church Street; is
15 that right?

16 A Yes.

17 Q So that -- did that Church Street, Mill Street,
18 that 20-foot setback with the possibility of five did not
19 change as a result of 13077. But what did change were the
20 requirements that you read to the Court that were also
21 requested in Mr. Small's letter; is that right?

22 A The enhancement?

23 Q The enhancements and street activity, right?

24 A Yeah. For any parking garage that was going to be
25 exempt for -- from the commercial ground floor requirements.

1 Q And that would have applied to what eventually
2 became the office building parking garage; is that right?

3 A If they were going to build a parking garage that
4 didn't have ground floor commercial, then that was a
5 requirement.

6 Q You testified to this yesterday, that getting down
7 to 5 feet, with that additional requirement would have been
8 highly unlikely; is that correct?

9 A I don't -- we never saw it. I don't know how they
10 could really accomplish it. Five feet is a pretty narrow
11 space, when you take it and put it on, like, a level plane.
12 And just have to have your sidewalk, have to have the canopy
13 trees, but then also be able to meet all the requirements
14 and enhancements that were -- became a requirement as a
15 result of that amendment, I think would be very challenging.

16 Q Well, let's move forward, and Ms. Stokes-Marshall
17 makes the motion, and that motion is approved at the -- and
18 the motion to do the further study is approved at the
19 December 10th, 2013 council meeting; is that correct?

20 A That's right.

21 Q All right. Let's move forward, and it appears
22 that exhibit -- Exhibit 9 reflects minutes for a special
23 planning committee meeting on December 19th, 2013; is that
24 correct?

25 A Yes.

1 Q And a special planning committee means it wasn't a
2 regular meeting; is that right?

3 A No. Like I said, they gave themselves a pretty
4 short time frame to accomplish this, and so it was going to
5 require some special meetings. We were visiting the whole
6 overlay district.

7 Q So this is just nine days after Ms.
8 Stokes-Marshall made the motion at the council meeting; is
9 that right?

10 A That's right.

11 Q So what was the purpose, if you're looking at
12 those minutes, what was the purpose of this special planning
13 committee?

14 A It was to begin to review the ordinance as was
15 directed by town council at their December meeting.

16 Q Which -- and all of this would eventually become
17 Ordinance 14022; is that correct?

18 A That's right.

19 Q Was this meeting advertised to the public?

20 A Yes, it was.

21 Q Moving forward, there was a meeting on -- January
22 -- well, was there a special planning committee meeting on
23 January 10th, 2014 to further discuss these items?

24 A That sounds right. Are you pointing to --

25 Q Yeah. And I'm sorry, that goes down to Exhibit

1 No. 33, Ms. Farrell.

2 A Okay. Yes.

3 Q And is that January 10th, 2014?

4 A Yes.

5 Q And you discussed this yesterday with Mr. Gaskins.

6 Is that the meeting where planning committee suggested or

7 asked to remove the footnote?

8 A The ability to reduce down to 5 feet?

9 Q Right.

10 A Yes, it was.

11 Q So that is where that was discussed, right?

12 A At that January meeting.

13 Q And that would have removed the ability to even
14 get down to the 5 feet; is that right?

15 A Right. So in the end, that would have meant just
16 a 20-foot setback.

17 Q Right. And moving forward, were there additional
18 meetings that were held to discuss the proposed changes to
19 the UCOD?

20 A Well, this would have had to go -- just like we
21 were talking about with the last ordinance. I can't
22 remember if planning committee had any more meetings, I
23 don't think that they did. At this point, they would
24 have -- again, we had to take it to the planning commission
25 is my point.

1 Q But after January 10th, 2014, the second special
2 planning committee meeting on February 19th, which is
3 Exhibit 13, February 19th, 2014, it went to the planning
4 commission; is that right?

5 A Yeah.

6 Q And that -- again, that is Exhibit 13, and you
7 have already discussed the purpose of the planning
8 commission. Was there a public hearing at that meeting?

9 A Yes. That was the public hearing, that meeting.

10 Q And no decision was made at that time, the matter
11 was deferred to a future meeting; is that correct?

12 A Right. Let's see, he closed the public hearing, I
13 can see, but then there was the move to defer -- they were
14 going to have a special planning commission meeting, and
15 that was on February 27th.

16 Q Just to discuss this issue; is that correct?

17 A Yes.

18 Q All right. And isn't it true that if you look at
19 Exhibit No. 14, there was a planning, special planning
20 commission meeting, on February 27th, 2014?

21 A Yes.

22 Q And was this item discussed again?

23 A It was.

24 Q Was this meeting noticed to the public?

25 A Yes. It wasn't advertised as a public hearing,

1 because we had already done that, but it would have been --
2 we still post all of our meetings weekly in the newspaper
3 and then online.

4 Q And you mentioned this earlier, and I don't want
5 to lose site of it. Were these changes reflecting the
6 entire UCOD or entire urban corridor overlay district?

7 A They would affect the entire district.

8 Q And is one of the reasons why there were so many
9 meetings is because it was a very, very broad and all
10 encompassing --

11 A It was pretty comprehensive. I mean, we were
12 looking at residential and commercial, we were looking at
13 the way that the overlay district was written. It's
14 actually broken into three sections, because we recognize
15 the character to be a little bit different for Coleman and
16 Ben Sawyer versus Johnnie Dodds and Chuck Dawley. So they
17 all kind of have their own special sections. We had to
18 evaluate each of those.

19 And then just getting into design details,
20 such as setbacks or parking requirements, or things of that
21 nature. It was very comprehensive. It's probably -- I know
22 it's our biggest overlay district that we have in the code.
23 It's probably our biggest district that we have in the code.

24 Q And just to bring this to its conclusion and these
25 are -- there was a council meeting in March of 2014 for

1 first reading of Ordinance 14022?

2 A Sounds right. I don't know where the minutes are,
3 but --

4 Q Yeah. That is Exhibit No. 10.

5 A Okay. That was, I'd say, March 11th.

6 Q Excuse me. I did say March 11th, right?

7 A Oh, you did. Okay.

8 Q I think I did.

9 A Well, you were right, it was March 11th there was
10 a meeting. And we did have first reading.

11 Q All right. And the next month's council meeting
12 would have been April 8th, 2014 and that is shown on
13 Exhibit 11; is that correct?

14 A Yes.

15 Q And was the Ordinance 14022 approved for final
16 reading at that time?

17 A I know that it was. I'm just looking for it.

18 Q I believe it's on Page 20 of 36.

19 A I was looking for the motion.

20 Yeah, well, that's where it started, and
21 then, of course, all the discussion went on.

22 Q Right.

23 A There was a motion to approve. That's reflected
24 on 21, and then there were some motions to amend, and there
25 was public comment.

1 And then, David, I don't know where it's --
2 the final reading is. It goes on for a long time.

3 Q It does.

4 A All right. Anyway, final reading. It looks like
5 it's showing up finally on Page 31 of the ordinance.

6 Q Right. And that carried unanimously, correct?

7 A Yes. And there were several. It looks like they
8 had a lot of amendments that were in here, too. But, yes,
9 ultimately.

10 Q Now, I want you to go to Page 23 on those minutes.

11 A Okay. Page 23. Okay.

12 Q And if you look on the middle of the page, there
13 was a speaker that says Greg Taylor; do you see that?

14 A I assume that means Gray Taylor.

15 Q Gray Taylor, who was the Plaintiff's legal council
16 at the time; is that correct?

17 A Yes, he was.

18 Q Okay. All right. Ms. Farrell, I want to ask you
19 so that we have gone the process -- and I want to ask you to
20 explain to the Court what the changes were and what they
21 meant practically from Ordinance 14022. Is this --

22 A Just specific to that chart?

23 Q The chart; does this help?

24 A That was for Coleman, right?

25 Q Right. Does this help?

1 A Sure.

2 MR. PAGLIARINI: Your Honor, may I hand this up to
3 the witness?

4 THE COURT: Sure.

5 BY MR. PAGLIARINI:

6 Q All right. So, Ms. Farrell, what does that
7 represent?

8 A This is the kind of red line version of the chart
9 that the -- this actually says it's the draft from the
10 planning commission public hearing, and would have been what
11 was ultimately presented to town council for their
12 consideration for first and final reading.

13 Q And this is for the April 2014 -- well, first
14 reading would have been March 2014; is that correct?

15 A Right.

16 Q And then approved in April, right?

17 A Correct.

18 Q Okay. And does this help you explain the changes
19 in the UCOD?

20 A Okay. Yeah, it can.

21 When this part of it, obviously as I
22 mentioned earlier, the urban corridor, the amendments were
23 very comprehensive and included all streets. I mean, not
24 all streets, but all sections. When I say, "streets," I
25 mean Johnnie Dodds and Chuck Dawley, in addition to Coleman

1 and Ben Sawyer. So what we are showing here is a couple of
2 different things.

3 First of all, it was the elimination of that
4 5-foot ability to reduce the 5-foot setback. So that was --
5 that was struck here, and you can see where it was struck
6 within this. This is that Section C1.

7 Q So when you say "that Section C1," that is where
8 the project was located, in C1, for reference purposes,
9 right?

10 A Yes.

11 MR. GASKINS: Your Honor, I hate to interrupt, but
12 can I look at this? I haven't seen it. It's not been
13 identified as anything other than what she described it
14 as.

15 MR. PAGLIARINI: Sure.

16 MR. GASKINS: Thank you.

17 MR. PAGLIARINI: Sure.

18 BY MR. PAGLIARINI:

19 Q You had mentioned that the -- or I had asked you
20 that the project was in C1, and you were explaining that the
21 aid --

22 A Okay. Yeah. And so what we did at that time,
23 because, remember, we talked about how we ended up breaking
24 that area C1, because of the building height in order to
25 accomplish the building height? But what we ended up doing

1 was -- we had to kind of reconfigure some of these
2 subsections, so to say, up in here. And so now we've got
3 this section C1.

4 David, do we have a map? It would actually
5 kind of --

6 Q This one?

7 A Yes.

8 Q Okay.

9 A Okay. I'll -- hold it here.

10 Q I can hold it.

11 A Can you hold it like that?

12 Q I can.

13 A Okay. So section C1, can you see that, where I'm
14 talking about there. This C1, that is where we changed
15 everything to -- we have got to maintain that 55 feet in
16 building height that had been amended during -- with that
17 13077, but we came back in here and we started to clarify
18 where there were setbacks and where there were going to be
19 build-to lines, as I have explained.

20 So this is everything that was on Coleman and
21 Ben Sawyer. You can see throughout Coleman and Ben Sawyer
22 everything is a build-to line except for down here. And
23 this is -- this actually will be going out towards the
24 beach, towards Sullivan, and we wanted setbacks out there.
25 We wouldn't want a build-to line, there were setbacks.

1 The build-to lines on all the boulevard
2 streets, and then we started to really do an analysis here
3 of all the side streets. And as I've explained, there was
4 concern about the impact that some of the development could
5 have as you're starting to go into these residential areas.
6 And we showed that on a previous map.

7 So this is the Old Village, part of which is
8 the historic district, and these are a bunch of
9 neighborhoods on the opposite side as well.

10 So we ended up kind of basically going street
11 by street. And, like, where do we not want an activity
12 zone? And so we made sure that those streets were listed as
13 setbacks, and so you can see that on a couple of these
14 sections here.

15 But where is it okay that we have an activity
16 zone? Where do we really want an activity zone to occur?
17 And that was really going to be in those areas that were
18 strictly commercial and did not encroach into a residential
19 area.

20 So I'll point, just for example, to C6, right
21 here, and right here. That is on the opposite side from
22 this particular project. It's entirely commercial there,
23 there's no residential at all right there.

24 And so we recognized that as a great
25 opportunity for a lot of redevelopment and the opportunity

1 for build-to lines to occur.

2 Now, I know there's been a lot of discussion
3 about the new footnote that was put in.

4 Q And for reference, Mill Street runs here and
5 across Coleman Boulevard over to this side; is that correct?

6 A All the way -- that's right.

7 Q All right.

8 A So with the new footnote, you can see where the C1
9 is in that brown color right there. So you got Mill Street,
10 but you have also got two other side streets. So you've got
11 Church, that we keep talking about, and then you've got Live
12 Oak, down at the bottom of the brown. Live Oak.

13 Those go directly into residential areas, and
14 actually go directly into the historic district. And so we
15 wanted to make sure that those maintained a setback, but
16 that Mill would have, being a commercial street and then
17 already knowing we have the requirement for the garage, that
18 that one could actually have a build-to line. It could have
19 the activity zone -- the ability to have the activity zone,
20 which would compliment what they were already going to have
21 to build for the parking garage.

22 And so that's why the footnote was put there
23 and added here for Mill Street, because you wanted something
24 different for that than the other two abutting streets
25 within C1. We needed those to stay in setbacks to protect

1 the residential area.

2 And you can see we did the same thing down
3 here at Simmons Street, which Simmons Street -- this is
4 where our -- this is the middle school right here, and it's
5 also where our farmers market is. And we wanted the
6 opportunity, even though this was kind of starting to
7 stretch back into the residential areas, to have the
8 opportunity right there as well to have the ability for the
9 activity zone, because it kind of complimented the farmers
10 market across the street.

11 And actually that explains the -- we did do
12 this, not to -- this is just showing you what we did in
13 Coleman. What we also did on Johnnie Dodds, we didn't have
14 a chart like this for Johnnie Dodds, but what we did on
15 Johnnie Dodds was called out the streets as well, and we
16 actually just named streets that were going into the
17 residential neighborhoods and said, you can't have an
18 activity zone on Tall Pine or Creekside, all the ones that
19 were leaning into the residential areas.

20 And so that was -- it was not just unique
21 even to Coleman, it was also the other side streets as well.

22 Q And thank you for that explanation. Let's talk a
23 little bit about the activity zone, which there was a bit of
24 a discussion about that yesterday.

25 There was included in 14022, language that

1 related to Mill Street and Church Street about activity
2 zones; is that correct?

3 A I'm sorry. I'm not following your question.

4 Q Well, let me ask you this: In 14022, did that
5 bring in the activity zone language that you had discussed
6 earlier for those locations?

7 A Well, it did for Mill Street, because we
8 established the build-to line there, but not for -- Church
9 was a setback.

10 Q Right. So Mill Street had the activity zone.
11 Now, was that consistent, the requirements of that activity
12 zone, with what had been passed back in December from a
13 practical standpoint on Mill Street?

14 A Yes. If they were going to build a parking garage
15 at that location, without the commercial ground floor, then
16 it was consistent, yeah.

17 Q All right. So despite the terminology, there was
18 no practical change for the developer from the December '13
19 ordinance to the April 2014 ordinance; is that correct?

20 A Not when it came to making those types of
21 enhancements along the street.

22 Q Now, let's go back to April 8th, 2014. At that
23 time, April 8th, had a plaintiff submitted a site specific
24 development plan that would confer a vested right for the
25 design of the office building garage?

1 A No.

2 Q Had you seen any plans at all?

3 A We had not gotten any kind of submittal at that
4 point in time.

5 Q Was there any indication to you at that time that
6 the developer expected to have 5-foot setbacks on Mill
7 Street and Church Street?

8 A We wouldn't have known that.

9 Q Now, just briefly, you were not involved with the
10 negotiation of the parking license agreement; is that
11 correct?

12 A No.

13 Q Were you generally aware that it had been agreed
14 to and approved in October of 2013?

15 A Yeah. I would have been at the council meetings
16 and those things, yeah.

17 Q You didn't have any authority or perform any work
18 or studies as far as feasibility at that time; is that
19 correct?

20 A No, I didn't.

21 Q When you -- were you provided a draft of the
22 agreement prior to its approval?

23 A I was provided a draft very early on, I think,
24 just to look at it, see if I had any thoughts or concerns,
25 probably just merely more from a land use side.

1 Q And you have been aware that there has been
2 discussion about an Exhibit A, or rendering. Was that
3 rendering even attached to your draft?

4 A I don't know. It wasn't. I think this was --
5 like I said, it was pretty early on that I was given a
6 draft.

7 Q Moving forward on the time line, April, we left
8 off on April of 2014. Are you aware that there was a
9 pre-submittal some days, a few days after April 8th?

10 A Well, yeah, we talked about that yesterday. And I
11 shared with everybody that I just don't have a recollection
12 of the meeting. But we require pre-application meetings.

13 Q That was the meeting that you can't recollect
14 whether you were there or not?

15 A Yeah, yeah.

16 Q But at some point in the months following a
17 submittal, an official submittal was made by the developer;
18 is that correct?

19 A Yes.

20 Q And do you recollect or have anything -- well,
21 first of all, was it your job to review the details of that
22 submittal?

23 A I'm sorry. Say that again.

24 Q Was it your job to review the details of that
25 submittal?

1 A No. Well, planning department did, so we've
2 obviously got staff members that are assigned for those
3 types of responsibilities.

4 Q But it's your understanding that staff and
5 Mr. Prause, who testified yesterday, and his folks, reviewed
6 it for details; is that right?

7 A Yes.

8 Q And is it your understanding that as submitted, as
9 submitted as far as build-to lines and those matters along
10 Coleman, Church, and Mill Street, it complied with the
11 build-to line and other setback requirements?

12 A The one that was submitted later on in June?

13 Q Yes.

14 A Yes, I think so.

15 Q All right. As head of the planning department,
16 did your department ever receive any appeals regarding any
17 decisions made by staff related to this project?

18 A No. No, we did not.

19 Q Ms. Farrell, if you could, go to Exhibit 28,
20 Defendant's Exhibit 28. Just tell me when you have that.

21 A Okay.

22 Q What is Exhibit 28?

23 A It is a certificate of occupancy for this
24 building.

25 Q And what is the date of the certificate of

1 occupancy?

2 A It's July 28th, 2017.

3 Q That is approximately three years after the
4 initial submittal of the plans; is that correct?

5 A Yes.

6 Q If the plans were submitted in June or around
7 there of 2014?

8 A Yeah. Okay.

9 Q What is the significance of a certificate of
10 occupancy as it relates to planning?

11 A That means that they have the ability to occupy
12 the building, that it's been completed, construction. .

13 MR. PAGLIARINI: Excuse me, Your Honor. I'll take
14 a moment.

15 Your Honor, I believe I just have another two or
16 three questions and then I'll wrap up.

17 BY MR. PAGLIARINI:

18 Q Ms. Farrell, you have gone through the discussion
19 about the ordinance and the comprehensive UCOD changes. In
20 fact, it was a comprehensive change to the entire district;
21 is that correct?

22 A Yes.

23 Q Did anyone, at any time, whether it be elected
24 official or employee of the town, pressure you, or even tell
25 you that one of the purposes, or that you should work

1 towards thwarting development of the office garage parking
2 complex?

3 A Absolutely not.

4 Q In fact, the threshold, or jumping off point, for
5 the 2014 amendments were made at the December 2013 council
6 meeting; is that right?

7 A Yes.

8 Q At that time, do you recollect any significant
9 opposition or people showing up to meetings complaining
10 about the parking garage?

11 A No. They were complaining about some other stuff,
12 but not this.

13 Q Those other projects that you had mentioned
14 before, right?

15 A Yes, correct.

16 Q And ultimately, was the exercise that led to
17 approval of April -- April 2014 amendment, were all of
18 those meetings publicly noticed?

19 A Yes, they were.

20 Q Did Mr. Small or any of his staff ever contact you
21 to discuss the proposed changes that were under way in the
22 early part of 2014?

23 A No, not that I can recall.

24 Q And I had asked you earlier about whether
25 Mr. Small had ever asked you to review or look at the town's

1 ordinance regarding parking space width, in order to change
2 that ordinance. Do you have a recollection of him asking
3 that?

4 A No.

5 MR. PAGLIARINI: And, Your Honor, if I may
6 approach the witness -- may I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. PAGLIARINI:

9 Q I'm handing you to a town ordinance --

10 MR. PAGLIARINI: And if Your Honor would like a
11 copy.

12 BY MR. PAGLIARINI:

13 Q Ms. Farrell, is this ordinance, town Ordinance
14 156173?

15 A Yes.

16 Q And if you look at the parking spaces that would
17 have been included in the parking structure, would section C
18 apply?

19 A Yes, it would have.

20 Q What is the width, in accordance with town
21 ordinance?

22 A That it shall not be less than 9 feet in width.

23 Q All right. So that is a 9-foot width for any and
24 all parking spaces in the town of Mount Pleasant; is that
25 right?

1 A Commercial.

2 Q Commercial. And it does not -- does not segregate
3 structures versus street or parking lot parking; is that
4 right?

5 A No, no.

6 Q And that 9-foot requirement had been in existence
7 prior to 2012; is that right?

8 A It's been in existence for as long as I can even
9 know.

10 Q And it's still in existence; is that correct?

11 A Yes.

12 Q And there is a parking garage at -- or excuse me,
13 a parking structure at the town Center?

14 A There is.

15 Q Is that 9 feet parking width spaces?

16 A Should be. I haven't measured them, but it should
17 be.

18 Q Well, that's what the standard is, right?

19 A It is.

20 Q And you don't know of any changes or any requests
21 from the Plaintiff to change that when they were asking for
22 changes in 2013; is that right?

23 A No.

24 MR. PAGLIARINI: Ms. Farrell, thank you very much.

25 I do not have have any further questions.

1 THE COURT: Any redirect?

2 MR. GASKINS: Your Honor, I do have a few
3 questions. May we take a break?

4 THE COURT: Sure. All right. Ten-minute break.
5 (Recess.)

6 THE COURT: You may proceed.

7 MR. GASKINS: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GASKINS:

10 Q Good morning, Ms. Farrell.

11 A Good morning.

12 MR. GASKINS: Well, Laura, if you could please
13 bring up Plaintiff's Exhibit No. 8.

14 BY MR. GASKINS:

15 Q Ms. Farrell, what I'll represent to you that what
16 is depicted here Plaintiff's Exhibit 8, which is Ordinance
17 No. 13077, which is the same ordinance that was passed in
18 December of 2013 that you just reviewed with Mr. Pagliarini,
19 correct?

20 A Yes.

21 MR. GASKINS: Laura, if you could, please turn to
22 Page 4 of this exhibit.

23 BY MR. GASKINS:

24 Q And call out section on here, 2D. And,
25 Ms. Farrell, isn't this the actual language that you were

1 referring to that requires the enhancements along the garage
2 that you were discussing earlier?

3 A Yes, sir. I read this earlier.

4 Q Okay. And if I understand your testimony
5 correctly, this would have applied to Mill Street regardless
6 of whether Mill Street was considered an activity zone at
7 that time or not, correct?

8 A That's correct. It would have applied to,
9 throughout the urban corridor, to any street that had a
10 parking garage that was trying to take advantage of that
11 exception.

12 Q Okay. And if I understood or heard your testimony
13 correctly earlier, you said it would have been, quote, very
14 challenging, unquote, for the project to utilize a 5-foot
15 setback and meet these requirements, correct?

16 A I believe so.

17 Q Okay. So let's talk about these features. They
18 are intended to promote and maintain pedestrian activity,
19 correct?

20 A Yes.

21 Q And that could be public art, correct?

22 A Correct.

23 Q Could be a foundation?

24 A A fountain.

25 Q Oh, I'm sorry, a fountain. Thank you for

1 correcting me.

2 A Okay.

3 Q A fountain?

4 A A fountain.

5 Q A bus stop; is that correct?

6 A Yes, uh-huh.

7 Q Or similar features, correct?

8 A Yes.

9 Q And similar features is not defined anywhere, is
10 it?

11 A No, it's not.

12 Q It's somewhat vague and subjective; would you
13 agree with that?

14 A It would give opportunity to whoever is designing
15 and building it to suggest some other things.

16 Q Okay. And so it would give planning staff or
17 whoever is doing the design or view, whether that's staff or
18 the design review board, some discretion in determining
19 whether those similar features are consistent with this code
20 provision, correct?

21 A Yes.

22 Q And it goes on to say that the activity fronting
23 the parking garage, to the extent possible, correct?

24 A Yes.

25 Q And you would agree with me, that to the extent

1 possible is also somewhat vague and subjective, correct?

2 A It can be. It's to provide specificity.

3 Q Exactly. All right.

4 And ultimately the project received design
5 approval from your division, your department, correct?

6 A From planning staff, yes.

7 Q And your staff determined that the project, as
8 designed and ultimately constructed, met these requirements,
9 correct?

10 A Correct.

11 Q Okay.

12 MR. GASKINS: Laura, if you could please bring up
13 the photograph of the existing garage.

14 BY MR. GASKINS:

15 Q Ms. Farrell, this is a photograph that was shown
16 earlier during trial. Do you recognize this to be the
17 garage project that we have all been discussing and that was
18 ultimately approved by your staff and constructed?

19 A Yes.

20 Q Okay. Do you see any public art -- and this is
21 Mill Street, right?

22 A Right.

23 Q Okay. And this is where those enhancements had to
24 be included, correct?

25 A Correct.

1 Q Okay. Do you see any public art?

2 A Not in this image, no.

3 Q Do you see any fountains?

4 A Not right there. There's something up at the
5 corner, I think. It's not a fountain, but there's something
6 that anchors the corner.

7 Q Is there a bus stop along Mill Street?

8 A No, there's not.

9 Q Okay. So in order to meet the requirements that
10 we just talked about, it has to fall under this umbrella of
11 similar feature, correct?

12 A Uh-huh, yes.

13 Q What are the similar features along Mill Street
14 that promote pedestrian activity?

15 A Well, we got an awful lot of benches that have
16 been incorporated into the design. They did a very good job
17 with their landscaping to kind of create, I guess, a
18 comfortable environment for the pedestrian.

19 Obviously, the sidewalk was designed in a way
20 to be enhanced with a lot of decorative features as well.
21 It was designed in a way to be attractive and comfortable
22 for a pedestrian.

23 Q Okay. And you believe that would have been very
24 challenging to include those features with a project that
25 included a 5-foot setback?

1 A I do.

2 Q And you realize how the property is situated.
3 It's kind of -- it doesn't run parallel to Mill Street,
4 correct?

5 A No, I know. It goes in at an angle. It cuts
6 tight at Church Street.

7 MR. GASKINS: That is all I have. Thank you.

8 THE COURT: Thank you, ma'am. You may step down.

9 MR. GASKINS: Plaintiff calls Jeff Johnston.

10 Thereupon,

11 JEFF JOHNSTON

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GASKINS:

16 Q Good morning, Mr. Johnston. Please state your
17 name for the record, please.

18 A Jeffrey Allen Johnston.

19 Q And where do you live, Mr. Johnston?

20 A Charleston, South Carolina.

21 Q And what is your profession?

22 A I am an architect.

23 Q And what is your educational background?

24 A I have a Bachelor of Architecture from Auburn
25 University.

1 Q And who is your current employer?

2 A SMHA.

3 Q And then is that also -- has that also been known
4 as Stubbs Muldrow and Herin Architects?

5 A Yes.

6 Q And do you have any professional licenses or
7 certifications?

8 A Yes. And I'm licensed with the State of South
9 Carolina, with the department of LLR, as a registered
10 architect.

11 Q And how long have you been an architect?

12 A I received my licensure in 2007. So 12 years.

13 Q There's been testimony that you were the project
14 architect on this project; is that correct?

15 A Correct.

16 Q And so at this time, Shem Creek Development Group,
17 or some of its affiliated entities, would have engaged you
18 to be -- or engaged your firm to be the lead architect on
19 this project, correct?

20 A Correct.

21 Q Had you had any prior relationship with Shem Creek
22 Development Group or any of its principals?

23 A No.

24 Q Okay. Since this project, have you had -- have
25 you been engaged to do any other work on behalf of Shem

1 Creek Development Group or any of its principals?

2 A No, sir.

3 Q Is the town of Mount Pleasant a client or former
4 client of your firm?

5 A Yes.

6 Q And what projects has your firm worked on for the
7 town?

8 A The Mount Pleasant town hall and the Mount
9 Pleasant town gymnasium.

10 Q And when was that work done, to the best of your
11 recollection?

12 A The town hall was built and designed around the
13 same time that this office building in question was
14 constructed. So 2015, '16, '17.

15 Q Okay. And do you and your firm continue to do
16 architectural work for projects in the town of Mount
17 Pleasant?

18 A We do. Right now, we've got six projects in
19 various stages of design within the town.

20 Q And where, actually, is your office?

21 A Our office is located in Mount Pleasant. We have
22 been in Mount Pleasant since our company's inception in
23 1990. So a lot of us in the office, live, work, and play in
24 the town.

25 Q Okay. And in your role of working in the town,

1 would you have ongoing relationships and communications with
2 the town's planning staff?

3 A Absolutely.

4 Q And it wouldn't be in your interest to do anything
5 that -- to make them mad or provoke them in any way, would
6 it?

7 A Correct, no.

8 Q So you are here to tell the truth today, correct?

9 A Absolutely.

10 Q Well, let's talk about when you and your firm were
11 engaged as the architect on the project. When was that?

12 A I believe it was in October of 2013.

13 Q Okay. And who was your point of contact with Shem
14 Creek Development Group?

15 A Mr. Flesch.

16 Q Okay. And kind of give us a general overview of
17 what your role in the development was as the project
18 architect on this project.

19 A I think, to put it very briefly, our role was to
20 fulfill the program vision that was given to us that was to
21 create a 35,000 square foot building and to achieve close to
22 276 parking spaces.

23 Q Okay. And does your role as the project
24 architect, or your firm's role as the architect, end when
25 the project is designed and on paper and approved by the

1 town?

2 A No. We -- our firm -- most architecture firms
3 offer programming through construction and administration
4 services, as we do. And the unique thing about our firm is
5 that the same personnel are involved in the project from the
6 very beginning of the project to the very end of the
7 project.

8 Q Okay. And were you involved in this project from
9 the beginning to the end?

10 A Yes.

11 Q Okay. So you saw it through, through the
12 construction of what we just showed on the screen, correct?

13 A Correct, yes, sir.

14 Q And what did you understand your goal or task to
15 be in the design phase of the project?

16 A We were given the client's goals of creating
17 35,000 square feet of office space and 276 or 270,
18 approximately, number of parking spaces in a structured
19 parking.

20 Q Okay. And do you know what the number of spaces
21 was based on?

22 A There was a parking agreement, yes.

23 Q And you understood that it was your goal, as the
24 project architect, to try to reach the number of spaces that
25 were included in the parking license agreement?

1 A Correct.

2 Q There's been previous testimony about work,
3 conceptual renderings and plans done by Ken Betsch. Do you
4 know who Mr. Betsch is?

5 A I have not met him personally, but I do know him
6 in the professional world, and I do recall having one of
7 those sketches.

8 Q Okay. And so you reviewed those as part of your
9 work on this project?

10 A Yes. We were given those by the client.

11 Q You mentioned the parking license agreement, did
12 you ever review that?

13 A Insomuch as just to recognize that there was a
14 number of parking spaces to achieve.

15 Q Okay. When did you start working on the design of
16 the building?

17 A Shortly thereafter. I want to say a couple of
18 weeks after we first met.

19 Q Well, describe for the Court the process that you
20 went through in this project to design it.

21 A All right. Initially we had a, what we call, a
22 design charrette in our office. And the charrette is really
23 just a big time to test the design from Mr. Betsch according
24 to the -- I guess, the site requirements as we saw it at
25 that time. So there's that.

1 Q Let me stop you right there. When you say "site
2 requirements," what do you mean?

3 A Zoning regulations, setbacks and buffers and
4 build-to and that sort of thing.

5 Q Okay. Sorry to interrupt. Please keep going.

6 A No, that is okay.

7 So we kind of challenged that versus the
8 sketch and see if the sketch that we were given could be
9 made real or what implications we had, if it couldn't. And
10 then we jump into schematic design, and then design
11 development, construction documention, and then construction
12 administration.

13 So there's different phases and I'd say, just
14 in concept, as you start, you know very little about the
15 project; and as you end, you can basically know where every
16 bolt is. So there is a variety of tasks between the
17 conceptual design and the construction administration of the
18 project.

19 Q Okay. So when you began working on the project,
20 what was your understanding of the height restrictions on
21 the site?

22 A It had recently been changed. The height
23 restriction was 55 feet when we were engaged.

24 Q And just to clarify, I believe the earlier
25 testimony was that you were engaged in October of 2013; is

1 that correct?

2 A Yes.

3 Q Okay. And I believe the ordinance actually became
4 effective in December of 2013.

5 A Correct.

6 Q Does that sound correct to you?

7 A Yeah, correct. So shortly after we engaged.

8 Q And when you began working on the project, what
9 was your understanding of the setbacks that apply to the
10 project site?

11 A Well, I guess we'll go one by one. Coleman
12 Boulevard was an activity zone that required a build-to
13 between 20 and 30 feet.

14 Moving over to Mill Street, there was a
15 20-foot setback with an exception for 5 feet, if certain
16 conditions were met.

17 And Church Street, it being the back of the
18 building, I think we presumed it was the rear of the
19 building and it, therefore, had a 5-foot setback.

20 Q And if Church Street was considered a side street,
21 you would have that ability to reduce to 5 feet, correct?

22 A Twenty feet. If meeting exceptions, we could get
23 down to 5 feet, yes, sir.

24 Q And it sounds like you considered Church Street to
25 be the rear of the building?

1 A Correct. It was the back of the building, the
2 rear of the building.

3 Q And are those the -- is that what you were relying
4 on when you designed the initial plans for the project?

5 A Correct, yes.

6 Q Now, what parking space dimensions did you use
7 when you first designed the project?

8 A Mr. Betsch's plan, when we scaled it to a scale,
9 we recognized that the parking spaces were 8'6". So in
10 order to maximize the number of parking spaces, we had to
11 use that same logic, I guess, in an 8'6" parking space. So
12 we presumed 8'6".

13 Q Was it unusual to use 8'6" spaces in the design of
14 a parking garage?

15 A No. The neighboring municipality of Charleston
16 has 8'6" parking spaces specifically designated for
17 structured parking. There are other municipalities also
18 have similar language -- Columbia, Charlotte, Atlanta, even
19 Charleston County.

20 I'll say, not specific to structured parking,
21 they give a lot of latitude for parking spaces, if it's in a
22 structured garage or not.

23 Q Based on your experiences, are 8'6" wide spaces
24 adequate to provide usable parking for most vehicles?

25 A Most vehicles. The largest SUV is about

1 80 inches, wide. So that's 6'8", you know.

2 Q Okay. Now, when you were designing the building,
3 did you have any meetings with the town staff about design
4 issues?

5 A Our first meeting with the town was to discuss
6 exiting strategy, and that was in mid to late January.

7 Q Of what year?

8 A Of 2014.

9 Q And who did you meet with, with the town?

10 A I met with Jeff Ball, who was the building
11 official with the town, and it was a fire marshal,
12 Winklehoffer (phonetic), is that correct?

13 Q Well, we will look at the document that should
14 help refresh your recollection.

15 But Mr. Ball, you said he worked for the
16 building department?

17 A He was a building official with the building
18 department.

19 Q Okay. And it's my understanding from
20 Ms. Farrell's testimony earlier, that the building
21 department is part of the planning department?

22 A I don't know specifically, but, yes.

23 Q And what was the purpose of the meeting that you
24 had in January of 2014?

25 A It was specifically to talk about the exiting

1 strategy and to talk about handicapped spaces that were on
2 the ground floor, not the second floor, and to talk about
3 where stairs were located and how we were going to do some
4 stairs that were open and available to the public without
5 being -- we had parking stairways and we had office building
6 stairways.

7 The office building stairways needed to be
8 secure. The parking garage, as it was more of a public
9 parking space, or parking facility, that stairway was to
10 remain open and public.

11 So we had to walk through that exiting
12 strategy with Jeff Ball and the fire marshall so that we
13 could make sure we were on the same page with exiting. Our
14 primary role is the life safety of building and creating a
15 building.

16 MR. GASKINS: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. GASKINS:

20 Q Mr. Johnston, I have handed you what has been
21 premarked as Plaintiff's Exhibit No. 48. Take a minute to
22 review it, let me know when you are finished.

23 A Yes, sir, I'm familiar with this document.

24 Q What is this document?

25 A These are meeting minutes, after following that

1 conversation with Jeff Ball and Joseph Winklehoffer, uh-huh.

2 So we were summarizing our conversation.

3 This is something we typically do as an order
4 of process when we have meetings with building officials or
5 any other governmental agency that helps us to document the
6 conversation, or helps us to recall the conversation.

7 Q And this is something that you would have prepared
8 shortly after the meeting?

9 A Correct.

10 Q And would it have been your normal practice in the
11 ordinary course of business to prepare memoranda like this
12 that were likely discussions that were held in the meeting?

13 A Yes, sir.

14 MR. GASKINS: And at this time, we'd move to admit
15 Plaintiff's Exhibit No. 48.

16 THE COURT: Any objection?

17 MR. PAGLIARINI: No objection, Your Honor.

18 THE COURT: All right, it's in.

19 *(Whereupon, Plaintiff's Exhibit No(s). 48 marked*
20 *for identification and received in evidence.)*

21 BY MR. GASKINS:

22 Q And you discussed the primary purpose of this
23 meeting was to discuss the stairs, correct?

24 A Correct, exiting and sprinkling.

25 Q Were any other issues discussed during this

1 meeting?

2 A Yeah. The second page of that exhibit, items 4
3 through 7, talk about other items that were discussed. And
4 one of those, we talked about open -- we talked about fire
5 sprinkling systems, we talked about stall, parking stall
6 widths, we talked about accessible parking spaces, and
7 again, another fire sprinkler question.

8 Q Okay. So at this point in time, you informed him
9 that you were using 8'6" wide parking spaces, correct?

10 A Yeah. As we were just describing the design that
11 we were presenting to them, we just talked about our
12 assumptions.

13 Q Okay. So at that point in time, you were showing
14 them actual designs of the parking spaces, correct?

15 A Yes. We had a hard line drawing, what we call
16 hard line drawings, which was in the computer and accurate.

17 Q And would you believe that those -- those drawings
18 also reflected the build-to lines or setbacks that you were
19 utilizing?

20 A I would assume that, yes.

21 Q Did you have any other meetings with town staff?

22 A We had -- the next meeting we had with town staff
23 was for the pre DRB application meeting.

24 Q And there's been some discussion about it, but I
25 don't think there's ever been really a full summary

1 explanation of that process. What would have been the
2 design review process for the project at this time?

3 A As I remember it, I believe the applicant had the
4 choice to either go before the staff, or staff review for
5 the design review board, or you could go to the board for a
6 board discussion, board review.

7 We chose the staff level review. And the
8 steps for the design review board process was to, A, have, a
9 pre-application, a pre DRB submittal application meeting. I
10 forget the technical term of it.

11 B, then have a preliminary submittal to
12 staff. And then finally have a final design review
13 submittal to the staff.

14 So a meeting, preliminary approval, final
15 approval.

16 Q Okay. Do you recall when the first
17 pre-application meeting was?

18 A It was in -- was it in late April, mid April?
19 April 14th-ish, 15th?

20 Q Mr. Johnston, do you recall if you prepared a
21 memoranda --

22 A We did.

23 Q -- reflecting, I guess, what you call the meeting
24 minutes for that meeting in April of 2014?

25 A Yes.

1 Q And would reviewing that memoranda help refresh
2 your recollection as to when the date was?

3 A It would.

4 MR. GASKINS: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes, sir.

7 BY MR. GASKINS:

8 Q I handed you what has been premarked as
9 Plaintiff's Exhibit 47. Do you recognize that document?

10 A Yes, sir.

11 Q And what is it?

12 A It is a memorandum of meeting minutes to talk
13 about those things that were discussed at this meeting. And
14 we were, again, intending to submit a design review board
15 submittal, and this was the pre-application meeting to
16 submit the designs. So we had a design prepared and ready
17 to --

18 Q And does this memorandum help refresh your
19 recollection as to when you believe that meeting occurred?

20 A April 14th was the date of this memorandum.

21 Q Okay. And you would have prepared this at the
22 time or shortly after you had the meeting?

23 A Correct, yes, sir.

24 Q And, again, it was your normal practice in the
25 ordinary course of business to prepare memoranda like this?

1 A Yes.

2 MR. GASKINS: We would move to admit Plaintiff's
3 Exhibit No. 47 into evidence.

4 MR. PAGLIARINI: No objection.

5 THE COURT: All right. It's in.

6 *(Whereupon, Plaintiff's Exhibit No(s). 47 marked*
7 *for identification and received in evidence.)*

8 BY MR. GASKINS:

9 Q So tell us about that meeting that happened in
10 April of 2014.

11 A Well, the purpose of the meeting was to review our
12 plans to-date. And then I guess at this point, we had been
13 working on the design for three or four months, and
14 primarily we were looking at where are the setbacks that we
15 assumed at the time? Were they appropriate? And to talk
16 about what our assumptions were. And we were going to
17 review the parking stall width, and the general square
18 footage of the building.

19 And then so we were talking about horizontal
20 requirements, site requirements relative to setbacks and
21 such. And then we also talked about the aesthetics of the
22 building to see if they met the ordinances of the town. So
23 we were reviewing the planning and architectural criteria.

24 Q What all did you show town planning staff at this
25 meeting; do you recall?

1 A I can't recall exactly, but at this point in
2 time, we would have had a site plan, floor plans, and
3 building elevations, which were 2D elevations, and we
4 probably had some perspective sketches, too.

5 Q What was the town's response when they were
6 presented with these different plans and designs and
7 reviewed them?

8 A Well, we talked about horizontal requirements for
9 the building site, and we were told that Mill Street was now
10 an activity zone, whereas before, we were applying the
11 20-foot, 5-foot setback. So it changed our thinking on what
12 Mill Street was going to be.

13 And then on the rear setback, we were told
14 that the new requirement is 20 feet from the property line
15 with no exceptions.

16 And then we talked about some other things
17 relative to the landscaping at the front of Coleman
18 Boulevard, and I think we had some columns that were in the
19 activity zone, and we were told that the columns are part of
20 the building, can't be in an activity zone.

21 And then we talked about the parking stall
22 width, and at that point the town said that we weren't -- we
23 could not provide an 8'6" stall width as it wasn't part of
24 the ordinance as current.

25 Q Did the town indicate to you that the setback

1 requirements and the build-to requirements had recently been
2 changed?

3 A Yes.

4 Q Did you know about those changes as they were
5 being considered by the town?

6 A I did not, no.

7 Q Did anybody from the town contact you and let you
8 know they were under consideration?

9 A No, sir. Yeah, I think --

10 Q Did anybody from the town contact you and inquire
11 as to how they could affect the plans that were in the
12 process of being designed?

13 A No, I can't recall that.

14 Q And was the issue of stall width also discussed at
15 this meeting?

16 A Yes, it was.

17 Q And what you were showing them at that point in
18 time had 8'6" wide spaces, correct?

19 A Correct. We were trying to maximize the width of
20 -- bounds of the property. We were trying to get the most
21 parking spaces.

22 Q And based on the comments that were presented at
23 this time, what was your expectation as to whether you would
24 get design review approval based on the plans as they
25 existed at that time?

1 A It was not going to happen.

2 Q Okay. And what effect did the changes in the
3 setback and build-to requirements, what effect did that have
4 on the number of spaces that were depicted in the plans that
5 you presented to the panel that day?

6 Q The increase setbacks and/or build-to is their
7 applicable reduce the square footage -- or not square
8 footage, reduce the building footprint. And as a result of
9 reducing the building footprint, it reduced the number of
10 parking spaces available. I can talk about it left to right
11 and top to bottom, if you wish.

12 Q Well, let's do it. It may help us if we actually
13 look at the floor plans.

14 A Uh-huh. (Indicating affirmatively.)

15 MR. GASKINS: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 BY MR. GASKINS:

19 Q I have handed you what has been premarked as
20 Plaintiff's Exhibit 50. Are you familiar with this
21 document?

22 A Yes, sir.

23 Q What is it?

24 A It looks like a floor plan of the first floor and
25 second floor of the office building parking garage structure

1 and it was -- I can't read the date, but I believe it was in
2 April 8th. Is that what I'm reading?

3 Q I don't have a good copy, but it appears to be
4 April 8, 2014, correct?

5 A Yes.

6 Q And so this would have been prepared prior to your
7 pre-application meeting, correct?

8 A Correct.

9 Q Do you believe that this is something that -- do
10 you believe this is what you presented to the town during
11 that pre-application meeting?

12 A I think that is a reasonable assumption. Do I
13 know that it was exactly this? No. But, yes, I think it
14 would be very similar to this, if not this.

15 Q It would be substantially similar?

16 A Yes.

17 Q All right. And how many spaces are depicted on
18 these floor plans?

19 And first of all, before we do that, if you
20 could, and if you want to step out, you can help orient us
21 as to where Coleman Boulevard is, where Mill Street is, and
22 where Church Street is.

23 A Okay. I'm doing some math. We had 266 parking
24 spaces.

25 Q Okay. And that was in response to my question

1 before I interrupted you, but if you could just help the
2 Court orient us and show us where we are at.

3 A The page up on the screen would be Coleman
4 Boulevard.

5 Q That would be Coleman Boulevard.

6 A Correct. To the right would be Mill Street.

7 Q Okay.

8 A And to the bottom would be Church Street.

9 Q Okay. And this is the first floor plan?

10 A Correct.

11 Q And this would be the second floor plan?

12 A Yes, sir.

13 Q Okay. And you said that there were 266 spaces?

14 A Correct.

15 Q Okay. And how did you come up with that number?

16 A You can't read it on the screen there, but
17 there's a -- on that top -- on the right-hand side in the
18 middle part of the building, there's some numbers. It says
19 119 spaces on the second floor, plus 34 spaces on the ramp.
20 On the left-hand side, in the middle of the building, in a
21 textbox, it says that there are 113 spaces on the first
22 floor.

23 Q And 113 on the first floor, 119 on the second
24 floor, and 34 on the ramp, correct?

25 A Correct.

1 Q That comes up to 266. And that is utilizing
2 stalls with a width of 8'6", correct?

3 A Correct.

4 Q And what setbacks were you utilizing as it relates
5 to Church Street?

6 A 5-foot setback.

7 Q Okay. And what about Mill Street?

8 A 5-foot setback.

9 Q Okay. And were you utilizing a 5-foot setback for
10 the entirety of the site as it runs along Mill Street?

11 A Yes.

12 Q Okay. And what I'm asking is, this appears to
13 be the -- where is the structure of the building?

14 A The structure is the rectangle and the site is
15 trapezoidal, so the building is off of the property line
16 more than 5 feet, if that answers the question.

17 Q I think so. So up here, is this the building
18 line?

19 A Yes, sir.

20 Q Okay. That is the extent of the building. And --

21 A The stair pops out.

22 Q And there is a setback that decreases as you leave
23 Coleman and approach Church, coming down Mill; is that
24 correct?

25 A Say that question again?

1 Q I apologize.

2 So this will be Coleman, Mill, Church. So
3 would this -- would this be more than 5 feet?

4 A From the building to the property line, yes. More
5 than 5 feet, yes.

6 Q Okay. And down here, what was the width?

7 A It was right at 5 feet there at that bottom corner
8 at the intersection of Church and Mill.

9 Q Okay. What is depicted here?

10 A Those appear to be trees, yeah. Or palm trees,
11 perhaps.

12 Q And there's been testimony, and I don't want you
13 to repeat it, but there were certain criteria that had to be
14 met to reduce the setbacks to 5 feet. Do you believe that
15 that met the criteria?

16 A Hard to say. This was an early sketch, and as we
17 developed the project, we had a landscape architect involved
18 and landscape architect would have -- it sounds like, based
19 on what we talked about, those enhancements might be --
20 that's something that really would have been described or
21 designed by the landscape architect.

22 Q And I'm not asking you about the enhancements.
23 It's my understanding that the criteria to reduce to a
24 5-foot setback were tree plantings?

25 A Tree plantings, yes.

1 Q Okay. A 5-foot sidewalk, correct?

2 A Correct.

3 Q And a triangle vision or a vision -- a triangle
4 site, something like that, correct?

5 A Correct, yeah. Vision triangle, yeah.

6 Q And could you have complied with those
7 requirements with this floor plan?

8 A Yes, yeah.

9 Q So after this April 2014 pre-application meeting,
10 I would imagine that came as pretty shocking news?

11 A It was a good surprise.

12 Q Okay. So what did y'all do next? And when I say,
13 "y'all," you, your team, and working with the Shem Creek
14 Development Group. What did you do next to kind of figure
15 out how you were going to address these issues raised by
16 town staff?

17 A Well, we wanted to figure out how to solve the
18 problem, but we didn't really understand what the problem
19 statement was. So we asked Christiane and Kent, I believe
20 Prause, and Mike Robertson to help us understand what the
21 zoning ordinance changes were.

22 So I had reached out to them and asked them
23 if they can help describe the new ordinances relative to
24 setbacks. So I reached out to them, I think, via email.

25 MR. GASKINS: Your Honor, may I go through the

1 exhibits and try --

2 May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. GASKINS:

5 Q Mr. Johnston, I'm going to hand you what's already
6 been admitted into evidence as Plaintiff's Exhibit No. 21.

7 A Yes, sir.

8 Q Do you recognize these?

9 A Yes, sir.

10 Q What is it?

11 A Email correspondence between myself and Kent
12 Prause, and several other -- subsequent emails between Mike
13 Robertson, Christiane. But primarily to Kent.

14 Q And what was purpose of these emails?

15 A To gain insight and clarity into the revisions
16 from the ordinance -- to the ordinance.

17 Q And did Mr. Prause provide you a copy of the
18 ordinance?

19 A Yes.

20 Q And it appears that that -- this led to some
21 discussion about whether Church Street or the side of the
22 structure backing up to Church Street was a rear setback,
23 correct?

24 A Correct. Yeah, there's questions about a rear
25 setback.

1 Q That was reflected on the bottom of Plaintiff's
2 Exhibit 21; is that correct?

3 A Correct. That is where we were trying to gain
4 clarity on, was Church Street a rear of the site, therefore,
5 a rear setback?

6 Q Okay. And what was Mr. Prause's response?

7 A Said that the 20-foot setback for a side street
8 from the chart applies. The chart heading indicates a front
9 or side setback austensibly contemplating a corner lot with
10 another lot behind the subject lot, and not a lot bounded on
11 three sides of the street.

12 So I think he's saying two adjoining
13 properties back to back would be considered the rear.

14 Q And why was it important to the project to
15 understand what the setbacks were for Church Street as they
16 relate to parking?

17 A Because of the geometry of the parking structure,
18 we -- it is a big site, but it's not -- it's just big enough
19 for a parking garage. So if you were to remove 15 feet, the
20 difference between 20 feet and 5 feet, it makes a
21 substantial difference in the way that the parking garage is
22 shaped. So we were --

23 MR. GASKINS: If you will, get Exhibit 50.

24 THE COURT: Does that complete your answer?

25 BY MR. GASKINS:

1 Q Oh, I'm sorry. I didn't think -- I didn't mean
2 to interrupt.

3 A Well, I forgot the question.

4 Q I was asking you why the setback mattered on
5 Church Street, and it may be best to explain your answer by
6 demonstrating how the difference between a 5-foot setback
7 and a 20-foot setback affected the number of spaces as
8 depicted in the floor plan.

9 A Sure. It would be best to approach the screen?

10 Q That will be great, if you think that it'll be
11 helpful.

12 A All right.

13 Q The setback would primarily be affecting the
14 second floor. I know we have to talk about it on the first
15 floor, because that is where the side boundaries are, but
16 the second floor is the part that gets affected.

17 Our 5 feet would be here, the 20 feet is
18 approximately at the end of that parking stall right there.

19 So if that 20-foot setback is enacted, this
20 structure -- first of all, this structure can occur as a
21 strong 5-foot setback. As soon as a 20-foot setback is
22 enacted, the building footprint had to change to get out of
23 the setback.

24 So in essence, on the second floor, this was
25 the original setback line, now the setback line is back

1 here. It would eliminate all the parking spaces on the
2 first and second floor.

3 We were creative and had the first floor
4 parking spaces stick out on the ground floor, but on the
5 second -- since it wasn't a building, then the second floor,
6 as it was a building, had to be out of the setback.

7 So that number of spaces was 17 or 16,
8 depending on the stall width.

9 Q And so that's on the second floor?

10 A Correct, second floor.

11 Q Initially you had the parking that backed up to
12 Church Street within the structure, correct?

13 A Correct.

14 Q And so applying a 20-foot setback there would have
15 also eliminated the stalls in the structure, correct?

16 A On the -- yes.

17 Q On the first floor. And that would have resulted
18 in another reduction of spaces, not just 16 or 17.

19 A Right. I think we had 11 down there.

20 Q So approximately 28 at that point in time?

21 A Yes, sir.

22 Q All right.

23 MR. GASKINS: Laura, please go back to Exhibit

24 No. 20 -- I'm sorry, 21.

25 BY MR. GASKINS:

1 Q If you could -- and Mr. Prause didn't believe that
2 the 5-foot setback, the rear 5-foot setback, applied,
3 correct?

4 A Correct.

5 Q He said that -- and what is your understanding of
6 his rationale?

7 A I think what he was trying to say is that when two
8 properties adjoin each other, that would be a rear yard
9 setback, to use his yards. It doesn't necessarily mean the
10 rear of the building, like ours is.

11 Q Okay.

12 MR. GASKINS: Now, Laura, if you could go to
13 Exhibit 20, which I will represent is Ordinance 14022,
14 and go to new setbacks, new development guidelines
15 chart on 20, please.

16 BY MR. GASKINS:

17 Q Are you familiar with this chart?

18 A Yes.

19 Q Okay. And I'll represent to you that this is the
20 chart that -- as adopted in the April 2014 zoning amendment.
21 Okay.

22 Do you see anything in here that supports
23 Mr. Prause's interpretation that a rear building setback
24 could not back up or front the street?

25 A There are no definitions on this sheet submitted.

1 Q Okay. And if we go to the next page, there is a
2 footnote here, correct?

3 A Uh-huh, yes.

4 Q All right. If we could go to the next page and
5 call up Footnote 3.

6 Do you see anything in this footnote which
7 would support Mr. Prause's interpretation that a rear
8 building setback could not back up to a street?

9 A No, I do not.

10 Q In fact, this creates an exception to the 5-foot
11 setback, correct?

12 A Correct.

13 Q And in Mr. Prause's response, he explained that
14 his interpretation was based on a rear yard, correct?

15 A Correct. He agreed, a rear yard setback.

16 Q All right. I am going to hand to you --

17 MR. GASKINS: If I may approach.

18 THE COURT: Yes, sir.

19 BY MR. GASKINS:

20 Q -- ordinance 156.007, which was handed up to
21 Mr. Prause yesterday and contains the definition of rear
22 yard. Do you see that definition?

23 A Yes, sir.

24 Q Okay. Do you see anything in that definition that
25 says a rear yard cannot back up to a street?

1 A No, I do not.

2 Q Okay. What did you consider to be the rear
3 building setback on this property?

4 A The back of the building, which is that facing
5 Church Street.

6 Q And that is not an interpretation you are giving
7 today, correct?

8 A Correct.

9 Q If you look at your memo that was previously
10 entered into as Exhibit 47, where does -- and look at No. 5.
11 What does that say, No. 5?

12 A Here we are trying to go street by street, and
13 we're talking about item No. 5. It says "rear setback." In
14 parentheses, it says "Church Street."

15 Q Thank you.

16 So, after you got Mr. Prause's interpretation
17 and the new information regarding the ordinance that had
18 just been adopted, what did you do next with regards to
19 pursuing this project and designing it?

20 A Our design team looked at different -- the new
21 ordinance, and created the new building boundary based on
22 the ordinance.

23 Q Okay. And was it your understanding that
24 Mr. Small and Mr. Flesch were also presenting options to the
25 town that would provide some relief and give you some more

1 flexibility on how to maximize spaces?

2 A Yeah. At that time, I believe we created four
3 different studies showing different setback scenarios and
4 different stall width scenarios.

5 Q And did y'all try to get the town to accept 8'6"
6 wide spaces?

7 A I believe that was the intent of those four
8 documents, it's just explaining the two to Mr. Flesch. I
9 gave them to him. It was my understanding that he was using
10 that to talk with the town.

11 Q And was that proposal accepted by the town?

12 A Not to my knowledge.

13 Q Did you try to get a 5-foot setback on Church
14 Street?

15 A That was also part of the exhibits there, no. So,
16 yes, we did try.

17 Q You did try?

18 A Yes.

19 Q And was that proposal accepted by the town?

20 A No.

21 Q And did y'all try to get the project deemed a
22 civic use so that the setbacks and design elements could be
23 decided by planning staff?

24 A That was one of the avenues we were exploring,
25 yes.

1 Q And was that proposal accepted by the town?

2 A No.

3 Q Did y'all try to include on-street parking on Mill
4 Street in the design?

5 A At the -- I think it was the April 11th meeting,
6 or 14th meeting, we talked about that being a way to help
7 mitigate the lost parking, was to add on-street parking on
8 Mill Street.

9 Q Mr. Johnston, we are going to pull up Exhibit
10 number -- well, it's already been introduced into evidence
11 as Plaintiff's Exhibit 45. Maybe you can just look at it on
12 the screen?

13 A Super.

14 Q You recognize this document?

15 A Yes.

16 Q What is it?

17 A This was a preliminary design report submittal.

18 Q Okay. And what's the date of this submittal?

19 A June 11th, 2014.

20 Q Who prepared it?

21 A I did.

22 Q And who was it submitted to?

23 A The town of Mount Pleasant design review board
24 staff.

25 Q And how much --

1 MR. GASKINS: Laura, if you could, please pull out
2 item No. 3 on the left-hand column on the first page.

3 BY MR. GASKINS:

4 Q How many spaces were provided in this submittal?

5 A Total, 289 spaces.

6 Q Okay. And what did those 289 spaces consist of?

7 A They were comprised of 235 parking spaces on the
8 structured parking. We had ten public spaces that were on
9 the angled on-street parking on Mill Street. And we had
10 demonstrated 44 at-grade parking spaces that were outside of
11 the building footprint, but still on the property.

12 Q Okay. And was this submittal prepared and the
13 design included in this submittal based on the zoning
14 interpretations and guidance provided by the town's staff in
15 regards to the setbacks and build-to requirements?

16 A Yes, I believe so.

17 MR. GASKINS: Laura, if you could, please, go to
18 Page 3.

19 BY MR. GASKINS:

20 Q And, again, if you could, looking at this, and
21 I'll help you. I may lead you a little bit just to save a
22 little time.

23 But this is Coleman Street, correct?

24 A Correct.

25 Q Mill Street?

1 A Yes.

2 Q Church Street?

3 A Yes.

4 Q And this would have been Tavern and Table, or
5 maybe its predecessor?

6 A Correct.

7 Q Yeah. And so you had 235 spaces in the structure,
8 correct?

9 A Yes, uh-huh.

10 Q And the structure, that is the line of the
11 structure on Mill Street -- or on Church Street, correct?

12 A Yeah, Church, yes.

13 Q And this shows spaces on the first floor that were
14 actually outside of the structure?

15 A Yes, sir.

16 Q And you did that to maximize the number of spaces?

17 A Yes, sir.

18 Q Okay. Where is the on-street parking that you
19 included in the submittal?

20 A Off of Mill Street, which would be the right-hand
21 side of this page.

22 Q And that would be right here?

23 A Uh-huh. (Indicating affirmatively.) You got a
24 total of ten.

25 Q And where is the additional 44 spaces?

1 A On the left-hand side of the parking structure.

2 Q Okay. And was this your attempt to maximize the
3 number of spaces that could be provided?

4 A Absolutely.

5 Q And was this submittal approved by the town?

6 A It was not, no.

7 Q Okay. You were here for Ms. Farrell's testimony,
8 correct?

9 A Uh-huh. (Indicating affirmatively.) Part of it
10 this morning.

11 Q And did you hear her say that the June 11th
12 submittal, or the June 2014 submittal was approved?

13 A I did.

14 Q Do you think that is accurate?

15 A No, I don't.

16 Q Why not?

17 A We were given a letter of denial.

18 Q And what was -- what is your understanding of the
19 reasons that the town denied this submittal?

20 A There were two primary site objections. One was
21 the on-street parking, as this was an activity zone. I
22 think it was partially determined that parking spaces can't
23 occur within an activity zone, so we were asked to remove
24 the on-street parking on Mill.

25 And then I think the distance between the

1 garage entry and the entry to the surface parking lot to the
2 left, there was a minimum distance required between drives,
3 and this did not demonstrate that.

4 So then we had -- I think that is it, the two
5 primary site objections. And then there was some
6 architectural objections about the garage elevation on
7 Church Street and how it didn't -- it wasn't sensitive
8 enough to the local historic district.

9 Q So that design was rejected, and you had to
10 redesign the project again, correct?

11 A Correct.

12 Q And ultimately, the project was approved by the
13 town planning staff in September of 2014. Does that sound
14 correct to you?

15 A That sounds about right, yes, sir.

16 Q And the final design, as it relates to the number
17 of spaces, was basically what is depicted in the structure,
18 correct?

19 A Relatively.

20 Q Okay. I believe that there -- the final approval
21 reflected 234 spaces?

22 A Correct.

23 Q So you would have lost one space somewhere in the
24 redesign?

25 A Yes.

1 Q And you also lost the ability to provide the
2 on-street parking?

3 A Uh-huh, yes.

4 Q I'm showing you now a picture that has recently or
5 previously been reviewed during this trial, and this is a
6 picture of the building as constructed from close to the
7 corner of Mill and Church, correct?

8 A Yes, sir.

9 Q And you were here for Ms. Farrell's testimony?

10 A Yes, sir.

11 Q Okay. And did you hear her testimony that it
12 would have been very challenging to include some of the
13 design features that were intended to promote pedestrian
14 activity?

15 A I did hear that.

16 Q And she identified some of those things as
17 benches, sidewalk, I forget what else. I don't know if
18 there was anything else.

19 Do you believe that you could have included
20 those features in a design that utilized a 5-foot setback?

21 A The same features that are shown here -- we had a
22 very talented landscape architect, I'm sure she could have
23 come up with something intriguing.

24 Q From when you began working on this project until
25 it got design approval, what was your goal with regards to

1 the number of spaces to include in the garage design?

2 A We were always asked to maximize the number of
3 parking spaces available.

4 Q And who gave you that direction?

5 A Mr. Flesch.

6 Q Did anyone ever tell you not to maximize the
7 number of spaces?

8 A No, sir.

9 Q There's also been a suggestion that additional
10 spaces could have been provided by adding a third level of
11 parking and reducing the office space. And I believe you
12 were asked about that in your deposition.

13 A Yes, sir.

14 Q Do you believe that was a feasible option?

15 A No.

16 Q Why not?

17 A I mentioned previous that the footprint of the
18 building, although it is a big site, for a parking structure
19 it's really -- it's not. It's just the right dimension.

20 We were parking on the incline, the ramp to
21 get from level to level, and to park on that ramp, you have
22 to have a maximum incline. And the distance, believe it or
23 not, front to back of the property lines just perfect for
24 that incline to park upon.

25 So partially parking on the third floor

1 wouldn't be possible. You would need the entire third floor
2 to make the ramp work.

3 Q Mr. Johnston, I don't want to get you in any
4 trouble here, but do you believe the town and its staff was
5 cooperative in trying to maximize the number of spaces that
6 were designed in this project?

7 A I would -- I would say that there would be avenues
8 to be more flexible in, and specifically in this case it
9 would require ordinance change, and that did not happen.

10 Q And they also could have adopted various
11 interpretations, like civic use, rear setback, correct?

12 A Correct.

13 Q And the town was not cooperative in exploring
14 those solutions, was it?

15 A Didn't appear to be.

16 Q Okay. Now, if the town had applied just a 5-foot
17 setback on Church Street, just 5 feet, let's assume nine
18 spaces of -- that are 9 feet wide. How many additional
19 spaces could have been provided in the parking garage?

20 A Sixteen spaces on the second level at 9 feet.

21 Q Okay. And what is your understanding of how many
22 public spaces were included in the final design of the
23 parking garage?

24 A We had 234 spaces available.

25 Q Okay. And of those, how many were required to be

1 used for office use?

2 A Per the ordinance, I think it was 130 was required
3 to be used. If we can go back to maybe that exhibit that
4 had the parking analysis on it, I might be able --

5 Q Okay. We will get that.

6 A It might -- actually the submittal will work,
7 yeah. I can zoom back in.

8 It might be on the next page. But let's try
9 here first.

10 Oh, I know it'll be -- it might be in the
11 text there in the middle of the bottom. It might be in that
12 text, if we even read it.

13 MR. GASKINS: Laura, if you could call that out,
14 please.

15 BY MR. GASKINS:

16 Q Well, in the interest of time, and certainly
17 Plaintiff's counsel can correct me if I am wrong, but it's
18 my understanding that 117 spaces were required for the
19 office use. Does that sound --

20 A I knew it was around a hundred. Maybe if we go
21 back to that first page -- it is not on that page here.

22 And in that -- I think item No. 2 on the
23 left-hand side, or it might be actually three. Three.

24 Q I think there has already been testimony about how
25 many were public in -- of the 234, how many were public and

1 how many were not.

2 So if you add 17 or 16 to 117, how many do
3 you get? Over 232, correct?

4 A Correct.

5 Q Now, if the town had agreed to a 5-foot setback on
6 Church Street, deemed the project a civic use and allowed
7 8'6" wide spaces and on-street parking, do you believe that
8 you could have achieved 276 total spaces?

9 A I think we would have gotten pretty close.

10 Q Pretty close.

11 A Yeah. Like, 270-ish, to 276 might be possible.
12 It is hard to tell because you would have to go through the
13 same process that we did on the building that is built, and
14 that was a year-long design process. So it's kind of hard
15 to say. But I believe we would have gotten near 270.

16 MR. GASKINS: That is all I have at this time.

17 Thank you.

18 THE COURT: Cross examination.

19 MR. PAGLIARINI: Yes, Your Honor. Thank you.

20 CROSS EXAMINATION

21 BY MR. PAGLIARINI:

22 Q Good morning, Mr. Johnston. How are you?

23 A Doing well, sir. Good morning.

24 Q Mr. Johnston, for convenience, there's a binder, I
25 believe to your right, and those are Defendant's exhibits.

1 So if I refer you to the binder and tab, that would be the
2 appropriate book. Okay?

3 A Yes, sir.

4 Q All right. Mr. Johnston, we met in December for
5 your deposition; is that correct?

6 A Correct.

7 Q And at that deposition, you agree that Mr. Gaskins
8 is and was not your attorney; is that correct?

9 A Correct.

10 Q Prior to that deposition, you met with Mr. Gaskins
11 to discuss your testimony and review plans; is that right?

12 A Correct.

13 Q And you did so also before this trial; is that
14 correct?

15 A We did.

16 Q And also after testimony you heard this morning,
17 you met in the hall to discuss further testimony; is that
18 right?

19 A Yes, we discussed.

20 Q Now, Mr. Johnston, you discussed earlier some work
21 you did for the town, but not for any of the prior
22 principals. In fact, your firm, Stubbs Muldrow Herin,
23 entered into a statutory tolling agreement with Shem Creek
24 Development Group about lawsuits related to this garage; is
25 that correct?

1 A Correct.

2 Q And, therefore, you have incentive for the town of
3 Mount Pleasant to pay money to the developer to avoid any
4 further litigation for Stubbs Muldrow; is that correct?

5 A Ask the question again.

6 Q You have entered into a tolling agreement, your
7 firm, with Shem Creek Development Group; is that correct?

8 A We did, yeah.

9 Q And the purpose of that is because there is
10 possible litigation that they can bring against your group;
11 is that right?

12 A That is the purpose of the tolling agreement, as I
13 understand it, yes. But I would also say that there's a
14 threat of litigation in any situation.

15 Q But this one required, or at least was brought to
16 the point where there was a statutory tolling agreement; is
17 that correct?

18 A That is correct, yeah.

19 Q You have previously done work in the town of Mount
20 Pleasant, as you mentioned, correct?

21 A Yes.

22 Q You are familiar with the staff and the zoning
23 requirements and all the like; is that correct?

24 A Our firm is, yes.

25 Q You didn't work on any of the projects within the

1 town?

2 A Correct, I did not.

3 Q And you were retained, at least your firm was
4 retained, sometime in October of 2013; is that correct?

5 A Yes, sir.

6 Q And at that time, I believe, and what you told me,
7 that you were relying on an engineering firm, I believe it
8 was CSC, to provide you information regarding setbacks and
9 town zoning regulations and the like; is that correct?

10 A Yes sir.

11 Q And you specifically said it wasn't your
12 responsibility, it was their responsibility to provide that
13 information to you; is that right?

14 A That is right.

15 Q And you understood at the time that you were
16 retained, that there was still changes that would need to be
17 made regarding the building height in order to fit four
18 floors -- four stories; is that correct?

19 A It's hard to say if I knew it at the time. You
20 said at the time that the agreement was made, but I think
21 shortly thereafter the height was changed, yeah.

22 Q You couldn't have built the project as it is with
23 four stories -- excuse me, you couldn't build it at three
24 stories, you needed four stories to meet your requirements,
25 the requirements that were provided to you; is that correct?

1 A Correct.

2 Q Okay. Well, let's talk about those requirements,
3 sir.

4 If you would, I believe you were retained and
5 there was an execution of a contract; is that correct?

6 A Yes, sir.

7 Q And if you look in that book, on Tab 16, if you
8 can get there, and let me know when you get there.

9 A Uh-huh, yes, sir.

10 Q All right. You're on the first page, and I'd ask
11 you, sir, is this the AIA document that was executed in
12 October of 2013? That was the formal retention of your
13 firm?

14 A This is the first tab on 16? The way I'm seeing
15 this, this is actually an agreement between architect and
16 consultant.

17 Q This is 7th October 2013; is that correct?

18 A The date of the agreement between architect and
19 consultant is October 2013.

20 Q 2013; is that right?

21 A Yes, uh-huh.

22 Q I'm sorry for misspeaking.

23 If I can bring you down to the bottom of that
24 first page, the Shem Creek office building and parking deck.
25 Do you see that section?

1 A I do.

2 Q And it says, "approximately 35,000 square feet of
3 office building shell with associated plus/minus 270-car
4 parking structure located at the intersection of Coleman
5 Boulevard and Mill Street in Mount Pleasant; is that
6 correct?

7 A That is what it reads.

8 Q And so your scope of work was to design an
9 approximately 35,000 square foot office building; is that
10 correct?

11 A Yes.

12 Q And it was a plus or minus 270-car parking
13 structure; is that right?

14 A Yes.

15 Q And the word "structure" is used, correct?

16 A Structured parking, yes, sir.

17 Q Not on-street parking, correct?

18 A Correct.

19 Q Now, your initial contract with the developer was
20 with AVTEX and Red Drum Capital; is that correct?

21 A I believe so. I don't have a copy of it in front
22 of me, but, yes.

23 Q And AVTEX, as I believe you understand, was
24 Mr. Small's company; is that right?

25 A Yes, sir.

1 Q And the contract was later assigned to 101 Coleman
2 Partners; is that right?

3 A That sounds familiar, yes.

4 Q You didn't have a contract with Shem Creek
5 Development?

6 A I don't think, but I don't have a copy of the
7 contract in front of me, but --

8 Q And at the time you began working on the project,
9 it was your understanding that another architect, Mr. Betsch
10 had performed some preliminary work; is that correct?

11 A Yes, sir.

12 Q And as you, I believe, testified you never spoke
13 or engaged in communications with Mr. Betsch, but you were
14 provided perhaps one of his sketches; is that right?

15 A Yes, sir.

16 Q And that is the sketch that showed 276 spaces,
17 right?

18 A I was only given one page, one floor.

19 Q All right. So you couldn't tell what was in
20 there?

21 A Could not.

22 Q But you did scale it off and determine that he was
23 utilizing 8'6" stall widths; is that right?

24 A Yes, sir.

25 Q Let's talk about that because I believe -- I want

1 to understand your testimony that you provided earlier.

2 You said at the very end something related to
3 it would require an ordinance change, and I wasn't sure what
4 you were referring to. Were you referring to the parking
5 stall widths that would require an ordinance change?

6 A That is my understanding of the process. You are
7 really talking about process and making changes to
8 ordinances, but as I understand it they required width that
9 is now current in an ordinance.

10 Q I'm sorry. I didn't hear what you said. You
11 understand now --

12 A The current ordinance, I believe, for parking
13 spaces is 9 feet.

14 Q Right.

15 A So to change that to 9'6" would have required an
16 ordinance.

17 Q To 8'6", I believe.

18 A Either dimension. Anything smaller than 9 feet.

19 Q Do you have any reason to believe that that 9-foot
20 stall width was new or somehow changed any time during the
21 time after you were retained?

22 A No. I don't think it was a question of it being
23 new, I think it was just a question of there are other
24 municipalitites that allow varying widths of parking spaces.

25 Q Well, if you design in any particular

1 municipality, city, or organization, you are designing to
2 the specific legal requirements within that area; is that
3 correct?

4 A Well, yes. But there's parking -- the parking
5 requirements -- absolutely. The parking requirements of the
6 town of Mount Pleasant is the requirements, sure.

7 Q Right. That is their requirement. It was 9 feet.

8 A Correct.

9 Q And you didn't learn that until some April of
10 2014, some six, seven months after you were retained; is
11 that right?

12 A It is not a matter of learning, it is a matter of
13 exploring if it were an option.

14 Q Okay. You mentioned that CSC was providing you
15 memoranda, guidance, and the like on the zoning regulations
16 requirements; is that correct?

17 A Yes, sir.

18 Q Did they send you any memos or any documentation
19 indicating appropriate setbacks or build-to lines on
20 Coleman, Mill, or Church Street when you were retained?

21 A The -- their summary, we talked about it in
22 conversation. I'm not sure if we have a memo per se. I do
23 know in the drawings, one of the ones we just looked at,
24 described those setbacks as part of their documentation on
25 drawings.

1 Q And you indicated that -- well, as part of that,
2 you indicated that you were not sure of what the building
3 height was at that time. They didn't send you anything
4 telling you that the building height restriction was
5 45 feet.

6 A At that time?

7 Q Yes.

8 A I can't recall that.

9 Q Building height is a pretty fundamental element.
10 I'm not an architect, but even I know that building height
11 is pretty important, right?

12 A Uh-huh. (Indicating affirmatively.)

13 Q And they didn't provide you that information.

14 A I can't remember exactly what they provided us. I
15 don't have a memo for that. It appears in sequence in other
16 drawings.

17 Q You mentioned that you have, at least briefly,
18 understood or -- I don't want to mischaracterize what you
19 said, but you never had a copy of the parking license
20 agreement in your file; is that right?

21 A I believe that's correct, yes.

22 Q And you discussed it and understood that
23 Mr. Flesch was concerned about getting to 276 spaces, as you
24 testified earlier; is that right?

25 A Yes.

1 Q Not plus or minus 270 that's in the agreement, but
2 276, right?

3 A In the parking agreement, it was listed as 276.

4 Q And that is what he told you; 276, right?

5 A Uh-huh. (Indicating affirmatively.)

6 Q You were aware at the time you took on the project
7 that it was within the urban corridor overlay district,
8 correct?

9 A Yes, sir.

10 Q And you produced, I believe, an initial design
11 concept for the project for your client in October of 2013;
12 is that right?

13 A I believe.

14 Q Now, I'm asking you, I'm not looking at the book
15 now, I'm going back to the Plaintiff's exhibit,
16 Mr. Gaskins's Exhibit 50.

17 A Uh-huh. (Indicating affirmatively.)

18 Q That document, Exhibit 50, I think you believe
19 said was prepared, or it was sometime in April of 2014; is
20 that right?

21 A Yes, sir.

22 Q Okay. So let's talk about the preliminary plan.

23 We discussed this a while back, but I believe
24 that that concept provided 270 spaces, or approximately 270
25 spaces; is that right? Or do you recollect that?

1 A Did we do the math earlier, and it was 266?

2 Q All right. Well, all right. That is what I'm
3 getting at. Ultimately you provided a preliminary plan that
4 showed 266 spaces within the structure; is that right?

5 A Yes.

6 Q And that is what you provided to the staff in
7 April of 2014, right?

8 A Correct.

9 Q And let's talk about some of the assumptions that
10 you relied on to get 266 spaces. That 266 included use of
11 8'6" width parking stall spaces; is that right?

12 A Yes.

13 Q And also, as you discussed extensively with
14 Mr. Gaskins, it relied on 5-foot setbacks on both Mill and
15 Church Streets, correct?

16 A Yes.

17 Q All right. So your design, making all the
18 assumptions that you felt could maximize the parking spaces
19 in the structure, got you to 266, right?

20 A Correct.

21 Q Now, if you were to use Exhibit 50 and utilize
22 8'6" -- excuse me, 9-foot parking stall widths, but keeping
23 the 5-foot setbacks, that would have brought you to 252
24 spaces, right?

25 A I believe that was one of our studies.

1 Q Yeah. So if you had utilized the ordinance
2 requirement in your preliminary, that would have got you to
3 252. And, again, that is with the assumption of 5-foot
4 setbacks, right?

5 A Correct.

6 Q Now, initially, as we discussed, Mr. Flesch had
7 concern about the preliminary drawing, and it didn't get to
8 276; is that right?

9 A Of course.

10 Q And you just mentioned with Mr. Gaskins that you
11 were doing everything you could and working to try to
12 increase that number; that's correct?

13 A Correct.

14 Q But in either way, under your plan, the most
15 within the structure you could have obtained was 266, right?

16 A Yes.

17 Q All right. And pardon me, because I wanted to
18 pack and read your transcript, and I learned a lot that day,
19 but I think some of which you talked about today got me a
20 little bit confused, so I want to square it away.

21 If you are looking at Exhibit 50, I believe
22 the total, if you add the first floor of 113, plus 119 on
23 the second floor, plus a 24-space ramp, that is how you get
24 to the 266; is that right?

25 A I think it's 34 on the ramp, but, yes.

1 Q Oh, you are correct. It is 34. I think we
2 discussed that day how neither architects nor lawyers were
3 that proficient. So that is probably going to hinder us
4 today.

5 But 266 was the number. And the initial
6 design had two floors of office building sitting on two
7 floors of structured parking garage; is that correct?

8 A Correct.

9 Q And I don't think there is any doubt what you just
10 testified to, that the final design that was approved
11 ultimately had 234 spaces, parking spaces, in the structure;
12 is that correct?

13 A Yes.

14 Q All right. So, now, I'm making an assumption that
15 you are using 9-foot stalls, and so you started at the 252
16 number. If you had your design, Exhibit 50, I think you
17 just testified that if you utilized 9-foot stalls, you start
18 at 252, and ultimately 234 were approved using 9-foot
19 stalls; is that right?

20 A Because of setbacks, yes.

21 Q Correct.

22 A Yes, 234. We went from 252 to 234.

23 Q That is my next question. That 252 to 234, your
24 testimony is that changed because of the setback changes and
25 interpretations and requirements, right?

1 A Correct.

2 Q So 18-space difference is what, in your testimony,
3 those setbacks cost, right?

4 A Yes. That is the difference.

5 Q Yes.

6 A Uh-huh. (Indicating affirmatively.)

7 Q Now, here is where I was a little bit confused.
8 When we discussed this earlier, I believe you said those 16
9 or 17 spaces were cut off on the Church Street side, the
10 Church Street side of the parking garage along the rear on
11 the second floor; is that correct?

12 A Correct.

13 Q But there was no net change to the first floor; is
14 that right?

15 A Right. I don't -- I don't know that without
16 studying the plans.

17 Q All right. Well, you testified, when Mr. Gaskins
18 asked you that it was 16 on the second floor, plus 11 on the
19 first floor -- or excuse me, 17 plus 11, for a total of 28,
20 right?

21 A Right. And the confusion comes just in the
22 process of design. There is some other things that come up,
23 like column locations and whatever. So it's kind of hard to
24 conject, or project, what the future total might be.

25 But using simple math, if you assume that

1 this -- what we were saying, 252 spaces, could translate one
2 for one, then the difference would be 252 minus 34, 17
3 spaces.

4 Q So no matter how you get there, your testimony is
5 that the setback changes, that net was 17 spaces, right?

6 A Right.

7 Q Okay. Fair enough.

8 I want to ask you about the -- and I've used
9 this term, about the width of the building. I think we
10 established it. When I say "width," sir, we're talking
11 about Mill Street to the creek side, right?

12 A Okay.

13 Q Because on the -- I can show you this overhead,
14 this aerial view.

15 MR. PAGLIARINI: Excuse me. May I approach,
16 Your Honor?

17 THE COURT: Yes, sir.

18 MR. PAGLIARINI: All right.

19 BY MR. PAGLIARINI:

20 Q And so if I were to show you this aerial view,
21 this is the subject project, correct?

22 A Yes, sir.

23 Q And Coleman, right?

24 A Uh-huh. (Indicating affirmatively.)

25 Q Mill Street and Church Street, right?

1 A Yes, sir.

2 Q Which is also showing as Ronnie Boals.

3 So you talked a good bit about the activity
4 zone and the requirements along Mill Street, but I believe
5 your testimony is that the width of the building, and if I'm
6 talking about Mill Street to where there was a lease line on
7 this side --

8 A Uh-huh. (Indicating affirmatively.)

9 Q -- your design essentially didn't change from your
10 preliminary until the final; is that right?

11 A It changed, but didn't substantially change.

12 Q All right. Meaning that width, that width
13 designation -- or excuse me, however you define it -- the
14 number of parking spaces was not affected as it relates to
15 the width of the structure; is that right?

16 A You are correct.

17 Q Yeah. So any zoning changes along Mill Street
18 ultimately didn't affect what you could put in the structure
19 as far as parking spaces; is that right?

20 A That is not quite true. We had to move the
21 stairwell and -- I think two stairwells. We had to move
22 interior and the other one we had to move up along Mill
23 Street. And when we moved that one stairwell up along Mill
24 Street to stay out of the activity zone, where that stair
25 landed on the second floor, we had to lose a space.

1 Q One space.

2 A I think so, yeah.

3 Q And the other stairwell related to, if I'm not
4 mistaken, Coleman Boulevard, and there had to be a stairwell
5 moved as a result of that; is that correct?

6 A No. I'm talking about the stairwell closest to
7 the lease line and Church Street.

8 Q So at most, the changes along Mill Street would
9 have resulted in a net one space change; is that right?

10 A I think that's fair to say.

11 Q All right. And let's do the math. If you go 252,
12 plus the 17 along Church Street and the one along Mill
13 Street, that would be an 18-space difference, correct?

14 A That is correct math.

15 Q That is correct?

16 Well, you testified earlier that it was --
17 you thought at least you could achieve a 5-foot setback on
18 Church Street; is that right?

19 A Yes.

20 Q Now, you understand the concept and the difference
21 between a build-to line and a setback line, correct?

22 A Yes.

23 Q You are aware that on a build-to line, which is
24 the 20-foot build-to line along Church Street in the before,
25 it was -- well, it was 20 feet with a possibility of five,

1 right?

2 A Setback.

3 Q Excuse me, setback. I -- setback line in the
4 before, right?

5 A Yes, uh-huh.

6 Q And then the 5-foot option was removed; is that
7 your understanding?

8 A That is correct. In essence, it become a 20-foot
9 setback, yes.

10 Q Now, you testified that you had no knowledge that
11 these changes were taking place and were being discussed at
12 the town council level, right?

13 A That is correct.

14 Q And that would have been CSC's responsibility to
15 tell you that, according to your agreement, which you told
16 me earlier.

17 A As -- we were all part of the project team.

18 Q Right. Well, it would have been your
19 responsibility then? I mean, you testified earlier that CSC
20 was providing --

21 A CSC helped us with the -- with the ordinances,
22 yes.

23 Q So no one from CSC told you that there was
24 anything happening?

25 A Not to my knowledge.

1 Q You mentioned in your testimony there was a -- and
2 I'm referring, sir, to Plaintiff's Exhibit 48. That is not
3 in the book, that is something that Brandon would have
4 provided to you. Do you have that, sir?

5 A Yes, sir, I do.

6 Q And those are the January 20th, 2014 meeting
7 minutes, right?

8 A Yes.

9 Q And that was the meeting with Jeff Ball of the
10 town of Mount Pleasant building department; is that correct?

11 A Yes.

12 Q Now, that was not a meeting to discuss design, was
13 it?

14 A It was to discuss life safety.

15 Q Right. Life safety was the primary purpose of
16 that?

17 A Yes.

18 Q You don't know that Jeff Ball has anything to do
19 with design, do you?

20 A He would not.

21 Q Okay. So mention of an 8'6" parking stall may or
22 may not have resonated with Mr. Ball; is that correct?

23 A Correct. The minutes reflect that, too. Well, it
24 doesn't -- let's see.

25 It doesn't specifically reflect that, but,

1 no, he is a building department guy who is concerned more
2 about life safety and meeting building code requirements.

3 Q Right. So the first time you had any substantive
4 discussion with the town of Mount Pleasant about setback
5 lines, build-to lines, parking stall widths was the
6 April 2014 meeting that's summarized in Exhibit 47, which is
7 your memo of April 14th, correct?

8 A That's right.

9 Yeah, I want to go back to the memo here.
10 And it does say in item No. 5, the parking stall width will
11 be determined by zoning, or zoning staff, not by anybody
12 present at this meeting.

13 Q Right.

14 A Yes. Yep, so the first time we met with planning
15 staff was this next meeting minutes here, Plaintiff's
16 Exhibit 47 on April 14th.

17 Q And that's when you found out about the issues
18 or -- excuse me, the changes in the zoning requirements
19 along Mill Street and/or the surrounding area, I guess is
20 the best way to put it, right?

21 A Uh-huh, yes, sir.

22 Q If I were to tell you that the certificate of
23 occupancy was issued in July of 2017, would you dispute
24 that?

25 A No.

1 Q And let me go back. I just wanted to assert that.
2 Let's go back to the April meeting, and Mr. Gaskins handed
3 you a series of emails between you, or among you and staff.

4 But if you would, I would like to refer you
5 to the big book, and Exhibit 31. Just tell me when you get
6 there, Mr. Johnston.

7 A Yes, sir, I'm here.

8 Q And I think you answered this, but if you're
9 looking at the first page, I think the difference between
10 this exhibit and what you reviewed with Mr. Gaskins was --
11 is that very first email of Wednesday, April 30th, is an
12 email from you to Mr. Flesch; is that correct?

13 A Yes.

14 Q And I think you reiterated what you just testified
15 and say, in the first sentence, it attaches correspondence
16 and it says, "As you know, it followed the only town meeting
17 we had to review the design."

18 So that corroborates the fact that this was
19 your first design meeting, correct?

20 A Yes.

21 Q Now, you testified earlier, I want to move down
22 the page to the email from Mr. Prause, and I want to make
23 sure I understood what you told Mr. Gaskins in the
24 discussion about side street setbacks and rear street
25 setbacks, right?

1 Do you remember that discussion that you had
2 with Mr. Gaskins?

3 A Uh-huh, yes.

4 Q And I think you referenced, I wasn't sure what you
5 said, but if there are two adjoining properties, meaning one
6 property backs up to another property, that is, at least
7 according to Mr. Prause, where the rear setback would apply;
8 is that right?

9 A Well, he didn't say that explicitly. He didn't
10 say adjoining properties or abutting properties.

11 Q Right. But is that your understanding?

12 A When I read this email today, yes.

13 Q And a side street would be a whatever boundary
14 that abuts a street, or a road; is that correct?

15 A A side street --

16 Q If you are going to utilize the side street
17 setback, as opposed to the rear street setback, you would
18 utilize the side street setback when the subject property is
19 bounded by a street; is that correct?

20 A Well, I would question what a side street is. I
21 think that was the --

22 Q That was the issue?

23 A That was the issue, what is a side street? What
24 is a rear street? What is anything that is not Coleman?
25 Coleman was specifically addressed.

1 Q Well, I'm talking about Church Street.

2 A I understand. Coleman was the only one addressed
3 specifically.

4 Q Did CSC ever tell you or indicate to you, or did
5 you get any information from them about whether Church
6 Street was actually a street?

7 A If Church Street was a street?

8 Q Do you have any reason to believe that Church
9 Street did not meet the definition or requirements of a
10 street to utilize a side street setback?

11 A No.

12 Q You don't have any information about that?

13 A I don't think so, no.

14 Q Mr. Prause would certainly be, as the town zoning
15 administrator, qualified to make a decision on that, with
16 that evidence; is that correct?

17 A To determine if it is a street or not? I would
18 think --

19 Q To determine whether the side street setback
20 requirement is applicable.

21 A Well, he did.

22 Q And he did.

23 A He did.

24 Q Right.

25 A I think.

1 Q Now, you mentioned to Mr. Gaskins that there were
2 a series of attempts to try to work and negotiate with the
3 town on issues such as setbacks, stall widths and the like,
4 but you weren't part of those discussions or negotiations;
5 is that correct?

6 A I helped prepare some exhibits.

7 Q Right. You prepared exhibits, but you were not
8 part of any discussions, so you don't know what was said or
9 what was discussed; is that right?

10 A Correct, right.

11 Q Only that you went to submit the plan. Excuse me,
12 you went to a formal submittal in June of 2014; is that
13 correct?

14 A A pre-application submittal or meeting, yes.

15 Q I'm sorry. Let me make sure we are talking about
16 the same thing.

17 The pre-application meeting was in April of
18 2014, and you made a formal submittal in June of that year,
19 as you testified earlier, right?

20 A Correct.

21 Q All right. And that is the June submittal, where
22 there was the on-street parking on Mill Street as well as
23 near the lease line; is that correct?

24 A Correct.

25 Q And that was the substantive change, at least the

1 on-street parking on Mill Street and the outside of the
2 structure near the lease line. That was the part that the
3 town did not -- did not approve; is that right?

4 A And some aesthetic things.

5 Q Right, some aesthetics.

6 A Uh-huh. (Indicating affirmatively.)

7 Q And that was my next question. But within the
8 structure itself, the design of the structure itself, not
9 talking about on-street parking, and other than those
10 aesthetics, the plan was essentially approved from how you
11 designed it.

12 A I can't -- I can't say that, because it was
13 denied.

14 Q I said other than -- well, it was denied for the
15 on-street parking, right?

16 A It was denied. And they gave me in the letter
17 that, I think it was a two-page, three-page letter, but
18 different reasons why it was denied.

19 Q And once you removed the on-street parking, it was
20 approved; is that right?

21 A Once I addressed the comments that were on the
22 letter, it was approved and there were --

23 Q Right. It was ultimately approved, correct?

24 A Ultimately approved, yes.

25 Q Yes.

1 A There were several comments to address.

2 Q That is not unusual when you make a submittal.

3 Have you ever made a major project submittal where there
4 were not comments to address?

5 A Yes.

6 Q In the town of Mount Pleasant you made major
7 project submittals where there were no comments whatsoever?

8 A City of Charleston.

9 Q And for a project as complicated as this, there
10 are typically -- typically -- comments by staff; is that
11 right?

12 A Oh, absolutely, yeah. I'm not saying it doesn't
13 happen. Yes, it's very typical, yeah.

14 Q You were not in charge or responsible for
15 requesting amendments to the zoning ordinances; is that
16 correct?

17 A No, sir.

18 Q You never, at least prior to April of 2014, in the
19 pre-submittal meeting, have reviewed the provisions of town
20 Ordinance 13077 that was enacted in December of 2013; is
21 that correct?

22 A Ask the question again.

23 Q Sure. As of the time of your pre-submittal
24 meeting in April of 2014, you had not reviewed the terms and
25 provisions of town Ordinance 13077 that was approved in

1 December 2013. That is the one with the building height
2 change and some other things.

3 A I would say that we did review it because the
4 building design had a 55-foot height.

5 Q All right. So you did review it?

6 A Uh-huh. (Indicating affirmatively.)

7 Q And you are aware that on Mill Street there were
8 requirements, design requirements, to make it essentially
9 pedestrian friendly; is that right?

10 A I can't recall it specifically, but after today's
11 discussions, yes.

12 Q Yeah. You understood that there, you know, that
13 the features -- that there were additional features,
14 examples such as public art, fountain, bus stop, similar
15 features to promote and maintain pedestrian activity in the
16 activity zone with the arrangement of these features
17 configured so as eliminate any dead space.

18 A Uh-huh. (Indicating affirmatively.)

19 Q And it applied both to commercial and residential
20 properties; is that right?

21 A I believe that is the wording, yes.

22 Q And you testified earlier that that was the
23 design -- excuse me, the landscape architect's
24 responsibility, so you really can't comment on whether that
25 provision would have been achieved or not, except to say she

1 is very talented, right?

2 A She is a part of our design team. We had to have
3 the same message. So hearing her design concept and
4 philosophy carried through, as sometimes I was the
5 spokesman of it -- I was not the author.

6 But I think there is some authority given to
7 state the enhancements. But ultimately it's not my
8 responsibility, it's hers.

9 Q Right. That's all I'm saying. That would be for
10 her to comment on, not you, right?

11 A Her to design to.

12 MR. PAGLIARINI: Mr. Johnston, thank you very much
13 for your patience with me. I very much appreciate your
14 time, and I hope you have a good afternoon.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Any redirect?

17 MR. GASKINS: Yes, very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. GASKINS:

20 Q Mr. Johnston, Mr. Pagliarini asked you about a
21 tolling agreement; do you recall that?

22 A I know of it, yes.

23 Q And that is related to potential claims that may
24 or may not arise at some point in the future, correct?

25 A I understand, yeah.

1 Q And those potential claims do not relate to your
2 individual work; is that your understanding?

3 A That is my understanding.

4 Q It doesn't relate to the quality or alleged work
5 deficiencies of any work performed by Stubbs or SMHA,
6 correct?

7 A That's my understanding, yes.

8 Q That lawsuit relates to activities undertaken by
9 the structural engineer on the project, correct?

10 A Yes, who was a consultant.

11 Q And what is your understanding of what those
12 activities were that may get brought up in a lawsuit at a
13 later occasion?

14 A There was an employee of our structural engineer,
15 Jim Owens. Mr. Owens. He -- how do I say this. He --

16 Q Mr. Owens had access to information related to
17 this project, correct?

18 A That's the thought, yeah.

19 Q And he accessed that information, correct?

20 A No, I don't know if he did or didn't.

21 Q Okay. But as a result of his actions, he was
22 terminated by ADC; that's your understanding?

23 A Correct, yes.

24 Q And so whatever potential claims relate to
25 Mr. Owens and whatever he did, correct?

1 A Say that one more time. I'm sorry.

2 Q It's your understanding that whatever claims exist
3 are related to Mr. Owens and whatever he did with the
4 information he had access to.

5 A Right, if he had access.

6 Q And, of course, we have met a number of times.
7 Have I ever asked you to do anything other than tell the
8 truth?

9 A No, you have not.

10 Q And if I did, what would you do?

11 A I would tell the truth.

12 Q And you were sworn under oath today. You have not
13 told anything but the truth; is that correct?

14 A To the best of my ability, yes.

15 Q You were asked a question about the width of the
16 building and none of that changed. And I think your answer
17 was, it didn't change.

18 A Substantially.

19 Q Yes. And isn't it true that it didn't change
20 substantially because the owner of the project was able to
21 acquire additional property and basically shift the project
22 over?

23 A Say that one more time.

24 Q The project, as it was designed, was basically
25 shifted over, and the developer had to acquire additional

1 property to accommodate that; is that your understanding?

2 A No, that is not my understanding.

3 Q Okay. Now, there is -- Mr. Pagliarini asked you
4 about the certificate of occupancy.

5 A Uh-huh. (Indicating affirmatively.)

6 Q Do you remember when construction began?

7 A Construction began, I think it was April of 2016.
8 We had a foundation permit submittal that was in February, I
9 believe, and we addressed those comments in March. And I
10 believe we got approval in April. It might have been May.

11 Q Regardless of what setbacks applied, what setbacks
12 changed, what build-to lines applied and what changed, space
13 dimensions, what was your goal?

14 A To maximize the number of parking spaces that we
15 could get on that site.

16 Q And did you attempt to do that?

17 A Every -- every inch.

18 MR. GASKINS: Thank you. That is all I have.

19 THE COURT: Thank you, sir. You may step down.

20 Mr. Gaskins, do you plan on calling any other
21 witnesses?

22 MR. GASKINS: Your Honor, that is our last witness
23 before we rest.

24 Yesterday we showed some videos of town council
25 meetings. I never identified that by exhibit number.

2-6-2020 PROCEEDINGS

1 But what we have here, I'd like to admit into evidence
2 as Plaintiff's Exhibit 18. It's a flash drive
3 containing those video recordings, subject to
4 Mr. Pagliarini's objections.

5 *(Whereupon, Plaintiff's Exhibit No(s). 18 marked*
6 *for identification and received in evidence.)*

7 MR. PAGLIARINI: Right, Your Honor. We put our
8 objection on the record at the time. I would just ask
9 that that be considered.

10 THE COURT: Yes, sir.

11 And speaking of all the exhibits, I was trying to
12 keep up, although they jumped around a little bit with
13 the exhibit numbers. So before we go on, I want to
14 make sure that we have everything.

15 I think all the objections were handled, but I
16 just want to make sure to coordinate with the court
17 reporter to make sure everything is in that you
18 intended to put in.

19 MR. GASKINS: Yes, ma'am. We discussed that this
20 morning, and she's got her list and we have a
21 corresponding list of ours, so we should be able to
22 determine pretty quickly if there is anything that was
23 not admitted that we intended to.

24 THE COURT: Counsel, are you intending on calling
25 any witnesses?

2-6-2020 PROCEEDINGS

1 MR. PAGLIARINI: Your Honor, we have one, which is
2 a reading in of some testimony from Mr. Betsch. I
3 don't believe it should take more than 20 to 25
4 minutes, and we will have to discuss about calling
5 Mr. Morrison, who is the town's transportation
6 engineer, about the setback issue.

7 I don't believe he would take more than 20 or 30
8 minutes, either. So I don't believe we will need to
9 recall any witnesses at this point. So we just would
10 also like to put up some motions on the record
11 following the Plaintiff's case, but I think that would
12 be it.

13 THE COURT: Sure. And I don't mean to rush
14 anyone. I'm getting all these e-blasts and emails
15 about the potential weather this afternoon. I think
16 that it's supposed to start around 2:30, 3:00. So I
17 want to kind of push through as much as we can so we
18 can get everyone home safely, if there is inclement
19 weather.

20 Do y'all want to take, like, a quick break and
21 grab up a protein bar or something, or you just want to
22 push though?

23 MR. PAGLIARINI: We're fine either way,
24 Your Honor.

25 MR. GASKINS: We will defer to the Court.

2-6-2020 PROCEEDINGS

1 MR. PAGLIARINI: All I would ask is if we can have
2 five minutes right now?

3 THE COURT: Sure. Sure, and as far as the
4 testimony you want to read into the record, if you just
5 want to identify that to the Court and submit it, so we
6 don't take that time? Or do you need --

7 MR. PAGLIARINI: If that is the Court's wish.

8 THE COURT: That just might simplify it. I mean,
9 I'm happy to hear it, but trying to kind of cut down on
10 time a little bit.

11 MR. GASKINS: I think that everybody would be
12 thankful with that option.

13 THE COURT: I'll leave it in your discretion, that
14 is just an option for you to consider.

15 MR. PAGLIARINI: Okay. So let's assume that. I
16 didn't hear it, but if we take five minutes now, that
17 should give us the opportunity to discuss that.

18 THE COURT: Sure. All right. We'll take a brief
19 recess.

20 (Recess.)

21 THE COURT: A couple housekeeping matters, as far
22 as the exhibits are concerned. Obviously the Chief
23 Justice allowed me to hold this matter here in the
24 preferred jurisdiction. But I'm sure Ms. Bostick
25 doesn't want to keep your exhibits. They should be in

2-6-2020 PROCEEDINGS

1 be Charleston County.

2 So I think the best way to handle that is if y'all
3 could agree amongst yourselves to have them sealed and
4 delivered to the Charleston County Clerk of Court, I'll
5 let y'all work that issue out. But I certainly don't
6 want to be responsible for that, so I'll put y'all in
7 charge of that.

8 Any objection to that?

9 MR. GASKINS: No, Your Honor. We can do that.

10 MR. PAGLIARINI: No objection.

11 THE COURT: All right. Parties ready?

12 MR. GASKINS: Yes, Your Honor.

13 Before we move on to the Defendant's case, we were
14 able to confer with the court reporter, and there
15 appear to be four exhibits that may not have been moved
16 into evidence, and in an abundance of caution, we would
17 like to put on the record that we are moving to admit
18 Plaintiff's Exhibit 50 and Plaintiff's Exhibit 53, and
19 I understand Mr. Pagliarini has no objection to those.

20 MR. PAGLIARINI: Right. No objection to 50 and
21 53, Your Honor.

22 *(Whereupon, Plaintiff's Exhibit No(s). 50, 53*
23 *marked for identification and received in evidence.)*

24 MR. GASKINS: And then also, we are moving to
25 admit Plaintiff's Exhibit 35 and Plaintiff's Exhibit

2-6-2020 PROCEEDINGS

1 No. 11. These were related to and discussed during
2 DeMoura's testimony. I believe, Mr. Pagliarini raised
3 objections at the time, but I believe he wants to
4 restate it for the record.

5 MR. PAGLIARINI: Right, Your Honor. We raised
6 contemporaneous objections to these exhibits, and we
7 would just reiterate same.

8 *(Whereupon, Plaintiff's Exhibit No(s). 35, 11*
9 *marked for identification and received in evidence.)*

10 THE COURT: All right. So the same ruling
11 applies, and they are in.

12 MR. PAGLIARINI: Your Honor, if we could do this
13 now and get these in before the Plaintiff rests, we did
14 move during the last witness to move all of our
15 exhibits, which are in the book, Exhibits 1 through 34
16 into evidence with the exception of the parking license
17 agreement, which will rely on Plaintiff's Exhibit 7.

18 I believe we moved all those in without objection,
19 so I don't need to do it again. But I just want to
20 clarify for the record that we've done that, and we
21 won't need to do that at a later time, unless we have
22 additional exhibits in our case.

23 THE COURT: All right. And then while we are on
24 the issue of exhibits, of course, I have got your
25 notebook. And, Counsel, you have handed had me a stack

2-6-2020 PROCEEDINGS

1 of documents at the beginning, but I don't know if your
2 exhibits are contained with the correct numbers in
3 there.

4 So what I'll ask you to do, so that I have your
5 exhibits in there, just supply me with a list that they
6 correspond with something that's in the notebook tab,
7 or supply me with a copy of your exhibits.

8 Old school, I prefer a hard copy, and you can just
9 submit it in that format to my clerk as well.

10 MR. GASKINS: Yes, Your Honor. We will be glad to
11 do that.

12 THE COURT: So at this time, does the Plaintiff
13 rest?

14 MR. GASKINS: The Plaintiff rests.

15 THE COURT: And Mister --

16 MR. PAGLIARINI: Your Honor, we do, and just
17 briefly we discussed some matters. We'd like to put
18 our directed verdict and motions on the record. That
19 will take a little bit of time. We are certainly
20 agreeable to Witness Betsch, the parties that
21 designated from his deposition transcription, and we
22 are just happy to submit those to the Court for review
23 without having to go through that process.

24 And then we will call Mr. Morrison, who, again,
25 his famous words, should be the shortest witness, not

2-6-2020 PROCEEDINGS

1 height wise, but the shortest witness in this case.

2 THE COURT: All right. So thank you. Go ahead
3 and put your directed verdict motion on the record.

4 MR. PAGLIARINI: Yes, ma'am. Mr. Tackett will
5 handle that.

6 MR. TACKETT: Your Honor, Claude Tackett for the
7 town of Mount Pleasant. May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 MR. TACKETT: This is really the motion and
10 Supplemental Memorandum in support of our involuntary
11 dismissal on the Rule 41 entry of Judgment No. 52. We
12 haven't filed this yet, but we will be filing it today.

13 If I may proceed, Your Honor.

14 THE COURT: Yes, sir.

15 MR. TACKETT: It is our, as we opened with
16 discussions of our Motion for Summary Judgment, Judge,
17 we, the town, takes the position in the case, is the
18 same in that this is the interpretation of a clear,
19 unambiguous contract.

20 I think that the past 3½ days demonstrates we have
21 parties after the fact talking about what the terms of
22 the contract mean, and what that looks like, and we,
23 again, take the position the contract is clear,
24 unambiguous, and I believe the Court can ascertain that
25 from the four corners of the contract.

2-6-2020 PROCEEDINGS

1 Plaintiff's counsel has said a few times,
2 especially around the trial, that the fact the
3 Plaintiff has a different interpretation of the
4 contract indicates that there's ambiguity, something to
5 that effect.

6 I just want to cite a few points of the law on
7 this idea of ambiguity, and what South Carolina law is.

8 "Only if the document itself creates ambiguity
9 should a Court look to outside evidence to aid
10 interpretation." That is Laser Supply, 382 South
11 Carolina 326.

12 Another -- same case also says, "Interpretation of
13 a contract is governed by the objective manifestation
14 of the parties as sent at the time the contract was
15 made, rather than the subjective after-the-fact,
16 meaning one party assigns to it."

17 And one of my favorites, this is from actually a
18 case that Plaintiffs cited in one of their -- I think
19 in their memorandum in objecting to, or in response to
20 our Motion for Summary Judgment. And this is the
21 Reserve at Woodstock, this versus City of Woodstock
22 case, it's cited 958 NE2d 1100.

23 And this is what the quote from that case that
24 Plaintiff cites: "The contract is not ambiguous merely
25 because the parties disagree on its meaning. Ambiguity

2-6-2020 PROCEEDINGS

1 is where language is obscure in meaning through
2 indefiniteness of expression."

3 And so we don't think, neither under South
4 Carolina law nor -- nor the outside jurisdiction that I
5 just quoted. The Illinois appellate court would say
6 that this is an unclear, ambiguous contract, meaning
7 it's clear -- the four corners tell us what it means.

8 I'm going to look at a few, a few -- I think the
9 last 3½ days, there's been some lack of clarity cast
10 over some provisions that I think are important to
11 point out.

12 Section 105 of the contract: "Project consists"
13 -- again, this definition is used throughout --
14 "consists of a multilevel structured parking garage
15 comprised of 276 total parking spaces," per -- got the
16 rendering attached thereto many times.

17 106 is important, and this is because we've heard
18 repeatedly this idea that the town could, should have
19 accepted outside parking spaces, spaces outside the
20 garage to count for this total.

21 I think 106, and we'll talk about the other
22 sections, talk about that altogether.

23 But Section 106 says, and this is titled,
24 Premises, which is important. "The portion of the
25 property comprising 132 of the 276 total parking spaces

2-6-2020 PROCEEDINGS

1 planned for the project, those are called the public
2 spaces."

3 "The remaining 144 spaces are referred to herein
4 as the reserved spaces, and the public spaces and
5 reserved spaces are collectively herein the parking
6 spaces."

7 All right. That's pretty -- again, that's plain
8 and unambiguous. And here's what it says: "The
9 parking spaces, along with the parking garage building
10 in which they are located" -- that tells us, those
11 spaces, all the parking spaces are going to be located
12 in the garage "shall comprise the parking garage," more
13 particularly described at Exhibit A.

14 Again, it's clear and ambiguous, Your Honor, that
15 276 is 276, and it is inside the garage per the clear
16 meaning of the -- of the contract.

17 Now, we did proffer some evidence, Judge. There
18 was a lot of parole evidence that came in. If Your
19 Honor decides that it's ambiguous about what 276 means,
20 we think there's some evidence. And, again, we're not
21 weighing that objection. I want to be very clear, but
22 we think it's important to let Your Honor know the
23 extent to which, if you allow parole evidence, you
24 consider parole evidence, there's some parole evidence
25 that's very favorable to our position.

2-6-2020 PROCEEDINGS

1 Plaintiff's Exhibit 3 was a memo prepared by
2 Mr. Eric DeMoura. You heard Mr. DeMoura testify
3 Tuesday and yesterday, it listed very specifically 276
4 spaces. That is not qualified at all in that memo.

5 It indicates that the parties negotiate that rent
6 number. It indicates what the Plaintiffs initiated and
7 what the town agreed to.

8 But it goes on to specifically calculate a per
9 space calculation. How much does it cost per space for
10 us? If we are going to have 276 spaces, and it costs
11 us this much, how much does it cost per space?

12 We would say that evidence is indicative of
13 intent. And that's contemporary, that's at the time
14 that the parties were negotiating during, not
15 after-the-fact. Indicative of the town's thought on
16 that, that it is exactly 276 spaces.

17 Now, for 3½ days, you have heard the question many
18 times, it's been asked of Plaintiff's witnesses, it's
19 been asked -- well, they are all Plaintiff's witnesses,
20 and the town's employees, this idea with they never
21 submitted you an analysis. They never gave you a study
22 indicating they needed 276. But we had something far
23 better. It's far better than an analysis or a study,
24 we had a promise.

25 We didn't need an analysis, we didn't need a

2-6-2020 PROCEEDINGS

1 study. We had a promise from the Plaintiffs.

2 Now, they questioned our clients, multiple of our
3 employees about Mr. Small, what a man of integrity,
4 honor he is. We believe that. And I'm not saying that
5 that takes away from that.

6 And we have lots of experience with Mr. Small.
7 And Mr. Small promised us 276. We believed him. It's
8 simple as that. We didn't need a study. We didn't
9 need a study to tell us that we had to have 276. We
10 didn't have to prove that to Mr. Small. He came to us,
11 he said, "I can do 276."

12 And the town entered that based on that promise.
13 It's that simple.

14 The contract is clear. Certain number of spaces
15 per -- per a certain number of rent. The rent did not
16 vary, nor did the space.

17 Now, I want to talk about, a little bit about the
18 Plaintiff's interpretation under 2.02. It says
19 licensure, that is Plaintiff, at a sole cost and
20 expense shall construct the proposed project as if it's
21 been defined in a form, talked about that, form as
22 opposed to a number substantially similar to the
23 conceptual drawings, attached hereto is Exhibit B.

24 Now, I said in my argument on Motion for Summary
25 Judgment that I think Exhibit B is a scrivener's error

2-6-2020 PROCEEDINGS

1 and Mr. Gaskins sort of objected to that.

2 But one thing we haven't spoken about, what is
3 Exhibit B to this agreement? Exhibit B, Judge, is --
4 there is none in Exhibit B. The reason I say it's a
5 scrivener's error, if you look at Exhibit B, the very
6 last page, Page 13 of the agreement, it's the fixed
7 amount of rent. It's the rent schedule. It's the rent
8 schedule.

9 Exhibit B doesn't refer to any drawings, and I
10 promise you, if Plaintiff had any other drawings or if
11 there were any other concepts that were attached to
12 this, we would have seen it. It hasn't come here.
13 There was one conceptual rendering, that is the
14 renderings attached to Exhibit A. The only other
15 exhibit to this is the rent provision, the rent
16 schedule, at Exhibit B.

17 Now, another -- another rule of interpretation is,
18 and it's this: The rule -- "An interpretation which
19 establishes the more reasonable and probable agreement
20 of the parties should be adopted, while interpretation
21 leading to an absurd result should be avoided."

22 That is Community Fairs, that's 379 South Carolina
23 141.

24 So what's the simple discussion? We agree to pay
25 a fixed amount of rent for 276 spaces. We argue it's

2-6-2020 PROCEEDINGS

1 absurd. It's absurd to say that the town agreed. And,
2 again, we know what they are saying, substantially
3 similar means, substantially similar means 234 spaces.
4 They're saying 234 is substantially similar to 276.

5 We absolutely think that is absurd. Under the
6 law, that is an absurd result. When it is a matter of
7 law, you can say that is not substantially similar.

8 It is absurd to believe that we would have entered
9 that contract to pay a fixed amount of rent for
10 84.7 percent of the total spaces. I think that would
11 be an absurd -- that interpretation would lead to that
12 absurd result.

13 Mr. Gaskins talked a lot about the Plaintiff's
14 breach not being material. Our point is that in order
15 for their breach of contract claim to survive, they got
16 to prove they were able to perform. And we say, no,
17 you were not able to perform. You breached a material
18 term of the agreement.

19 Their next argument not only is their -- so first
20 argument is well, really, the 234 is substantially
21 similar, and so you can enforce the contract. Their
22 next argument is, well, if we breached, it was not a
23 material breach.

24 Now, I don't say it's self-evident that providing
25 only 84.7 percent of the promise of the man is a

2-6-2020 PROCEEDINGS

1 material breach. But let's, for argument sake, let's
2 consider their Kiriakides case that they talked about.

3 Now, again, as I mentioned in my initial
4 argument, Kiriakides is distinguishable, it's a very
5 minor breach, and the Court was trying to avoid the
6 absurd interpretation of the ejectment statute.

7 Well, let's apply the factors. Let's apply the
8 factors from Kiriakides.

9 Factor A, is we're going to be deprived of
10 15 percent of the spaces we bargained for, that were
11 promised in the space.

12 But not only do we lose that, we lose the
13 guarantee that those spaces are set aside. Now, they
14 spent a lot of time at trial trying to convince the
15 Court, the town still is getting all these benefits.
16 The still got spaces there. Public still can use them.
17 Mr. Flesch cited 155,000 people have used the garage.

18 There is a couple of problems with that. Again,
19 we didn't have to prove benefit. They got to prove
20 that they can provide us, they can give us 276 spaces.

21 We lost 15 percent of those, but we also lose the
22 guarantee that those are set aside for the public.

23 They have to conform to zoning regulations. Okay? And
24 the zoning regulations, we talked about it, do require
25 them to require so many of those spaces for the public.

2-6-2020 PROCEEDINGS

1 But today, as we sit here, they are free to lease
2 those spaces, use those spaces for whatever. We don't
3 have the promise that all of those spaces are being
4 used for the public, and I don't think that they would
5 say that they are willing to say that promise applies
6 today.

7 Again, there are certain rules they got to cause
8 or keep a certain number available to the public. But
9 we lost 84.7 percent -- or we lost 15 percent of the
10 spaces, and we lost the benefit of that promise.

11 Section B, can the town be adequately compensated?
12 Again, how can we be compensated for a 15 percent loss
13 in spaces? We can't be. They are lost for the
14 entirety of the 30-yr term.

15 So we lose those spaces every year for a 30-year
16 term. There's no way to compensate us for that, and
17 they are going to tell you, they're going to argue a
18 lot about what kind of damages we can recover. I think
19 they will tell you, there's no provision in this
20 agreement that will allow us to sue them for breach for
21 reduction in the number of parking spaces. We would
22 say they absolutely cannot be adequately compensated.

23 The third factor is forfeiture to the extent to
24 which the breaching party suffered forfeiture.

25 Yes, they'll suffer forfeiture of the contract.

2-6-2020 PROCEEDINGS

1 But they also had an opportunity to talk to us, and
2 they had an opportunity to walk away. They chose not
3 to.

4 Why? Why did they choose not to? Because this is
5 a widely successful project. Mr. Flesch very
6 passionately spoke toward how successful this project
7 is. They felt, apparently at the time, why would we
8 walk away from what we think is going to be a good
9 project, even if the town doesn't participate?

10 They have got a great project that is obviously
11 doing well and providing parking spaces. And also,
12 they have got commercial, grade A commercial space.
13 It's is doing well.

14 And so why they do suffer forfeiture of what the
15 town is going to pay, they had the opportunity to walk
16 away from that and they realized they couldn't provide
17 it per the terms of the contract.

18 The fourth factor is the extent to which the party
19 can cure its breach. The Plaintiff can't cure its
20 breach, they can't give us those 42 spaces back, so
21 they can't do that.

22 The last factor is the good faith in fair dealing.
23 Now, you've heard a lot about the -- one of the things
24 they make much hay of, all these employees they talked
25 to, they said repeatedly, why didn't you call us and

2-6-2020 PROCEEDINGS

1 tell us there was trouble? Why didn't you call and
2 tell us that you were going to amend the zoning
3 ordinance?

4 You heard Mr. Johnston testify, just in the last
5 couple of hours, he was -- so the parking license
6 agreement was entered in October of 2013. Mr. Johnston
7 was retained that month, that month, and prepared a
8 conceptual drawing. And he learned that month, when he
9 prepared it, he couldn't provide 276.

10 He testified that Mr. Flesch was upset about that.
11 I would say the Golden Rule applies. If you are going
12 to hold us to the expectation, then we should have been
13 calling, we are partners, we're partners, we should
14 have been calling, why didn't they call us and say,
15 hey, we just realized that we can't do 276? We can't
16 do it.

17 Now, here's why that's important, the timing
18 that's important, Judge. We still haven't even done
19 the amendments yet. The amendments are still in
20 process, they still can't technically build the garage.
21 They need to get the -- they need council, who they say
22 they are getting cooperation from them at the time.
23 Council is getting ready to pass amendments, we know
24 that on hindsight. They're getting ready to pass
25 amendments to help them build this garage.

2-6-2020 PROCEEDINGS

1 What would a call in October saying that we can't
2 do it, we've overestimated on our numbers, we can't do
3 it, what might a call like that had of done?

4 I think if you hold them to their same standard,
5 this fifth factor is did they exercise good faith, I
6 think there is an argument to be made. If you use
7 their standard, they didn't exercise good faith not
8 letting us know that they weren't going to be able to
9 provide those spaces.

10 Their next argument, Judge, is that so we -- we
11 argue even under the Kiriakides that there was a
12 material breach. But, again, we think it's
13 self-evident. We think it's self-evident that they
14 did, in fact, have a material breach.

15 Their next argument is that we prevented them from
16 performing the contract. All right. So the law says,
17 you can't -- a defaulting party can't claim breach if
18 they prevented the other party from performing. That
19 is what they are arguing, we prevented them from
20 performing. All right.

21 Now, again, we are not questioning Mr. Small's
22 integrity in those discussions, those negotiations in
23 2013. Let's assume he was sincere, for argument sake.
24 But they were sincerely wrong. They could not provide
25 276 spaces. They never could. Never.

2-6-2020 PROCEEDINGS

1 And they have shown you nowhere to-date they
2 could. Their best estimates, they could never provide
3 276.

4 Now, Mr. Farrell corrected this and helped orient
5 this drawing. All right. So admitted to evidence --
6 now, here is what they have testified to, Judge, is
7 that they relied on one thing.

8 And what's confusing about the last couple of days
9 is, is it makes us think about what was happening in
10 April 2014. But what's important, and what Plaintiffs
11 have testified to, what they relied upon to promise
12 276, was Mr. Betsch's rendering. That's what they told
13 us multiple times.

14 Now, let's look at that. Why did that lead to
15 mistakes? You heard Mr. Johnston say this is a really
16 tight piece of property. We got to be really careful,
17 it's just big enough for a garage.

18 Now, let's look at the mistakes Mr. Betsch made in
19 estimating 276.

20 Here is the garage property. One of the things
21 they don't talk about is Coleman Boulevard. Okay. So
22 this is Coleman Boulevard, Mr. Betsch's concept
23 assumed, and I mentioned this in my argument for Motion
24 for Summary Judgment, assumed zero lot lines. He took
25 the building to the property line in all directions.

2-6-2020 PROCEEDINGS

1 Okay. And you've heard lots of testimony, what were
2 the actual setbacks? What were the -- what could the
3 footprint actually be?

4 Coleman Boulevard, at all times relevant to this
5 discussion, was a 20- to 30-foot build-to line. Okay.
6 Mr. Betsch drew it all the way to the property line.

7 So out of the gate, first mistake that he made --
8 and, again, this is estimating, this is estimating the
9 number that we are going to use to rely on to enter a
10 contract. He missed his Coleman Boulevard by 20 feet.
11 No one can dispute that. He misses by 20 feet.

12 Now, you've heard testimony, how much are the
13 parking spaces? Mr. Johnston testified about the
14 impact of what Church Street did. Imagine if you lose,
15 all of a sudden, this building line on Coleman
16 Boulevard is now 20 feet closer than what Mr. Betsch
17 said it would be. Our spaces are 9 x 18, that's an
18 entire row of spaces, on at least one level. That's an
19 entire row of spaces gone. So those are spaces that
20 he's overestimated. All right.

21 Now, let's look at he also overestimates, we know,
22 on Mill Street and Church Street. And obviously,
23 Judge, I recognize that there is a dispute about what
24 Plaintiffs should have had the benefit of. And we will
25 talk about that.

2-6-2020 PROCEEDINGS

1 But here is what we know for certain. For
2 certain, Mill Street had 20-foot setback. When he
3 prepared this conceptual rendering, it had a 20-foot
4 setback with the possibility that he could get it to
5 five. And we disagreed about whether they could do
6 that.

7 When you get to Church Street, same thing. It was
8 a 20-foot setback. In each of those directions, Judge,
9 he was wrong by 20 feet. By 20 feet, he was wrong.

10 Mr. Johnston, again, testified to the impact of
11 being off that much. He didn't -- he wasn't presuming
12 a 5-foot setback, he was presuming zero. No setback in
13 those. So now, we go from zero setbacks, you got the
14 setbacks actually have to apply.

15 Now, let's talk about Mr. Johnston's estimates.
16 There is a lot of discussion about how wide our parking
17 spaces should be. There is no dispute, Judge,
18 whatsoever.

19 From the beginning to today, 9 feet spaces are
20 required in the town of Mount Pleasant. That is not up
21 for dispute. But you know what the argument is? The
22 argument is that we are arcane, we aren't smart enough
23 to do what Charleston and Charlotte and Columbia do,
24 and do narrower spaces. Well, if you parked in that
25 garage, I have parked in that garage multiple times,

2-6-2020 PROCEEDINGS

1 those 9-foot spaces are pretty nice.

2 And the town of Mount Pleasant has decided after
3 thoughtful deliberation, that there is going to be
4 9-foot spaces in the town of Mount Pleasant. It is
5 their prerogative to do so. The Plaintiff was wrong.

6 Now, it's interesting, Mr. Betsch says, or
7 Mr. Johnston just said, because Mr. Betsch drew his
8 8'6", I drew mine at 8'6". That doesn't make either
9 one of them right. It's another estimate where they
10 were wrong.

11 And how much do we know that that impacted the
12 garage? If you use their own numbers, just that
13 estimate alone, Mr. -- Mr. Johnston testified that his
14 estimate that he gave, or his plans that he gave to the
15 staff in April 2014 had 266 spaces. Okay.

16 Yet, but that assumed 8'6" parking space width.
17 All right. He then admits, he admitted on the stand,
18 if you reduced that to what the town required, now
19 again, this is Plaintiff's best day. This is their
20 best estimate. This is them being successful in
21 getting the setbacks they want on Mill Street and
22 Church Street, but they got to comply with our parking
23 space width.

24 The biggest number they could get was 252. That's
25 the biggest they could get to, 252 parking spaces. He

2-6-2020 PROCEEDINGS

1 just testified to that. And there's no argument
2 throughout that our parking space width was anything
3 other -- anything other than that. All right. So they
4 were wrong.

5 They also made -- I would say we didn't prevent
6 them from performing because they made some bad
7 assumptions. And we are going to disagree about this.
8 I get it.

9 When you hear Mr. Johnston just testify this is a
10 tight spot, it is going to be difficult, we got to
11 squeeze every space we can out of it, an accurate
12 estimate is pretty important.

13 Because every little bit makes a difference. So
14 they make some assumptions. They make the
15 assumption -- they make the assumption that they were
16 going to be entitled to 5-foot setbacks on Mill Street
17 and Church Street.

18 Well, let's eliminate Mill Street. Mill Street,
19 the difference that they had, Mr. Johnston just
20 testified to. The difference that Mill Street made, in
21 the number of parking spaces they could provide, was
22 one parking space. That's assuming you grant them that
23 they were somehow owed that space. But that is the
24 only difference it made.

25 Then they assumed they were going to get a 5-foot

2-6-2020 PROCEEDINGS

1 setback on Church Street. He testified that that was
2 17 spaces. I think the total, he says, that we cost
3 him was 18 spaces. So their best day, with the proper
4 parking spaces was 252, you subtract 18 that he said
5 our zoning amendments caused, that is how you get to
6 234.

7 But they forgot something. They forgot the
8 promises that were made in July and August in letters,
9 the new requirements in the December ordinance. Again,
10 their assumptions did not take into account -- I'm not
11 saying those are necessarily in bad faith, I think they
12 were just bad assumptions.

13 They didn't take into account what the
14 requirements were for garages, they eliminated flood
15 proofing on the ground floor. They didn't take those
16 into account. They made inaccurate assumptions.

17 The 5-foot setback is very plain. Here's what the
18 testimony was. The testimony was you had to make these
19 three requirements. Mr. Johnston just said, I don't
20 know if we could have gotten it or not, because we have
21 to consider these requirements from the December
22 amendments, and had to talk to the landscape person and
23 see if we could get a 5-foot setback.

24 That is what he testified to. I don't know if we
25 could get it or not. But it is a "may", it is not a

2-6-2020 PROCEEDINGS

1 command.

2 Even if they meet those requirements, it's not
3 certain that they will get them, and it still has to go
4 through the design review process. You heard them talk
5 about some of their problems, their solutions were
6 aesthetics and things like that. Design review process
7 is going to take all those things in to consider. That
8 5-foot setback is not -- you might make it, you might
9 make that assumption for an estimate, but you certainly
10 don't enter into a contract based on an assumption that
11 may -- that's just a possibility.

12 All right. So they talk about there's been a lot
13 of discussion about our good faith and fair dealing,
14 and I want to walk through these, and I'll walk through
15 these as quickly as I can, Judge.

16 So in their complaint, and they've talked a lot
17 about in the trial about the adoption of 2014
18 amendments. Your Honor has heard about those much more
19 than you would like to, I'm sure, at this point.

20 Their position is that when we were considering
21 those, one, we should have given them a call. I don't
22 know beyond that what their -- I mean, what does a call
23 do? Does a call mean that the amendments don't happen?
24 Let's say we did call them. Does that mean that
25 Mr. Flesch, or Mr. Small are going to convince town

2-6-2020 PROCEEDINGS

1 council not to enact those amendments? There is no
2 demonstration that a phone call will do anything. We
3 don't think we are obligated to.

4 They said plainly that there was nothing illegal
5 about those amendments. Nothing. There's nothing
6 illegal about those amendments. And the way that a
7 developer or landowner protects itself, if you don't
8 want zoning changes to impact your property, there's
9 one way to do it. Our state legislature has given a
10 way to do that, and that is the vested rights statute.
11 There is a way to protect yourself.

12 And the town of Mount Pleasant has adopted that in
13 the form of its own vested rights statute.
14 Mr. Pagliarini walked through, here's the list of ways
15 in the town ordinance that you can get vested rights
16 for this project. It's undisputed that none of those
17 apply.

18 Now, they brought up this letter from the attorney
19 that was sent to the town in 2014, but if you notice,
20 their complaint does not have a vested rights claim.
21 They're not claiming vested rights as a matter of law,
22 they are coming in saying they should have been
23 entitled to it under this guise of good faith and fair
24 dealing. But the truth is, vested rights, this is the
25 way you protect yourself in these situations, this

2-6-2020 PROCEEDINGS

1 contract doesn't matter. The State has prescribed a
2 way to do it and we do that.

3 Now, what is -- what is the --

4 THE COURT: Did you say a contract doesn't matter?

5 MR. TACKETT: No, no. No, what I'm saying is that
6 the contract -- here's -- I'll reword it this way,
7 Judge.

8 Can a municipality and a landowner contract around
9 vested rights? The State has said there's one way that
10 a landowner/developer gets vested rights, and here is
11 the way you do that, if you want to be protected.

12 Can a landowner and municipality, any local
13 government, contract around that? Hey, we want to
14 protect you so that you don't get entered into a
15 contract. And then these subsequent amendments would
16 never apply to you.

17 If you don't meet one of these site specific
18 development plans -- a contract -- a contract can't
19 alter the vested rights and the way you protect
20 yourself from them. And that's what I meant when I
21 said that.

22 A contract cannot alter the way, and I don't think
23 our legislature intended, a contract cannot alter the
24 way a party gets vested rights. It can't do it.

25 And I don't think it would be proper for us to say

2-6-2020 PROCEEDINGS

1 that a municipality and a landowner can contract around
2 that.

3 We have talked about their statements and promises
4 in 2013. You heard Ms. Farrell testify, she never
5 dreamed that those 2014 amendments, they had the
6 discussion in 2013. Again, maybe it is a
7 misunderstanding. I mean, oftentimes we have disputes
8 and people attribute ill intentions to other people.
9 You watch Mr. Prause, Ms. Farrell get up there and
10 testify for a long time about all their decisions.
11 They can disagree with it, that's fine. I don't think
12 they have proven that those were in bad faith.

13 They claimed that the enforcement of -- of spaces
14 was a breach of the good faith and fair dealing.
15 Again, we addressed that.

16 We don't believe that there's anything in the law
17 that required town council, you saw the video, when
18 town council was considering their amendments. We
19 don't think that good faith and fair dealing required
20 the town to renegotiate that contract. That's what
21 they were doing, they were trying to get them to
22 renegotiate, and the town council opted not to do that.

23 You saw that, and you saw the minutes. We don't
24 think that their failing to do that is somehow a breach
25 of good faith and fair dealing.

2-6-2020 PROCEEDINGS

1 I do think it's important to bring up one of the
2 things they say in the complaint. There was not --
3 there is a little bit of testimony of Mr. Johnston on
4 this issue. One of the things they say is that we used
5 confidential information about their project to
6 wrongfully, is best the way I can put it. I think
7 that it's important for us to put on the record,
8 there's been no evidence that the town had any
9 confidential information that got wrongfully, and
10 maybe -- and perhaps Plaintiff has abandoned that, but
11 that's one thing they say in their complaint. There's
12 no evidence that's been suggested that I have seen that
13 the town did that, any town employee or any town
14 council member did that.

15 Let's talk about the unfavorable interpretation.
16 You've heard them, about the unfavorable
17 interpretations about Church Street, unfavorable
18 interpretations about the civic use issue. Multiple of
19 those.

20 Again, Mr. Flesch testified they didn't do
21 anything illegal. That is important. I think -- I
22 think when you look at the way Ms. Farrell was
23 questioned about the civic use issue and you look at
24 the way Mr. Prause was questioned about the Church
25 Street issue, it's pretty clear that they think our

2-6-2020 PROCEEDINGS

1 decisions were wrong. And I think they would say our
2 decisions were wrong under the law.

3 But, again, the way you do that, you heard them
4 testify at length about those decisions. I don't think
5 you could attribute bad faith though. There's no
6 evidence it was bad faith. It's clear they both
7 thought what they were doing was right in good faith.

8 All right. And if they disagree, again, our state
9 legislature and town of Mount Pleasant gives them an
10 avenue to redress that.

11 Take it to the board of zoning appeals. You can
12 do that. I do a lot of work with the board of zoning
13 appeals for Mount Pleasant. Those appeals come all the
14 time and they are not always upheld. Mr. Prause is not
15 always upheld.

16 Even with regard to controversial project, they
17 are not in vain and certainly that was their avenue for
18 relief. If they disagree about those, appeal those.
19 Or seek a variance from those.

20 The thing about a variance, and Mr. Pagliarini,
21 watch this, if you get a variance, that's considered a
22 way to get a vested right.

23 If they appeal those decisions, they appeal the
24 application of the 2014 amendments in 2014. Let's
25 assume they take that and they request a variance. If

2-6-2020 PROCEEDINGS

1 they can get a variance from the board of zoning
2 appeals, that's a vested right that's protected by the
3 state legislature and the state law.

4 Again, it is clear, and the testimony is clear
5 that they did seek approval or appeal or variance from
6 any of the applications. I think that to argue that
7 now, under the guise of good faith and fair dealing, is
8 untimely.

9 We also believe we are entitled to involuntary
10 dismissal on the Plaintiff's failure to meet the
11 parking license agreement's condition precedent. Okay.
12 So we talked about this some, and I'll address the
13 Plaintiff's objections to this.

14 It's section 2.03, licensure's contingency. The
15 word "contingency," I mean is a matter -- it's been
16 interpreted in South Carolina, that word, contingency,
17 is -- your ears should perk up. It's a red flag that
18 is a condition precedent. That particular kind of
19 language is what is considered by our courts as almost
20 dispositive.

21 It says, licensor's obligations under this license
22 agreement, including but not limited to the obligations
23 to construct a project -- we know what that is, it is
24 defined earlier -- are contingent upon all necessary
25 approvals for construction being issued by the

2-6-2020 PROCEEDINGS

1 appropriate town of Mount Pleasant department or
2 entity.

3 Now, we can -- we can look at one example of how
4 this played out. They complained that they did not get
5 approval for their foundation permit in a timely
6 manner. Why did they not get that? There was a
7 dispute about whether they had to pay for parking
8 spaces or not. They ultimately prevailed on that issue
9 and got the foundation permit.

10 Those are the kind of approvals you are looking
11 for. The point of that was, Mr. Prause's point of it
12 was, you got to comply with zoning regulations. And
13 this could have played out innumerable ways. If they
14 had submitted their plans, that were not in compliance
15 in June of 2014, this provision could have applied in a
16 number of ways. They are not getting approval if they
17 don't comply with the zoning ordinance.

18 This expressly says, they have got to construct it
19 to our ordinances and with -- and so that they get our
20 approval. That is an absolute contingency. Absolute
21 contingency.

22 Now, their argument is, well, if it's a
23 contingency, it only is for their benefit. So let's
24 take that to its logical conclusion.

25 If that's only for their benefit, are they

2-6-2020 PROCEEDINGS

1 permitted to propose and build a garage, like they've
2 done in this instance, right? They've got a garage
3 that's built, it was 234 spaces. So this is why --
4 this is the dispute.

5 They propose and build a garage with 234 spaces.
6 We say it's not in compliance. You didn't meet that
7 condition. All right?

8 They're saying it did. We did meet it, we did
9 meet that condition and you got to comply.

10 Now, if you buy that that's only for their
11 benefit, that means we've got no recourse. That means
12 that they get to build what they want, whether it
13 complies or not, and then we have to accept it. It's
14 clearly for our benefit.

15 If they can't build a project in compliance with
16 our zoning regulations, that is a mutual benefit. And
17 I think the law says you can look to the intent of the
18 whole agreement, certainly -- certainly they should not
19 be allowed to not meet this contingency, yet enforce
20 this contract to the town. We say they did not -- they
21 did not meet it.

22 And we think this is another area, Judge. I think
23 I would go -- I mentioned that rule of construction
24 earlier interpretation that -- to avoid absurd
25 interpretation. I would say that that is mutually

2-6-2020 PROCEEDINGS

1 beneficial. To say it's just for them, yet we can't --
2 that's not for our benefit, I think that is an absurd
3 interpretation.

4 I want to address a little bit, they are going to
5 talk about this. Section 2.06, excuse of performance.
6 It says that a party shall not be deemed in default
7 with respect to the performance of any (inaudible),
8 evidence, condition of its license. If same, shall be
9 due, and they -- they have quoted multiple times,
10 governmental regulation or controls.

11 Now, first of all, that is, I would argue, you got
12 to look at that in light of what we just read. A very
13 specific provision it says. They are. They are
14 subject to those approvals. They are subject to those
15 regulations. I'm not saying that to be inconsistent.
16 We have not charged them with being in default, we
17 haven't sued them for damages. We are not trying to
18 get money out of them.

19 But certainly, when you look at this contingency,
20 I think as you -- as Your Honor looks at Section 2.06,
21 you got to look at, we would argue in light of 2.03,
22 which expressly says they are -- that their ability to
23 build a project with our approvals and without our
24 zoning regulations, we think that expressly does
25 require them to do that.

2-6-2020 PROCEEDINGS

1 We talked about this whole idea of prejudice.
2 They are arguing that, well, okay, Your Honor finds a
3 condition of precedent. If it doesn't prejudice them,
4 you don't have to enforce it. And we've talked about
5 how we don't think that that's a requirement. Puckett
6 v State Farm, case 314 South Carolina 371. We think
7 that is a misstatement of what that issue says and I
8 don't think that's not necessary to fool with,
9 enforcement of a condition precedent.

10 We think -- now, again, I had to clarify this at
11 my first argument. The idea -- our next argument we
12 made is that, okay, if Your Honor adopts the
13 interpretation, we agree with the Plaintiff that, in
14 fact, the number of 276, or the number of parking
15 spaces only has to be substantially similar to 276. If
16 that's what Your Honor agrees the contract says,
17 then -- then, we would argue that that's not reasonably
18 certain.

19 Again, we cite in our memo, that I have handed
20 forward, we will file today cases for that position.
21 But is 234 -- if I'm entering into a contract and
22 someone says, let's say, our term is, it's got to be
23 reasonable -- substantially similar to 276. Would I
24 expect that I'm going to get 234? Is that a
25 reasonable -- is that reasonably certain? We would say

2-6-2020 PROCEEDINGS

1 absolutely not. Substantially similar is not a
2 reasonably certain standard, and that it's not an
3 enforceable term. If that is in fact what the contract
4 says, we don't think that's what it says, and if you
5 thought that, that would be our argument.

6 We have not talked much, Judge, about damages, but
7 feel obligated to. First is we do want to renew our
8 arguments we filed in the Motion to Compel, in our
9 pending Motion for Consideration on whether the
10 contract is -- the fault provision is a liquidated
11 damages provision. And I want to incorporate our
12 arguments in there. We don't believe that it's a
13 liquidated damages provision, just to the record once
14 you review those arguments and those positions.

15 Now, this gets -- we haven't talked much about the
16 default provisions of the agreement or the rent
17 provisions of the agreement, but I feel like we should
18 just very briefly go through those in the context of
19 damages.

20 What is Plaintiff requesting? They're requesting
21 all 15 years of rent that they are obligated -- that we
22 are obligated under the contract to pay them for 15
23 years of rent. We first and foremost do not believe
24 that that is what that default provision allows.

25 And I want to walk through that just a little bit.

2-6-2020 PROCEEDINGS

1 Section 1.07 entitles them to rent during the first 15
2 years of the term of the rent period and, again, so
3 that 15 years is defined by the contract as the rent
4 period. The fixed minimum rent.

5 So during each year, the rent period, we are
6 obligated to give them \$185,000. The initial license
7 year, this is from the -- from the -- let me see here,
8 it's under Section 1.07, Part A.

9 For the first year of rent, we were supposed to
10 escrow that money, \$185,000, on the commencement of
11 construction. That is one of the ways they say that we
12 breached. Okay.

13 However, under the agreement, that escrowed money
14 would not go to the Plaintiffs until they get their CO,
15 their certificate of occupancy, which was in July 2017.
16 Okay.

17 Plaintiff terminated the contract a year prior to
18 that, in June 2016. You know, there was some confusion
19 about when they terminated it and there was a
20 scrivener's error, but we argue, under the contract,
21 and if you look at section -- if you look at Section
22 1.10, license term. Rental commencement dates -- I'm
23 sorry. Rental commencement dates, states (reading),
24 the term of the license shall begin on rent
25 commencement date. And later on, it says, the rental

2-6-2020 PROCEEDINGS

1 commencement date shall be date of issuance of
2 certificate of occupancy by the town.

3 So that is when this started. Now, here is what
4 is interesting about that. Plaintiffs argued in
5 response to our Motion to Compel that we weren't
6 entitled to any of the damages or information on
7 damages or discovery of damages because the rental
8 period never started.

9 They are saying it never started, so you are not
10 allowed to show that we mitigated damages, you aren't
11 entitled to that setoff under Section B 1.07.

12 THE COURT: Counsel, we have already been through
13 all of these arguments. Let's move on. I'll adopt the
14 previous arguments on this issue.

15 MR. TACKETT: Yes, Judge. Thank you.

16 And so our last argument would be, Judge, would be
17 just that if Your Honor -- well, first of all, look at
18 the default provision. And this is something I don't
19 think we have discussed, Judge. This is important to
20 damages they're claiming.

21 Section 6.01 explains the damages available to the
22 Plaintiff in the event of default by licensee. It
23 says, (inaudible reading) licensee shall be entitled to
24 bring an action for specific performance or breach of
25 contract against licensee, but agrees that sole and

2-6-2020 PROCEEDINGS

1 exclusive rendering shall be the rent payments due
2 under this agreement.

3 Now, they are interpreting that language to say
4 all of the rental payments, for all of 15 years.

5 We would argue, when they terminated this
6 agreement, what was due. They terminated the agreement
7 in June 2016, what was due? Again, we don't think we
8 have breached at all. We don't think that we are
9 entitled to one penny.

10 But at that point, the rental commencement date
11 hadn't even started. There was -- there was the
12 requirement of escrow money and, again, we felt that
13 they were not able to fulfill their terms and that is
14 why that money was not escrowed.

15 We just want to make clear, we don't think the
16 agreement allows them to recover 15 years of rent. We
17 don't think that's what the absolute language of the
18 agreement says.

19 And I think that's also substantiated by -- again,
20 if Your Honor allows parole evidence in, Mr. Flesch
21 testified that there was no acceleration clause. In
22 fact, there was an acceleration clause that would
23 require all the rent to come due in default, and that
24 that was a rule that the town's request.

25 And so we think that would be parole evidence of

2-6-2020 PROCEEDINGS

1 the fact that certainly, if not our intent, when we
2 were negotiating this agreement, if in a breach, that
3 they would be entitled to the full 15 years.

4 And our final argument is just that. And this is
5 in our brief, Judge, is that if, in fact, the agreement
6 permits 15 years of rent to be paid, well, then, it is
7 an unforceable penalty, and we have cited the
8 authorities for that in our memo. Thank you.

9 THE COURT: Mr. Gaskins.

10 MR. GASKINS: Your Honor, because they were the
11 same arguments that were addressed in summary judgment,
12 I don't know if it would do you much good for me to
13 repeat those same arguments. So if there are
14 particular areas that you would like me to address, I'm
15 happy to; but, otherwise, I'll just refer back to the
16 arguments that I made for the Motion for Summary
17 Judgment. And I do believe the evidence that has been
18 presented here during the trial is more than enough to
19 defeat a directed verdict motion.

20 THE COURT: Thank you, Counsel. I agree. At this
21 juncture, obviously there's sufficient evidence for the
22 Court to make a determination of questions of fact. So
23 in this particular case, your motion is respectfully
24 denied.

25 MR. PAGLIARINI: Thank you, Judge.

2-6-2020 PROCEEDINGS

1 THE COURT: All right. You may call your first
2 witness.

3 MR. PAGLIARINI: Your Honor, our first witness
4 will be Mr. Ken Betsch. The parties agreed to submit
5 deposition transcript revisions. Both parties have an
6 interest to submit that to the Court.

7 And we need to file the original, Your Honor; is
8 that correct?

9 THE COURT: The original can be made as a Court's
10 exhibit, and I can look at the designations.

11 MR. PAGLIARINI: It should be in the trial
12 notebook.

13 THE COURT: If they're in the trial notebook, then
14 I've already got it.

15 MR. GASKINS: Yes, ma'am, they are.

16 THE COURT: And I'll just mark that as an exhibit,
17 So it'll go with the full record.

18 MR. PAGLIARINI: Very well.

19 And we're ready for our next witness, Your Honor.

20 THE COURT: All right. You may call your next
21 witness.

22 MR. PAGLIARINI: Mr. Brad Morrison.

23 *(Whereupon, Court's Exhibit No(s). 1 marked for*
24 *identification and received in evidence.)*

25 Thereupon,

1 BRAD MORRISON

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PAGLIARINI:

6 Q Mr. Morrison, what is your current position with
7 the town of Mount Pleasant?

8 A The Director of Transportation.

9 Q And briefly, for the Court, tell them your
10 engineering background, education, and certifications.

11 A I have a Bachelors of Science, Civil Engineering,
12 from the Citadel. Masters of Engineering from the
13 University of Florida. That is my education.

14 Did you ask me about what I do, gentlemen?

15 Q Well, what is your role as the town transportation
16 director?

17 A In a general sense, we are in charge of
18 development of all capital improvement programs, road
19 projects. We are in charge of the signal system,
20 encroachment permitting, signs, other programmatic things.

21 Q Mr. Morrison, there's been testimony at this trial
22 about the status of Church Street. And Church Street, also
23 known as Ronnie Boals Boulevard running along one of the
24 sides of the project.

25 Are you familiar with the Church Street, and

1 have you reviewed and researched the history of Church
2 Street?

3 A Yes.

4 Q All right. Is Church Street currently a town
5 right-of-way?

6 A It is.

7 Q How did it get to be a town right-of-way?

8 A Based on looking into this, it appears that the
9 right-of-way, street, came into the SCDOT, state highway
10 system in 1961.

11 In 2005, based upon a project, a pocket park
12 that the town desired to construct at the end of Church
13 Street, right near the water basically, we had to make the
14 request of DOT to transfer that right-of-way to the town
15 ownership, because they were not going to permit the pocket
16 park essentially.

17 Q And are those, if you have that notebook next to
18 you, if you can go to Tab 19.

19 A Okay.

20 Q Does Tab 19 include the records and information
21 you obtained regarding the history of Church Street?

22 A It does.

23 Q And based on your review of those, does it
24 indicate that prior to 2005, that Church Street was
25 maintained and operated by the DOT?

1 A It does.

2 Q And subsequent to that, who operates, maintains
3 Church Street?

4 A The town of Mount Pleasant.

5 Q All right. Is there -- do town ordinances provide
6 any information on what is or how a street is categorized?

7 A The town ordinances define a street in Title 7
8 traffic code, Chapter Seven general provisions. Those are
9 the definitions for street.

10 Q Is there any provision that you rely on to
11 determine or decide in your role as planning director as to
12 whether this is categorized as a street?

13 A Repeat the question, you threw me off when you
14 called me planning director.

15 Q Do you have information to determine, based on
16 your review of town code, as to whether Church Street is
17 actually a street?

18 A Yes. By the definition, it's defined as a street.
19 We have called it a street and a right-of-way this whole
20 trial.

21 Q And can a street be a -- there are definitions of
22 public street; is that correct?

23 A There's some categories in the land development
24 regulations that define public street and a private street,
25 yes, sir.

1 Q But -- and there are different types of streets;
2 is that correct? Such as public, collector, minor, private,
3 improved, private right-of-way, so it's many defining or at
4 least definitions of what is a street?

5 A Yes, sir. Yes, sir, it's like the function of
6 that street is further defined by those categories.

7 Q And is there any record that the town has
8 abandoned Church Street?

9 A No.

10 Q Is abandonment a legal process, to your
11 understanding?

12 A My understanding, it's defined by State statute.

13 Q And what would be required to abandon a public
14 street?

15 A I do not know all those, the code section, but I
16 think it's public notice and then -- it's abandoned equally
17 amongst property owners up and down. I'm not really
18 familiar with it, we haven't done it that much.

19 Q Sure. But generally, would there need to be a
20 court process and a public meeting?

21 A Oh, yes, sir, yes, sir.

22 Q Regardless of the ownership, whether it's DOT or
23 the town of Mount Pleasant, is Church Street still a street
24 that would require setbacks in the town of Mount Pleasant?

25 A Yes.

1 Q Let's talk about maintenance. Do you know whether
2 the town has maintained Church Street?

3 A We have done some improvements. The Church
4 Street, obviously I mentioned in 2005, I believe some of the
5 work that was done, along with the pocket park was -- I
6 would consider maintenance. It was doing some pedestrian
7 improvements as well as addressing some drainage, I believe.

8 Q Even if there was no town maintenance, would that
9 affect the status of Church Street as a street in the town
10 of Mount Pleasant?

11 A No.

12 Q Do you have any other information that you believe
13 would help the Court in determining that Church Street is a
14 street in accordance with the town of Mount Pleasant
15 ordinances and State law?

16 A Not at this time.

17 MR. PAGLIARINI: Thank you, sir.

18 No further questions, Your Honor.

19 THE COURT: Mr. Gaskins, anything?

20 MR. GASKINS: Nothing, Your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 THE WITNESS: Thank you.

23 MR. PAGLIARINI: Your Honor, at this point, we
24 have no further witnesses to call.

25 THE COURT: All right, sir. Thank you.

2-6-2020 PROCEEDINGS

1 Defense rests. And same motions are all renewed?

2 MR. PAGLIARINI: Yes, ma'am. We would renew our
3 Motion for Directed Verdict at this time.

4 THE COURT: All right. So it is for the same
5 reason, they are respectfully denied at this juncture.

6 Just a couple of housekeeping matters. I'm going
7 to ask y'all to do a couple things for me before I give
8 you my ruling.

9 I would like for you to brief the issue of
10 election of brevity. Obviously then a matter that has
11 been brought up as far as this Plaintiff having a duty
12 to go through the ordinance appeal process, or just go
13 through the breach. Obviously the town has the power
14 to enact whatever ordinances they want to.

15 The effect on the agreement is really what is
16 germane, but I think the defense seems to be arguing
17 that they should have a duty to go through the
18 administrative process of the ordinance.

19 So I would like for both parties to brief those
20 issues. And then I would also request that both
21 parties submit proposed orders, don't do it on the E
22 filing system, but basically by email. So obviously I'm
23 not going to use one or the other, but it will give me
24 guides on where to start on each side.

25 MR. PAGLIARINI: And is there a deadline you have



coleman and ben sawyer boulevards
revitalization master plan
town of mount pleasant, south carolina
february 2008



Seamon, Whiteside
& Associates, Inc.

urban edge studio

PB PlaceMaking

Parsons Brinckerhoff

**PLAINTIFF'S
EXHIBIT**

1

On-Street Parking

Based on the recommendations in the KHA study, the design team is recommending that parallel parking be implemented on Coleman Boulevard from Simmons Street to Erckmann Drive. The team also recommends that the Town pursue access easements or right of way acquisition on the south side of Coleman to allow a planted median, in lieu of the concrete median recommended by KHA.

Parallel, angled, or reverse angle parking is recommended for all perpendicular or parallel streets within the study area. It is further recommended that within projects or adjacent to existing on-street parking that the various parking types should not be intermingled without approval of the Town's traffic engineer. The purpose of this provision is to reduce any possible confusion with users and merchants.

In order to reduce the amount of parking each individual property owner is required to provide on-site, it is recommended that new projects be able to count all on-street spaces with 300 feet of any building entrance as part of their required parking utilizing the ULI shared parking formulas.

Parking Decks

One of the major impediments to achieving the density of development recommended within this study is the pressure put on individual parcels, especially smaller parcels, to provide on-site parking. Adjacent on-street parking will help mitigate this demand but not in a very significant way. At-grade parking lots require approximately 430 to 550 square feet per vehicle. These lots also contribute to the urban heat island effect and can affect the walkability of an area.

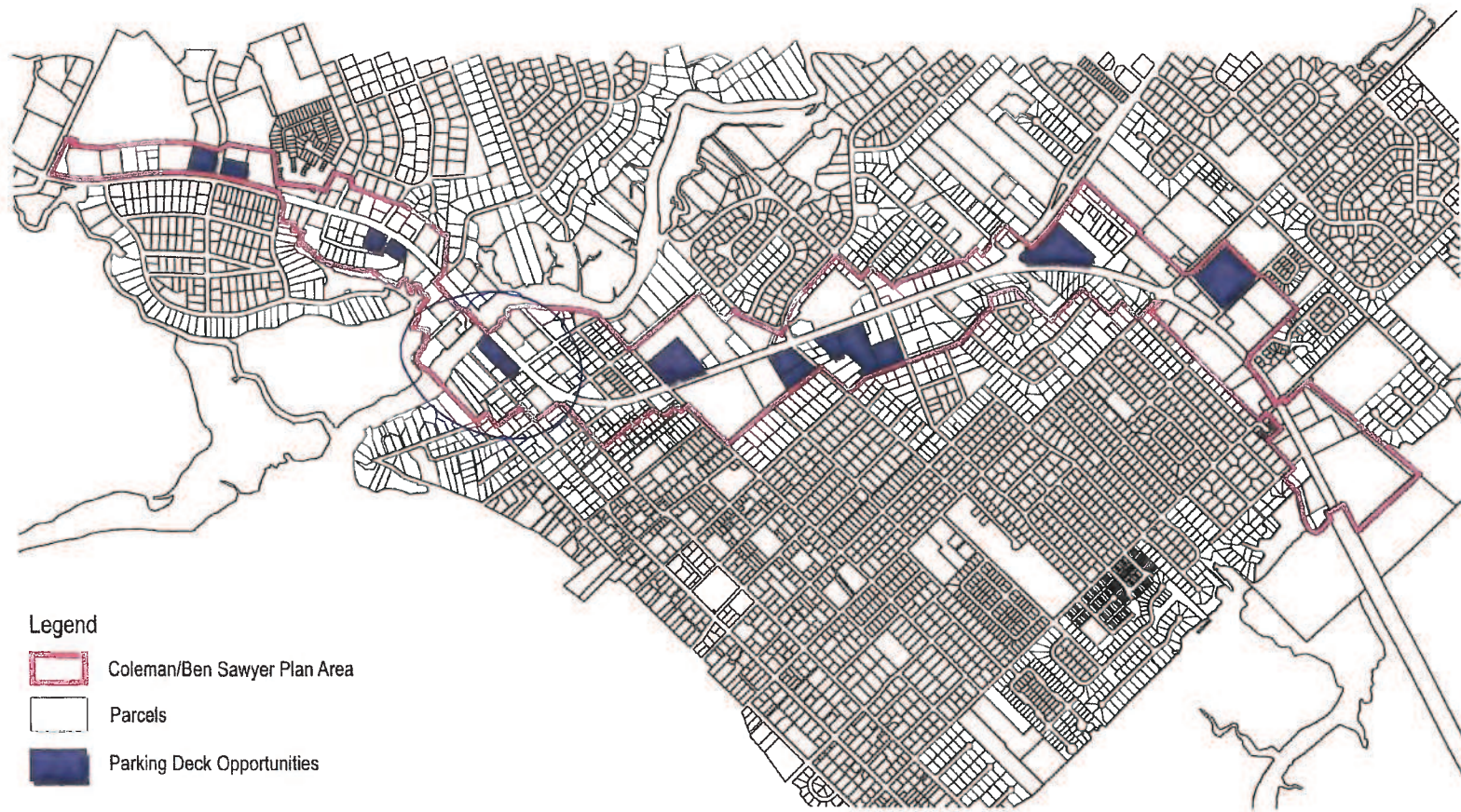
Structured parking, while more expensive than at-grade parking, is a viable way to achieve greater density and efficiency for some sites. It is highly recommended that developers consider the viability of providing structured parking within their sites or shared between sites. It is further recommended that the Town pursue opportunities to provide parking decks either as sole owner/operator or as some type of private/public partnership. Where parking decks are provided near a proposed development the Town's staff should have the ability to reduce or even eliminate parking requirements for some projects.

It is very important for the architectural integrity of the overlay district that these parking decks fit in with the surrounding architecture of the area and not be strictly utilitarian in their design.

Their design should respect and reflect the unique qualities of Mount Pleasant architecture. Also, where parking decks front the boulevards, retail or other commercial uses shall be required at street level so that the presence of parking decks does not detract from the life and vitality of the street. A map showing some possible locations for parking decks is included as Figure 26.

Bicycle Lanes

Due to potential conflicts between bicyclists and vehicular traffic and on-street parking it is recommended that the Town provide adequate signage to direct bicyclists to alternative routes through the Old Village and other areas. A possible bicycle route is shown in Figure 27.



Potential Locations for Parking Decks

Figure 26.
coleman boulevard and ben sawyer boulevard
revitalization master plan

Memorandum

FINAL

To: Tex Small, Jr.
AVTEX Commercial Properties, Inc.

From: Gerald Salzman, AICP
David Taxman, P.E.

Date: January 26, 2012

Subject: Shem Creek Garage Feasibility Study
Mt. Pleasant, South Carolina



Introduction

This memorandum presents the results of a Parking Structure feasibility study for the Shem Creek site in Mt. Pleasant, South Carolina. The site is located along Shem Creek and strategically located near a number of successful businesses and is an overall popular destination in Mt. Pleasant. The site currently contains two restaurants (Red's Ice House and RB's Seafood Restaurant) and two event centers (Lighthouse on the Creek and Cottage on the Creek). This report will present a determination of the number of spaces in the garage, the potential revenue and expenses associated with the proposed garage over a seven year period, and the overall net profit/loss generated by the garage.

Study Area

The study area is located in Mt. Pleasant, South Carolina and extends along Coleman Boulevard between Broadway Street and Scott Street. The study area and potential site for the Parking Structure are shown in **Figure 1**. The study area includes a number of bars/restaurants, office buildings, and businesses. Some businesses in the study area were not included in the analysis, simply because they did not appear to generate a substantial parking demand. The other facility that operates similar to the proposed Parking Structure site is located across Shem Creek and consists of two restaurants, a hotel, a small grocery store and parking for Shem Creek Park. The labeling system shown in **Figure 1** correlates to the parking inventory and occupancy tables provided later in the report.

**PLAINTIFF'S
EXHIBIT**

2

SCDG0004368

Figure 1 - Study Area



DESMAN Associates

SCDG0004369

Parking Inventory and Occupancy of Study Area

Parking inventory and occupancy counts of off-street parking facilities were conducted in the study area on Friday, November 4, 2011 and Saturday, November 5, 2011. For both days counts were performed during the afternoon (1 PM – 2 PM), evening (7 PM – 8 PM) and late evening (10 PM – 11 PM). There was a wedding at the Lighthouse on the Creek and at the Cottage on the Creek on Saturday, November 5, 2011. However, no events were taking place on Friday, November 4, 2011 at either venue.

The weather was unseasonably cold during the day of the parking counts, which could have substantially reduced the area's parking demand. During warm seasons, the area attracts more people since it relies on the docks and attractive views across Shem Creek to generate business. It is expected that the parking demand is greater during a warm weather season than what was observed, and it may be advantageous to perform counts during a peak activity time period (warm weather day) to better understand the peak parking demand for the area.

Each business in the study area had its own parking lot designated for its customers and employees. The only businesses which shared parking included: Vickery's Restaurant and Water's Edge Restaurant, Red's Ice House and Cottage on the Creek, and Bailey's Executive Offices and Shem Creek Bar and Grill. Shem Creek Bar and Grill is permitted to use Bailey's Executive Offices parking lot after 5 PM.

Table 1 shows the results of the parking inventory and occupancy counts for each day of counts. Parking occupancy counts were not performed at each facility for every count period due to lack of parking demand at that time. Based on these parking occupancy counts most businesses in the study area were adequately supporting their demand with on-site parking. An acceptable occupancy level for these types of facilities is approximately 90%, which allows vehicles to adequately circulate and locate a space. Based on the counts, the only businesses where the parking demand was at or above capacity included: Red's Ice House/Lighthouse on the Creek, Sette Italian Restaurant, Shem Creek Bar and Grill, KRA Grill, and Vickery's Restaurant. However, the overflow parking demand for Shem Creek Bar and Grill and Vickery's Restaurant was supported by shared parking spaces. Patrons for Sette Italian Restaurant were potentially parking in the adjacent Pet Vet parking lot. Patrons for the KRA Grill were parking on-street.

Table 2 provides the parking inventory and occupancy counts for the potential development site. This includes the parking for RB's Restaurant, Red's Ice House, The Cottage on the Creek and Lighthouse on the Creek. The peak parking period was on Saturday evening between 7 PM and 8 PM, when 69% of the parking on the entire site was occupied. The parking areas for Red's Ice House and Lighthouse on the Creek were consistently the most occupied.

Table 1 – Parking Inventory and Occupancy

Facility	# of Spaces	Parking Occupancy Counts						Percentage Occupied					
		Friday, November 4, 2011			Saturday, November 5, 2011			Friday, November 4, 2012			Saturday, November 5, 2012		
		1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm
A RB's Restaurant	92	20	49	12	25	55	28	22%	53%	13%	27%	60%	30%
B Red's Ice House / Lighthouse on the Creek	176	41	74	49	70	158	122	23%	42%	28%	40%	90%	69%
C Cottage on the Creek	92	0	1	0	1	36	1	0%	1%	0%	1%	39%	1%
D Pet Vet	22	11	2	0	0	6	1	50%	9%	NA	0%	27%	5%
E Sette Italian Restaurant	30	18	32	NA	1	19	5	60%	107%	NA	3%	63%	17%
F Shem Creek Bar/Grill	14	11	2	NA	3	3	2	79%	14%	NA	21%	21%	14%
G Closed Bank	8	1	0	NA	0	0	0	13%	0%	NA	0%	0%	0%
H The Scratch Pad	10	6	0	NA	7	0	0	60%	0%	NA	70%	0%	0%
I Lucy Law Firm	22	7	0	NA	2	0	0	32%	0%	NA	9%	0%	0%
J Bailey's Executive Offices	66	23	12	6	5	11	7	35%	18%	9%	8%	17%	11%
K Shem Creek Bar/Grill	55	21	55	11	32	28	17	38%	100%	20%	58%	51%	31%
L The 5th Season	15	13	5	NA	8	2	2	87%	33%	NA	53%	13%	13%
M Foxworth	11	3	1	NA	2	0	0	27%	9%	NA	18%	0%	0%
N KRA Grill	80	78	52	0	64	39	0	98%	65%	0%	80%	49%	0%
O Live Oak Center	18	2	0	NA	2	0	0	11%	0%	NA	11%	0%	0%
P Presbyterian Church	70	1	25	NA	0	0	0	1%	36%	NA	0%	0%	0%
Q 220 Church Street Office Space	10	2	0	NA	1	0	0	20%	0%	NA	10%	0%	0%
R Blue Moon Development	24	5	0	NA	0	0	0	21%	0%	NA	0%	0%	0%
S Wabi Sabi	18	5	0	NA	3	0	0	28%	0%	NA	17%	0%	0%
T Half Moon Outfitters	15	9	0	NA	11	2	0	60%	0%	NA	73%	13%	0%
U Aubergine Home Collection	20	6	5	NA	7	3	0	30%	25%	NA	35%	15%	0%
V Shem Creek Park Lot	31	3	1	0	15	3	2	10%	3%	0%	48%	10%	6%
W Water's Edge/Vickery's	144	39	84	12	51	69	21	27%	58%	8%	35%	48%	15%
W Mt. Pleasant Seafood	12	4	0	0	3	1	0	33%	0%	0%	25%	8%	0%
W Shem Creek Inn	59	36	44	41	37	33	40	61%	75%	69%	63%	56%	66%
W Vickery's Restaurant	48	35	48	15	45	40	18	73%	100%	31%	94%	83%	38%
W Unmarked Spaces	25	9	3	3	7	4	4	36%	12%	12%	28%	16%	16%
X Office Space	31	11	3	0	4	2	2	35%	10%	0%	13%	6%	6%
Y Public House Restaurant	43	14	34	NA	21	25	14	33%	75%	NA	49%	58%	33%
Z Common Courtyard	69	33	19	NA	40	16	17	48%	28%	NA	58%	23%	25%
AA Sleeping Organic	11	NA	NA	NA	7	1	1	NA	NA	NA	64%	9%	9%
BB Finz Bar and Grill	20	NA	NA	NA	13	16	17	NA	NA	NA	65%	80%	85%
CC Commercial Strip Mall	385	NA	NA	NA	206	179	154	NA	NA	NA	54%	46%	40%

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Table 2 – Development Site Parking Inventory and Occupancy

Parking Users	# of Spaces	Parking Occupancy Counts						Percentage Occupied					
		Friday, November 4, 2011			Saturday, November 5, 2011			Friday, November 4, 2012			Saturday, November 5, 2012		
		1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm
RB's Restaurant	92	20	49	12	25	55	28	22%	53%	13%	27%	60%	30%
Red's Ice House / Lighthouse on the Creek	176	41	74	49	70	158	122	23%	42%	28%	40%	90%	69%
Cottage on the Creek	92	0	1	0	1	36	1	0%	1%	0%	1%	39%	1%
TOTALS	360	61	124	61	96	249	151	17%	34%	13%	27%	69%	42%

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Table 3 shows the parking inventory and occupancy for the site on the opposite side of Shem Creek, which includes Shem Creek Park, Water's Edge Restaurant, Vickery's Restaurant, Mt. Pleasant Seafood, and Shem Creek Inn. This site has sufficient parking to support its demand. The peak occupancy was only 56% occupied, which occurred between 7 PM and 8 PM on Friday evening.

Table 3 – Adjacent Site Parking Inventory and Occupancy

Facility	# of Spaces	Parking Occupancy Counts						Percentage Occupied					
		Friday, November 4, 2011			Saturday, November 5, 2011			Friday, November 4, 2011			Saturday, November 5, 2011		
		1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm	1pm- 2pm	7pm- 8pm	10pm- 11pm
Shem Creek Park Lot	31	3	1	0	15	3	2	10%	3%	0%	48%	10%	6%
Water's Edge/Vickery's	144	39	84	12	51	69	21	27%	58%	8%	35%	48%	15%
Mt. Pleasant Seafood	12	4	0	0	3	1	0	33%	0%	0%	25%	8%	0%
Shem Creek Inn	59	36	44	41	37	33	40	61%	75%	69%	63%	56%	68%
Vickery's	48	35	48	15	45	40	18	73%	100%	31%	94%	83%	38%
Unmarked Spaces	25	9	3	3	7	4	4	36%	12%	12%	28%	16%	16%
TOTALS	319	126	180	71	156	150	85	39%	56%	22%	50%	47%	27%

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On-Street Parking

No substantial on-street parking demand was observed in the study area during each of the parking occupancy count periods. The only mass of vehicles parking on-street was in front of KRA Grill, due to the two KRA Grill parking facilities being at capacity. Overall, there were a few vehicles parked on-street who were most likely residents or employees/visitors of small businesses in the area. Except for along Coleman Boulevard, which does not permit on-street parking, most streets in the study area do not have on-street parking restrictions or meters. This allows people the opportunity to park on-street for free. Based on the Coleman Boulevard and Ben Sawyer Boulevard Revitalization Master Plan, it is recommended that on-street parking be provided along Coleman Boulevard from Simmons Street to Erckmann Drive, which is approximately four blocks from the development site. This on-street parking will primarily support the parking demand generated by the Farmers Market and other businesses in the area.

Future Parking Demand

As stated in the *Coleman and Ben Sawyer Boulevards Revitalization Master Plan*, the following goals hope to be achieved in Mt. Pleasant:

- More vertical, dense development
- Create a more pedestrian friendly, multi-modal atmosphere
- Street frontage for future buildings with either parking in back or shared parking
- Public parking decks

These goals reflect the use of a parking deck to facilitate economic development and support a shared parking concept, where people park in a central location and walk to their destination. The potential Shem Creek Parking Garage would hope to serve both future developments on the site and surrounding businesses. Future developments potentially planned on the site and on adjacent parcels to the site are listed in **Table 4. Figure 2** displays the location of these potential developments. The actual site program includes a 130 room hotel, a 10,000 square foot restaurant and a 5,000 square foot banquet space/convention center. A summary of the total potential development sizes for each land use in the study area is listed below.

- Hotel – 130 Rooms
- Restaurant – 10,000 Sq. Ft.
- Banquet Space / Convention Center – 5,000 Sq. Ft.
- Office – 100,000 Sq. Ft.
- Retail – 50,000 Sq. Ft.

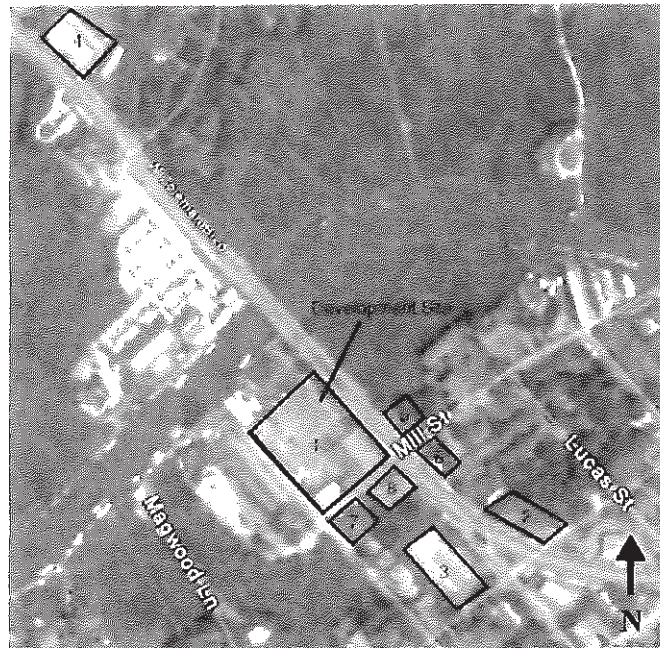
Table 4 – Future Development Program in Study Area

Future Development Program		Development Size
1	Hotel	130 Rooms
	Restaurant	10,000 Sq. Ft.
	Banquet Space	5,000 Sq. Ft.
2	Office	20,000 Sq. Ft.
	Retail	10,000 Sq. Ft.
3	Office	23,333 Sq. Ft.
	Retail	11,667 Sq. Ft.
4	Office	23,333 Sq. Ft.
	Retail	11,667 Sq. Ft.
5	Office	8,333 Sq. Ft.
	Retail	4,167 Sq. Ft.
6	Office	8,333 Sq. Ft.
	Retail	4,167 Sq. Ft.
7	Office	8,333 Sq. Ft.
	Retail	4,167 Sq. Ft.
8	Office	8,333 Sq. Ft.
	Retail	4,167 Sq. Ft.

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The existing land uses of Red's Ice House and The Lighthouse on the Creek would be demolished in order to allow future site development. So the parking demand currently generated by these facilities will be eliminated. However, they are essentially being replaced by the future developments. The other potential development parcels (2 through 8) are one of the following: closed business, undeveloped parcel of land, low parking demand use, or the business sufficiently supports its existing parking demand. Since these development parcels are not currently generating any real parking demand or they support their existing demand, no loss in parking demand has to be accounted. Due to the limited amount of space on these parcels of land and the goal to share parking between facilities, these future developments may not provide adequate on-site parking to support future demand and may instead rely on public parking in the area.

Figure 2 – Future Development Locations



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A shared parking demand analysis was performed to determine the peak parking demand that would be generated by the future developments listed in **Table 4**, which includes the site development. The methodology stated in *Urban Land Institutes (ULI) 2nd Edition of Shared Parking* was applied for this analysis. **Table 5** shows the peak weekday and weekend shared parking demands. Based on this analysis, the peak weekday and weekend parking demand for future developments are 822 and 561 vehicles, respectively. The reason for the drop in parking demand during the weekend is that the parking demand generated by the office space is mostly eliminated.

Table 5 – Shared Parking Demand of Future Developments

Land Use	Project Data Quantity Unit	Weekday					Weekend					Weekday		Weekend			
		Base Rate	Mode Adj	Non-Capable Ratio	Project Rate	Unit	Base Rate	Mode Adj	Non-Capable Ratio	Project Rate	Unit	Peak Hr Adj	Peak Mo Adj	Estimated Parking Demand	Peak Hr Adj	Peak Mo Adj	Estimated Parking Demand
												1 PM	December		1 PM	December	
Community Shopping Center (400 ksf) Employee	50,000/sf GLA	2.00	1.00	1.00	2.00	/ksf GLA	2.20	1.00	1.00	3.20	/ksf GLA	1.00	1.00	145	0.95	1.00	137
		0.70	1.00	1.00	0.70	/ksf GLA	0.80	1.00	1.00	0.80	/ksf GLA	1.00	1.00	35	1.00	1.00	40
Hotel/Lesure	130/rooms	0.90	1.00	1.00	0.90	/rooms	1.00	1.00	1.00	1.00	/rooms	0.65	0.50	38	0.65	0.50	42
Restaurant/Lounge	10,000/sf GLA	10.00	1.00	1.00	10.00	/ksf GLA	10.00	1.00	1.00	10.00	/ksf GLA	1.00	1.00	100	1.00	1.00	100
Conference Club/Banquet (20 to 50 sq ft/guest room)	8,000/sf GLA	30.00	1.00	1.00	30.00	/ksf GLA	30.00	1.00	1.00	30.00	/ksf GLA	0.65	1.00	175	0.65	1.00	175
Office 25 to 100 ksf	100,000/sf GLA	0.25	1.00	1.00	0.25	/ksf GLA	0.03	1.00	1.00	0.03	/ksf GLA	0.45	1.00	11	0.80	1.00	2
Employee		3.15	1.00	1.00	3.15	/ksf GLA	0.32	1.00	1.00	0.32	/ksf GLA	0.50	1.00	284	0.80	1.00	26
												Customer Employee Reserved		470 352 0	Customer Employee Reserved		472 66 0
												Total		822	Total		541

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Table 6 provides the peak shared parking demand generated by only the site developments exclusively. This eliminates the parking demand generated by office and retail space at the other development sites. The peak shared parking demand for the development site during the weekday and weekend is 334 and 353 vehicles, respectively. This analysis simply shows how many parking spaces are needed to support the parking demand generated by the planned developments on the site.

Table 6 – Shared Parking Demand of Site Development

Land Use	Project Data Quantity Unit	Weekday			Weekend			Weekday			Weekend		
		Base Rate	Project Rate	Unit	Base Rate	Project Rate	Unit	Peak Hr Adj	Peak Mo Adj	Estimated Parking Demand	Peak Hr Adj	Peak Mo Adj	Estimated Parking Demand
Hotel/Lesure	130/rooms	0.90	0.90	/rooms	1.00	1.00	/rooms	0.65	1.00	111	0.65	1.00	124
Restaurant/Lounge	10,000/sf GLA	10.00	10.00	/ksf GLA	10.00	10.00	/ksf GLA	0.67	0.98	66	0.67	0.98	66
Conference Club/Banquet (20 to 50 sq ft/guest room)	5,000/sf GLA	30.00	30.00	/ksf GLA	30.00	30.00	/ksf GLA	1.00	1.00	150	1.00	1.00	150
										Customer Employee Reserved			340 13 0
										Total			334

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Other Sources of Parking Demand

Other than future development in the area there are other potential sources of parking demand to the parking structure. The main potential parking demand generators include the Shem Creek Park, the Mt. Pleasant Presbyterian Church, Mt. Pleasant Farmers Market and the Cooper River Bridge Run.

Shem Creek Park recently opened in October 2011 and includes 2,200 feet of boardwalk for fishing, recreation and boat docks. A number of large community events are planned to be hosted at this park, which could generate people into the parking garage.

The Mt. Pleasant Presbyterian Church consists of 3,000 members and has a small lot of 70 spaces and overflow lots in grass fields. The proposed parking garage would be conveniently located near the Church and could support overflow parking during Sunday services.

Mt. Pleasant Farmers Market which opens in mid-April and runs through mid-October each Tuesday from 3:30 PM until dark. Parking is provided on-site at Moultrie Middle School or in the shopping center located directly across from the Farmers Market site. The Farmers Market site is located a couple blocks away from the site of the proposed Shem Creek Garage and may not generate any parking into the garage.

The Cooper River Bridge Run is a 22-year old 10-K race which raises funds for public education on the importance of exercise. The run generates approximately 35,000 participants every year. The main course of the run is along Coleman Boulevard and it passes the proposed site of the Shem Creek Garage.

Parking Rates

There are currently no parking facilities in the study area that charge for parking. This would be the first parking facility to potentially charge for parking. However, there are parking facilities in Downtown Charleston that charge for public parking. A survey of these facilities was performed to determine the average parking rates for hourly, daily and monthly parking. **Table 7** lists the parking rates for a number of parking facilities and the on-street meters located in Downtown Charleston. The average parking rates of these facilities is also provided in **Table 7**.

Since there are currently only free parking lots in the study area this information will be applied as a guide to understand what people may be willing to pay for parking in Mt. Pleasant. Based on these parking rates, we feel that the following parking rate schedule can be applied in the Shem Creek Parking Garage:

- Hourly: \$1.25
- Daily: \$11.00
- Monthly: \$55.00
- Hotel/Overnight/Valet: \$5.00

Table 7 – Parking Rate Survey

Parking Facility	Location	Parking Rates			
		Hourly	Daily	Monthly	Hotel
On-Street Meters	Charleston, SC	\$0.75	-	-	-
King & Queen Street Parking Garage	Queen St. and King St.	\$2.00	\$20.00	\$175.00	-
Charleston Place	85 Hasell Street	\$2.00	\$25.00	\$125.00	\$12.00
Palmetto Parking Lot	8 Cumberland St.	\$0.00	\$8.00	\$250.00	-
Charleston County Parking Garage	90 Cumberland St.	\$2.00	\$20.00	\$140.00	-
Majestic Square Garage	211 King St.	\$2.00	\$16.00	\$125.00	-
Palmetto Garage	69 Wentworth St.	\$3.00	\$12.00	\$125.00	-
Republic Parking Lot	174 Meeting St.	\$0.00	\$7.00	\$130.00	\$12.00
Camden Exchange Parking Garage	47 Jahn St.	\$2.00	\$10.00	\$125.00	\$12.00
Marion Square Garage	401 King St.	\$2.00	\$10.00	-	\$12.00
Cumberland Steet Parking Garage	Cumberland St. and Meeting St.	\$2.00	\$20.00	\$140.00	-
Average Parking Rates		\$1.61	\$14.80	\$148.33	\$12.00

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Future Site Description

Figure 3 shows a summary of the future uses for the Shem Creek Parking Garage site. As shown in Figure 3, the hotel, restaurant and banquet space would displace Red's Icehouse and Lighthouse on the Creek. The current parking area on the site would continue to contain approximately 100 spaces, which would support the parking demand generated by hotel guests. Any spillover parking demand from the sites development, possibly generated by either the restaurant or banquet space, would utilize the parking garage. Based on the shared parking demand analysis for developments planned on the site (Table 6), a total of approximately 350 spaces are needed. In order to simply support the developments planned on the site it was assumed the Shem Creek Parking Garage would be two levels and approximately 250 spaces. This gives a total of 350 spaces on the site, including the 100 spaces in the adjacent lot.

Figure 3 – Future Site Layout



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Financial Analysis

A seven year financial analysis was performed to determine the feasibility of constructing and operating the Shem Creek Parking Garage. It was assumed that the garage would be a public parking facility and would contain 250 spaces.

Revenue

The analysis of future revenue generated by the parking garage includes the parking demand generated by future developments, since the parking occupancy counts show that all of the existing businesses currently adequately support their parking demand. However, some of the future developments in the Shem Creek area of Mt. Pleasant will be permitted to rely on nearby parking, as stated in the *Coleman and Ben Sawyer Boulevards Revitalization Master Plan*. It was assumed that the overflow parking demand generated by the Shem Creek Park and the Mt. Pleasant Presbyterian Church would use the parking garage. The Mt. Pleasant Presbyterian Church has even reached out to the developer about a potential parking agreement. Another major assumption is that the on-street parking in the neighborhood will become regulated in a way to prevent people from parking on-street and to instead use the parking garage.

Table 8 shows the analysis of revenue projections for a 250 space parking garage. It was assumed that hotel patrons would park on the adjacent parking lot and that people visiting the restaurant and banquet space in the hotel would utilize the parking garage. Other than the hotel development on the site and the Shem Creek Park, developments 2, 3, 5, 6, 7 and 8, as listed in **Table 4** and shown in **Figure 2**, will generate parking demand to the Shem Creek Parking Garage. However, only half of the office space parking demand was included and none of the developments' retail demand. The total office parking demand captured by the Shem Creek Parking Garage was assumed to be 135 vehicles, which is half of the office parking demand generated by future developments. This is due to the assumption that these developments may provide some on-site parking. Also, the parking demand generated by these office developments was staggered in quarters over a four year period since there is no definitive timeline for their construction and occupancy.

For the banquet center/convention center it was assumed that it would model the existing event space on the site (Lighthouse on the Creek), which hosts approximately 90 events per year and has an attendance range between 40 and 400 people. A 20% capture rate was applied for people already staying at the hotel and attending a banquet or convention. The parking revenue generated by the restaurant space was divided into a weekday and weekend analysis. Below is a list of the assumptions applied in calculating the revenue for the parking garage.

- The average event size for a banquet/convention is 300 people and the average vehicle occupancy is 2.5 people per vehicle.
- A patron visiting the banquet would stay an average of 5 hours.
- Office parkers would pay a monthly fee of \$55.
- Shem Creek Park would generate an average of 10 vehicles per day and they would stay an average of 2 hours.
- A restaurant/bar patron during the weekday would stay an average of 2 hours and a space would turnover twice per day.
- A restaurant/bar patron during the weekend would stay an average of 3 hours and a space would turnover twice per day.

The parking rates applied in this analysis are based on the parking rate survey of parking garages in Downtown Charleston and our opinion of what people would legitimately pay in Shem Creek. The hourly rate was increased by \$0.75 and the monthly rate was increased by \$5 in year 3. After year 3 the rates were increased by an inflation factor of 3% per year. Although the parking rates were increased by 3% per year, which reflects the average annual increase in parking rates, they would typically be increased in increments of at least a quarter.

As shown in **Table 8**, the average weekday and weekend parking demand is 195 and 230 spaces, respectively. The average weekday parking demand includes the office, Shem Creek Park and restaurant/bar weekday demand. The average weekend parking demand includes the banquet center/convention center parkers, Shem Creek Park, and the restaurant/bar weekend demand. This shows that a 250 space garage would adequately support the parking demand considered for this financial analysis.

Table 8 – Shem Creek Garage Revenue Projections

Parking Patrons	Turnover / # of Hours	# of Spaces	Hours of Parking						
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Banquet Center/Convention Center Parkers ¹	5	120	600	600	600	600	600	600	600
Office ²	1	135	34	68	101	135	135	135	135
Shem Creek Park ³	2	10	20	20	20	20	20	20	20
Restaurant/Bar - Weekday ⁴	4	50	200	200	200	200	200	200	200
Restaurant/Bar - Weekend ⁵	6	100	600	600	600	600	600	600	600
Presbyterian Church - Sunday	3	50	150	150	150	150	150	150	150
Total Vehicles During Average Weekend Period ⁶		230							
Total Vehicles During Average Weekday Period ⁷		195							
Total Vehicles During Average Sunday ⁸		230							
Parking Rates									
Banquet Center/Convention Center Parkers ¹			\$1.25	\$1.25	\$2.00	\$2.06	\$2.12	\$2.19	\$2.25
Office ²			\$55.00	\$55.00	\$60.00	\$61.80	\$63.65	\$65.56	\$67.53
Shem Creek Park ³			\$1.25	\$1.25	\$2.00	\$2.06	\$2.12	\$2.19	\$2.25
Restaurant/Bar - Weekday ⁴			\$1.25	\$1.25	\$2.00	\$2.06	\$2.12	\$2.19	\$2.25
Restaurant/Bar - Weekend ⁵			\$1.25	\$1.25	\$2.00	\$2.06	\$2.12	\$2.19	\$2.25
Presbyterian Church - Sunday			\$1.25	\$1.25	\$2.00	\$2.06	\$2.12	\$2.19	\$2.25
Revenue									
Banquet Center/Convention Center Parkers ¹	90		\$67,500	\$67,500	\$108,000	\$111,240	\$114,577	\$118,015	\$121,555
Office ²	12		\$22,440	\$44,880	\$72,720	\$100,116	\$103,119	\$106,213	\$109,399
Shem Creek Park ³	365		\$9,125	\$9,125	\$14,600	\$15,038	\$15,489	\$15,954	\$16,432
Restaurant/Bar - Weekday ⁴	250		\$187,500	\$187,500	\$300,000	\$309,000	\$318,270	\$327,818	\$327,818
Restaurant/Bar - Weekend ⁵	115		\$86,250	\$86,250	\$138,000	\$142,140	\$146,404	\$150,796	\$155,320
Presbyterian Church - Sunday	52		\$9,750	\$9,750	\$15,600	\$16,068	\$16,550	\$17,047	\$17,558
Total Revenue			\$382,865	\$405,005	\$648,920	\$693,802	\$714,410	\$735,842	\$748,083

¹ Assumed an average event size of 300 people, a vehicle occupancy of 2.5 people/vehicle, a 20% capture rate from the hotel and that a person would stay an average of 5 hours.

² Assumed half of the office parking demand from development sites 2, 3, 5, 6, 7 and 8 would be captured by the Garage.

³ Assumed an average demand of 10 vehicles per day and an average stay of 2 hours for the Shem Creek Park.

⁴ Assumed half of the peak demand for the weekday restaurant/bar parkers, a turnover of 2 vehicles per day and an average stay of 2 hours.

⁵ Assumed the peak demand for the weekend restaurant/bar parkers, a turnover of 1.5 vehicles per day and an average stay of 3 hours.

⁶ Includes Banquet Center/Convention Center Parkers, Shem Creek Park, and Restaurant/Bar - Weekend.

⁷ Includes Office and Restaurant Bar - Weekday.

⁸ Includes Banquet Center/Convention Center Parkers, Shem Creek Park, Restaurant/Bar - Weekday, and Presbyterian Church.

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Expenses

Table 9 illustrates a detailed estimate of the projected operating and maintenance costs for the parking garage. The parking garage would be accessible 24/7 with a pay-on-foot revenue control system and the use of RFI cards for monthly parkers. The garage would be remotely managed by a private parking operator. A \$40,000 annual fee was applied for the private parking operator fee.

Table 9 – Shem Creek Garage Operating and Maintenance Expenses

DIRECT EXPENSES						
Private Parking Operator						\$40,000
Rent-Equipment	(Com Equip)	Amount \$200	FT Emp.	Factor 12		\$2,400
Insurance	PL/PD/GKLL/Crime Coverage	Amount 250	Unit Cost \$80	1		\$20,000
Repairs & Maint.	Per Elevator	2	\$250	12	\$6,000	
	Pkg Equip	2	\$1,200	1	\$2,400	\$8,400
Utilities		250	\$5.50	12		\$16,500
Depreciation - Sweeper		96	\$23,000	12		\$2,875
Telephone		250	\$0.18	12		\$540
Rubbish & Sweeping	Powerwash	Spaces 250	Unit Cost \$5.00	1	\$1,250	
	Striping	250	\$1.50	1	\$375	
	Rubbish	250	\$0.00	1	\$0	
	Pest Control	250	\$0.50	1	\$125	\$1,750
Signs		\$1,000		1		\$1,000
Materials & Office Supplies		250	\$6.05	1		\$1,513
Forms & Printing	Tickets (1000s)	Amount 46	Unit Cost \$18.00	1	\$821	
	Key Cards	400	\$1.50	1	\$600	
	Invoices	250	\$0.04	12	\$120	
	Envelopes	250	\$0.08	12	\$240	\$1,781
Advertising		\$0		12		\$0
Security	Armor Car Service	275		12	\$3,300	
	Safety Inspections		\$1,000	1	\$1,000	
	Alarm Service		\$450	1	\$450	\$4,750
Property Taxes		\$17,500		1		\$17,500
Ground Lease		\$65,000		1		\$65,000
Miscellaneous		\$75		12		\$900
Credit Card	Processing Service Fees	\$250		12		\$3,000
TOTAL EXPENSES						\$187,909

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Tex Small, Jr.
Shem Creek Garage Feasibility Study

January 26, 2012
Page 17

Capital costs for the proposed Shem Creek Parking Garage are provided in **Table 10**. The financial analysis assumes 250 parking spaces at a total cost of \$6,200,000. This includes an average construction cost of \$20,000 per space and \$1.2 million for the land acquisition costs. An annual interest rate of 5.0% and a \$75 per space per year maintenance reserve were applied. With full financing over a 20 year period, the total annual payment is \$695,628.

Table 10 – Shem Creek Garage Financing Costs

Description	Amount	Notes	250 Spaces
Full Financing - 20 Years			
Monthly Payment	\$40,747	\$1,200,000	Land Cost
Months	12		
Annual Payment	\$488,970	0.0500	Interest Rate/year
M&O	\$187,909	240	months
Maint Res. @ \$75/sp/yr	\$18,750		
Total Annual Payment	\$695,628	\$6,200,000	Loan Amt. ¹

¹ Assumed a \$20,000 per space construction cost and \$1.2 million in land costs.

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Net Project Revenue

A comparison of project revenues with project costs is provided in **Table 11**. It was assumed that maintenance and operating expenses would increase at 4% per year. Also, since this would be a municipal garage there would be no tax on gross revenues. The analysis shows that the Shem Creek Garage would operate at approximately a \$320,000 deficit initially. Due to the increase in the hourly and monthly parking rates in year 3 and the assumption that more future development would come online in the area, the net operating deficit decreases to approximately \$77,500. It is projected that after 7 years the Shem Creek Garage would experience a deficit of approximately \$15,000. Overall, the Shem Creek Garage will not be a profitable venture, but could help support economic development and smart growth in the Shem Creek area.

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Table 11 – Shem Creek Garage Net Income Summary

Expenses	Annual Factor	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Annual Payment		\$488,970	\$488,970	\$488,970	\$488,970	\$488,970	\$488,970	\$488,970
M&O Expenses ¹		\$187,909	\$195,425	\$203,242	\$211,372	\$219,827	\$228,620	\$237,765
Maint Res. @\$75/sp/yr		\$18,750	\$18,750	\$18,750	\$18,750	\$18,750	\$18,750	\$18,750
Total Annual Expenses		\$695,628	\$703,145	\$710,962	\$719,091	\$727,546	\$736,339	\$745,484
Revenue		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Banquet Center/Convention Center Parkers 1	90	\$67,500	\$67,500	\$108,000	\$111,240	\$114,577	\$118,015	\$121,555
Office 2	12	\$22,440	\$44,880	\$72,720	\$100,116	\$103,119	\$106,213	\$109,399
Shem Creek Park 3	365	\$9,125	\$9,125	\$14,600	\$15,038	\$15,489	\$15,954	\$16,432
Restaurant/Bar - Weekday 4	250	\$187,500	\$187,500	\$300,000	\$309,000	\$318,270	\$327,818	\$327,818
Restaurant/Bar - Weekend 5	115	\$86,250	\$86,250	\$138,000	\$142,140	\$146,404	\$150,796	\$155,320
Gross Revenue		\$372,815	\$395,255	\$633,320	\$677,534	\$697,860	\$718,796	\$730,525
NET INCOME		-\$322,813	-\$307,890	-\$77,642	-\$41,557	-\$29,686	-\$17,544	-\$14,959

¹ Assumed maintenance and operation expenses would increase at 4% per year.

DESMAN Associates

Conclusion

A parking structure feasibility study was performed to assess the seven year financial outlook for a parking structure at the Shem Creek site in Mt. Pleasant, South Carolina. The site is located at the northwest corner of Mills Street and Coleman Boulevard. To determine the existing parking conditions adjacent to the proposed site, parking inventory and occupancy counts were performed during a typical Friday and Saturday at multiple time periods. It was determined that the study area adequately supports the existing parking demand, with only a few select lots reaching capacity at peak periods. The parking rates of parking facilities in downtown Charleston were compiled to determine the potential parking rates for the Shem Creek Garage. There are currently no daily parking fees for public parking facilities in Mt. Pleasant.

The future site where the garage would be located would consist of a hotel with banquet/convention center space and a restaurant/bar which would replace Red's Icehouse and Lighthouse on the Creek. The site would also have a 100 space lot primarily for hotel patrons. The Shem Creek Parking Garage would be 2 levels and have 250 spaces.

The following major assumptions were applied for the Shem Creek Garage revenue analysis:

- Seven future developments would contribute to future parking demand.
- On-street parking in the area would be managed and regulated to prevent the abuse of on-street neighborhood parking.
- Hotel patrons would be provided parking in the 100 space lot on site and would generally not use the Shem Creek Garage.
- The Shem Creek Garage would primarily be used by people visiting the convention center/banquet space, hotel restaurant/bar, Shem Creek Park events and future office demand.

The following major assumptions were applied for the analysis of maintenance and operating expenses and financing costs:

- A 24-7 operation with pay-on-foot equipment.
- The garage would be remotely managed by a private parking management company in the area.
- Property taxes and ground lease fees of \$17,500 and \$65,000, respectively, were included in the operating and maintenance expenses.
- A \$20,000 per space construction cost was assumed.
- Full financing over a 20 year period with a 5% annual interest rate was analyzed.

DESMAN

AN ASSOCIATE OF

Tex Small, Jr.
Shem Creek Garage Feasibility Study

January 26, 2012
Page 20

The financial analysis revealed that the Shem Creek Parking Garage would operate at a deficit over the seven year period. Initially, the deficit would be approximately \$320,000, but would decrease to approximately \$77,500 with an increase in parking rates. By year 7, with added development to the area and a continued increase in parking rates, the net deficit would reduce to approximately \$15,000.

SCDG0004387

Assumptions

The financial analysis of the subject parking structure presented in this report represents a series of analyses and estimates based on certain underlying assumptions. The assumptions used in this report include the following:

- 1. The proposed parking structure will be designed and constructed so that it will be acceptable to its patrons and so that there will be no impediments to its use.*
- 2. The proposed parking structure will contain the specified number of spaces.*
- 3. The proposed parking structure will be constructed and opened according to the specified time frame and at the construction and financing costs assumed.*
- 4. The fees to be charged in the years projected in this analysis will be at the levels shown.*
- 5. Operating costs of the parking structure will not exceed the levels reflected in the estimates.*
- 6. The parking structure will be properly maintained during its service life to assure its continuing viability. Maintenance costs will be as estimated.*
- 7. There will be no significant changes in the availability of motor fuel and transit competition during the period of the pro forma.*
- 8. The assumed level of new development or redevelopment in the trade area will take place according to the specified time frame.*
- 9. The level of economic activity in the metropolitan area and in the trade area of the parking structure will continue to be normal, and parking demand and the demand for the commercial space will continue at normal levels during the period of the pro forma.*
- 10. The financial information included in this report was prepared by Desman Associates. This information may not have been prepared in compliance with generally accepted accounting standards, and was not audited in any manner.*



RESOLUTION NO. R.13102

STATE OF SOUTH CAROLINA	)	A RESOLUTION TO ENTER INTO
	)	A LICENSE AGREEMENT REGARDING
COUNTY OF CHARLESTON	)	PUBLIC ACCESS AND USE OF A
	)	PROPOSED PARKING GARAGE NEAR
TOWN OF MOUNT PLEASANT	)	SHEM CREEK

WHEREAS, the Shem Creek area in the Town of Mount Pleasant is a vibrant and busy public gathering area enjoyed by residents and tourists;

WHEREAS, the need for accessible and safe public parking is evident;

WHEREAS, a parking garage located in this area will contribute to the growth of the Shem Creek area while providing safe and convenient access to residents and tourists;

WHEREAS, Shem Creek Development Group, LLC seeks to construct, maintain and operate a parking facility on Shem Creek;

WHEREAS, it is in the best interest of the Town of Mount Pleasant to reserve parking spaces within the proposed parking facility for the public; and

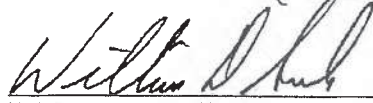
WHEREAS, Mount Pleasant Town Council hereby finds that the license agreement attached as Exhibit A provides the appropriate provisions to reserve said parking spaces;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Councilmembers of the Municipality of Mount Pleasant, in Council assembled, that Exhibit A attached hereto, or a substantively similar agreement, is formally and officially approved and adopted.

THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ITS ADOPTION.

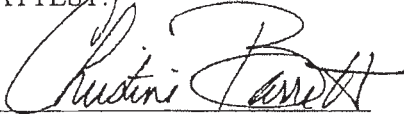
**PLAINTIFF'S
EXHIBIT
6**

SIGNED, SEALED AND DELIVERED THIS 14 DAY OF October, 2013.



William D. Swails, Mayor
Town of Mount Pleasant

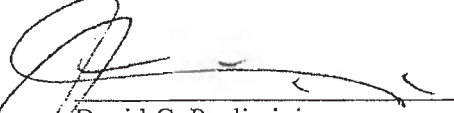
ATTEST:



Christine Barrett
Clerk of Council

October 14, 2013

APPROVED AS TO FORM:



David G. Pagliarini
Corporation Counsel

PARKING LICENSE AGREEMENT
BY AND BETWEEN
SHEM CREEK DEVELOPMENT GROUP LLC
AND
TOWN OF MOUNT PLEASANT

EXHIBIT A (Page 2 of 13)
R.13102

Article I.
BASIC LICENSE PROVISIONS

Section 1.01 Effective Date. The Effective Date of this License shall be October __, 2013.

Section 1.02 Licensor. Shem Creek Development Group LLC ("SCDG")

Section 1.03 Notice Addresses.

Address of Licensor: 400 Hibben Street, Suite 200
Mount Pleasant, SC 29464

With a copy to: Buist Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Attn: Gray B. Taylor Esq.

Licensee/Town: Town of Mount Pleasant ("Town")

Address of Licensee: Town of Mount Pleasant Municipal Complex
100 Ann Edwards Lane
Mount Pleasant, SC 29464

With a copy to: Town of Mount Pleasant Legal Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

Section 1.04 Property. The real property and improvements to be constructed thereon situated in the Town of Mount Pleasant, South Carolina, as more fully described on the attached Exhibit "A" (the "Property").

Section 1.05 Project. The Project consists of a multi-level structured parking garage, comprised of 276 total parking spaces, and a proposed office complex. A conceptual rendering of the Project is attached hereto as Exhibit "A"

Section 1.06 Premises. That portion of the Property comprising 132 of the 276 total parking spaces planned for the Project (the "Public Spaces"; the remaining 144 spaces are referred to herein as the "Reserved Spaces", and the Public Spaces and Reserved Spaces are collectively herein the "Parking Spaces"). The Parking Spaces, along with the parking garage building in which they are located, and all ancillary and/or associated structures, shall comprise the "Parking Garage", as more particularly described and identified on Exhibit "A".

Section 1.07 Rent.

- (a) **Fixed Minimum Rent:** During the first fifteen years of the License Term (the "Rent Period,") Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, the Fixed Minimum Rent, subject only to the adjustments set forth herein. During each year of the Rent Period, Fixed Minimum Rent shall be One Hundred Eighty-five Thousand and no/100 (\$185,000.00) Dollars. Fixed Minimum Rent for each License Year of the Rent Period shall be paid on or before the commencement of each License Year during the Rent Period. Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by Licensor, with payment being released from escrow upon the Rent Commencement Date. Following the Rent Period and for all remaining years of the License Term, Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior

EXHIBIT A (Page 3 of 13)
R.13102

demand and without any deduction or setoff whatsoever, Fixed Minimum Rent in the amount of One Dollar per year.

- (b) Rent Reduction based Upon Financial Performance of the Parking Garage: If at any time during the Rent Period of this License, should the operation of the Parking Garage result in an annual net operating profit, Licensee shall be entitled to reduce its Fixed Minimum Rent Payment for the following License Year of the Term by its pro rata share, based upon the percentage of the Parking Spaces comprising the Public Spaces.

(i) For the purpose of this Agreement, "Net Operating Profit" shall be defined as gross revenue generated by the Parking Spaces during any License Year, less all expenses related to operation, maintenance and repair of the Parking Garage (including reasonable reserves for repair and replacements), including but not limited to the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon). Should the calculation of Net Operating Profit for any License Year result in a negative number (a "Net Operating Loss"), the Net Operating Profit for the following License Year shall be reduced by the Net Operating Loss from the preceeding License Year.

(ii) By way of example, should the Parking Garage result in an annual net operating profit of \$10,000, Licensee's Fixed Minimum rent for the final License Year of the Term shall be reduced by \$4,782.61 (e.g., $\$10,000 \times 132/276 = \$4,782.61$).

Section 1.08 Operating Expense Payment. Licensor, as its sole and exclusive obligation, shall pay all expenses associated with the operation of the Parking Garage.

Section 1.09 License Year. A License Year shall be each successive period of twelve (12) calendar months commencing on the Rental Commencement Date.

Section 1.10 License Term; Rental Commencement Date. The term of the License (the "License Term") shall begin on the Rent Commencement Date, and shall end upon the earlier of (i) thirty (30) License Years thereafter or (ii) a Major Capital Event (as defined hereinafter), unless extended or sooner terminated in accordance with the terms and provisions of this License. The rental commencement date ("Rental Commencement Date") shall be date of issuance of certificate of occupancy by the Town.

Section 1.11 Permitted Use. The sole Permitted Use of the Public Spaces shall be for vehicular parking spaces for the general public at rental rates comparable to market rates for similarly situated parking facilities.

Article II.
LICENSE OF PREMISES AND QUIET ENJOYMENT

Section 2.01 Description of Premises.

- (a) Licensor currently Leases (or has the ability to lease) the land shown on Exhibit "A", together with the existing buildings and improvements thereon depicted, all of which constitute the Property, pursuant to the

EXHIBIT A (Page 4 of 13)
R.13102

terms and conditions of that certain Real Property License by and between Snowmill, LLC, as Licensor thereunder, and Lowcountry Capital, LLC, as Licensee thereunder, dated April 1, 2006, as amended and thereafter assigned from Lowcountry Capital, LLC to Lucasville Investments, LLC (the "Prime Lease"). In consideration of the rents, covenants and agreements reserved and contained in this License, Licensor hereby grants an exclusive Licenses over the Premises to Licensee and Licensee accepts same, subject only to the terms and conditions herein contained, and all applicable liens, encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Property.

- (b) The Premises shall include only the Public Spaces and necessary appurtenances specifically granted in this License, and shall not include any adjacent buildings, docks, or surface parking areas.

Section 2.02 Licensor's Work. Licensor, at its sole cost and expense, shall construct the proposed Project, in a form substantially similar to the conception drawings attached hereto as Exhibit "B".

Section 2.03 Licensor's Contingency. Licensor's obligations under this License Agreement, including but not limited to the obligation to construct the Project, are contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity. Licensor, in its sole and absolute discretion, may elect to terminate this License Agreement at any time prior to the earlier of (i) twenty-four (24) months from the Effective Date, or (ii) Licensor's commencement of construction of the Parking Garage.

Section 2.04 Possession/Alterations. Licensor and Licensee hereby agree that the Town's issuance of a certificate of occupancy for the Parking Garage shall be deemed conclusive evidence of Licensee's acceptance of the Premises in satisfactory condition and in full compliance with all covenants and obligations of Licensor related to construction of the Parking Garage. Licensee agrees that except as otherwise expressly set forth in this License, no representations or inducements respecting the condition of the Premises have been made to Licensee by Licensor or its authorized representatives. The Licensee shall notify the Licensor of any accident, defect, damage or deficiency in any part of the Premises or improvements which comes to the attention of the Licensee, its employees or contractors notwithstanding that the Licensor may have no obligation in respect thereof.

Section 2.05 Quiet Enjoyment. Licensor covenants that Licensee, upon paying all sums due from Licensee to Licensor and performing and observing all of Licensee's obligations under this License, shall peacefully and quietly have, hold and enjoy the Premises and the appurtenances throughout the License Term without interference by the Licensor, subject, nevertheless, to the other terms and provisions of this License.

Section 2.06 Excuse of Performance. Anything in this License to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of a party, that party shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this License if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulation or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the Licensor; provided, however, that nothing herein shall delay or excuse payment of rent or any other sum due under this License.

**Article III.
OPERATING COVENANTS**

Section 3.01 Management of the Project. Licensee acknowledges and agrees that the sole and exclusive control and responsibility for management of the Project shall be with the Licensor. In furtherance of such management, Licensor shall make such decisions regarding staffing, the hiring of employee, operational standards, maintenance, parking fees, rules and regulations for use of the Project, and other decisions related to the management and operation of the Project. Notwithstanding the foregoing, Licensor has agreed to certain standards and criteria for operation of the Parking Garage, as set forth herein.

Section 3.02 Operating Covenants. In consideration of this Agreement, Licensor hereby agrees to the following management guidelines and operational standards for the Premises and the Project:

- (a) The Public Spaces subject to this License Agreement are intended to foster tourism and economic development along Coleman Boulevard and the Shem Creek waterfront, and to provide parking for existing local businesses. In order to achieve these objectives, the Public Spaces shall be available for public use, 365 days per year, 24 hours per day.
- (b) The Reserved Spaces shall be reserved for separate allocation by Lessor Monday through Friday, 6:00 a.m. until 7:00 p.m. During all other times the Reserved Spaces shall be available for public use, on a first-come first-served basis.
- (c) The Premises shall be operational 365 days per year, 24 hours per day. Licensor reserves the right to establish, charge and collect reasonable fees for use of the Public Spaces and for the Reserved Spaces for such times as the Reserved Spaces are available for use by the general public. Parking fees shall be at rental rates comparable to market rates for similarly situated parking facilities. Following the termination of this License Agreement, Licensor shall be free to set parking fees in its sole discretion.

Section 3.03 Operating Costs. Licensor shall be solely responsible for the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon).

Section 3.04 Licensor's Work. Licensee has inspected the Licensor's conceptual plans for the Project, and agrees to accept the Premises if constructed in a substantially similar manner, and that no other Licensor work shall be required.

**Article IV.
INSURANCE**

Section 4.01 Licensor's Coverage. Licensor shall maintain at its sole expense during the term hereof:

- (a) public liability insurance covering the Premises in an amount of \$2,000,000 for injury and/or death to one person. The Town of Mount Pleasant shall be named as an additional insured; and

EXHIBIT A (Page 6 of 13)
R.13102

- (b) Earthquake, flood, fire and extended casualty, windstorm and hail coverage in an amount not less than 100% of the replacement value of the buildings and improvements now or hereafter located on the Premises (but in no case less than \$5,000,000) with companies satisfactory to Licensor; and

Article V.
CASUALTY AND CONDEMNATION

Section 5.01 Fire, Explosion or Other Casualty. In the event the Premises are damaged by fire, explosion or any other casualty to an extent which is less than fifty (50%) percent of the cost of replacement of the Premises, the damage shall promptly be repaired by Licensor at Licensor's expense, but without abatement of Rent. In the event of any such damage and (a) the Premises shall be damaged to the extent of fifty (50%) percent or more of the cost of replacement, Licensor shall repair or rebuild the Premises or the building or buildings, with an abatement of the Fixed Minimum Rent during the time reasonably required to repair or rebuild and a tolling of the License Term for the time required to repair or rebuild.

Section 5.02 Major Capital Event. Following the 15th year of the Rent Term should uninsured capital improvements or repairs costing in excess of \$750,000 be required in any single License Year Licensor may elect to terminate this License upon written notice to Licensee and consultation with Licensee's representatives.

Section 5.03 Condemnation. If the whole of the Premises, or so much thereof as to render the balance unusable by Licensee for more than 6 months, shall be taken under power of eminent domain, or otherwise transferred in lieu thereof, or if any part of the Property is taken and its continued operation is not, in Licensor's sole opinion, economical, this License shall automatically terminate as of the date possession is taken by the condemning authority, for so long as the Town of Mount Pleasant is not the condemning authority. No award for any total or partial taking shall be apportioned, and Licensee hereby unconditionally assigns to Licensor any award which may be made in such taking, or condemnation. In the event of a partial taking which does not result in the termination of this License, Fixed Minimum Rent shall be apportioned according to the part of the Premises remaining usable by Licensee.

Section 5.04 Condemnation Award. All compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Premises or Property, shall be the property of Licensor, whether such damages shall be awarded as compensation for diminution in the value of the License or to the fee of the Premises or otherwise, and Licensee hereby assigns to Licensor all of the Licensee's right, title and interest in and to any and all such compensation.

Article VI.
DEFAULTS AND REMEDIES

Section 6.01 Definitions. In the event that Licensee (a) fails to pay all or any portion of any Rent or other sum due from Licensee hereunder or pursuant to any exhibit hereto within ten (10) days following written notice; (b) fails to comply with any other obligation of Licensee under this License within 30 days after written notice; or (c) becomes bankrupt, insolvent or files any insolvency or similar bankruptcy, debtor proceeding; then Licensee shall be in default hereunder and Licensor may, at its option and without further notice to Licensee, (i) terminate Licensee's right to use of the Premises, (ii) without terminating this License, re-enter and resume exclusive possession of the Premises, or (iii) declare this License terminated, and may thereupon in either event remove all persons and property from the Premises in any manner permitted by South Carolina law. In addition, Licensor shall be entitled to bring an action for specific performance or breach of contract against Licensee, but agrees that its sole and exclusive remedy shall be the Rent Payments due under this Agreement. Both parties waive any claims that either may have to any consequential or punitive damages, and agree that the prevailing party in any dispute shall be entitled to an award of costs and attorney's fees, including the cost of trial and any appeals. .

Section 6.02 Rights and Remedies. The various rights and remedies herein granted to Licensor shall be cumulative and in addition to any others to which Licensor may be entitled by law or in equity, and the exercise of

one or more rights or remedies shall not impair Licensor's right to exercise any other right or remedy. In all events, Licensor shall have the right, upon notice to Licensee, to cure any breach by Licensee at Licensee's sole cost and expense, and Licensee shall reimburse Licensor for such expense upon demand.

Section 6.03 Bankruptcy. If Licensor shall not be permitted to terminate this License as hereinabove provided because of the provisions of Title 11 of the United States Code relating to insolvency, reorganization or bankruptcy, as amended ("Bankruptcy Code"), then Licensee as a debtor-in-possession or any trustee for Licensee agrees promptly, within no more than fifteen (15) days upon request by Licensor to the applicable bankruptcy court, to assume or reject this License, and Licensee on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this License by Licensor with such court. In such event, Licensee may only assume this License if (a) it cures or provides adequate assurance that the trustees will promptly cure any default hereunder, (b) it compensates or provides adequate assurance that Licensee will promptly compensate Licensor for any actual pecuniary loss to Licensor resulting from Licensee's defaults, and (c) it provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this License to be performed by Licensee. In no event after the assumption of this License shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this License as set forth hereinabove, shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder, and (2) the assumption of this License will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Licensor shall have no obligation to provide Licensee with any utilities or other services as herein required, unless Licensee shall have paid and be current in all payments of Operating Costs, utilities or other charges therefor.

**Article VII.
SUCCESSION TO LICENSOR'S INTEREST**

Section 7.01 Assignment and Attornment. Licensor, in its sole discretion, may assign its rights under this License Agreement at any time during the License Term, and Licensee shall attorn and be bound to any of Licensor's successors or assigns under all the terms, covenants and conditions of this License for the balance of its remaining term.

Section 7.02 Subordination. Licensee agrees that it shall, within 10 days after receipt of Licensor's request, subordinate this License to any mortgage held by an institutional lender which encumbers any portion of the Premises (each is a "Mortgagee"), pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement (an "SND A"). Upon request of Licensee, Licensor shall use reasonable diligence to obtain an SND A from the Mortgagee.

Section 7.03 Mortgagee's Approval. If any mortgagee of the Property requires any modification of the terms and provisions of this License as a condition to such financing as Licensor may desire, then Licensor shall have the right to cancel this License if Licensee fails or refuses to approve and execute such modifications, within thirty (30) days after Licensor's request therefor. Upon such cancellation by Licensor, this License shall be null and void and neither party shall have any liability either for damages or otherwise to the other by reason of such cancellation. In no event, however, shall Licensee be required to agree, and Licensor shall not have any right of cancellation for Licensee's refusal to agree, to any modification of the provisions of this License relating to: the amount of rent or other charges reserved herein; the size and/or location of the Premises; or the duration of the License Term and/or Rental Commencement Date of the term.

Section 7.04 Estoppel Certificate. Within ten (10) days after request therefor by either party from time to time, the other party agrees to deliver in recordable form, a certificate to any proposed mortgagee or purchaser, or to the other party, certifying that this License is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto (or stating those claimed), and the dates to which Fixed Minimum Rent and Additional Rent have been paid.

**Article VIII.
MISCELLANEOUS**

EXHIBIT A (Page 8 of 13)
R.13102

Section 8.01 Assignment and Subletting. Licensee shall not directly or indirectly assign or in any manner transfer, mortgage, pledge, encumber or dispose of this License or any interest therein, or sublet or license the Premises or any part or parts thereof, or permit occupancy of all or any part thereof by anyone with, through or under it (each of the foregoing transactions is called a "Transfer"), without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion.

Section 8.02 Waiver. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Licensor shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant or condition of this License, other than the failure of Licensee to pay the particular rental so accepted, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such rent, and no covenant, term or condition of this License shall be deemed to have been waived by Licensor, unless such waiver be in writing by Licensor.

Section 8.03 Accord and Satisfaction. No payment by Licensee or receipt by Licensor of a lesser amount than the then due Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such rent or pursue any other remedy in this License provided.

Section 8.04 Entire Agreement. This License and the Exhibits and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Licensor and Licensee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this License shall be binding upon Licensor or Licensee unless reduced to writing and signed by them.

Section 8.05 No Partnership. By execution or performance of this License or any related agreement, Licensor does not, in any way or for any purpose, become a partner of Licensee in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with Licensee.

Section 8.06 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, insurrection, war or other causes beyond its reasonable control, then it shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided that nothing in this Section shall excuse or delay payment of Rent or any other sum.

Section 8.07 Notices. Any notice, demand, request or other instrument which may be or are required to be given under this License shall be delivered personally or sent by either United States certified mail postage prepaid or widely recognized commercial courier service requiring a signed receipt (such as Federal Express), and shall be addressed (a) if to Licensor at the address provided in Section 1.1 for Licensor or at such other address as Licensor may designate by written notice, and (b) if to Licensee at the address provided in Section 1.103 for Licensee or at such other address as Licensee shall designate by written notice. Notices shall be effective upon delivery, unless delivery is refused or cannot be made, in which event notice shall be effective as of attempted delivery, as indicated by written report or receipt of the postal service or commercial courier.

Section 8.08 Captions and Section Numbers; Interpretation. The captions, section numbers, article numbers, and index appearing in this License are inserted only as a matter of convenience and in no way define limit, construe, or describe the scope or intent of such section or articles of this License nor in any way affect this License.

EXHIBIT A (Page 9 of 13)
R.13102

There shall be no interpretation or construing of this License favorable or unfavorable to either party by virtue of its preparation by Licensor.

Section 8.09 Licensee Defined, Use of Pronouns. The word "Licensee" shall be deemed and taken to mean each and every person or party mentioned as a Licensee herein, be the same one or more; and if there shall be more than one Licensee, any notice required or permitted by the terms of this License may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Licensor or Licensee shall be deemed a proper reference even though Licensor or Licensee may be an individual, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this License apply in the plural sense where there is more than one Licensor or Licensee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

Section 8.10 Broker's Commission. Licensor and Licensee each represent and warrant to the other that no broker or real estate agent was involved in this transaction, and Licensor and Licensee each agree to indemnify and hold harmless the other from and against any and all claims, demands, liability, cost or expense (including attorney's fees) incurred by the other arising out of any claim for a brokerage commission or fee asserted due to the acts of the indemnifying party in connection with this License.

Section 8.11 Partial Invalidity. If any term, covenant or condition of this License or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this License shall be valid and be enforced to the fullest extent permitted by law.

Section 8.12 Execution of License and Municipal Authority. The submission of this License for examination does not constitute a reservation of or option for the Premises and this License becomes effective as a License only upon execution and delivery thereof by Licensor and Licensee. Licensee represents to Licensor that all necessary action has been undertaken to authorize this contractual obligation of the Licensee, and that the payments due under this License Agreement represent an ongoing obligation of the Town of Mount Pleasant. The Licensee may make this license contract beyond the term of the governing members of the municipal corporation entering into the License, since the subject matter of this License is an exercise of the Licensee's business and proprietary powers, and does not involve the exercise of a legislative function or the governmental power of the Licensee. Licensee has obtained the legal opinion of its Town Attorney confirming the provisions of this representation.

Section 8.13 Recording. Licensee agrees not to record this License nor any memorandum thereof, and upon any such recordation this License shall be voidable at Licensor's option. Said memorandum or short form of this License shall describe the parties, the Premises and the License Term and shall incorporate this License by reference. Licensor may record a notice prohibiting attachment of construction liens to its interest in the Premises and Property.

Section 8.14 Applicable Law. The Laws of the State of South Carolina shall govern the validity performance and enforcement of this License.

Section 8.15 Time is of the Essence. Time is of the essence of this Agreement.

Section 8.16 Successors and Assigns. Except as otherwise provided herein this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs personal representatives, executors, successors and assigns. Nothing herein shall authorize any transfer of this License, any interest in this License, or any interest in Licensee.

EXHIBIT A (Page 10 of 13)
R.13102

Section 8.17 Survival of Obligations. The provisions of this License with respect to any obligation of Licensee to pay any sum owing or to perform any act after expiration or other termination of this License shall survive the expiration or other termination of this License.

Section 8.18 Jury Trial. **LICENSEE AND LICENSOR BOTH WAIVE A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS, UNDER OR CONNECTED WITH THIS LICENSE OR ANY OF ITS PROVISIONS, AND THEIR RELATIONSHIP AS LICENSOR AND LICENSEE.**

Section 8.19 Representations. Licensee acknowledges that neither Licensor nor Licensor's agents, employees or contractors have made any representations or promises with respect to the Premises, the Property or this License except as expressly set forth herein.

Section 8.20 Licensor's Liability. Notwithstanding anything to the contrary herein contained, Licensee agrees that Licensor (and, in case Licensor is a joint venture, partnership, tenancy in common, association or other form of joint ownership, the individual partners, members and employees of any such joint venture, partnership, tenancy-in-common, association or other form of joint ownership) shall have absolutely no personal liability with respect to any of the provisions of this License, or any obligation or liability arising therefrom or in connection therewith. Licensee shall look solely to Licensor's equity in the Premises for the satisfaction of any remedies of Licensee against Licensor including, without limitation, the collection of any judgment (or other judicial process) requiring the payment of money by Licensor in the event of any default or breach by Licensor with respect to any of the terms and provisions of this License to be observed and/or performed by Licensor, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Premises, and no other assets of Licensor or any principal or partner of Licensor shall be subject to levy, execution or other judicial process for the satisfaction of Licensee's claim, and in the event Licensee obtains a judgment against Licensor, the judgment docket shall be so noted. This exculpation of liability shall be absolute and without exception whatsoever. This section shall inure to the benefit of Licensor's successors and assigns and their respective principals.

[Signatures on following page]

EXHIBIT A (Page 11 of 13)
R.13102

IN WITNESS WHEREOF, the parties hereto have executed this License this day and year first above written.

LICENSOR:

Shem Creek Development Group LLC,
a South Carolina limited liability company

First Witness

Second Witness

By: Tyler N. Flesch
Its: Manager

LICENSEE:

Town of Mount Pleasant

First Witness

Second Witness

By:
Its:

EXHIBIT A (Page 12 of 13)
R.13102

EXHIBIT "A"

Legal Description and Site Plan for
Property, marked to show Premises

EXHIBIT "B"

Fixed Minimum Rent

Year	Total
1	\$185,000.00
2	\$185,000.00
3	\$185,000.00
4	\$185,000.00
5	\$185,000.00
6	\$185,000.00
7	\$185,000.00
8	\$185,000.00
9	\$185,000.00
10	\$185,000.00
11	\$185,000.00
12	\$185,000.00
13	\$185,000.00
14	\$185,000.00
15	\$185,000.00

ORIGINAL



PARKING LICENSE AGREEMENT
BY AND BETWEEN
SHEM CREEK DEVELOPMENT GROUP LLC
AND
TOWN OF MOUNT PLEASANT

**PLAINTIFF'S
EXHIBIT**

7

1

Article I.

BASIC LICENSE PROVISIONS

Section 1.01 Effective Date. The Effective Date of this License shall be October 17, 2013.

Section 1.02 Licensors. Shem Creek Development Group LLC ("SCDG")

Section 1.03 Notice Addresses.

Address of Licensor: 400 Hibben Street, Suite 200
Mount Pleasant, SC 29464

With a copy to: Buist Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Attn: Gray B. Taylor Esq.

Licensee/Town: Town of Mount Pleasant ("Town")

Address of Licensee: Town of Mount Pleasant Municipal Complex
100 Ann Edwards Lane
Mount Pleasant, SC 29464

With a copy to: Town of Mount Pleasant Legal Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

Section 1.04 **Property.** The real property and improvements to be constructed thereon situated in the Town of Mount Pleasant, South Carolina, as more fully described on the attached Exhibit "A" (the "Property").

Section 1.05 Project. The Project consists of a multi-level structured parking garage, comprised of 276 total parking spaces, and a proposed office complex. A conceptual rendering of the Project is attached hereto as Exhibit "A"

Section 1.06 Premises. That portion of the Property comprising 132 of the 276 total parking spaces planned for the Project (the "Public Spaces"; the remaining 144 spaces are referred to herein as the "Reserved Spaces", and the Public Spaces and Reserved Spaces are collectively herein the "Parking Spaces"). The Parking Spaces, along with the parking garage building in which they are located, and all ancillary and/or associated structures, shall comprise the "Parking Garage", as more particularly described and identified on Exhibit "A".

Section 1.07 Rent.

- (a) **Fixed Minimum Rent:** During the first fifteen years of the License Term (the "Rent Period,") Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, the Fixed Minimum Rent, subject only to the adjustments set forth herein. During each year of the Rent Period, Fixed Minimum Rent shall be One Hundred Eighty-five Thousand and no/100 (\$185,000.00) Dollars. Fixed Minimum Rent for each License Year of the Rent Period shall be paid on or before the commencement of each License Year during the Rent Period. Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by Licensor, with payment being released from escrow upon the Rent Commencement Date. Following the Rent Period and for all remaining years of the License Term, Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior

demand and without any deduction or setoff whatsoever, Fixed Minimum Rent in the amount of One Dollar per year.

- (b) Rent Reduction based Upon Financial Performance of the Parking Garage: If at any time during the Rent Period of this License, should the operation of the Parking Garage result in an annual net operating profit, Licensee shall be entitled to reduce its Fixed Minimum Rent Payment for the following License Year of the Term by its pro rata share, based upon the percentage of the Parking Spaces comprising the Public Spaces.

- (i) For the purpose of this Agreement, "Net Operating Profit" shall be defined as gross revenue generated by the Parking Spaces during any License Year, less all expenses related to operation, maintenance and repair of the Parking Garage (including reasonable reserves for repair and replacements), including but not limited to the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon). Should the calculation of Net Operating Profit for any License Year result in a negative number (a "Net Operating Loss"), the Net Operating Profit for the following License Year shall be reduced by the Net Operating Loss from the preceeding License Year.

- (ii) By way of example, should the Parking Garage result in an annual net operating profit of \$10,000, Licensee's Fixed Minimum rent for the final License Year of the Term shall be reduced by \$4,782.61 (e.g., $\$10,000 \times 132/276 = \$4,782.61$).

Section 1.08 Operating Expense Payment. Licensor, as its sole and exclusive obligation, shall pay all expenses associated with the operation of the Parking Garage.

Section 1.09 License Year. A License Year shall be each successive period of twelve (12) calendar months commencing on the Rental Commencement Date.

Section 1.10 License Term; Rental Commencement Date. The term of the License (the "License Term") shall begin on the Rent Commencement Date, and shall end upon the earlier of (i) thirty (30) License Years thereafter or (ii) a Major Capital Event (as defined hereinafter), unless extended or sooner terminated in accordance with the terms and provisions of this License. The rental commencement date ("Rental Commencement Date") shall be date of issuance of certificate of occupancy by the Town.

Section 1.11 Permitted Use. The sole Permitted Use of the Public Spaces shall be for vehicular parking spaces for the general public at rental rates comparable to market rates for similarly situated parking facilities.

Article II. LICENSE OF PREMISES AND QUIET ENJOYMENT

Section 2.01 Description of Premises.

- (a) Licensor currently Leases (or has the ability to lease) the land shown on Exhibit "A", together with the existing buildings and improvements thereon depicted, all of which constitute the Property, pursuant to the

terms and conditions of that certain Real Property License by and between Snowmill, LLC, as Licensor thereunder, and Lowcountry Capital, LLC, as Licensee thereunder, dated April 1, 2006, as amended and thereafter assigned from Lowcountry Capital, LLC to Lucasville Investments, LLC (the "Prime Lease"). In consideration of the rents, covenants and agreements reserved and contained in this License, Licensor hereby grants an exclusive Licenses over the Premises to Licensee and Licensee accepts same, subject only to the terms and conditions herein contained, and all applicable liens, encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Property.

- (b) The Premises shall include only the Public Spaces and necessary appurtenances specifically granted in this License, and shall not include any adjacent buildings, docks, or surface parking areas.

Section 2.02 Licensor's Work. Licensor, at its sole cost and expense, shall construct the proposed Project, in a form substantially similar to the conception drawings attached hereto as Exhibit "B".

Section 2.03 Licensor's Contingency. Licensor's obligations under this License Agreement, including but not limited to the obligation to construct the Project, are contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity. Licensor, in its sole and absolute discretion, may elect to terminate this License Agreement at any time prior to the earlier of (i) twenty-four (24) months from the Effective Date, or (ii) Licensor's commencement of construction of the Parking Garage.

Section 2.04 Possession/Alterations. Licensor and Licensee hereby agree that the Town's issuance of a certificate of occupancy for the Parking Garage shall be deemed conclusive evidence of Licensee's acceptance of the Premises in satisfactory condition and in full compliance with all covenants and obligations of Licensor related to construction of the Parking Garage. Licensee agrees that except as otherwise expressly set forth in this License, no representations or inducements respecting the condition of the Premises have been made to Licensee by Licensor or its authorized representatives. The Licensee shall notify the Licensor of any accident, defect, damage or deficiency in any part of the Premises or improvements which comes to the attention of the Licensee, its employees or contractors notwithstanding that the Licensor may have no obligation in respect thereof.

Section 2.05 Quiet Enjoyment. Licensor covenants that Licensee, upon paying all sums due from Licensee to Licensor and performing and observing all of Licensee's obligations under this License, shall peacefully and quietly have, hold and enjoy the Premises and the appurtenances throughout the License Term without interference by the Licensor, subject, nevertheless, to the other terms and provisions of this License.

Section 2.06 Excuse of Performance. Anything in this License to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of a party, that party shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this License if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulation or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the Licensor; provided, however, that nothing herein shall delay or excuse payment of rent or any other sum due under this License.

**Article III.
OPERATING COVENANTS**

Section 3.01 Management of the Project. Licensee acknowledges and agrees that the sole and exclusive control and responsibility for management of the Project shall be with the Licensor. In furtherance of such management, Licensor shall make such decisions regarding staffing, the hiring of employee, operational standards, maintenance, parking fees, rules and regulations for use of the Project, and other decisions related to the management and operation of the Project. Notwithstanding the foregoing, Licensor has agreed to certain standards and criteria for operation of the Parking Garage, as set forth herein.

Section 3.02 Operating Covenants. In consideration of this Agreement, Licensor hereby agrees to the following management guidelines and operational standards for the Premises and the Project:

- (a) The Public Spaces subject to this License Agreement are intended to foster tourism and economic development along Coleman Boulevard and the Shem Creek waterfront, and to provide parking for existing local businesses. In order to achieve these objectives, the Public Spaces shall be available for public use, 365 days per year, 24 hours per day.
- (b) The Reserved Spaces shall be reserved for separate allocation by Lessor Monday through Friday, 6:00 a.m. until 7:00 p.m. During all other times the Reserved Spaces shall be available for public use, on a first-come first-served basis.
- (c) The Premises shall be operational 365 days per year, 24 hours per day. Licensor reserves the right to establish, charge and collect reasonable fees for use of the Public Spaces and for the Reserved Spaces for such times as the Reserved Spaces are available for use by the general public. Parking fees shall be at rental rates comparable to market rates for similarly situated parking facilities. Following the termination of this License Agreement, Licensor shall be free to set parking fees in its sole discretion.

Section 3.03 Operating Costs. Licensor shall be solely responsible for the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon).

Section 3.04 Licensor's Work. Licensee has inspected the Licensor's conceptual plans for the Project, and agrees to accept the Premises if constructed in a substantially similar manner, and that no other Licensor work shall be required.

**Article IV.
INSURANCE**

Section 4.01 Licensor's Coverage. Licensor shall maintain at its sole expense during the term hereof:

- (a) public liability insurance covering the Premises in an amount of \$2,000,000 for injury and/or death to one person. The Town of Mount Pleasant shall be named as an additional insured; and

- (b) Earthquake, flood, fire and extended casualty, windstorm and hail coverage in an amount not less than 100% of the replacement value of the buildings and improvements now or hereafter located on the Premises (but in no case less than \$5,000,000) with companies satisfactory to Licensors; and

Article V. CASUALTY AND CONDEMNATION

Section 5.01 Fire, Explosion or Other Casualty. In the event the Premises are damaged by fire, explosion or any other casualty to an extent which is less than fifty (50%) percent of the cost of replacement of the Premises, the damage shall promptly be repaired by Licensor at Licensor's expense, but without abatement of Rent. In the event of any such damage and (a) the Premises shall be damaged to the extent of fifty (50%) percent or more of the cost of replacement, Licensor shall repair or rebuild the Premises or the building or buildings, with an abatement of the Fixed Minimum Rent during the time reasonably required to repair or rebuild and a tolling of the License Term for the time required to repair or rebuild.

Section 5.02 Major Capital Event. Following the 15th year of the Rent Term should uninsured capital improvements or repairs costing in excess of \$750,000 be required in any single License Year Licensor may elect to terminate this License upon written notice to Licensee and consultation with Licensee's representatives.

Section 5.03 Condemnation. If the whole of the Premises, or so much thereof as to render the balance unusable by Licensee for more than 6 months, shall be taken under power of eminent domain, or otherwise transferred in lieu thereof, or if any part of the Property is taken and its continued operation is not, in Licensor's sole opinion, economical, this License shall automatically terminate as of the date possession is taken by the condemning authority, for so long as the Town of Mount Pleasant is not the condemning authority. No award for any total or partial taking shall be apportioned, and Licensee hereby unconditionally assigns to Licensor any award which may be made in such taking, or condemnation. In the event of a partial taking which does not result in the termination of this License, Fixed Minimum Rent shall be apportioned according to the part of the Premises remaining usable by Licensee.

Section 5.04 Condemnation Award. All compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Premises or Property, shall be the property of Licensor, whether such damages shall be awarded as compensation for diminution in the value of the License or to the fee of the Premises or otherwise, and Licensee hereby assigns to Licensor all of the Licensee's right, title and interest in and to any and all such compensation.

Article VI. DEFAULTS AND REMEDIES

Section 6.01 Definitions. In the event that Licensee (a) fails to pay all or any portion of any Rent or other sum due from Licensee hereunder or pursuant to any exhibit hereto within ten (10) days following written notice; (b) fails to comply with any other obligation of Licensee under this License within 30 days after written notice; or (c) becomes bankrupt, insolvent or files any insolvency or similar bankruptcy, debtor proceeding; then Licensee shall be in default hereunder and Licensor may, at its option and without further notice to Licensee, (i) terminate Licensee's right to use of the Premises, (ii) without terminating this License, re-enter and resume exclusive possession of the Premises, or (iii) declare this License terminated, and may thereupon in either event remove all persons and property from the Premises in any manner permitted by South Carolina law. In addition, Licensor shall be entitled to bring an action for specific performance or breach of contract against Licensee, but agrees that its sole and exclusive remedy shall be the Rent Payments due under this Agreement. Both parties waive any claims that either may have to any consequential or punitive damages, and agree that the prevailing party in any dispute shall be entitled to an award of costs and attorney's fees, including the cost of trial and any appeals.

Section 6.02 Rights and Remedies. The various rights and remedies herein granted to Licensor shall be cumulative and in addition to any others to which Licensor may be entitled by law or in equity, and the exercise of

one or more rights or remedies shall not impair Licensor's right to exercise any other right or remedy. In all events, Licensor shall have the right, upon notice to Licensee, to cure any breach by Licensee at Licensee's sole cost and expense, and Licensee shall reimburse Licensor for such expense upon demand.

Section 6.03 Bankruptcy. If Licensor shall not be permitted to terminate this License as hereinabove provided because of the provisions of Title 11 of the United States Code relating to insolvency, reorganization or bankruptcy, as amended ("Bankruptcy Code"), then Licensee as a debtor-in-possession or any trustee for Licensee agrees promptly, within no more than fifteen (15) days upon request by Licensor to the applicable bankruptcy court, to assume or reject this License, and Licensee on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this License by Licensor with such court. In such event, Licensee may only assume this License if (a) it cures or provides adequate assurance that the trustees will promptly cure any default hereunder, (b) it compensates or provides adequate assurance that Licensee will promptly compensate Licensor for any actual pecuniary loss to Licensor resulting from Licensee's defaults, and (c) it provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this License to be performed by Licensee. In no event after the assumption of this License shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this License as set forth hereinabove, shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder, and (2) the assumption of this License will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Licensor shall have no obligation to provide Licensee with any utilities or other services as herein required, unless Licensee shall have paid and be current in all payments of Operating Costs, utilities or other charges therefor.

Article VII.

SUCCESSION TO LICENSOR'S INTEREST

Section 7.01 Assignment and Attornment. Licensor, in its sole discretion, may assign its rights under this License Agreement at any time during the License Term, and Licensee shall attorn and be bound to any of Licensor's successors or assigns under all the terms, covenants and conditions of this License for the balance of its remaining term.

Section 7.02 Subordination. Licensee agrees that it shall, within 10 days after receipt of Licensor's request, subordinate this License to any mortgage held by an institutional lender which encumbers any portion of the Premises (each is a "Mortgagee"), pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement (an "SNDA"). Upon request of Licensee, Licensor shall use reasonable diligence to obtain an SNDA from the Mortgagee.

Section 7.03 Mortgagee's Approval. If any mortgagee of the Property requires any modification of the terms and provisions of this License as a condition to such financing as Licensor may desire, then Licensor shall have the right to cancel this License if Licensee fails or refuses to approve and execute such modifications, within thirty (30) days after Licensor's request therefor. Upon such cancellation by Licensor, this License shall be null and void and neither party shall have any liability either for damages or otherwise to the other by reason of such cancellation. In no event, however, shall Licensee be required to agree, and Licensor shall not have any right of cancellation for Licensee's refusal to agree, to any modification of the provisions of this License relating to: the amount of rent or other charges reserved herein; the size and/or location of the Premises; or the duration of the License Term and/or Rental Commencement Date of the term.

Section 7.04 Estoppel Certificate. Within ten (10) days after request therefor by either party from time to time, the other party agrees to deliver in recordable form, a certificate to any proposed mortgagee or purchaser, or to the other party, certifying that this License is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto (or stating those claimed), and the dates to which Fixed Minimum Rent and Additional Rent have been paid.

Article VIII. MISCELLANEOUS

Section 8.01 Assignment and Subletting. Licensee shall not directly or indirectly assign or in any manner transfer, mortgage, pledge, encumber or dispose of this License or any interest therein, or sublet or license the Premises or any part or parts thereof, or permit occupancy of all or any part thereof by anyone with, through or under it (each of the foregoing transactions is called a "Transfer"), without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion.

Section 8.02 Waiver. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Licensor shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant or condition of this License, other than the failure of Licensee to pay the particular rental so accepted, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such rent, and no covenant, term or condition of this License shall be deemed to have been waived by Licensor, unless such waiver be in writing by Licensor.

Section 8.03 Accord and Satisfaction. No payment by Licensee or receipt by Licensor of a lesser amount than the then due Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such rent or pursue any other remedy in this License provided.

Section 8.04 Entire Agreement. This License and the Exhibits and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Licensor and Licensee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this License shall be binding upon Licensor or Licensee unless reduced to writing and signed by them.

Section 8.05 No Partnership. By execution or performance of this License or any related agreement, Licensor does not, in any way or for any purpose, become a partner of Licensee in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with Licensee.

Section 8.06 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, insurrection, war or other causes beyond its reasonable control, then it shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided that nothing in this Section shall excuse or delay payment of Rent or any other sum.

Section 8.07 Notices. Any notice, demand, request or other instrument which may be or are required to be given under this License shall be delivered personally or sent by either United States certified mail postage prepaid or widely recognized commercial courier service requiring a signed receipt (such as Federal Express), and shall be addressed (a) if to Licensor at the address provided in Section 1.1 for Licensor or at such other address as Licensor may designate by written notice, and (b) if to Licensee at the address provided in Section 1.103 for Licensee or at such other address as Licensee shall designate by written notice. Notices shall be effective upon delivery, unless delivery is refused or cannot be made, in which event notice shall be effective as of attempted delivery, as indicated by written report or receipt of the postal service or commercial courier.

Section 8.08 Captions and Section Numbers; Interpretation. The captions, section numbers, article numbers, and index appearing in this License are inserted only as a matter of convenience and in no way define limit, construe, or describe the scope or intent of such section or articles of this License nor in any way affect this License.

There shall be no interpretation or construing of this License favorable or unfavorable to either party by virtue of its preparation by Licensor.

Section 8.09 Licensee Defined, Use of Pronouns. The word "Licensee" shall be deemed and taken to mean each and every person or party mentioned as a Licensee herein, be the same one or more; and if there shall be more than one Licensee, any notice required or permitted by the terms of this License may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Licensor or Licensee shall be deemed a proper reference even though Licensor or Licensee may be an individual, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this License apply in the plural sense where there is more than one Licensor or Licensee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

Section 8.10 Broker's Commission. Licensor and Licensee each represent and warrant to the other that no broker or real estate agent was involved in this transaction, and Licensor and Licensee each agree to indemnify and hold harmless the other from and against any and all claims, demands, liability, cost or expense (including attorney's fees) incurred by the other arising out of any claim for a brokerage commission or fee asserted due to the acts of the indemnifying party in connection with this License.

Section 8.11 Partial Invalidity. If any term, covenant or condition of this License or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this License shall be valid and be enforced to the fullest extent permitted by law.

Section 8.12 Execution of License and Municipal Authority. The submission of this License for examination does not constitute a reservation of or option for the Premises and this License becomes effective as a License only upon execution and delivery thereof by Licensor and Licensee. Licensee represents to Licensor that all necessary action has been undertaken to authorize this contractual obligation of the Licensee, and that the payments due under this License Agreement represent an ongoing obligation of the Town of Mount Pleasant. The Licensee may make this license contract beyond the term of the governing members of the municipal corporation entering into the License, since the subject matter of this License is an exercise of the Licensee's business and proprietary powers, and does not involve the exercise of a legislative function or the governmental power of the Licensee. Licensee has obtained the legal opinion of its Town Attorney confirming the provisions of this representation.

Section 8.13 Recording. Licensee agrees not to record this License nor any memorandum thereof, and upon any such recordation this License shall be voidable at Licensor's option. Said memorandum or short form of this License shall describe the parties, the Premises and the License Term and shall incorporate this License by reference. Licensor may record a notice prohibiting attachment of construction liens to its interest in the Premises and Property.

Section 8.14 Applicable Law. The Laws of the State of South Carolina shall govern the validity performance and enforcement of this License.

Section 8.15 Time is of the Essence. Time is of the essence of this Agreement.

Section 8.16 Successors and Assigns. Except as otherwise provided herein this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs personal representatives, executors, successors and assigns. Nothing herein shall authorize any transfer of this License, any interest in this License, or any interest in Licensee.

Section 8.17 Survival of Obligations. The provisions of this License with respect to any obligation of Licensee to pay any sum owing or to perform any act after expiration or other termination of this License shall survive the expiration or other termination of this License.

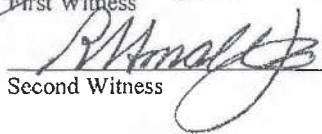
Section 8.18 Jury Trial. **LICENSEE AND LICENSOR BOTH WAIVE A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS, UNDER OR CONNECTED WITH THIS LICENSE OR ANY OF ITS PROVISIONS, AND THEIR RELATIONSHIP AS LICENSOR AND LICENSEE.**

Section 8.19 Representations. Licensee acknowledges that neither Licensor nor Licensor's agents, employees or contractors have made any representations or promises with respect to the Premises, the Property or this License except as expressly set forth herein.

Section 8.20 Licensor's Liability. Notwithstanding anything to the contrary herein contained, Licensee agrees that Licensor (and, in case Licensor is a joint venture, partnership, tenancy in common, association or other form of joint ownership, the individual partners, members and employees of any such joint venture, partnership, tenancy-in-common, association or other form of joint ownership) shall have absolutely no personal liability with respect to any of the provisions of this License, or any obligation or liability arising therefrom or in connection therewith. Licensee shall look solely to Licensor's equity in the Premises for the satisfaction of any remedies of Licensee against Licensor including, without limitation, the collection of any judgment (or other judicial process) requiring the payment of money by Licensor in the event of any default or breach by Licensor with respect to any of the terms and provisions of this License to be observed and/or performed by Licensor, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Premises, and no other assets of Licensor or any principal or partner of Licensor shall be subject to levy, execution or other judicial process for the satisfaction of Licensee's claim, and in the event Licensee obtains a judgment against Licensor, the judgment docket shall be so noted. This exculpation of liability shall be absolute and without exception whatsoever. This section shall inure to the benefit of Licensor's successors and assigns and their respective principals.

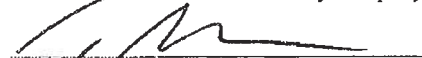
[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this License this day and year first above written.


First Witness

Second Witness

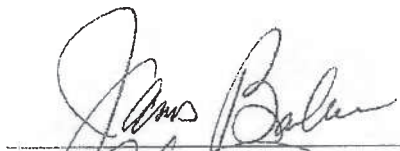
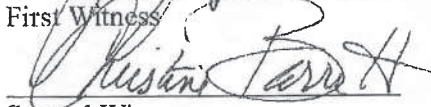
LICENSOR:

Shem Creek Development Group LLC,
a South Carolina limited liability company


By: Tyler N. Flesch
Its: Manager

LICENSEE:

Town of Mount Pleasant


First Witness

Second Witness

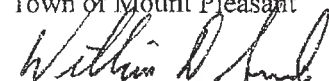
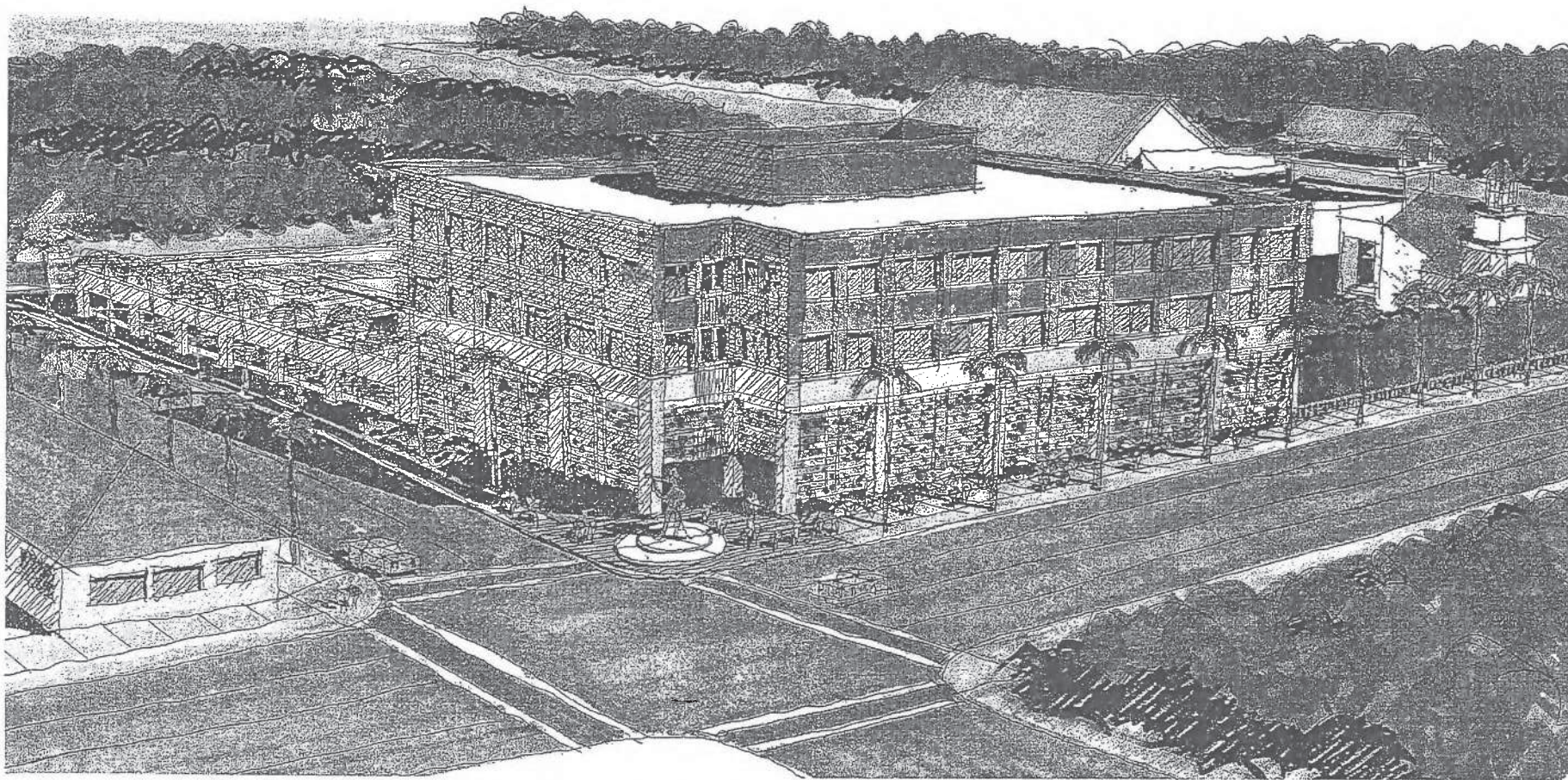

By: William D. Swails
Its: Mayor

EXHIBIT "A"

Legal Description and Site Plan for
Property, marked to show Premises



MOUNT PLEASANT COMMERCIAL DEVELOPMENT
AVTEX COMMERCIAL PROPERTIES



EXHIBIT "B"

Fixed Minimum Rent

Year	Total
1	\$185,000.00
2	\$185,000.00
3	\$185,000.00
4	\$185,000.00
5	\$185,000.00
6	\$185,000.00
7	\$185,000.00
8	\$185,000.00
9	\$185,000.00
10	\$185,000.00
11	\$185,000.00
12	\$185,000.00
13	\$185,000.00
14	\$185,000.00
15	\$185,000.00

ORDINANCE NO. 13077

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Municipality of Mount Pleasant, in Council assembled, that various provisions of Section 156.329 of Chapter 156 of the Mount Pleasant Code of Ordinances pertaining to regulations for parking structures located in a flood zone in the UC-OD Urban Corridor Overlay District; more specifically the UC-CBS, Coleman-Ben Sawyer Boulevard Urban Corridor District portion thereof, shall be and are hereby amended as described herein above, to now read as follows:

CHAPTER 156; ZONING CODE

Use District Regulations

156.329 UC-OD, URBAN CORRIDOR OVERLAY DISTRICT.

(P) *UC-CBS, Coleman-Ben Sawyer Boulevard Urban Corridor District.*

(5) *Site development and design elements.*

(a) *Maximum height, setbacks and build-to lines, and bufferyard requirements.* Maximum height, setbacks and build-to lines, and bufferyard requirements shall be as depicted in the following development guidelines chart and corresponding Figure 7. UC-CBS Development Guidelines Map, and as further described herein, except civic uses, which shall be in accordance with division (N)(6) herein.

UC-CBS DEVELOPMENT GUIDELINES CHART					
Area	Maximum Building Height Allowed	Front Setback or Build-to on Coleman or Ban Sawyer	Front or Side Setback or Build-to on Other Streets	Rear Building Setback	Internal Side and Rear (Non-street) Buffers
C1-a	55'	20-30'BT	20' SB ⁵	5'	5'
C1-b	45'	N/A	20' SB ⁵	5'	5'

(The remainder of the chart remains unchanged)

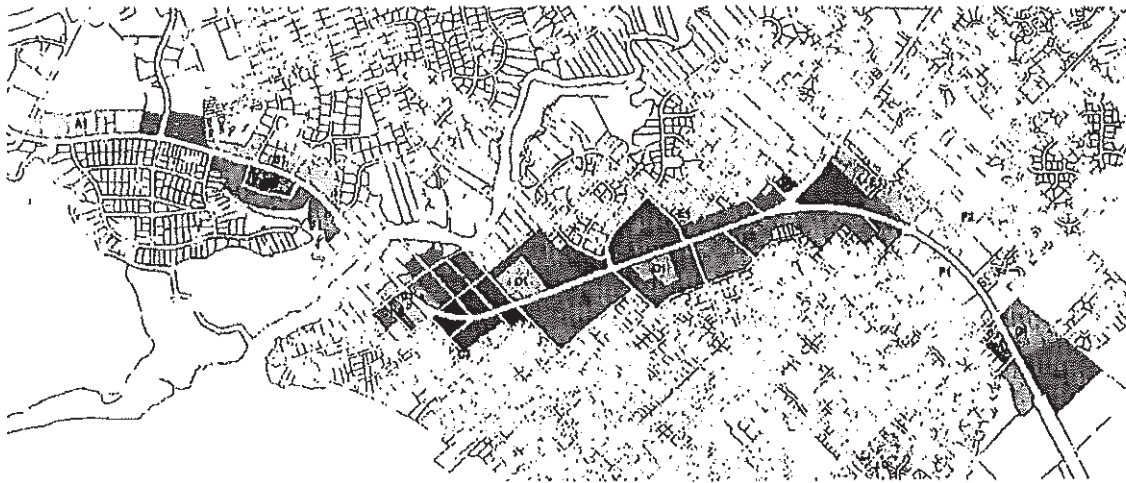


Figure 7. UC-CBS Development Guidelines Map.

(b) *Building height.*

2. Where indicated on the development guidelines chart and corresponding map, the maximum height limit shall be 55 feet, measured to the building eave; provided further that all structures shall have a minimum of two floors, with a maximum of four floors allowed. The two-floor minimum shall only apply to buildings fronting the boulevard.

(M) *Parking and loading requirements.* Great care should be taken to create an adequate amount of off-street and on-street parking to serve development areas. The location of parking should facilitate access to new developments, but not use valuable real estate better suited to buildings and public space. Parking should be hidden between or behind buildings and in parking structures.

(5) *Design.* The parking and loading design requirements shall be as follows, unless specified otherwise in this section. (See especially § 156.329 (M)(5)(c)1. and 2. a. through d.)

(c) Provisions for parking garages located in a flood zone. Notwithstanding any provisions to the contrary, the following provisions may apply exclusively to parking garages located in a flood zone.

1. Parking garages located in a flood zone may be exempt from the provisions of § 156.329 (M)(5)(a)1. and 2. (but not (a) 3.), and 156.329 (M)(5)(b)2. and 2.c. (but not 2.a., 2. b. and 2.d.),

2. The following additional special provisions apply only to parking garages located in a flood zone constructed under the exemptions of § 156.329(M)(5)(c)1. above.

a. If the parking garage supports other uses, the required parking shall be calculated pursuant to the provisions of § 156.171 or § 156.172 and the total amount of parking shall include an additional 100 spaces above the parking amount required for the other uses.

b. The excess parking must be made available to the general public.

c. Ground level parking must be completely screened from view with architectural elements and landscaping.

d. The parking garage must provide added features such as public art, a fountain, a bus stop or similar feature(s) to promote and maintain pedestrian activity in the activity zone, with the arrangement of these features configured so as to eliminate any "dead" space, with the activity (commercial, residential) fronting the parking garage to the extent possible on the Boulevard side and side street sides.

(d) *Incentive for parking structures.* There shall be no maximum parking requirements for commercial uses if a parking structure is utilized on site.

(e) *Parking for outdoor dining.* Parking for outdoor dining shall be as provided in § 156.171 for restaurant use and not based upon square footage of outdoor use area.

(f) *Parking for activity zone uses.* Additional parking shall not be required for uses conducted in the activity zone.

(N) *Other considerations.*

(1) *Elevated buildings.*

(a) *Buildings in flood zones.*

1. In order to project a pedestrian-friendly streetscape, it is highly recommended that alternatives to elevating commercial buildings located in "A" flood zones be pursued. This may be accomplished by floodproofing or altering the elevation of the finished floor inside the building. However, in the event that these techniques are not feasible and the building must be elevated, such elevation may not exceed the minimum elevation required plus one foot of additional "freeboard"; provided further, that this provision shall not

apply to a parking garage located in a flood zone meeting the requirements of §156.329 (M)(5)(c)2. a. through d.

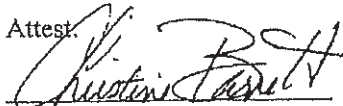
(c) *Buildings elevated for parking.* See divisions (M)(5)(a)1. through 3, (M)(5)(b)1, and 2.a. through d. for buildings elevated for parking not located in a flood zone and (M)(5)(c)1. and 2. a. through d. for buildings elevated for parking located in a flood zone.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING.

SIGNED, SEALED AND DELIVERED THIS 11 DAY OF December, 2013.


Linda Page, Mayor
Town of Mount Pleasant

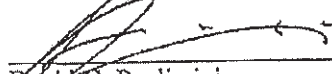
Attest:

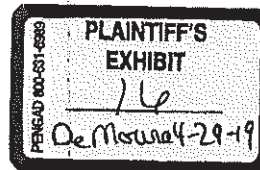

Christine Barrett
Clerk of Council

December 11, 2013
Mount Pleasant, SC

Introduced: November 19, 2013
Final Reading: December 10, 2013

APPROVED AS TO FORM:


David G. Pagliarini
Corporation Council



November 11, 2014

Gray B. Taylor, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd, Suite 200
Mount Pleasant, SC 29464

Dear Mr. Taylor,

This letter is in response to your request regarding the project known as the 0 Coleman Boulevard Parking Garage (the "Project.") You have requested that the Town of Mount Pleasant confirm that if the Project is constructed pursuant to the approved plans the resulting number of parking spaces will satisfy the Licensor's construction obligations under the Parking License Agreement dated October 17, 2013 (the "Agreement.")

The Agreement represents the Town's obligation to lease from the Licensor a specific number of parking spaces for the public. The Agreement is contingent, among other things, on the issuance of a Certificate of Occupancy for the Project and the availability of the requisite number of Public Spaces as defined in the Agreement. The Town and the Licensor are neither partner nor involved in a joint venture and as such the Town has no obligation to ensure that the Project is completed.

The information contained in this letter is based on current available information and is subject to change should additional information be made available. Specifically, the Town is relying on parking data provided by your client. Further, any positions stated herein should not be considered binding or final as Town Council has the sole authority to decide policy matters.

The Agreement provides that in exchange for payment of rent in the amount of One Hundred and Eighty Five Thousand Dollars (\$185,000.00) per year, two hundred and seventy six (276) Public Spaces shall be available to the public during non-business hours. During business hours, one hundred and thirty two (132) Public Spaces shall be available to the public. Rent is tied to the number of Public Spaces and as such the Town's position is that the Public Spaces shall be available for use by general public and not included as part of minimum parking requirements for surrounding businesses. Based on the provisions of the Agreement and the approved Project plans it is our position that at this time the Town is unable to state that the proposed number of available Public Spaces, as defined in the Agreement, will satisfy the Licensor's obligations.

The Town initially considered a document entitled Shem Creek Office Building Parking Analysis (the "Analysis") prepared by your client's engineer. The Analysis reflects a shared parking arrangement for the benefit of the Project (Office Building), Red's and the Tavern & Table. The Town's Corporation Counsel sought clarification from you and by letter dated October 20, 2014

you indicated that the Analysis is a non-binding document and is not applicable in this situation. We have considered the Proposed Parking Layout, prepared by your client, attached as Exhibit A to this letter.

Per the Proposed Parking Layout the parking structure is expected to provide 234 total spaces. The adjacent surface lot is expected to provide 100 spaces. You have indicated that the 132 Public Spaces available during business hours will be in the structure which leaves 102 available for use by the Office Building (considered "Reserved Spaces" per Section 1.07 of the Agreement.) It appears that the Office Building requires 117 spaces.

During non-business hours 276 Public Spaces must be made available. To achieve that total the 132 Public Spaces inside the structure should be added to the 102 available Reserved Spaces for a total of 234. This means that 42 Public Spaces are necessary to meet the required total of 276.

We expect that your client takes the position that those 42 Public Spaces will be available in the adjacent surface lot. This letter does not address the issue of whether all 276 Public Spaces must be contained within the parking structure. However, even if adjacent surface spaces are allowed for that purpose we cannot ignore the parking needs of neighboring businesses. By your client's calculation Red's will require, at minimum, 77 spaces and the Tavern & Table, at minimum, will require 112 spaces for a total of 189. Notwithstanding Office Building use of the adjacent surface spaces, this total far exceeds the 100 available adjacent surface spaces. When the 42 Public Spaces are added to the 89 additional need by the restaurants there appears to be a total shortage of 131 spaces.

You recently provided a letter from Mr. William Crowley of Red's indicating that he can make an additional 50 spaces available. Assuming that is possible, a shortage of 81 spaces remains.

Based on our analysis and current information it does not appear that a sufficient number of Public Spaces, as defined in the Agreement, will be available. Should you have a different analysis we are happy to consider the same.

Sincerely,

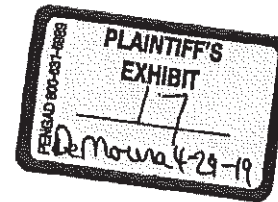


Eric M. DeMoura
Town Administrator
TOWN OF MOUNT PLEASANT

Enclosure: Exhibit A

cc Mayor Linda Page
Mount Pleasant Town Council
Christiane Farrell, Director of Planning
David Pagliarini, Corporation Counsel





FIRST AMENDMENT TO PARKING LICENSE AGREEMENT

THIS FIRST AMENDMENT TO PARKING LICENSE AGREEMENT (this "First Amendment"), dated as of January ____, 2015, is entered into by and between Shem Creek Development Group LLC (the "Licensor") and the Town of Mount Pleasant (the "Licensee"). Licensor and Licensee are collectively referred to herein as the "Parties" or individually as a "Party".

RECITALS

WHEREAS, Licensor and Licensee have previously entered into that certain *Parking License Agreement by and between Shem Creek Development Group LLC and Town of Mount Pleasant, dated October 17, 2013* (the "Agreement"; any capitalized term used herein and not otherwise defined shall have the meaning set forth in the Agreement); and

WHEREAS, due to zoning changes enacted by the Town of Mount Pleasant, Licensor's initial plans for the Project have been revised in order to comply with Town Ordinance 14022. As a result of changes to the Project required for compliance with Ordinance 14022, the total number of parking spaces included in the Project has been reduced from 276 to 234; and

WHEREAS, Licensor and Licensee now desire to amend the Agreement to acknowledge and approve certain of Licensor's plans for construction of improvements contemplated by the Agreement; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and the mutual promises and covenants set forth in this First Amendment, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties agree, for themselves, their successors and assigns, as follows:

1. Recitals; Defined Terms. The above recitals are true and correct and incorporated herein by reference. Any capitalized term used but not defined in this First Amendment shall have the meaning ascribed that term in the Agreement.
2. Approved Plans. The undersigned Licensee has reviewed the Licensor's plans comprising the Licensor's final DRB Submittal, approved by the Town of Mount Pleasant on September 24, 2014, for construction of improvements contemplated by the Agreement (the "Approved Plans"), a copy of which is attached hereto as Exhibit "A". Licensee agree that, if constructed pursuant to the Approved Plans, the resulting Public Spaces and Reserved spaces will collectively satisfy the Licensor's construction obligations as set forth in the Agreement.
3. Amendment. Section 1.05 is hereby amended to reduce the number of parking spaces from 276 to 234.
4. Amendment. Section 1.06 is hereby amended and replaced with the following:



Section 1.06 Premises. That portion of the Property comprising 117 of the 234 total parking spaces planned for the Project (the "Public Spaces"; the remaining ~~217~~117 spaces are referred to herein as the "Reserved Spaces", and the Public Spaces and Reserved Spaces are collectively herein the "Parking Spaces"). The Parking Spaces, along with the parking garage building in which they are located, and all ancillary and/or associated structures, shall comprise the "Parking Garage", as more particularly described and identified on Exhibit "A".

5. Amendment. Section 1.07 is hereby amended and replaced with the following:

Section 1.07 Rent.

(a) Fixed Minimum Rent: During the first fifteen years of the License Term (the "Rent Period,") Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, the Fixed Minimum Rent, subject only to the adjustments set forth herein. During each year of the Rent Period, Fixed Minimum Rent shall be One Hundred Sixty-Three Thousand Eight Hundred and no/100 (\$163,800.00) Dollars. Fixed Minimum Rent for each License Year of the Rent Period shall be paid on or before the commencement of each License Year during the Rent Period. Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by Licensor, with payment being released from escrow upon the Rent Commencement Date. Following the Rent Period and for all remaining years of the License Term, Licensee covenants and agrees to pay to Licensor, in legal tender of the United States of America, without any prior demand and without any deduction or setoff whatsoever, Fixed Minimum Rent in the amount of One Dollar per year.

(b) Rent Reduction based Upon Financial Performance of the Parking Garage:  at any time during the Rent Period of this License, should the operation of the Parking Garage result in an annual net operating profit, Licensee shall be entitled to reduce its Fixed Minimum Rent Payment for the following License Year of the Term by its pro rata share, based upon the percentage of the Parking Spaces comprising the Public Spaces.

(b) For the purpose of this Agreement, "Net Operating Profit" shall be defined as gross revenue generated by the Parking Spaces during any License Year, less all expenses related to operation, maintenance and repair of the Parking Garage (including reasonable reserves for repair and replacements), including but not limited to the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring the Parking Garage and paying all management fees, taxes, public charges, debt service on initial construction costs and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Parking Garage, including, but not limited to, the cost of all utilities necessary to serve the Parking Garage, all ground rent payments for the Parking Garage, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special that are levied charged or assessed against the Parking Garage by any lawful taxing authority whether federal, state, county municipal, school or otherwise (other than income, inheritance and franchise taxes thereon). Should the calculation of Net

Operating Profit for any License Year result in a negative number (a "Net Operating Loss"), the Net Operating Profit for the following License Year shall be reduced by the Net Operating Loss from the preceeding License Year.

(ii) By way of example, should the Parking Garage result in an annual net operating profit of \$10,000, Licensee's Fixed Minimum rent for the final License Year of the Term shall be reduced by \$5,000.00 (e.g., $\$10,000 \times 117/234 = \$5,000.00$).

6. Amendment. Section 3.02 is hereby amended to include subsection (d), as follows:

(d) Licensor, Lucasville Investments, LLC and all subsequent subtenants ~~shall cooperate to the best of their ability~~ to utilize the onsite surface parking located on the Property but not included in the Project to satisfy their parking requirements, and shall enter into the "Shared Parking Agreement" attached hereto as Exhibit "C".

7. Amendment. Exhibits "A" and "B" are amended and replaced in their entirety with Exhibits "A" and "B" attached hereto.

8. Estoppel. Upon and by its execution of this First Amendment, Licensee acknowledges and agrees that:

(a) If constructed pursuant to the Approved Plans, the resulting Public Spaces and Reserved spaces will collectively satisfy the Licensor's construction obligations as set forth in the Agreement.

(b) If constructed pursuant to the Approved Plans, the resulting Public Spaces and Reserved spaces will collectively satisfy the Licensor's construction obligations as set forth in the Agreement. ~~In addition~~ Subject to the execution of the Shared Parking Agreement attached as Exhibit "C", the remaining surface parking controlled by Lucasville Investments, LLC will satisfy all current parking requirements of Red's Ice House and Tavern and Table.

(c) The Agreement is in full force and effect and has not been assigned, modified, supplemented or amended in any way.

(d) The Agreement represents the entire agreement between the parties as to the Project.

(e) There are no defaults by either the Licensor or the Licensee, and no event has occurred or situation exists which would, with the passage of time or the giving of notice, or both, constitute default under the Agreement.

9. Affirmation. The Parties specifically reaffirm, acknowledge, ratify, and agree to the all of the terms and provisions of the Agreement, as amended hereby, as if more fully stated herein.

10. Agreement Effective. Except as specifically amended and modified by this First Amendment, the Agreement shall continue in full force and effect in accordance with its terms.
5. Counterparts. This First Amendment may be executed in any number of identical counterparts, any and all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.

[Signatures on following pages]

IN WITNESS WHEREOF, Licensors and Licensee have caused this First Amendment to be executed as of the day and year first above written.

WITNESS OR ATTEST:

Licensors:

Shem Creek Development Group LLC

By:
Its:

Licensee:

Town of Mount Pleasant

By:
Its:

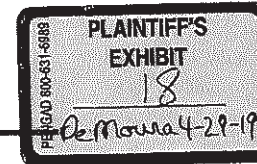
EXHIBIT "A"
(Legal Description and Approved Plans)

**EXHIBIT "B" (Fixed
Minimum Rent)**

Year	Total
1	\$163,800.00
2	\$163,800.00
3	\$163,800.00
4	\$163,800.00
5	\$163,800.00
6	\$163,800.00
7	\$163,800.00
8	\$163,800.00
9	\$163,800.00
10	\$163,800.00
11	\$163,800.00
12	\$163,800.00
13	\$163,800.00
14	\$163,800.00
15	<u>\$163,800.00</u>

\$2,457,000

EXHIBIT "C"
(Shared Parking Agreement)



Mount Pleasant Town Council Meeting



February 10, 2015



SCDDEF17764

Timeline/History

- **10/14/13:** Parking lease agreement
 - “Accessibility”, “safety”, “convenience”, “for the public”
 - Alleviates parking on residential streets
 - Separate funding source
- **12/10/13:** Request approved to increase height to 55 ft. and to be released from first floor requirement (ord. 13077)
- **4/15/14:** Setbacks/Build to lines changed
- **9/24/14:** DRB approval
- **11/11/14:** Height reduced to 45 ft.
- **11/11/14:** Letter sent to Gray Taylor
- **TODAY:** The project is approved and is vested. Project owner may submit for building permit

Current License Agreement

276 Parking Spaces

HOURS	PARKING SPACES
M-F	144 Reserved
Office Hours	132 Public
Nights, Weekends	All 276

\$185,000 annually for 15 years
= \$2,775,000 Total (ATAX)
or \$670.29 per space

Project Current Design

Total Parking Spaces in project proposal	234 in parking structure	100 of Surface lot parking	= 334 total parking spaces
Required Parking Spaces (existing businesses)	112 Tavern and Table	77 Red's	189 total required (exceeds 100 surface spaces)
Spaces Available for Public	334 total spaces	- 189 required spaces	= 145 spaces for public
Requirement for not providing 1 st floor	145 spaces for public	- 100 spaces (required for not providing 1st floor)	= 45 excess spaces

45 spaces x \$670.29= **\$30,163.05** per year or **\$452,445.75** total

New Proposal Received

- Revises # of parking spaces
- Requests payment adjustment from \$185,000 annually to \$163,800 annually or \$2,457,000

Council Options

- Not to act on new proposal
- Act to deny new proposal
- Act to approve proposal
- Act to approve a different amount (45 spaces)
- Act to approve some variation thereof

Plaintiff's Trial Exhibit #18 - Flash Drive

**Motion to Transfer Exhibit From Charleston
County Clerk of Court To Be Filed**



ORDINANCE NO. 14022

STATE OF SOUTH CAROLINA	)	AN ORDINANCE TO AMEND SECTIONS
	)	156.007 AND 156.329 OF CHAPTER 156 OF
	)	THE MOUNT PLEASANT CODE OF
COUNTY OF CHARLESTON	)	ORDINANCES PERTAINING TO DEFINITIONS
	)	AND THE UC-OD, URBAN CORRIDOR
	)	OVERLAY DISTRICT, RESPECTIVELY
TOWN OF MOUNT PLEASANT	)	

WHEREAS, the UC-OD, Urban Corridor Overlay District was established by Ordinance No. 10081 and subsequently amended by Ordinance Nos. 11061 and 13077; and

WHEREAS, Town Council now desires to amend various portions of the same in conjunction with certain Definitions in Section 156.007 of the Zoning Code; and

WHEREAS, the Mount Pleasant Planning Commission held a public hearing on February 19, 2014, to consider the amendments herein to the Mount Pleasant Code of Ordinances; and

WHEREAS, the Mount Pleasant Town Council is empowered with the authority to make amendments to the Mount Pleasant Code of Ordinances and believes it is in the best interest to now so act with respect to the matter described herein.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Municipality of Mount Pleasant, in Council assembled, that Sections 156.007 and 156.329 of Chapter 156 of the Mount Pleasant Code of Ordinances pertaining to definitions and the UC-OD, Urban Corridor Overlay District shall be and are hereby amended, as follows:

1. Add the following definitions to Section 156.007 in their appropriate alphabetical order with existing definitions:

CHAPTER 156: ZONING CODE

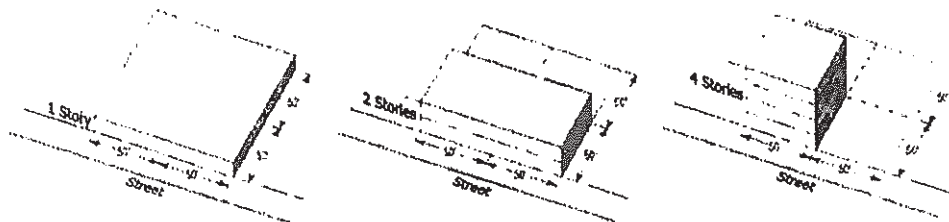
§ 156.007 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.



ACTIVITY ZONE. The improved area located between the street right-of-way and the build-to line, which has been approved through the design review process and which may be utilized for pedestrian-friendly uses, such as but not limited to, streetside dining, entertainment, pushcarts, or outdoor display of merchandise.

FLOOR AREA RATIO (FAR). Expresses the relationship between the amount of useable floor area permitted in a building or buildings and the area of the lot on which the building stands. It is obtained by dividing the gross floor area of a building by the total area of the lot. The diagram below illustrates three ways that a FAR of 1.0 might be achieved: a one-story building covering the entire lot, a two-story building covering half the lot, or a four-story building covering one quarter of the lot.



OUTDOOR DINING. These areas shall be located outside of the activity zone and may be open to the elements and temporarily enclosed by means such as fencing, walls, plastic, or other enclosing materials and methods due to weather.

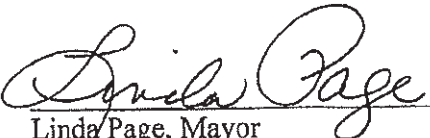
PUSHCART. A non-self-propelled vehicle designed to be readily moveable, from which merchandise or food is sold.

STREETSIDE DINING. These areas shall be located within the activity zone, and are specifically required to be open air, unconditioned dining, open to the elements and not enclosed by any means, such as fencing, walls, plastic, or other enclosing materials and methods; except that awnings shall be allowed. Temporary planters for landscaping may be used to delineate the dining area, but may not impede pedestrian access.

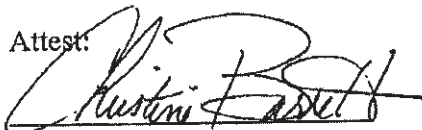
2. Repeal the existing Section 156.329 in its entirety and replace the same with new language and graphic depictions to now read as provided in the attached Exhibit A, which is incorporated herein by reference.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING.

SIGNED, SEALED AND DELIVERED THIS 15 DAY OF April, 2014.


Linda Page, Mayor
Town of Mount Pleasant

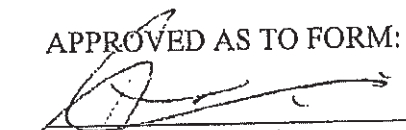
Attest:


Christine Barrett
Clerk of Council

April 15, 2014
Mount Pleasant, SC

Introduced: March 11, 2014
Final Reading: April 8, 2014

APPROVED AS TO FORM:


David G. Pagliarini
Corporation Council

§ 156.329 UC-OD, URBAN CORRIDOR OVERLAY DISTRICT.

Amended

(A) *Boundary of the district.* The boundary of the district is graphically depicted in the following Figure 1.

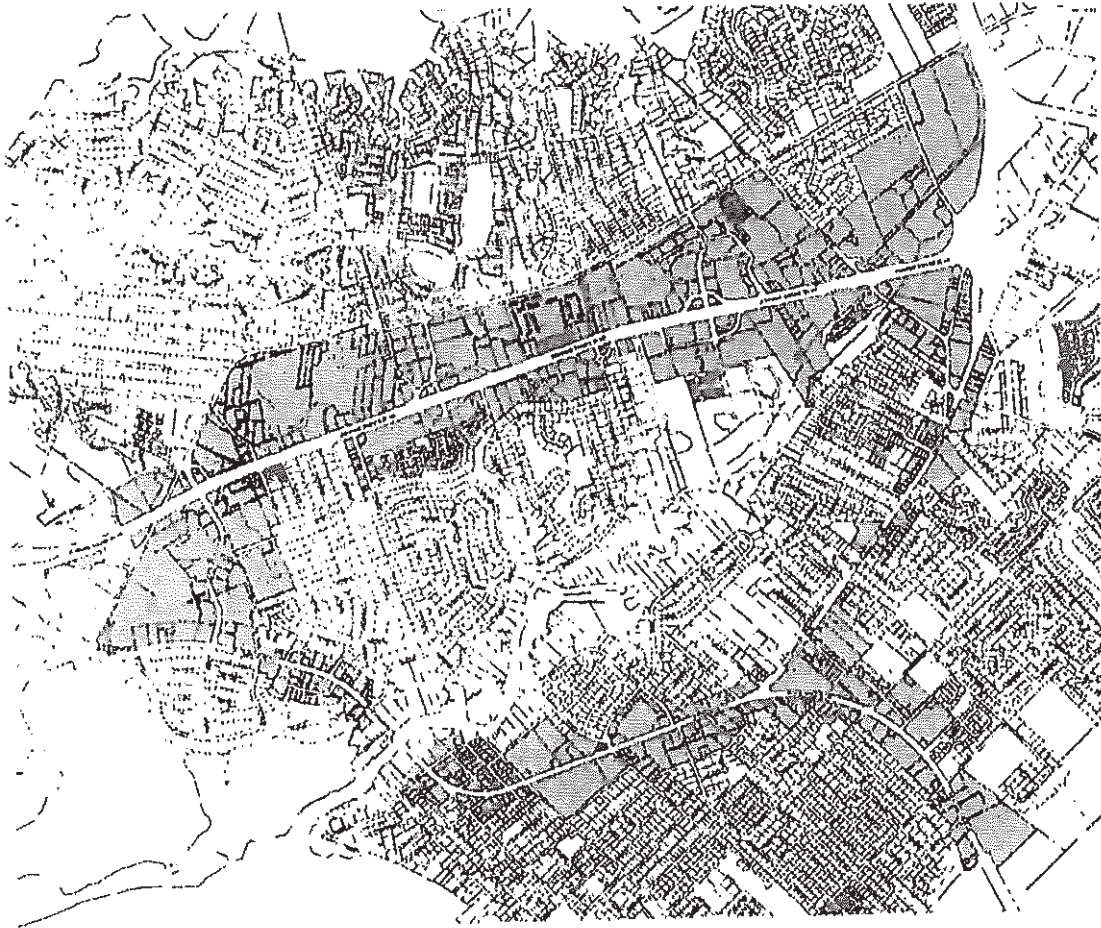


Figure 1. Boundary of Urban Corridor Overlay District.

(B) *Purpose.*

(1) The purpose of the district is to implement the recommendations of the Town Comprehensive Plan 2009-2019 by fostering an active, pedestrian-oriented commercial

environment with a variety of uses, activities, and scales; where form is as important as use, with buildings and primary entrances located near the public realm and high-quality pedestrian streetscapes in front. An emphasis should be placed upon a high degree of design quality for the building facade and a strong interaction between the buildings and the public realm. Public spaces, such as plazas, should be integrated with surrounding development.

(2) This focus on the public realm is a fundamental tenet of form-based zoning codes. The Town Comprehensive Plan 2009-2019 recommends the use of form-based codes as a way to provide for more flexibility in the development or redevelopment of property, which serves to make the town more competitive from an economic development standpoint. Form-based codes address the relationship between building facades and the public realm, and regulate the form and mass of buildings, while allowing the market to dictate the internal use(s) of the building. Form-based codes also encourage construction of sustainable buildings that can adapt over time to changing uses.

(3) The Town Comprehensive Plan 2009-2019 recommends that higher density development occur in the southern area of town, and that the town promote appropriate infill and redevelopment in the urban core. Providing opportunities for higher density development in the urban core serves to reduce sprawl and preserve rural areas.

(4) This triangular-shaped area, which is bounded on the west by the Ravenel Bridge, on the east by I-526, on the north by Johnnie Dodds Boulevard, and on the south by Coleman and Chuck Dawley Boulevards, represents the core of the southern end of town. It is planned to be developed and re-developed into the urban core of the town, with an emphasis on mixed use commercial and residential development in a pedestrian- and bicycle-friendly, walkable style of development. The most public uses, such as retail sales, should be located on the first floor, with more private uses, such as residential and office uses, on upper floors. Appropriate development form includes taller buildings, higher density residential use, and compact development with multimodal access.

(5) Because the triangle is bisected by Shem Creek, with no cross-access along its length, this “loop” will serve as a primary transit corridor for the urban core. Redevelopment of these corridors should facilitate multimodal access, comprising pedestrian, bicycle, and mass transit-type modes of transportation, including buses and shuttle service.

(6) Buildings are encouraged to achieve national green building certification, such as but not limited to, Leadership in Energy and Environmental Design (LEED).

(C) Design review process/development standards.

(1) All development within the UC-OD shall be subject to the CDR-OD, Commercial Design Review Overlay District, process as provided in this chapter. However, in order to

achieve the goals of the UC-OD, when in conflict, the site development requirements as set forth in this section shall take precedence over those found within the CDR-OD.

(2) The development standards shall be specified within this overlay district, as applicable. Where not so modified, the development standards of the underlying district classification, or as otherwise already provided by other standards, shall apply. Such modification will maintain the following hierarchy when in conflict: the specific requirements of the UC-OD shall apply first; second in application shall be specific requirements of Planned Development District zoning; third in application shall be CDR-OD requirements; and finally the requirements of the underlying zoning district or other applicable zoning district standards and land development regulations.

(D) *Permitted uses/overlay district.* As an overlay district, permitted uses shall be those of the underlying zoning district classification, as modified herein.

(1) A mixture of commercial and residential uses is encouraged overall. This mixed use may include separate commercial use buildings and residential dwellings on the same property, as well as commercial and residential uses in the same building. In order to facilitate the mixture of commercial and residential uses in the same building, residential uses may occur on the street level or any building level containing commercial uses.

(2) In order to accommodate any type of commercial or mixed use, the underlying zoning district of a property must be commercial.

(3) Residential uses located on any parcel in the UC-OD are subject to the density requirements of the UC-OD.

(4) Permitted uses for residentially-zoned properties are:

(a) Detached single-family dwellings, provided such dwellings do not front the boulevards or frontage roads;

(b) Duplex dwellings;

(c) Townhouse dwellings, with no restriction on the number of units within a single building or length of individual rows of townhouse dwelling units;

(d) Multi-family dwellings;

(e) Permitted and conditional uses as provided in the PI-1 District, subject to their applicable requirements and approval processes; and

(f) Accessory uses, except Accessory Dwelling Units.

(5) Permitted uses for commercially-zoned properties are:

(a) Detached single-family dwellings, provided such dwellings do not front the boulevards or frontage roads;

(b) Duplex dwellings;

(c) Townhouses dwellings, with no restriction on the number of units within a single building or length of individual rows of townhouse dwelling units;

(d) Multi-family dwellings;

(e) Permitted, conditional, and special exception uses as provided in the OP, NC, AB, CO, and PI-1 Districts, subject to their applicable requirements and approval processes.

(f) Permitted, conditional, and special exception uses as provided in the AB-2 District, will be allowed only when the underlying zoning of a parcel is AB-2, and provided further that conditional and special exception uses are subject to their applicable requirements and approval processes.

(g) Outdoor and streetside dining uses, including the sale and consumption of alcoholic beverages, shall be a permitted use in all underlying commercial use districts, provided the conditions specified in the underlying use district have been met.

(h) Accessory uses, except Accessory Dwelling Units.

(i) Any combination of the aforementioned uses.

(E) *Open space.* No open space is required, but is strongly encouraged in the form of parks, plazas, and public gathering places.

(F) *Minimum lot size.* There is no minimum lot size; however, a primary goal of the UC-OD is to provide incentives to encourage the aggregation of multiple smaller parcels and to promote a more effective utilization of larger parcels for mixed use in creating well designed projects, connected and unified in design and function. The maximum benefit allowed by the provisions of this section will result from such aggregation of properties, and their utilization will prove impractical without the same.

(G) *Floor area ratio.* The maximum floor area ratio (FAR) allowed is 1.5. Parking structures shall not be included in FAR calculations. FAR shall not apply to detached single-family dwellings.

(H) *Incentives.* The development intensity of each district varies with the allowed building height. To achieve the desired aesthetic goals, zoning incentives are necessary to aggregate smaller properties to create "blocks" for development, where taller buildings and parking structures are utilized.

(1) *Incentives cumulative.* The incentives provided herein are cumulative. By way of example, FAR may be increased to 1.9 if a nonresidential development is located on a minimum of four acres and park area is provided (1.5 FAR plus 0.2 FAR for a minimum acreage plus 0.2 FAR for park area equals 1.9 FAR).

(2) *FAR increases allowed.* A FAR increase of 0.2 is allowed for the following provisions:

(a) *Minimum size block.* For each block comprised of at least four acres. A block need not comprise one parcel, or one ownership, but all owners should agree on combined uses and site design, with one cohesive development plan.

(b) *Workforce housing.* For a minimum of 15% of total units provided for workforce housing, as defined in § 156.007. The minimum 15% requirement is based upon the maximum base density for the development, prior to the application of any incentive increases. For example, the maximum number of residential units in a mixed use development located on five acres in the UC-CBS is 100 units (20 units per acre x 5 acres = 100 units). Total workforce housing units required is 15 units (100 x 15% = 15 units).

(c) *Public space/open space/parks.* For dedicated, contiguous public gathering space, open space, or improved park area with a minimum area of 4,000 square feet for projects greater than one acre in size; or for a minimum of 10% of total project area for projects of one acre or less in size. No portion of the activity zone shall count toward the minimum area.

(d) *Curb cuts.* For projects with no curb cuts on the boulevard or frontage road, but that instead rely upon a parallel or perpendicular street for access. A perpendicular street is not a curb cut. For projects with no frontage on the boulevard or frontage road, this incentive is available when there are no curb cuts on the primary access road, as determined through the design review process. On/off ramps for elevated interchanges shall not be considered as a frontage road or the primary access road.

(3) *Density increase for residential units.* A corresponding 0.2 increase in density of residential units is allowed in conjunction with increased FAR for the provision of the above incentives. Therefore, the increased floor area may be utilized to accommodate an increase of up to 20% of residential density for each incentive, or may be utilized for commercial or mixed use in the increased floor area. By way of example, if mixed use is provided in the UC-CBS, the base density of 20 units per acre may be increased to 28 units per acre if workforce housing and park area are provided (20 x 0.2 = 4 additional units for workforce housing, plus 20 x 0.2 = 4 for park area equals 20 + 4 + 4 = 28).

(4) *No residential density limitation.* No residential density limitation shall apply to projects that are mixed use and meet all of the requirements of divisions (2)(a) through (d) above.

(I) *Activity zone.*

(1) *Description.* The activity zone is a quasi-public space that may be used for pedestrian circulation, placement of required canopy trees, planters, benches, trash receptacles, and other street furnishings, in addition to the uses described herein.

(2) *Location.* Because the activity zone is specifically defined as the area between the street right-of-way line and build-to line, this means that an activity zone is not permitted where a setback is required.

(a) *UC-CBS.* In the UC-CBS, activity zones are expressly prohibited where a setback is required, as specified in the UC-CBS Development Guidelines Chart.

(b) *UC-JDB.* In the UC-JDB, activity zones are expressly prohibited on the following neighborhood streets: Lansing Drive, Tall Pine Road, Dragoon Drive, Pine Hollow Road, Cottingham Drive, Williamson Drive, and the western side of Bowman Road between Johnnie Dodds Boulevard and Mathis Ferry Road.

(c) *UC-CDB.* In the UC-CDB, activity zones are permitted only on the boulevard. Activity zones are expressly prohibited on all side streets.

(3) *Permitted uses.* All uses in the activity zone shall be conducted outside of the street right-of-way. Design review approval shall be required prior to establishing any use and/or installing any street furnishings within the activity zone. Allowed uses are limited to the following:

(a) Streetside dining;

(b) Outdoor merchandise display, which must be related to the business in front of which it is located;

(c) Non-amplified music performers or entertainers, subject to the town's noise ordinance;

(d) Pushcarts; and

(e) One A-frame or sandwich board sign per business, subject to the requirements of the Signs section of this chapter. A-frame signs shall also require an approved sign permit.

(J) *Curb cuts.*

(1) Except as provided herein, existing regulations concerning separation between curb cuts must be met. The location, widths, curb radii, sidewalks, and street trees associated with curb cuts should be carefully evaluated during the design review approval process, with the overall goal of making the streets more walkable and pedestrian-friendly. Frequent curb cuts and large curb radii present hazards for pedestrians.

(2) One two-way access curb cut (driveway) for parcels with frontage of less than 200 feet along the boulevards is allowed.

(3) Two two-way access curb cuts (driveways) for parcels with 200 feet or more of frontage along the boulevards are allowed.

(4) No parcel shall be allowed to have more than two curb cuts along the boulevards.

(5) Access points to the boulevards shall look like streets, not like parking lot entrances, as illustrated in Figures 2 and 3.

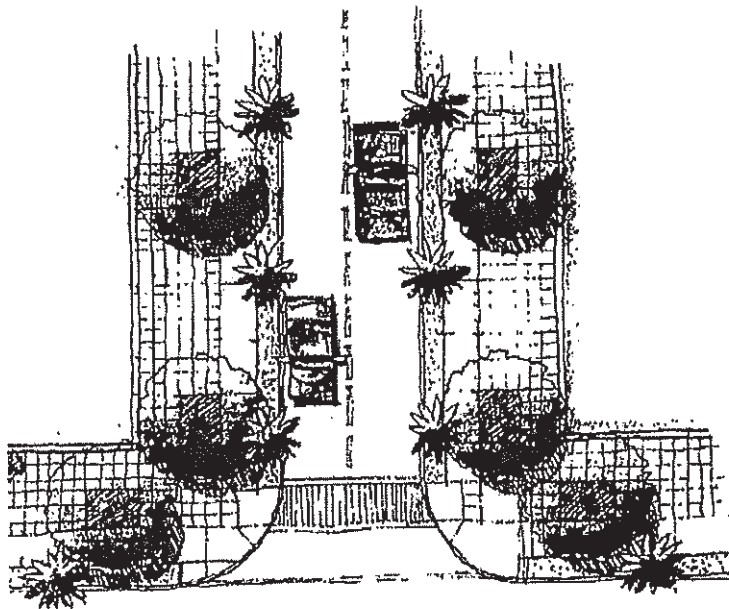


Figure 2. Looks like a street.

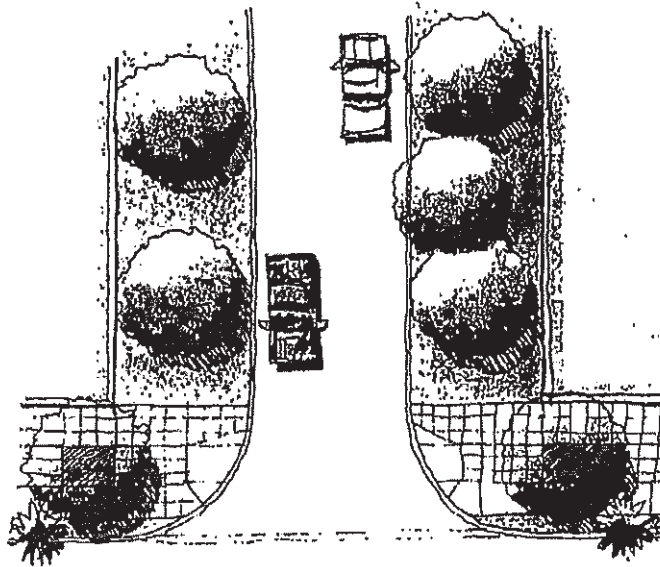


Figure 3. Looks like a parking lot.

(6) Curb cuts shall be allowed on side or parallel streets as long as all other pertinent regulations, such as distance between curb cuts, are met.

(7) Shared vehicular access is encouraged; the benefit is more frontage and more developable land on parcels.

(K) *Drive-through facilities.*

(1) Because “drive-through culture” is not compatible with the overarching goals of the UC-OD, drive-through facilities are generally discouraged, and may need to be located internal to sites, behind other road front buildings that meet the goals of the UC-OD, except as provided in division (Q)(10) of this section.

(2) Drive-through lanes are prohibited within the activity zone.

(3) Drive-through lanes shall not present impediments to the smooth and orderly flow of pedestrian or vehicular traffic to or within the site.

(L) *Internal access roads.*

(1) In order to facilitate the replication of a grid street pattern and enhance the streetscape appearance for nonresidential and mixed use developments where no public street is dedicated,

internal access roads shall be required whenever site design characteristics reasonably allow them on all larger parcels and smaller parcels that have been aggregated. For residential developments where public street dedication is required, the street standards contained elsewhere in this section apply.

(2) These roads shall be designed to appear and function as a public street. Privately owned access roads must be owner-maintained.

(3) Sidewalks and on-street parking are required. On-street parking spaces on internal access roads may count towards required parking. Buildings should address these internal access roads in the same manner as a public street with respect to orientation, setbacks, and bufferyard requirements.

(M) Parking and loading requirements/on-street parking. Great care should be taken to create an adequate amount of off-street and on-street parking to serve development areas. The location of parking should facilitate access to new developments, but not use valuable real estate better suited to buildings and public space. Parking should be hidden between or behind buildings and in parking structures, except as provided elsewhere in this section for single-family residential uses.

(1) *Shared parking.*

(a) Required parking shall be calculated utilizing the shared parking standards established by the Urban Land Institute for nonresidential uses; provided, however, no additional parking spaces shall be required for uses conducted in the designated activity zone.

(b) If shared parking standards cannot be achieved, Off Street Parking and Loading Requirements, §§ 156.170 et seq. of this chapter shall apply; provided, however, required parking for nonresidential uses may be reduced by 20%.

(2) *Multi-family residential uses.* Parking spaces for multi-family residential uses shall be one and one-half (1 ½) to two (2) spaces per dwelling unit.

(3) *On-street parking.* On-street parking shall be allowed on public streets within and adjacent to the UC-OD; provided it is depicted on an on-street parking plan map, approved by the town and SCDOT, but may not count toward the amount of parking spaces required for a development. Where such on-street parking in the right-of-way is not feasible, parking in easements on private property is highly encouraged.

(4) *Pervious materials.*

(a) On private property, pervious materials, other than loose rock or gravel, may be utilized for required parking spaces and parking drive aisles, subject to the design review approval process.

(b) Pervious materials, other than loose rock or gravel, may be used in the right-of-way, subject to SCDOT and town approval. Spaces in the right-of-way shall be a hard surface, with markings delineating the spaces.

(5) *Design.* The parking and loading design requirements shall be as follows, unless specified otherwise in this section. (See especially § 156.329 (M)(5)(c)1. and 2. a. through d.)

(a) *Parking placement.* Parking placement for multi-family, mixed use, and nonresidential uses shall be as follows, unless specified otherwise in this section.

1. Ground level parking in buildings and parking structures is permitted; provided the street level frontage of the building is comprised of a minimum of 80% residential and/or usable commercial space, and meets the requirements of divisions (b)2.a. through d. below.

2. In no case shall ground level parking lots or exterior loading areas occupy more than one-third of a lot's frontage along a pedestrian street or street segment; except as provided in division (P)(5)(h) of this section with respect to building frontage and parking.

3. Parking and exterior loading areas shall be buffered from any adjacent pedestrian way by planting street trees and providing a landscaped area with a continuous row of high shrubs, or a fence or seating wall.

(b) *Parking structures.*

1. When possible, parking structures (garages) shall be placed in the center of the block, as illustrated in Figure 4, and may utilize ground floor parking.

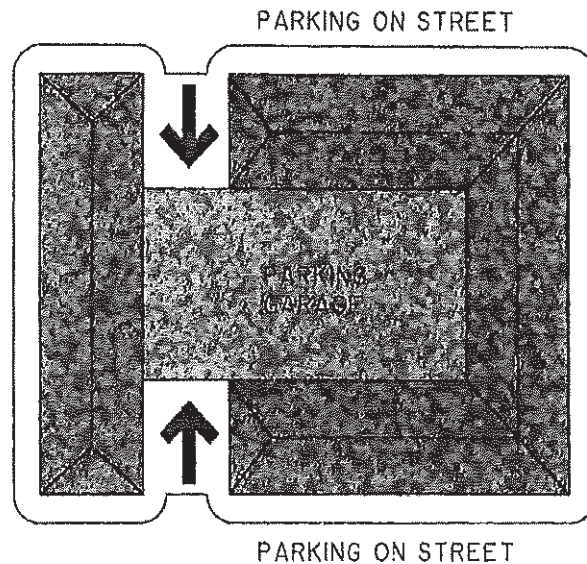


Figure 4. Parking structure location.

2. Parking in structures not located mid-block shall be above the ground floor or behind the storefront or residential uses, if located on the ground floor as described below.

a. If located to the side of a building, the parking structure must be set back from the front of that building and have an architectural facade.

b. Sloping floors shall not be visible from primary streets.

c. Retail storefronts, residences, or other business uses on street level shall be required on street frontages of parking structures to provide vitality.

d. Vehicular access shall be from side streets or alleys wherever possible, and not directly from the primary street.

(c) *Provisions for parking garages located in a flood zone.* Notwithstanding any provisions to the contrary, the following provisions may apply exclusively to parking garages located in a flood zone.

1. Parking garages located in a flood zone may be exempt from the provisions of § 156.329 (M)(5)(a)1. and 2. (but not (a) 3.), and 156.329 (M)(5)(b)2. and 2.c. (but not 2.a., 2. b. and 2.d.).

2. The following additional special provisions apply only to parking garages located in a flood zone constructed under the exemptions of § 156.329(M)(5)(c)1. above.

a. If the parking garage supports other uses, the required parking shall be calculated pursuant to the provisions of § 156.171 or § 156.172 and the total amount of parking shall include an additional 100 spaces above the parking amount required for the other uses.

b. The excess parking must be made available to the general public.

c. Ground level parking must be completely screened from view with architectural elements and landscaping.

d. The parking garage must provide added features such as public art, a fountain, a bus stop or similar feature(s) to promote and maintain pedestrian activity in the activity zone, with the arrangement of these features configured so as to eliminate any "dead" space, with the activity (commercial, residential) fronting the parking garage to the extent possible on the Boulevard side and side street sides.

(d) *Incentive for parking structures.* There shall be no maximum parking requirements for commercial uses if a parking structure is utilized on site.

(e) *Parking for outdoor dining.* Parking for outdoor dining shall be as provided in § 156.171 for restaurant use and not based upon square footage of outdoor use area.

(f) *Parking for activity zone uses.* Additional parking shall not be required for uses conducted in the activity zone.

(N) *Other considerations.*

(1) *Elevated buildings.*

(a) *Buildings in flood zones.*

1. In order to project a pedestrian-friendly streetscape, it is highly recommended that alternatives to elevating commercial buildings located in "A" flood zones be pursued. This may be accomplished by floodproofing or altering the elevation of the finished floor inside the building. However, in the event that these techniques are not feasible and the building must be elevated, such elevation may not exceed the minimum elevation required plus one foot of additional "freeboard"; provided further, that this provision shall not apply to a parking garage located in a flood zone meeting the requirements of §156.329 (M)(5)(c)2. a. through d.

2. To the maximum extent possible, elevating the building shall not compromise the width and integrity of the activity zone.

(b) *Residential structures.* Residential structures that are not within a flood zone shall not be elevated where they front a public street.

(c) *Buildings elevated for parking.* See divisions (M)(5)(a)1. through 3, (M)(5)(b)1. and 2.a. through d. for buildings elevated for parking not located in a flood zone and (M)(5)(c)1. and 2. a. through d. for buildings elevated for parking located in a flood zone.

(2) *False second floors.* False second floors are not allowed for buildings in which multiple stories are required. However, a mezzanine comprising one-third of the area of the floor below, or an atrium located between the floor and ceiling equivalent to two-story spaces, may be utilized to fulfill this requirement.

(3) *Access easements.* Where interconnectivity is proposed, access easements shall be provided from a public right-of-way to the property line of the adjacent property it is meant to serve. Where a final plat is required, easements shall be provided prior to final plat approval; for developments that do not require a final plat, easements shall be provided prior to issuance of any building permits for the development. Easements shall provide for unencumbered access by the adjoining property owner(s) and the public through the property in perpetuity, or until such time as the property is redeveloped and the easement is no longer required.

(4) *National Electrical Safety Code/local utility code requirements.* In all cases, build-to, and side and rear yard setbacks are subject to and superseded by applicable National Electrical Safety Code and local utility code requirements; provided, however, that approval through the design review process will allow flexibility in administering these requirements. For example, the addition of another power pole may be required to reduce the amount of wind-generated sway in power line conductors, to allow a building to be placed in closer proximity to the conductor. These situations will be addressed on a case-by-case basis during the design review approval process.

(5) *Residential uses,* including detached single-family dwellings, duplex dwellings, and townhouse dwellings.

(a) *Lot and Street Standards.*

1. *Lot standards.*

a. *Minimum lot size.* Individual dwelling units, including detached single-family dwellings, duplex dwellings, and townhouse dwellings, may be located on their own fee-simple lot with no minimum lot size or lot coverage requirements. Lot size and buildable lot area shall be determined by setback, yard area, and parking requirements.

b. *Setbacks and yard requirements for principal and accessory structures.* The minimum setback along all property lines is five feet, except where setbacks or build-to lines have been established for specific side streets in the UC-OD, in which case such requirements shall take precedence where any single-family, duplex, or townhouse dwellings have frontage on those streets.

c. The lot standards of § 155.047 (C)(1) pertaining to “postage stamp” lots may not be utilized for single family residential uses.

2. Street standards.

a. *Dedicated public street.* Individual dwelling units , including detached single-family dwellings, duplex dwellings, and townhouse dwellings, may be subdivided only when abutting, and with direct access from, a dedicated public street.

b. In cases where single-family lots are subdivided with access to an existing public street, access for parking must be located to the rear of the lots (alley-fed). Driveways for individual dwelling units may not be located on existing public streets.

c. Where duplex or townhouse dwellings may be approved along any of the boulevard streets, requirements for sidewalks and street tree plantings shall be in accordance with the specifications of the respective sub-district.

d. *New streets.* Any new streets servicing residential uses as identified in this division located in the UC-OD shall meet the following standards.

i. *Two-way streets.* Two-way streets shall require a minimum right-of-way width of 33 feet, with two 10-foot (minimum) travel lanes. The street shall contain, on each side, a five foot sidewalk, vertical curb and gutter, and street tree plantings. The required street trees may be located on private property outside the public right-of-way.

ii. *One-way streets.* One-way streets shall require a minimum right-of-way width of 22 feet with a minimum 14-foot travel lane, a minimum five-foot sidewalk on one side, vertical curb and gutter, and street trees. A one-way street may serve a maximum of 12 dwelling units unless otherwise approved by the Planning Commission. The required street trees may be located on private property outside of the street right-of-way.

iii. Design.

aa. In addition to the street types provided in i. and ii. above, the street types of Section 155.048 (F) may be utilized to meet the requirements of this section.

bb. All of the provisions of Section 155.048 pertaining to streets shall apply to the design and construction of new streets serving residential uses as described in this division and located in the UC-OD.

(b) Parking.

1. *Number of spaces.* A minimum of two parking spaces per dwelling unit are required.

2. *Size of spaces.*

a. Each off-street parking space shall not be less than nine feet in width and 18 feet in depth.

b. Each on-street parking space shall not be less than eight feet in width and 22 feet in depth.

3. *Location.* All required parking spaces shall be located on the same lot as the dwelling unit they are intended to serve. Because a primary purpose of the UC-OD is to create a pedestrian-friendly environment, off-street parking spaces should generally be located to the side or rear of a dwelling unit so as to limit the encroachment of driveways into the public realm. To this end, required parking spaces may be tandem.

(c) *Approval Process.*

1. *Subdivision approval.*

a. All single-family residential use developments in the UC-OD shall require sketch plan and preliminary plat approval by the Planning Commission.

b. The Planning Commission shall be responsible for approval of tree removal for the installation of infrastructure and the configuration of lots, to include consideration of tree locations and buildable area of lots, and the appropriateness of open space where it has been provided.

2. *Design Review.*

a. Prior to application for a building permit, the applicant shall submit to design review staff for approval.

b. In all cases, design review staff will ensure compliance with any conditions of approval placed on the development by the Planning Commission, site requirements specific to the UC-OD, and other relevant ordinance sections.

c. Architectural design review approval shall only be required for duplex and townhouse dwellings and is required prior to issuance of building permits. Detached single-family dwellings are not subject to architectural design review.

3. *Checklist.* The required sketch plan and preliminary plat shall include, at a minimum, the information listed in the UC-OD Sketch Plan Checklist and UC-OD Preliminary Plat Checklist, as applicable, provided by the Department of Planning and Development, as may be amended from time to time.

(5) *Civic uses.* Because of the nature of their uses, build-to lines, setbacks, and other design elements for civic uses, such as school buildings, churches, fire stations, and the like, shall be determined in the design review approval process.

(6) *Rezoning*. Property owners may submit an application for rezoning to PD, Planned Development District, or any other use district classification, including removal from the UC-OD and its requirements, subject to the rezoning process.

(O) *Design guidelines*.

(1) *Activity zone design standards*.

(a) *Awnings*.

1. Awnings may cover the entire activity zone area not utilized for canopy tree placement and as defined for streetside dining.

2. Awnings must comprise a minimum of five feet in depth, measured horizontally from face of building.

3. Awnings shall be a maximum of eight feet in height, measured from the bottom of an awning and/or valence to the sidewalk adjacent to building. This measurement may be adjusted for grand, multi-story windows.

(b) *Balconies*. Balconies may project over the activity zone, but in no instance shall they extend over the right-of-way.

(c) *Raised planters*. In order to enhance the pedestrian-oriented theme of development, planters shall be required as a design element to soften the building exterior and enhance the streetscape.

(d) *Street furniture*. Street furniture shall be utilized to enhance and facilitate the pedestrian experience and shall not be utilized as additional signage.

(e) *Pedestrian access to remain unimpeded*. In all cases, permanent or temporary design features or activities shall not impede pedestrian access on the public sidewalk.

(2) *Residential access to the street*. Units on the second floor and above must have a direct access to the street. This access may be created through the use of a single or multiple lobby(ies) that access the street level.

(3) *Building fronts*.

(a) *Primary entry*. For buildings with frontage on the boulevards or frontage roads, the primary entry must be from Coleman Boulevard, Ben Sawyer Boulevard, Johnnie Dodds Boulevard frontage road, or Chuck Dawley Boulevard. Rear of buildings shall not be designed to appear as fronts. Display windows are required on all street facades for retail buildings. Other commercial or office buildings shall adhere to the requirements of § 156.327 (E)(6)(c)4. Second floor and above, with a separate entrance from the first floor, shall have primary entrance from

the primary street, when feasible. Buildings, businesses, and residences facing side streets should have entrances from the side street.

(b) *Secondary entry.* Secondary entrances from the rear of a store may be allowed; however, this area may not be treated as a storefront in detailing or pedestrian amenities.

(5) *Terminal vistas.*

(a) Properties that terminate views down streets shall be identified during the design review process, and will be held to a higher architectural standard along this visible facade.

(b) Such identified properties are those that are across from side streets that intersect the primary boulevard and terminate or intersect and continue at a different angle.

(c) Properties that are at the end of a straightaway on the boulevard shall also meet this requirement.

(P) *UC-CBS, Coleman-Ben Sawyer Boulevard Urban Corridor District.*

(1) *Boundaries of the district.* The boundaries of the district are generally described as including those properties abutting Coleman Boulevard and Ben Sawyer Boulevard, located between the intersections of Magrath Darby Boulevard on the north and Patriot's Point Boulevard on the south, and the beginning of the Ben Sawyer Causeway, specifically excluding those properties located within the Shem Creek Waterfront Overlay District and the residential subdivision of Bayview Acres, and as more accurately depicted on the official zoning map, including any amendments thereto, now or in the future. The boundary of the district is graphically depicted in the following Figure 5.

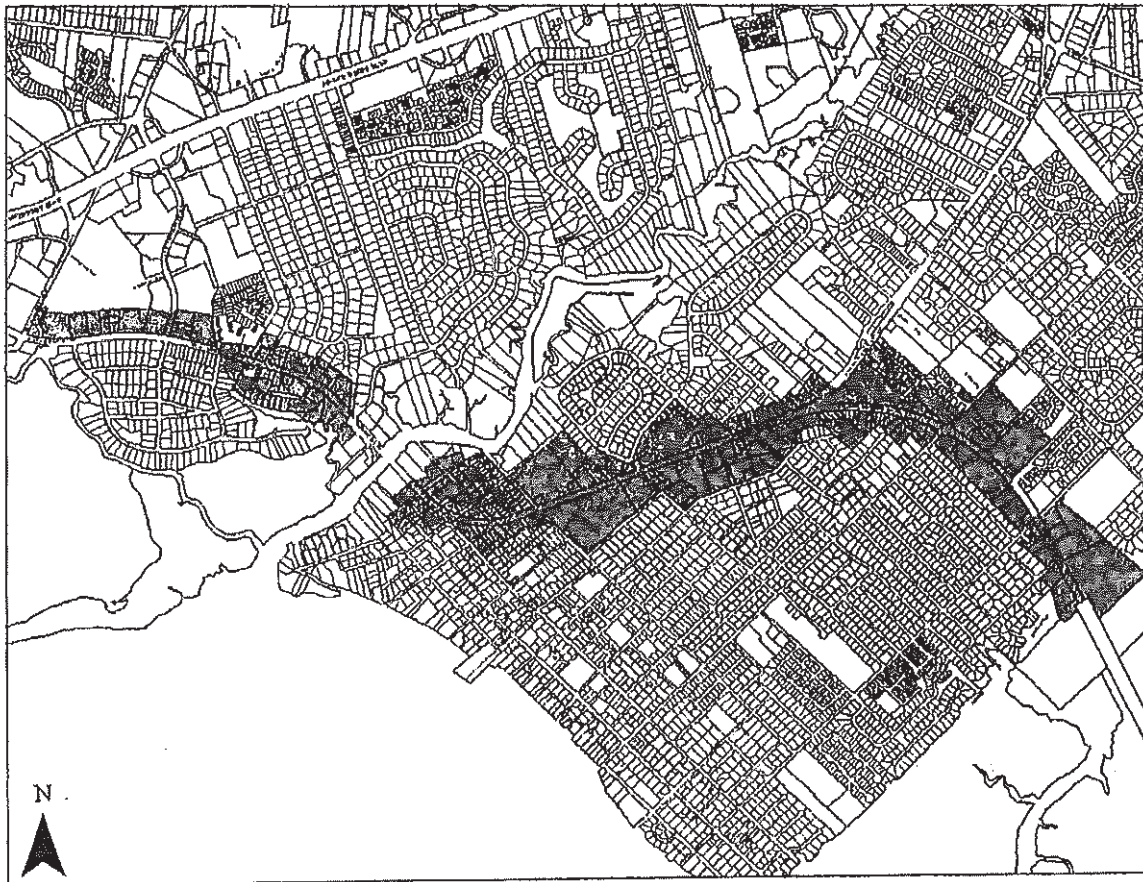


Figure 5. Boundary of UC-CBS.

(2) *Intent and findings.*

(a) *Intent.* The intent of the overlay district is to provide a scheme for the redevelopment and adaptive use for the project area as a pedestrian-oriented, bicycle-friendly, mixed use, distinctive urban environment to act as a focal gathering point for the town. A combination of the highest quality standards of site and building design, coupled with a true mixture of uses, will provide an environment ensuring a lively, vibrant human experience in the activity zone along the street.

(b) *Findings.* In furtherance of the stated purpose, Town Council finds and declares the following:

1. The identified Coleman-Ben Sawyer Boulevard Urban Corridor Overlay District is a developed area and located in the older and traditional part of town, much of which is underutilized and suitable for redevelopment.

2. Creating an overlay district on portions of Coleman Boulevard and Ben Sawyer Boulevard will encourage appropriate redevelopment to reestablish the vitality and vibrancy of this part of town. Certain incentives in this district will encourage a true mixture of uses and improve the standards of site and building design.

3. A renewed and vibrant Coleman-Ben Sawyer Boulevard Urban Corridor Overlay District will contribute to the overall economic, aesthetic, and general well-being of the town.

4. The redevelopment of this area is compatible with the goals and objectives of the Town Comprehensive Plan, the Coleman and Ben Sawyer Boulevards Revitalization Master Plan, and the Coleman Revitalization Advisory Board Report to Mount Pleasant Mayor and Town Council.

(3) Specific mixed use requirements for certain areas.

(a) A minimum of 60% of the ground floor street frontage shall be utilized for retail, restaurant, or entertainment use, as permitted in division (D) of this section, in buildings with frontage on Coleman Boulevard, within the area located between Live Oak Street and the intersection of Coleman, Ben Sawyer, and Chuck Dawley Boulevards. Such retail, restaurant, or entertainment space shall be of a meaningful depth so as to create a functional, usable commercial space that addresses the activity zone and creates interest and activity in the public realm.

(b) The remaining 40% of first floor level floor area may be devoted to office or residential use.

(c) This requirement shall only apply to parcels that have greater than 100 feet frontage on Coleman Boulevard, measured property line to property line.

(4) *Density of residential use.* Maximum density of residential uses shall be 16 units per acre for single use residential development, and 20 units per acre for mixed use development; except that additional density may be allowed as provided in division (H)(1) of this section. For the purposes of calculating residential density, mixed use projects or developments are those consisting of both residential and nonresidential uses.

(5) Site development and design elements.

(a) *Maximum height, setbacks and build-to lines, and bufferyard requirements.* Maximum height, setbacks and build-to lines, and bufferyard requirements shall be as depicted in the following development guidelines chart and corresponding Figure 6. UC-CBS Development

Guidelines Map, and as further described herein, except civic uses, which shall be in accordance with division (N)(6) herein.

UC-CBS - DEVELOPMENT GUIDELINES CHART					
Area	Maximum Building Height Allowed ¹	Front Setback or Build-to on Coleman or Ben Sawyer ²	Front or Side Setback or Build-to on Other Streets	Rear Building Setback ³	Internal Side and Rear (Non-street) Buffers ⁴
A1	55'	20-30' BT	20' SB	5'	5'
A2	55'	20-30' BT	20-30' BT	5'	5'
B1	55'	20-30' BT	20' SB	10'	5'
B2	55'	20-30' BT	10-20' BT	10'	5'
C1	55'	20-30' BT	20' SB ⁵	5'	5'
C2	55'	20-30' BT	20' SB ⁶	5'	5'
C3	45'	N/A	20' SB	5'	5'
C4	45'	N/A	20' SB	5'	5'
C5	55'	20-30' BT	20-30' BT	5'	5'
C6	45'	N/A	20-30' BT	5'	5'
D1	75'	20-30' BT	10-20' BT	N/A	5'
D2	55'	20-30' BT	10' SB	10'	5'
D3	55'	20-30' BT	20' SB	10'	5'
E1	55'	N/A	10' SB	5'	5'
E2	55'	20-30' BT	20' SB	10'	5'
E3	75'	20-30' BT	10-20' BT	N/A	5'
F1	55'	20-30' BT	20' SB	10'	5'
F2	55'	N/A	20' SB	10'	5'
G1	55'	20' SB	20' SB	25'	5'
G2	55'	30' SB	N/A	25'	5'

¹	In all cases, the maximum height for buildings in the UC-CBS that are located within 50 feet of an abutting residential property line, or an abutting street right-of-way adjoining residential property; provided such residential property is located outside of the UC-CBS, shall be 40 feet, measured from grade to roof ridge, and further provided that no such building shall exceed a maximum of three stories.
²	Build-to lines are measured from back of curb to face of building; if no curb is present, measure from edge of pavement. Awnings and canopies are not included. Setbacks are measured from the right-of-way line.
³	In all cases where rear or side property lines abut residential properties lying outside of the UC-CBS, a minimum 15-foot setback is required, within which a minimum 10-foot type "C" bufferyard with an F3 fence, is also required.
⁴	Common wall construction to adjacent properties spanning property lines may be utilized in accordance with applicable building and fire code requirements. Buffers are not required where interconnectivity between parcels is provided or shown on the plan for future connection, or when common wall construction to adjacent properties spanning property lines is utilized. Where interconnectivity or common wall construction is not provided, a minimum type "A" bufferyard plant unit material is required.
⁵	The 20' setback applies to all side streets except Mill Street, where a 20-30' build-to is required.
⁶	The 20' setback applies to all side streets except Simmons Street, where a 20-30' build-to is required.



Figure 6. UC-CBS Development Guidelines Map.

(b) *Building height.*

1. Building heights shall be measured from the top of curb, or edge of paving if curb is not present, based on an average measurement taken at all building corners, and every 25 feet

along the length of any street or internal access road to either the building eave or ridge of roof, as applicable.

2. Where indicated on the development guidelines chart and corresponding map, the maximum height limit shall be 55 feet, measured from the top of curb to the building eave; provided further that all structures shall have a minimum of two floors, with a maximum of four floors allowed. The two-floor minimum shall only apply to buildings fronting the boulevard.

3. Where indicated on the development guidelines chart and corresponding map, the maximum building height limit shall be 45 feet.

a. The maximum height shall be measured to the ridge of the roof, not the eave; provided further that, in cases where buildings utilize a flat roof, the maximum height shall be measured to the top of the roof structure. Parapet walls are allowed above the 45-foot-height limit, but may not exceed an additional four feet in height.

b. All structures shall have a minimum of two floors, with a maximum of three floors allowed. The two floor minimum shall only apply to buildings fronting the boulevard.

4. A maximum height of 75 feet, with a minimum of two floors and with a maximum of six floors, measured to the eave, will be allowed in three specific locations in the UC-CBS, as indicated on the development guidelines chart and map.

a. The limits of the 75 foot height zone shall be measured 150 feet from any abutting residential property line or from an abutting street right-of-way adjoining residential property, provided such residential property is located outside of the UC-CBS.

b. In the area located inside the 150-foot line, the building height shall be 55 feet, measured to the eave, except as provided in footnote 1 in the development guidelines chart above.

c. The two-floor minimum shall only apply to buildings fronting the boulevard.

5. Additional property may be allowed a maximum height of 75 feet; provided these properties are incorporated/aggregated with those in one of the three locations in which the 75 foot height limit is allowed in a unified development scheme that meets all of the requirements of the overlay district, subject to the requirements of divisions (P)(5)(b)4.a. and b., above.

a. Moultrie Plaza area (D1) includes additional properties located in D2 and D3, within the area bounded by Coleman Boulevard/Simmons Street/Rue de Muckle/and where Shem Drive intersects Vincent Drive across from Fairmont Avenue (which does not include Brookgreen shopping center).

b. The Boulevard site area (D1) includes additional properties located in D2, within the area bounded by Coleman Boulevard/Fairmont Avenue/King Street/Pherigo Street.

c. Sea Island shopping center area (E3) includes additional properties located in E1, bounded by Ben Sawyer Boulevard/Chuck Dawley Boulevard/Schirmer Street and its extension to Ben Sawyer Boulevard.

6. *Utilization of area above the maximum height.*

a. No area above the maximum height or maximum number of stories may be used to create an extra floor of living area or enclosed commercial space. However, this area may be used for storage and such uses as open decks or rooftop restaurants.

b. Multilevel decks above the maximum height are expressly prohibited.

(c) *Build-to lines/setbacks.* The build-to line or setback shall be as indicated on the development guidelines chart, except for civic uses, which shall be determined through the design review process in accordance with the provisions of division (N)(6) herein.

(d) *Building size limitations.* No limitations on square footage of structures will be imposed. However, because “big box” retail development is not consistent with the purpose of the UC-CBS, the building footprint of any individual structure is limited to 50,000 square feet.

(e) *Bufferyards and plantings.*

1. *Front yard buffer.*

a. For buildings fronting Coleman Boulevard, Ben Sawyer Boulevard, or side streets, no understory or shrub plantings are required.

b. However, three canopy trees of a minimum-four-inch caliper shall be required for each 100 linear feet of road frontage, using species such as Southern Red Oak, Live Oak, Willow Oak, Elm varieties and American Beech. Such tree types to be consistent with each block and evenly spaced, with exceptions made for curb cuts, utilities, and other obstructions. On side streets, the required street trees shall be located in an area behind the sidewalk.

c. In order to enhance the pedestrian-oriented theme of development, planters shall be required as a design element to soften the building exterior and enhance the streetscape appearance.

i. Internal side and rear (non-street frontage) bufferyards shall be provided in accordance with the requirements of the development guidelines chart and map.

ii. Sabal Palmettos shall be planted in the public right-of-way adjacent to lots on Coleman and Ben Sawyer Boulevards, at approximately 30 feet on center. Additional low shrub or groundcover plantings, including grass, may be required between the Sabal Palmettos in the verge.

iii. Parking lot islands, which must include canopy trees of four-inch caliper or larger, of a species approved during the design review approval process, must be provided at a minimum of every 12 spaces when adjacent to rear or side property lines, and internal parking lot islands either shall be provided at a minimum of every 12 spaces or only at the end of parking rows.

(f) *Sidewalks and landscaping.*

1. There shall be a public sidewalk, either within the right-of-way or within a pedestrian easement on private property, on both sides of all streets within the UC-CBS, a minimum of five feet wide on side streets and internal access roads, and a minimum of eight feet wide on boulevard streets.

2. On boulevard streets, these walks shall typically be separated from traffic by a grassed verge, which shall be a minimum of three feet wide, measured from the back of curb, and planted with Palmettos at approximately 30 feet on center; provided, however, that where on-street parking is utilized, the Palmettos may be planted in openings of three feet by three feet, with eight-foot-wide sidewalks serving the parallel parking areas. See Figures 7 and 8.

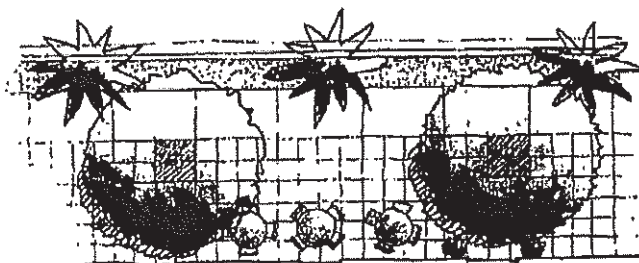


Figure 7. Location of Palmetto street trees.

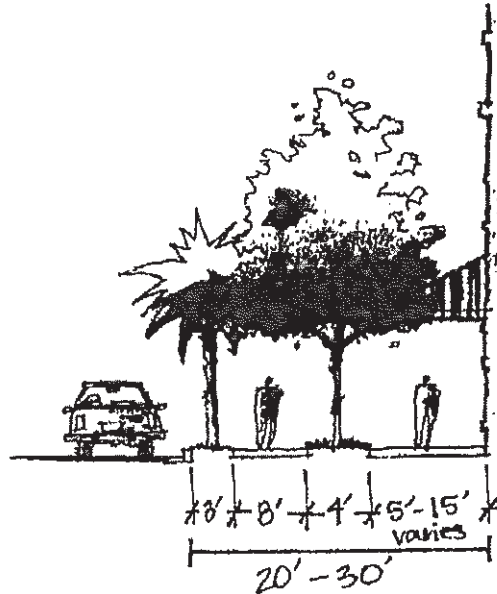


Figure 8. Sidewalk and landscaping cross-section for the boulevards.

(g) *Relationship of buildings to the street.* Because of the stated purpose of the UC-OD, maintaining a strong, single-plane, pedestrian-oriented relationship between the building front and the street is important. Therefore, changes in elevation between buildings and streets shall be avoided to the fullest extent possible. Activity zone grading shall be a crucial initial design consideration, as it will determine the finished floor elevation(s) of the building and may be a limiting factor in door placements and tenant space allocations. The accessible route(s) to the tenant space(s) may influence the useable space within the activity zone. As a general rule, the following standards shall apply; provided, however, exceptions may be allowed as noted herein.

1. *Grade changes.* Slopes shall not exceed 5% within the area located between the top of curb or the edge of pavement and the face of the building. Handicapped accessibility must comply with the requirements of the latest adopted edition of the International Building Code, which may result in reductions to the maximum slope.

2. *Strategies for accommodating grade changes.* The following design techniques are examples that may be utilized to accommodate grade changes and achieve the pedestrian-oriented relationship of building front and the street:

a. *Step-finished floor of building.* Where grade changes make it a necessity, the finished floor of buildings shall step (i.e., maintain a consistent grade) with the existing grades along the street, as illustrated in Figure 9 below. Buildings with long facades or located on lots

with varying grades or a long street frontage may require multiple steps in the finished floor to remain consistent with the existing street grade.

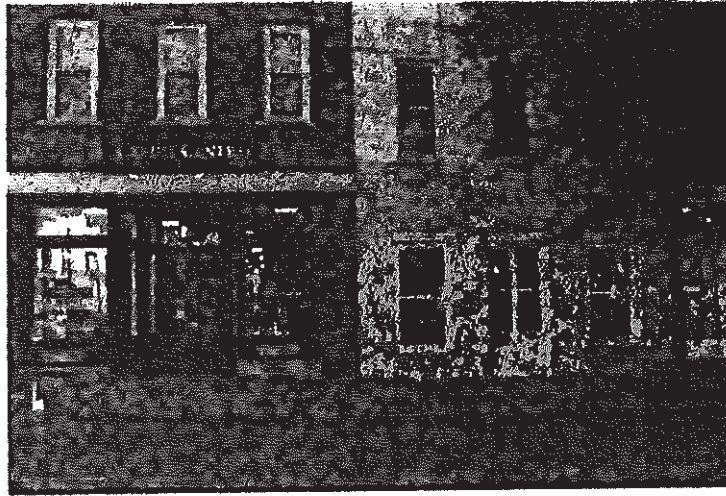


Figure 9. Step-finished floor of building.

b. *Recessed doors.* Building entry doors may be recessed, as illustrated in Figure 10, to accommodate required landings at entries, and to provide increased finished floor elevation and a greater length of slope within this area. Steps within the recess may also increase finished floor elevation.

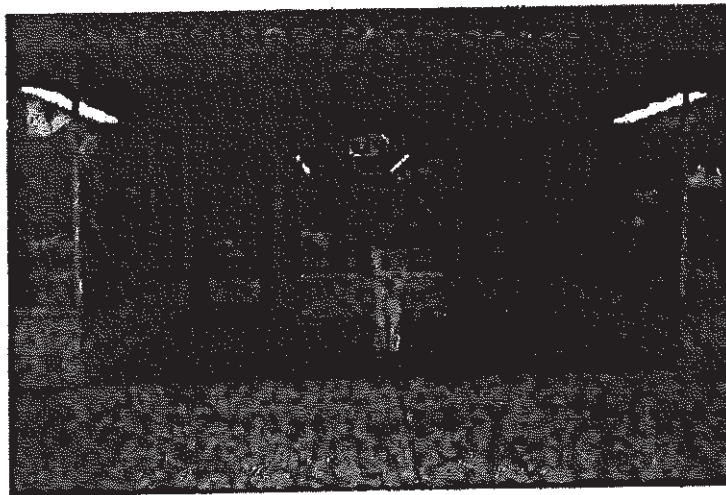


Figure 10. Recessed doors.

c. *Ramps and stairs.* Ramps and stairs may be provided either within or along the side or rear of the building and not within the activity zone.

d. The provision of additional access doors may be necessary to accommodate handicapped access.

e. A combination or all of the design elements referenced above may be required to achieve the desired activity zone relationship described, as illustrated in Figure 11.



Figure 11. Variety of design elements to address grade changes.

3. *Exceptions.* Certain circumstances may render maintenance of the 5% maximum slope within the area located between the top of curb or edge of pavement and the face of the building impractical. Examples of such circumstances include, but are not limited to, existing grade elevation conditions that cannot reasonably be altered, the accommodation of drainage concerns and/or special requirements of flood hazard areas. In such cases, the following exceptions may apply. However, it must be emphasized that the exceptions will apply only after the above-referenced design techniques have been incorporated to the greatest extent possible, and the 5% maximum slope standard cannot be met because of unusual circumstances.

a. A maximum of two stair risers, of between four and seven inches in height, abutting the sidewalk, may be utilized to accommodate a change in elevation, as illustrated in Figure 11; provided that the slope from the top stair tread to the face of the building does not exceed 5%.

b. The sidewalk abutting the stairs must have a minimum width of eight feet, with dedicated public access for any portion located outside of the public right-of-way.

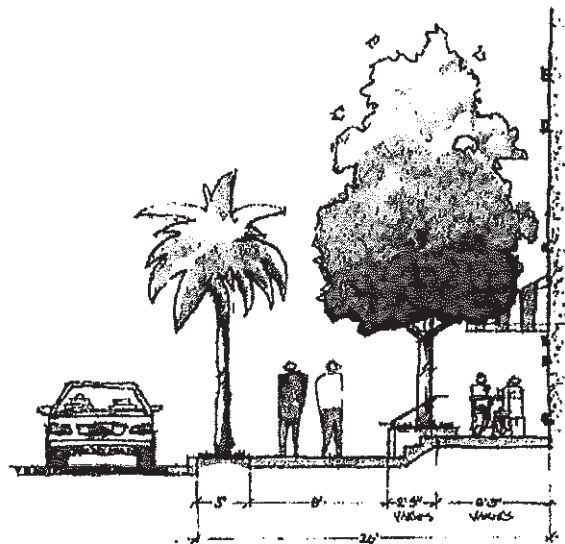


Figure 12. Stairs in the Activity Zone.

c. Greater consideration shall be given for these exceptions for sites involving additions and renovations to existing buildings than for redevelopment or development of vacant lots.

(h) *Lot frontage/pocket parks and other urban open space/plazas.* The goal of these requirements is to maintain a cohesive streetscape framed by buildings that address the public realm. Frontage will be assessed as the building facade that is located within the build-to area or within four feet of the setback line. Frontage shall be considered for both of the required two stories, while higher stories may be set back from the bottom two stories. The purpose of the pocket park or other urban open space/plazas is to provide variety in the public realm and usable outdoor space outside of the activity zone.

1. On Coleman Boulevard, between the intersection of Lansing Drive and the intersection of Chuck Dawley Boulevard, the minimum building frontage on properties of less than 100 feet shall be 100% of its frontage, except for adequate allowance for one curb cut. The total required building frontage may be accomplished through a phased development plan.

2. For properties with more than 100 feet of frontage on the boulevards, a minimum of 70% building frontage shall be required. The total required building frontage may be accomplished through a phased development plan.

3. Pocket parks, plazas, and other urban open spaces that are integrated into the overall design of a project shall count for a maximum of 20% of the required building frontage.

4. The minimum allowable size of a pocket park or other suitable urban open space shall be 12 feet of frontage and 300 square feet of overall area.

(i) On-street parallel parking may be implemented on both sides of Coleman Boulevard, from Simmons Street to Erckman Drive. On-street parking in other areas may be either parallel or angled, designed according to accepted standards, and approved by the town and SCDOT

(Q) *UC-JDB, Johnnie Dodds Boulevard Urban Corridor Overlay District.*

(1) *Boundary of the district.* The boundary of the district is graphically depicted in the following Figure 13.



Figure 13. Boundary of UC-JDB.

(2) *Intent.* The intent of the UC-JDB District is to enhance the driving experience for the motorist as well as the pedestrian experience in terms of convenience, safety, and aesthetics; to create opportunities for the redevelopment of underutilized properties along the corridor to attract jobs and create economic development opportunities and tourism for the community; to enhance East Cooper Regional Medical Center and provide an incentive for other medical practices to collocate; to create opportunities for civic uses that will enhance the hospitality industry within a Hospitality/Economic Development District; to enhance connections to the Memorial Waterfront Park and Waterfront Gateway District; to protect existing residential neighborhoods both adjacent to and near the corridor; to facilitate new and more pedestrian-oriented retail establishments that provide the everyday needs of the area residents; to define new open spaces, parks, and gathering spaces along the corridor as transition areas between development parcels throughout the districts along the corridor; to create new development guidelines for enhancing the corridor through creative land planning and architectural patterns in all the newly created districts; and to enhance housing opportunities conducive with the area.

(3) *Permitted uses.* Permitted uses are those identified in division (D) of this section; provided, however, the preferred land uses and development patterns shall be as follows:

(a) *Hospitality/Economic Development District.* The boundary of this district is illustrated in Figure 14.

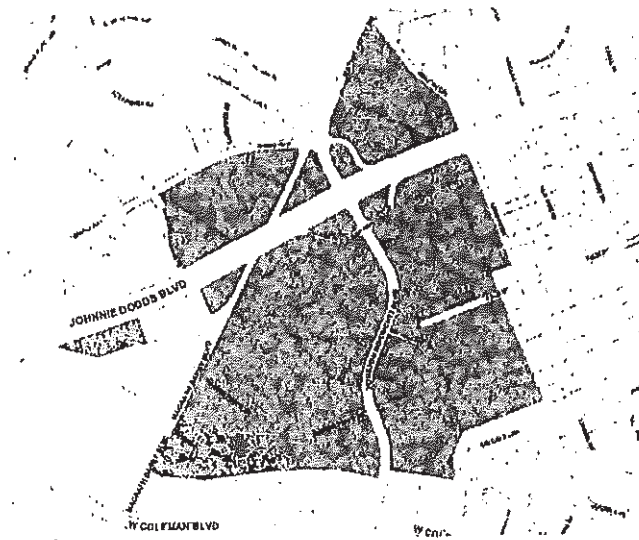


Figure 14. UC-JDB Hospitality/Economic Development District.

1. Hotels and higher density office uses.

2. Higher density residential uses.

3. Neighborhood commercial uses that benefit and enhance hotel and office uses such as boutique retailers, restaurants, and convenience stores.

(b) *Neighborhood Commercial and Office District*. The boundary of this district is illustrated in Figure 15.

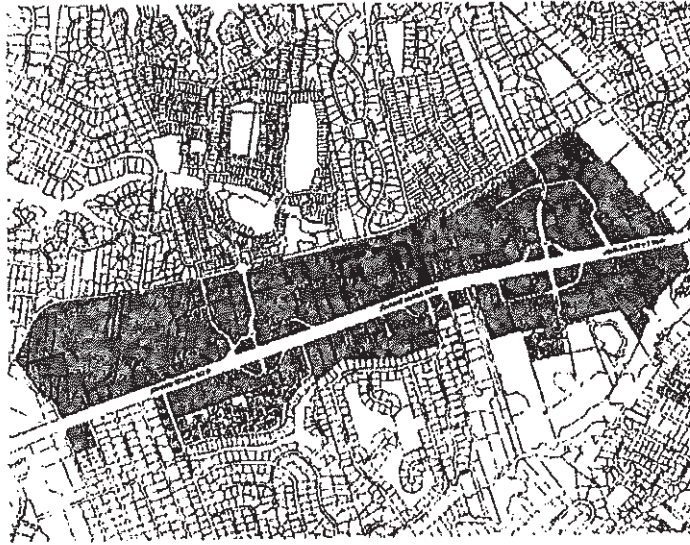


Figure 15. Boundary of UC-JDB Neighborhood Commercial and Office District.

1. Neighborhood commercial uses that benefit the existing community, such as grocery stores, convenience stores, and dry cleaners.

2. Higher density office uses with retail uses that benefit office uses, such as coffee shops, cafes, printing companies, and office supply stores.

(c) *Health and Wellness/Economic Development District*. The boundary of this district is illustrated in Figure 16.



Figure 16. UC-JDB Health and Wellness/Economic Development District.

1. Research and medical office uses or “medical campus” use.
2. Higher density residential and workforce housing to facilitate hospital expansion.
3. Ancillary retail and service related uses.
4. Accommodations for hospital visitors.

(4) *Density for residential uses.* Maximum density of residential uses shall be as shown in the table below; except that additional density may be allowed as provided in division (H)(1) of this section. For the purposes of calculating residential density, mixed use projects or developments are those consisting of both residential and nonresidential uses.

District	Density for Single Use Residential Development	Density for Mixed Use Development
UC-JDB Hospitality/Economic Development District	20	30
UC-JDB Neighborhood Commercial and Office District	16	20
UC-JDB Health and Wellness/Economic Development District	20	30

(5) *Number of stories.*

(a) Buildings fronting on the frontage road shall be a minimum of two stories.

(b) Buildings fronting on side streets (non-frontage roads) and buildings located at the intersections between the frontage road and Johnnie Dodds Boulevard may utilize a single story.

(6) *Building height.* Building heights shall be measured from the top of curb, or edge of paving if curb is not present, based on an average measurement taken at all building corners, and every 25 feet along the length of any street or internal access road to the building eave.

(a) *Neighborhood Commercial and Office District.* Maximum building height is 55 feet, except as provided in division (c) below.

(b) *Hospitality/Economic Development District and Health and Wellness/Economic Development District.* Maximum building height is 80 feet, except as provided in division (c) below.

(c) In all cases, the maximum height for buildings in the UC-JDB that are located within 50 feet of an abutting residential property line, or an abutting street right-of-way adjoining residential property outside of the UC-JDB, shall be 40 feet, measured from grade to roof ridge, and further provided that no such building shall exceed a maximum of three stories.

(7) *Build-to lines/rear yard setback requirements.*

(a) *Front yard build-to line.*

1. Requirement for buildings fronting on the frontage road is 20 to 30 feet, with a minimum 8-foot sidewalk.

2. Requirement for buildings fronting on side streets (non-frontage road) and for intersection properties, as described in division (Q)(11), is 20 to 30 feet, with a minimum-five-foot sidewalk. For properties where the Mathis Ferry Road buffer applies, the build-to line shall be determined through the design review process.

3. Build-to lines shall be measured from the back of curb to the face of the building. If no curb is present, build-to lines shall be measured from the edge of pavement.

(b) *Rear yard setback.* Rear yard setback is 15 feet.

(c) *Exceptions.*

1. Contingent upon approval through the design review process, development utilizing an integrated site plan involving multiple parcels may forego rear yard setbacks along parcel lines, except when commercial uses abut residential uses lying outside the district boundaries. In the latter case, a minimum 15-foot setback is required.

2. Build-to lines and setbacks for civic uses shall be in accordance with the provisions of division (N)(6) herein.

(8) *Bufferyards.*

(a) *Mathis Ferry Road buffer.* See § 156.201 (I) (3).

(b) *Front yard.* Street trees are required. Three canopy trees of a minimum-four-inch caliper shall be required for each 100 linear feet of road frontage, using species such as Southern Red Oak, Live Oak, Willow Oak, Elm varieties, and American Beech. Such tree types to be consistent with each block and evenly spaced, with exceptions made for curb cuts, utilities, and other obstructions.

(c) *Side and rear yards.* In general, bufferyard requirements on individual parcels are specified in § 156.201; however, contingent upon approval through the design review process, development utilizing an integrated site plan involving multiple parcels may forego side and rear bufferyards along parcel lines, except when commercial uses abut residential uses lying outside the district boundaries. In the latter case, a minimum 10-foot, Type "C" bufferyard, with an F3 fence, is required in all instances. This buffer may overlap with the required side and/or rear yard setback. In addition, buffers are not required where common wall construction to adjacent properties spanning property lines is utilized in accordance with applicable building and fire code requirements.

(9) *Exceptions for the Health and Wellness/Economic Development District.* Because the typical frontage road cross section will not be implemented in the vicinity of Bowman Road, due to its use as on-ramp and off-ramp access to the elevated interchange, the development standards applicable to the orientation of the frontage road will instead be applied to Bowman Road, or as otherwise determined through the design review process.

(10) *Intersection properties.* This overlay district zoning scheme recognizes that the relatively small sites near the intersections and located between the frontage road and Johnnie Dodds Boulevard will continue to be utilized for such uses as fast food restaurants and convenience stores. These are necessary uses for an urban boulevard setting, their sites are not large enough for other Neighborhood Commercial uses as contemplated in these regulations, and the opportunity to aggregate parcels is negated by the roadway configuration. Therefore, these properties should be developed or redeveloped in such a fashion so as to meet, to the fullest extent possible, the provisions promulgated herein as determined through the design review process, in full recognition that certain incentives or requirements cannot be achieved.

(11) *Pedestrian trails/access/open space/parks.* A key component of the UC-JDB is the provision of an integrated pedestrian and bicycle access plan through sidewalks and trails. This system is graphically depicted in an illustrative manner in Figure 17, below. Dedication of easements and construction for sidewalks and pedestrian trails on development parcels may be

required in the approval process to implement this pedestrian and bicycle access system. In addition to the pedestrian trail system, areas suitable for open space and parks are illustrated in the following Figure 17.

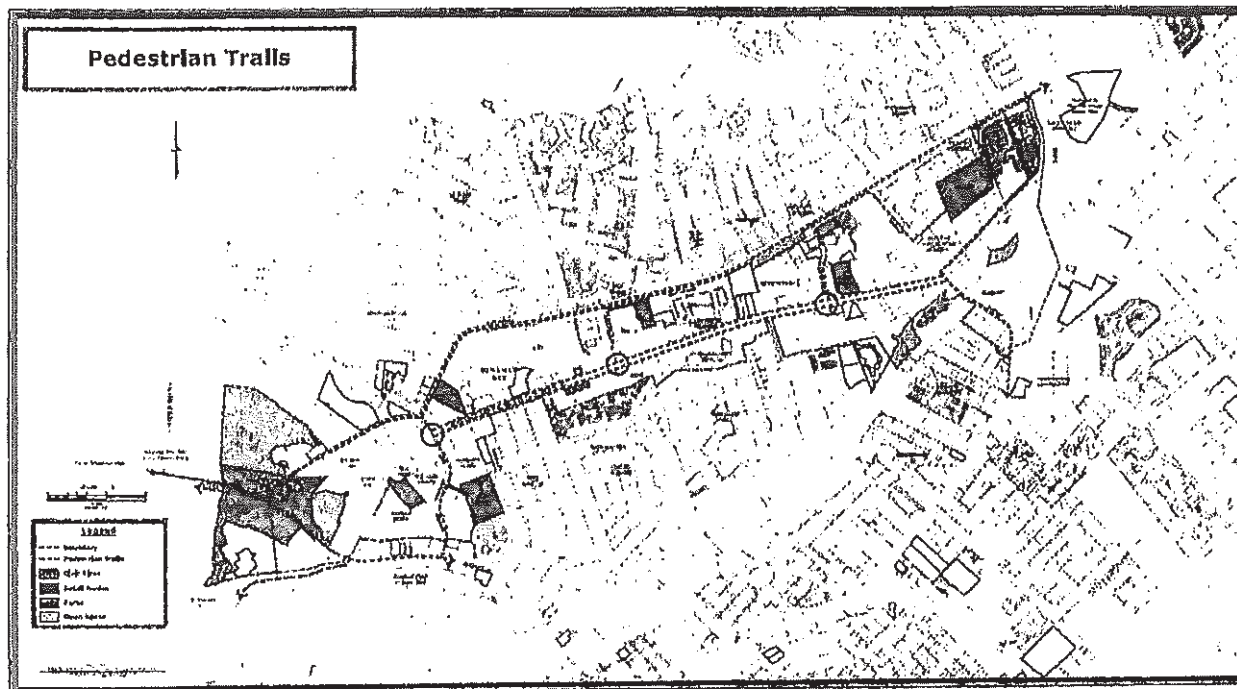


Figure 17. UC-JDB pedestrian and bicycle trails system and proposed open space areas.

(R) UC-CDB, Chuck Dawley Boulevard Urban Corridor Overlay District.

(1) *Boundary of the district.* The boundary of the district is graphically depicted in the following Figure 18.



Figure 18. Boundary of UC-CDB.

(2) *Intent.* The intent of the district is to implement the recommendations of the Town Comprehensive Plan 2009-2019 by completing the “third leg” of the urban and transit corridor comprised of Coleman/Ben Sawyer Boulevards, Johnnie Dodds Boulevard and Chuck Dawley Boulevard. This triangular-shaped area represents the urban core of the southern end of town. Because the triangle is bisected by Shem Creek, with no cross-access along its length, this “loop” will serve as a primary transit corridor for the suburban core. The development of the UC-CDB will be smaller scale, interspersed mixed use development with respect to height, density and compactness than the other two corridors, but will retain the same integral components of mixed use commercial and residential development in a pedestrian-friendly, walkable style of development.

(3) *Density for residential uses.* Maximum density of residential uses shall be 16 units per acre for single use residential development, and 20 units per acre for mixed use development. For the purposes of calculating residential density, mixed use projects or developments are those consisting of both residential and nonresidential uses.

(4) *Building height.* Maximum building height shall be 40 feet, provided that no such building shall exceed a maximum of three stories. Building heights shall be measured from the top of curb, or edge of paving if curb is not present, based on an average measurement taken at all building corners, and every 25 feet along the length of any street or internal access road to the building eave.

(5) *Build-to lines/rear yard setback requirements.*

(a) *Front yard build-to line.*

1. Front yard build-to line is 20 to 30 feet, which includes an 8-foot sidewalk only when an activity zone is included as part of the development plan; otherwise, the existing sidewalk shall be sufficient to meet the intent of this section, unless no sidewalk exists in which case installation of a 5-foot sidewalk shall be required.

2. Build-to lines shall be measured from the back of curb to the face of the building. If no curb is present, build-to lines shall be measured from the edge of pavement.

(b) *Rear yard setback.* Rear yard setback is 15 feet.

(c) *Exceptions.*

1. Contingent upon approval through the design review process, development utilizing an integrated site plan involving multiple parcels may forego rear yard setbacks along parcel lines, except when commercial uses abut residential uses lying outside the district boundaries. In the latter case, a minimum-15-foot setback is required.

2. Build-to lines and setbacks for civic uses shall be in accordance with the provisions of division (N)(6) herein.

(6) *Bufferyards.*

(a) *Front yard.*

1. For buildings fronting on Chuck Dawley Boulevard or side streets, no understory or shrub plantings are required.

2. However, three canopy trees of a minimum-four-inch caliper shall be required for each 100 linear feet of road frontage, using species such as Southern Red Oak, Live Oak, Willow

Oak, Elm varieties, and American Beech. Such tree types to be consistent with each block and evenly spaced, with exceptions made for curb cuts, utilities, and other obstructions.

(b) *Side and rear yards.* In general, bufferyard requirements on individual parcels are specified in § 156.201. However, contingent upon approval through the design review process, development utilizing an integrated site plan involving multiple parcels may forego side and rear bufferyards along parcel lines, except when commercial uses abut residential uses lying outside the district boundaries. In the latter case, a minimum-ten-foot, Type "C" bufferyard, with an F3 fence, is required in all instances. This buffer may overlap with the required side and/or rear yard setback. In addition, buffers are not required where common wall construction to adjacent properties spanning property lines is utilized in accordance with applicable building and fire code requirements.

(Ord. 10081, passed 2-8-11; Am. Ord. 11061, passed 9-13-11)