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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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 4 OF 4
(pp. 1280-1546)

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Town of Mount Pleasant

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Certificate of Counsel

Certificate of Compliance

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1407
Main 843.856.4488

Gray B. Taylor
gray.taylor@buistbyars.com

May 12, 2014

Via Email to: david@lawyershmp.com

David G. Pagliarini, Esq.
Hinchey, Murray & Pagliarini, LLC
234 Seven Farms Dr., Suite 300
Daniel Island, SC 29492

Re: 0 Coleman Boulevard, Mount Pleasant, SC

Dear David:

As a follow-up to my letter of May 1, and our conversations of last week, I would like to provide some additional information on the Church Street right of way. Pursuant to Ordinance 14022, my client's design professional had previously included a 20' buffer along the property line running adjacent to Church Street, under the assumption that this was a state road.

We recently learned that the State right of way for Church Street was removed from the State highway system in 2005, and transferred to the Town. Since that time it has been used for private parking, and has not been maintained as a public street or road. As such, we feel the appropriate setback along the western portion of the project should be 5', as a "Non-Street" buffer. We would ask that you provide an opinion to the Town Planning Staff confirming the same.

Lastly, I would also like to express my client's frustration regarding the approval process. My client undertook the garage component of its project at the request of the Town, and in order to help implement a revitalization plan some 20 years in the making. Now, the Town appears to be intent on undoing 20 years of planning and progress in order to satisfy the irrational demands of a small group of citizens. This not only jeopardizes the Town's contractual obligations under the License Agreement, but also sends a message to the business community that the Town will not follow through on long term plans if a vocal minority objects. The 73,000 residents of our Town, along with the business community which supports the Town with tax revenue and economic growth, both deserve better.

We trust that the Town has no intention of breaching its contractual obligations under the License Agreement, and that you will concur that this project does in fact have vested rights and a clear civic use, and that a 5' buffer along the former Church Street right of way is appropriate.

{00465421.DOCX}

PLAINTIFF'S EXHIBIT 24

Yours very truly,



Gray B. Taylor

cc: Shem Creek Development Group LLC (via email)

TOWN OF MOUNT PLEASANT

LEGAL DEPARTMENT
100 Ann Edwards Lane
Mount Pleasant, SC 29464

SOUTH CAROLINA

TELEPHONE
Area Code (843)
849-2020
FAX
388-1078

June 5, 2014

Via Email to: gray.taylor@buistbyars.com

Gray B. Taylor, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd, Suite 200
Mount Pleasant, SC 29464

Re: 0 Coleman Boulevard, Mount Pleasant, SC

Mr. Taylor:

I am in receipt of your letters dated May 1, 2014 and May 12, 2014 respectively. You have indicated that you represent Lucasville Investment Group, LLC, the tenant, under a 99 year ground lease at 0 Coleman Boulevard, and Shem Creek Development Group, the developer of a future project at the same location. You have identified three issues related to the question of whether your clients are subject to the amended provisions of the Urban Corridor Overlay District (UC-OD.) Amendments to the UC-OD were effective April 8, 2014 when Town Council adopted Ordinance 14022 which provides amendments to section 156.329 of the Mount Pleasant Code of Ordinances. Prior to the adoption of ordinance 14022 it appears that your clients were possibly subject to, depending on certain development conditions, a five foot or less setback along Church Street. It now appears that they are subject to a 20 foot setback.

As Corporation Counsel for the Town of Mount Pleasant I am responsible for providing legal advice to the Town. Though I am conveying the our position on the issues raised by you, the conclusions and opinions herein are not binding on your clients, the Town's elected officials, appointed officials or staff. Additionally, no plans have been submitted and all comments herein are subject to actual receipt and review of a proposal.

You have raised the following three issues in support of your position:

1. That your clients have submitted, and that the Town has approved, a site specific development plan as defined in the South Carolina Vested Rights Act and section 156.049 of the Town of Mount Pleasant Code of Ordinances and that your clients have established a vested right subjecting them to UD-OC requirements prior to amendments effective April 8, 2014;

2. That the proposed project contains a civic use as defined in the UD-OC and is therefore not subject to certain setback and design guidelines; and

PLAINTIFF'S EXHIBIT 32

PLAINTIFF'S EXHIBIT NO. 6 FOR IDENTIFICATION DATE: 8-9-19 RPTR: HO

Save Shem Creek000897

SCDG0002974

3. That the right-of-way known as Church Street is not a street as defined in the Town of Mount Pleasant Code of Ordinances and therefore your clients are subject to a five foot setback as opposed to a twenty foot setback under the provisions of the amended ordinance.

First, it is our position that your clients have not established a vested right. No site specific development plan, as defined in South Carolina Code section 6-29-1540(13) or section 156.049 of the Town of Mount Pleasant Code of Ordinances, has been presented to the Town or been approved by the Town. Your position is that the exhibit attached to the parking license agreement is a site specific development plan. The Town's position is that the exhibit is merely a rendering which lacks the specific requirements of a site specific development plan.

Town Council's approval of the parking license resolution was not an approval of a specific project, but only a financial commitment to reserve parking spaces for the public on the condition that a parking garage is actually constructed. Further, the financial commitment is contingent on your clients' ability to provide a minimum number of spaces. The Town made no promises that your clients could construct an economically feasible project and, as specified in the parking license agreement, there is no joint venture. The Town continues to honor the terms of the parking license agreement, however the Town is not committed to pay for any spaces unless and until the appropriate number of parking spaces are available.

Second, since there has been no submittal we cannot determine whether the project should be classified as a civic use. As you are aware, UC-OD provides certain exceptions to projects designated as a civic use. Historically, our Planning Department has considered the term civic use to describe churches, schools and the like. While the Code does not define civic use, a for-profit, privately owned and operated parking facility and commercial office building does not appear to meet any reasonable definition of the term.

Third, it is our position that Church Street is a street as defined in section 155.004 of the Town of Mount Pleasant Code of Ordinances. Church Street was removed from the SCDOT system, is now part of the Mount Pleasant system and the Town is responsible for maintenance. The fact that the street cuts through a parking lot and may be used for parking does not negate the underlying fact that it is a street.

Sincerely,

David C. Pagliarini
Corporation Counsel

From: Paul Gawrych <paul.gawrych@gmail.com>
Sent: Thursday, February 27, 2014 2:18 PM
To: Eric DeMoura <EDeMoura@tompsc.com>
Subject: RE: Proposed parking garage

Thanks

From: Eric DeMoura [mailto:EDeMoura@tompsc.com]
Sent: Thursday, February 27, 2014 1:29 PM
To: Paul Gawrych
Subject: RE: Proposed parking garage

Yes. The Town has entered into a public-private partnership with the ownership of the office building. Tex is a party to the ownership group. See below the proposal that went to council.

Shem Creek Parking Proposal
Location: Intersection of Coleman Blvd. and Mill St.
Total Parking Cost: $4,630,000
Total Spaces: 276
Cost Per Space: $16,775

Use Terms:

- 276 spaces
- (144 spaces reserved for tenants)
- 132 spaces available Monday-Friday 6AM-5PM
- 276 spaces available Monday-Friday 5PM-6AM, Saturday (all day) & Sunday (all day)

Developer Request
$200,000 over 15 years, or $3M (ATAX)

Town of Mount Pleasant Counter Proposal:

- $185,000 over 15 years (negotiated and agreed to)
- Deduct pro rata share of revenue from annual payment (negotiated and agreed to)

Good for TOMP?

- Supports redevelopment/revitalization of Coleman
  - Parking for visitors and businesses (can support greater density)
- Solves short-term parking congestion (weekends)
- Private developer taking most of the risk
  - Financing
  - Maintenance
- Parking revenue will lower the annual payments

Stipulations:

- Request full disclosure on construction costs
  - If costs are less or the interest rate is lower, then reduce the total commitment (negotiated and agreed to)

From: Paul Gawrych [mailto:paul.gawrych@gmail.com]
Sent: Thursday, February 27, 2014 11:47 AM

PLAINTIFF'S EXHIBIT 37

To: Eric DeMoura
Subject: FW: Proposed parking garage

The part that I highlighted in red below, can you expand on that please.

Thanks,
Paul

From: gheganj@comcast.net [mailto:gheganj@comcast.net]
Sent: Wednesday, February 26, 2014 10:37 PM
To: Christine Barrett
Subject: Proposed parking garage

Christine,

Hope you are doing well. Would you please send this to the members of town council? We are hoping to get some of the concerns added to an upcoming planning commission agenda. Thanks.

Dear Town Council members,

As you may already know, many citizens of the Old Village are concerned about the proposed parking garage at the corner of Mill Street and Coleman (on the same side as the former Settee restaurant). We feel that the parking garage would not only detract from the beautiful natural marsh surroundings. But also, the garage would not blend with the current buildings along Shem Creek. This plan also could represent a foreshadowing of future tall buildings in that area. This proposal also echoes commission member Bob Brimmer's concerns of recent building proposals "not blending in with the surrounding community".

The proposed project is set to be a joint venture between the town and developer Tex Small. The plan is for 3 floors of parking below and 2 floors of commercial office space above. The total height will be around 55 feet. The original plans for the overlay district restricted the height in this location to 40 feet. Unfortunately in September of 2013, Mr. Smalls along with the support of members of the town council had the town commission increase the zoning to 55 feet. We are concerned that the town will continue to increase the height of the proposed structures in the overlay district. A building this tall is certainly not in keeping with the surrounding structures. Furthermore, it will be the first structure seen by residents driving over the Shem Creek bridge coming into Mt Pleasant. Of note, some of the town council members that voted for the increase were on the original committee that decided the original 40 feet maximum height in the area.

Not only are we concerned over the height of the structure, but also we are concerned about the design. We fear the architecture will not be in keeping with the surrounding area and will be more in line with the architecture of the Boulevard. We asked if the public would have input into the design. Unfortunately, the response was "no." Only the staff would conduct the preliminary and final design review. We feel the citizens and tax payers should have more input especially since this is proposed to be a joint venture with the town.

Thank you for your attention to this matter. We hope this can be added to a future agenda for discussion.

Sincerely,

Mark and Joanna Ghegan

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From: Nancy Dispenza </O=TOWN OF MOUNT PLEASANT/OU=TOWN OF MOUNT PLEASANT/CN=RECIPIENTS/CN=NANCY>
Sent: Tuesday, April 15, 2014 4:47 PM
To: Eric DeMoura <EDeMoura@tompsc.com>
Subject: RE: letter

Yes Sir, will do.
Nancy

From: Eric DeMoura
Sent: Tuesday, April 15, 2014 4:39 PM
To: Lauren Sims
Cc: Nancy Dispenza
Subject: RE: letter

You rock. Nancy, please put in letter form for me (including attachments) as Mr. Orner only provided an address. Also, I plan to email my letter to Mayor and Council.
Eric

From: Lauren Sims
Sent: Tuesday, April 15, 2014 3:35 PM
To: Eric DeMoura
Cc: Nancy Dispenza
Subject: RE: letter

Eric,
Please see my edits highlighted in red below. I've also attached the 3 documents you requested. Please let me know if I can further assist.
Lauren

David Orner
811 Abcaw Way
Mount Pleasant, SC 29464

Dear Mr. Orner,
Thank you, sir, for attending the town council meeting on April 8, 2014 and for voicing your opinion on the structure near Shem Creek, referred to as the parking garage in your letter to Town Council. Your opinion is important. In response to your request, please allow me to provide more information about this project. To begin, while reasonable people can disagree, the structure in question at the intersection of Mill Street and Coleman Boulevard is not a typical parking garage. As you can see from the enclosed and latest architectural renderings, the structure is an office building with one additional parking deck above the traditional surface parking. The additional parking deck is not required for the office building. Instead, the additional deck is a result of an agreement between the Town and the project owner to accommodate the public parking demand in that area. The public/private partnership addresses a clear community need by providing a safe and organized location for citizens and visitors to park when visiting the fine restaurants in the area, shopping along Coleman Boulevard, or enjoying the Town's Shem Creek Park, which will soon be expanded. In exchange for carrying the additional cost for the extra parking deck, the Town, through a license agreement, will pay $185,000 over fifteen years for guaranteed use of roughly 276 parking spaces. 144 of those spaces are reserved for office tenants Monday through Friday from 6am to 5pm. To fund this partnership agreement, the Town is using accommodation taxes which are taxes collected from visitors staying at local hotels. State law allows for the use of these funds to support tourism-related expenditures of which parking is specifically mentioned. This arrangement

PLAINTIFF'S EXHIBIT 38

benefits the community for several reasons- it not only precludes the Town from having to fund and construct its own parking structure to address current and future parking congestion, but it also requires that the project owner incur the risk of the project. The owners are responsible for the financing, construction, and maintenance of a parking deck costing likely in excess of $5 M. Further, if the parking deck generates revenue, the Town's pro rata share will be deducted from the annual payment.
With regards to your questions (also enclosed), I believe you will find that the information provided above satisfies most of your questions. With regard to architectural review, the Town does require commercial design review. Town staff will represent the community's interest in ensuring that this building be aesthetically pleasing.
Thank you again for your comments and your inquiry. Please let me know if I can be of any further assistance.
Eric DeMoura
Town Administrator

From: Eric DeMoura
Sent: Tuesday, April 15, 2014 11:25 AM
To: Lauren Sims
Cc: Nancy Dispenza
Subject: letter

Lauren,
Clean up this letter of response to the gentleman below.
Eric

David Orner
811 Abcaw Way
Mount Pleasant, SC 29464

Dear Mr. Orner,
Thank you, sir, for attending the town council meeting on April 18, 2014 and for voicing your opinion on the parking garage near Shem Creek. Your opinion is important. Please allow me to provide more information about this project. To begin, while reasonable people can disagree, the structure in question at the intersection of Mill Street and Coleman Boulevard is not a typical parking garage. As you can see from the enclosed and latest architectural renderings, the structure is an office building with one additional parking deck above the traditional surface parking. The additional parking deck is not required for the office building. Instead, the additional deck is a result of an agreement between the Town and the project owner to accommodate the parking demand in that area. The public/private partnership addresses a clear public need by providing a safe and organized location for citizens and visitors to park when enjoying the Town's Shem Creek Park, visiting the fine restaurants in the area, or shopping on Coleman Boulevard. In exchange for carrying the additional cost for the extra parking deck, the Town, through a license agreement, will pay $185,000 over fifteen years for guaranteed use of roughly 276 parking spaces. 144 of those spaces are reserved for office tenants Monday through Friday from 6am to 5pm. To fund this partnership agreement, the Town is using taxes collected from visitors staying at local hotels known as accommodations taxes. State law allows the use of these funds to support tourism-related expenditures of which parking is specifically mentioned in the law. This is a good deal for the citizens of the Town because in addition to addressing current and future parking congestion, the project owner incurs the risk of the project. They are responsible for financing, construction, and maintenance of a parking deck costing likely in excess of $5 M. Further, if the parking deck generates revenue, the Town's pro rata share will be deducted from the annual payment.
With regards to your questions (also enclosed), I believe you will find that the information provided above satisfies most of your questions. With regard to architectural review, the Town does require commercial design review. Town staff will represent the community's interest in that this building be aesthetically pleasing.
Thank you again for your comments and your inquiry. Please let me know if I can be of any further assistance.
Eric DeMoura

Town Administrator

From:	Eric DeMoura <EDeMoura@tompsc.com>
Sent:	Friday, September 27, 2013 8:56 AM
To:	Nancy Dispenza <NDispenza@tompsc.com>
Subject:	FW: RedLine Shem Creek
Attach:	Shem Creek Parking Garage License Agreement REVISED9.18.13.doc

Please print

From: David Pagliarini [mailto:david@lawyershmp.com]
Sent: Wednesday, September 18, 2013 1:10 PM
To: Tyler
Cc: Eric DeMoura; Gray Taylor; Jim Hinchey
Subject: Re: RedLine Shem Creek

Tyler/Gray:

Please find our comments and revisions. I am available to discuss at any time.

On Tue, Sep 17, 2013 at 2:12 PM, Tyler <tyler@redtyadvisors.com> wrote:
David/Eric,

I understood from Tex Small that he spoke with Eric last week in regards to the parking agreement and where we are etc. Tex is out of town this week but has asked that I continue to pursue what we were working on. The last word was that we were to receive a redline version of the document for review. Our original draft was sent on august 15th and I know the height/retail amendment to the overlay is under way etc. As it relates to the document, it is paramount that we work through any issues and get to a final draft as quickly as possible. If possible I would like to review the redline and get any kinks worked out this week, so we can begin our engineering, design, etc. Please advise as to the status of the document and if my timetable is achievable. Thanks in advance....

Tyler Flesch
400 Hibben Street, Suite 200
Mt. Pleasant, SC 29464
843.628.3595 (O)
843.696.3030 (M)
RED DRUM CAPITAL

--
David G Pagliarini
Hinchey,Murray&Pagliarini,LLC
234 Seven Farms Dr. Suite 300
Charleston, SC 29492
(843) 971-8646
(843) 971-8073 (f)

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Hinchey,Murray&Pagliarini,LLC
webmail

PLAINTIFF'S EXHIBIT 39

PARKING LICENSE AGREEMENT

BY AND BETWEEN

SHEM CREEK DEVELOPMENT GROUP LLC

AND

TOWN OF MOUNT PLEASANT

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 ~~entire~~ 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 ~~License Term~~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~~Term~~. Payment for the first License Year of the Rent Period~~Term~~ 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 ~~Term~~ 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 x 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 be a period of ~~fifteen forty (1540)~~twenty-five (25) License Years, commencing upon the Rent Commencement Date and ending on date ~~fifteen forty (4015)~~ twenty-five (25) years thereafter, 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. ~~Notwithstanding the foregoing, Licensor shall not be prohibited from entering into agreements with local business to provide dedicated parking spaces for employees and patrons of such businesses.~~

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 ~~Town of Mount Pleasant Town Council and Building Department~~appropriate Town of Mount Pleasant department or entity. ~~Necessary approvals include, but are not limited to, modification of the UC-CBS Development Guidelines Chart in the Coleman Overlay District of C-1 to allow a maximum building height of 55 feet, and modification of Section (M)5(B)2-c of the same to add "except in "A" flood zones".~~ 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. ~~Necessary approvals include, but are not limited, final approval of text amendments to 156.329, UC-OD, Urban Corridor Overlay District, of the Town of Mount Pleasant Code of Ordinances, specifically to allow for 55 feet in building height for those properties that are fronting Coleman Boulevard and located in section C1 as identified in the UC-CBS Development Guidelines Chart shown in 156.329(P)(5), and also to amend section 156.329 (M)5(B)2-c and other relevant Code sections of the UC-OD to remove the requirement for ground floor commercial uses when a parking garage is located in a flood zone and also when the parking provided is in excess of that required for the development and is available for use by the public.~~

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~~, subject only to the Licensor's use of the Parking Spaces for Special Events (as defined below), and the Licensor's ability to enter into agreements with local business to provide dedicated parking spaces for employees and patrons of such businesses.~~

(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.

~~(d) Licensor reserves the right to limit access to the Parking Spaces during certain "Special Events". Special Events during which parking availability for the general public may be limited, or only available upon special terms and conditions, shall include but not be limited to holiday events such as the Town Christmas Parade, 4th of July celebrations, New Year's Eve celebrations, the Cooper River Bridge Run, and weddings, oyster roasts, concerts and similar special events hosted by one or more local event venues or restaurants.~~

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 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. Following the 13th year of the Rent Term, Should the Premises shall be damaged to the extent of fifty (50%) percent or more of the cost of replacement, ~~during the last two (2) years of the License Term,~~ Licensor may elect to terminate this License.

Section 5.02 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 5.03 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 it 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. ~~and accelerate the payment of all remaining Fixed Minimum Rent payments such that they shall then be immediately due and owing. In no event shall Licensor's termination of this License and/or Licensee's right to possession of the Premises abrogate Licensee's agreement to pay Rent and additional charges due hereunder for the full term hereof. Following re-entry of the Premises by Licensor, Licensee shall continue to pay all such Rent and additional charges as same become due under the terms of this License, together with all other expenses incurred by Licensor in regaining possession until such time, if any, as Licensor relets same and the Premises are occupied by such successor. Upon any reletting, sums received from such new Licensee by Licensor shall be applied first to payment of costs incident to reletting; any excess shall then be applied to any indebtedness or other sums owing to Licensor from Licensee other than for Fixed Minimum Rent and Percentage Rent, if any; and any excess shall then be applied to the payment of Fixed Minimum Rent and Percentage Rent, if any, due and unpaid. The balance, if any, shall be applied against the deficiency between all amounts received hereunder and sums to be received by Licensor on reletting, which deficiency Licensee shall pay to Licensor in full, within five (5) days of notice of same from Licensor. Licensee shall have no right to any proceeds of reletting that remain following application of same in the manner set forth herein.~~

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 ~~Counterclaim and~~ Jury Trial. ~~In the event that the Licensor commences any summary proceeding or action for non-payment of Rent or other charges provided for in this License, Licensee shall not interpose any counterclaim of any nature or description in any such proceeding or action.~~ **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.

LICENSOR:

Shem Creek Development Group LLC,
a South Carolina limited liability company

_____
First Witness

_____
By: Tyler N. Flesch
Its: Manager

_____
Second Witness

LICENSEE:

Town of Mount Pleasant

_____
By:
Its:

_____
First Witness

_____
Second Witness

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

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1407
Main 843.856.4488

Gray B. Taylor
gray.taylor@buistbyars.com

June 23, 2015

Via Email to: david@lawyershmp.com

David G. Pagliarini, Esq.
Hinchey, Murray & Pagliarini, LLC
234 Seven Farms Dr., Suite 300
Daniel Island, SC 29492

Re: Termination of the October 17, 2013 Parking License Agreement by and between Shem Creek Development Group LLC and Town of Mount Pleasant (the "Agreement")

Dear David:

Please allow this letter to serve as termination of the above-referenced Agreement due to the failure to cure default after notice by the Town of Mount Pleasant. Any capitalized terms herein shall have the meaning of set forth in the Agreement unless otherwise set forth herein.

As I informed you on February 10, 2015, the Town of Mount Pleasant was in default pursuant to the Agreement for failure to provide the Estoppel Certificate as required by Section 7.04 of the Agreement. That default has not been cured.

Further, the Agreement is terminated due to the Town of Mount Pleasant's anticipatory breach by failing and refusing to comply with Section 1.07(a). That Section provides as follows:

> *Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by the Licensor, with payment being released from escrow upon the Rent Commencement Date.*

To date, our client has not received any notice that the Town of Mount Pleasant has complied with payment of the first License Year's rent into escrow, which was to have happened upon the commencement of construction.

The failure to pay all or any portion of this Rent and the failure to cure after thirty (30) days constitutes grounds for termination pursuant to Section 6.01 of the Agreement.

As our client informed the Town of Mount Pleasant on June 8, 2016, our clients' damages under Section 6.01 include the full Rent Payments due under the terms of the Agreement along with potential recovery of attorneys' fees and costs should they be the

PLAINTIFF'S EXHIBIT 42
1305

prevailing party. Our client reserves all of its rights under Section 6.01 of the Agreement to pursue all of the Rent Payments due to it in the sum of $2,770,000.00.

The Town of Mount Pleasant's breach of the implied duty of good faith and fair dealing and the express obligations of Section 2.03 of the Agreement are further cause for termination. The direct acts and omissions of the Town of Mount Pleasant and individual members of Town Council, some of whose actions were prior to their being seated on Town Council breach the implied duty of good faith and fair dealing. These Council members should govern themselves accordingly.

As you were informed on June 8, 2016, our client made a settlement offer which was summarily rejected by Town Council at its following Town Council meeting. There will be no action required by Town Council upon receipt of this notice of termination. With kind regards, I remain

Yours very truly,

Gray B. Taylor

cc: Shem Creek Development Group LLC (via email)

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1407
Main 843.856.4488

Gray B. Taylor
gray.taylor@buistbyars.com

October 20, 2014

Via Email to: david@lawyershmp.com

David G. Pagliarini, Esq.
Hinchey, Murray & Pagliarini, LLC
234 Seven Farms Dr., Suite 300
Daniel Island, SC 29492

Re: 0 Coleman Boulevard, Mount Pleasant, SC

Dear David:

Please allow this letter to serve as a response to the questions posed in your email of October 15. Any capitalized terms used herein and not otherwise defined shall have the meaning set forth in the October 17, 2013 Parking License Agreement by and between Shem Creek Development Group LLC and Town of Mount Pleasant (the "Agreement").

1. Do you agree with the overall analysis I have provided? Please share any specific disagreements.

We agree with the number of available spaces to be constructed pursuant to the final DRB Submittal, approved September 24, 2014 (the "Approved Plans"), and agree that these spaces will satisfy the requirements of the Parking License Agreement (the "Agreement"). We disagree that the parking requirements for either Red's Ice House or Tavern and Table have any bearing on the satisfaction of SCDG's construction obligations under the Agreement.

The purpose and intent of the Project has always been to improve the current parking situation for existing local business. Mr. DeMoura was quoted by the Post & Courier in an article published on October 6, 2013, as stating that the garage would allow new development on smaller nearby properties that could not otherwise meet the Town's parking requirements, and specifically that "the Parking Garage would count toward that parking". As further evidence of this, Section 3.02(a) of the Agreement specifically states that the Public Spaces "are intended to foster tourism and economic development along Coleman Boulevard and the Shem Creek Waterfront, and to provide parking for existing local businesses."

As a direct result of the anticipated construction pursuant to the Agreement, the former Lighthouse event venue (an existing local business), is currently undergoing significant

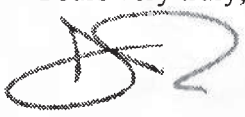
PLAINTIFF'S EXHIBIT 43 1307

The questions and answers posed above arose out of SCDG's request to the Town for an acknowledgement that, if constructed, the Approved Plans would satisfy SCDG's construction obligations under the Agreement. We strongly believe this to be the case. There are clearly minor differences between the conceptual plans and Approved Plans, as anticipated by Section 3.04 of the Agreement. As noted above, the primary driver of these differences was the Town's intentional and deliberate changes to the zoning code, and specifically the setback requirements adopted by Ordinance 14022. Additional, the Town's requested on-street parking spaces along Mill Street were not approved by SCDOT.

Shem Creek Development Group, LLC made every effort possible to design a project which met its construction obligations under the Agreement. Following the enactment of Ordinance 14022, SCDG, at significant expense, re-designed the project to meet its construction obligations under the Agreement as well as the additional regulations imposed by Ordinance 14022. For several weeks now, SCDG has been seeking a simple affirmation from the Town that, if constructed pursuant the Approved Plans, the resulting Public Spaces and Reserved Spaces will satisfy SCDG's construction obligations under the Agreement. No such affirmation has been forthcoming.

Accordingly, please allow this letter to serve a formal request, pursuant to Section 7.04 of the Agreement, that the Town provide an Estoppel Certificate within ten (10) days of the date of this letter, in the form attached hereto. Should the Town provide a satisfactory letter indicating the sufficiency of the Approved Plans within ten days, my client is willing to forego the necessity of a formal Estoppel Certificate.

Yours very truly,



Gray B. Taylor

Enclosure
cc: Shem Creek Development Group LLC (via email)

ESTOPPEL CERTIFICATE

TO: Shem Creek Development Group LLC (hereinafter referred to as "Licensor")
Attention: Tyler Flesch
400 Hibben Street, Suite 200
Mt. Pleasant, South Carolina 29464

RE: Shem Creek Parking Garage, Mount Pleasant, South Carolina

The undersigned, Town of Mount Pleasant, as Licensee (together with all successors and assigns, the "Licensee"), under 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), hereby certified as follows:

1. That 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").

2. 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. That the Agreement is in full force and effect and has not been assigned, modified, supplemented or amended in any way.

4. That the Agreement represents the entire agreement between the parties as to the Project.

5. That 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.

EXECUTED and delivered this ____ day of October, 2014.

TOWN OF MOUNT PLEASANT

_____
By:
Its:

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1407
Main 843.856.4488

Gray B. Taylor
gray.taylor@buistbyars.com

May 1, 2014

Via Email to: david@lawyershmp.com

David G. Pagliarini, Esq.
Hinchey, Murray & Pagliarini, LLC
234 Seven Farms Dr., Suite 300
Daniel Island, SC 29492

Re: 0 Coleman Boulevard, Mount Pleasant, SC

Dear David:

I am writing to you in your capacity as the Attorney for the Town of Mt. Pleasant. I represent Lucasville Investment Group, LLC (the tenant under a 99 year ground lease) and Shem Creek Development Group (the property developer) in the above-referenced matter. As you know, the development of this prominent corner and component of the Coleman Boulevard urban corridor has been the topic of much discussion in recent years. In conjunction with former Mayor Swails, my clients entered into discussions regarding the incorporation of certain civic components into their planned office building, and at the specific request of the Town, undertook an extensive design process to incorporate a parking deck into the project. When completed, the proposed deck will exceed the parking needs of the attached office building, and provide much needed public parking for nearby businesses.

In early 2013, during the design process, Town staff identified a conflict between the proposed plans and the then-existing zoning ordinance. In order to resolve this conflict and allow the requested additional parking to be approved without the need for a zoning variance, my clients requested a change to the current zoning (see attached letter dated July 23, 2013). Town Council responded by modifying the UC-CBS Development Guidelines Chart for the Coleman Overlay District to increase the building height to 55', and modified section M(5)B(2)-c by adding "except in flood zones".

Following these two changes, the Town and my client finalized their negotiations over the proposed project, culminating in the Parking License Agreement, dated October 17, 2013 (the "License Agreement"). After further input from the Town, the plans (originally reviewed with the Town Planning Committee in the summer of 2013) were finalized and attached as Exhibit "A" to the License Agreement. Since signing the License Agreement on October 17, 2013, my client has continued to invest several hundred thousand dollars in architectural, structural, and landscape design plans, all in reliance on the License Agreement, the preliminary

PLAINTIFF'S EXHIBIT 44

plans included therein, and the Town's affirmative steps to specifically allow the additional civic component of this project.

Unfortunately, at its April 8, 2014 meeting, Town Council approved an Ordinance to Amend Sections 156.007 and 156.329 of Chapter 156 pertaining to definitions and the UD-OC, Urban Corridor Overlay District. These changes, and specifically the changes to building setbacks and parking space widths, render my client's project economically unfeasible. In our opinion, these changes also violate a vested right under the South Carolina Vested Rights Act, S.C. Code Ann. §6-29-1510, *et seq.* (2005)(the "Vested Rights Act").

The development plan attached to the License Agreement clearly constitutes a "site specific development plan" under the Vested Rights Act. Once approved, site specific development plans are only subject to changes in zoning or land-use requirements that do not operate to affect, prevent, or delay development, unless done with the consent of the landowner. *Id.* at §6-29-1540(13). The current changes negatively affect our client's project, and our client certainly did not consent to the changes. In fact, you will remember that our client appeared at the April 8th meeting to advise against Council passing this amended ordinance. Despite the strong words from Mayor Page in support of the parking garage, Town Council chose to pass the ordinance, thus rendering our project (and many other planned commercial projects along Coleman Blvd.) economically impossible to build. Based upon the Vested Rights Act, we are requesting that our project be reviewed based upon the plain language of the UD-OC, Urban Corridor Overlay District as it existed prior to the ordinances passed on April 8th.

In addition to our client having a vested right, you will recall that the project does contain a "Civic Use" as defined in the UD-OC, Urban Corridor Overlay District. While Civic Uses is not defined exclusively, a parking garage specifically designed to meet the needs of the public and area businesses should easily satisfy the definition. For additional support, I would also point to the language contained in the License Agreement, and the Town's funding of the License Agreement through accommodations tax dollars, which may only be used for public (i.e., "civic") purposes.

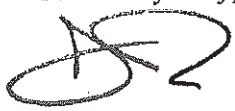
While I apologize for the length of this letter, I felt it was important to remind the current Town staff and Council of the long history of my client's proposed development. My client incorporated the additional parking at the specific request of the Town, and has worked in good faith with the Town to make it a reality. As much as we appreciate the assurances from individual Council members that the recent ordinance was only intended to impact residential projects, the reality of the situation is that the recent ordinance does affect commercial projects along Coleman Boulevard, and seriously jeopardizes our project along with many other planned redevelopments. We urge the Town to resolve this apparent unintended consequence.

In the interim, my client has terminated a prior lease agreement and made a significant financial investment based upon a binding agreement with the Town. We remain excited about the project, want to see it completed, and know that the parking garage component will be of great value to the surrounding businesses. For these reasons, we must assert our rights under the Vested Rights Act, and ask that all plans for this project be reviewed upon the plain language of

the UD-OC, Urban Corridor Overlay District as it existed prior to the ordinances passed on April 8th, and that all design aspects of the parking garage component be reviewed as a Civic use.

Lastly, I would also like to express our dismay over last night's comments to the media by Council Member Santos. We trust that these comments are his personal opinion only, and that the Town has no intention of breaching its contractual obligations under the License Agreement.

Yours very truly,



Gray B. Taylor

Enclosure

cc: Shem Creek Development Group LLC (via email)

{00460117.DOCX}

AVTEX
COMMERCIAL PROPERTIES, INC.

July 23, 2013

Mrs. Thomasena Stokes-Marshall
Chair of the Planning Committee
Town of Mt. Pleasant
100 Ann Edwards Lane
Mt. Pleasant, S. C. 29464

Dear Mrs. Stokes-Marshall:

As you are aware, our company has worked diligently with the Town to bring a parking structure to the corner of Coleman Boulevard and Mill Street. In order to make it economically feasible for all parties, we have incorporated a proposed office building over the garage.

In an analysis of the regulations we discovered that our project would not meet two present requirements in the current overlay district; the overall height and a requirement to put retail on the ground floor of a parking structure. Therefore, I would like to respectfully request a modification to the UC-CBS- Development Guidelines Chart in the Coleman Overlay District of C-1 to allow a maximum building height allowed of 55 feet. In addition, I request that section (M) 5 (B) 2-c be modified by adding "except in A flood zones".

It is our intent to work with staff to provide open spaces and people oriented design details to ensure the integrity of the activity zones on our adjoining streets.

Thank you for your consideration of these two items. I am always available to meet and discuss how to move this request forward and also any concerns that may arise.

Sincerely,

Robert S. Small IV.,
CEO
Avtex Commercial Properties, Inc.

RSSjr:ewk

P.O. Drawer 10287
:nville, SC 29603
Office: (864) 271.1900
Fax (864) 233.0639

SMHa
Stubbs Muldrow Herin architects

MEMORANDUM

proj: **Shem Creek Office & Parking Structure**
re: Town of Mount Pleasant: DRB Pre-Submission Plan Review
to: Tyler Flesch
from: Jeff A. Johnston
date: April 14, 2014
comm: 1347.00

1. Present: Michael Robertson, Christiane Farrell, Planning, Town of Mount Pleasant; Tyler Flesch, Avtex Commercial; Charles Muldrow, Jeff Johnston, SMHa.
2. The purpose of this meeting was to review the design to date, in what may be called the pre-DRB submission design & site plan review.
3. There were several fundamental site plan changes affecting this building design that occurred within the Town's Coleman Boulevard Urban Overlay District zoning ordinance. According to Christianne, the Town, as passed in the most current Town Council meeting, very recently adopted these changes. She stated that these changes have been made, through final reading.
4. Side setback (Mill Street):
    a. This is now an "Activity zone", where the building is required to be within 20-30 feet of the back of curb. It was unclear if there is a build-to percentage of building frontage requirement.
    b. The building was designed using the old requirement of 20'-0, of which it could be reduced to a 5' setback, provided the following: a vision triangle at the corner and street plantings.
    c. The current garage stairwell at the corner of Church and Mill is now within this 20-30 foot activity zone.
    d. Due to the lot shape, the building does not currently parallel the property line/build to line.
    e. Removing the corner stair would solve the activity zone issue, however the building shape may have to parallel and abut the build -to line, which would cause inefficiencies with building shape and cost.
5. Rear setback (Church Street):
    a. The design utilized the same 5'-0" setback, with the provisions listed in 4b above.
    b. The new requirement is that this setback is 20'-0" from the property line, within which no built structure can reside.
    c. The current design shows an entire row of parking within this setback zone, on two levels.
    d. Moving the building edge 20' will result in a loss of 28 parking spaces, and possibly reduce the ramp length such that parking on the ramp becomes too steep (it is currently at 8%, shortening it may result in a 10% slope, which is undesirable to park on).
6. Coleman Boulevard

PLAINTIFF'S EXHIBIT 47

STUBBS MULDROW HERIN architects, inc.
400 Hibben Street • Mount Pleasant, SC 29464 • 843.881.7642 • 843.884.5021 fax • www.smha.com

a. The current design shows two columns within the activity zone, upon which two stories of occupied space are supported.

b. These columns cannot be within the activity zone, nor can occupied space be located.

c. This corner bump out will have to be shifted back to be in line with the building's primary mass.

7. Landscape:

   a. The Town will require that the straight 8'-0" sidewalk be implemented, as exactly per the Town's zoning text.

   b. The current design has a layering of hard paved materials, weaving along the street edge.

   c. The landscape plan will require re-design to implement the zoning requirements.

8. Parking stall width:

   a. The Town does not differentiate between surface and structured parking. All stalls are required to be 9'-0" wide by 18'-0" deep.

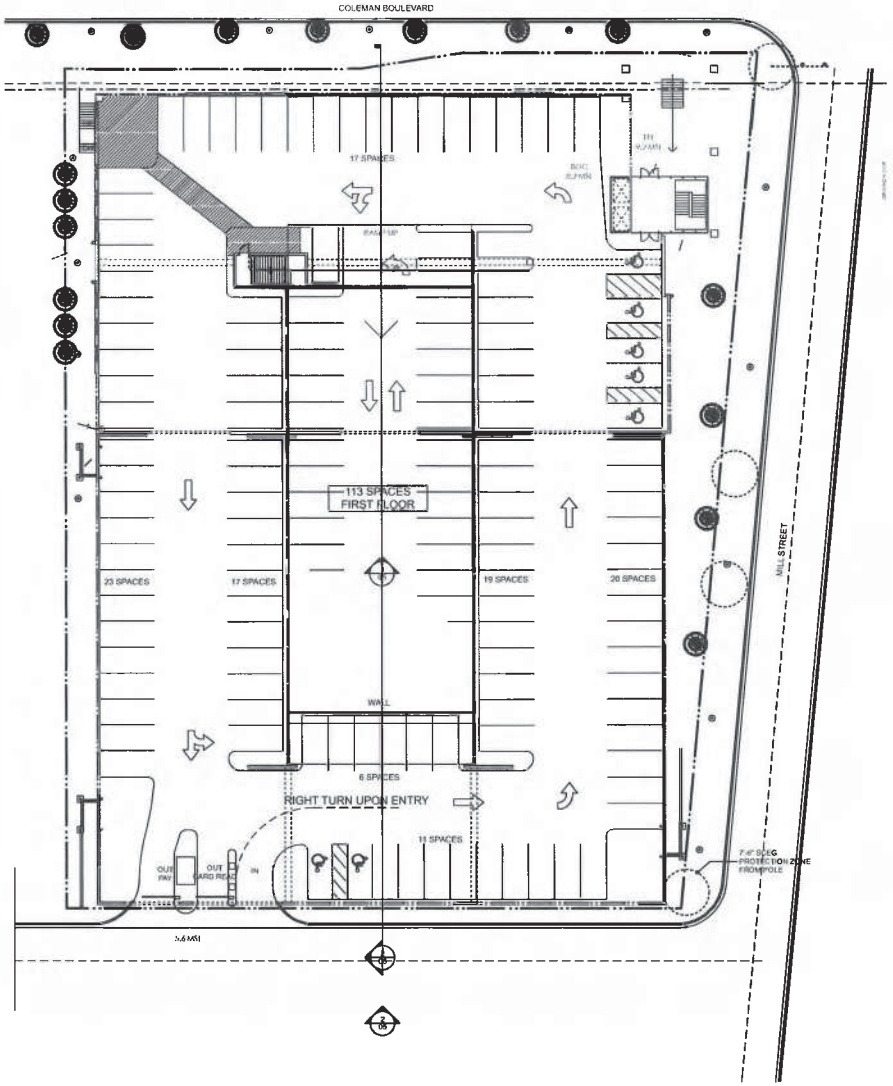
   b. The current parking plan shows parking stalls at 8'-6" wide.

   c. Moving to 9'-0" stalls will significantly reduce the amount of parking available.

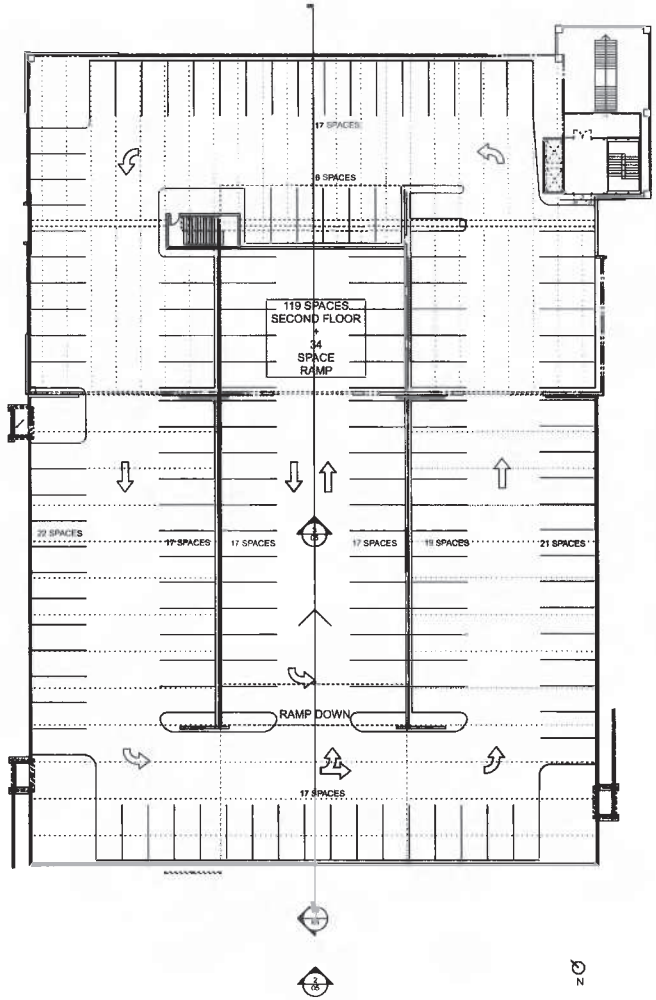
9. On street parking may be an option for both Mill and Church Street, to help recoup some of the structured parking loss.

Please review for accuracy and completeness. Contact me immediately if you find anything that needs to be corrected and I will issue a correction. Lack of notification will be interpreted as agreement with the information as presented.

cc: Attendees, Tex Small, Avtex Commercial.



1 FIRST FLOOR-GARAGE



2 SECOND FLOOR-GARAGE

SMHa

PLAINTIFF'S EXHIBIT 50

SHEM CREEK OFFICE BUILDING

FLOOR PLANS

SCHEMATIC DESIGN

PLOTTED: 4/8/14

Shem Creek Development Group, LLC vs. Town of Mount Pleasant, South Carolina				
Damages Associated With Present Value of Fixed Minimum Rent Payments				
Date of Loss:				July 28, 2017
Initial Lease Term (15 years):				July 27, 2032
Date of Trial:				February 27, 2020
Discount Factor:[1]				2.03%
Interest Rate (SC Statutory Pre-Judgement):				8.75%
Annual Rent:				$ 185,000

	Lost Rent	Present Value	Interest	Total Loss
Pre Trial: Past Losses	$ 555,000	$ 555,000	$ 76,756	$ 631,756
Post Trial: Future Losses	2,220,000	1,972,560	-	1,972,560
Total	$ 2,775,000	$ 2,527,560	$ 76,756	$ 2,604,316

due date	Period	Lost Rent	Present Value	Interest	Total Loss
	Pre-Trial: Past Losses				
7/28/2017	July 28, 2017 - July 27, 2018	$ 185,000	$ 185,000	$ 41,773	$ 226,773
7/28/2018	July 28, 2018 - July 27, 2019	185,000	185,000	25,585	210,585
7/28/2019	July 28, 2019 - July 27, 2020 [2]	185,000	185,000	9,398	194,398
		$ 555,000	$ 555,000	$ 76,756	$ 631,756
mid-yr per	**Post-Trial: Future Losses**				
0.5	July 28, 2020 - July 27, 2021	$ 185,000	$ 183,150	$ -	$ 183,150
1.5	July 28, 2021 - July 27, 2022	185,000	179,506	-	179,506
2.5	July 28, 2022 - July 27, 2023	185,000	175,935	-	175,935
3.5	July 28, 2023 - July 27, 2024	185,000	172,434	-	172,434
4.5	July 28, 2024 - July 27, 2025	185,000	169,004	-	169,004
5.5	July 28, 2025- July 27, 2026	185,000	165,641	-	165,641
6.5	July 28, 2026 - July 27, 2027	185,000	162,346	-	162,346
7.5	July 28, 2027 - July 27, 2028	185,000	159,116	-	159,116
8.5	July 28, 2028 - July 27, 2029	185,000	155,950	-	155,950
9.5	July 28, 2029 - July 27, 2030	185,000	152,847	-	152,847
10.5	July 28, 2030 - July 27, 2031	185,000	149,806	-	149,806
11.5	July 28, 2031 - July 27, 2032	185,000	146,825	-	146,825
		$ 2,220,000	$ 1,972,560	$ -	$ 1,972,560
	Total	$ 2,775,000	$ 2,527,560	$ 76,756	$ 2,604,316

[1] Average Interest Rate for the 12 year period as stated on the town of Mt Pleasant Genral Obligation Bonds of 2019

[2] Payment for this period should be received July 28, 2019, prior to trial date.

OFFICIAL STATEMENT

$35,000,000 GENERAL OBLIGATION BONDS OF 2019
OF THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
(the "Bonds")

Dated: Date of Delivery **Due: June 1, as shown below**

Payable from *ad valorem* taxes without limitation as to rate or amount, levied on all taxable property in the Town of Mount Pleasant, South Carolina. Proceeds of the Bonds will be used to defray the costs of constructing a public services operations center and of replacing and expanding Fire Station 4 and to pay the cost of issuance of the Bonds. (See "Use of Proceeds of the Bonds" herein).

THIS OFFICIAL STATEMENT
Prepared under the Supervision of
Marcy E. Colov, Chief Financial Officer
100 Ann Edwards Lane, Mount Pleasant, South Carolina 29464
Telephone (843) 884-8517

MATURITY SCHEDULE

Due June 1	Principal Amount	Interest Rate	Yield	CUSIP*	Due June 1	Principal Amount	Interest Rate	Yield	CUSIP*
2020	$1,750,000	5.000%	1.69%	622625JQ7	2030	$1,750,000	5.000%	2.33%c	622625JS1
2021	1,750,000	5.000	1.70	622625JH5	2031	1,750,000	2.875	2.92	622625JT9
2022	1,750,000	3.000	1.73	622625JJ1	2032	1,750,000	3.000	3.04	622625JU6
2023	1,750,000	5.000	1.78	622625JK8	2033	1,750,000	3.125	3.14	622625JV4
2024	1,750,000	2.000	1.85	622625JL6	2034	1,750,000	3.125	3.22	622625JW2
2025	1,750,000	5.000	1.90	622625JM4	2035	1,750,000	3.250	3.30	622625JX0
2026	1,750,000	5.000	1.97	622625JN2	2036	1,750,000	3.250	3.37	622625JY8
2027	1,750,000	5.000	2.06	622625JP7	2037	1,750,000	3.375	3.44	622625JZ5
2028	1,750,000	5.000	2.14	622625JQ5	2038	1,750,000	3.500	3.51	622625KA8
2029	1,750,000	5.000	2.23c	622625JR3	2039	1,750,000	3.500	3.57	622625KB6

PLAINTIFF'S EXHIBIT 53

SCDG0004416

307 Mill St
Mt Pleasant, South Carolina
Google
Street View
Mill St
Shem Creek Park
Google
PLAINTIFF'S EXHIBIT 59

399 Mill St
Mt Pleasant, South Carolina
Google
Street View
Shem Creek Park
Pace St
PLAINTIFF'S EXHIBIT 60
Google
Image capture: Aug 2011 © 2020 Google United States Terms Report a problem

MOUNT PLEASANT TOWN COUNCIL
Tuesday, October 8, 2013
6:00 p.m. – Council Chambers
Municipal Complex - 100 Ann Edwards Lane
Mount Pleasant, SC 29464

MINUTES

Mayor Swails called the meeting to order at 6:01 p.m. Council members present were Kenneth Glasson, Chris O'Neal, Elton Carrier, Chris Nickels, Craig Rhyne, Linda Page and Thomasena Stokes-Marshall. John Burn was absent.

Chaplin Farmer led Council in prayer. Ken Glasson led the Pledge of Allegiance. Counsel David Pagliarini certified compliance with the Freedom of Information Act.

Mayor Swails called for approval of the agenda.

Ms. Stokes-Marshall so moved; motion seconded by Mr. Glasson. Motion carried unanimously.

PUBLIC HEARINGS, AWARDS & PRESENTATIONS

Community Wellness Day Proclamation: Mr. DeMoura read a proclamation celebrating Community Wellness Day. Dr. Antoinette Biegaj was present to receive the proclamation.

Special Recognition: Mayor Swails said that Council wanted to honor Miss Mount Pleasant/Miss South Carolina, Brooke Mosteller, in some way so Mayor Swails presented her with a Key to the City.

Mount Pleasant Track Club & 9U Cal Ripken Baseball All-Star Team recognition: Mr. Ken Ayoub, Director of Recreation Department, presented the State Champions for 2013.

APPROVAL OF MINUTES FROM THE SEPTEMBER 10, 2013 TOWN COUNCIL MEETING, SEPTEMBER 24, 2013 SPECIAL TOWN COUNCIL MEETING AND THE SEPTEMBER 2013 FINANCIAL STATEMENT.

Mr. Glasson moved to approve the above listed items; motion seconded by Ms. Stokes-Marshall. Motion carried unanimously.

CORRESPONDENCE AND PUBLIC STATEMENTS

Susan Sloate, 1300 Park West Blvd., #416: Ms. Sloate said that she was so grateful that the Town had added street lighting on some of the major thoroughfares. She was there to thank Council since she had been very vocal about this need for five years.

PLANNING – New Business

First Reading: An Ordinance providing for the annexation of an approximately 0.95 acre vacant parcel of land located at 457 Commonwealth Road, identified by TMS No. 596-08-00-089. (Ord. No. 13061)

Ms. Farrell introduced the Ordinance.

Ms. Page moved to approve first reading of the Ordinance; motion seconded by Mr. Glasson. Motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for the annexation of four parcels of family land located in the Woodville subdivision. (Ord. No. 13062)

Ms. Page moved to approve first reading of the Ordinance; motion seconded by Mr. Glasson. Motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to provide for a *second* amendment to the Pepper Tract PD-CD, Planned Development-Conservation Design District Ordinance (Ord. No. 11048) by rezoning from RC, Rural Commercial District, to CDSF, Cluster Development Single Family District, an approximately 10.55 acre portion thereof. (Ord. No. 13063)

Ms. Farrell introduced the Ordinance.

Mr. Glasson moved to approve first reading of the Ordinance; motion seconded by Ms. Stokes-Marshall.

Mr. O'Neal asked if this increased the number of lots for single-family homes or do they stay the same.

Ms. Farrell said the original planned development was approved for 313, but they have platted so far 224. So the 50 will fall in line with that and will stay capped at 313. The area they wanted to locate it was designated commercial and they wanted to designate that area as single-family.

The motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to amend §156.330 (E)(3)(e) of Chapter 156 of the Use District Regulations division of the Mount Pleasant Code of Ordinances pertaining to Building Area Ratio Requirements in the OV-HD, Old Village Historic District. (Ord. No. 13064)

Ms. Farrell introduced the Ordinance. This was reviewed first by the Old Village Historic District Commission. The Planning Commission and Committee recommended approval if the massing of a building is not being increased; the individual will be able to exceed the building area ratio on the Code Book. This would allow people to be able to finish off attics and areas that would not increase the building's mass.

Mr. Carrier moved to approve first reading of the Ordinance; motion seconded by Ms. Page. Motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

PLANNING – Old Business

Final Reading: An Ordinance providing for the annexation of an approximately 18.63 acre parcel of land known as a portion of Tract 3, Kinlocks subdivision; also known as the Hindman Tract; located adjacent to the Harborgate Shores, Home Farm, and Fiddlers Marsh subdivisions and identified by TMS No. 532-16-00-119. (Ord. No. 13058)

Ms. Farrell introduced the Ordinance.

Mr. Glasson moved to approve final reading of Ordinance Nos. 13058 & 13059 (Items 1 & 2); motion seconded by Mr. Rhyne. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to zone R-2, Low Density Residential District, an approximately 18.63 acre parcel of land known as a portion of Tract 3, Kinlocks subdivision; also known as the Hindman Tract; located adjacent to the Harborgate Shores, Home Farm, and Fiddlers Marsh subdivisions; and identified by TMS No. 532-16-00-119. (Ord. No. 13059)

[Ordinance 13059 was approved with Ordinance 13058 above.]

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to amend the Belle Hall Planned Development District Ordinance pertaining to a 5.54 acre parcel of land identified by TMS No. 540-00-00-002 located within the Belle Hall Commercial Center, allowing multi-family use for 66 residential units. (Ord. No. 13060)

Ms. Farrell introduced the Ordinance.

Mr. Glasson moved to approval final reading of Ordinance No. 13060; motion seconded by Mr. Rhyne. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

COMMITTEE REPORTS

Accommodations Tax Advisory Committee – Elton Carrier

Mr. Carrier said there was no meeting but he reported that the Mount Pleasant hotels are at 72% occupancy and have the highest average daily rate in the county at $120/night.

Annexation Committee – Linda Page

Ms. Page said the committee met and recommended approval of the annexations that appeared earlier in the agenda under Planning – New Business. Of note are the Woodville subdivision annexations that represent properties located in the Town's expanded planning area. All annexed properties will assume residential zoning district classifications upon annexation. The parcel on Commonwealth Road will be RR, Rural Residential and the Woodville tracts will be RC-2, Rural Conservation 2.

Bids & Purchases Committee – Kenneth Glasson

Mr. Glasson reported that the committee met and approved the purchase of a Refuse Truck with a Packer Body in the amount of $185,200 dollars from Hughes Motors, Inc.

The Committee also approved the purchase of a (4) Wheel Loader with attachments from Blanchard Machinery Company in the amount of $256,600 dollars. Both pieces of equipment are within our budget and will be assigned to Public Services.

Economic Development Committee – Chris O'Neal

Mr. O'Neal said the committee did not meet, but the Harbor Accelerator is looking for additional tenants in the incubator as part of the twelve-week accelerator program. Applications need to be in by the 1st of November.

Mr. Nickels commented that he had attended a presentation by Mr. O'Neal and Ms. Merry in a roomful of people up at Roper North Hospital that was very well received and well attended. He appreciated them making that presentation.

Finance Committee – Elton Carrier

Mr. Carrier said that the committee did not meet, but he reported that the Department Heads are in a very good position in their budget, having not overspent and he commended them for that.

Fire Committee – Kenneth Glasson

Mr. Glasson said the committee did not meet, but Fire Chief Williams has continued to update the paramedic program and they now have 39. He said that within the past year, medical calls were up 64% and cardiac arrests were up 500%. He said the chief continues to run a great program.

Human Resources – Craig Rhyne

(No meeting, no report)

Patriots Point Development Authority – Mayor Billy Swails

Mayor Swails said he did not attend the last meeting, but the Medal of Honor continues to move along and the agreement is signed, so maybe someday they will have the Medal of Honor Museum.

Planning Committee – Thomasena Stokes-Marshall

Ms. Stokes-Marshall said that staff presented an update on the workforce and senior housing. The review included an overview of Comprehensive Plan goals related to housing; information on current workforce and senior housing development in the Town; and suggestions for consideration of potential incentives for zoning changes that may further support workforce and senior housing. The community recognizes that the Town should continue to pursue efforts to address

workforce and senior housing units and that this should be included as a focus in the upcoming Comprehensive Plan update.

Police, Legal & Judicial Committee – Mayor Billy Swails

Mayor Swails said the following items would be addressed under Council New Business later in the agenda:

1. Shem Creek Docks Public Use Agreement (See Resolution under Council New Business Item XI.A.1)
2. Shem Creek Public Parking Agreement (See Resolution under Council New Business Item XI.A.2)
3. Adjustments to the property acquisition process (See Resolution under Council New Business Item XI.A.3)

Public Services Committee – Chris Nickels

Mr. Nickels said the committee met and they heard from staff and members of the East Cooper Civic Club regarding 4th Avenue. A road up there is under the Town's ownership and control. The Town was given an estimate of building out the road, including permitting, design and drainage costs. The committee did not think the project would be feasible at this time. The committee will place the project on the coming year's prioritization schedule and it will be revisited at a later time.

Recreation Committee – John Burn

Ms. Stokes-Marshall reported in Mr. Burn's absence. She said there is one action item; a recommendation that Council approve having Mayor Billy Swails as the Grand Marshall for the 2013 Christmas Parade.

Ms. Stokes-Marshall so moved; motion seconded by Mr. Glasson. The motion carried with Mayor Swails abstaining.

Transportation Committee – Brad Morrison

Mayor Swails said the committee did not meet, but they took transportation matters to Columbia today and got permission to do something that will be on the transportation agenda next month.

Waterworks Commission – John Burn
(No meeting, no report)

Water Supply Committee – John Burn
(No meeting, no report)

ADMINISTRATOR'S REPORT – Eric DeMoura

Mr. DeMoura announced one vacancy on the Planning Commission – Seat #7, a four-year term expiring in November of 2013.

Mayor Swails said he may not still be in his position as mayor, but he would support Henry Middleton's reappointment to this position on the Planning Commission.

COUNCIL – New Business

A Resolution: A Resolution to enter into Public Access Easements and a Lease Agreement regarding docks located at Shem Creek. (R.13101)

Mr. Carrier moved to approve the Resolution; motion seconded by Ms. Stokes-Marshall.

Mel Mowrer, 525 Mill Street: He had signed up, but declined to speak.

The motion carried unanimously.

Mr. DeMoura read the Resolution *BY TITLE ONLY.* This Resolution *SIGNED, SEALED and DELIVERED* this date.

A Resolution: A Resolution to enter into a License Agreement regarding public access and use of a proposed parking garage near Shem Creek. (R.13102)

Mr. Carrier moved to approve the Resolution; motion seconded by Mr. Rhyne. Motion carried unanimously.

Mr. DeMoura read the Resolution *BY TITLE ONLY.* This Resolution *SIGNED, SEALED and DELIVERED* this date.

A Resolution: A Resolution to adopt a Town of Mount Pleasant Right-of-Way Acquisition Process. (R.13103)

Mr. Carrier moved to approve the Resolution; motion seconded by Mr. Rhyne. Motion carried unanimously.

Mr. DeMoura read the Resolution *BY TITLE ONLY.* This Resolution *SIGNED, SEALED and DELIVERED* this date.

COUNCIL - Old Business

None

ADJOURNMENT

The meeting was adjourned at 6:35 p.m.

Submitted by:

Patty Wallis
100813

Tuesday, November 12, 2013
6:00 p.m. – Council Chambers
Municipal Complex - 100 Ann Edwards Lane
Mount Pleasant, SC 29464

MINUTES

Mayor Swails called the meeting to order at 6:00 p.m. Council Members present were Mayor-Elect Linda Page, Mr. Elton Carrier, Mr. Ken Glasson, Mr. John Burn, Mr. Craig Rhyne, Ms. Thomasena Stokes-Marshall, Mr. Chris Nickels and Mr. Chris O'Neal. Councilmembers-Elect Paul Gawrych and Gary Santos were also present.

Chaplain Robinson opened the meeting with a prayer, and Mr. Ken Glasson lead in the Pledge of Allegiance. Mr. David Pagliarini certified compliance with the Freedom of Information Act.

Mr. Glasson moved to approve the agenda, seconded by Mr. Rhyne. All present voted in favor.

Mayor Swails asked Dr. William Golightly to come forward with his family. Mayor Swails presented Dr. Golightly the Order of the Gavel for his thirty-one years of service on the Mount Pleasant Waterworks Commission. Dr. Golightly thanked everyone for the honor.

Mayor Pro Tem Stokes-Marshall stated she has the distinct pleasure to do one final act before Mayor Swails leaves office. She said throughout the years there have been many Mayors that have worked with Council to bring us to where we are now. She said she had the privilege of working with three Mayors - Mayor Cheryll Woods-Flowers, Mayor Harry Hallman, and now Mayor Billy Swails. Ms. Stokes-Marshall said that as you look around the room you can see portraits of the past Mayors that have served throughout the years. She said she has worked with Mayor Swails in the position of Mayor for the past four years and it has truly been a pleasure. She stated one of his unique qualities is that he has the ability to build a consensus. Ms. Stokes-Marshall said this has been one of the best Councils she has ever worked with, and there has been no issue too great or too small for them to resolve. This Council has been able to agree to disagree, be respectful, walk away from the table and have the utmost respect for each other as human beings and as leaders for this community. Ms. Stokes-Marshall asked her fellow Council

Members to step forward along with Mayor Swails as they unveiled the portrait that will be displayed in Council Chambers along with past Mayors.

Mayor Swails thanked everyone for the honor, stating it was a privilege and a pleasure to work with both Councils and he hoped that it would be the same for Mayor-Elect Page.

The Honorable Judge David Michel, Chief Municipal Court Judge, conducted the Swearing-In Ceremony of Mayor-Elect Linda Page.

Mayor Page then conducted the Swearing-In Ceremony of Council Members Elton Carrier, Paul Gawrych, Gary Santos and Mark Smith. Thereupon, the newly elected officials took their seats at the Council bench.

Mr. O'Neal moved to nominate Ms. Stokes-Marshall to continue her role as Mayor Pro Tem, seconded by Mr. Nickels. All present voted in favor.

Mayor Page congratulated Mayor Pro Tem Stokes-Marshall who in turn thanked the Mayor and her fellow Council Members.

Mr. DeMoura announced the Committee assignments as follows:

Annexation Committee: Mark Smith, Chair; Members Chris O'Neal and Gary Santos.

Bids and Purchases Committee: Mark Smith, Chair; Members Ken Glasson and Gary Santos.

Economic Development Committee: Chris O'Neal, Chair; Members Elton Carrier, Mark Smith and John Burn.

Finance Committee: Chris O'Neal, Chair; Members Thomasena Stokes-Marshall, Elton Carrier and Chris Nickels.

Fire Committee: Gary Santos, Chair; Members Chris O'Neal and Paul Gawrych.

Human Resources Committee: Chris Nickels, Chair; Members Thomasena Stokes-Marshall and Ken Glasson.

Planning Committee: Thomasena Stokes-Marshall, Chair; Members Elton Carrier, Chris O'Neal and Mark Smith.

Police, Legal & Judicial Committee: Mayor Page, Chair; Members Elton Carrier, Thomasena Stokes-Marshall, Chris Nickels.

Public Services Committee: Chris Nickels, Chair; Members Gary Santos, Paul Gawrych.

Recreation Committee: Elton Carrier, Chair; Members Gary Santos, Thomasena Stokes-Marshall.

Transportation Committee: Mayor Page, Chair; Members Thomasena-Stokes-Marshall, Elton Carrier and Chris Nickels.

Water Supply Committee: Mark Smith, Chair; Members Paul Gawrych and Ken Glasson.

Mount Pleasant Waterworks: Members Mayor Page, Mark Smith.

Accommodations Tax Advisory Board: Member Mark Smith

CARTA Representatives: Chris O'Neal and Ken Glasson.

Council of Governments Representative: Mayor Page

CHATS Representative: Chris Nickels

Charleston County Aviation Authority: Mayor Page

Patriots Point Development Authority: Mayor Page

Charleston Metro Chamber of Commerce: Mayor Page

A Public Hearing: A Public Hearing to receive input on a request to amend the Town of Mount Pleasant 2009-2019 Comprehensive Plan by changing the Future Land Use Map designation of an approximately 1.94 acre parcel of land known as Parcel 5, Boone Hall subdivision, located at the terminus of McConnell Lane and identified by TMS No. 580-00-00-170, from Commercial to Medium Density Neighborhood.

Ms. Farrell read the Public Hearing, stating this is 1.94 acres located near the entrance of Brickyard Plantation. This request will be considered under Item 4 of Planning New Business. Mr. DeMoura stated there was one person who wished to speak.

Mr. Jeff Birnbaum, 74 Iron Bottom – Mr. Birnbaum said he is the applicant and the owner of Parcel 5 Boone Hall. He said last month the Planning Commission heard his request for rezoning to residential, and he wanted to thank the Planning Commission for their majority support. He stated their parcel has interconnectivity to the north through Brickyard Plantation and out to Highway 17. The parcel also has interconnectivity to the south through Brickside Lane near Carabbas Restaurant and out to Highway 17. He said most importantly, the parcel has full access through McConnell Drive. Much of the surrounding area, particularly in the rear of the property is wetlands, and likely will never be developed. Mr. Birnbaum said when he purchased the parcel, along with another non-contiguous parcel across the street five years ago, it was the intent to develop and construct stand-alone single story professional offices. On the parcel across the street, they were somewhat successful with that concept by building two offices

that are currently occupied. He said that after five years of concentrated marketing, they see little or no demand for that product at this location, whether they offer outright sales or leases. He stated they employed The Beach Company and Carolina One and the demand is just not there, and they do not see the demand increasing. Mr. Birnbaum said they went back and re-evaluated the highest and best use for this property. He said they are certain they can market and sell single family dwellings there.

Mayor Page said she appreciated his request to speak this evening. There being no further speakers Mayor Page declared the Public Hearing closed.

A Public Hearing: A Public Hearing to receive input on a request to amend the Town of Mount Pleasant 2009-2019 Comprehensive Plan by changing the Future Land Use Map designation of an approximately 3.4 acre parcel of land known as Tract 2-3, Parcel A, Watermark subdivision, located at 1365 Bowman Road, and identified by TMS No. 560-00-00-059, from Business/Light Industrial/Economic Development to High Density Neighborhood.

Ms. Farrell read the Public Hearing stating this request to amend the Comprehensive Plan will be considered under Item 6 of Planning New Business. Mayor Page asked if anyone wished to speak. There being no speakers, Mayor Page declared the Public Hearing closed.

A Public Hearing: A Public Hearing to receive input on a proposed fourth amendment to the document entitled "Watermark Development Agreement between the Town of Mount Pleasant and Beach Shellpoint, LLC" (Ordinance No. 05109), pertaining to property located on Chuck Dawley Boulevard, Bowman Road and Watermark Boulevard. The proposed development agreement amendment will add residential townhouse as a permitted use and include development standards for the same for an approximately 3.45 acre undeveloped tract of land known as Tract 2-3, Parcel A, Watermark subdivision, located at 1365 Bowman Road and identified by TMS No. 560-00-059.

Ms. Farrell read the Public Hearing stating this is the first Public Hearing regarding a request to amend the Watermark Development Agreement. The second required Public Hearing will be on Tuesday, December 10th at 6:00 p.m. here in Council Chambers. This request will be considered under Item 8 of Planning New Business. Mayor Page asked if anyone wished to speak. There being no speakers, Mayor Page declared the Public Hearing closed.

A Public Hearing: A Public Hearing to receive input on a proposed Third Amendment to a Development Agreement By and Between CDM of Charleston, LLC and Town of Mount Pleasant, South Carolina, which is summarized below:

1. Reduce the number of structures in the MP-1, Monument Park-1, and MP-2, Monument Park-2, Districts.
2. Allow for a Comprehensive Development Project sign to be located in the median of an entrance drive on U.S. Highway 17 between Park West Boulevard and Faison Road.
3. Adopt new Town of Mount Pleasant Sign Ordinance in lieu of current regulations and clarify that additional signs shall be permitted within the development in accordance with such regulations.
4. Increase maximum accessory structure height to 25 feet.
5. Modify buffer requirements for attached single-family residential uses.
6. Modify lot width to depth ratio requirements.

The Property is comprised of approximately 1,608.50 acres of land and whose location is generally described as being on the north side of US Highway 17 between Park West and Pepper Plantation developments and includes the following TMS Nos.: 540-00-00-012, -018, -022, -035; 598-03-00-117 through -262; 598-03-00-264 through -271; 598-03-00-274 through -276; 598-03-00-278 through -339; 540-00-00-155 and -158; 598-03-00-106 through -109; 598-03-00-114,-115, -263, -272, -273, and -277.

Ms. Farrell read the Public Hearing stating this is the first Public Hearing regarding a request to amend the Carolina Park Development Agreement. The second required Public Hearing will be Tuesday, December 10th at 6:00 p.m. here in Council Chambers. This request will be considered under Item 11 of Planning New Business. Mayor Page asked if anyone wished to speak. There being no speakers, Mayor Page declared the Public Hearing closed.

Mr. Carrier moved to approve the minutes from the October 8, 2013 Town Council Meeting, the November 8, 2013 Special Town Council Meeting and the October 2013 Financial Statements, seconded by Mr. O'Neal. All present voted in favor.

CORRESPONDENCE AND PUBLIC STATEMENTS

Pat Sullivan, 1002 Plantation Court – Ms. Sullivan stated there was an editorial about Cainhoy Plantation developing five thousand acres which could

cause a lot of issues with traffic. She said Mount Pleasant needs to learn as much as possible as the developers want to fast track this development.

PLANNING NEW BUSINESS

First Reading: An Ordinance providing for the annexation of an approximately 1.59 acre parcel of land known as Tract A, located at 1515 U.S. Highway 17 North, and identified by TMS No. 559-14-00-041. (Ord. No. 13065)

Ms. Farrell stated this is the existing Sunoco Gas Station near Wando Crossing. The Annexation Committee recommended annexation.

Mr. Glasson moved for first reading of Ordinances 13065 and 13066, seconded by Mr. Santos. All present voted in favor.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to zone AB-2, Areawide Business-2 District, an approximately 1.59 acre parcel of land known as Tract A, located at 1515 US Highway 17 North, and identified by TMS No. 559-14-00-041. (Ord. No.13066)

(Approved with Ordinance 13065 above.)

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to rezone from $-1, Low Density Residential District, to AB-2, Areawide Business-2 District, and HNB-VR-OD, Hungryneck Boulevard-Venning Road Overlay District, an approximately 2.056 acre parcel of land located on Hungryneck Boulevard (Portions formerly known as Country Store Road) approximately 1,500 feet Southwest of its intersection with Venning Road and identified by TMS No. 559-00-00-020. (Ord. No.13067)

Ms. Farrell stated this property is located behind Mount Pleasant Chevrolet and was most recently used for construction offices for the I-526 overpass. Should Mount Pleasant Chevrolet want to expand vehicle storage or display on this property, AB-2 zoning would be required in addition to special exception approval from the Board of Zoning Appeals. This property will remain in the Hungryneck Boulevard-Venning Road Overlay and adhere to the access management requirements. Both the Planning Commission and the Planning Committee recommended approval.

Mr. Glasson moved for first reading of Ordinance 13067, seconded by Mr. Carrier. All present voted in favor.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to amend a portion of the Town of Mount Pleasant Land Use Map of the Town of Mount Pleasant 2009-2019, with respect to

an approximately 1.94 acre parcel of land known as Parcel 5, Boone Hall subdivision, located at the terminus of McConnell Lane and identified by TMS No. 580-00-00-170. (Ord. No. 13068)

Mr. Farrell stated this property is located behind First Citizens near Brickyard Shopping Center. This is a request to amend the Comprehensive Plan to allow residential uses at a medium density. The next item is the zoning request pertaining to the same. The Planning Commission recommended approval by a vote of six to one. The Planning Committee expressed concerns with the change in land use and recommended denial of the request.

Mr. Santos stated he agreed with the Planning Committee as we currently have problems with school overcrowding and he is not in favor of this rezoning. Mr. Carrier stated we are trying to preserve Economic Development land and he thinks this property should remain commercial. Mr. Nickels asked if the land use is changed, how many homes would be able to be built. Ms. Farrell stated eleven, but they are planning for ten.

Mr. Gawrych moved for denial of first reading, seconded by Mr. Glasson. Mr. DeMoura stated one person had signed up to speak.

Mr. David Seay, 2013 Shields Lane – Mr. Seay said he believes in small business growth and preservation. He stated that businesses nearby are struggling and he believes homes being built on this property will help them.

Mayor Page called for the vote. Mr. Nickels and Mr. Smith voted no with all others present voting in favor of denial. The motion to deny first reading carried with a vote of 7-2.

First Reading: An Ordinance to rezone from OP, Office Professional District, to RPH, Patio House Residential District, an approximately 1.94 acre parcel of land known as Parcel 5, Boone Hall subdivision, located at the terminus of McConnell Lane and identified by TMS No. 580-00-00-170. (Ord. No. 13069)

Ms. Farrell stated this is the zoning request associated with the previous Comprehensive Plan request from Office Profession to Patio House Residential. The Planning Commission recommended approval, with the Planning Committee recommended denial of the request.

Mr. Carrier moved to deny first reading, seconded by Mr. Santos. Mr. Nickels and Mr. Smith voted no with all others present voting in favor of denial. The motion to deny first reading carried with a vote of 7-2.

First Reading: An Ordinance to amend a portion of the Town of Mount Pleasant Future Land Use Map of the Town of Mount Pleasant, Comprehensive Plan 2009-2019, with respect to property known as Watermark. (Ord. No. 13070)

Ms. Farrell stated the next three items on the agenda all pertain to this next request. This specific item is to amend the Comprehensive Plan for a 3.45 acre parcel fronting Bowman Road which is part of the Watermark development from Business/Light Industrial/Economic Development to High Density Residential. The proposed land use would support townhome use. The Planning Commission recommended approval by a vote of six to one, and the Planning Committee unanimously recommended approval.

Mr. Glasson moved for first reading of Ordinances 13070, 13071 and 13072, seconded by Mr. Santos.

Ms. Stokes-Marshall asked if there were discussions about Workforce Housing. Ms. Farrell stated the Planning Commission reached out to The Beach Company for additional discussion for this property or possibly others.

Mr. Dan Doyle, 179 Ionsboro, The Beach Company. Mr. Doyle stated this property is owned by Beach Shellpoint and is marked for townhome units. He said they cannot commit to put restrictions on that parcel of land. He stated they would be more than happy to work with the Town in finding other opportunities.

Ms. Stokes-Marshall said she can recall when the Beach Company requested to amend a Development Agreement and they had discussion about properties. She said the Beach Company had agreed to look at housing for Workforce Housing and Seniors. She says as she looks at the agenda, there are a lot of residential requests and there is a need for Workforce Housing. She stated we cannot just approve these without asking developers to at least look at it. Ms. Stokes-Marshall said as we move forward there is a need to consider this, and Lowcountry Housing Trust would be willing to work toward this goal and it is something we need to explore.

Mayor Page called for the vote. Mr. Gawrych abstained with all others present voting in favor. The motion to approve first reading or Ordinances 13070, 13071 and 13072 carried.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for a *fifth* amendment to the Watermark Planned Development District Zoning Ordinance (Ordinance No. 05052). (Ord. No. 13071)

(Approved with Ordinance 13070 above.)

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for a third amendment to Ordinance No. 05109, the Development Agreement by and between the Town of Mount Pleasant and Beach Shellpoint, LLC (Watermark Development Agreement). (Ord. No. 13072)

(Approved with Ordinances 13070 and 13071 above.)

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for an amendment to the Belle Hall Planned Development District Ordinance pertaining to an approximately 0.66 acre portion of an approximately 0.72 acre portion of Tract K known as Lot 3, Belle Hall Subdivision, located at 492 Bramson Court and identified by TMS No. 537-00-00-249, by adding detached single-family dwelling units as an additional permitted use on the parcel and establishing development standards for the same. (Ord. No. 13073)

Ms. Farrell stated this is a request to amend the Belle Hall Planned Development to allow either single family attached or single family detached dwellings on a 0.66 acre parcel of land located at the front of Moultrie Park subdivision on Bramson Court. Both the Planning Commission and the Planning Committee recommended approval.

Mr. Glasson moved for approval, seconded by Mr. Carrier. All present voted in favor.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for a *third amendment* to the Planned Development District Ordinance pertaining to property known as Carolina Park. (Ord. No.13074)

Ms. Farrell stated Carolina Park has requested to amend their Planned Development to incorporate several changes pertaining to signs and development standards. Regarding signage on Highway 17, the developer has proposed to eliminate two sign structures that could have been constructed in each of the monument parks in exchange for the ability to allow one freestanding sign at a curb cut to be located on Highway 17 between Park West Boulevard and Faison Road. Ms. Farrell clarified that commercial properties located within a development are allowed freestanding signs. They will adhere to the Town's sign ordinance except for those exceptions provided. Accessory structures located in Carolina Park Residential 3 district can be permitted to have twenty-five feet in building height rather than be limited to eighteen feet, without having to be an Accessory Dwelling Unit, which is allowed in this increased height. Elimination of the spatial

requirement of ten feet for buffers along streets where townhomes are constructed, planting quantities would still be met, and be exempt from buffers adjacent to other uses. They would have the ability to exceed lot width to depth ratio of two and a half times – Single Family equals four times the width, and Town Homes equals five times the width. The Planning Commission recommended approval by a vote of six to one, and the Planning Committee recommended approval by a vote of three to one.

Ms. Stokes-Marshall asked about the height change from eighteen to twenty-five feet. Ms. Farrell said the only way anyone can have a height of twenty-five feet currently for an accessory structure is if it is a dwelling unit, which has a requirement of a bathroom and a kitchen. She stated some of the residents in Carolina Park are interested in having an accessory structure without making it a dwelling unit, for instance an office.

Mr. Carrier moved for first reading of Ordinances 13074 and 13075, seconded by Mr. Nickels. All present voted in favor.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for a third amendment to Ordinance No. 11064, the Development Agreement by and between the Town of Mount Pleasant and CDM of Charleston, LLC (Carolina Park Development Agreement). (Ord. No. 13075)

(Approved with Ordinance 13074 above.)

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to amend Chapter 156 of the Mount Pleasant Code of Ordinances pertaining to the division thereof regulating signs. (Ord. No. 13076)

Ms. Farrell stated the Planning Commission held a Public Hearing on a text amendment to the Sign Ordinance. The text amendment was based on those recommendations made by the Special Committee on Signs. The Planning Commission unanimously recommended approval. The Planning Committee expressed that they would like to review these amendments further with Town Council and has requested a sixty day deferral of this item. Some of the items considered are directory signs in shopping centers; specifications for signage on multi-story, multi-tenant buildings; standards for A-frames; a pilot program for pedestrian signage; clarifying whether or not corporate images/symbols count toward signage.

Ms. Stokes-Marshall moved for deferral, seconded by Mr. Glasson.

Mr. Carrier said we are doing this mainly for the new Council Members. He stated he did not think the ad hoc committee went far enough and it would be best to look at it further. It is Council's responsibility to resolve this issue.

Mayor Page said she felt it was a good decision to defer to make sure all Council Members had a chance to review it.

Mr. Gawrych asked if the deferral included sending it back to the Planning Committee and Mayor Page responded in the affirmative.

Mayor Page called for the vote and all present voted in favor.

First Reading: An Ordinance to amend 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. (Ord. No. 13077)

Ms. Farrell stated this text amendment includes amendments to two portions of the Urban Corridor Overlay District. First, this provides for a height increase for properties fronting Coleman between Live Oak and the Shem Creek Waterfront Overlay from forty-five feet to the ridge, to fifty-five feet to the eave. This affects approximately ten properties. Secondly, this amends certain requirements for parking garages. As currently written, parking garages must have commercial use on the ground floor. This amendment provides that if a parking garage is located in a flood zone and at least 100 public parking spaces are provided, that ground floor commercial shall not be required as long as the parking is screened and the activity zone is enhanced with art, bus shelters or other features that create interest and activity. The Planning Commission had no recommendation, and the Planning Committee recommended approval unanimously.

Mr. Santos said he would like to see this vote deferred so that new Council Members had a chance to look at it.

Mayor Page said a Public Hearing has been held and she would prefer to have the vote this evening. Ms. Stokes-Marshall said she agreed with the comments and with all due respect to Mr. Santos, this is first reading, and more information can be provided before final reading.

Mr. Smith said he appreciated all the training he had received and all of his questions have been answered. He stated he is comfortable voting this evening.

Ms. Stokes-Marshall moved for first reading, seconded by Mr. Carrier. Mr. Santos voted no, with all others present voting in favor. The motion carried.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

PLANNING OLD BUSINESS

Final Reading: An Ordinance providing for the annexation of an approximately 0.95 acre vacant parcel of land located at 457 Commonwealth Road, identified by TMS No. 596-08-00-089. (Ord. No. 13061)

Mr. Carrier moved for final reading, seconded by Ms. Stokes-Marshall. All present voted in favor.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for the annexation of four parcels of family land located in the Woodville subdivision. (Ord. No. 13062)

Mr. Gawrych moved for final reading, seconded by Mr. Glasson. All present voted in favor.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to provide for a *second* amendment to the Pepper Tract PD-CD, Planned Development-Conservation Design District Ordinance (Ord. No. 11048) by rezoning from RC, Rural Commercial District, to CDSF, Cluster Development Single Family District, an approximately 10.55 acre portion thereof. (Ord. No. 13063)

Mr. Glasson moved for final reading, seconded by Mr. Carrier. All present voted in favor.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to amend §156.330 (E)(3)(e) of Chapter 156 of the Use District Regulations division of the Mount Pleasant Code of Ordinances pertaining to Building Area Ratio Requirements in the OV-HD, Old Village Historic District. (Ord. No. 13064)

Mr. Gawrych moved for final reading, seconded by Ms. Stokes-Marshall. All present voted in favor.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

COMMITTEE REPORTS

<u>Accommodations Tax Advisory Committee</u>

The Committee met Thursday, November 7, 2013 to receive presentations from applicants for the third grant period of the Fiscal Year. The Committee will report their recommendations to Council at the December meeting.

The first quarter revenue payment for Fiscal Year 2013/2014 was received totaling $244,408; over $42,000 higher than first quarter in Fiscal Year 2012/2013.

An increase in sales at the Mount Pleasant Visitor Center has produced a need for the CVB to install a second computer to assist visitors with ticket purchasing and hotel reservations.

Annexation Committee

The Annexation Committee met and the Committee recommended approval of the annexation request for the Sunoco Convenience Store entertained as Item 1 under Planning New Business that appeared earlier on the agenda.

Bids & Purchases Committee

The Committee met to consider three bids to provide pine straw and mulch maintenance services for a one-year period.

The Committee authorized staff to enter into contract with Lowcountry Mulch, Inc. in the amount of $300,440 to provide this service.

Economic Development Committee

There was no meeting and therefore no report.

Finance Committee

There was no meeting and therefore no report.

Fire Committee

There was no meeting and therefore no report.

Human Resources

There was no meeting and therefore no report.

Patriots Point Development Authority

There was no report.

Planning Committee

All items have been addressed under Council New Business so there is therefore no report.

Police, Legal & Judicial Committee

There was no report.

Public Services Committee

There was no meeting and therefore no report.

Recreation Committee

The Committee approved one long term rental request for use of the Senior Center. The Committee recognized a Clemson Extension 4H Agent and two Master Gardeners for volunteering to help plant flowers at the Miriam Brown Community Center. The Committee was briefed on membership and participation numbers for October.

Transportation Committee

Mr. Gawrych moved to approval acquisition of Sweetgrass Basket Parkway Phase 4A Right-of-Way, seconded Mr. Glasson. All present voted in favor.

Waterworks Commission

There was no meeting and therefore no report.

Water Supply Committee

There was no meeting and therefore no report.

ADMINISTRATOR'S REPORT

Mr. DeMoura stated there is one vacancy on the Cultural, Arts and Pride Commission and three vacancies on the Old Village Historic District Commission.

Mr. Nickels asked Mr. DeMoura to remind everyone how the Cultural, Arts and Pride Commission came to be. Mr. DeMoura stated a decision was made to combine several Committees that were performing different functions. This Commission will seek opportunities in the community for the public to access arts and culture.

Mr. Nickels said this is an interesting blend of artists and authors.

COUNCIL NEW BUSINESS

Mr. Smith moved to allocate $25,000 to support the Medal of Honor Bowl, seconded by Mr. Glasson. All present voted in favor.

COUNCIL OLD BUSINESS

There is no Council Old Business.

EXECUTIVE SESSION

Ms. Stokes-Marshall moved to go into Executive Session to discuss the items listed below from the agenda, seconded by Mr. Glasson. All present voted in favor.

The meeting was adjourned to Executive Session at 7:34 p.m. and was reconvened at 8:28 p.m. with Mayor Page stating no votes were taken.

Legal and Contractual

Legal advice pertaining to a proposed annexation

Mr. Carrier moved to instruct the Administrator to proceed as discussed in Executive Session, seconded by Mr. Santos. Mr. Gawrych voted no with all others present voting in favor. The motion carried with a vote of 8-1.

Legal advice regarding potential litigation concerning a contractual matter.

Mayor Page stated legal advice had been received but no action is to be taken at this time.

Personnel

Appointments to Boards and Commissions

Mr. O'Neal moved to defer appointment to the Planning Commission in order to receive more applications, seconded by Mr. Nickels. All present voted in favor.

There being no further business, Mayor Page adjourned the meeting at 8:29 p.m.

Respectfully submitted,

Christine Barrett
Clerk of Council
November 12, 2013

MOUNT PLEASANT TOWN COUNCIL
MEETING MINUTES
Tuesday, December 10, 2013
6:00 p.m. – Council Chambers
Municipal Complex - 100 Ann Edwards Lane
Mount Pleasant, SC 29464

MINUTES

Mayor Linda Page called the meeting to order at 6:01 p.m. Council members present were Kenneth Glasson, Chris O'Neal, Elton Carrier, Chris Nickels, Mark Smith, Thomasena Stokes-Marshall, Gary Santos and Paul Gawrych.

Chaplin Dewey led Council in prayer. Ken Glasson led the Pledge of Allegiance. Counsel David Pagliarini certified compliance with the Freedom of Information Act.

Mayor Page called for approval of the agenda.

Mr. Carrier motioned to amend the agenda to move up agenda Item IX. L to Item VII.A. in the Recreation Committee report; motion seconded by Mr. Nickels. Motion carried unanimously.

Mr. Gawrych moved to approve the amended agenda; motion seconded by Mr. Santos. Motion carried unanimously.

PUBLIC HEARINGS, AWARDS & PRESENTATIONS

A. ***A Public Hearing:*** Charleston County Community Services Department Urban Entitlement Program – As a designated Urban Entitlement community in good standing, Charleston County anticipates receiving Program Year 2014 funding from the United States Department of Housing and Urban Development (HUD) to support community development activities countywide. This Public Hearing is being held to encourage citizen participation in the development of the PY 2014-2015 Annual Action Plan.

Ms. Johnna Murray, Community Services Manager for Charleston County Housing and Urban Development said that they go out yearly to their participating jurisdictions within Charleston County. Mount Pleasant is a participating jurisdiction for HUD funds that they receive at the county. On an annual basis, different towns and non-profits make grant

applications to the county that will be reviewed and competitively scored. Those that are ranked favorably and fit within their funding priorities to HUD receive a grant. She said these are federal funds and the top two priorities communicated to the county by their citizens at this time is the need for housing rehabilitation and infrastructure. Infrastructure needs are connections to water and wastewater systems and the upgrade of wells and septic systems. She said they are entering into their fourth year of their five-year Strategic Plan. After two more years, they will go back to the communities and ask where they think that these federal funds are needed. They will develop another Strategic Plan at that point and the priorities could shift, depending upon public input. She said these HUD funds are designated for poverty citizens, the low- to moderate-income individuals in our communities. She said the Town of Mount Pleasant has been one of their partners and has been a grant recipient for years. If council knows of a contender for the funds, they are encouraged to go to Charleston County's website in January and submit an application that will be scored and reviewed.

Hearing no speakers, Mayor Page declared the public hearing closed.

B. ***A Public Hearing:*** A Public Hearing to receive input on a request by the owner of an approximately 1.05 acre parcel of land known as Lot 5, Tract 12C, located at 916 Wando Park Boulevard, and identified by TMS No. 540-00-00-152, to amend the Town of Mount Pleasant Comprehensive Plan 2009-2019 Future Land Use Map by changing the land use designation of the aforementioned parcel of land from Business/Light Industrial/Economic Development to Medium Density Neighborhood.

Ms. Farrell introduced Public Hearing Item B.

Hearing no speakers, Mayor Page declared the public hearing closed.

C. ***A Public Hearing:*** A Public Hearing to receive input on a proposed fourth amendment to the document entitled "Watermark Development Agreement between the Town of Mount Pleasant and Beach Shellpoint, LLC" (Ordinance No. 05109), pertaining to property located on Chuck

Dawley Boulevard, Bowman Road and Watermark Boulevard. The proposed development agreement amendment will add residential townhouse as a permitted use and include development standards for the same for an approximately 3.45 acre undeveloped tract of land known as Tract 2-3, Parcel A, Watermark subdivision, located at 1365 Bowman Road and identified by TMS No. 560-00-059.

Ms. Farrell introduced this, the second Public Hearing for Item C.

Hearing no speakers, Mayor Page declared the public hearing closed.

D. ***A Public Hearing:*** A Public Hearing to receive input on a proposed Third Amendment to a Development Agreement By and Between CDM of Charleston, LLC and Town of Mount Pleasant, South Carolina, which is summarized below:

1. Reduce the number of structures in the MP-1, Monument Park-1, and MP-2, Monument Park-2, Districts.
2. Allow for a Comprehensive Development Project sign to be located in the median of an entrance drive on U.S. Highway 17 between Park West Boulevard and Faison Road.
3. Adopt new Town of Mount Pleasant Sign Ordinance in lieu of current regulations and clarify that additional signs shall be permitted within the development in accordance with such regulations.
4. Increase maximum accessory structure height to 25 feet.
5. Modify buffer requirements for attached single-family residential uses.
6. Modify lot width to depth ratio requirements.

The Property is comprised of approximately 1,608.50 acres of land and whose location is generally described as being on the north side of US Highway 17 between Park West and Pepper Plantation developments and includes the following TMS Nos.: 540-00-00-012, -018, -022, -035; 598-03-00-117 through -262; 598-03-00-264 through -271; 598-03-00-274 through -276; 598-03-00-278 through -339; 540-00-00-155 and -158; 598-03-00-106 through -109; 598-03-00-114,-115, -263, -272, -273, and -277.

Ms. Farrell introduced this, the second Public Hearing for Item D.

Hearing no speakers, Mayor Page declared the public hearing closed.

E. Government Finance Officers Association Distinguished Budget Presentation Award and Certificate of Achievement for Excellence in Financial Reporting

Mr. Potts stated that the Town of Mount Pleasant has received two national awards in the financial area: *The Distinguished Budget Presentation Award* from the Government Finance Officers Association and the *Comprehensive Annual Financial Report Award* (CAFR). Mr. Potts had the employees that work in the budget and finance office to come forward and be recognized.

Mr. Potts said the budget award represents a significant achievement by the Town and it reflects the commitment of the governing body of the staff to meet the highest principles of governmental budgeting. In order to receive the award, the Town had to satisfy nationally recognized guidelines for effective budget presentation. The guidelines are designed to assess how well an entity budget serves as a policy document, a financial plan, an operations guide and a communications device. The budget must be rated efficient by an independent panel of GFOA financial officers in order to receive this award. We were able to do this for the second year in a row.

Mr. Potts then addressed the Comprehensive Annual Financial Report Award. This award is the highest form of recognition in the area of governmental accounting and financial reporting. Its attainment represents a significant accomplishment by a government and its manager. Our CAFR has been judged by an impartial panel to meet the highest standards of the program, including demonstrating a constructive spirit of full disclosure and clearly communicating its financial story to motivate potential users and user groups to read the balanced CAFR.

Mr. Potts introduced each staff member by name and title. He said these employees do a wonderful job and they work hard day in and day out. Receiving this national recognition is something of which to be proud. Mr. Potts thanked and commended them all.

APPROVAL OF MINUTES FROM THE NOVEMBER 12, 2013 TOWN COUNCIL MEETING AND THE NOVEMBER 2013 FINANCIAL STATEMENT.

Mayor Page called for approval of the above minutes and financial statement.

Mr. Glasson so moved; motion seconded by Mr. Smith. Motion carried unanimously.

CORRESPONDENCE AND PUBLIC STATEMENTS

Rename track for Peyton Moore: Mr. Carrier read a short bibliography of Peyton Moore who was born in September 2003 in Mount Pleasant and was a student at Mount Pleasant Academy and formerly the O'Quinn School. He loved sports and was a member of the Mount Pleasant Track Club, the Charleston Running Club, Charleston Runs and U. S. Track & Field. Mr. Carrier continued for several more paragraphs outlining this fine young man's life which ended on June 4, 2013.

Mr. Carrier moved to rename the Park West Track Facility in memory of Peyton Moore; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. Moore, his father, said that Peyton was an inspiration to all who knew him and gave his best effort to everything that he did. He sincerely thanked council for naming this track in his honor.

Mrs. Moore, his mother, spoke for a few minutes and she also thanked council for naming the track in honor of her son to help keep his memory alive.

Wando High School Football Players: Will Lynch extended thanks on behalf of the Wando High football team to the Mayor and Council for allowing the team to use the Alhambra Hall facility for their banquet. They hope to continue to use the hall in the future.

Temporary moratorium on building permits for the Coleman Boulevard Overlay District:

Mayor Page asked the speakers who have signed up to speak on this issue to line up and limit their speaking to two minutes.

James Scott, 506 Royall Avenue: Mr. Scott said that there are a lot of concerns and concerned residents about Earl's Court which will have 26 houses on a 1.3 acre parcel of land at the intersection of Hibben and Whilden Street. It is an incredibly dense development at a dangerous intersection which does not reflect the character of the neighborhood. There are also parking and traffic issues. The residents realize that Earl's Court is symptomatic of other types of developments that are in the liberal zoning requirements called the Overlay District that abuts well-established neighborhoods. He said they have found that there are all sorts of parcels like this that could be affected, from Bayview all the way down to Simmons Point. He said the residents are asking for a mechanism to ensure that such developments are more in concert with their surrounding areas. He said the parcels at Earl's Court are not actually on Coleman Boulevard, but are located in the adjoining neighborhood. He said they have been passing around a petition in the neighborhood and to date they have over 900 signatures on it. He presented the petition to Council.

Ann Edwards, 100 Venning Street: Mrs. Edwards said she appreciated Council taking the time to listen and to understand their concerns. They are very concerned about the property on Whilden and Hibben Streets. There are beautiful oaks there and it is not a wide street; and the buildings are right on the street. She said that people have come to Mount Pleasant because it is the best place to live in the county; particularly the historic Old Village in Mount Pleasant. The residents want to maintain the wonderful area that they have there. They want to take care of their citizens, to be safe, and to have it so that police, fire trucks and ambulances can come there easily. They want their school children to be able to walk around. She said they are concerned about the congestion that this is going to cause. It does not seem to be in keeping with the Old Village nor with Coleman Boulevard. She asked Council to look into it and work with the residents in any way that they can to make it a better place.

Dave Shimp,1551 Ben Sawyer Boulevard: Mr. Shimp said he agreed with everything that Mrs. Edwards said. He pointed out that their choice is between high density or urban sprawl. Several years after the planned high density units are fully

occupied, they will then have to face inevitable sprawl. They will be living with mistakes for generations to come. He said that the zoning regulations for this development are inadequate. Aesthetically, the Boulevard and Earl's Court have serious issues including parking and safety, but this is not the developer's fault. Proper guidelines were obviously inadequate, too vague or just not enforced. Either way, these two developments are the result. They are the first of many more construction projects to be built under these same guidelines. They should take a close look at the rules that have been put in place. He said that zoning and other regulations governing the Overlay District should be closely and carefully revalidated. He asked that this be addressed tonight and not delayed or kicked back to staff. It is regrettable that this review process may cause an interruption in issuing permits, but if proper guidelines were now in place, he doubted that this crowd would have to be here tonight.

Jimmy Bagwell, 207 Williams Street: Mr. Bagwell said that, like the rest of the people in the room, he was there because he loves Mount Pleasant and particularly the Old Village. He said he has always shopped and done business on Coleman Boulevard. His business is on Coleman Boulevard and he owns property there. He is very concerned about the way Coleman Boulevard could develop under the Overlay District. He said we need to sit back tonight, pause and review what has been passed. It is not in keeping with what the citizens want; not in keeping with density that we have in the Old Village and Coleman Boulevard. There is a lot of undeveloped property that if allowed to develop into multi-family units or the type of high density we are seeing in Earl's Court, it will ruin the old part of Mount Pleasant. He said we are going to have sprawl no matter what, but we need to preserve what they have in this part of town. This is the heart of Mount Pleasant and we must do everything we can to stop it. He said we need to review this plan for the next three to six months, work with the citizens and staff and the developers and come back with something we can all live with.

Mike McClain declined to speak. He said his points had been made.

Tom Utsey, 813 Pitt Street: Mr. Utsey said that in 1988 -1992 he was sitting as a councilman. He said we are here tonight to see if we can get Council to agree to go back and look at what was passed, even though we understand the revitalization vision and the idea to do it was probably a good and noble idea. Along the way, the project morphed into something that we believe is evidenced by Earl's Court and it is just not working. Mr. Neal's Planning Commission meeting indicated that the ordinance allows too much. If it is stated in the ordinance, they

have no power to deny a project, so this ordinance needs adjusting. He said the second thing needed is a means to stop the bleeding; the rush to build things that are allowed, but have unintended consequences. Please consider that tonight, he said.

Jeff Kirkland, 817 Pitt Street: Mr. Kirkland said he is obviously involved in this. He had the opportunity to read the Coleman plan as well as the corridor analysis that supports the Coleman Overlay District. Earl's Court is emblematic of the unintended gaps in what is really happening. At the Earl's Court project, there have been eight pages of violations that have been uncovered to date. These are violations of Town ordinances, of SCDOT State Laws, etc. Just because this can be done, does not mean it should be done. There are a lot of liberties being taken there. He said they are not looking to totally throw the law out, but are looking for a remedy. Town Council has the legal authority and a moral fiduciary and liability responsibility to make sure that if something is amiss, to step back and hit the pause button for a short time, and review this. The overlay plan is good to the extent that Coleman Boulevard needed some aesthetic changes, traffic and safety changes, but the liberties that are going on right now are causing the main controversy and need to be addressed.

Christine Von Kolnitz, 1071 Cottingham Drive: Ms. Von Kolnitz said she was representing Cooper Estates Civic Club. They were at the meeting to support neighbors on either side of Coleman Boulevard. She is also representing herself as a resident who lives on Cottingham Drive. She understands a parking garage is being built for Shem Creek, and that is a major concern. She said that people leaving the creek in the evenings race down their road and drive through the stop signs. The density at Earl's Court and the Boulevard will send more traffic down their street. She asked council to consider collecting fees from these developers coming to neighborhoods for improvements to help mitigate these issues.

Bobby Warrick, President of Bayview Civic Club: Mr. Warrick said he was supportive of action that will delay this project.

Gary Awkerman, President of The Groves Civic Association: Mr. Awkerman said his neighborhood is located at the tail-end of this whole thing. Everything other than traffic is coming their way. The increased density is causing problems with cut-through traffic. He said he is at the meeting to support decreasing density.

Suzanne Rogers, 717 Magnolia Street: Ms. Rogers said one side of her property is on Pherigo Street and she is very concerned about traffic. Years ago she

tried to get speed humps because of people cutting through Pherigo Street, but was denied. Finally they put up speed humps and then she asked for a stop sign, but they would not do that. There was no solution to the problem other than having policemen come in occasionally. They come for a couple of days, then they do not show up for a long period of time unless she complains again. She said her car has been hit on Pherigo Street and her kids have almost been hit riding their bikes. She is concerned about the traffic and what the solution is for the increasing traffic.

Tex Small, 2306 Palm Blvd. IOP: Mr. Small said, as he understands the issues, one is a moratorium on building permits and the second is extending the Historic District. He said he has eight family members who live in the Old Village and they love it just as much as these speakers do. He said he has built projects in the Town of Mount Pleasant. Almost a decade ago, they saw this same kind of effort to have moratoriums on projects after developers had spent money, time and effort to try and bring reasonable growth and development to the Town. He said he fought this twice a decade ago and it took over three years to get his permits at untold costs. Residents did not want us to put retail on the north end [of Town] and had they not put retail on the north end, you would not have had almost $1B in sales in the last five years. That has kept property taxes in Mount Pleasant at the lowest level in the region. Moratoriums do not work and I am against it, he said. Relative to extending the Historic District, he read one email in which a lady said she remembers her son catching his first fish off the Shem Creek Bridge. He said, "Nostalgia is not historic."

Fredda Culbreth, 757 Post Oak Drive: With all due respect to those concerned about the development, she wanted everyone to know that she is from a small town and after moving here, it is like living in heaven; it is a wonderful place. She realizes that residents do not want anything to change that. At the last meeting, there was a lot of talk about resolutions for working with developers. As we go forward, she hoped that will be a real consideration. For the past two years, she has been involved and working with the Town on a small dense development. It is being brought to the Town now. She said she and her husband have spent hundreds of thousands of dollars; carrying the costs, developing and any and all expenses that go with that. She said they went through the process legally and by the book and went back over and over redefining what would work best for the city. She said they are excited about this project and what it will bring to the city and she hopes for serious consideration when it is given to those who follow the rules.

Vince Graham, 414 Whilden Street: Mr. Graham said that Coleman/Ben Sawyer Boulevard is Mount Pleasant's Main Street. The annual bridge run starts there and the annual Christmas parade is there. Since the IOP Connector opened in the early nineties, traffic counts along there have plummeted and businesses have closed. In an effort to address this issue, Town leaders created the Overlay District. The very heart of the Old Village, the area between Pitt, Morrison and Venning, is a collection of homes on small lots, multi-family buildings and small neighborhood commercial space. It is a great model to emulate. Healthy growth like a tree, church or child is good. He expressed his support for the Overlay District.

Phillip Ford, Charleston Homebuilders Association, 672 Marina Drive, Charleston: Mr. Ford said he supported what Mr. Graham said and lady before him. The Overlay District is a great starting point if you want to take a look at it and adjust it. But to stop projects that are already in place with time and money spent is not correct. People have gone through the process and have been approved; that property is vested under state law and there is nothing that can be done about it. Six months from now with a moratorium the project will still be the same. Once the preliminary plat is approved, it will not change. There are other ways to deal with it or massage it. We definitely do not need to go down the moratorium road. Mr. Graham is not a member of the Homebuilders Association, but Mr. Ford stated he will defend his project. It is a great project and actually improves the Old Village and it improves property values. It is a wonderful thing for the Town and should continue.

Roger Elliott, 439 Church Street: He reminded that there are five guarantees in life: birth, death, taxes, change and imperfection. He said that he and other constituents have uncovered many imperfections in Earl's Court. They also suspect that there are imperfections in some of the decisions that led to the approvals for Earl's Court. He said that they, the constituents, would like to see, and hope that Madam Mayor and Council will consider, a productive moratorium that does not injure any builder, contractor or businessman that is dedicated. The best thing to do is to bring the builders together with the constituents and Council. He said that the constituents have a very mixed view of the so-called Planning staff. He said that someone used the word professional; but they question the consistency of Planning staff's professionalism. He and others support economic development for the Town, but do not think that transparency has been evident.

Roger Elliott: (Signed up for another topic about extending the Old Village Historic District) Mr. Elliott said that some of them have been working to organize

the tax paying constituents and have developed a proposal, but they are not ready just yet to bring it to the Town. He said the constituents would like to bring a proposal to the Town after it has been effectively aired among them. It concerns the Overlay District. They question whether the Town and Council really have a business model for Economic Development and question whether the Town has the professional capacity to truly establish a Strategic Plan that will bring in the kind of Economic Development that everyone would like to see. They agree with the Building Association that keeping taxes down is welcome and enjoyable for everybody. The problem is having a path that brings all of the interest groups together and they do not believe that the Town has one. They will bring a proposal to Town Council soon.

Pat Sullivan, 1002 Plantation Court: Ms. Sullivan said that speaking for herself and as a board member of Charleston Moves, she endorses the concept of the Overlay District and she loves the idea of infill, which is very important. The plan is to transport people however they wish to go, whether walking, biking, by car or mass transit. She does not agree with some building heights or architecture that is being allowed, but the planned development took a long time to put together and Mount Pleasant citizens were a part of the process. She has noticed that since she started attending committee and council meetings, it is hard to stay on top of what is going on with the Town. She thought there was a huge communications issue and she would like to challenge and strongly suggest that they put an integrated group of people together from around town to figure out how to disseminate information better. She said that newspaper, TV, Town website, internet, etc., is not working.

Tony Page, 302 Coleman Boulevard: Mr. Page said that there does appear to be some disconnect in communications. In his opinion, Coleman Boulevard is a throughway, not a destination. It goes to Sullivan's Island, Rifle Range Road, Chuck Dawley. If Coleman Boulevard is further constrained, it will cause more cut-through traffic and more problems. He said they cannot create a new beginning tonight, but they can start where they are and create a better ending. He urged Council and staff to come up with something that works for the entire city and does not further constrain Coleman. Greater density will further impact the lack of schoolrooms and create more traffic problems.

Ryan Castle, Charleston County Association of Realtors: Mr. Castle wanted to bring up some points on the Historic District. In light of what occurred on July 6, 2012, it is becoming more of an issue whether you are in a Historic District or

not. The results can be seen in downtown Charleston and in Rockville, etc. Flood insurance is becoming more of a problem for everybody in the coastal area, A & B flood zones. It is becoming a bigger issue and placing someone in a Historic District without talking to the owners of the property involved could be catastrophic. The exemptions still apply for Historic Districts when they renovate buildings not to be at base flood elevation, but the rate is not exempted anymore. When a sale occurs, it is causing problems. In downtown Charleston, when owners renovate, they want to go to base flood, but the city will not let them, so now they are just walking away and leaving the property vacant. Putting people in a Historic District and not allowing them to build or renovate at base flood elevation is causing major problems. There is also widespread speculation that FEMA is about to lower the 50% threshold for renovations down to 30% in order to get to the base flood elevation.

Lucy Hightower, 404 Church Street: Ms. Hightower lives one block from Earl's Court. She has heard a lot about what is legal and what is not legal. She said her main concern is where will people park. She said her property is already overrun with cars. There is not enough parking now, particularly so if businesses are located at Earl's Court. She said she has empathy for the builders, but remember the people who first built in the Old Village and have pity on them.

Stephanie Hunt, 12 Pierates Cruz: Ms. Hunt said she also has property on Coleman Boulevard and she appreciates the dialogue and the passion concerning all of this. She said she is chairman of Charleston Moves and they are very invested in seeing Coleman Boulevard continue to become a complete street that will accommodate pedestrians, bicycles, and transportation. She disagreed that it is a throughway. She believes it has the potential to become the Main Street where people can mingle and safely commute. She said her issue is not with Earl's Court or even with the aesthetics of the Boulevard. If we can increase density, then we can increase opportunities to use transportation other than cars. She hoped that the long history of public input, smart consultations with other planners that went into the CRAB plan can be retained and improved.

There were no more speakers.

Mayor Page said that Item 7. B is a discussion of a temporary moratorium on building permits for the Coleman Boulevard Overlay District. She said she ran for mayor on a platform of family and engaged citizens. You are engaged and we get it. She said she understands their concerns and hopes that as they move forward, they can address them. Mayor Page said she has listened and made notes. She

opened the floor for discussion by Council to see if they can come up with something that will indicate that the Town gets it, Council gets it, and staff gets it. She said she first had to defend staff and their transparency. She said it is hard to be a public servant in the Town and not see how hard these people work to do their jobs. They take a beating because it is not true. They are easy to work with, open and very transparent. She said she just wanted to say that for the record.

Mr. Santos said he had a public meeting at Moultrie Middle School. He had not heard anyone say they are against development or developers. He heard some developers speak tonight that are from IOP and Charleston and they talked about what is good for Mount Pleasant and he appreciated their comments. People who bought houses and live here have the right to discuss what they think is best for the Coleman Boulevard Overlay District. Every five years the Comprehensive Plan is reviewed and people would like to see a review of the Coleman Overlay District as well. Back when CRAB was implemented, there were a lot of recommendations made by CRAB committee members, but Council changed a lot of those things, such as allowing 75 foot building heights. There were other things that Council changed that were not in the initial CRAB report. He thought that most people want now to pause and take a look at what is going on at Coleman Boulevard to see if it fits and if it is going in the proper direction. They do not want to hurt businesses or developers; but it is incumbent upon Council to pause and take a look at the direction we are going. If that direction turns out to be a positive direction, then certainly we move on. But if there are issues that need to be addressed, then we need to address them. He thought that is what residents want; to pause and take a look at the Overlay District to see if it is going in the right direction and decide if we should move on or make some changes. Mr. Santos said he would like to see another blue ribbon committee look at what has happened over the last five years. He said he has gotten phone calls from Bayview, The Groves, Rivertowne and Park West, etc. The problems are not just centered around the Old Village. People all over the Town now are looking at this very carefully. Unfortunately, the Old Village does not have a Homeowners Association, so they have been somewhat left out of this development's plans. They have now agreed to have a representative so they can be added to an email blast in order to be included. We need to get more Homeowners Associations involved so when we do have issues, they are notified. He would like to see a blue ribbon committee made up of businesses and citizens as soon as possible to take a look at what is going on at Coleman Boulevard to see if we are going in the right direction. Moratoriums are sometimes good and

sometimes bad and he said he is using the term for lack of a better word. Mr. Santos said he is prepared to make a motion to have a temporary moratorium in order to take a look at what is going on in the Coleman Boulevard Overlay District. After that is done, then make a decision as to whether to move on.

Mr. Santos moved to issue a temporary moratorium and to appoint a blue ribbon committee of citizens to re-evaluate the Coleman Overlay District and come back to Council and give an opinion so they can move on. [Motion died for lack of a second.]

Mayor Page asked if there was any more discussion on Item B, VII.

Mr. Carrier asked Mayor Page to explain where they are at this juncture of the discussion.

Mayor Page said that they need to move forward with the second item about the Historic District and then come up with something that will resolve the issues raised by the citizens who have spoken tonight so they know we have their backs.

Mr. Carrier said, "So there is no more discussion of Item A because a motion was made?"

Mayor Page said, "And because the motion failed because of a lack of a second."

Mr. Carrier said, "So we did not have a point of discussion. We just had one person discuss and then make a motion, but we did not get a chance to discuss."

Mr. Gawrych explained that the agenda had been amended and they were discussing a moratorium. A motion was made, but there was no second. That motion failed. If there is no more discussion, we move on to the next item. But if someone still wants to discuss something . . .

Ms. Stokes-Marshall spoke. She thanked all of the residents who came out to express their concerns on this particular matter and have made their voices heard. She said she could speak on behalf of all her fellow Council Members that they do hear you loud and clear. She respects the fact that you feel it necessary for Council to pause. She said she is inclined to agree with all that made comments about stopping and thinking about revisiting this. She said she did not think that a moratorium is the right direction to take at this point in time.

Ms. Stokes-Marshall moved that the Planning Committee study the relationship between the Main Street revitalization effort and existing neighborhoods; specifically, items such as parking, setbacks, density, building heights and development standards; for example, requirements such as public streets, minimum lot sizes, studying where existing commercial properties meet

existing residential properties. The Planning Committee should deliver its recommendations within sixty (60) days. She said they will be reaching out to members that are representative of the community and the Old Village with a dialogue where they can come to a meeting of the minds and a consensus of agreement that will ultimately benefit and continue to improve the quality of life for all of our citizens; motion seconded by Mr. Nickels.

Mayor Page asked for discussion.

Mr. Smith said he would concur with the comments made earlier and they obtained 913 signatures on a petition not counting all the emails and communications received. He said he would appreciate the emails going to Council's Town address since those emails are subject to subpoena. In the spirit of supporting Councilwoman Stokes-Marshall's motion, he wanted to be reassured seeking clarification that the Planning Committee is obligated to communicate to the Planning Commission before the Council can take any votes in the future. Is that correct?

Mr. DeMoura replied that the Planning Committee can communicate with Council at any time. There cannot be a vote on an ordinance without it first going to the Planning Commission (State Law) because it impacts the zoning code.

Mr. Pagliarini agreed. He said also that the Town Ordinance 156.031 amendments or changes to regulations directly deals with changing zoning ordinances, boundaries, regulations; there is a set procedure in place that these issues must go to the Planning Commission and be vetted there so that it is open to the public.

Mr. Smith said he just wanted to be assured that before voting on this matter that significant voices that have spoken will be listened to and allowed to be a part of the process before it comes back to Council. He asked if his understanding is correct and that citizens are appointed to that commission.

Mr. Pagliarini said that is the way the ordinance is set up.

Mr. Smith said he has 22 items that do not overlap each other from the comments tonight that are very similar to the notes he had put together from the emails he had received. He believed they almost mirror each other identically. He hoped that the Planning Committee could narrow the scope and include all of those items in the motion that was made by Ms. Stokes-Marshall. He said he believes that it does include all of them.

Mr. Carrier asked for clarity. The Commission is now having workshops on the Comprehensive Plan. Is that going to encompass this because he did not want a duplication.

Ms. Stokes-Marshall said her motion was not intended for it to be encompassing.

Mr. Carrier said so we are going to take it on ourselves as the Planning Committee to do that.

Ms. Stokes-Marshall replied in the affirmative.

Mr. Nickels stated that he wanted to thank everyone here tonight and he attended the meeting at Moultrie Middle School. He said he stay the entire time and listened to a lot of you. As Mayor Pro Tem Stokes-Marshall said, your voices have been heard. A moratorium is a drastic remedy and that is not what I would have supported. He said he did not mind the direction that Mayor Pro Tem has set forth to send this to the Planning Committee of which she is the chair. Rather than this just being sent there for a limited amount of time, 60 days, and he wanted to hold the committee to it and it will be a lot of work to accomplish in sixty days. He encouraged that they engage the citizens, the homebuilders, the commercial and residential realtors and whoever else needs to have a voice at the table. As businessmen and women, uncertainty does not lend itself well. He wanted to reassure everybody that he kind of likes the way Coleman looks now as opposed to five or seven years ago. It is not perfect, but it has made great strides and he likes the direction it is going. He encouraged homebuilders and risk takers to continue and if things need adjusting, we will do the necessary tweaking. He said he is behind the vision.

Mr. Gawrych thanked everyone for all the e-mails. He read all of them and had taken copious notes tonight. He said he had 12 years under his belt and Mr. Santos had 13 years as a Councilman and Ms. Stokes-Marshall has even more. We have always worked hard to listen. He said that what the citizens had just heard tonight may be a little confusing. Ms. Stokes-Marshall, the chair of the Planning Committee made a motion with distinct points in that motion which is to bring it back to the Planning Committee which is a part of Council. Our attorney said that within our ordinance, while they work at this for sixty (60) days, it they make significant changes, it then has to go to the Planning Commission, a body of citizens that Council appoints. They will receive it, review it and send it back to the Planning Committee, who will review it again and then it goes back to the full body of Council. He said it is a standard process that has always been done. He wanted

to make sure everyone was clear on that. Before moving on, he had one thing he wanted to say. In his 12 years on Council, it has always been an honor, but he was baffled by the last election when only 18.2% of registered voters came out to vote. Less than 11,000 of 58,000 people registered to vote came out to vote, so 47,000 stayed home. He said again it has always been an honor to service, he enjoys it and he loves the Town. Tonight he heard some comments from the podium that really concerned him; comments about the Planning staff of this town. There are no grounds for that and this is not the place for that. He said he was embarrassed that it took place. He said he took exception to those remarks and he wanted it known. Please do not come in here and do that. If you have a concern, there is a way to properly handle it.

Mr. O'Neal said he heard a lot of comments, he read all the emails, and as a businessman, he gets frustrated at how slowly government moves sometimes. In a business, we can pivot and move quickly. The governmental laws and rules that are in place, for right or wrong, cause us to move slower, which is both good and bad. The bad is that sometimes we cannot react as quickly as we would like. The good is that it gives citizens an opportunity to become involved in the process. He thought that Mr. Gawrych did a wonderful job of explaining the process of how this will be addressed. To recap, there will be a Planning Committee meeting on January 7th. He asked that residents submit comments and Council will read and address them as quickly as possible. He said that Council strives for transparency and will continue to get better. He suggested that residents sign up for emails and go on the Town website for projects. Everything is there, schematics for the project, where they are located, etc. The Planning staff has done a wonderful job of putting that on line. He thanked the residents for attending the meeting.

Mr. Glasson stated that Mr. Gawrych's points were dead on and he stands behind him on the comments about staff. There is a sixty-day timeline for an open forum for more details and to address concerns one-on-one and to allow Council to move forward in the best way for the Town. As Mr. Small said, he does not believe in a moratorium which may have unintended consequences and can be catastrophic. He said he is in support of Ms. Stokes-Marshall's motion.

Mr. Gawrych asked Ms. Stokes-Marshall to please read her motion one more time. [She repeated the motion.]

Mayor Page said there are a lot of people that are concerned about these issues and she would ask Ms. Stokes-Marshall to have a Special Committee

Meeting to get the process underway so these citizens will know that we are addressing all of the concerns heard tonight.

Ms. Stokes-Marshall said her intent is to confer with the Town's Planning Director, explore some dates with Committee Members and hold a Special Planning Committee meeting as soon as possible.

Mr. Santos had a question about the motion. He asked if residential properties were included in the motion, not just commercial.

Ms. Stokes-Marshall said she had no problem in amending her motion to include residential properties.

Ms. Stokes-Marshall amended her motion to include residential properties.

Mr. Nickels said he liked the motion to begin with because he thought it was narrowly tailored. He said he does not want to revisit the entire CRAB Report and all the work that was done for years to get there. He thought they had identified the areas where it meets neighborhoods.

Mr. Santos said they have an amended motion on the floor and they need a second to the amended motion to discuss it.

Mr. Santos seconded the amendment to the motion.

Mayor Page called the vote on the amended motion.

The motion carried 8 – 1 with Mr. Santos voting 'no.'

Mayor Page called for a 10 minute recess at 7:36 p.m.

Mayor Page reconvened the meeting at 7:44 p.m. [Mr. Glasson was not present when the meeting resumed.]

Mayor Page stated they would continue discussions under Correspondence and Public Statements. The next item is:

Extension of the Old Village Historic District Commission's oversight to include both sides of Shem Creek (east of the Shem Creek Bridge) to include Shem Creek Park:

Mayor Page said her understanding was that through the historic survey process several years ago, they discovered that there are no historic properties identified in that area. The Maritime District is already established. The Shem Creek Overlay District is different from the Coleman Boulevard Overlay District.

Mr. Santos moved to defer this item until the next Council meeting to allow time to look at it and decide whether or not they can do this.

Mayor Page stated that during the historical survey process that was done in the Old Village, there are no grounds to extend this historic district if there are no historic buildings. She said they are also challenged with the fact that Shem Creek

also has the Maritime District and also the Shem Creek District in place which limits the heights and the types of businesses located there which must be Maritime related or restaurants, etc. that is related to the waterway.

Mr. Santos said there was no second to his motion for discussion so they can move on to the next item of business.

PLANNING – New Business

First Reading: An Ordinance providing for an amendment to the Belle Hall Planned Development District pertaining to an approximately 1.5 acre parcel of land known as tract C-1-A-1-C located on Wando Park Boulevard and identified by TMS No. 537-00-00-246, by adding a mini-storage facility as an additional conditional use on the parcel and providing conditions for the same. (Ord. No. 13078)

Ms. Farrell introduced the ordinance.

Mr. Carrier moved for first reading of Ordinance No. 13078; motion seconded by Mr. Gawrych. Motion carried. [Glasson absent for vote]

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to amend the Town of Mount Pleasant 2009-2019 Future Land Use Map pertaining to an approximately 1.05 acre parcel of land known as Lot 5, Tract 12C, located at 916 Wando Park Boulevard, and identified by TMS No. 540-00-00-152, by changing the Land Use recommendation from Business/Light Industrial/Economic Development and commercial land uses to Medium Density Neighborhood Land Use. (Ord. No. 13080)

Ms. Farrell introduced Ordinance No. 13080.

This request is to amend the Comprehensive Plan to allow residential uses on this property. The medium density request establishes the maximum density allowed on the property at 6 units per acre. The Planning Commission unanimously recommended denial. The Planning Committee had a split vote of 2 to 2 and therefore do not have a recommendation.

Mr. Carrier moved for first reading of Ordinance Nos. 13080 & 13079; motion seconded by Mr. Smith.

A speaker had signed up for this item.

Tom Smith, president and owner of the property in question: Mr. Smith said his firm has been headquartered in Mount Pleasant for the last 21 years with a staff of 28 and an annual payroll of over $1.8M. He spoke to the point of why he thinks his request is reasonable even though the Planning Commission turned him down. His presentation included three points: The intent and the application of the Town's

Comprehensive Plan of 2009 – 2019 and the third point is that there is no reasonable detrimental effect. The only reason given by the Planning Commission in voting against their rezoning was the issue of losing Economic Development property for other uses. One question asked of staff by the commission was: What is the property adjacent zoned? He showed a zoning map slide. He said his property is surrounded by residential property and that is the point he wanted to make.

Mayor Page said a motion and a second for approval of items 2 & 3 was on the floor. She called for the vote.

The motion carried 8 – 1 with Ms. Stokes-Marshall voting 'no.' [Mr. Glasson was absent for the vote.]

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for an amendment to the Belle Hall Planned Development District pertaining to an approximately 1.05 acre parcel of land known as Lot 5, Tract 12-C, located at 916 Wando Park Boulevard and identified by TMS No. 540-00-00-152, by adding duplex residential uses and accessory uses as the only permitted uses, and providing development standards for the same. (Ord. No. 13079)

[Ordinance approved with Item #2, Ordinance 13080 above.]

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

Presentation of Annual Findings on Development Agreements:

Mr. Kent Prause presented the following report pursuant to the requirements of Section 6-31-90 of the South Carolina Code of Laws, Section 157.090 of the Mount Pleasant Code of Laws and the applicable sections of the referenced development agreements, all of which require an annual report to assess compliance with obligations imposed by the respective development agreements.

1. Seaside Farms. The term of the Seaside Farms development agreement has expired. Going forward Seaside Farms will no longer be included in the Presentation of Annual Findings.
2. Carolina Park. The entire previous agreement was cancelled and terminated and a new agreement was entered into with the new owners on September 13, 2011. The agreement was amended a second time on April 9, 2013, pertaining primarily to permitted uses and development standards. The development agreement is scheduled for final consideration again on December 10, 2013 with amendments pertaining primarily to development

standards. The previous obligations were retained in the new agreement, in addition to new future obligations as delineated below.

a. The Town is in receipt of deeds to the property to be donated to the town per the terms and conditions of the previous development agreement. This included a property swap with Charleston County for the proposed library with increased acreage but reduced construction cost reimbursement and the property swap with the Town for the proposed Fire Station. CCSD is in receipt of the deeds to the Middle College site and the elementary school site.
b. The relevant current obligation is the fee in lieu of impact fees due December 20th. Fees for recreation equipment and bus shelters have been paid pursuant to the 2011 agreement.
c. The sidewalk on Park Avenue Boulevard to Park West has been completed.
d. The Park Avenue Boulevard extension to Darrell Creek Trail and the Middle College are under construction.
e. The outstanding obligation consists of improvements to Faison Road consisting of an upgrade to a four-lane section with a median and turn lanes and signalization at the Highway 17 N intersection within 90 days after the issuance of Certificates of Occupancy for the 600,000th square feet of commercial building construction.

3. Watermark. The primary obligation of the Watermark development agreement was the dedication of right-of-way for the phase of Hungryneck II B-1, now known as Watermark Boulevard, which has been accomplished. Due to an arrangement with Council, the excess value of the dedication of their portion of Hungryneck II B-1 is allowed as a transportation impact fee credit, transferrable to other development projects. The Planning Department is tracking these credits which have been used for the Scott's Creek neighborhood. The Boulevard apartment project on Coleman Boulevard and the new hotel project located at the site of the former Fort Moultrie Motel. This project is nearing the beginning of the third year of a five year extension of the initial development agreement as subsequently amended, pursuant to Ordinance No. 10072, adopted on December 14, 2010. An amendment to the development agreement is slated for Council consideration on December 10, 2013, providing for an additional townhouse permitted use with associated development standards for a portion of the ED, Economic Development

portion of the development. No additional obligations will be created by this amendment.

4. Central Mount Pleasant. The *Second Amendment* to the development agreement was approved on May 11, 2012 extending the agreement for an additional five year timeframe. The *Third Amendment* to the development agreement was approved on November 13, 2012, clarifying the completion date for certain road improvements and adding additional obligations summarized below.
    a. The principal obligations of the developer pursuant to the development agreement are the construction and dedication of the extension of Hungryneck II B from Hungryneck Boulevard to Watermark Boulevard, the construction and dedication of a primary connector roadway between Hungryneck Boulevard Phase II-B and Rifle Range Road within thirty-six (36) months of the date, August 31, 2010, a good faith effort to attract senior housing to the Mixed Use Tract site that may include an age restricted community, independent living facility, assisted living facility, and or a continuous care facility and other obligations related to Trident Technical College primarily regarding parking and access.
    b. The construction and dedication of Hungryneck II-B has been accomplished. It is now known as Midtown Avenue.
    c. The requirement for the primary connector roadway from Midtown Avenue to Rifle Range Road has a provision for a one-year extension. Town officials were informed at the Mayo 2013 Planning Committee meeting that the road would not be complete by August 31, 2013 and further that the development agreement also provides that unless the Town should establish good cause why an extension of the completion date shall not be granted, the Developer shall be afforded an additional 12 months to complete construction of the primary connector road up on the inability to complete the primary connector road within the 36 month completion schedule. The completion date is now August 31, 2014. Master plans for the roadway were submitted to staff in July and again in October for review. Each time the plans have been returned with comments specific to compliance with the road design provided in the development agreement and shown on the sketch plan. Revised plans were submitted to staff on November 21, 2013. These plans were

returned with staff comments to engineers representing the property owner on November 27, 2013.

d. The Town currently has not been apprised of any efforts to attract a senior housing component to the property.
e. The primary obligations related to TTC involved a parking lease agreement with a first right of refusal for purchase for the parking property to the Town or TTC and construction and dedication of an access road from Midtown Avenue to the existing public rights-of-way designated John Dilligard Lane and/or Graddick Road. This portion of the agreement was to be memorialized in a recorded covenant to present final plans for the construction of the TTC Interconnectivity Road, including its alignment, upon subdivision or sale of any part of Tract 1B on which it would be located and to complete construction and public dedication of said road prior to any certificate of occupancy being issued by the Town of Mount Pleasant with respect to any portion of the Tract 1B property now owned by the Developer. The covenant was to be provided for review by town legal counsel no later than 30 days after signing the amended agreement. This obligation has not been met.

Ms. Stokes-Marshall asked, as far as Watermark is concerned, the last time they came to Council for an amendment to the Development Agreement, there was some information about the possibility of including senior housing. Where do we stand with that?

[Mr. Glasson rejoined the meeting at 7:54 p.m.]

Mr. Prause replied that as stated in the report, they are not aware of any senior housing that is being planned so far.

Ms. Farrell clarified that was to be in Central Mount Pleasant, not Watermark.

PLANNING – Old Business

Mr. Gawrych offered to expedite the meeting by approving items B1 – 10 in one motion.

Mayor Page said she appreciated Mr. Gawrych trying to expedite the meeting, but they should take one item at the time for the benefit of the newest Council members who are not as astute on the issues just yet.

Final Reading: An Ordinance providing for the annexation of an approximately 1.59 acre parcel of land known as Tract A, located at 1515 U.S. Highway 17 North, and identified by TMS No. 559-14-00-041. (Ord. No. 13065)

Ms. Farrell introduced Ordinance No. 13065. She said the Annexation Committee recommended approval.

Mr. Glasson moved to approve items 1-2 (Ordinance Nos. 13065 & 13066; motion seconded by Ms. Stokes-Marshall. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to zone AB-2, Area-wide Business-2 District, an approximately 1.59 acre parcel of land known as Tract A, located at 1515 US Highway 17 North, and identified by TMS No. 559-14-00-041. (Ord. No.13066)

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

[This Ordinance approved with Ordinance No. 13065 above.]

Final Reading: An Ordinance to rezone from R-1, Low Density Residential District, to AB-2, Areawide Business-2 District, and HNB-VR-OD, Hungryneck Boulevard-Venning Road Overlay District, an approximately 2.056 acre parcel of land located on Hungryneck Boulevard (Portions formerly known as Country Store Road) approximately 1,500 feet Southwest of its intersection with Venning Road and identified by TMS No. 559-00-00-020. (Ord. No.13067)

Ms. Farrell introduced Ordinance No. 13067. The Planning Commission and Committee recommended approval.

Mr. Gawrych moved to approve Ordinance No. 13067; motion seconded by Mr. O'Neal. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to amend a portion of the Town of Mount Pleasant Future Land Use Map of the Town of Mount Pleasant, Comprehensive Plan 2009-2019, with respect to property known as Watermark. (Ord. No. 13070)

Ms. Farrell introduced Ordinance No. 13070. The Planning Commission recommended approval by a vote of 6 to 1. The Planning Committee unanimously recommended approval.

Mr. Glasson moved to approve Items 4, 5 &6 as they are all related; motion seconded by Mr. Santos. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for a *fifth* amendment to the Watermark Planned Development District Zoning Ordinance (Ordinance No. 05052). (Ord. No. 13071)

[Ordinance No. 13071 approved with Ordinance No. 13070 above.]

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for a third amendment to Ordinance No. 05109, the Development Agreement by and between the Town of Mount Pleasant and Beach Shellpoint, LLC (Watermark Development Agreement). (Ord. No. 13072)

[Ordinance No. 13072 approved with Ordinance Nos. 13070 and 13071 above.]

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for an amendment to the Belle Hall Planned Development District Ordinance pertaining to an approximately 0.66 acre portion of an approximately 0.72 acre portion of Tract K known as Lot 3, Belle Hall Subdivision, located at 492 Bramson Court and identified by TMS No. 537-00-00-249, by adding detached single-family dwelling units as an additional permitted use on the parcel and establishing development standards for the same. (Ord. No. 13073)

Ms. Farrell introduced Ordinance No. 13073.

Mr. Carrier moved to approve final reading of Ordinance No. 13073; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for a *third amendment* to the Planned Development District Ordinance pertaining to property known as Carolina Park. (Ord. No.13074)

Ms. Farrell introduced Ordinance No. 13074. The Planning Commission and Committee recommended approval with the condition that the 25 foot height for accessory structures be limited to the CPR3 district of Carolina Park.

Mr. Glasson moved to approve final reading of Ordinance Nos. 13074 and 13075; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for a third amendment to Ordinance No. 11064, the Development Agreement by and between the Town of Mount Pleasant and CDM of Charleston, LLC (Carolina Park Development Agreement). (Ord. No. 13075)

[Approved with Ordinance No. 13074 above]

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to amend 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. (Ord. No. 13077)

Ms. Farrell introduced Ordinance No. 13077.

Mr. Glasson moved to approve final reading of Ordinance No. 13077; motion seconded by Mr. O'Neal. The motion carried 8 - 1 with Mr. Santos voting 'no.'

Mr. DeMoura read FINAL READING BY TITLE ONLY. This Ordinance *SIGNED, SEALED and DELIVERED* this date.

COMMITTEE REPORTS

Accommodations Tax Advisory Committee – Mark Smith

Mr. Smith said he had one action item regarding the funding requests/recommendations. The committee met on December 5th to make recommendations for seven funding requests in the amount of $17K. If Council accepts the committee's recommendations, it will leave a balance of $37,268 for the remaining fiscal year. The funding recommendations approved by the committee follow:

Coastal Carolina Boy Scouts / Patriots Point Camporee - $2,000
The Great Race - $3,000
Gullah Heritage Programs - $3,000
Southeastern Wildlife Expo - $6,000
67th Annual Festival of House & Gardens - $1,000
Carolina Soccer Classic - $1,000
Mardi Crawl - $1,000

Mr. Smith moved to accept the funding recommendations submitted by the ATAC Committee in the amount of $17K; motion seconded by Mr. Nickels.

Mr. Santos did not think that the Historic Charleston Foundation has any impact on Mount Pleasant. In reading the comments from the Committee, they have already printed their brochures and one member noted that they do nothing in Mount Pleasant. Mr. Santos said he has a problem with this one. Some of those folks have adamantly spoken against some aspects of tourism and have fought against it. He said he does not know how to separate that one out since the motion includes all of them.

Mr. Smith said that before he amends his motion, he wanted to address that concern. He said that Mr. Santos is correct in citing some of the comments from the minutes. The Festival of House and Gardens requested $15K and the committee is recommending $1,000. It is incorrect that there is no economic impact to the Town of Mount Pleasant. Non-residents are 89% of the attendees and 6.5% of the attendees stay in Mount Pleasant. There are 16,000 attendees and 875 of those are visitors who generate 1,782 room nights with an estimated economic impact to our Town of $746K. Mr. Smith stated that before modifying the motion, we should make sure it is based on factual information that includes 'heads in beds.'

Mr. Santos said he is just quoting from the minutes where Mr. Smith, Council liaison for the Committee, asked: "If the Committee feels that way, why do anything monetarily for the event?" Mr. Santos said these are your words from the minutes. He asked Mr. Smith if he could justify that statement.

Mr. Smith replied that was a statement he made in seeking clarification since that was his first ATAC meeting. He said he was making sure that we had a fiduciary responsibility for dispersing those funds and making sure he was vetting it out thoroughly. He said as he moves forward, he can tighten those dollars.

Mr. Carrier said he was at the meeting also, and with all due respect to both, they did award the $1,000 with a marketing caveat that Mount Pleasant had to be involved in their marketing advertising for this event. If they are not, then the funds will not be awarded. Ms. Richardson very ably follows that up when the time comes. Mr. Carrier said he agreed with Mr. Santos that it is not one of our premier events, and it does need scrutinizing and Committee wrestled with it also because we do get some hotel rooms out of the event.

Ms. Ashley Richardson, Tourism Director, stated that the Council Members did a great job of explaining it. The Committee went back and forth, but felt that $1,000 was justified.

Mayor Page stated there was a motion on the floor to approve funding all seven events as stated. Hearing no further discussion, she called for the vote.

Mayor Page called for the vote and the motion carried 8 – 1 with Mr. Santos voting 'no.'

Annexation Committee – Mark Smith

(No meeting, no report)

Bids & Purchases Committee – Mark Smith

Mr. Smith said that Committee heard staff's request for a sole source procurement to replace two pumps and an updated control panel for the Edwards Park stormwater pump station. The Committee authorized a contract with Xylem, Inc.-Flygt in the amount of $169,737.22 for two pumps, installation and control panel upgrades.

The Committee also authorized a contract to construct the Whitehall Terrace Community Center to Mitchell Construction Company, Inc. in the amount of $539,500. The contract award was made contingent upon council approving additional project funding in the amount of $135,620.

Finally, Council will consider additional funding as part of the Budget Adjustment Ordinance under Council New Business, Item XI.A.2.

Economic Development Committee – Chris O'Neal

Mr. O'Neal stated that the Cultural, Arts & Pride Commission recommended the Market at Oakland Plantation for the 2013 Civic Pride Award for maintaining a pristine property. The recipient will be invited to the January 2014 Council meeting to receive the award.

Mr. O'Neal moved to award the 2013 Civic Pride Award to the Market at Oakland Plantation; motion seconded by Ms. Stokes-Marshall. Motion carried unanimously.

Mr. O'Neal said that Charleston County has requested an amendment to the Multi-County Park Agreement to include a parcel related to Hubner Manufacturing that was inadvertently left off the original resolution. That resolution will be addressed under Council New Business, Item XI.A. 3.

Mr. O'Neal said the committee also heard a presentation by John Osborne, Founder and Director of The Harbor Accelerator which is currently occupying the Town's BIZ Inc. space. One of their occupants will make a short presentation as soon as possible to his committee. He said that the *Post & Courier* had a wonderful

write-up on The Harbor Accelerator in the Business Section of their paper last Monday.

Finance Committee – Chris O'Neal

Mr. O'Neal stated that the Finance Committee and the Human Resources Committee had a lot of discussion back and forth relative to a request for a Christmas bonus for Town employees. He thinks that the employees do a fantastic job and there is no need to have a further debate over a difference of $50 in the bonus ($200 vs. $250).

Mr. O'Neal moved to award a Christmas bonus to the Town employees in the amount of $250 ***net*** *per employee; motion seconded by Mr. Gawrych. Motion carried unanimously.*

Mr. O'Neal said the Mid-Year budget adjustment ordinance would be addressed later under Council New Business Item XI.A.2.

Approval of annual independent Audit Report:

Mr. O'Neal said the report was an unmodified opinion which is the best that can be received.

Mr. O'Neal moved to accept the excellent audit report submitted for the Fiscal Year ended June 30, 2013; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. O'Neal said that the committee heard a request to the Town from *The Moultrie News* for a sponsorship of their 50th Anniversary. They were asked to come back after the committee receives information from the Town attorney on the ability to make a contribution.

Mr. O'Neal said the committee also received information a status report on the progress being made on the Town's new healthcare model and a timeline regarding the issuance of a 2014 General Obligation Bond to pay for capital projects.

Mr. O'Neal said the committee also recognized Jeanne Griffin for five years of service as the Town's Financial Services Officer.

He also said that the Town has received the Distinguished Budget Presentation Award for the second year in a row and also received the Excellence in Financial Reporting for the 25th year in a row.

Mr. O'Neal said they concluded their meeting with an executive session to discuss a proposed intergovernmental agreement, and no action was taken.

Fire Committee – Gary Santos

Mr. Santos said there were three items up for consideration. The first was that the Fire Department requests approval to apply for $27,500 for Assistance to Firefighters Grant from FEMA to purchase three flag props for the training facility with a required 10% match of $2,750. These props are designed to help train the department in how to extinguish propane fires. The committee approved forwarding the request to Council for approval of the grant for the three props in the amount of $27,500 and a match of $2,750.

Mr. Santos said he would place this request in the form of a motion; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. Santos said the Fire Department requested approval to apply for a $126,000 grant for Assistance to Firefighters Grant (Host Charleston County) for mobile data terminals from FEMA with a required 10% match of $12,600. This grant would place 18 mobile data terminals in each of the Department vehicles. The committee unanimously approved sending this request to Council.

Mr. Santos so moved; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. Santos said the final item was that the Fire Department requested approval to apply for a $100,000 grant for Assistance to Firefighters grant from FEMA with a 10% required match of $10,000 to purchase the following:

115 external harnesses for the department's turnout gear; 115 emergency bailout kits which includes rope and a descending device; Training and a "train the trainer" workshop for the devices; 4 practice bailout kits to use during training sessions.

Mr. Santos so moved; motion seconded by Mr. Gawrych. Motion carried unanimously.

Human Resources – Chris Nickels

Mr. Nickels said the committee met and discussed a Christmas bonus for the Town employees and that was just discussed under Finance Committee.

He said the committee heard a PowerPoint presentation by Mr. DeMoura and Mr. Potts regarding the new healthcare model. Several years ago, staff and Council took action to remodel the plan and it has been paying financial dividends. He encouraged everyone to review the presentation if they had not seen it.

Patriots Point Development Authority – Mayor Linda Page

(No meeting, no report)

Planning Committee – Thomasena Stokes-Marshall

Ms. Stokes-Marshall said the committee had a short meeting, but she had nothing to report.

Police, Legal & Judicial Committee – Mayor Linda Page

Mayor Page said the committee met and reviewed fees pertaining to the towing of vehicles. This will be addressed later in the meeting under Council New Business - Item XI.A.1.

Public Services Committee – Chris Nickels

Mr. Nickels said the committee met and he had a brief report. They recognized an employee for 10years of service.

They also heard from SCE&G pertaining to their tree trimming schedule and that they will be providing that information to the residents.

Mr. Nickels said they received an update from Mr. Peele on the Town's Strategic Plan as it relates to our Asset Management Program.

Mr. Nickels said they heard from the Town Administrator and others about natural gas for an eventual fleet of vehicles that use natural gas to achieve energy independence for more security during uncertain times and to save money.

Recreation Committee – Elton Carrier

Mr. Carrier said they had already addressed earlier in the meeting the consideration to name the Park West Track in Memory of Peyton Moore.

Mr. Carrier reported there was a surge of 300 new applicants in November for the Senior Center. That will be cause to address a budget item later in the meeting. He said the number of members is significant and they are up to almost 2,400 in membership.

Transportation Committee – Mayor Linda Page

(No meeting, no report)

Waterworks Commission – Mark Smith

Mr. Smith stated that the Commission met and they elected a commission chairman. He said that former councilmember John Burn sent his regards and he is working hard on the Waterworks Commission and is looking forward to an enhanced relationship between the Town and Waterworks.

They were reminded of some completed projects over the past few years; a total of eight projects, totaling $10,900,000. There is approximately $700K of active relocation improvement projects underway. There are seven identified proposed projects in excess of $4.3M and they are seeking to identify a source for that funding.

Mr. Smith noted for the record the committee chairs and co-chairs who were appointed:

Personnel Committee - Mac Jenkinson; Vice Chair – John Burn; Cost Recovery Committee – Susan Mellichamp; Vice Chair – Diane Lauritson; Community Development Chair – Diane Lauritson; Vice Chair – Mac Jenkinson.

He reminded that the committee meetings are on the first Wednesday of every month and the commission meets every third Monday of the month.

Water Supply Committee – Mark Smith

Mr. Smith said the committee met. He thanked fellow committee members, Ken Glasson and Paul Gawrych, for attending the meeting and all of the Town staff who were in attendance at the meeting. He said they are looking forward to working together.

ADMINISTRATOR'S REPORT – Eric DeMoura

Mr. DeMoura reported that there are five opportunities to serve as follows:

Old Village Historic District Vacancies – 3 Seats
Board of Zoning Appeals – 1 Seat
Accommodations Tax Advisory Committee – 1 Seat

COUNCIL – New Business

First Reading: An Ordinance to amend Chapter 112, Section 112.33, of the Mount Pleasant Code of Ordinances, to change the payment procedures and the fee schedule for towing services. (Ord. No. 13081)

Counsel Pagliarini stated that this was brought up as a result of the PJL Committee. They are looking to change the towing ordinance to address some

deficiencies. Two of the main ones that came out of committee were to change the payment procedures to require companies to accept credit/debit cards. Some were only accepting cash and that was a problem for some citizens. The second is to include an $80 drop fee. In some towing situations, before the vehicle is towed away, it can be dropped and not towed to a certain destination. Those two items were added to Section 112.33 of the Ordinance.

Ms. Stokes-Marshall moved for first reading; motion seconded by Mr. Carrier. Motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to amend the Budget for the Town of Mount Pleasant for the Fiscal Year commencing July 1, 2013, and ending June 30, 2014. (Ord. No.13082)

Mr. O'Neal moved to approve Ordinance No. 13082; motion seconded by Mr. Nickels.

Two speakers had signed up to speak:

Dick Giffen said the item had already been taken care of.

Mr. DeMoura said the second speaker had stepped out.

Ms. Stokes-Marshall said that before voting on the motion, did they include funds for additional staffing.

Mr. Carrier replied that he was getting ready to do that. He said there is a budget adjustment to add to the numbers already before Council. He read the request: He said it is a $9K budget adjustment for part-time assistance for the Recreation Department because of an increase in the daily attendance since the opening of Phase II of the Senior Center. The membership has jumped significantly with the same number of employees on duty. This has made it very difficult to maintain the quality of service and facility management. They have had a couple of instances where they did not have enough staffing and non-members have come in and started using the facilities because they do not have the necessary staff coverage and it is a real problem. There is a level of liability over there that is a couple of rungs higher than anywhere else in the Recreation Department. There were some injuries in the equipment room with people using machinery improperly and they were not attended to properly because no one saw what happened. This request is justified for a 32.5 hour equivalent for two program monitors. He said that Ms. Stokes-Marshall observed that there should be staff assigned for that purpose only. They should not substitute staff from other parts of the recreational

programs. They need to have these people there who are tuned into the senior center activities and what is needed to be observed, etc.

Mr. Carrier said he was putting that request into the form of a motion to adjust the budget by $9K for senior center part-time employees.

Mayor Page said they already have a motion on the floor by Mr. O'Neal to approve the budget as presented. She asked Mr. O'Neal if he was prepared to amend his motion.

Mr. O'Neal replied the motion is to amend the ordinance that had been presented. To clarify, he asked where the funds would come from.

Mr. Potts replied that it would come from the contingent account – non-departmental.

Mr. O'Neal said he would amend his motion to include that. Mr. Nickels seconded the amendment to the motion.

Mr. Nickels wanted to comment. He said he is new to the Finance Committee and he is very glad to be a member. He said he is a little lost in this process and is not sure if this is allowable, but would like to receive notice before something like this comes up rather than hearing about it three and one-half minutes ago. He said the $9K is just a small thing, but what if this was a major request. It never went through the committee process. This seems small and it will pass, but moving forward he would appreciate being included in these decisions. He had no idea of this. Maybe he missed an email or something, he said.

Mr. Carrier said he agreed. This was a very 11th hour occurrence. It slipped by until the managers had their meeting and Mr. DeMoura reminded them of the deadline that had passed or was passing as they were meeting for the budget adjustment submissions.

Mr. Gawrych asked if he had read in this amended budget that they would need extra money to construct a community center at Whitehall.

Mr. DeMoura replied in the affirmative.

Mayor Page called for the vote and the motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

A Resolution: A Resolution to approve amendment of the Agreement for Development of a Joint County Industrial Park, by and between Charleston County, South Carolina, and Colleton County, South Carolina, so as to include additional property in the Town of Mount Pleasant as part of the Joint County Industrial Park, and to remove certain property in the Town of Mount Pleasant (including the re-

designation of certain parcel numbers) from the Joint County Industrial Park. (R.13121)

Mr. DeMoura said this item came from the Economic Development Committee and this is an amendment to a prior accepted resolution and this is a cleanup or administrative matter.

Mr. O'Neal moved to accept Resolution 13121; motion seconded by Mr. Gawrych. Motion carried unanimously.

Mr. DeMoura read the Resolution *BY TITLE ONLY.* This Resolution *SIGNED, SEALED and DELIVERED* this date.

COUNCIL – Old Business

There was no Council Old Business.

EXECUTIVE SESSION

Mr. Santos moved to go into executive session at 8:30 p.m. to discuss the following items; motion seconded by Ms. Stokes-Marshall. All present voted in favor.

A. Legal and Contractual
   Discussion of proposed Intergovernmental Agreement

B. Personnel
   Appointments to Boards and Commissions
   a. Consideration of applications for appointment to the Planning Commission Seat #7, a four-year term expiring in November of 2013.
   b. Consideration of applications for appointment to the Culture, Arts and Pride Commission, Seat #2, a four-year unexpired term ending in February of 2015.

The regular meeting reconvened at 9:04 p.m. Mayor Page stated that no votes were taken.

Ms. Stokes-Marshall moved to appoint Ben Bryson to the Planning Commission Seat #7, a four-year term expiring in November 2013; motion seconded by Mr. Nickels. Motion carried unanimously.

Mr. Smith moved to appoint Ms. Kenda Sweet to the Culture, Arts and Pride Commission Seat #2, a four-year unexpired term ending in February of 2015; motion seconded by Mr. Gawrych. Motion carried unanimously.

ADJOURNMENT

Hearing no further discussion, the meeting was adjourned at 9:05 p.m.

Submitted by:

Patty Wallis
121013

MOUNT PLEASANT TOWN COUNCIL
Tuesday, February 10, 2015, 6:00 p.m.

Municipal Complex, Council Chambers
100 Ann Edwards Lane
Mount Pleasant, SC 29464

MINUTES

Mayor Linda Page called the meeting to order at 6:05 p.m. Council members present were Kenneth Glasson, Chris O'Neal, Elton Carrier, Chris Nickels, Mark Smith, Paul Gawrych, Gary Santos and Thomasena Stokes-Marshall.

Chaplain Michael Morris led Council in prayer. Ken Glasson led the Pledge of Allegiance. Counsel David Pagliarini certified compliance with the Freedom of Information Act.

Mayor Page called for approval of the agenda.

Mr. O'Neal moved to amend the agenda to move up the Transportation Committee report to come before Correspondence and Public Statements. Also, under Council New Business, move Item 9 up to Item 7; motion seconded by Mr. Glasson. Motion carried unanimously.

PUBLIC HEARINGS, AWARDS & PRESENTATIONS

Days of Remembrance Proclamation – Rabbi Refson:

Mr. DeMoura read a Days of Remembrance Proclamation that will be observed between April 12 – 19 to remember the victims of the Holocaust which was the systematic persecution and annihilation of European Jewry and others by Nazi Germany between 1933 – 1945.

Rabbi Refson spoke about the continuing hate and violence between all races and religions throughout the world that persists to this day.

Sandra Brett spoke about the meaning of the yellow candles that were lit in remembrance of the victims of the Holocaust.

Poetry Reading by Ms. Marjory Wentworth: Mark Smith introduced Mr. Jonathan Green, noted local artist who introduced Ms. Marjory Wentworth, Mount Pleasant resident who has been the South Carolina Poet Laureate since 2003. She read her poem, "One River, One Vote."

Employee of the Month: Ryan Johnson and Garrett Heatherington with the Recreation Department were recognized as Employees of the Month for assisting an elderly lady, whose husband was bleeding heavily from a head laceration, to find the nearest emergency room. They had just come outside Wando High School following a wrestling program that ended at 6:30 p.m. They jumped into their car and directed her to the nearest hospital (Roper). They assisted in getting her immediate help at the emergency room. Their quick action has been recognized and they have been nominated as Employees of the Month.

Football State Champions – 12 year old all stars: Mr. Ken Ayoub noted their achievement of winning the 2014 SCAT Championship. He presented the huge sign that will be erected in their recognition.

Boy Scout Troop 529: Mr. Grant, their leader, brought the troop to the Council meeting as a governmental learning experience for their Citizen's Merit Badge.

APPROVAL OF MINUTES FROM THE JANUARY 13, 2015 TOWN COUNCIL MEETING AND THE JANUARY 2015 FINANCIAL STATEMENT.

Mr. Smith so moved; motion seconded by Mr. Glasson. Motion carried unanimously.

Transportation Committee Report: (Per amended agenda) *Mr. O'Neal moved for approval of the W. Coleman Boulevard street lights; motion seconded by Mr. Gawrych. Motion carried unanimously.*

Conceptual approval of The Groves traffic calming: Mayor Page said she chairs the Transportation Committee and she received many thought provoking, well written e-mails from two established neighborhoods, The Groves & Cooper Estates.

Mayor Page said the cut-through traffic has been discussed repeatedly and it is time to fix the problem, but they cannot fix it tonight. What they heard was that the project as put forth helps one neighborhood, but jeopardizes another. They heard that 90% (a disputed number) of The Groves neighborhood wanted to make positive changes to control the cut—through traffic in the neighborhood. She wanted to ensure that Cooper Estates is just as protected as is The Groves and wanted the neighborhoods to come up with solutions along with the Town.

Mayor Page moved that Council agree to take this issue back to the Transportation Committee to hear representatives of both neighborhoods talk about all options and to find the money to finally fix the cut-through problems; motion seconded by Mr. O'Neal.

Mr. Nickels said he understands the passion about this issue and other traffic calming measures that might be employed. He was concerned that there were scores of people at the Council meeting who just found out that this was going to be sent back to the Transportation Committee. He hoped that going forward, they can look for efficiencies on ways to message the public to avoid having them show up for an item that will not be resolved at this meeting of Council and is going back to where it was a week ago Monday, the Transportation Committee.

Mayor Page said she appreciated his sentiment, but she would not apologize because she replied to 150 e-mails, but some neighborhoods do not have HOA's to contact. She promised that this next time they are going to fix the cut-through problems. She called for the vote.

The motion carried unanimously.

Mayor Page said that this was going to be addressed at next month's Transportation Committee meeting and she solicited something solid from the residents of the neighborhoods that are involved. She stated they would vote on it, up or down.

Ms. Stokes-Marshall stated that a number of residents from a number of connecting communities to The Groves are in attendance and they are

concerned as well about the proposed changes. They should select one or two individuals from all of the communities involved and have them contact the Transportation Director, Mr. Brad Morrison, and submit their names as representing their community. This item will go back to the Transportation Committee and those individuals will be contacted and asked to attend the meeting and to be involved in the decision-making process. Even though there are communities that are divided on this issue, they are trying to engage the community in the process. Council needs the residents' help and support to solve this issue.

Mayor Page said that Council has the approval to take this back to the Transportation Committee. They cannot solve this tonight and if there is division in the neighborhoods, they should choose a spokesperson for their neighborhood. She reminded that Monday, March 2nd is the date for the committees to meet. If they need a larger forum, the Transportation Committee can meet in the gym. She submitted the Transportation Committee report to the clerk for the record.

Mayor Page announced a break at 6:47 p.m. for people who wished to leave.

The Council meeting reconvened at 6:54 P.M.

Mayor Page announced that the amended agenda calls for Council – New Business as the next items (XI A. 1 & 2). This item was put on the agenda by Ken Glasson.

Mr. Glasson addressed items XI. A. 1. Consideration of request by Shem Creek Development Group, LLC to amend the parking license agreement (Resolution R.13102). He said he would defer this to Mr. Gawrych, co-sponsor of the item, after which he would speak.

Mr. Gawrych said he was contacted by Mr. Glasson last Thursday morning to co-sponsor this item that has been around since October 2013. He asked Town Administrator, Eric DeMoura, to provide a timeline of the events surrounding it to understand what they are dealing with.

Mr. DeMoura stated that he had prepared slides on the history and a timeline that brings us to this point today. On October 14, 2013, the current parking license agreement was approved by Council and is contained in the Resolution. The Town agreed to pay for the parking privileges with Accommodation Tax funds that are paid by hotel visitors to the Town, which is an allowed use of those funds.

Two months later, December 2013, the developer approached Town Council for an increase in the height of the building, up to 55 feet. Within that same request, they asked to be released from the first floor requirement to have a business or residences. In April of 2014, the setbacks and build-to lines changed for that area and much of Coleman Boulevard that affected this proposed office/garage building.

On September 24, 2014, the project moved forward and received Design Review approval. In the middle of November 2014, the building height was reduced by Town Council to 45 feet, down from the 55 feet that had been granted on December 10, 2013. On that same date, Mr. DeMoura sent a letter to the project owner's legal representation, Mr. Gray Taylor, letting him know that based on the new project proposal, the parking requirements did not meet the Town's Parking License Agreement. He sent the letter to their legal representative on that date (12/10/13).

Mr. DeMoura noted that the project as it stands today has been approved and it is vested. There is some talk that a vote tonight on the Parking License Agreement will affect whether the project can be built or not. That is not true. What Council will be voting on is the public financing part of the agreement; whether or not public financing will be attached to this project. The project owner may submit for a building permit; that has not changed.

Mr. DeMoura stated that the current license agreement speaks of 276 parking spaces. During business/office hours Monday through Friday, 144 spaces are reserved for the office building, leaving 132 parking spaces for public use. On nights/weekends, all 276 parking spaces are to be provided by the project for public parking. Monetary consideration for that parking

agreement was ATAC funds in the amount of $185,000 annually or $2.8M over the 15 year term of the agreement which amounts to $670 per parking space. Those are the terms of the current license agreement.

Mr. DeMoura referred to a drawing for clarity. He said the developer would be able to provide a total of 334 parking spaces for this project; 234 in the structure and 100 surface parking spaces. However, there is required parking for two nearby businesses that must be provided for: Tavern & Table, 112 minimum; Red's Ice House, 77 minimum parking spaces are required for a total of 189 required parking spaces to meet the parking needs of these two businesses.

Mr. DeMoura said that 334 total spaces minus the 189 required spaces leaves 145 parking spaces remaining for the public. However, there is a requirement to provide parking for first floor use which is designated retail/commercial/residential. They are not providing what is required in the ordinance for The Boulevard (100 spaces for public use). Bottom line, it leaves only 45 excess parking spaces free and clear if the project is built. Therefore, his letter that was sent to the project owner's legal representative stated that the current project does not meet the stipulations provided for in the license agreement.

Mr. DeMoura said that the Town received a new proposal that revises the number of parking spaces similar to what Mr. DeMoura indicated moments before. It requested a payment adjustment from the $185,000 in the original license agreement down to $163,000 or just shy of $2.5M over the life of the term. Mr. DeMoura indicated the options available on a slide. One option is to not act on the new proposal; do nothing on the new request. Council also has the option to deny it with a vote of this body, or they can approve it with a different amount of parking spaces as indicated on the slides. Council has the discretion for some variation of that at their pleasure. Mr. DeMoura stated that those are the facts and that is where Council stands currently.

Mr. Gawrych said that what is important tonight is considering a contract, how to address it or how to amend it. It has nothing to do with the

parking facility. That will be handled later. He stated that he was on Council in 2004 when Council had a vision, which is now Shem Creek Park and the Town spent $6M for one acre of land and for all those docks. They spent another $2M to fix up all of those docks which came to $8M. It was done with Tax Increment Financing funds (TIF) and not direct tax dollars. They all know that Shem Creek is one of the Town's stellar gems. Shem Creek is now the cleanest it has been in 300 years. While figuring out how to protect, preserve and enhance it, Council realized that more people would want to come to enjoy it. That led to the topic of where to park cars in early 2005/06. Since that time, Phase I was finished and they planned Phase 2. The plan was a vision that when people came to Shem Creek Park, they could park their car and traverse every square inch of the park without moving their car. When the office/parking building was proposed, they approached the Town to see if they could join in to establish parking. Negotiations began and a contract was inked. They then came back to the Town because to get the needed parking spots, they would have to go up ten feet in height. Council voted 8 – 1 with Mr. Santos voting nay to grant the 10 feet to get the parking spots.

As Mr. DeMoura stated, 4-5 months later, Council was working to amend the Coleman Overlay District, which they did. Those amendments impacted the setbacks on this piece of property. The property was too small for the building they needed to get the required parking spaces. He noted that this has always been on the Council level and it is back before Council tonight where it needs to be. It was understood that Mr. DeMoura would review the project and he determined that it did not have the number of parking spaces that were required to meet the contract that was inked in October 2013. Therefore, he submitted a letter to the applicant. What has occurred since then has not been clear; has not gone away and it needs to be cleared up.

Mr. Gawrych moved to accept and endorse the letter that Mr. DeMoura wrote to the applicant stating that their project does not meet the contract requirements that was inked in 2013; motion seconded by Mr. Glasson.

Mr. Santos said he was surprised and a little concerned about this action. He agreed with the letter, but wanted to make sure this action does not paint them into a corner legally.

Counsel Pagliarini stated that he had no problems with the motion as it stands. He said it represents the Town's position.

Mr. Nickels stated that Mr. DeMoura's letter seems intuitively correct, but he wondered if they needed to receive legal advice as to whether there were legal ramifications of an affirmation of the letter by Council. He wondered if that needed to be discussed privately in executive session.

Mr. Pagliarini stated that was up to Council's discretion. Typically legal advice relating to contracts is done in executive session.

Mr. Nickels moved as a point of order to obtain legal advice in a brief executive session about the motion before voting on it to make sure they fully understand the ramifications of adopting it formally as a Council; motion seconded by Mr. Santos.

Mayor Page objected and stated that they are trying to do this in the public arena.

Mr. Pagliarini said that the current motion was made during the comment period to go into executive session for legal advice.

Mr. Smith stated that he would not vote in favor of an executive session; this was too delicate an item to go into executive session and the Town's business should be discussed openly.

Mr. Santos stated that if all of Council had known this would come up, then probably Mr. Smith would be right. Mr. Santos said this was a surprise to him, but apparently some people knew about it. He wanted to make sure that Council was doing the right thing legally.

Mayor Page called for a roll call vote on the motion to go into executive session. The motion failed with 7 voting against and 2 voting in favor. Mr. Nickels and Mr. Santos voted in favor.

Mayor Page referred back to the original motion which was to approve Mr. DeMoura's letter.

Mr. Nickels asked what accepting the letter would mean. Are they formally accepting a position that has already been published on the internet and already sent to the developer under the Town Administrator's signature?

Mr. Gawrych stated that this was generated by full Council and the contract was signed and approved by full Council with a directive to the Town Administrator to make a determination as to whether it met requirements of the contract or not. The Town Administrator reviewed it and deemed that it did not meet the contract requirements and therefore wrote a letter and sent Council a copy. Council is saying that as a body they approve the letter. If they accepted it on the front end, they are agreeing to close that contract on the back end.

Mr. Nickels asked Mr. DeMoura if he wrote that letter of his own accord without consulting Council. Who directed him to write that letter?

Mr. DeMoura replied that there was discussion at the Council level to examine the project and determine whether a sufficient number of parking spaces were included to meet the public funding requirement. The letter stated that a sufficient number of parking spaces were not provided.

A roll call vote carried unanimously to approve the letter that was written in October by the Town Administrator to the developer's legal counsel.

Mr. Gawrych said to follow that action and to continue the discussion, the developer now knows that he cannot provide the number of parking spaces that the Town requires for the project. The natural process for him would be to amend the process and submit something new. This has been going on for a while now and it has become clear that it cannot be achieved. Town government should not be involved with assisting this project with government money and this Parking License Agreement should be ended and put to bed.

Mr. Gawrych moved to deny any new proposal that may be put forward or submitted by the developer/applicant pertaining to this contract; motion seconded by Mr. Glasson.

Mr. Glasson said that he appreciated the comments by Mr. Gawrych. If it was not clear to anyone, a vote on the motion will end any public dollars going into an office building for parking spaces. There will be zero public dollars spent at any level on this project. He added that any Council Member or the public can call or e-mail him when an item is placed on the agenda that they have a question about. He said it is sad to see that mutual respect does not exist between Council and the public and between Council Members. They brought this to the table to put an end to something that has been fought over for the last two and a half years.

Mr. Santos pointed out that maybe that is why some of the audience is a little bit hesitant. Not long ago, Mr. Glasson wrote a half page in the *The Moultrie News* about Mr. Santos taking items directly to Council without going first to committee. Mr. Santos said he did not find out until last Friday that this item would be on the Council agenda. It did not go to committee first as Mr. Glasson postulated so profusely in his article. Mr. Santos said they had recently decided that items would go to committee first and then go to Council. Apparently that did not happen with this item. It appeared on the agenda out of the blue and everyone got concerned because they did not know what was going on or what might happen. Apparently some members of Council knew what was going on since it sounded rehearsed and everybody knew what they were going to say. Mr. Santos said he was hesitant to approve the letter even though Mr. DeMoura had done an excellent job on it and he agreed with the letter, but he and many citizens were caught off guard when this item suddenly appeared on the agenda.

Mayor Page replied that she believes that some of her Council Members have had the same feeling about some items that Mr. Santos had put on the agenda.

Mayor Page called for a roll call vote. The vote was unanimous in favor of the motion.

CORRESPONDENCE AND PUBLIC STATEMENTS

Mayor Page called people forward who wanted to speak about the road closures at The Groves.

Barry Wolff, 1468 Pocahantas: Mr. Wolff had an objection to closing off The Groves. From the minutes of the Transportation Committee meeting of February 2nd, it was estimated that traffic in The Groves would generate 2,000 trips/day. Those 2,000 trips will now go out to Coleman Blvd. without the access to get out to Johnnie Dodds Blvd. With everything that is planned and already approved, they are looking at 800-1,000 more housing units in the Coleman corridor. Traffic studies have no way of planning for those increases. He said he lives in the Old Village in Mount Pleasant. McCants and Center Streets are connected by Fairmont and Royall Streets. It has been a connection to Rifle Range Road forever. If you close The Groves, you push the traffic over to Cooper Estates and you will have to close Cooper Estates. Residents get tired of the traffic in the Old Village so they are going to ask Council to close the Old Village. This would be opening Pandora's Box. You cannot do it.

Mike Reynolds, 1025 Lansing Drive, The Groves: Mr. Reynolds has lived there for 24 years. When he bought his current home on the corner of Lansing and Japonica Streets, there was no Whole Foods, no Trader Joe's. As part of the group that volunteered to spearhead this effort, they tried to consider their own neighbors in The Groves. The comments earlier were that this needs to be solved for both communities, if warranted. He suggested closing off Cottingham on the frontage road and give them both back their neighborhoods. Some have said they do not have a neighborhood; they have four streets that people cut through every day. Mr. Brad Morrison has numbers that indicate 42% of the traffic is cut-through every day. All they are asking is that they will be able to have a community neighborhood and not a traffic through-way.

Mary Stuart Murphy, resident of The Groves: She has lived there since 1984 and her street, Lakeview, is not as impacted as Lansing. They have been discussing this for years and they have tried to preserve The Groves,

but surroundings have outgrown the neighborhood and they are known as the cut-through neighborhood. They do not have a solution, but somehow they must stop the cut-through traffic in their neighborhood. She appealed to Council to help them with this problem.

Carol Bischoff, 1022 W. Lakewood Drive: She said her 95 year old father built his home in The Groves 50 years ago and raised his family there. The entire family still lives in Mount Pleasant. They are all registered voters and were very disappointed that their father was not included in the original survey, given the data collected and the opportunity to express his thoughts and opinions on this very important change in the neighborhood. He is not in favor of blockage to the neighborhood. There are other less intrusive alternatives to be tried first. Because of this, she questioned the method in which this survey was conducted. Other residents were also not informed. She asked Council to move forward with public hearings so all affected will have the opportunity to be involved.

Jim Algar, 977 Tall Pine, The Groves: Mr. Algar said that originally Lansing went all the way across to Mathis Ferry. Through the years, it was decided that a major highway was needed to cut through Lansing. He grew up on Lansing and his parent's house is still there. Twenty years ago, his mother demanded that they put in stop signs because people were coming through much too fast. He said he lives in that neighborhood now and has seen it grow and now they have big businesses around and it is used as a short cut. The Tri-County area is growing and everyone knows about this place because of the internet. They are going to deal with more people than anyone can imagine. This neighborhood was not designed to have people driving through it. Houston-Northcutt was designed for that. More people and businesses are coming and the business corridor will cut through the neighborhood because it is the shortcut and the easiest way to do things. We do not need to do it the easy way, but the right way, he said.

Tom Keagy, 980 Lansing Drive: This proposed plan will change lives in The Groves, and will probably save a few. Traffic is getting ridiculous and they all know that. The plan has changes and inconvenience that they all will share. If they do not try this plan, they will forever be part of the traffic

pattern that exists today. More and more people will use it when they find out about it and it will be even more inconvenient. He said it is already hard to get out on the frontage roads, but wait until all these businesses open. With this plan, they will need to enter from Lansing and Cliffwood. It addresses an important point. If any roads are open to the frontage road, then the traffic will find its way through.

Alan Bischoff: He said that his father is totally against the road closures and they will move in with him soon to help him out. The unintended consequence that he and others have seen at The Boulevard is with cars parking in other peoples' neighborhoods. There are other things that can be done; sidewalks, road warnings, crosswalks, etc. that could help slow traffic. Closing off the roads will cause people to go over to Houston-Northcutt or Cottingham.

Gary Awkerman, 979 Lansing Drive: He said that about 2 years ago, he had the opportunity to start working with The Groves leadership group re the cut-through issue in The Groves. They began to work with the Transportation Department and he found that they are a small department with excellent skills who helped them and never told them what to do during those two years. In September, they finally came up with a plan to close streets on the by-pass side. It was very aggressive and they no idea what would happen. They set up a survey group with 10 – 15 people for over a month. They documented every house they went to and thought maybe they would get a majority to agree in the survey, but they got a landslide. That indicated there is a need to do something about it.

Carol Lewis, 1026 Cummings Circle, Cooper Estates: She said she completely agrees with those who live in The Groves. She was relieved to hear that Town Council voted to take it to the Transportation Committee. She agrees that The Groves has a big issue, but so does Cooper Estates. By closing the roads at The Groves, it will negatively impact Cooper Estates. A little over a year ago, her son was hit by a car going too fast on Cottingham. He was 14 and on the edge of the road. These car drivers are in such a hurry on a daily basis. They cannot wait to go around, so the driver's side-mirror knocked her son in the face with resulting surgery, dental surgery, and a

broken collarbone. How many lives does it take to slow down traffic in the neighborhood with a speed limit of 25 mph? She sees it every day; they run the stop sign going 40-50 miles an hour. She said her neighbor got hit walking her dog. She said they must come together as a community to resolve this.

Alexis Reeder, 1025 Cliffwood Drive: She offered thanks for supporting her neighborhood. She said it is her understanding that the issue of speed bumps has been brought up and the Town, for whatever reason, has not been very receptive to that. So the Transportation Committee came up with the road closure idea. The cut-through traffic affects their safety and quality of life and cars are speeding on all the streets in her neighborhood. Picture all this going on in front of your house; how would you react to it, she asked. She wishes to maintain their safety and she supports the road closures.

Matt Maurer, 927 Lansing Drive: He expressed thanks for all the work done so far. He wanted to talk about the survey and as part of the survey group, they spent thousands of hours taking papers to their neighbors indicating what they were proposing and asking them to sign yes or no, and to make comments. Those not surveyed did not answer their door on several attempts. Out of the 228 homes, they were able to contact 170. Ninety percent of those 170 said 'yes.' Ten percent said 'no.' He said they realize that Cooper Estates has a problem with this and they would like to see them come together to fix both neighborhoods. They need to work together as a group to solve this growing problem.

Donna German, 1020 Tall Pine Road; The Groves: They have owned their home there since 1985. They worked with the committee involved with getting stop signs over 20 years ago. She thought this issue was summed up today when ABC news released a statement about this meeting tonight. They said that the Town was getting ready to close four major throughways from Coleman to Johnnie Dodds Boulevard. Houston-Northcutt is a major throughway; their neighborhood streets are not. She said that they had a dog hit and killed while her husband was out walking early one morning. Two teenage girls were cutting through and speeding

through the neighborhood to get to school. It may be a child that is hit next, she said. Let's close the roads. The neighborhood has worked together for years trying to solve the problem; they have proposed speed bumps, closing a road, etc. People have put a lot of time and effort into this and they have come up with a solution and we need to support them, she said.

Aimee DuRant, 1060 Groves Ct.: She said that they have many anecdotes of children having to dodge cars, runners having to dodge trucks because they are, unfortunately, a thoroughfare. She said she has had drivers literally drive into her front yard in their hurried effort to reach Coleman Boulevard from Johnnie Dodds Boulevard where her children and twelve other kids exit the bus at the bus stop. This is more than needing to mitigate traffic, they have to eliminate this traffic. Speed bumps are helpful, but the only way to address this problem is to completely eliminate it, by whatever means. She said there are seven ways to get in and out of their neighborhood of 228 homes compared to other neighborhoods in town with one or two.

Randy Brown, corner of Lansing and Shannon Drives: He said that he and his wife have no children and they love convenience. He was in favor of closing roads on the frontage road side and being a little inconvenienced because it is the right thing to do. The Groves is a gem of a neighborhood and all they are asking for is the same thing that all the new high density communities are getting; one way in and one way out for safe streets; a place where they do not have to worry about someone running a traffic light while texting. He said he sees people run stop signs all the time when he is working in his yard. He has called the police who have been helpful and they have actually camped out at his intersection and within 20 minutes they have pulled someone over.

Jeff Denison, 926 Lansing Drive: He believed that going back to the Transportation Committee was an excellent decision. They ride bikes in the neighborhood all the time. Speed enforcement will deter traffic and a few more stop signs are probably a very good idea. When speed enforcement is done, a lot of the people who are ticketed live there. Speed humps and a few extra stop signs will work. Blocking off a public road paid for with tax

dollars will create more traffic on the few that are left open. If they decide to block streets, it should first be done with temporary concrete barriers to get an assessment of what the people think because it may not be what they really want.

Mike Evans, 903 Cliffwood Drive: He said he owns one of four houses on the frontage road and it appalls him that this has gone on for four years and no one from the Town or the Civic Neighborhood Association has knocked on his door. This is wrong, he said.

Margaret Ann Michaels, 1511 Ben Sawyer Blvd.: She lives at the corner of Ben Sawyer and Central Drive so she lives with traffic too. If Houston-Northcutt is too far for the public to go without another cut-through and the driving public has determined that they need another way through, they need to think about that. If they decide they are going to put the needs and priorities of the people who live in those neighborhoods over the needs and priorities of the driving public, which she believed they should do, then they have to make sure that those shortcuts are not shortcuts. It is very simple, if it is not a shorter way to go, people will not use it. Make it so that it takes more time to get through. They will want to go to Houston-Northcutt because they want to be able to drive 45 mph. Putting up more crosswalks, more four-way stop signs, bigger and higher speed bumps, police ticketing more people, etc. will correct the problem because it will be inconvenient and will take more time to cut through.

Mary McManus, 1004 Lansing Drive: She said she was born here and she invited people to sit in her yard any Saturday/Sunday and they will see 43 cars go by in less than three minutes. She said her 90 year-old father walks with a walker and he has almost been hit. She said that Council should do something about this; do their job.

Bryce Westcott, 1061 Cottingham: He said that everyone is affected by cut-through traffic in both The Groves and Cooper Estates. He did not know if closing the roads is the right answer. He said 3,800 cars/day go by his house and he did not want another 2,000 from The Groves going by his

house. There has to be a cohesive comprehensive plan between both neighborhoods to resolve the cut-through issue.

Dave Browning, 905 Short Court, Cooper Estates: He said that Cottingham is a known thoroughfare. Closing down four public roads in Mount Pleasant is not a business the Town should get into. It is tax payers money that will pay for this. There is a lot of traffic in this town and closing down public roads is not a great way to deal with it.

Jennifer Beauvais, 1109 Calm Water Court: She said she lives right off Rifle Range Road. She wanted to speak about the proposed Shem Creek parking garage. She thanked the Mayor and Council for having the wisdom to vote not to allow any other amendments to pass. She believed that would not have been possible without the hard work of Jimmy Bagwell and Gary Santos. Mr. Santos is the one member of Council that has seen taking the time to really listen to what his constituents have been saying and asking for. She was disappointed that there are people that took campaign contributions from this developer and then voted in favor of doing him a favor in return. It certainly looks like quid pro quo. She reminded that every vote Council took on this issue is a matter of public record. Anyone who voted at any time to support putting a monstrosity of a parking garage in such a beautiful area will never get her vote again, she said.

Brad Bradford, lives in the Indian Village: He said that Paul Gawrych and Ken Glasson apparently tried to resolve tonight without public comment the issues that people came here to speak about. He asked them what they had done because he did not understand.

Mayor Page stated that this was a public comment period and was not the time for Council to interact with him.

Mr. Bradford said he had a couple of observations to make. The Town Administrator said they are considering taking something away from the developer of the Shem Creek parking garage. That means it is a done deal and a formality. When we consider giving the developer something more, we can always talk about it. Mr. Bradford said he wanted to express his

disdain for those town leaders who are defiling this community for a couple of developers.

Barry Wolff, 1468 Pocahontas Street: Mr. Wolff said he has been opposed to this garage from the beginning. From what he understands, 30 feet of this project sits in the Shem Creek Overlay District. Looking at the zoning, 40 feet of this building should not exist. He said he did not recall any zoning hearings or public hearings to change the zoning of this property, so something has been wrong from the beginning. When the project first came up in 2013, it was described on the agenda as 'A text amendment relative to a proposal on Coleman Boulevard at Coleman and Mill Street.' If it had said 'A request to build a 55' tall building with two floors of parking and 43,000 feet of office space,' there would have been a lot of public outcry instead of the way it turned out.

Charlotte Basala, 1619 Marsh Harbor Lane, Toler's Cove: She said she is 16 years old and a junior in high school. Mount Pleasant is beautiful and she is lucky to live here. She said her generation is embracing the idea of change and she is not against that. She wanted residents to think about the things that they see when driving around here. Are there things that have remained the same since you were growing up here? The idea that just because you can [do something] does not mean that you should. Please consider the repercussions of your actions today and what you will be changing forever. At some point the charm will be lost with more people moving here every day. Please let your good integrity be our legacy, she said.

Don Muglier, 1881 West County Drive, Park West: He would like to change the focus from where they have been to the future development of Cambridge Square at Park West. When they came in 2008 looking for a development to move into, they were very attracted to Park West. One of the reasons why was a brochure given to them in 2008 based on a 2006 planned development of Cambridge Square which Town Council had approved. Cambridge Square led them to move into Park West. He read a portion of that 2008 brochure. He said that when this new proposed development comes before Council, the new density that they requested in

no way reflects what they bought into when they decided to move to Park West in 2008.

Brandt Horton, Old Village Drive: He said that he continues to read news stories or other public forums that the Town already has densities and zoning, so they cannot change it and people are coming here to live. He said that is not accurate; you absolutely can change zoning. When we continue to allow increased traffic counts and these multi-family density areas to be built, it will cause 2,000 – 3,000 more cars per day during peak traffic times. Council is allowing more and more cars on Coleman Boulevard where there are only four lanes of roadway. If you keep doing this and allowing more density, where are the cars going to go?

Diana DuPuis, 1927 Falling Creek Circle: She said that it has come to her attention that many Council Members and other members of the community seem to think that the people who were born and raised in Mount Pleasant and are at retirement age are the ones that are annoyed with the way Council is handling situations. That is not true at all, she said. She is 36 years old and over thirty of her friends would have liked to be at the meeting tonight, but were not able to attend. There are a lot of things that a lot of people are upset about with this Council. She said they moved to Mount Pleasant because they love it. She has owned property in Mount Pleasant for ten years and has lived here for 13 ½ years. She understands growth, but at some point Council has to decide where to use public dollars for the good. They need to find a way to have developments that have green space which allows predatory and migratory animals to live and thrive next to people without encroaching on them or them on us. Why not begin to realize that what draws people here is the unique looks of Mount Pleasant. She said she is originally from New Jersey, she went to high school in Sarasota, Florida, she went to school in Madison, Wisconsin and she has lived in places that are concrete jungles. She moved here because it is not. She does not want Mount Pleasant to become like that. You change the whole landscape by putting in a monstrosity of a parking garage that nobody wants and communities like The Boulevard where 'hipsters' want to live as described by a developer at one of the meetings. She said she represents that generation of hipsters who do **not** want to live there. The reason why

residents of The Boulevard are parking on Coleman Boulevard is because they have to pay at the parking garage where they live. She asked how many of these multi-family high density developments are going to be built when there are vacant units there now?

Burt Karmiel, Mary Street: Mr. Karmiel said he is also disappointed with most of Council who are siding with developers. Some do not stand up for the citizens. No names need to be mentioned because we all know who they are. The Council was entrusted to do the right thing and to allow the right buildings; not The Boulevard and not garages and not 70 foot buildings. Council is siding with developers and not with the population. He recently spent five months in California for medical reasons and he observed smaller coastal communities that have kept their integrity and only have one and two-story buildings. That is something that has not been done here and Mount Pleasant is going further astray. Citizens have been sold a bill of goods about urban sprawl. After these large things built, there will still be urban sprawl and you will really have gridlock. San Diego County insists that before a building is put up, they must put up PVC pipes to indicate the height/width of the building. If people could be shown that here, they would not allow it.

Sarah Jacob, 1152 Village Creek Lane: She spoke on behalf of affordable housing. They need to remember that not all residents have a lot of money. Housing is needed for seniors. There are seniors in this community who live on Social Security, with the average payment of $1200 a month. How much rent do you think those people can pay at The Boulevard? This city has teachers, policemen/women, people who need homes in our community who are doing a public service. There are people taking care of the elderly who cannot afford to live here. There needs to be affordable housing built in this community.

Greg Sidwell, 1721 Jane Basford Place, Park West: Mr. Sidwell applauded the decision on the proposed parking garage. His primary interest, along with others, is Cambridge Square. He urged Council to disapprove it based on the traffic impact. That traffic will impact both Park West and the environs across Highway 41, which has a traffic problem

already. It should be disapproved for the incompatibility with the existing neighborhoods and the Town's Comprehensive Plan. He recommended disapproval based on the density of the housing in the proposal and the overall degradation of the quality of life in Park West.

Steve Gilder, 2135 Waldon Park Drive, Park West: He echoed what Mr. Sidwell said about disallowing the development of Cambridge Square. The traffic impact analysis is seriously flawed. It understates the tremendous load that will be put on Park West Boulevard which the traffic analysis shows to be overloaded already. There will also be an effect and impact on the schools in the Park West community. Please disallow the Cambridge Square development, he said.

Joe Bustos, 649 King Street, Mount Pleasant: Mr. Bustos reminded that Mount Pleasant purchased 40 acres of marsh and high land on the west side of Shem Creek to prevent condos and a marina being built on Shem Creek. Additionally, an overlay district was established on the eastern side to prevent a hotel that was ultimately disapproved and to prevent anything from encroaching on the waterborne business area of Shem Creek. He thought the decision was wise to not allow public money for this proposed garage. Do not let the developer get off by providing an incomplete development by simply excising the public funds, he said. If the developer does not deliver on everything, it should be disapproved and go back through the planning process. He concluded by saying that the comments tonight have been about over-density and Council needs to pay attention to that.

Dave Shimp, 1551 Ben Sawyer Blvd: Mr. Shimp said he is on the board at Simmons Point and also on the board of the Save Shem Creek Corporation. He had been coming to the commission, committee and Council meetings and he is frankly tired of coming to all these meetings, but he added that he is not going away and the people here are not going away. The ground swell is growing. He pointed out that he is equally disappointed and distressed that the Council seems to be in a confrontational situation with a lot of its citizens. That is not good governance. He said he applauded the vote tonight to take the public funds out of the garage project, but as

Mr. Bustos said, that project needs to be stopped. He stated that Council are their elected representatives and he asked that they please listen to the citizens Referring back to the poem read earlier, there is one boat on one river. Council's friends and neighbors are telling them that this boat is off course. Please listen to the residents so they can right the ship and get it back on course.

John Collins, 1551 Ben Sawyer: Mr. Carland stated regarding time and perception that if we had more of the former, the latter perception would not be nearly as suspect and negative. Jamming this item onto an already full agenda created suspicion. The perception is what has been done for special interests, whether or not that is the case. Regarding time; how can the Council, the Planning Commission/Committees, the Planning Staff, etc. do justice to any of these plans? They cannot, he said. Stop this runaway train. A three-day notice for this item is absurd and not nearly enough. He asked that Council do the Town of Mount Pleasant a service and put a stake in the heart of this project which does nothing to benefit the Town and does much to detract from a beautiful and significant part of their heritage.

Margaret Michaels, 1511 Ben Sawyer Blvd.: Ms. Michaels said that with the urban sprawl going up Highway 17, this Town will have to do what Honolulu is doing right now, build a monorail. She just moved here from living in Honolulu for 11 years. If residents here think they have a beautiful place to live, they also have a beautiful place to live. She addressed public transportation. The Town should keep the rustic sand and pebble seafood parking lots down at Shem Creek. They are part of the ambiance of Mount Pleasant just like the Trawler's lighthouse. She suggested running an attractive open air electric trolley system with informed drivers wearing hands-free microphones as they point out the historic locations along the route and give factoids to the visitors and the residents. A trolley is not just transportation; it is a tourist attraction and hopefully a free one for all riders. It can run from downtown Charleston to Patriots Point, across the bridge to show off the bridge, the golf course, the Yorktown and the Old Village. Show visitors Mount Pleasant Towne Centre so they can go shopping. Let the developer build his parking garage somewhere on

Highway 17 on dry land that does not encroach upon the marsh. Those Hospitality funds can be spent on a trolley system instead.

Andrea Lewis, 1656 Seewee Fort Road, Park West: She wants Council to think about the quality of life. Just say no to the Cambridge Square variance because that is a big deal. She said they want quality over quantity.

Martie Adams, 409 Royall Avenue: Ms. Adams said she is a member of the Save Shem Creek Corporation board. She had two concerns about the still lingering possibility of a parking garage being built on Shem Creek. The builder can still do it, but will not now have Town money. She said their concern is that the garage encroaches into the marine district which is an area protected by zoning regulations. The CRAB report addresses economic growth and the enhancement of the beauty of the town. The CRAB report says that selected areas along Coleman Boulevard, such as Shem Creek must be protected. Building heights there should be no higher than 40 feet. The report says that Shem Creek is a natural and historic asset of Mount Pleasant. It is a public treasure owned by the hearts and souls of the citizens of Mount Pleasant and careful consideration must be given to protect Shem Creek. Building a parking garage on Shem Creek is not protecting the public treasure. To allow this area to develop in a way that distracts from its historical coastal village character is to make our town look like Anywhere, USA. We want to preserve the character of Mount Pleasant, not just for sentimental reasons. Studies show that community distinctiveness is a critical element for economic success. If we want prosperity, we must retain the character of Mount Pleasant and Shem Creek. If we need garages, there are other places to build them. The possibilities for increasing ugliness, noise, traffic congestion and shrinking open spaces in our town are numerous.

Jim Owens, 1197 Island View Drive: Mr. Owens said he is a native son and a lifelong resident. He applauded what was done tonight by eliminating the public funds. He was disappointed that they cannot go further and eliminate this garage altogether. He showed some slides of Shem Creek and the site plan of the garage project. It encroaches 30 feet into the Shem Creek Overlay District. How and why and by whom, he is not sure but he

would like to get to the bottom of that. It is clear in the zoning interpretation; it would not extend more than 30 feet. It is outside the 30 foot limitation. Mr. Owens concluded, "We will take our Town back. That is a promise."

Jimmy Bagwell, 207 William Street: Mr. Bagwell said he had been coming to Council meetings for over a year and the residents have been telling Council that they are not a small group of zealots or agitators or whatever. The people in this town are tired of this. He said he had not heard one person stand up and say this is the greatest plan they have ever seen. Everyone he has heard had said enough is enough. The Boy Scouts were in here earlier to get their citizenship merit badge. Mr. Bagwell said he would like to give all these folks that are sitting in this audience a citizenship merit badge. Without their participation and concern for this town, he doubted that this action would have been taken tonight. It is only their efforts and their communications to Council to let them know how they feel, that Council turned this thing around. He said he applauded Council on eliminating the public money, but they also need to rescind the Coleman Overlay Plan. We need to take back our Coleman Boulevard. A developer asked him the other day his vision for the Town of Mount Pleasant. Mr. Bagwell responded that the one thing he knows is that The Boulevard and that garage are not in his vision for the Town of Mount Pleasant. He said he has lived here all of his 66 years. He concluded that Shem Creek is the heart and soul of this town. They need to save it and do away with this garage and turn around the plans that are in place now.

Nancy Fairless, 1111 Simmons Street: Ms. Fairless said she had some concerns but would wait until someone who could speak better and do research better to address her concerns. Those things that Jim Owens was pointing out and the 30 feet that extends out into a different zone where business is not allowed should be looked at hard. There is much gray area in that and other developments in this town. For the rest of her two minutes, she thought everyone in the audience should take a long look at what Mr. Owens was trying to point out and they need to get that garage stopped.

Jeff Kirkland, 817 Pitt Street, Old Village: Mr. Kirkland said he has been coming to these meetings for 18 months like a lot of other people. Council has finally come to a fork in the road. He is glad to see some Council Members changing. For over 18 months the Town has tried to allow developers to shoehorn things into areas where they did not need to be. Planning has found some rather creative ways to allow things to be put into areas where they should not be. He noted that now that Council has come to a fork in the road, they should be careful about what goes on behind closed doors at Council and staff levels where the laws that Mr. Owens was trying to show are adhered to, to the letter.

Mayor Page announced a 5 minute recess at 8:40 p.m.

The meeting was reconvened at 8:47 p.m.

PLANNING – New Business

First Reading: An Ordinance to zone PD-CD, Planned Development-Conservation Design District, two tracts of land comprising lots 12 and 28 located in Pepper Plantation subdivision. (Ord. No. 15010)

Ms. Farrell introduced the ordinance.

Mr. O'Neal moved to approve first reading of the ordinance; motion seconded by Mr. Smith. The motion carried 8 – 1 with Mr. Gawrych voting nay.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for the annexation of three parcels of land comprising approximately 2.92 acres, located on Weaver Circle and Hungryneck Boulevard. (Ord. No. 15011)

Mr. Smith moved to defer items 2 and 3 for up to five months; motion seconded by Ms. Stokes-Marshall. Motion carried unanimously.

First Reading: An Ordinance to zone AB, Areawide Business District, and HNB-VR-OD, Hungryneck Boulevard – Venning Road Overlay District, three parcels of land comprising approximately 2.92 acres, located on Weaver Circle and Hungryneck Boulevard. (Ord. No. 15012)

[Item deferred for up to five months with previous item.]

First Reading: An Ordinance to amend the Dunes West Planned Development District ordinance pertaining to a portion known as Cambridge Square. (Ord. No. 15013)

Mr. Smith moved to deny items 4 & 5; motion seconded by Mr. Glasson.

Mr. Glasson stated that if this is denied he would encourage the developer whom he has already spoken with as well as some of the residents to have the concerns addressed. He believed there was a middle road there that could be met.

The motion carried unanimously.

Request for Impact Assessment and Conceptual Plan approval for a development to be known as Cambridge Square located in Park West at Park West Boulevard and Greymarsh Road.

[Item denied along with the previous item #4.]

First Reading: An Ordinance providing for the annexation of a parcel of land located at 1093 Washrich Court, AKA 1093 Panther Court, FNA 1319-C Myrick Road, identified by TMS No. 532-08-00-037. (Ord. No. 15014)

Mr. Carrier moved to approve first reading of the ordinance; motion seconded by Mr. Glasson. Motion carried unanimously.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance providing for the annexation of three tracts of land comprising approximately 10.07 acres located on the north side of US Highway 17 North in the Ten Mile Community. (Ord. No. 15015)

Mr. Smith moved to defer items 7 & 8 up to five months; motion seconded by Mr. Glasson.

Mr. Nickels asked if there is a stated reason for this deferral.

Ms. Farrell replied that nothing was provided other than a request for a deferral.

Mr. O'Neal said he would vote no against this.

Mr. Glasson said he had not spoken with anyone recently, but this is a workforce housing project and they want to see if there is consideration relative to the sizes they are putting in and to see if there is favor among Council Members for a redesign.

Mr. Gawrych asked Ms. Farrell to whom this would come back. Ms. Farrell replied that she assumed it would be directly to Council. Mr. Gawrych stated that they should realize that if they deviate this plan in any way, that is not the right course of action. Ms. Farrell agreed.

Mayor Page called for a roll call vote on the deferral.

The vote to deny the deferral of items 7 & 8 carried 6 – 3. Those voting nay were Messrs. Carrier, Gawrych, Nickels, O'Neal, Santos and Mayor Page.

Those voting aye were Mr. Glasson, Mr. Smith, and Ms. Stokes-Marshall.

Mr. O'Neal moved to deny Items 7 & 8; motion seconded by Mr. Santos.

Ms. Stokes-Marshall stated for the record that this is an item that a developer is attempting to address the need for affordable workforce and senior housing in the Town of Mount Pleasant. The Comprehensive Plan calls for workforce and affordable housing in the Town. As opposed to Council just turning this project down, she would like to see Council at least make an effort to try and work with and collaborate with those developers

who are attempting to address the need for affordable workforce housing in the Town.

Mr. Carrier said he sympathized with Councilwoman Stokes-Marshall, but they have been overrun with information from the county as far as density issues out there and public transportation issues. There is a lot going against this project and he did not think they should carry it forward much longer.

Mr. Gawrych said he would think that the action they took to not allow deferral would send a clear message that they do want to work with them for a better plan because the one they are submitting is not going to be accepted. They realize that if they come back in five months and they have changed it, it is not coming back to Council. They still have an opportunity, but they have got a way to go based on the location of that piece of property.

Ms. Stokes-Marshall stated that either Council is going to follow the recommendation of the Comprehensive Plan to address the need for affordable housing in the Town of Mount Pleasant or not. When the opportunity is presented, they want to think that we do not need affordable housing here. We hear the opposite from those people who work here but cannot afford to live here. She said she did not want the vote to just be a no without her commenting that this Council needs to give serious consideration to affordable housing in this Town. It is a problem.

Mr. O'Neal said he did not want this to come across as a vote that is not for workforce housing. The issue is that this area in Charleston County is zoned one house per three acres. They propose 65 but it is outside of the urban growth boundary. The other thing that troubles Mr. O'Neal is that in 2013, they ran numbers on workforce housing and for a household of four, it was a $287,000 house. At today's interest rates, it is now a $315,000 to $320,000 house. We cannot cap the price on workforce housing any more than what the growth allows for. To potentially have 65 houses where we could have had three houses at $320,000 per home is more than Tupelo which is not a workforce housing development that is right next door and is

one unit/acre with cluster development. He said he did not want it to be misconstrued that this vote is against workforce housing and he wished they could get it at an affordable price. Unfortunately, this is just not the right place.

Ms. Stokes-Marshall said she understood all of those ramifications, but she felt the need to put that out there.

Mr. O'Neal said he wanted the public to be informed about what this project/proposal was and why they voted that way.

Mr. Smith said he drove out and looked at the site where eight houses are proposed along Hwy. 17 and he echoed Mr. O'Neal's comments. He said he was in support of the spirit of workforce housing, but he cannot see having 20 condos there in that space where 8 homes are proposed to go. He said he would not support this in that area. It is too dense and does not fit that area.

Mr. Glasson concurred with Mr. Smith's comments about the density. He would allow the developer to come back with a redesign and waive the one year waiting period.

Ms. Farrell reminded Council that this was a motion to deny both first reading of the annexation as well as zoning. If annexation is denied, that does provide the ability for this developer to approach Mount Pleasant Waterworks for the sewer and potentially develop in the county.

Mr. Smith said they would have to sign the agreement letter that Waterworks and the Town has and they would have to annex in if water/sewer becomes available.

Mayor Page said they could amend the motion to take the annexation out.

Mr. O'Neal said he was willing to amend his motion to allow for the annexation. He would withdraw his motion for Item 7 only. Mr. Santos withdrew his second to the motion.

Mr. Gawrych stated that the motion is that they want to annex the property but not grant them zoning tonight. That gets to be quite un-American in his opinion and he cannot go there. Talking about workforce housing, there are a lot of people tonight made comments about too much density, more quality over quantity. He said that one day they are going to get seriously aggressive one day about workforce housing. The government has to get involved. We cannot tell people what they are going to charge. We realize they are past the urban growth boundary line.

Mayor Page said it is also bonus density. She asked for an explanation of the bonus density issue with workforce housing in this particular development.

(Mr. Santos left at 9:01 and returned at 9:05 p.m.)

Ms. Farrell stated that workforce housing does allow for bonus density. That particular type of development could have up to eight units/acre. There is a 20% requirement for workforce housing and the balance can be market rate units. So there is additional density.- Mr. O'Neal already addressed that with this particular development vs. what can be accomplished if the property was simply annexed, they would only be able to have one unit per three acres for a total of three units. There is the ability within the code for cluster development if they set aside 50% open space. If that occurs, the density can be changed to a 1:1 so the maximum would be a total of ten units on the property. What has been proposed and is allowed through workforce housing is the potential to go all the way up to 80 units total for this development (8 units/acre).

Mayor Page said obviously it is a complicated issue. One of the things that the Town does well is cluster development and she appreciated that it is 50% open space within the development. She said there are things in place to get what appears to be more density without actually being more dense. With some other items such as workforce housing or mixed use, there are bonus densities allowed.

Mr. DeMoura added that the applicant can receive water/sewer if two conditions are met. One is that it has been denied and second is that it is

consistent with the Comprehensive Plan. It is only consistent with the Comprehensive Plan if they exercise the workforce housing component which is proposed. Is that correct?

Ms. Farrell replied in the negative. The consistency with the Comprehensive Plan is based on the future land use map (density). In this case, the map indicates a total of 10 units, the 1:1. But this could be developed in Charleston County.

Mr. Carrier said they were discouraging this being developed by Mount Pleasant. He asked Ms. Farrell to explain R3 in the letter from Charleston County. Ms. Farrell replied that it is the same as the Town. If this annexation is denied and the developer got past the water/sewer issue, Charleston County would not be inclined to have a development of this density.

Mr. O'Neal moved to accept first reading of the request for annexation of the 10.7 acres in Item 7; motion seconded by Mr. Santos.

Ms. Stokes-Marshall asked if the applicant wanted to move forward with the annexation.

Ms. Farrell replied that this is first reading; they will have the opportunity to make a different request before the final reading.

The motion carried 7 – 2 in favor of annexation. Mr. Gawrych and Mr. Glasson voted nay.

Mr. DeMoura read *FIRST READING BY TITLE ONLY.*

First Reading: An Ordinance to zone PD-WFH, Planned Development – Workforce Housing District, three tracts of land comprising approximately 10.07 acres located on the north side of US Highway 17 North. (Ord. No. 15016)

Mr. O'Neal moved to deny Item 8; motion seconded by Mr. Santos. Motion carried unanimously.

Mr. Glasson stated that when Councilman Smith moved to deny Items 4 & 5, he (Glasson) made a comment to encourage the developer to meet with the residents following the meeting; however, he neglected to move to allow the developer to waive the one-year waiting period requirement for them to get together because waiting would not benefit the developer or the community regarding Cambridge Square. He would like to move to waive the one-year requirement so they can continue on with this development.

Counsel Pagliarini stated the applicant would have to request the waiver.

Mayor Page stated that the developer was present and she asked if he would like to request that.

Kevin Steelman, developer for Cambridge Square: Mr. Steelman said he had signed in to speak and normally the applicant is requested to speak before Council votes on an item, but somehow that was missed. Nevertheless, as Mr. Glasson alluded, they have had a number of comments throughout this process and they have put the property back under contract and are trying to move forward with a plan for development that was put before Council and was denied. He said they are looking forward to working both with the Town and the Park West homeowners in going back to the drawing board to put a plan forward that would allow them to move this project forward. Mr. Steelman said that he respectfully requests that they waive the one-year waiting period so they can revisit their plans and come back with something that would be more appropriate.

Mr. Glasson moved to waive the one-year waiting period as stated; motion seconded by Mr. Gawrych.

Mr. Gawrych said that this would go back to the Planning Commission to start the process all over.

Mr. Pagliarini stated that is correct. The process will start over.

Mr. O'Neal said they are going to take up later an issue that came out of the Planning Committee that should a planned development agreement amendment come forward, that they would be required to wait sixty days for staff to review. That planned development agreement that came forward is sitting there and he asked that staff have at least 60 days to review it. He said he is okay with waiving the waiting period, but this is not an issue that is ready to come back before Council next month, at this point.

Mr. Pagliarini stated that it is subject to all typical requirements and it would go back through the process again with the normal allotted time frame to review the project.

Ms. Farrell said that proposal was specific to Development Agreements. This is a Planned Development zoning, but it does not have a Development Agreement with it. It would be four weeks before the meeting date for a submittal.

Mr. Glasson stated that imposing an artificial 60 day window is not warranted to be imposed at this point.

Mayor Page replied that it would in this case because this is about a Development Agreement, it is not a Planned Development.

Mr. Nickels asked the idea originally behind enacting a one-year waiting period. If a certain project is denied, they have to wait a year. He noted that developers routinely ask for a waiver of that requirement and he cannot think of a time when it has not been granted. Is waiting for a year done to encourage bringing a finely-honed plan to begin with or did this number come out of the blue.

Mr. Santos replied that some developers come back for another bite of the apple, like the one a few months ago. Council had a discussion about it at that time because they were coming back repeatedly and making staff drop what they were doing to go over it again to help them fine-tune their development. He believed that they need to start holding true to this requirement and when they come back, that development is done and ready to go. As seen recently, they keep coming back for a waiver and he

did not think it was fair to staff to have to continue to teach them what they need to do to get their development approved. He said that is his understanding of this issue.

Mr. Nickels asked if the waiver of the one year waiting period that was requested was not granted tonight, can Council 30 - 60 days from now vote to lessen that time period or does the waiver have to be decided now.

Ms. Stokes-Marshall said it is Council's decision whether or not to go for the full one year waiver or grant a waiver of a shorter period of time. She said they have had developers request a waiver for a lesser time than the one year. It is Council's discretion.

Mr. O'Neal asked if they bring a plan that is substantially different than the one they submitted, they do not have to meet the one year waiting requirement either. Is that correct?

Ms. Farrell answered if it is a different zoning request. She did not know if it could be answered exactly; they would have to see. The zoning request is obviously going to be to amend the Planned Development no matter what because this is a Planned Development. How substantially different it would be is something they would have to evaluate.

Mr. Nickels asked if Council decides not to waive the one year waiting requirement, does that mean they can come back in six months to ask for a waiver at that time.

Mr. Pagliarini said they can make another request for a waiver at that time.

Mayor Page called for the vote on the motion.

The motion carried 5 – 4 to grant the waiver for the one-year waiting period requirement for Cambridge Square (Items 4 & 5). Those voting nay were Messrs. Nickels, O'Neal, Santos and Ms. Stokes-Marshall.

PLANNING – Old Business

Motion to reconsider Final Reading of Ordinance 14079.

Ms. Farrell stated that final reading of this zoning ordinance was denied at the January Council meeting by unanimous vote. If Council votes to reconsider this item, a vote for final reading will be taken immediately thereafter.

Mr. Carrier so moved; motion seconded by Mr. Smith. The motion carried 8 – 1. Mr. O'Neal voted nay.

Final Reading: An Ordinance to rezone from AB, Areawide Business District, to AB-2 Areawide Business-2 District, two parcels of land comprising approximately 1.388 acres, located at 1426 and 1463 US Highway 17 North. (Ord. No. 14079)

Mr. Gawrych moved for final reading of the Ordinance; motion seconded by Mr. Smith.

Mayor Page explained that Council was reconsidering this final reading that had unanimously failed. Some Council members wanted to reconsider their vote. She called for a roll call vote.

The motion to approve final reading carried 7 – 2 with Mayor Page and Mr. O'Neal voting nay.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for the annexation of an approximately 0.07 acre vacant tract of land being a portion of what was formerly known as Howell Street, now known as Lymann Lane, such portion now identified by TMS No. 532-08-00-096 and shown on a plat recorded in Plat Book S-58 of the Charleston County RMC Office. (Ord. No. 14052)

Mr. Carrier moved for approval; motion seconded by Mr. Glasson. Motion carried unanimously.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to zone AB-Areawide Business District, and UC-OD, Urban Corridor Overlay District, an approximately 0.07 acre parcel of land located on the former Howell Street, near Chuck Dawley Boulevard now known as Lyman Lane and identified by TMS No. 532-08-00-096. (Ord. No. 14053)

Mr. Carrier moved to approve final reading of the Ordinance; motion seconded by Mr. Smith. Motion carried unanimously.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for the annexation of an approximately 3.0 acre parcel of land known as Lot 12, located at 1472 Old Rosebud Trail, Pepper Plantation, identified by TMS No. 615-00-00-147 and shown on a plat recorded in PB EH-978 at the Charleston County RMC Office. (Ord. No. 15003)

Mr. Glasson moved to approve final reading of Ordinance Nos. 15003 & 15004; motion seconded by Mr. Smith. Motion carried with Mr. Gawrych voting nay.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance providing for the annexation of an approximately 2.40 acre parcel of land known as Lot 28, located at 3515 War Admiral Court, Pepper Plantation, identified by TMS No. 615-00-00-159 and shown on a plat recorded in PB EG 978-979 at the Charleston County RMC Office. (Ord. No. 15004)

[Approved with previous item.]

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Final Reading: An Ordinance to provide for an amendment to Belle Hall Planned Development District Ordinance, as amended, by removing the 35% maximum site coverage limitation for a portion thereof. (Ord. No. 15008)

Mr. Gawrych moved to approve final reading of the Ordinance; motion seconded by Mr. Smith. Motion carried unanimously.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

Mayor Page asked the committee chairs to submit their reports to the clerk to expedite the meeting.

COMMITTEE REPORTS

Accommodations Tax Advisory Committee – Chris Nickels

The Committee met Thursday, February 5th to receive presentations from nine (9) applicants for the final grant period of the fiscal year. The Committee will report their recommendations to Council at the March meeting.

The Committee had discussion about the influx of hotel rooms to downtown Charleston and Mount Pleasant and how it would factor into future demand. Staff noted that marketing for "heads in beds" was becoming more critical. There is also a plan to form an East Cooper Hospitality Alliance for our hospitality partners to connect and network to bring more business and visitors to Mount Pleasant. Staff also introduced the new restaurant map.

Bids & Purchases Committee – Mark Smith

(No Meeting)

Economic Development Committee – Mark Smith

Mr. Smith reported that Jim Newsome, President and CEO of SC Ports Authority, provided a presentation to the committee on February 2nd. The Port measured an 8% growth in FY 13/14 and 15% at midyear in FY 15/16. To maintain a competitive edge in the shipping industry, Mr. Newsome outlined several initiatives the port is undertaking as part of an aggressive growth strategy to bring in 2 million containers a year. Strengthening and growing relationships with direct and indirect customers helps secure financial growth. The future is about larger container ships, which makes the $509 million dredging project critical.

The Wando Terminal has limitations in moving product due to the lack of rail, but expanding new gate hours for trucks and upgrades to facilities are recent successful initiatives. Mr. Newsome expressed his appreciation of the support the Town has provided in the past and looks forward to continuing the good relationship.

Education Committee – Paul Gawrych
(No Meeting)

Finance Committee – Chris O'Neal
(No Meeting)

Fire Committee – Gary Santos

Mr. Santos submitted the following January 2015 report:

TYPE	*NUMBER OF CALLS*
Fires	17
Medical	446
Other	240
TOTAL	**703**

Human Resources – Chris Nickels
(No Meeting)

Patriots Point Development Authority – Mayor Linda Page
(No Meeting)

Planning Committee – Chris O'Neal

Mr. O'Neal submitted the following report:

1. **Continued discussion regarding multifamily development, density, and mixed use planned developments**

With respect to the continued discussion regarding growth management issues, the Committee noted that a list of questions has been received from Town Council members. Those questions will be reviewed by Committee and then forwarded to stakeholders in the near future.

2. **Discussion regarding submittal deadlines for Development Agreements and Development Agreement amendments**

The Planning Committee considered a recommendation from Planning staff that a submittal deadline for development agreements and development agreement amendments be established for 8 weeks prior to the meeting date at which the submittal will be considered. Currently there is not a submittal deadline for development agreements though most applicants will submit 4 weeks prior to a meeting date. Considering the complexity of development agreements and associated planned development or

comprehensive plan amendments, this is not sufficient time for review. The Committee directed staff to move forward with the necessary text amendments.

Police, Legal & Judicial Committee – Mayor Linda Page
(No Meeting)

Public Services Committee – Ken Glasson
(No Meeting)

Recreation Committee – Elton Carrier

Mr. Carrier submitted the following report:

The Committee approved two rental requests.

The Committee had a post Town Council Retreat discussion regarding the Recreation Department's programs, assets, funding and future.

- Monday, December 22-Wednesday, December 31 – Holiday camps were offered at the Jones Center, Darby Building, and the Park West Program Building. There were twelve camps with a total of 259 participants. Some of the camps included trip, skateboard, art, music, crafts, Mad Science and karate.

- Friday, January 9 – The Piranha Swim Team began practice at the Jones Center Pool. There were 30 swimmers registered. The Piranha's swim every Friday from 5:30-6:30 p.m.

- Friday, January 9 – A Sock Hop was held at the Town Hall Gym. There were 300 participants.

- For the month of January we did 547 swim lessons.

- For the month of January 1,362 youth and 164 adults participated in athletic leagues.

- Senior Center current membership is 2,728.

- Tennis Center membership is 982.

Transportation Committee – Mayor Linda Page

Mayor Page stated that all action items were addressed earlier in the meeting.

The Committee received a presentation from Mr. William Hamilton on public transportation in Mount Pleasant and discussed the history and design of the Coleman Boulevard/Live Oak intersection.

Waterworks Commission – Mark Smith
Report

Water Supply Committee – Mark Smith
Report

ADMINISTRATOR'S REPORT – Eric DeMoura

Mr. DeMoura announced the following Boards and Commissions Vacancies:

Old Village Historic District Commission (1)

Historical Commission (1)

COUNCIL – New Business

Mayor Page announced that the following New Business items were taken up earlier in the amended agenda.

Consideration of request by Shem Creek Development Group, LLC to amend the parking license agreement (Resolution R.13102).

A proposal to amend Resolution R.13102, a License Agreement Regarding Public Access and use of a proposed parking garage. (R.15021)

COUNCIL - Old Business

Final Reading: An Ordinance to amend the Budget for the Town of Mount Pleasant for the Fiscal Year Commencing July 1, 2014 and ending June 30, 2015. (Ord. No. 15009)

Mr. Gawrych moved to approval final reading of the Ordinance; motion seconded by Mr. Smith. Motion carried unanimously.

Mr. DeMoura read *FINAL READING BY TITLE ONLY.* This Ordinance *SIGNED, SEALED and DELIVERED* this date.

EXECUTIVE SESSION

Mr. O'Neal moved to go into executive session at 9:25 p.m. to discuss Legal/Contractual and Personnel matters as listed on the agenda; motion seconded by Mr. Smith. Motion carried unanimously.

Mayor Page reconvened the regular session at 9:48 p.m. She stated that no actions or votes were taken.

Legal and Contractual Matters

a. Legal advice pertaining to a Coleman Boulevard acquisition and potential litigation

b. Contractual matter pertaining to a public road alignment

Personnel

Appointments to Boards and Commissions

a. Consideration of applications for the Historical Commission
Mr. Carrier moved to appoint Patrick Morrisey for fill Seat #6 for a four-year term on the Historical Commission; motion seconded by Mr. Nickels. Motion carried unanimously.
b. Consideration of applications for the Planning Commission
Mr. O'Neal moved to appoint Josh Malone to Seat #4 on the Planning Commission; motion seconded by Mr. Smith. Motion carried unanimously.
c. Consideration of applications for the Accommodations Tax Advisory Committee
Mr. O'Neal moved to re-appoint Cheryl Craven to Seat #2 on the ATAC Committee; motion seconded by Ms. Stokes-Marshall. Motion carried unanimously.
d. Consideration of applications for the Culture, Arts and Pride Commission
Mr. Nickels moved to re-appoint Kenda Sweet and appoint new members Ann McGahey, Stephanie Meadows and Judy Dixon; motion seconded by Mr. Gawrych. Motion carried unanimously.
e. Consideration of applications for the Old Village Historic District Commission
Mr. O'Neal moved to re-appoint Brett Bennett to Seat #2 on the OVHDC; motion seconded by Mr. Gawrych. Motion carried unanimously.
f. Consideration of applications for the Design Review Board.
There were no qualified applicants, so they will re-advertise.

Personnel Item

Mayor Page moved to approve the third amended employment agreement and severance agreement for the Town Administrator as presented in executive session; motion seconded by Mr. Nickels. Motion carried unanimously.

ADJOURN

The meeting was adjourned at 9:50 p.m.

Submitted by:

Patty Wallis

021015

AVTEX
COMMERCIAL PROPERTIES, INC.

July 23, 2013

Mrs. Thomasena Stokes-Marshall
Chair of the Planning Committee
Town of Mt. Pleasant
100 Ann Edwards Lane
Mt. Pleasant, S. C. 29464

Dear Mrs. Stokes-Marshall:

As you are aware, our company has worked diligently with the Town to bring a parking structure to the corner of Coleman Boulevard and Mill Street. In order to make it economically feasible for all parties, we have incorporated a proposed office building over the garage.

In an analysis of the regulations we discovered that our project would not meet two present requirements in the current overlay district; the overall height and a requirement to put retail on the ground floor of a parking structure. Therefore, I would like to respectfully request a modification to the UC-C8S- Development Guidelines Chart in the Coleman Overlay District of C-1 to allow a maximum building height allowed of 55 feet. In addition, I request that section (M) 5 (B) 2-c be modified by adding "except in A flood zones".

It is our intent to work with staff to provide open spaces and people oriented design details to ensure the integrity of the activity zones on our adjoining streets.

Thank you for your consideration of these two items. I am always available to meet and discuss how to move this request forward and also any concerns that may arise.

Sincerely,

Robert S. Small Jr.,
CEO
Avtex Commercial Properties, Inc.

RSSjr:ewk

P.O. Drawer 10287
Greenville, SC 29603
Office: (864) 271.1900
Fax: (864) 233.0639

ORDINANCE NO. 13077

STATE OF SOUTH CAROLINA	)	AN ORDINANCE TO AMEND VARIOUS
	)	PROVISIONS OF SECTION 156.329 OF
	)	CHAPTER 156 OF THE MOUNT PLEASANT
	)	CODE OF ORDINANCES PERTAINING TO
COUNTY OF CHARLESTON	)	REGULATIONS FOR PARKING STRUCTURES
	)	LOCATED IN A FLOOD ZONE IN THE
	)	UC-OD, URBAN CORRIDOR OVERLAY
	)	DISTRICT
TOWN OF MOUNT PLEASANT	)	

WHEREAS, Mount Pleasant Town Council now desires to amend 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, by amending the UC-CBS Development Guidelines Chart and the Figure 7, UC-CBS Development Guidelines Map of Section 156.329 (P)(5)(a) and the text of 156.329 (P)(5)(b)2.; and the text of Sections 156.329 (M)(5), (M)(5)(c),(M)(5)(c)1. and 2.a. through d., and re-letter existing (c) through (e) to (d) through (f); and amending the text of Sections 156.329 (N)(1)(a)1. and (N)(1)(c); and

WHEREAS, the Mount Pleasant Planning Commission held a public hearing on October 23, 2013, 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 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)

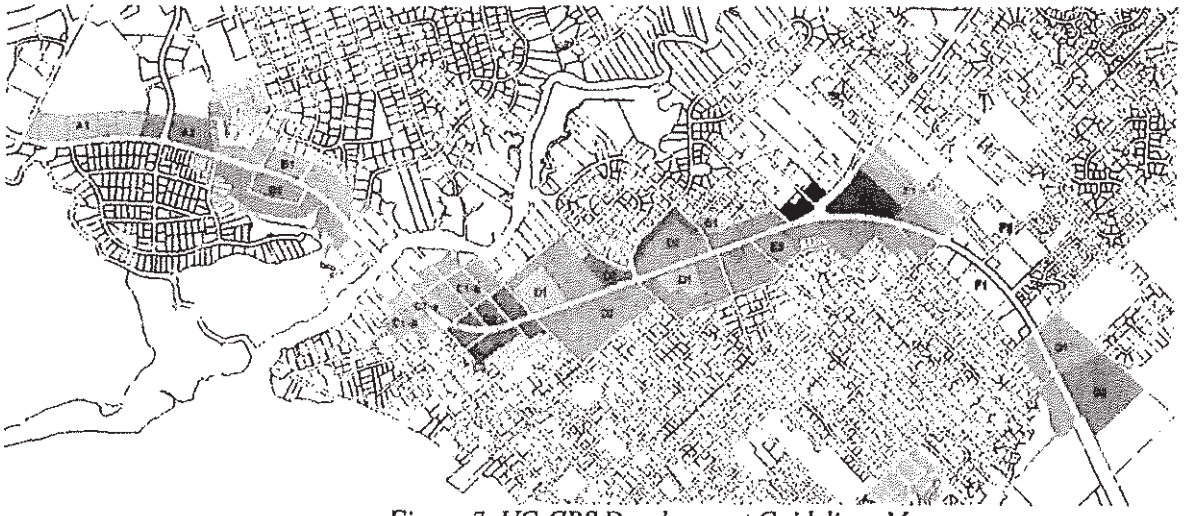


Figure 7. UC-CBS Development Guidelines Map.

(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 13, 2013
Final Reading: December 10, 2013

APPROVED AS TO FORM:

David G. Pagliarini
Corporation Council

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1407
Main 843.856.4488

Gray B. Taylor
gray.taylor@buistbyars.com

June 23, 2015

Via Email to: david@lawyershmp.com

David G. Pagliarini, Esq.
Hinchey, Murray & Pagliarini, LLC
234 Seven Farms Dr., Suite 300
Daniel Island, SC 29492

Re: Termination of the October 17, 2013 Parking License Agreement by and between Shem Creek Development Group LLC and Town of Mount Pleasant (the "Agreement")

Dear David:

Please allow this letter to serve as termination of the above-referenced Agreement due to the failure to cure default after notice by the Town of Mount Pleasant. Any capitalized terms herein shall have the meaning of set forth in the Agreement unless otherwise set forth herein.

As I informed you on February 10, 2015, the Town of Mount Pleasant was in default pursuant to the Agreement for failure to provide the Estoppel Certificate as required by Section 7.04 of the Agreement. That default has not been cured.

Further, the Agreement is terminated due to the Town of Mount Pleasant's anticipatory breach by failing and refusing to comply with Section 1.07(a). That Section provides as follows:

> *Payment for the first License Year of the Rent Period shall be paid into escrow upon the commencement of construction by the Licensor, with payment being released from escrow upon the Rent Commencement Date.*

To date, our client has not received any notice that the Town of Mount Pleasant has complied with payment of the first License Year's rent into escrow, which was to have happened upon the commencement of construction.

The failure to pay all or any portion of this Rent and the failure to cure after thirty (30) days constitutes grounds for termination pursuant to Section 6.01 of the Agreement.

As our client informed the Town of Mount Pleasant on June 8, 2016, our clients' damages under Section 6.01 include the full Rent Payments due under the terms of the Agreement along with potential recovery of attorneys' fees and costs should they be the

prevailing party. Our client reserves all of its rights under Section 6.01 of the Agreement to pursue all of the Rent Payments due to it in the sum of $2,770,000.00.

The Town of Mount Pleasant's breach of the implied duty of good faith and fair dealing and the express obligations of Section 2.03 of the Agreement are further cause for termination. The direct acts and omissions of the Town of Mount Pleasant and individual members of Town Council, some of whose actions were prior to their being seated on Town Council breach the implied duty of good faith and fair dealing. These Council members should govern themselves accordingly.

As you were informed on June 8, 2016, our client made a settlement offer which was summarily rejected by Town Council at its following Town Council meeting. There will be no action required by Town Council upon receipt of this notice of termination. With kind regards, I remain

Yours very truly,

Gray B. Taylor

cc: Shem Creek Development Group LLC (via email)

ORDINANCE NO. 14022

STATE OF SOUTH CAROLINA)
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COUNTY OF CHARLESTON)
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TOWN OF MOUNT PLEASANT)

AN ORDINANCE TO AMEND 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, RESPECTIVELY

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:

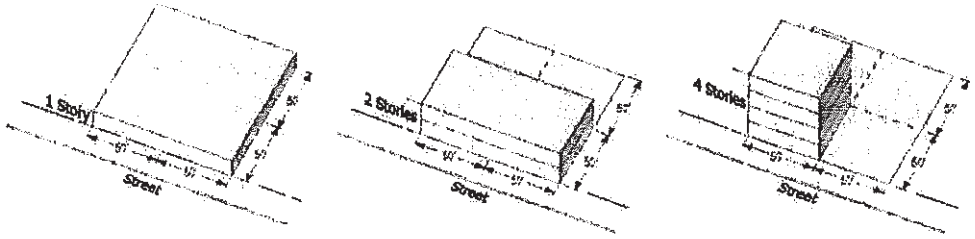
CHAPTER 156: ZONING CODE

§ 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

EXHIBIT A
ORD. 14022

Amended

§ 156.329 UC-OD, URBAN CORRIDOR OVERLAY DISTRICT.

(A) *Boundary of the district.* The boundary of the district is graphically depicted in the following Figure 1.

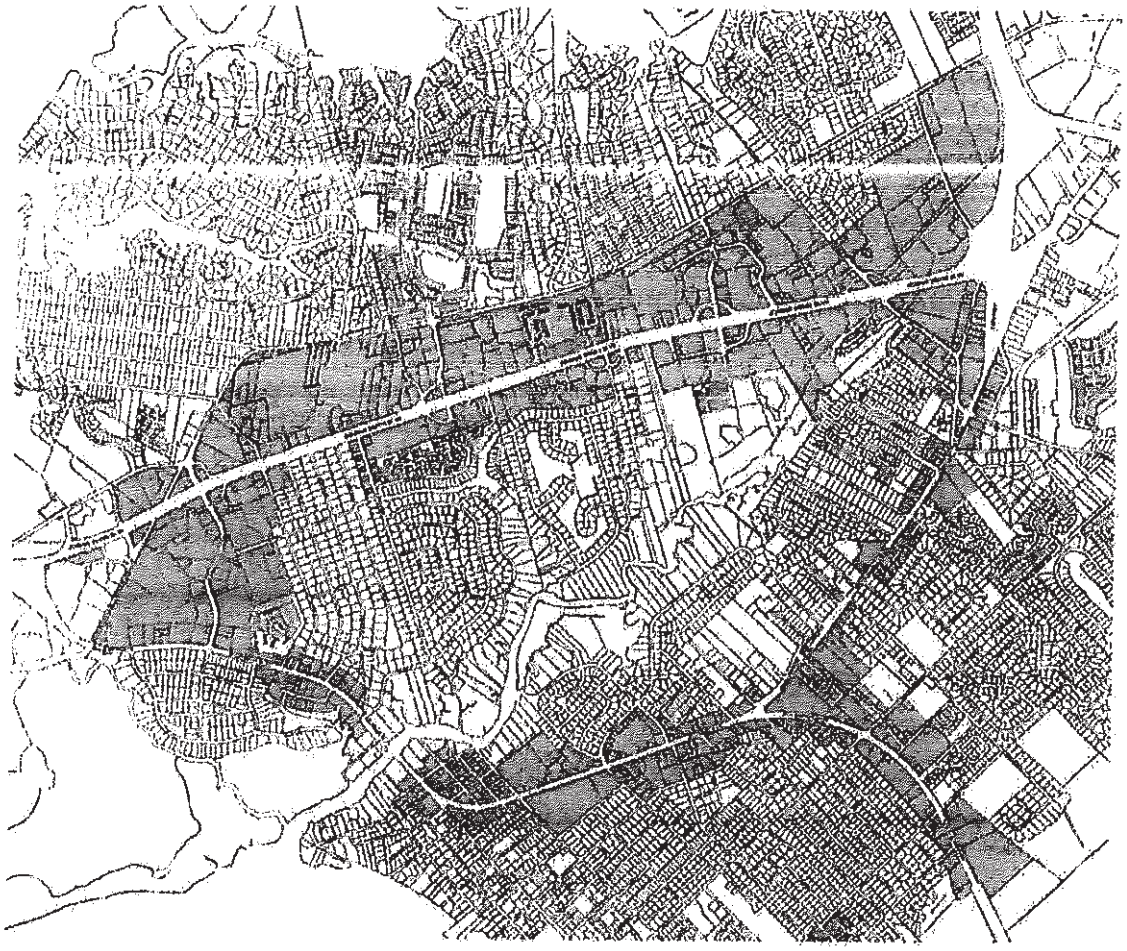


Figure 1. Boundary of Urban Corridor Overlay District.

(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.

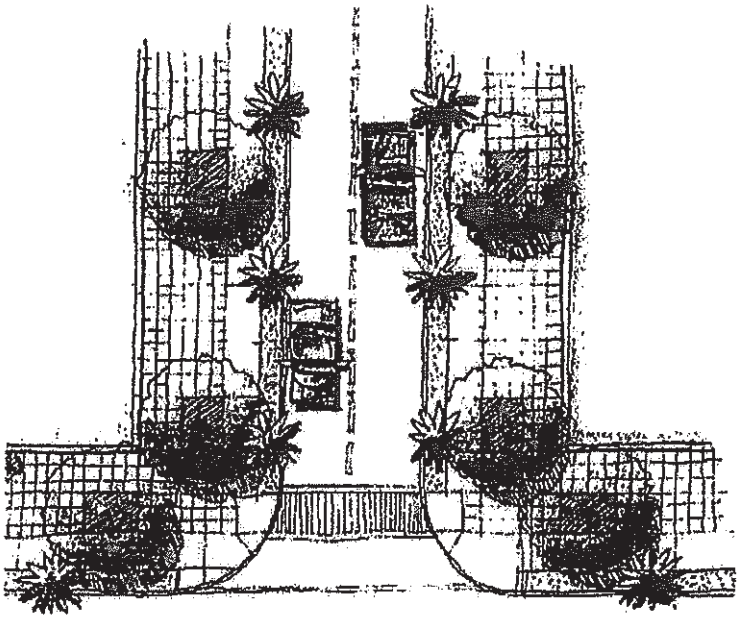


Figure 2. Looks like a street.

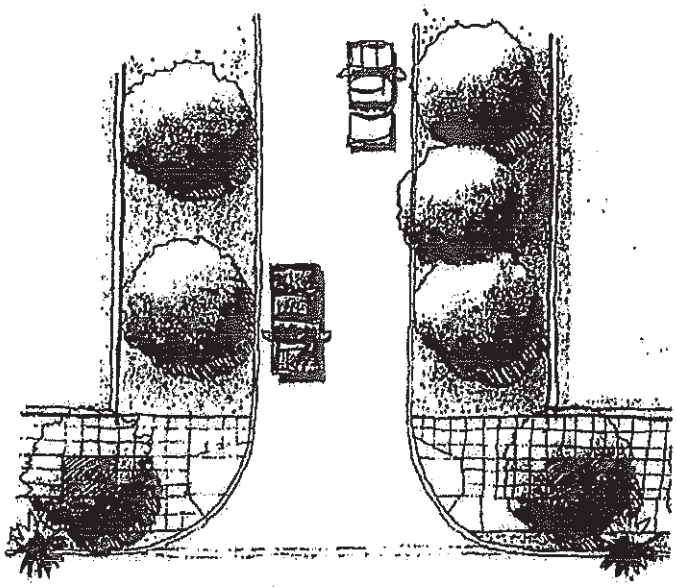


Figure 3. Looks like a parking lot.

(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.

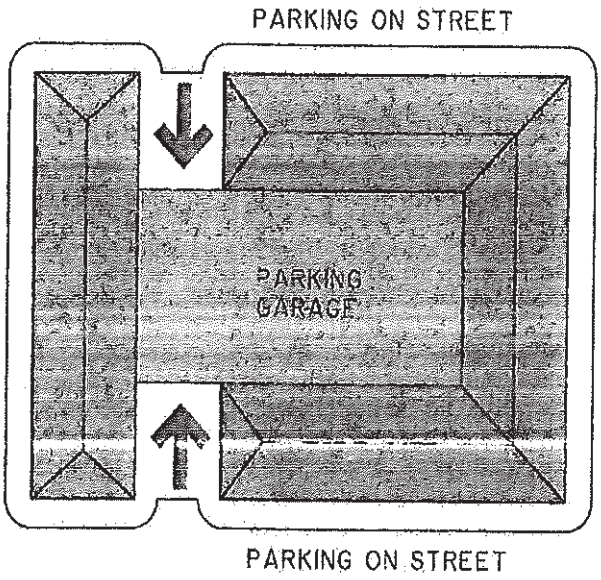


Figure 4. Parking structure location.

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 § 1 56.329(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) *Rezonings.* 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.

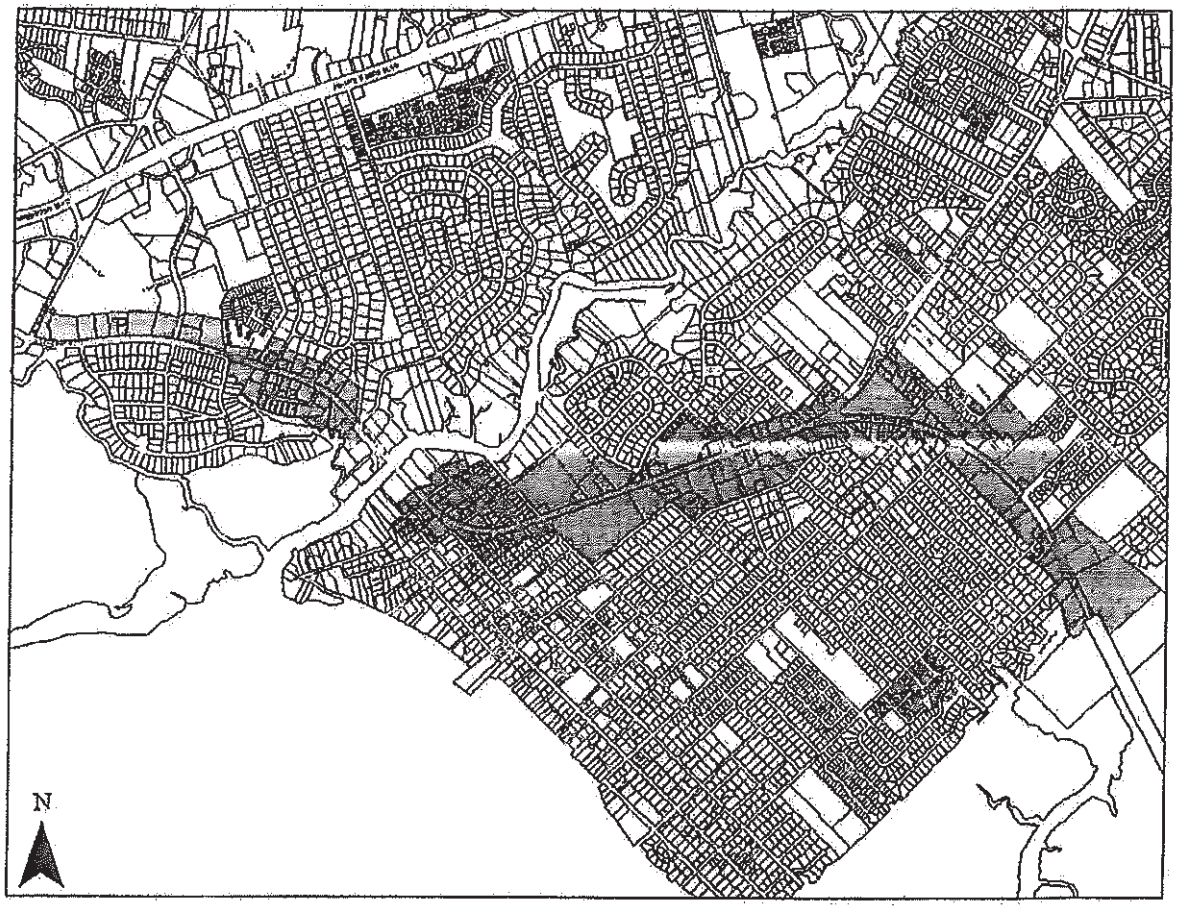


Figure 5. Boundary of UC-CBS.

(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.

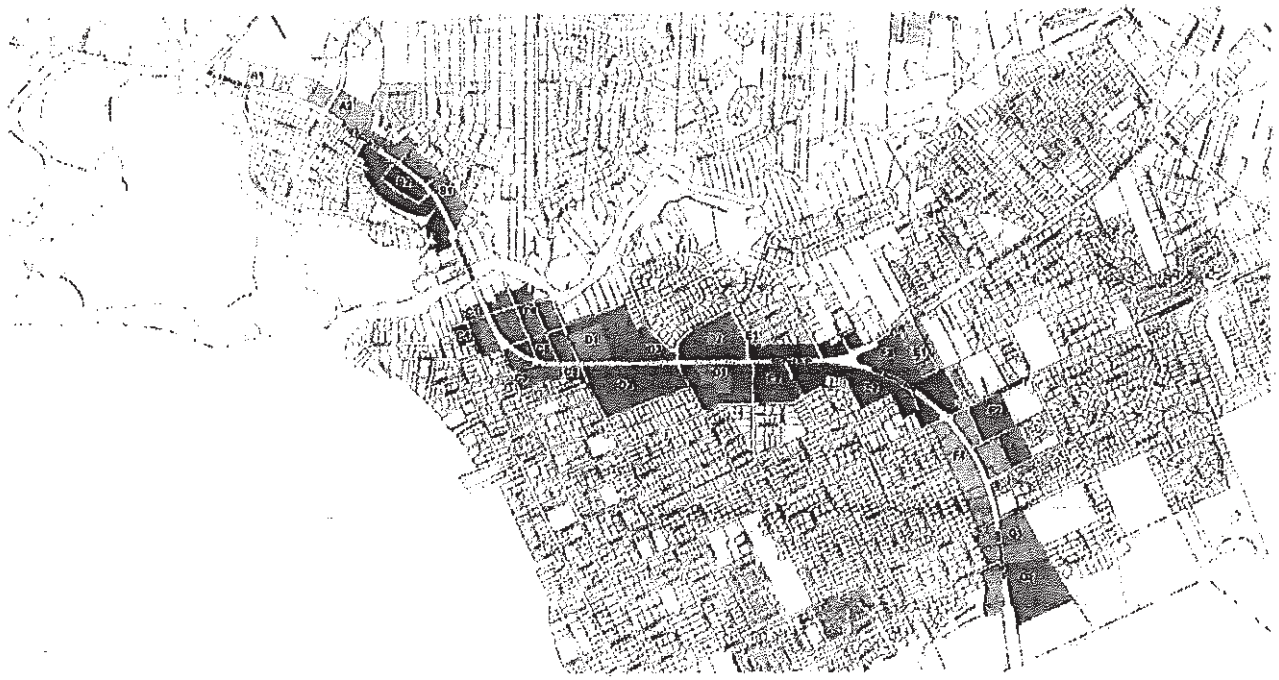


Figure 6. UC-CBS Development Guidelines Map.

(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-feet-wide sidewalks serving the parallel parking areas. See Figures 7 and 8.

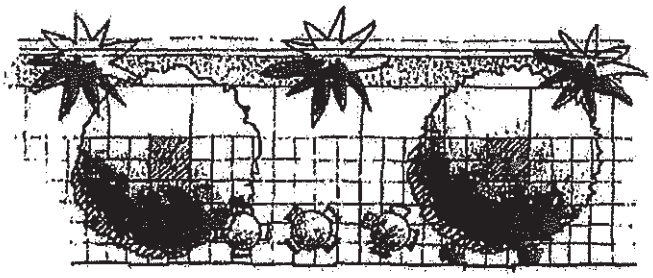


Figure 7. Location of Palmetto street trees.

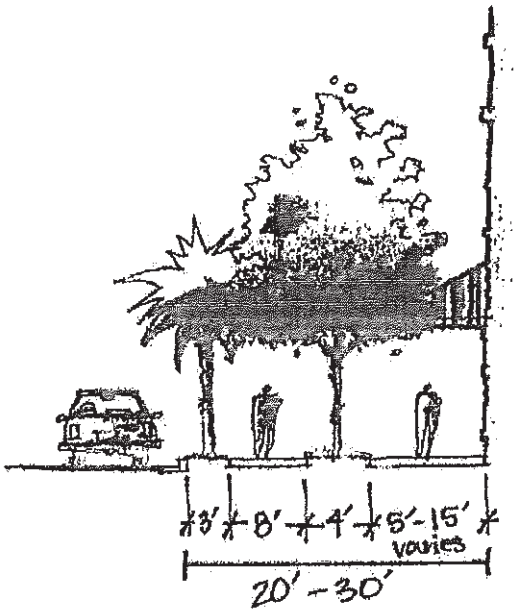


Figure 8. Sidewalk and landscaping cross-section for the boulevards.

(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.

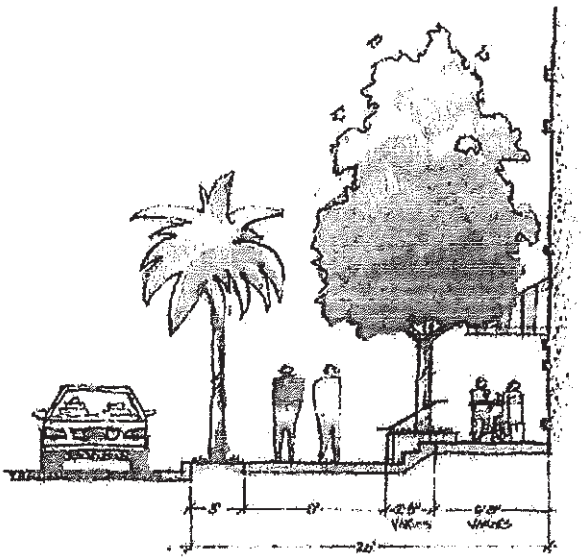


Figure 12. Stairs in the Activity Zone.

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.

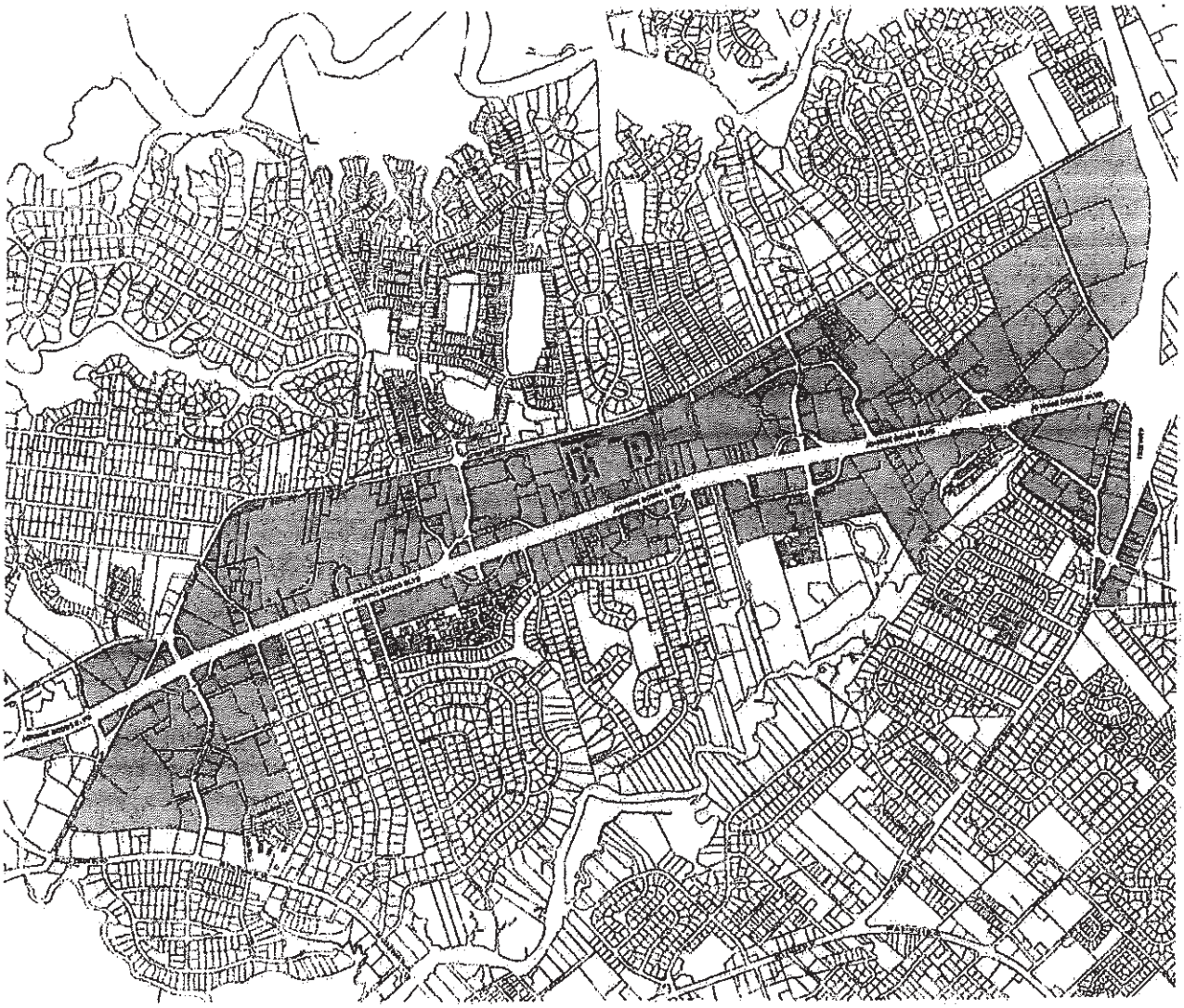


Figure 13. Boundary of UC-JDB.

(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.

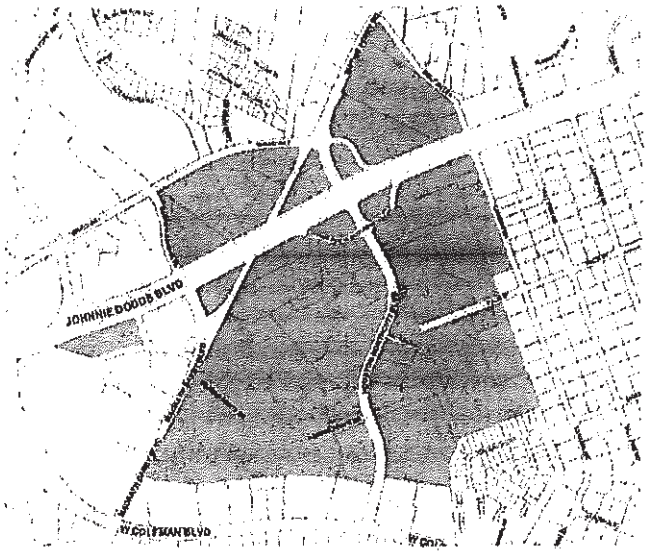


Figure 14. UC-JDB Hospitality/Economic Development District.

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.

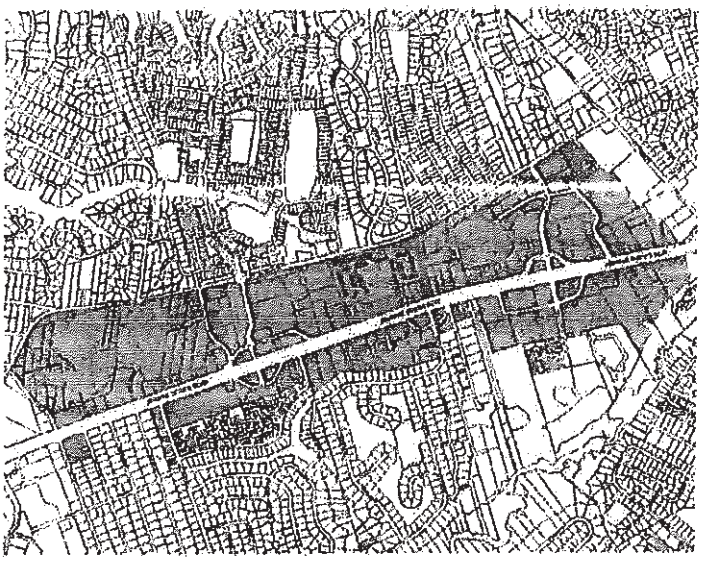


Figure 15. Boundary of UC-JDB Neighborhood Commercial and Office District.

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.

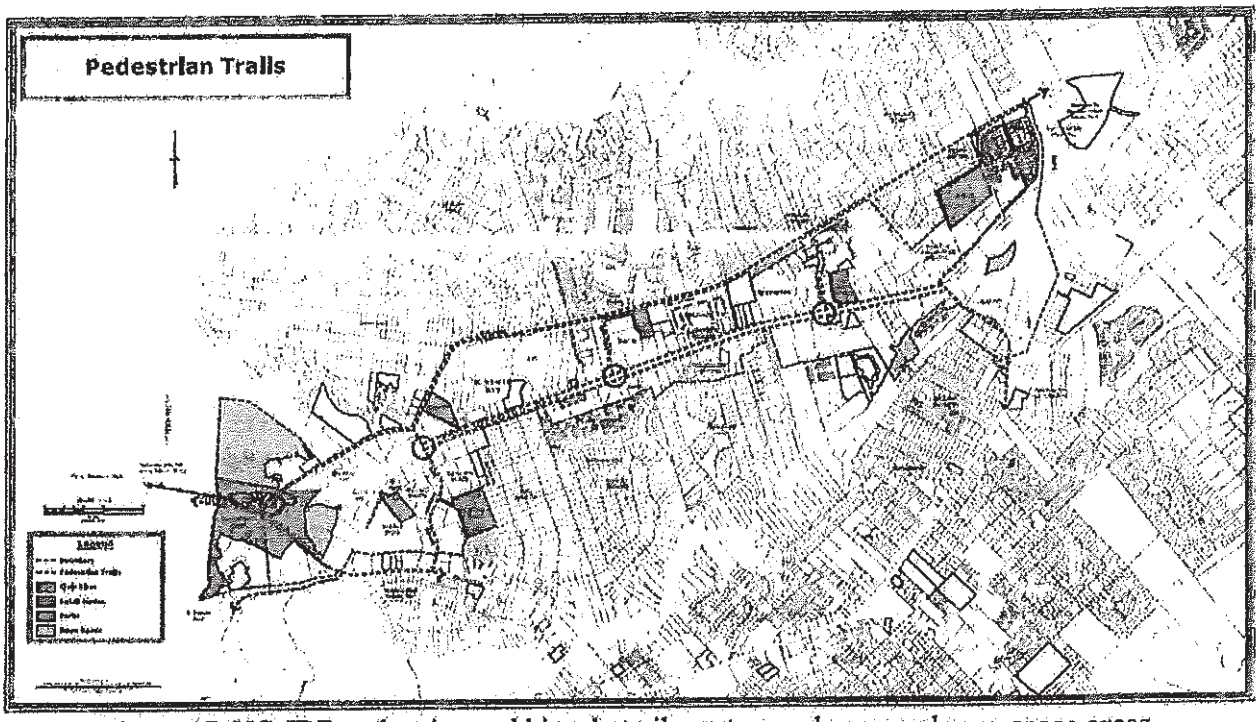


Figure 17. UC-JDB pedestrian and bicycle trails system and proposed open space areas.

(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)

28

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

07/28/2017

PERMIT # CN-16-121002

PROJECT NAME: Shem Creek Office Building

OWNER NAME Shem Creek Development Group, LLC
ADDRESS 1164 Oakland Market Rd
Mt Pleasant

PROPERTY ADDRESS: 111 Coleman Blvd
Mt Pleasant, SC 29464

Contractor: Thompson Turner Construction
100 N Main St Sumter SC 29150

CONSTRUCTION TYPE: New Office and Parking Deck AE/12+1 2012 IBC Shell Only Do Not Occupy

PROPOSED USE: New Office and Parking Deck AE/12+1 2012 IBC Shell Only Do Not Occupy

OCCUPANCY TYPE: B Business

OCCUPANCY LOAD: 0

CONSTRUCTION TYPE: IIB

SQUARE FOOTAGE: 40798

SPRINKLED: 40798

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances, Chapter 150 and the International Code Series with State Amendments. The building may only be occupied in accordance with the classification

T. Lee Cave, Building Official

Gmail by Google

Tyler Flesch <tyler@redtyadvisors.com>

Fwd: Shem Creek Office & Structured Parking

Jeff Johnston <j.johnston@smha.com> Wed, Apr 30, 2014 at 11:06 AM
To: Tyler Flesch <tyler@redtyadvisors.com>

Tyler,

Attached is the correspondence that we have had with the Town. As you know, it followed the only Town meeting we had to review the design.

This meeting was with planning staff, and was intended to be a "pre-submission" meeting, as described in the zoning ordinance for plan review process.

Jeff A. Johnston, AIA
STUBBS MULDROW HERIN architects, inc.
400 Hibben Street • Mount Pleasant, SC 29464 • 843.881.7642 • 843.884.5021 fax
• www.smha.com • smha on facebook
Designing in the Lowcountry since 1990

Begin forwarded message:

From: Kent Prause <KPrause@tompsc.com>
Subject: RE: Shem Creek Office & Structured Parking
Date: April 22, 2014 at 4:37:58 PM EDT
To: Jeff Johnston <j.johnston@smha.com>
Cc: Mike Robertson <MRobertson@tompsc.com>, Christiane Farrell <CFarrell@tompsc.com>

No, the 20' setback for a side street from the chart applies. The chart heading indicates a front or side setback, ostensibly contemplating a corner lot with another lot behind the subject lot and not a lot bounded on three sides with street frontage. The street frontage setback applies; the 5' rear yard setback applies only if there is another lot between the subject property and Church Street.

W. Kent Prause III, AICP
Division Chief/Zoning Administrator
Department of Planning and Development
Town of Mount Pleasant
100 Ann Edwards Lane
Mount Pleasant, SC 29464

P (843) 884-1229
F (843) 856-2195
kprause@tompsc.com

From: Jeff Johnston [mailto:j.johnston@smha.com]
Sent: Tuesday, April 22, 2014 4:29 PM
To: Kent Prause
Cc: Mike Robertson; Christiane Farrell
Subject: Re: Shem Creek Office & Structured Parking

To confirm: at our meeting the other day, the thought was that the 20' setback on Church Street is a result of the garage Fronting Church Street, even though it may be considered the "Rear" of the site & project. The Rear Building Setback of 5'-0" would not apply?

Jeff A. Johnston, AIA
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On Apr 22, 2014, at 2:29 PM, Kent Prause <kprause@tompsc.com> wrote:

Jeff,

Please find attached a copy of the signed ordinance which incorporates all the changes to the overlay district. I will be reviewing the site plan for the project since Chris Haynes is leaving us. This is my first site plan review for the UC-OD, so whatever plan is submitted, I will go through all of the relevant portions of the ordinance one-by-one. From a cursory review of the requirements, it seems that sections 156.329 (A) through (O) and (P) seem most relevant.

Section 156.329 (M)(5)(a)1. through 3. addresses building frontage with ground level parking and (P)(5)(h) 1. through 4. addresses building frontage requirements.

I confirmed with Chris that the build-to lines establish the minimum and maximum distances the face of buildings can be placed from the point of measurement. In other words, it cannot be closer than 20 feet or further than 30 feet away from the required point of measurement. Components of the façade may be varied in distance, provided they reside within the 20 -30 foot build-to parameters.

The most relevant ordinance revisions recently adopted pertaining to the setback on Church Street and the build-to line on Mill Street can be found in the development guidelines chart of section 156.329 (P)(5)(a).

There may be other relevant requirements not mentioned here, so I caution you to do as I will and go through them one at a time.

Regards,

W. Kent Prause III, AICP
Division Chief/Zoning Administrator
Department of Planning and Development
Town of Mount Pleasant
100 Ann Edwards Lane
Mount Pleasant, SC 29464

P (843) 884-1229
F (843) 856-2195
kprause@tompsc.com

From: Jeff Johnston [mailto:j.johnston@smha.com]
Sent: Monday, April 21, 2014 11:45 AM
To: Mike Robertson; Christiane Farrell; Kent Prause
Subject: Shem Creek Office & Structured Parking

Good morning everyone.

I hate to send a group email like this, but I was hoping to get an update on the latest zoning requirements for the Shem Creek project that we discussed last week and was unsure of who in your group would be best to reach out to.

There were a few questions following our meeting:

1) What is the specific wording of the revised ordinance? The Town's website still has the 09/13/2011 Overlay Ordinance. Is there a fresher copy available (particularly with this latest change)?
2) Activity Zone along Mill Street: As we discussed, this activity zone of 20-30 feet from the back of curb/edge of pavement establishes a build-to line. Is there a minimum amount of building frontage that resides on the border of this line? This is outlined for Coleman boulevard as 100% for properties less than 100 feet and 70% for those longer than 100'.
3) Is the intent that the building frontage exactly mimic the build-to line (ie., is parallel to the build-to)? As we discussed, uur building is not parallel to the property line, and the required frontage is now achieved as it steps in and out of the 20-30 activity zone. I would like to hear your thoughts on this approach.
4) Where can I find the ordinance revisions that were presented and approved by Town Council?

Thanks in advance for your time, if I can meet with you to talk through this in greater detail, I'd be happy to do so.

Jeff A. Johnston, AIA
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<14022.pdf>

AVTEX
COMMERCIAL PROPERTIES, INC.

August 28, 2013

Mrs. Thomasena Stokes-Marshall
Chair of the Planning Committee
Town of Mt. Pleasant
100 Ann Edwards Lane
Mt. Pleasant, S. C. 29464

Dear Mrs. Stokes-Marshall:

As you are aware, our company has worked diligently with the Town to bring a parking structure to the corner of Coleman Boulevard and Mill Street. In order to make it economically feasible for all parties, we have incorporated a proposed office building over the garage.

In an analysis of the regulations we discovered that our project would not meet two present requirements in the current overlay district; the overall height and a requirement to put retail on the ground floor of a parking structure. Therefore, I would like to respectfully request a modification to the UC-CBS- Development Guidelines Chart in the Coleman Overlay District of C-1 to allow a maximum building height allowed of 55 feet for those parcels fronting Coleman Boulevard only. In addition, I request that section (M) 5 (B) 2-c be modified by adding "except in A flood zones when the parking garage has a public use".

It is our intent to work with staff to provide open spaces and people oriented design details to ensure the integrity of the activity zones on our adjoining streets. For example, we will use architecturally designed display panels for public use only to provide additional screening as well as an activity generator. Our intention is to coordinate the design and placements with the Cultural, Arts, and Pride Commission.

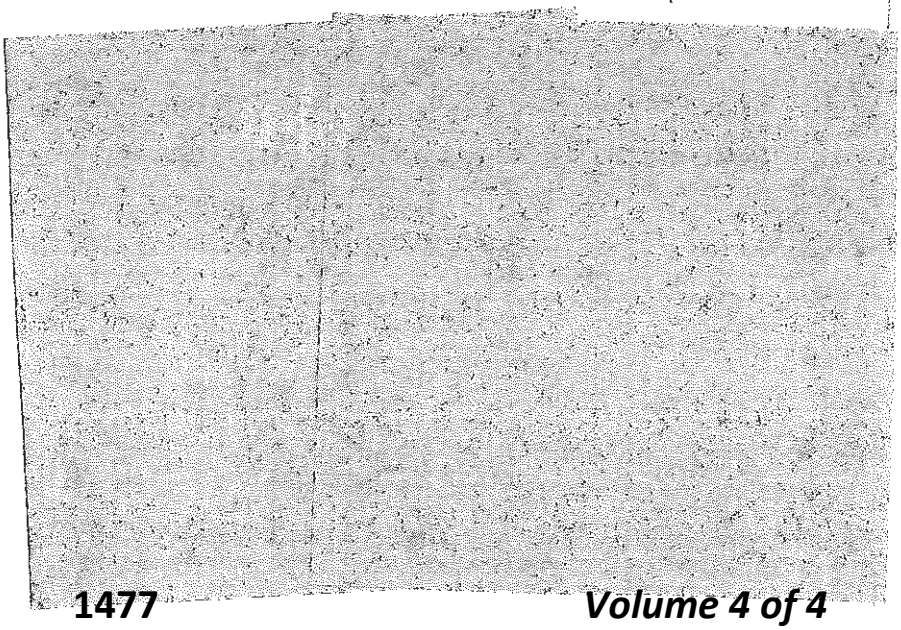
Thank you for your consideration of these two items. I am always available to meet and discuss how to move this request forward and also any concerns that may arise.

Sincerely,

Robert S. Small, Jr.
CEO
Avtex Commercial Properties, Inc.

RSSjr:ewk

P.O. Drawer 10287
Greenville, SC 29603
Office: (864) **271.1900**
Fax: (864) **233.0639**



043920STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Shem Creek Development Group, LLC, Plaintiff, v. The Town of Mount Pleasant, South Carolina, Defendant.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-10-5493 **PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: JAMES J. HINCHEY, JR., ESQUIRE, AND JULIA P. COPELAND, ESQUIRE, HINCHEY, MURRAY & PAGLIARINI, LLC, ATTORNEYS FOR DEFENDANTS:

Plaintiff Shem Creek Development Group, LLC ("Plaintiff") responds to Defendant's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Plaintiff objects to the Interrogatories to the extent that they: (a) seek to require Plaintiff to provide any information or identify documents beyond what is available to Plaintiff at present from a reasonable search of her own files; or (b) seek to require Plaintiff to provide any information or identify documents within, subject to, or protected by the attorney-client privilege, work-product privilege/immunity, or other privileges; or (c) seek to impose upon Plaintiff any other obligation not imposed by the South Carolina Rules of Civil Procedure, specifically Rules 26 and 33.

2. To the extent Plaintiff responds as set forth herein, nothing in these responses should be construed as waiving rights or objections which otherwise might be available to Plaintiff, nor

should Plaintiff's responses to any of these interrogatories be deemed an admission of relevancy, materiality, or admissibility in evidence of the interrogatories or the responses thereto.

3. These general objections apply to all of Plaintiff's responses. To the extent that specific general objections are cited in a specific response, those specific citations are provided because they are believed to be particularly applicable to the specific interrogatories and are not to be construed as a waiver of any other general objection applicable to information falling within the scope of the interrogatory.

4. The following responses reflect Plaintiff's present knowledge, information, and belief and may be subject to change or modification based on Plaintiff's further discovery, or on facts or circumstances which may come to Plaintiff's knowledge during the course of discovery and/or preparation for litigation.

ANSWERS TO INTERROGATORIES

1. In your complaint you allege that in 2013, the Town of Mount Pleasant entered into an agreement to rent public spaces in a parking deck to be developed by Shem Creek Development Group. Please list the names, employers, addresses and participation of all individuals who, to your knowledge negotiated, drafted, or approved this agreement.

ANSWER: The following individuals negotiated the Parking License Agreement on behalf of Plaintiff: Grey Taylor, Esq., Tyler Flesch, and Tex Small. Upon information and belief, the following individuals negotiated the Parking License Agreement on behalf of the Town of Mount Pleasant: David Pagliarini, Esq., and Eric DeMoura.

2. In your complaint you allege that soon after the Town committed to support the development of the parking deck, a vocal group of opponents engaged in a deliberate campaign

to kill the project through political pressure exerted on Town Council and other means. With regard to the referenced "vocal group of opponents," please state:

a. The name, address, and employer of any such opponent;
b. The name of any Town staff or official with whom these vocal opponents communicated;
c. The specific date of any referenced communications and the specific substance of any communication.
d. Identify any document which you claim evidences such an engagement to kill the project.

ANSWER: Pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from the correspondence and meeting minutes of Defendant, which have previously been produced in response to Plaintiff's First Requests for Production, including SCDDEF3872-3878, 4402-4403, 4766-4769, 5583-5584, 5636-5642, 6278-6281, 9634, 21204-21207, 21247-21258, 21373, 21376-21377, 22555, 22568-22569, 22630, 22637-22638, 24950-24954, 25062-25070, 25078-25080, 25149, 25151-25152, 25155-25164, 25169-25174, 25190-25191, 25199-25200, 25781-25789. In addition, responsive information can be found in documents labeled SCDG0000012-15, 30-38, 43-45, 105-112, 124-127, 249-263, 431-432, 469, 475-480, 482, 487-499, 729-730, 755-814, 1469-2096, 2099, 2111-2112, 2142-2146, 2529-2692, 2719-2923, 2926-2938, 2949-2973, 2978-2984, 2987-3118, 3145-3797, 3831-3852, 3855-3925, 3948-4004.

3. In your complaint you allege that the Town buckled to the pressure from the opponents of the parking deck by intentionally attempting to prevent the parking deck from being completed. With regard to this allegation, please state:

a. All evidence or documentation which supports or demonstrates a basis for the allegation that the Town "buckled to the pressure".
b. The identity of all members of the Town staff or any Town official who "buckled to the pressure".

c. All evidence or documentation which supports or demonstrates a basis for the allegation that the Town "intentionally" attempted "to prevent the parking deck from being completed".

d. The identity of all members of the Town staff or any Town official who "intentionally" attempted "to prevent the parking deck from being completed".

e. The identity and address of any member of the public who applied the "pressure" and for each state: the form of the pressure, the date on which the pressure was applied, all evidence of this pressure, and what specifically was said or communicated that evidences "pressure".

ANSWER: (a) See documents identified in response to more specific interrogatories above and below, as well as the meeting minutes of Town Council's meetings in April 2014 and February 2015 and correspondence exchanged between counsel for Plaintiff and Defendant. (b) Town Council Members of Town Council, the Town's administrator, and the Town's planning and zoning staff attempted to prevent the parking deck from being completed by enacting zoning amendments that limited the number of parking spaces to be provided in the parking deck, refusing to consider proposed amendments to the Parking License Agreement, adopting unfavorable interpretations of zoning ordinances, and exploring condemnation of the project site to prevent its development and completion. (c) See answer to subpart (a), above. (d) See answers to subpart (b), above. (e) Pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from the correspondence and meeting minutes of Defendant as well as those documents identified in response to Interrogatory No. 2, above.

4. In your complaint you allege that the Plaintiffs' pursuit of the development of the parking deck was supported by the Town because it was consistent with the Town's goal of increasing public access to Shem Creek, improving and increasing parking opportunities, and redeveloping the Coleman and Ben Sawyer Boulevards corridor in accordance with the Coleman and Ben Sawyer Boulevards Revitalization Master Plan. With respect to this allegation, please state:

a. All evidence or documentation which supports or demonstrates a basis for this allegation;
b. The identity of all members of the Town staff or any Town official who you claim may provide evidence or information concerning this allegation;
c. The name, address, and employer of any other individual, including those associated with the plaintiffs, not disclosed in subsection "b" above who may provide evidence or information concerning this allegation;
d. The substance of the testimony or information to be provided by any individual disclosed in response to subsections "b" and "c" above.

ANSWER: **(a) The Parking License Agreement; the meeting minutes of the Town Council meeting in which the Parking License Agreement was approved; the Coleman and Ben Sawyer Boulevards Revitalization Master Plan; correspondence between Defendant and Plaintiff regarding the negotiation of the Parking License Agreement; Town Resolution No. 13102 and Ordinance No. 13077. (b) Members of Town Council in 2013; Eric DeMoura; Town planning and zoning staff; and David Pagliarini. (c) Members of the Coleman Revitalization Advisory Board; Tyler Flesch; and Tex Small. (d) The individuals identified in subparts (b) and (c) are expected to testify that Plaintiff's pursuit of the development of the parking deck was supported by the Town because it was consistent with the Town's goal of increasing public access to Shem Creek, improving and increasing parking opportunities, and redeveloping the Coleman and Ben Sawyer Boulevards corridor in accordance with the Coleman and Ben Sawyer Boulevards Revitalization Master Plan.**

5. In your complaint you allege that the Plaintiffs and the Town in 2013 entered into a public-private partnership for the development of the parking deck. With regard to this allegation, please state:

a. All evidence or documentation which supports or demonstrates a basis for this allegation in general and specifically the existence of a "public-private partnership";
b. The identity of all members of the Town staff or any Town official who you claim may provide evidence or information concerning this allegation;

c. The name, address, and employer of any other individual, including those associated with the plaintiffs, not disclosed in subsection "b" above who may provide evidence or information concerning this allegation;
d. The substance of the testimony or information to be provided by any individual disclosed in response to subsections "b" and "c" above.

ANSWER: (a) The Parking License Agreement; the meeting minutes of the Town Council meeting in which the Parking License Agreement was approved; Town Resolution 13102; correspondence between Defendant and Plaintiff regarding the negotiation of the Parking License Agreement; and documents labeled SCDDEF16147-16149, 17478, 17516-17517, 17735, 17748-17752, 21194-21195, 21198-21200, and 24952-24954. (b) Members of Town Council in 2013; Town planning and zoning staff; and David Pagliarini. (c) Tyler Flesch and Tex Small. (d) The individuals identified in subparts (b) and (c) are expected to testify that Plaintiff and Defendant entered into a public-private partnership under which Plaintiff would design, build, own, and operate a parking deck to include publicly available parking spaces and in return Defendant would pay Plaintiff annual rent for Plaintiff's provision of such publicly available parking.

6. In your complaint you allege that in consideration for Plaintiffs provision of the Public Spaces, the Town agreed, pursuant to Section 1.07 of the Parking License Agreement, to pay Plaintiff annual rent in the amount of One Hundred Eighty-Five Thousand Dollars ($185,000) for fifteen (15) years, for a total amount of Two Million Seven Hundred Seventy-Five Thousand Dollars ($2,775,000). With regard to this allegation, please state:

a. Conditions precedent to be satisfied by the plaintiff before the Town had any obligations to pay any annual rent;
b. The number of spaces the plaintiff was required to provide as Public Spaces in order to satisfy its obligations under the agreement;
c. Any and all evidence which supports the position that the plaintiff may satisfy its requirement to provide Public Spaces by assigning spaces which do not comply with the space dimensions in the Code of Regulations.

ANSWER: (a) The Parking License Agreement contains no conditions precedent for the payment of annual rent other than the commencement of construction by Plaintiff. (b) The Parking License Agreement contemplates, but does not require, that 132 spaces would be used as Public Spaces, as that term is used therein. Furthermore, the Parking License Agreement provides that less than full performance may be excused under certain circumstances, including those circumstances underlying this litigation. (c) Plaintiff objects to subpart (c) of this interrogatory because it is vague, confusing, and fails to identify the "space dimensions in the Code of Regulations" to which it refers.

7. In your complaint you allege that soon after the Town entered into the Parking License Agreement, opposition to Plaintiffs proposed parking deck began to mount from Save Shem Creek, an anti-development political organization, and certain residents of the Old Village in Mount Pleasant. The opponents of the parking garage initiated a campaign to prevent the construction of the parking deck and to stop the Town from providing any funds to Plaintiff under the Parking License Agreement. With regard to this allegation, please state:

a. The names, addresses of all individuals or entities who you claim opposed the parking deck;
b. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to demonstrate opposition;
c. Identify all writings, documents, and communications which support your answers to (a) and (b) above;
d. Identify the names and addresses of any and all individuals associated with Save Shem Creek who you claim opposed the parking deck;
e. With respect to those individuals or entities identified in (d) above, state with specificity all and everything they said, wrote, or did to demonstrate opposition;
f. With respect to those individuals or entities identified in (e) above, state with specificity all and everything they said, wrote, or did to demonstrate opposition;
g. Identify all writings, documents, and communications which support your answers to (d) and (e) above;
h. Identify the names and addresses of any and all individuals from the "Old Village" who you reference in your claim they opposed the parking deck;
i. With respect to those individuals or entities identified in (h) above, state with specificity all and everything they said, wrote, or did to demonstrate opposition;

j. With respect to those individuals or entities identified in (i) above, state with specificity all and everything they said, wrote, or did to demonstrate opposition;

k. Identify all writings, documents, and communications which support your answers to (h) and (i) above;

l. Identify the name and address of each individual or entity who you claim initiated a campaign to prevent the construction of the parking deck and to stop the Town from providing any funds to Plaintiff under the Parking License Agreement;

m. With respect to those individuals or entities identified in (l) above, state with specificity all and everything they said, wrote, or did to support your allegation;

n. With respect to those individuals or entities identified in (l) above, state with specificity all and everything they said, wrote, or did to demonstrate they initiated a campaign to prevent construction of the parking deck;

o. Identify all writings, documents, and communications which support your answers to (l), (m), and (n) above.

ANSWER: Pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from the correspondence and meeting minutes of Defendant, which have previously been produced in response to Plaintiff's First Requests for Production, as well as those documents identified in response to Interrogatory No. 2, above.

8. In paragraph 15 of your Complaint you claim that as a result of growing opposition to Plaintiffs plans for the parking deck, the Town began exploring ways to escape its contractual obligations under the Parking License Agreement. However, because the Town feared a potential lawsuit that would follow if it terminated the Parking License Agreement unilaterally, it sought to undermine the economic and practical feasibility of the development rather than terminate the Parking License Agreement directly. With respect to these allegations, please:

a. Identify the name and address of each individual you claim began exploring ways to escape Town contractual obligations under the Parking License Agreement;

b. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;

c. With respect to those individuals or entities identified in (b) above, state with specificity all and everything they said, wrote, or did to demonstrate they were exploring ways to escape Town contractual obligations under the Parking License Agreement;

d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above.

e. Identify the name and address of each individual you claim feared a potential lawsuit and/or sought to undermine the economic and practical feasibility of the development rather than terminate the Parking License Agreement directly;

f. With respect to those individuals or entities identified in (e) above, state with specificity all and everything they said, wrote, or did to support your allegation;

g. With respect to those individuals or entities identified in (e) above, state with specificity all and everything they said, wrote, or did to demonstrate they feared a potential lawsuit and/or sought to undermine the economic and practical feasibility of the development rather than terminate the Parking License Agreement directly;

h. Identify all writings, documents, and communications which support your answers to (e), (f), and (g) above.

ANSWER: (a) Town Council members, Eric DeMoura, Kent Prause, and other individuals to be determined. (b)-(c) Town Council proposed and adopted zoning changes as reflected in Ordinance No. 14022, and the individuals identified attempted to prevent the parking deck from being completed by enacting zoning amendments that limited the number of parking spaces to be provided in the parking deck, refusing to consider proposed amendments to the Parking License Agreement, adopting unfavorable interpretations of zoning ordinances, and exploring condemnation of the project site to prevent its development and completion. (d) See Town Council Meeting Minutes for April 8, 2014, February 10, 2015, SCDDEF21257-21258, 22565, 22659, and SCDG0000797-814, 2100-2102. (e) See answer to subpart (a) of this interrogatory. (f)-(g) See answer to subparts (b)-(c) of this interrogatory. (h) See answer to subpart (d) of this interrogatory.

9. In paragraph 16 of your Complaint, you claim that during the Town's Council meeting on April 8, 2014, Town Council adopted a zoning ordinance designed to interfere with the development of the parking deck and hinder Plaintiffs' ability to design the parking deck in a manner which would allow it to provide all 276 spaces envisioned under the Parking License Agreement. Specifically, the Town adopted Ordinance No. 14022, which changed the setbacks specifically for Mill Street, where the parking deck was to be located, and eliminated language allowing setbacks

to be reduced to no less than five feet if certain conditions were met. With regard to these allegations please:

a. Identify the name of each individual you claim adopted a zoning ordinance designed to interfere with the development of the parking deck and hinder Plaintiffs' ability to design the parking deck in a manner which would allow it to provide all 276 spaces;
b. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;
c. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to demonstrate they adopted a zoning ordinance designed to interfere with the development of the parking deck and hinder Plaintiffs' ability to design the parking deck in a manner which would allow it to provide all 276 spaces;
d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above.

ANSWER: (a) Members of Town Council as of April 8, 2014. (b)-(d) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from Ordinance No. 14022 and its drafts; Town Council Meeting Minutes of April 8, 2014 and all other meeting minutes in which Ordinance No. 14022 was considered by Town Council, its Planning Committee, and the Planning Commission, as well as documents labeled SCDG0000039-42, 2100-2102, 2105-2109, 2138-2141, and SCDDEF5277-5400, 5401-5483, 5745-5783, 6293-7127, 9698-9737, 21293-21295, 21311-21313, 21315-21353, 21389, 21402-21442, 21464-21504, 21508, 21522-21527, 21531-22121, 22262-22267, 22281-22285, 22337-22354, 22359-22401, 22408-22410, 22420, 22515-22523, 22619-22626, 22261, 22689-22738, 23764-24681, 24735-24768, 24786-24793, 24831-24844, 24858-24860.

10. In paragraph 17 of your Complaint you allege that although the Parking License Agreement attached and incorporated Plaintiffs plan for the parking deck, the Town took the position that the changes adopted pursuant to Ordinance No. 14022 applied to the development of

the parking deck. The Town adopted this interpretation knowing that such interpretation would have a negative impact on Plaintiffs project and ability to provide all 276 spaces envisioned under the Parking License Agreement. With regard to these allegations, please:

a. Identify the name of each individual you claim took the position that the changes adopted pursuant to Ordinance No. 14022 applied to the development of the parking deck and/or knew that such interpretation would have a negative impact on Plaintiffs project and ability to provide all 276 spaces envisioned under the Parking License Agreement;
b. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;
c. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to demonstrate they took the position that the changes adopted pursuant to Ordinance No. 14022 applied to the development of the parking deck and/or knew that such interpretation would have a negative impact on Plaintiffs project and ability to provide all 276 spaces envisioned under the Parking License Agreement;
d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Members of Town Council as of April 8, 2014 and February 10, 2015; David Pagliarini; Eric DeMoura, Kent Prause. (b)-(d) Plaintiff is not aware of all or everything such indvidiuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents labeled SCDDEF20350, 20539, 21257-21258, 22565, 22659, and those documents identified in response to Interrogatory No. 9.

11. In paragraph 18 of your complaint you allege that Plaintiff requested that the Town apply a five-foot rear setback for the project based on the fact that it abutted an abandoned street which was being used for a parking lot rather than a public street. Although the Town had not

performed maintenance on the street, it claimed that the abandoned street was nevertheless a "street" as defined by the Town's Code of Ordinances because the Town was responsible for maintaining it. With regard to these allegations, please:

a. Identify the name and address of each individual you claim requested that the Town apply a five-foot rear setback for the project;
b. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;
c. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to demonstrate requested that the Town apply a five-foot rear setback for the project;
d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above.
e. Identify the name and address of each individual you claim can support your claim the project abutted an abandoned street which was being used for a parking lot rather than a public street;
f. With respect to those individuals or entities identified in (e) above, state with specificity all and everything they said, wrote, or did to support your allegation;
g. With respect to those individuals or entities identified in (e) above, state with specificity all and everything they said, wrote, or did to demonstrate the project abutted an abandoned street used for a parking lot rather than a public street;
h. Identify all writings, documents, and communications which support your answers to (e), (f), and (g) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Grey Taylor, Esq. on behalf of Plaintiff. (b)-(d) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in discovery, including documents labeled SCDG0002132-2133, 2138-2141; SCDDEF5700-5702, 17486-88, 20321-22; and correspondence from David Pagliarini to Grey Taylor, dated June 15, 2014, which is in possession of Defendant. (e) David Pagliarini; Brad Morrison; representatives of the South

Carolina Department of Transportation; and owners of the property abutting or utilizing parking in the area of Church Street. (f)-(h) See responses to subparts (b)-(d), above.

12. In paragraph 19 of your Complaint you allege that as a result of the Town's adoption of Ordinance No. 14022 and its interpretation regarding the application of the zoning changes to the development, Plaintiff was forced, at considerable expense, to redesign the parking deck to comply with the requirements imposed by the Town under its interpretation and application of Ordinance No. 14022. Based on the requirements imposed by the Town, Plaintiffs redesigned parking deck consisted of 234 parking spaces. With regard to these allegations, please:

a. Identify the name and address of each individual who participated in, authorized, and authored the redesign of the parking deck;
b. With respect to those individuals or entities identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;
c. Identify all writings, documents, and communications which support your answers to (a), and (b) above;
d. Identify the precise amount of redesign costs which you claim, provide a line item breakdown of these costs, and identify the names and addresses of individuals who will support these claims;
e. Identify all writings, documents, and communications which support your answers to (a), and (d) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Tyler Flesch, Tex Small, Jeff Johnston, and other employees of Stubbs Muldrow Herin architects. (b)-(e) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from the project file from Stubbs Muldrow Herin architects, which will be provided.

13. In paragraph 22 of your Complaint you claim that the Town refused to consider Plaintiff s proposed amendment to the Parking License Agreement. With regard to this allegation, please:

a. Identify the name and address of each individual who you claim refused to consider the proposed amendment;
b. With respect to those individuals identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;
c. Identify all writings, documents, and communications which support your answers to (a), and (b) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Members of Town Council as of February 10, 2015. (b)-(c) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in discovery, including documents labeled SCDDEF4409, 5090, 15524-15537, 17485-17489, 17762-17770, 25192-25193, and the meeting minutes from the Town Council meeting on February 10, 2015.

14. In paragraph 23 of your Complaint, you allege that the Town claimed that Plaintiffs plan did not provide sufficient Public Spaces because those spaces were required to be used by the neighboring restaurants located on the Shem Creek waterfront and that this position was contrary to the Town's prior position. With regard to these allegations, please:

a. Identify each and every inconsistency in the Town's position;
b. Identify the name and address of each individual who will has knowledge of the position or the inconsistencies;
c. With respect to those individuals identified in (b) above, state with specificity all and everything they said, wrote, or did to support your allegation;
d. Identify all writings, documents, and communications which support your answers to (b), and (c) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Plaintiff objects to this subpart (a) because it seeks the mental impressions of counsel which are protected by the attorney work product doctrine. (b) Eric DeMoura, David Pagliarini, and Grey Taylor. (c)-(d) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in discovery, including documents labeled SCDG0000009-11, 47-53, 2121-2122, 2126, 2395-2398; SCDDEF5992-5998; and Post & Courier article of October 5, 2013, entitled "Public to get more access to Shem Creek".

15. In paragraph 24 of your Complaint you claim that the Town's decision to refuse to honor its contractual obligation to pay rent was based on pretextual grounds and that the Town's actual reason for refusing to pay rent was to deny a revenue source to Plaintiffs proposed project, thereby rendering it economically unfeasible and placating the vocal opposition to the project. With respect to these allegations, please:

a. Identify each and every pretextual ground to which you make reference;
b. Identify the name and address of each individual who will has knowledge of any ground referenced in (a) above;
c. With respect to those individuals identified in (b) above, state with specificity all and everything they said, wrote, or did to support your allegations.
d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above;
e. Identify the name and address of each individual who have knowledge that the Town's actual reason refusing to pay rent was to deny a revenue source to Plaintiffs proposed project, thereby rendering it economically unfeasible and placating the vocal opposition to the project;
f. With respect to those individuals identified in (e) above, state with specificity all and everything they said, wrote, or did to support your allegation;

g. Identify all writings, documents, and communications which support your answers to (e) and (f) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) See minutes of Town Council meeting of February 10, 2015 and the letter approved by Town Council in such meeting. (b) Members of Town Council as of February 10, 2015; Eric DeMoura. (c)-(d) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in discovery, including documents labeled SCDG0000797-814 and those documents identified in response to Interrogatory No. 8. (e) See answer to subpart (b) of this interrogatory. (f)-(e) See answer to subparts (c)-(d) of this interrogatory.

16. In paragraph 25 of your Complaint, you claim Plaintiff was able to obtain necessary financing to develop the project by entering into a joint venture with a capital partner. With regard to this claim, please:

a. State the name and address of any individual or entity from whom plaintiff was able to obtain financing for this project;
b. State the name and address of any entity or individual with whom plaintiff entered into a joint venture concerning this project;
c. Identify all writings, documents, and communications which support your answers to (a) and (b) above.

ANSWER: Plaintiff objects to this interrogatory because it requests confidential and proprietary information. Plaintiff further objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objections, Plaintiff entered into

a joint venture with Somera Capital, and responsive documents to subpart (c) can be found at documents labeled SCDG0000054-55, 128-141, 452-458, and 484.

17. In paragraph 28 of your Complaint you claim that during construction of the project, Town Council explored the possibility of condemning the site of the parking deck project through the Town's exercise of eminent domain in an effort to prevent the completion of the project.

a. Identify the name and address of each individual who will has knowledge of any exploration by the Town of exercising its power of eminent domain to prevent completion of the project;
b. With respect to those individuals identified in (a) above, state with specificity all and everything they said, wrote, or did to support your allegation;
c. Identify all writings, documents, and communications which support your answers to (a) and (b) above;

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Members of Town Council as of February 2016; corporation counsel for the Town; Tyler Flesch; Tex Small; Joe Good; Summer Eudy; Billy Webb; Billy Simmons; and anyone who read or saw any of the numerous news reports regarding such actions. (b) Plaintiff is not aware of the actions, statements, or writings that the individuals have made to support the allegations in question. (c) See answer to subpart (b) of this interrogatory in addition to relevant meeting minutes and news reports reflecting Town Council's consideration of condemning the property in question.

18. In paragraph 29 of your Complaint you claim that Plaintiffs project has provided 234 total parking spaces, including 117 Public Spaces in substantial performance of its obligations under the Parking License Agreement. Please state:

a. The precise number of Public Spaces which must be provided under the written terms of the Parking License Agreement;

b. Identify the name and address of each individual who will has knowledge of or will provide evidence concerning the meaning or application of your claim the plaintiff substantially complied with its obligations;
c. With respect to those individuals identified in (b) above, state with specificity all and everything they said, wrote, or did to support your allegation;
d. Identify all writings, documents, and communications which support your answers to (b) and (c) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) The Parking License Agreement does not identify a precise number of Public Spaces which must be provided to substantially comply with the Parking License Agreement. Furthermore, the Parking License Agreement excuses full performance under certain circumstances. (b) Tyler Flesch and Tex Small. (c)-(d) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in discovery, including documents labeled SCDDEF5699-5703, 17787-17791, 20319-20322, 25192-25193, and 25331-25339.

19. In paragraph 32 of your Complaint you claim the Town was required to pay the Plaintiff over fifteen years a total amount of Two Million Seven Hundred Seventy-Five Thousand Dollars ($2,775,000). Please state:

a. The present day value of the stated "total amount";
b. The method used for the calculation made in (a) above;
c. The name and address of any individual participating in the above calculation.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff has not engaged an expert

witness to calculate the present value of the total amount. Plaintiff reserves the right to supplement this answer at the appropriate time.

20. In paragraph 39 of your Complaint you claim that Town breached the implied covenant of good faith and fair dealing by taking actions deliberately designed to prevent Plaintiff from developing the parking deck as envisioned under the Parking License Agreement and receiving rent thereunder. Please state:

a. With precision each and every action of the Town to which these allegations reference without omission of any action including those general allegations contained in subsections (a) through and including (i) of paragraph 39;
b. The names, addresses, and employers of any individual who has knowledge concerning these allegations;
c. With respect to those individuals identified in (b) above, state with specificity all and everything they said, wrote, or did to support your allegation;
d. Identify all writings, documents, and communications which support your answers to (b) and (c) above.

ANSWER: Plaintiff objects to this interrogatory because Plaintiff has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Paragraph 39 and the preceding allegations of the Complaint adequately identify the actions referenced and need no further description. (b) Tyler Flesch; Tex Small; members of Town Council; and Town planning and zoning staff. (c) -(d) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in discovery, including documents labeled SCDG0000797-814 and those documents identified in response to Interrogatory No. 8.

21. In paragraph 40 of your Complaint you claim that the Plaintiff's failure to perform is excused under the doctrines of impossibility and commercial frustration because the Town rendered Plaintiffs performance impossible. With respect to these allegations please state:

a. Any and all failures of the Plaintiffs to which you make reference in paragraph 40;
b. State with specificity how and Town action rendered the performance any action identified in (a) above impossible;
c. The names, addresses, and employers of any individual who has knowledge concerning these allegations;
d. With respect to those individuals identified in (c) above, state with specificity all and everything they said, wrote, or did to support your allegation;
e. Identify all writings, documents, and communications which support your answers to (a), (b), (c), and (d) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a)-(b) Plaintiff objects to these subparts (a)-(b) because they seek the mental impressions of counsel which are protected by the attorney work product doctrine. (c) Tex Small, Tyler Flesch, Jeff Johnston. (d)-(e) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from the project file from Stubbs Muldrow Herin architects, which will be provided.

22. In paragraph 41 you claim that to the extent that Plaintiff failed to provide sufficient Public Spaces and fully satisfy its obligations under the Parking License Agreement, Plaintiffs failure to perform is excused under Section 2.06 of the Parking License Agreement, which provides that a party shall not be deemed in default with respect to any terms, covenants,

or conditions if such default arises from government regulations or controls. With regard to these allegations please:

a. State each and every term, covenant, or condition which you claim are excused;
b. State, with respect to each term, covenant, or condition reference in your answer to (a) above, the specific governmental regulation and/or control to which you make reference;
c. The names, addresses, and employers of any individual who has knowledge concerning these allegations;
d. With respect to those individuals identified in (c) above, state with specificity all and everything they said, wrote, or did to support your allegation;
e. Identify all writings, documents, and communications which support your answers to (a), (b), (c), and (d) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Section 1.06. (b) Town Ordinance § 156.318, as amended by Ordinance No. 14022 and actions taken by Town Council in its meeting of February 10, 2015. (c) Members of Town Council; Eric DeMoura; David Pagliarini; Tex Small; Tyler Flesch. (d)-(e) Plaintiff is not aware of all or everything such individuals said, wrote or did. Subject to such limitation and pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from the project file from Stubbs Muldrow Herin architects, which will be provided, and the documents identified in response to Interrogatory No. 9.

23. In paragraph 43 of your Complaint you claim as a result of the Town's breaches of the Parking License Agreement, Plaintiff had to cure such breaches, and Plaintiff is entitled to costs incurred to cure such breaches in accordance with Section 6.02 of the Parking License Agreement. With regard to these allegations, please:

a. State with specificity each breach which was "cured" and precisely each and every action undertaken to cure any breach;
b. State with specificity all costs incurred by the plaintiff concerning each specific "cure" referenced in (a) above;
c. The names, addresses, and employers of any individual who has knowledge concerning these allegations;
d. With respect to those individuals identified in (c) above, state with specificity all and everything they said, wrote, or did to support your allegation;
e. Identify all writings, documents, and communications which support your answers to (a), (b), (c), and (d) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) See Paragraphs 31-39, which adequately identify with specificity the breaches by the Town. Plaintiff was forced to cure Defendant's breaches by redesigning the project and obtaining alternative financing to complete the project. (b) Plaintiff objects to subpart (b) of this interrogatory because it seeks confidential and proprietary information. Upon the entry of a protective or confidentiality order, Plaintiff will supplement with responsive information. (c) Tyler Flesch and Tex Small. (d) Plaintiff is not aware of the actions, statements, or writings that the individuals have made to support the allegations in question. (e) Plaintiff objects to subpart (b) of this interrogatory because it seeks confidential and proprietary information. Upon the entry of a protective or confidentiality order, Plaintiff will supplement with responsive information.

24. In paragraph 44 of your Complaint you claim that under Section 6.01 of the Parking License Agreement, Plaintiff is entitled to costs and attorneys' fees arising from this litigation. With regard to these allegations, please:

a. State with specificity each and every "cost" or "fee" incurred to date;
b. The names, addresses, and employers of any individual who is associated with any such "cost" or "fee";

c. With respect to those individuals identified in (b) above, state with specificity all and everything they said, wrote, or did to support your allegation;
d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above.

ANSWER: Plaintiff objects to this contention interrogatory because it is premature at this stage of discovery. Plaintiff is continuously incurring legal fees and litigation costs in this lawsuit and disclosure of such costs at this time would be incomplete and misleading. As such, Plaintiff will supplement this response when a more accurate account of its total fees and costs can be provided. Plaintiff further objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP.

25. In paragraph 46 of your Complaint you claim that Plaintiff provided a benefit to the Town in the form of increased public parking spaces available for the public park and restaurants along Shem Creek. With regard to these allegations, please:

a. State with specificity each particular benefit which you claim was provided to the Town by the Plaintiff;
b. State, month by month, the gross revenue received by the Plaintiff for the "public parking spaces" referenced in paragraph 46 since the parking deck opened;
c. State with specificity each and every benefit you received from opening the parking deck;
d. The names, addresses, and employers of any individual who has knowledge concerning any benefit received by either the Town of the Plaintiff through the referenced public parking spaces;
e. With respect to those individuals identified in (d) above, state with specificity all and everything they said, wrote, or did to support your allegation;
f. Identify all writings, documents, and communications which support your answers to (a), (b), (c), (d), and (e) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) See Paragraphs 46-47 of the Complaint, which adequately

identify with specificity the benefits conferred upon the Town. (b) Plaintiff objects to subpart (b) of this interrogatory because it seeks confidential and proprietary information. Upon the entry of a protective or confidentiality order, Plaintiff will supplement with responsive information. (c) Plaintiff objects to subpart (c) of this interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence. (d) Plaintiff objects to subpart (d) of this interrogatory because Defendant is in a better position to identify the members of its staff who can testify regarding the benefits it has received from the parking spaces. (e) Plaintiff is not aware of the actions, statements, or writings that the individuals have made to support the allegations in question. (f) Defendant is in possession of the information responsive to this interrogatory.

26. In paragraph 47 of your Complaint you claim the Town has realized the benefit of increased public parking by making the public park and restaurants along Shem Creek more accessible, which has consequently increased tax revenues for the Town and obviated the need for the Town to make improvements and expenditures for more parking opportunities along Shem Creek. With regard to these allegations please:

a. State with specificity the "tax revenues" to which you refer;
b. Quantify with specificity the annual increase in these "tax revenues" to which you refer;
c. Identify each and every "improvement" or "expenditure" which you claim was avoided by the Town;
d. The names, addresses, and employers of any individual who has knowledge concerning any of the "revenues", "improvements", and/or "expenditure" referenced in (a), (b), or (c) above;
e. With respect to those individuals identified in (d) above, state with specificity all and everything they said, wrote, or did to support your allegation;
f. Identify all writings, documents, and communications which support your answers to (a), (b), (c), (d), and (e) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9),

SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Local sales taxes; local option sales taxes. (b) Plaintiff is unable to quantify with specificity the amount of increased tax revenues because of the lack of available information. (c) Plaintiff objects to subpart (c) of this interrogatory because it cannot identify specific improvements or expenditures that do not exist. (d) Plaintiff objects to subpart (d) of this interrogatory because Defendant is in a better position to identify the members of its staff who can testify regarding the information requested in subpart (d). (e) Plaintiff is not aware of the actions, statements, or writings that the individuals have made to support the allegations in question. (f) Defendant is in possession of the information responsive to this interrogatory.

27. In paragraph 49 of your Complaint you claim that as a result of the Town being unjustly enriched by Plaintiffs' provision of increased public parking along Shem Creek, Plaintiff is entitled to be compensated for the value of providing such public spaces. With regard to these allegations, please:

a. State specifically, describe in detail, and itemize each item for which you claim compensation is required;
b. The names, addresses, and employers of any individual who has knowledge concerning any of items of compensation described in (a) above;
c. With respect to those individuals identified in (b) above, state with specificity all and everything they said, wrote, or did to support your allegation;
d. Identify all writings, documents, and communications which support your answers to (a), (b), and (c) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff answers the subparts to this interrogatory as follows: (a) Plaintiff is entitled to the costs of constructing and maintaining the spaces in question. (b) Tex Small and Tyler Flesch. (c) Plaintiff is not aware of the

actions, statements, or writings that the individuals have made to support the allegations in question. (d) Plaintiff is in the process of searching for responsive information and will supplement accordingly.

28. In your "PRAYER FOR RELIEF" you claim entitlement to an award of all rent payments due under the Parking License Agreement, or in the alternative, the value of the spaces provided by Plaintiff to the Town; an award for costs incurred to cure the breaches of the Parking License Agreement by the Town; an award of Plaintiff attorneys' fees and costs associated with this matter pursuant to Section 6.01 of the Parking License Agreement; and/or an award of all other appropriate relief as is just and proper under the circumstances. With regard to these allegations and Prayers, please:

a. State specifically, describe in detail, and itemize the value of the spaces provided to the Town;
b. State specifically, describe in detail, and itemize the costs incurred to cure the breaches of the Town;
c. State specifically, describe in detail, and itemize the attorney fees and costs associated with this matter pursuant to Section 6.01;
d. State specifically, describe in detail, and itemize each and every "other appropriate relief' to which you refer;
e. The names, addresses, and employers of any individual who has knowledge concerning any of items of compensation described in (a) through (d) above;
f. With respect to those individuals identified in (e) above, state with specificity all and everything they said, wrote, or did to support your allegation;
g. Identify all writings, documents, and communications which support your answers to (a) through (f) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, Plaintiff is in the process of determining the amounts it seeks in this action beyond the rent due under the Parking License Agreement, and Plaintiff reserves the right to rely on all evidence obtained during discovery

to support its allegations and claims. Subject to and without waiving such objections, Plaintiff will supplement this answer at the appropriate time.

29. With respect to any individual who may have knowledge or information concerning any claim or defense raised in this matter please:

a. State their names, addresses and employers;
b. Identify with specificity the information or knowledge they possess;
c. State with specificity all and everything they said, wrote, or did which may tend to support any claim or defense in this matter;
d. Identify all writings, documents, and communications send, received, authored, revised, or in the custody of any individual identified in (a) above.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, see responses to the other interrogatories above, which identify the witnesses in this case.

30. With regard to any expert witness you intend to call in this matter, please:

a. Provide the expert's name, address, and employer;
b. Identify each expert's education, employment history and authored articles, treatises, or books;
c. List the information provided such expert concerning this matter;
d. Describe in detail each task performed by the identified experts;
e. List each and every opinion and conclusion reached by the identified experts in this matter;
f. List all documents, writings, reports, findings, opinions, communications, exhibits, writings authored by or on behalf of or received from the identified experts.

ANSWER: Plaintiff has not engaged any expert witnesses to date. Plaintiff reserves the right to name expert witnesses at a later date and will supplement this answer accordingly.

31. Identify with specificity each writing, document, letter, email, communication, article or piece of evidence which you claim to be relevant to the issues in this case.

ANSWER: Plaintiff objects to this interrogatory because Defendant has exceeded the maximum number of interrogatories, including subparts, allowed under Rule 33(b)(9), SCRCP. Subject to and without waiving such objection, pursuant to Rule 33(c), SCRCP, the answers to this interrogatory and its subparts may be derived or ascertained from documents produced in response to Defendant's Requests for Production, Plaintiff's Requests for Production, and subpoenas issued in this case.

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Attorneys for Plaintiff Shem Creek Development Group, LLP

Dated: November 28, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
		CIVIL ACTION NO.: 2017-CP-10-5493
Shem Creek Development Group, LLC,	)	
Plaintiff,	)	
v.	)	**CERTIFICATE OF SERVICE**
The Town of Mount Pleasant, South Carolina,	)	
Defendants.	)	

The undersigned does hereby certify that a copy of the foregoing ***Plaintiff's Answers to Defendant's First Set of Interrogatories to Plaintiff*** was served via e-mail and/or by U.S. Mail, proper postage affixed and addressed to the following:

James J. Hinchey, Jr., Esquire
Julia P. Copeland, Esquire
Hinchey, Murray & Pagliarini, LLC
18 N. Adgers Wharf
Charleston, SC 29401

Wendy Stockhausen
Wendy Stockhausen

November 28, 2018

Charleston, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
SHEM CREEK DEVELOPMENT GROUP, LLC, Plaintiffs, vs. TOWN OF MT. PLEASANT, Defendants.	**Case No. 2017-CP-10-5493** **ORDER**

Plaintiff Shem Creek Development Group, LLC ("SCDG") brought this action against Defendant the Town of Mount Pleasant, South Carolina ("the Town") on October 23, 2017. A non-jury trial was held before this Court on February 3, 2020 through February 6, 2020 where each party presented evidence. After considering the law, evidence presented at trial, the arguments of counsel, and all matters submitted, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In 2008, the Town adopted a plan to revitalize the Coleman Boulevard corridor in Mount Pleasant. In that plan, the Town identified the corner of Mill Street and Coleman Boulevard as a potential site for a parking garage.[1]

2. In 2012, Plaintiff's principals, Mr. Small and Mr. Flesch, approached the Town about a parking garage concept that included an office component. After receiving positive feedback from the Town regarding its possible involvement in the project, Mr. Small engaged Ken Betsch, an architect, to prepare conceptual schemes for various designs of the project.[2]

3. During the next few months, Betsch prepared and proposed three separate and distinct design schemes with zero lot lines and no consideration of setback requirements.[3] Scheme Two proposed two floors of office space sitting atop two floors of parking consisting of 276 total spaces measuring nine feet in width.[4] Scheme Three provided three levels of parking garage,

[1] Plaintiff's Exhibit 1.
[2] Tr. pp. 336:17-21; 342:17-343:4
[3] Tr. p. 257:4-16.
[4] Tr. pp. 368:14-369:2.

exceeding 276 parking spaces, and the same two-floor office building.[5] Scheme Three accommodated approximately 310 parking spaces without diminishing any office space.[6] Plaintiff opted for Scheme Two, because, in part it provided better water views for the tenants of the office space.[7] Importantly, Mr. Betsch never performed any analysis of the Town's zoning regulations or made any assumptions about the regulations before preparing the Garage conceptual sketches.[8]

4. Mr. Small used the conceptual renderings of Scheme Two to negotiate an exclusive parking license agreement ("PLA") with the Town.[9] Neither Plaintiff nor its representatives met with Town staff prior to and post negotiation to discuss the feasibility of Scheme Two.[10]

5. Discussions between Plaintiff and the Town culminated in the adoption by Town Council of a resolution on October 8, 2013, approving the Town's entry into the PLA to license 276 parking spaces in the Garage.[11]

6. The terms of the PLA material to the Town included the following[12]:

a. The Project would consist of a multi-level structured parking garage, comprised of 276 total parking spaces;
b. the Town would pay rent to reserve 132 of those 276 total spaces for public parking on weekdays from 6 AM to 5 PM;
c. the remaining 144 spaces would be reserved for the public after 5 PM on weekdays and all weekends;
d. the license term was 30 years;
e. the Town would pay to SCDG annual rent of $185,000 for a period of 15 years;
f. Plaintiff's rights under the PLA were contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity;

[5] Defendant's Exhibit 15.
[6] Defendant's Exhibit 15.
[7] Defendant's Exhibit 15; Tr. p. 342:17-343:9; 367:11-20.
[8] See Dep. of K. Betsch, pp. 30:24-31:8; 34:8-11, Defendant's Exhibit 15.
[9] Tr. pp. 343:5-9; 345:6-15; 368:14-22.
[10] Tr. p. 370:11-16.
[11] See Resolution 13102, Plaintiff's Exhibit 6; October 8, 2013 Town Council Meeting Minutes, Defendant's Exhibit 4; Tr. p. 426:2-12.
[12] Plaintiff's Exhibit 7.

g. Town would be entitled to a rent reduction should the operation results in a net operating profit;

h. approval was contingent upon all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity;

i. Plaintiff, in its sole and absolute discretion, could elect to terminate the 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; and

j. Town would be entitled to a rent reduction based on the profitability of the Garage; and

k. 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.

7. The number of parking spaces within the Garage was a material term of the PLA, as it was commensurate with the amount paid by the Town through its accommodations tax.[13] Only a single page conceptual rendering of the exterior facade, showing no design details or assumptions, was attached as Exhibit A to the PLA.[14]

8. Jeff Johnston ("Johnston"), was retained by Plaintiff to replace Betsch in October 2013.[15] Johnston was tasked with preparing plans to meet the PLA minimum requirements, including 276 parking spaces within the footprint.[16] Johnston testified that Plaintiff was concerned by the fact that its initial design could not satisfy the number of spaces required by the PLA.[17] Johnston also immediately assessed that the initial concept prepared by Betsch and attached to the PLA did not comply with the Town's existing zoning setback, activity zone, and parking space width requirements.

Zoning Amendments of 2013 and 2014

[13] Tr. pp. 496:14-497:17.
[14] Plaintiff's Exhibit 7.
[15] Tr. pp. 720:10-12; 761:3-5.
[16] Tr. pp. 763:12-18;.
[17] Tr. pp. 767:22-768:5; 770:6-9.

9. In 2013, Mr. Small, on behalf of Plaintiff, requested that the Town enact multiple amendments to the Town's zoning code that would provide more favorable conditions for developing and constructing the Garage.[18] These amendments included increasing building heights and eliminating the requirements for floodproofing and ground floor commercial space in parking garages.[19]

10. The Town considered commercial space on the ground floor of the Garage an essential element to meet the goals of the Coleman Overlay District, as it enhanced a pedestrian oriented environment, and ensured vibrancy in lieu of dead space that often accompanied parking garages.[20] In order to obtain removal of commercial on the ground level, Mr. Small assured the Town of their intent "to work with staff to provide open spaces and people oriented design details to ensure the integrity of the activity zones on our adjoining streets."[21]

11. Mr. Small did not request to amend or seek a variance from the nine feet width requirement for parking spaces.[22] It is undisputed that at all times relevant hereto, Town regulations require all commercial parking spaces to be nine feet wide.[23]

12. In December 2013, Town Council enacted Ordinance 13077, which incorporated all of Plaintiff's desired amendments.[24] As part of these zoning amendments and commensurate with Mr. Small's stated intent, Ordinance 13077 required that garages which do not have floodproofing or first floor commercial, "must provide added features such as public art, a fountain, a bus stop, similar features to promote and maintain pedestrian activity" on the "Boulevard side ***and side street sides***" of the Garage.[25] This was a new requirement for garages, similar in purpose, but distinct from what was historically known as an "activity zone."[26]

April 2014 Zoning Ordinance Amendments to the Overlay District

[18] Def. Ex. 20 and 32.
[19] Id.
[20] Tr. pp. 668:12-670:13.
[21] Def. Ex. 20 and 32.
[22] Tr. pp. 679:20-680:1; 711:20-23.
[23] Tr. pp. 710:13-711:23.
[24] See Ordinance 13077, Defendant's Exhibit 21; Tr. p. 684:20-25.
[25] See Ordinance 13077 p.4, Defendant's Exhibit 21; see also November 12, 2013 Town Council Meeting Minutes regarding first reading ordinance, p. 11, Defendant's Exhibit 7 ("ground floor commercial shall not be required as long as the parking is screened and the activity zone is enhanced with art, bus shelters, or other features that create interest and activity.").
[26] Tr. pp. 671:2-21; 672:24-673:11.

13. At the same December 2013 meeting, Town approved the zoning amendments for SCDG's project, the Town also approved a review of the zoning regulations, including setbacks, governing the Coleman-Ben Sawyer Boulevards urban corridor zoning district that included the subject site.[27] This review was a response to resident complaints primarily about a residential development called Earl's Court, which was not far from SCDG's project site.[28]

14. This request resulted in several specially called and publicly noticed meetings to discuss prospective amendments throughout the zoning district, including eliminating the possibility of five-foot setbacks.[29] These meetings culminated with comprehensive amendments to the Urban Corridor Overlay zoning district, which Town Council enacted as Ordinance 14022 on April 8, 2014.[30] These amendments satisfied all public notice requirements.[31]

15. The amendments contained in Ordinance 14022 were also addressed at length with public comment at the Ordinance's first reading.[32]

16. One of the zoning amendments in Ordinance 14022 affected Simmons Street and Mill Street, affecting multiple properties on both sides of Coleman Boulevard, due to anticipated pedestrian activity. This amendment changed a 20-foot setback requirement to a 20-30 build-to-line.[33] This change to Mill Street from a 20-foot setback to a 20-30-foot build-to-line served to enhance and promote pedestrian activity along side streets as requested by Plaintiff during the amendments to Ordinance 13077.[34]

17. Ordinance 14022 also eliminated five-foot setbacks on side streets throughout the entire Urban Corridor Overlay District, including this project site.[35]

18. Prior to and during this time, Plaintiff had not submitted any site-specific development plan that could confer vested rights and protect the Garage site from these zoning amendments.[36]

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[27] Def. Ex. 8.
[28] Tr. pp. 686:22-688:14.
[29] Tr. 688:15-690:7.
[30] See Ordinance 14022, Defendant's Exhibit 26; Tr. 708:18-22.
[31] Tr. pp. 691:21-697:6.
[32] See Mar 11, 2014 Town Council Meeting Minutes, pp. 9-19, Defendant's Exhibit 26.
[33] Tr. 702:4-703:21; see also Ordinance 14022, Ex. A, p. 21, footnotes 5 and 6, Defendant's Exhibit 26
[34] Tr. pp. 672:24-673:11..
[35] Tr. pp. 698:18-699:6.
[36] Tr. pp. 704:22-705:4.

19. While the Town was publicly reviewing potential changes to the urban corridor zoning district, SMHa was designing the project with a 5' setback on the side fronting Mill Street without any regard for Mr. Small's earlier representations to the Town regarding activity zones, the status of the law, or communication with staff.

20. Town staff learned during its first formal meeting with Johnson on April 11, 2014, that Plaintiff's design plans were not compliant with the zoning amendments in Ordinance 14022.[37]

21. Plaintiff's architect, Mr. Johnson, admitted a reduction of only 18 parking spaces resulted from the April 2014 zoning amendments.[38] Therefore, even assuming Plaintiff was able to build the Garage with the setbacks it desired, the most parking spaces at the legal width Plaintiff's final architect was able to design totaled 252.[39]

22. Plaintiff offered the Town 234 spaces – 42 fewer parking spaces than Plaintiff promised in the PLA[40]. This represents more than 15% fewer spaces than Plaintiff promised.[41]

23. The Court finds that prior to and during the adoption of Ordinance 14022, no formal plans had been shared with Town staff to educate them on their desire to build a Garage with five-foot setback lines or any other design parameters for the Garage.

24. The Court finds that it was inconsistent and unreasonable for Plaintiff to promise the Town features that enhanced pedestrian activity along side streets, while also expecting that they should have known the Project would require five-foot setbacks on those same side streets.

25. The Court finds that there was no intent on the part of the Town to enact Ordinance 14022 to thwart development of the Garage.

Accommodations Sought from Developer

26. Instead of seeking a variance from the zoning requirements, SCDG sought from the Town over the next few months' various accommodations and applications of the zoning code that would enable SCDG to maximize the total number of spaces.

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[37] Tr.pp. 778:3-16; see also Email from J. Johnston to T. Flesch, dated Apr. 30, 2014 ("Attached is the correspondence we have had with the Town. As you know, it followed the only Town meeting we had to review the design…"), Defendant's Exhibit 31.
[38] Tr. pp. 772:2-6; 773:4-6.
[39] Tr. pp. 771:14-772:6; 775:11-14.
[40] Tr. pp. 183:8-10.
[41] Tr. p. 521:5-11.

27. First, Mr. Johnston inquired with the Town's zoning administrator, Kent Prause, whether a 5' rear setback could apply to the back of the building on Church Street. Mr. Prause rejected that request stating that a side-street setback must apply to the rear of the building, which meant that SMHa would have to use a 20' setback on Church Street. This decision was not appealed to the Board of Zoning Appeals (the "BZA").

28. SCDG's attorney requested that the parking garage be deemed a "civic use" under the Town's zoning code.[42] At the time, the Town's zoning ordinance defined "civic use" to mean:

> Utility, educational, recreational, cultural, medical, protective, governmental, and other uses that provide public or quasi-public services and are strongly vested with social importance. Examples may include, but are not limited to the following: city halls; post offices; police and fire stations; schools; museums; universities; public parks; meeting halls; libraries; transit centers; and parking structures. (Town Zoning Ordinance § 156.007).

29. Staff denied this request based on the fact that a commercial parking structure attached to a commercial office did not satisfy those requirements.[43] This decision was not appealed to the BZA.[44]

30. SCDG's attorney requested that Church Street not be considered a street because the Town had failed to maintain the right-of-way after it was removed from the state highway system.[45] That request was denied, because Church Street is a public road, owned and maintained by the Town.[46] This decision was not appealed to the BZA.

31. SCDG presented the Town with a modified design that included ten on-street parking spaces on Mill Street that could be used to increase the number of spaces available for public use in the parking garage. (Pl.'s Ex. 45.) The Town rejected this design element as well as it violated Sections 1.06 and 2.01(b) of the PLA.

32. Town Staff provided a positive interpretation of the Marine District line allowing an additional thirty (30') feet and enabling the construction of SCDG's desired footprint.

Plaintiff's Alleged Losses are the Result of Their Own Business Decisions

[42] Pl.'s Ex. 44.
[43] Tr. 663:2-25.
[44] Tr. 707:15-18.
[45] Pl.'s Ex. 24 & 44.
[46] Tr. 833:4-836:11.

33. Plaintiff's refusal to build a structure that provided 276 total parking spaces was driven by their desire to maximize profit.

34. Prior to any submittals to the Town, Mr. Small discarded an early option provided by his architect, Mr. Betsch, that accommodated 310 parking spaces to maximize views for the office space and maximize rental value.[47]

35. Plaintiff could have exercised its right to terminate and walk away pursuant to Section 2.03, but instead, it commenced construction because of the potential for profit.

36. Rather than providing the promised number of parking spaces, Plaintiff instead offered to the Town an amended PLA diminishing the number of parking spaces by 15% to 234, while maintaining the full amount of commercial office space.

37. On November 11, 2014, the Town Administrator, Mr. DeMoura, provided a letter to Plaintiff indicating that Plaintiff was not in compliance with the PLA because of its failure to provide the promised 276 parking spaces, a material term of the PLA.[48] Council then voted unanimously during its public meeting on February of 2015 to reinforce the position taken in Mr. DeMoura's November correspondence.[49]

38. The Court finds that the Town's action neither terminated the PLA nor removed funding for the Town to meet its obligations thereunder.

39. The PLA afforded Plaintiff an opportunity to walk away and not pursue development of the Parking Garage pursuant to Section 2.03 of the PLA. However, they unilaterally decided to move forward believing that the project would be profitable without the Town's payment for the parking spaces. On June 23, 2016, counsel for Plaintiff then terminated the PLA by letter, and unilaterally continued its endeavors to build the office and garage with a new investor.[50] Plaintiff had every opportunity to walk away, but instead, made the unilateral decision to proceed with building a Garage in order to maximize its Class A office space value.

40. Plaintiff produced no evidence that it is reserving spaces as outlined in the PLA. Town regulations require Plaintiff to provide 100 spaces in the Garage for the public, but this requirement is separate and apart from the promises Plaintiff made in the PLA.[51] To the extent

[47] See Defendant's Exhibit 15, Dep. of K. Betsch, pp.44:6-45:4.
[48] Plaintiff's Exhibit 13.
[49] See Febr. 10, 2015 Town Council Meeting Minutes, pp. 6-10, Defendant's Exhibit 12;
[50] See Ltr. from Gray Taylor to David Pagliarini, Defendant's Exhibit 23.
[51] Tr. 582:1-22; 673:12-674:4.

Plaintiff is providing spaces to the public as required by Town regulations, it cannot argue that the Town is getting the benefits of the PLA.

OUTSTANDING EVIDENTIARY ISSUES

I. PAROL EVIDENCE EITHER INTERPRETING OR EXPLAINING THE PLA IS NOT ADMISSIBLE, BECAUSE THE TERMS OF THE PARKING LICENSE AGREEMENT ARE CLEAR AND UNAMBIGUOUS.

41. Throughout trial, Plaintiff presented evidence in the form of testimony, written communications, video and documents in an effort to interpret and explain the terms of the PLA. Defendant objected to such parol evidence via both a properly filed pretrial motion and contemporaneous objections at trial. Following the legal conclusion of Brown v. Allstate,[52] I admitted such parol evidence into the record over Defendant's objections.

42. Based upon the below analysis below, the Court holds that the terms of the PLA are clear and unambiguous and, therefore, it is strictly the providence of the Court to interpret the meaning of the agreement and intent of the parties as found in the Agreement.[53] Further, the Court will not consider any parol evidence in either interpreting the PLA or rendering a verdict.

43. Pursuant to the terms of the PLA, Plaintiff granted an exclusive License over the Premises to the Town, and the Town accepted the same, subject only to the terms and conditions contained therein, and all applicable liens, encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Property.[54] The PLA provided that Plaintiff's obligations under the PLA, included the obligation to construct the Garage, and were contingent on all necessary approvals for construction being issued by the appropriate Town of Mount Pleasant department or entity.[55] As such, the PLA specifically contemplated that Plaintiff's compliance with the Town's zoning laws and required approvals were express conditions precedent to Plaintiff's obligations thereunder.

44. Plaintiff was required to provide 276 total parking spaces, including 132 spaces designated for public use 24 hours/day, 7 days/week.[56] The remaining 144 spaces were to be

[52] 344 S.C. 21, 542 S.E.2d 723 (2001).
[53] Rodarte v. Univ. of S.C., 419 S.C. 592, 603, 799 S.E.2d 912, 917 (2017).
[54] See Parking License Agreement, ¶ 2.01(a), dated October 17, 2013, Plaintiff's Exhibit 7.
[55] Id., ¶ 2.03
[56] Id., ¶¶ 1.05, 1.06, 3.02(a)

available to the public Monday – Friday 5:00pm to 6:00am and all day Saturday and Sunday.[57] In consideration for these 276 spaces being reserved for the public for 30 years, the Town was to pay Plaintiff a base rent of $185,000/year for 15 years.[58]

45. The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.[59]

46. "'Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties *as found within the agreement*."[60] Where the contract language is plain and capable of legal construction, that language alone determines the instruments force and effect.[61]

47. "A party cannot avoid the parol evidence rule by claiming he thought the contract he signed meant something other than what it said."[62] "'Interpretation of a contract is governed by *the objective manifestation of the parties' assent at the time the contract was made*, rather than the subjective, after-the-fact meaning one party assigns to it.'"[63]

48. Plaintiff offered evidence at trial, including testimony from Plaintiff's principals, to explain the terms of the PLA, specifically, the number of parking spaces required therein. [64]

49. Plaintiff offered evidence at trial, including testimony from Plaintiff's principals, to explain that Section 2.02 of the PLA, which states: "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…" to support the argument that "substantially similar" also applied to the number of parking spaces. The terms of the PLA clearly state the number of parking spaces, regardless of the "form" of the structure. The Court finds this testimony offered by Plaintiff unpersuasive.

50. Plaintiff attempts to contradict the plain language of PLA, which required Plaintiff to provide a specific number of parking spaces. Such testimony is inadmissible parol evidence. In

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[57] Id., ¶¶ 1.05, 1.06, 3.02(b).
[58] Id., ¶ 1.07(a).
[59] Rodarte v. Univ. of S.C., 419 S.C. 592, 603, 799 S.E.2d 912, 917 (2017) (citations omitted).
[60] Id. (citations omitted).
[61] Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d 696, 700 (2014).
[62] Rodarte, 419 S.C. at 604, 799 S.E.2d at 918.
[63] Id. at 603, 799 S.E.2d 917-918 (emphasis added).
[64] See e.g., Tr. _____.

this instance, where the PLA is clear and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement."[65]

51. Where the contract language is plain and capable of legal construction, that language alone determines the instruments force and effect.[66] Any evidence Plaintiff offers in this regard is simply its own subjective interpretation of the PLA, invades the province of the Court, and is inadmissible parol evidence that will not be used in rendering a verdict.

II. TESTIMONIAL EVIDENCE OF STAFF DECISIONS TO SUPPORT BREACH OF IMPLIED GOOD FAITH AND FAIR DEALING IS NOT ADMISSIBLE, PLAINTIFF FAILED TO EXHAUST ITS AVAILABLE ADMINISTRATIVE REMEDIES.

52. Plaintiff alleges that Defendant breach the implied covenant of good faith and fair dealing by taking actions deliberately designed to prevent Plaintiff from developing the parking deck as envisioned under the Parking License Agreement and receiving rent thereunder, including (a) adopting zoning amendments that forced Plaintiff to redesign the parking deck and provide fewer spaces than originally planned; … (h) adopting unfavorable interpretations of zoning ordinances to hinder Plaintiff's ability to develop the project.[67]

53. Throughout trial, Plaintiff presented evidence challenging the adoption of the zoning amendments in Ordinance 14022, as well as various planning and zoning officials' interpretations of the Town's zoning ordinances in order to show that these decisions were made without the spirit of cooperation due to its licensing arrangement with the Town.

54. This evidence included testimony and out of court statements, as well as examination of Town employees, regarding zoning ordinance interpretations made by Town staff for the alleged purpose of thwarting development of the Garage.

55. Defendant objected to such evidence via both a properly filed pretrial motion and contemporaneous objections at trial on the basis that Plaintiff failed to exhaust its administrative remedies in that Plaintiff neither appealed these zoning amendments nor determinations nor sought a variance therefrom.

56. Although the Court admitted Plaintiff's evidence over Defendant's motion and objections, the Court holds that Plaintiff failed to exhaust the available administrative remedies

[65] Rodarte, 419 S.C. at 603, 799 S.E.2d at 917 (citations omitted).
[66] Stevens & Wilkinson, 409 S.C. at 568, 762 S.E.2d at 700.
[67] See Comp. ¶ 39.

pertaining to these challenged staff interpretations and the application of Ordinance 14022 and, therefore, such evidence thereof is inadmissible. Further, the Court will not consider such evidence in rendering a verdict.

57. Evidence of the Town's zoning ordinance amendments and staff interpretations is irrelevant, unfairly prejudicial and, therefore, inadmissible because Plaintiff failed to exhaust its administrative remedies of applying to the Board of Zoning Appeals to either (1) appeal the interpretations; or (2) seek a variance from the zoning amendments and interpretations.

58. South Carolina Rule of Evidence 401 provides that "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "Evidence which is not relevant is not admissible." SCRE 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. SCRE 403.

59. "'A party aggrieved by the application of an ordinance must invoke and exhaust the administrative remedies provided thereby before he may resort to the courts for relief.'"[68] The doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act. De Pass, 234 S.C. at 203, 107 S.E.2d at 351-352; see also Dunbar v. City of Spartanburg, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976) (Court held property owner did not exhaust administrative remedies when it failed to seek a variance from zoning ordinance prior to filing lawsuit). Furthermore, "'the impact of [a] zoning ordinance upon [a given] property cannot be determined [when] the landowner has failed to pursue his administrative remedies by applying for a variance.'"[69]

60. Title 6, Chapter 29 of the South Carolina Code, dictates the administrative procedure for establishing zoning ordinances and enforcing those ordinances. In order to resolve

[68] De Pass v. City of Spartanburg, 234 S.C. 198, 202, 107 S.E.2d 350, 351 (1959) (citation omitted); see also City of Columbia v. Abbott, 269 S.C. 504, 508-509, 238 S.E.2d 177 (1977).

[69] Moore v. Sumter County Council, 300 S.C. 270, 273, 387 S.E.2d 455, 457 (1989); see also Stanton v. Pawley's Island, 309 S.C. 126, 420 S.E.2d 502 (1992) (Lawsuit brought by landowner was dismissed for failure to exhaust administrative remedies even though landowner claimed that effort to exhaust administrative remedies would have been futile).

disputes that may arise in the establishment and enforcement of these ordinances, the governing body is authorized to create a board of zoning appeals ("BZA"), and that board must follow specific procedures in hearing and deciding cases.[70] The BZA's decision may only then be appealed to circuit and appellate courts.[71] Town Ordinances in this context mirror state law.[72]

61. The doctrine of exhaustion of administrative remedies is applicable when, as here, a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy.[73]

62. This appeal mechanism provided an opportunity for applicants, like Plaintiff, to seek relief. Plaintiff bizarrely argues that this Court ignore the administrative remedy because, they conclude, BZA cannot grant the specific relief sought from this Court in its contract claim despite predicating their claim on bad faith and unfair dealing actions by these and other Town officials. This is an administrative appeal disguised as a contract claim and the use of evidence in this context is inappropriate, but more importantly, unconvincing to this Court.

63. While Plaintiff does not dispute Ordinance 14022 was legally enacted on April 8, 2014, following four months of public debate. Rather, Plaintiff believes that it should not have been subject to the provisions of ordinance 14022, because it was a party to the PLA.

64. Plaintiff has provided no evidence indicating that Ordinance 14022 was illegally enacted.

III. CERTIFIED MINUTES FOR TOWN COUNCIL MEETINGS ARE THE ONLY COMPETENT EVIDENCE OF THE PROCEEDINGS OF TOWN COUNCIL AND PAROL EVIDENCE CONCERNING THE MOTIVES, ACTIONS, DISCUSSIONS OR SUBJECTIVE INTENT OF TOWN COUNCIL MEMBERS IN VOTING ON THE APRIL 2014 ZONING AMENDMENTS, THE SHEM CREEK GARAGE AND PLAINTIFF'S PROPOSAL TO AMEND THE PARKING LICENSE AGREEMENT IS NOT ADMISSIBLE.

65. Plaintiff alleges that Town Council, among other things, improperly enacted amendments to zoning ordinances that hindered their ability to build the Garage based on public opposition, and then voted against any amendments to the Parking License Agreement after

[70] S.C. Code Ann. §§ 6-29-780 and -800 (2004).
[71] S.C. Code Ann. §§ 6-29-820 to -850 (Supp. 2006). S.C. Code Ann. §§ 6-29-820 to -850 (Supp. 2006).
[72] Town Ordinance § 156.411(A)(5)-156.412.
[73] Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (citing *Med. Mut. Liab. Ins. Soc. of Md. v. B. Dixon Evander & Assocs.*, 92 Md.App. 551, 609 A.2d 353 (1992)).

Plaintiff declined to deliver the promised number of parking spaces.[74]

66. Throughout discovery and during trial, Plaintiff introduced various emails, correspondence, video, and other out of court statements from Town Council in an attempt to ascribe improper intent and motive behind their votes related to the Garage. Specifically, Plaintiff played non-verified youtube video of Council meetings. Defendant objected to such evidence as its intent was to taint the Court's impression of subjective intent of individual Council members when voting on any matter related to the Shem Creek Garage, through a properly filed motion in limine and contemporaneous objections at trial. This Court allowed the material described above into evidence pursuant to Brown v. Allstate.

67. The certified minutes for Town Council meetings are the only appropriate and competent evidence of the proceedings and actions of Town Council and, therefore, all other evidence of Town Council's motives will not be considered in rendering a verdict.

68. On June 11, 2019, the Court heard and granted Defendant's Motion for Protective Order protecting all Town Council Members from being deposed, interviewed or required to testify in this case. In granting Defendant's Motion, the Court held that Council's actions relating to the Shem Creek Garage, Parking License Agreement and the Urban Corridor Overlay District zoning amendments were legislative acts.[75]

69. Town Council heard public comment and voted on the Parking License Agreement, Urban Corridor Overlay District zoning amendments, and the Shem Creek Garage at several meetings between September 2013 and February 2015. The meeting minutes for all of those meetings were admitted into evidence at trial and detail in straightforward and unambiguous language, the public comment, discussion and ultimate decisions of Council.

70. Throughout trial, Plaintiff offered into evidence non-verified youtube video recordings of meetings of Town Council in an effort to bring into question and taint this Court's impression of motives and subjective intent of individual members.

71. Such parol evidence is improper and will not be considered by the Court in rendering a verdict.[76]

72. S.C. Code Ann. § 5-7-250(b) requires town councils to "provide for keeping

[74] See Pl. Comp. ¶ 39.
[75] See Court's Order granting Defendant's Motion for Protective Order, p. 5, dated June 20, 2019.
[76] See Greenville County v. Kenwood Enterprises, 353 S.C. 157 (2003) (holding what Council members' motivations were passing the ordinance simply is not a proper inquiry.")

minutes of its proceedings which shall be a public record." In accordance with this statute, Town of Mount Pleasant Ordinance § 30.28 provides, "The Clerk of Council or designee shall attend all meetings of the Council and keep minutes of the proceedings of Council."

73. It is fundamentally inappropriate for a court to inquire into individual city council members' motives behind their legislative actions.[77] In reviewing decisions of municipal governments, "[m]unicipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of governing bodies."[78] "Parol evidence may not be admitted to explain, enlarge, or contradict minutes which are complete and unambiguous on their face."[79] "'Otherwise, parol evidence could render official minutes uncertain or unreliable so that minutes would fail to afford dependable evidence of the proceedings…'"[80]

74. The Court finds that relevant minutes for Town Council's meetings are both extensive and complete in describing the public comments, as well as Town Council's discussion and votes concerning the April 2014 zoning amendments, the Shem Creek Garage and the Parking License Agreement. The Court has already held that Town Council's actions relating to the Shem Creek Garage, Parking License Agreement and the Urban Corridor Overlay District zoning amendments were legislative acts.[81]

75. Given there is no ambiguity in those minutes, the Court will not consider other evidence of Town Council's actions pertaining to the Shem Creek Garage for the purpose of challenging the motives or subjective intent of the individual Council members.

CONCLUSIONS OF LAW

Burden of Proof

76. SCDG, as the plaintiff in this action, bears the burden of proof by a preponderance of the evidence standard. Menne v. Keowee Key Prop. Owners' Ass'n, 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App. 2006).

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[77] Horry Tel. Co-op., Inc. v. City of Georgetown, 408 S.C. 348, 354, 759 S.E.2d 132, 135 (2014) (citing Pressley v. Lancaster County, 343 S.C. 696, 542 S.E.2d 366 (2001) (other citations omitted)).

[78] Id.

[79] Berkeley Elec. Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992); Davis v. Orangeburg-Calhoun Law Enf. Comm., 344 S.C. 240, 248, 542 S.E.2d 755 (Ct. App. 2001) (citing).

[80] Id.

[81] See Court's Order granting Defendant's Motion for Protective Order, p. 5, dated June 20, 2019, attached hereto as Exhibit A.

77. The Town has asserted several affirmative defenses to SCDG's claim for breach of contract. "When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative defenses by the preponderance of the evidence." *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 195 (Ct. App. 2003) (quoting *Lorick & Lowrance, Inc. v. Julius H. Walker & Co.,* 153 S.C. 309, 318, 150 S.E. 789, 792 (1929)).

I. Plainitff Failed to Prove Its Breach of Contract Claim.

78. The cause of action for breach of contract requires the plaintiff to establish the following elements: (1) the existence of a contract, (2) a breach of the contract, and (3) damages to the plaintiff proximately resulting from the breach.[82] A breach occurs when a party to the contract fails to carry out a material term, promise, or condition of the contract.[83]

79. A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.[84] "Some terms are considered indispensable to a binding contract. Among these are price, time and place."[85] "In a contract for services two essential terms are the scope of the work to be performed and the amount of compensation."[86] Such material terms must be set out with reasonable certainty and the absence of material terms renders the agreement unenforceable.[87]

A. Plaintiff First Breached A Material Term of the PLA by Failing to Provide the Town with 276 Parking Spaces.

80. "[O]ne who seeks to recover damages for breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was, at the appropriate time, able, ready and willing to perform it."[88] "When called upon to construe contracts,

[82] Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).
[83] See Freeman Dodge, Inc. v. Fin. Servs., Inc., 272 S.C. 164, 249 S.E.2d 897 (1978).
[84] Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d 696,700 (2014) (citation omitted).
[85] Edens v. Laurel Hill, Inc., 271 S.C. 360, 247 S.E.2d 434, 436 (1978) (citing 17 C.J.S. Contracts, § 36(2)).
[86] Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 762 S.E.2d at 700 (citation omitted).
[87] Rose Elec., Inc. v. Cooler Erectors of Atl., Inc., 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016).
[88] Swinton Creek Nursery v. Edisto Farm Credit, ACA, 326 S.C. 426, 483 S.E.2d 789 (Ct. App. 1997) (citation omitted).

courts cannot rule on their wisdom or substitute their interpretation for the agreement clearly entered into between the parties."[89]

81. The Court holds that Plaintiff's breach of contract claim fails because Plaintiff first breached a material term of the PLA by failing to provide 276 parking spaces. Pursuant to the PLA, the Shem Creek Garage was to have 276 total parking spaces, including 132 spaces designated for public use 24 hours/day, 7 days/week.[90] The remaining 144 spaces were to be available to the public Monday – Friday 5:00pm to 6:00am and all day Saturday and Sunday.[91] As consideration for licensing these 276 spaces for 30 years, the Town was to pay Plaintiff a base rent of $185,000/year for 15 years.[92] It is undisputed that Plaintiff failed to provide the 276 spaces required by the PLA. The requirement of 276 parking spaces was a key, material term of the PLA as it provided the scope of Plaintiff's obligation under the PLA.[93]

82. Plaintiff admitted the PLA expressed a specific number of spaces.[94]

83. Plaintiff readily acknowledges that the Garage as constructed provides only 234 parking spaces, rather than the 276.[95] That is 42 spaces fewer or only 84.8% of the parking spaces Plaintiff promised in the PLA.

84. Per the PLA, the Town was obligated to pay a total of $2,775,000. Plaintiff attempts to argue the PLA required to the Town to pay the full amount of $2,775,000 for 84.8% of the spaces.

85. This interpretation leads to the absurd result of the Town being obligated to pay the same rent regardless of the number of parking spaces Plaintiff provided and the Plaintiff is free to provide any number of spaces that suits their modified business plan.

86. Plaintiff questioned witnesses as to whether the Town conducted an analysis to determine if 234 total spaces and 117 public spaces would be inadequate to help address the parking issues around Shem Creek. The Court holds that whether the Town conducted such an analysis is irrelevant to the fact that the PLA required 276 spaces. The PLA neither qualified the

[89] Texcon, Inc. v. Anderson Aviation, Inc., 284 S.C. 307, 326 S.E.2d 168 (Ct. App. 1985).
[90] See PLA, ¶¶ 1.05, 1.06, 3.02(a) and (b), Plaintiff's Exhibit 7.
[91] See PLA, ¶¶ 1.05, 1.06, 3.02(a) and (b), Plaintiff's Exhibit 7.
[92] See PLA., ¶ 1.07(a), Plaintiff's Exhibit 7.
[93] See Stevens & Wilkinson, 409 S.C. 568, 762 S.E.2d 696,700.
[94] Tr. pp. 262:1-3; 368:14:22.
[95] Tr. pp. 270:2-4; 392:3-6.

number 276 nor defined it based upon necessity or the Town's ability to substantiate the number of spaces with some analysis.

The Parking Space Requirement was Clear, Explicit and Material to the Agreement.

87. Plaintiff's claims are inconsistent with the plain meaning of the PLA and represent a material, unilateral alteration of the meaning of Section 2.02 of the PLA by arguing that the actual number of parking spaces only had to be "substantially similar" to the 276 spaces promised in the PLA.[96]

88. "The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the [contract]."[97] "If a contract's language is clear and capable of legal construction, this [c]ourt's function is to interpret its lawful meaning and the intent of the parties as found in the agreement."[98]

89. "A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense."[99] The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract.[100] "Where the contract language is plain and capable of legal construction, that language alone determines the instrument's force and effect."[101]

90. Also, where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction should prevail.[102] An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided.[103]

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[96] Tr. p. 218:12-21.
[97] Gilbert v. Miller, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct. App. 2003).
[98] Id. at 30-31, 586 S.E.2d at 864; Smith-Cooper v. Cooper, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001).
[99] Id. at 31, 586 S.E.2d at 864
[100] Koon v. Fares, 379 S.C. 149, 666 S.E.2d 230 (2008).
[101] Stevens & Wilkinson, 409 S.C. 568, 762 S.E.2d 696,700 (2014) (citing Jordan v. Sec. Grp., Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993)).
[102] Koon v. Fares, 379 S.C. 149, 666 S.E.2d 230 (2008) (citing Farr v. Duke Power Co., 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975)).
[103] Id.

91. Plaintiff asks the Court to adopt an interpretation of the PLA inconsistent with the plain, unambiguous language of the PLA. Section 2.02 of the PLA provides, "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" (emphasis added)." The single page conceptual drawing attached to the PLA depicts only the Garage's proposed exterior façade and elevation. There is absolutely no reference to the layout or number of parking spaces in this conceptual drawing.

92. Plaintiff also asks this court to believe the number of spaces negotiated was flexible based on the first sentence of Section 1.06 stating the 276 total parking spaces were "planned" for the Project. The term "planned" does not indicate that the plaintiff could deliver fewer than 276 spaces to the Town.

93. In Sections 1.05 and 1.06, the PLA specifically provides that the Garage will contain 276 spaces. These sections do not qualify the number 276 in anyway nor do they use the "substantially similar" language that Plaintiff advocates. To the extent the term "substantially similar" is used in Section 2.02 or 3.04, it is clearly referring to the "form" of the Garage as depicted in the conceptual drawing.

94. Section 1.07 entitled "Rent" and the attached Exhibit related thereto further support the position that the required number of parking spaces in unambiguous. The required rent for 276 spaces is $185,000 per year for 15 years with no reduction or adjustment based upon the number of parking spaces. The only potential adjustment to the Rent is described in Section 1.07(b) which permits a rent reduction for the Town based upon the profitability of the Garage.

95. Like the Sections that prescribe the number of parking spaces, the remainder of the PLA does not contemplate more or less rent based upon more or fewer parking spaces. The rent formula was simple: $185,000 per year for fifteen years for 276 parking spaces

96. Plaintiff argues that the Town would have been obligated to pay $185,000/year for fifteen years as long as Plaintiff provided the vague "substantially similar" number of "planned" parking spaces. This interpretation is absurd and assumes the obvious inconsistency that the Town was willing to pay a specific amount of rent, using tax-payer dollars, for a non-specific number of parking spaces. The "substantially similar" language in Section 2.02 references a conceptual drawing of the Garage's façade, elevation and "form" of the Garage, not the number of parking spaces, which is specifically prescribed in Sections 1.05 and 1.06.

97. The PLA specifically required Plaintiff to build a garage with 276 parking spaces, with very a specific allocation of those spaces for use and availability. In exchange, the Town would pay the specific amount of $185,000/year for fifteen years. This interpretation represents the more reasonable and probable agreement of the parties.

98. Plaintiff failed to provide the 276 parking spaces promised and required by the PLA, a material term of term of the agreement. Plaintiff first breached the agreement and therefore its breach of contract claim cannot survive.

99. Further, and in the alternative, even if the Court were to adopt Plaintiff's interpretation that Plaintiff only had to provide a number of parking spaces substantially similar to 276; 234 parking spaces, the number actually provided, is not substantially similar to 276 and, therefore Plaintiff first breached the Parking License Agreement.

Plaintiff's Breach of the Parking License Agreement was Material.

100. Plaintiff cites Kiriakides v. United Artists Commc'ns, Inc.,[104] for the proposition that its failure to provide 276 parking spaces is not a material breach of the Parking License Agreement.

101. Kiriakides is readily distinguishable from the present action and even if applied, supports the argument that Plaintiff breached a material term the PLA. In Kiriakides, the court interpreted the State's ejectment statute, S.C. Code Section 27-37-10, in the context of a commercial lease whereby the landlord sought to evict a tenant for a very minor breach of the lease - failure to pay an increased percentage in rent.[105] The present action involves a licensing agreement where neither the State ejectment statute nor eviction of a leasehold tenant are involved. Further, the court in Kiriakides was concerned that the landlord's interpretation of the ejectment statute "would lead to the absurd result that leases could be terminated for immaterial and trivial breaches."[106]

102. The court in Kiriakides in determining whether a failure to render or offer performance is material, considered the following circumstances significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit

[104] 312 S.C. 271, 275-76, 440 S.E.2d 364, 366-67 (1994).
[105] Kiriakides, 312 S.C. at 274-275, 440 S.E.2d at 365-66.
[106] Kiriakides, 312 S.C. at 275, 440 S.E.2d at 366.

of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.[107]

103. Applying the factors to this case: (a) The Town will be deprived of 15% of the parking spaces of which it bargained for under the Agreement; (b) the Town cannot be adequately compensated for the damages associated with the loss of 42 spaces. These spaces are lost for the entirety of the 30 Year License Term and there is nothing in the PLA that permits the Town to seek a reduction in rent for fewer spaces; in fact, Plaintiff demands full payment under the PLA for 15% fewer spaces; (c) although Plaintiff would suffer a forfeiture of the Town's rent payments, Plaintiff had the opportunity to terminate the PLA, but rather chose to proceed with constructing a Project that did not comply with the PLA and continue with the Project at its own peril; (d) it is impossible for Plaintiff to provide the lost spaces and cure the breach at this point; and (e) trial testimony indicates that Plaintiff knew in October 2013, less than a month after the parties executed the PLA and six weeks before the Town passed the zoning amendments Plaintiff requested, that it could not provide the number of spaces required by the PLA, yet Plaintiff withheld this information from the Town.

104. Plaintiff complains it was bad faith for the Town not to personally warn them of the impending zoning changes in Ordinance 14022, yet offers no explanation for not notifying the Town of its inability to provide the full number of parking spaces.

105. Plaintiff's own failure to warn the Town when it realized that it would not be able to provide 276 spaces did not comport with standards of good faith and fair dealing.

106. Whether in the context of Kiriakides or general contract principles, Plaintiff's business decision to proceed with premier office space and 85% of the required parking spaces constitutes a material breach of the PLA.

The Town Did Not Prevent Plaintiff from Providing the Required Parking Spaces.

107. Plaintiff's own mistakes, miscalculations, overestimations, and business decisions created the inability to provide the required parking spaces.

[107] Kiriakides, 312 S.C. at 276, 440 S.E.2d at 366-67.

108. Plaintiff's first mistake was commissioning the initial conceptual drawings without any analysis or consideration of the Town's zoning regulations, including setbacks. In fact, the sketch attached to the PLA provides no indication of what setback, if any, applied to the Garage. The renderings were drawn with "zero lot lines", meaning that the conceptual sketches assumed zero setbacks and drawn to the property lines. This first misstep was pivotal because it was these sketches that Plaintiff used to negotiate the terms of the PLA, which promised 276 parking spaces.

109. The evidence reveals that rather than having zero lot lines on the adjoining streets, Coleman Boulevard had a 20-30' build-to-line, Mill Street had a 20' setback, and Church Street had a 20' setback. These mistaken assumptions by Plaintiff regarding the setbacks caused it to vastly overestimate the foot print of the building and the number of parking spaces it could provide.

110. Plaintiff did not know or seek to know what the Town's setbacks actually were when it entered into the Agreement and certainly did not communicate any expectation or assumption to the Town. Most importantly, the Agreement contains zero assumptions regarding the Town's zoning regulations, but rather, assures the Town that the design will be consistent with the same.

111. Plaintiff argues that it was entitled to 5' setbacks on Mill Street and Church Street, which leads to its next major mistake.[108] First, the possibility of 5' setbacks on Mill Street and Church Street was just that – a possibility. The evidence showed Plaintiff had to satisfy specific requirements to obtain 5' setbacks, plus the Design Review process had to approve Plaintiff's plan.[109] These were not guaranteed.

112. Plaintiff also had to comply with the new requirements for parking structures in Ordinance 13077, which was adopted, in part, following Plaintiff's request. Mr. Small testified he submitted two written requests to the Planning Committee Chair in July and August of 2013.

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[108] Plaintiff neither argues nor offered evidence that it had vested rights which would preclude application of Ordinance 14022 to the Shem Creek Garage property. S.C. Code Sections 6-29-1510, et seq., and Town Ordinance Sections 156.049, et seq., outline the State and Town requirements for obtaining vested rights, none of which Plaintiff achieved prior to the enactment of Ordinance 14022. Town Staff testified that Plaintiff neither submitted nor received approval of a site-specific development plan, as required by State and Town law, in order to achieve vested rights for the Garage and be protected from application of Ordinance 14022 to the Project Tr. pp. 704:22-705:4. Further, the Court rejects the notion that a local governmental entity should in effect be required to be grant vested rights to a developer with whom it contracts regarding the development of land. The PLA did not preclude the Town from enacting lawful zoning ordinances that applied to the land and if Plaintiff wanted the benefit of the zoning regulations in effect at the time the parties executed the PLA, it needed to fulfill State law and Town of Mount Pleasants requirements for gaining vested rights.

[109] Tr. pp. 691:1-15.

In those requests, he specifically noted his intent to "provide open spaces and people-oriented design details to ensure the integrity of the activity zones on our adjoining streets."

113. As a result, Ordinance 13077 added a requirement for all garages which did not have floodproofing or first floor commercial, that they "must provide added features such as public art, a fountain, a bus stop, similar features to promote and maintain pedestrian activity" on the "Boulevard side ***and side street sides.***"[110] The Court finds it was unreasonable for Plaintiff to assume it could fulfil these requirements with 5' setbacks.

114. Plaintiff also had to have the design approved through the Town's Design Review process, and there is absolutely no evidence Plaintiff could have had such setbacks approved in the Design Review Process.[111] Thus, if Plaintiff assumed it could obtain 5' setbacks, that assumption was inconsistent with its own representations as to the design features it intended provide surrounding the Garage and such setbacks were not guaranteed.

115. The Court also finds that Plaintiff was able to shift the entire building approximately thirty feet away from Mill Street into the Marine Zoning District.[112] This is critical because Plaintiff's ability to shift the building eliminated any prospective impact of the building not having a 5' setback on Mill Street. Further, the Court finds that it was an interpretation of the zoning code by the Town's Zoning Administrator which led to Plaintiff's ability to shift the building.[113] This is inconsistent with Plaintiff's claim that the Town removed the 5' setback to thwart development of the Garage. Based on the foregoing, the Town did not prevent Plaintiff from performing under the PLA.

116. Plaintiff's breach of contract claim fails because Plaintiff first breached a material term of the PLA and refused to fulfill its promise to provide 276 parking spaces. Further, the Town did not prevent Plaintiff from fully performing. Plaintiff was unable to fully perform because of its own mistakes, unreasonable assumptions, and desire for additional office space.

117. Plaintiff knew as early as October 2013 that it could not provide 276 parking spaces, yet chose not to inform the Town, which does not comport with the standards of good faith and fair dealing.

[110] Defendant's Exhibit 21.
[111] Tr. 689:23-690:13.
[112] Tr. 611:2-613:12.
[113] Id.

Plaintiff Did Not Substantially Perform the PLA

118. Plaintiff argues that even the PLA required it to provide 276 total and 132 public spaces, that it substantially performed by designing the Garage with 85% and 89% of the respective total and public spaces thereunder. The Court disagrees and specifically holds that Plaintiff did not substantially perform its obligations under the PLA.

119. "The doctrine of substantial performance was conceived where a plaintiff's partial performance has already given to a defendant substantially all that he bargained for and is of such a nature that it cannot be returned." Clardy v. Bodolosky, 383 S.C. 418, 427, 679 S.E.2d 527, 531 (Ct. App. 2009).

120. First, The Court notes that the PLA was a licensing agreement and not a construction contract. The Town has no property interest in the Garage and does not possess any portion thereof. Further, Plaintiff terminated the PLA prior to the Rental Commencment Date in the PLA. As such, not only does the Garage provide only 234 of the 276 total spaces (85%) and 117 of the 132 (89%) public spaces, importantly, the Town does not receive the benefit of the promises under the PLA for Plaintiff to reserve spaces as the contract required. As long as it complies with Town regulations, Plaintiff is permitted to license and reserve the parking spaces as it sees fit.

121. As such, the parking spaces have "been returned" to Plaintiff. Plaintiff produced no evidence that it is reserving spaces as outlined in the PLA. Town regulations require Plaintiff to provide 100 spaces in the Garage for the public, but this requirement is separate and apart from the promises Plaintiff made in the PLA.[114] To the extent Plaintiff is providing spaces to the public as required by Town regulations, it cannot argue that the Town is getting the benefits of the PLA.

122. Plaintiff has not substantially performed under the PLA and its breach of contract claim necessarily fails.

B. Plaintiff's Breach of Contract Claim Fails Because It Failed to Meet a Condition Precedent of the PLA.

123. Where a party fails to comply with an express condition of a contract, that party has no right to enforce the contract.[115] "A condition precedent to a contract is 'any fact, other than mere lapse of time, which, unless excused, must exist or occur before a duty of immediate

[114] Tr. 582:1-22; 673:12-674:4.
[115] Ahrens v. McDaniel, 287 S.C. 63, 66, 336 S.E.2d 505, 507 (Ct. App. 1985).

performance by the promisor can arise.'"[116] "The question of whether a provision in a contract constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ."[117]

124. M&M Group Inc., involved a contract where a purchaser's obligation to purchase the property involved was contingent upon purchaser's ability to secure commercial financing.[118] In affirming the grant of summary judgment on the plaintiff's claims, the court held that the parties' "use of the language 'is contingent upon' is unequivocal and patently indicates the parties' respective obligations to buy and sell the business are contingent on [defendant's] ability to secure financing. No other meaning could be deduced from such clear and commonly used language."[119]

125. In the present case, pursuant to the PLA's express language, both Plaintiff's obligation to license spaces to the Town and the Town's obligation to pay rent under the PLA were contingent upon and subject to Plaintiff's ability to build a parking garage with 276 spaces in accordance with the Town's zoning laws and necessary approvals.

126. Under the PLA, Plaintiff granted "an exclusive License over the Premises to [the Town] and [the Town] 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."[120]

127. Further, Section 2.03 titled Licensor's Contingency provides:

> Licensor's obligations under the [PLA], including but not limited to the obligation to construct the [Garage], 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."[121]

128. Like the contract in M&M Group, Inc., the PLA specifically contemplated Plaintiff's ability to construct the Garage in compliance with the Town's zoning laws and required approvals as express conditions precedent to the parties' obligations thereunder. Because Plaintiff

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[116] M&M Group, Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262, 266 (Ct. App. 2008) (citations omitted).
[117] Id.
[118] Id. at 266-267.
[119] Id.
[120] See PLA, ¶ 2.01(a) (emphasis added), Plaintiff's Exhibit 7.
[121] Id. at ¶ 2.03.

failed to construct the Garage with 276 spaces in compliance with the Town's zoning laws and regulations, neither Plaintiff's obligation to license the spaces nor the Town's obligation to pay rent arose.

129. The intent of the parties to treat the construction of the Garage as a condition precedent to the licensing of parking is further demonstrated by the fact that the same section of the PLA that created this condition permitted Plaintiff to unilaterally terminate the agreement.

130. Plaintiff was afforded two years to decide whether it wanted to construct the Garage and, if not, could freely terminate the PLA with no consequences. The decision to build the garage without the financial commitment from the Town belonged solely Plaintiff.

131. Mr. Flesch admitted at trial that this provision required the Project to comply with the Town's zoning ordinances and receive all of the necessary approvals pursuant to Section 2.03.[122] However, Plaintiff argues that this is only a condition for Plaintiff's benefit. Such an interpretation leads to the absurd result that Plaintiff can demand the Town pay full rental value even if it is unable to meet the condition precedent to comply with the zoning ordinances and receive the necessary approvals to construct a compliant Garage.

132. Plaintiff argues that by providing only 234 of the 276 promised parking spaces, an express condition, it has substantially performed under the PLA and the Town is financially responsible.[123]

133. "[T]he doctrine of substantial performance does not apply to express conditions.[124] Thus, any evidence to show they substantially performed the contract is immaterial.[125] If substantial performance does not entitle a party to recovery on the contract, a judge is not required to hear an argument on the issue of substantial performance.[126]

134. The doctrine of substantial performance does not apply in this instance because while it provided a garage that looks similar to a drawing, Plaintiff failed to fulfill the express condition precedent of legally constructing 276 parking spaces.

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[122] Tr. pp. 234:7-235:17.
[123] See Pl. Comp. ¶ 29.
[124] Ahrens, 287 S.C. at 66-67, 336 S.E.2d at 507 (citation omitted); see also McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) ("If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arise." The doctrine of substantial compliance does not apply.).
[125] Id.
[126] Ahrens, 287 S.C. 63, 67, 336 S.E.2d 505, 508.

C. <u>If the PLA is Conceptual in Nature and as Vague as Plaintiff Argues, Then it Did Not Set Out a Material, Essential Term to a Reasonable Certainty and, Therefore, Is Not Enforceable Against the Town</u>.

135. In the alternative, Defendant argued that if, in fact, the PLA only required the number of parking spaces to be "substantially similar" to 276, then the PLA did not set out this material, essential term to a reasonable degree of certainty and, therefore, is not enforceable.

136. For a contract to be binding, material terms cannot be left for future agreements.[127] Material terms must be set out with reasonable certainty and the absence of material terms renders the agreement unenforceable.[128]

137. Plaintiff argued and presented testimony, that the PLA was based only on a concept, the numbers were meant to be fluid, and the terms of the Agreement required the number of parking spaces to only be "substantially similar" to 276.[129]

138. As demonstrated during trial, the number of parking spaces was a material term to the Town, as it was committing tax dollars to a stated parking need, and was material to defining the scope of Plaintiff's obligation to perform under the PLA.[130]

139. Even if the Court were to adopt Plaintiff's interpretation that its only obligation was to provide a "substantially similar" number of parking spaces, such a vague promise does not define this material term with reasonable certainty and renders the PLA very difficult to understand and administer. Such indefiniteness in this material term renders the PLA unenforceable.[131]

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[127] Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d at 700 (citing Aperm of S.C. v. Roof, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986)). Regardless of intent, an agreement which leaves open material terms is unenforceable. Id. at 701 (citing Aperm of S.C. v. Roof, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986); 1 Corbin on Contracts § 2.8 (Rev. ed. 1993) ("Even if an intention to be bound is manifested by both parties, too much indefiniteness may invalidate the agreement, because of the difficulty of administering the agreement."); 1 Corbin on Contracts § 4.1 ("A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood.")).

[128] Rose Elec., Inc. v. Cooler Erectors of Atl., Inc., 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016).

[129] Tr. p. 218:12-21.

[130] See Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d at 700 (citation omitted); Tr. pp. 496:14-497:17.

[131] Rose Elec., Inc. v. Cooler Erectors of Atl., Inc., 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016).

D. The Town did not Breach Its Implied Covenant of Good Faith and Fair Dealing.

140. There exists in every contract an implied covenant of good faith and fair dealing.[132] An implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract.[133]

141. Plaintiff cites several examples of alleged deliberate actions taken by the Town that represent a breach of the implied covenant of good faith and fair dealing.[134] However, Plaintiff's allegations mischaracterize the Town's actions, none of which breached the implied covenant of good faith and fair dealing.

i. The Town's adoption of 2014 zoning amendments did not breach the implied covenant of good faith and fair dealing.

142. Plaintiff first argues that the Town improperly adopted "zoning amendments that forced Plaintiff to redesign the parking deck and provide fewer spaces than originally planned."[135]

143. The primary zoning amendment Plaintiff complains about is the elimination of a footnote that ostensibly allowed them to apply a five-foot setback on Mill Street and Church Street.[136] Without those five-foot setbacks, Plaintiff complains they could not possibly satisfy the required space count.[137] There is no evidence, however, that Plaintiff could accomplish five-foot setbacks under the Town's zoning ordinances, even if the footnote remained in place.[138]

144. Town staff testified that even if Plaintiff met the basic requirements for requesting five-foot setbacks, their plans would then be submitted to the Design Review Process, approval of which would not be automatic but rather permissive.[139] Furthermore, Plaintiff has not proven they could have provided 276 spaces even if they were entitled to or could achieve five-foot setbacks.

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[132] U.S. f/u/b/a Williams Electric Co., Inc. v. Metric Constructors, Inc., 325 S.C. 129, 480 S.E.2d 447 (1997) (citing Adams v. Creel, 320 S.C. 274, 465 S.E.2d 84 (1995); Parker v. Byrd, 309 S.C. 189, 420 S.E.2d 850 (1992);Tharpe v. G.E. Moore, 254 S.C. 196, 174 S.E.2d 397 (1970)); Swinton Creek Nursery v. Edisto Farm Credit, ACA, 326 S.C. 426, 483 S.E.2d 789 (Ct. App. 1997) (citing Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 147 S.E.2d 481 (1966)).
[133] RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004).
[134] See Pl. Compl. ¶ 39.
[135] Id. at ¶ 39(a).
[136] Tr. pp. 149:8-15; 152:19-153:21.
[137] Tr. pp. 157:21-159:12.
[138] Tr. pp. 689:20-692:15.
[139] Tr. pp. 689:23-690:16.

145. The following facts were proven at trial:

a. Mr. Flesch admitted (Day 1 of direct examination) that none of the Town's ordinances or zoning determinations were illegal.

b. Mr. Flesch admitted (Day 1 of direct examination) that Plaintiff did not appeal the ordinance, determinations related thereto, or seek a variance therefrom.

c. The Marine District determination by Kent Prause, the Town's Zoning Administrator, gave them 30 additional feet toward Shem Creek, eliminating any need to shrink the footprint of the building along Mill Street to offset the 20-30 foot build-to line created by Ordinance 14022.[140]

Plaintiff's own statements and their requested amendments anticipated larger setbacks.

146. In written correspondence to the Town and recorded statements to the Town's Planning Committee, Plaintiff clearly expressed its expectation that the Garage's adjoining streets would have "open spaces", "people-oriented design details", and "activity zones."[141]

147. The zoning amendments enacted by Ordinance 13077 in 2013 at the behest of Plaintiff are consistent with Plaintiff's stated desire to "provide added features such as public art, a fountain, a bus stop, similar features to promote and maintain pedestrian activity" on the boulevard and side streets, such as Mill Street and Church Street in the case of the Shem Creek Garage.[142]

148. The evidence surrounding the enactment of this specific amendment demonstrates that Plaintiff acknowledged and even desired the Garage to be designed in a way to incorporate these features, that could not have been possible within a mere five-foot setback.

149. The subsequent zoning amendments to the Overlay District in Ordinance 14022 furthered that objective by changing Simmons Street and Mill Street, streets with anticipated pedestrian activity, from a 20-foot setback to a 20-30 build-to-line.[143] This change to Mill Street

[140] Tr. pp. 774:2-16.
[141] Defendant's Exhibits 3, 20 and 32.
[142] See Ordinance 13077, Defendant's Exhibit 21
[143] Tr. pp. 671:18-673:11; see also Ordinance 14022, Ex. A, p. 21, footnotes 5 and 6, Defendant's Exhibit 14022.

from a 20-foot setback to a 20-30-foot build-to-line served to promote the requested amendments enacted by Ordinance 13077.[144]

150. Plaintiff's own conceptual rendering of the Garage, which was attached to the PLA and considered the only design information available at the time these zoning amendments were adopted, clearly contemplated setbacks greater than five-feet on Mill Street.[145] Plaintiff also never sought a variance from application of this amended zoning ordinance or any staff determination related thereto.

151. Plaintiff provided no evidence, and even acknowledged that the enactment of Ordinance 14022 was legal and in good faith.

ii. The Town's enforcement of its zoning requirement for nine-foot parking spaces was not a breach of the implied covenant of good faith and fair dealing.

152. Plaintiff alleges the Town breached the covenant of good faith and fair dealing by not allowing Plaintiff to build the Garage with spaces 8 feet 6 inches in width. Town ordinance 156.173(C) provides "[p]arking spaces 90 degrees to the travel way aisle shall not be less than nine feet in width." Plaintiff did not request to amend or seek a variance from the nine feet width requirement for parking spaces.[146]

153. Plaintiff argues its concept presumed the Garage would have spaces that are 8 feet 6 inches wide, however Ken Betsch stated he always assumed nine feet spaces in his rendering, which is consistent with the Town's zoning regulations.[147] Plaintiff's final architect said Betsch's sketches assumed a parking space width 8 feet 6 inches. Unfortunately, neither Plaintiff nor its architects can say with certainty what their assumption was with regard to parking space width when the parties entered the PLA, but in either case, it was never communicated to the Town.

154. Rather, once Plaintiff realized it was unable to provide the 276 spaces required by the PLA, it demanded Town staff provide special treatment and grant a variation from the standard applied Town-wide. It is undisputed that at all times relevant hereto, Town regulations require all

[144] Tr. pp. 671:18-673:11.
[145] See PLA, Plaintiff's Exhibit 7.
[146] Tr. pp. 679:20-680:1; 711:20-23.
[147] Defendant's Exhibit 15.

commercial parking spaces to be nine feet wide.[148] The Court holds that it was not a breach of the implied covenant of good faith and fair dealing for the Town to enforce its parking space width requirement.

iii. The Town did not breach the covenant of good faith and fair dealing interpreting its zoning ordinances related to this project.

155. Plaintiff alleges that Town staff intentionally adopted unfavorable interpretations of the Town's zoning ordinances to hinder Plaintiff's ability to develop the Garage. Included in these were the Town's interpretation that the Garage did not represent a civic use, which if so defined, may have afforded some undefined flexibility in defining setbacks and other design elements for the Garage project during the design review process.[149] However, if the Garage had been defined as a civic use, there is no guarantee the design review process would have provided Plaintiff with the setbacks it desired.[150] Further, the Town's then Planning Director Christianne Farrell testified that no Town official or employee pressured or told her that she should work to thwart development of the Garage.[151]

156. Plaintiff also alleges the Town made unfavorable interpretations related to Church Street which caused the foot print of the building to be smaller than they planned.[152] Plaintiff counsel's extensive questioning of the Town's Zoning Administrator Kent Prause regarding his determination that a rear setback did not apply to the Church Street side of the Garage is another specific example of an interpretation that Plaintiff now complains.[153]

157. Mr. Prause testified that neither on his own initiative nor at the behest of Town authorities did he ever make any decision with the intent to thwart development of the Garage.[154] In fact, the Town's Ordinance clearly defines the treatment of a public street and the applicable setbacks, and Mr. Prause was simply doing his job in interpreting that Ordinance. Plaintiff's next step, if they disagreed, was to appeal it to BZA.

158. The Town's Transportation Director Brad Morrison also testified that Church Street is a public street that requires setbacks as defined by Town ordinance and has never been

[148] Tr. pp. 710:13-711:23.
[149] Tr. pp. 653:3-22; .
[150] Tr. pp. 306:10-17; 654:17-656:2.
[151] Tr. pp. 708:23-709:3.
[152] Tr. pp. 158:10-159:12.
[153] Tr. pp. 554:22-556:21; 561:5-567:6
[154] Tr. pp. 606:23-607:5.

abandoned by the Town.[155] Plaintiff's architect admitted that he had no reason to believe that Church Street did not meet the definition or requirements of a street to utilize a side street setback as Mr. Prause determined.[156]

159. Plaintiff neither appealed nor sought a variance from these staff decisions. In fact, Plaintiff does not allege that any of Town staff's interpretations were illegal, an abuse of discretion or even unreasonable. Rather, Plaintiff alleges that the Town did not provide the spirit of cooperation it expected. From Mr. Flesch's testimony and Plaintiff counsel's questioning of Town staff members, it appears Plaintiff defined "cooperation" simply as Town staff giving them what they wanted without regard for past precedent, uniformity, historical application or public policy. However, Mr. Flesch admitted there was no evidence that Town Staff was instructed not to cooperate with Plaintiff in developing the Garage.[157]

160. Further, Plaintiff mischaracterizes the request by Mr. Prause to provide free parking to restaurant patrons as a condition of receiving a foundation permit. Mr. Prause interpreted Town regulations to require Plaintiff to replace free surface lot spaces, which were going to be displaced by the proposed building footprint.[158] Regardless, the Town ultimately issued Plaintiff's foundation permit and did not require Plaintiff to provide the free parking spaces of which it complained. The Court finds that Plaintiff was neither damaged nor prejudiced by Mr. Prause's interpretation and that Mr. Prause's interpretation was made in good faith..[159]

161. The court finds that in each instance where Town staff issued a zoning determination, Plaintiff was notified of the substance of the determination and had an opportunity under both State law and Town Ordinance to appeal the determination. Rather than appeal, Plaintiff elected to submit design plans that complied with the Staff's determinations.[160]

162. The Court finds each determination was legal, reasonable, not an abuse of discretion and made in good faith. The Court agrees with the testimony of Town staff and holds that the implied covenant of good faith and fair dealing did not require the Town to interpret its zoning ordinances or make determinations related thereto in a manner favorable to Plaintiff or the

[155] Tr. pp. 832:21-836:16.
[156] Tr. 2/6 am, pp. 117::18-23.
[157] Tr. 301:5-12.
[158] Tr. pp. 571:17-574:1.
[159] Tr. pp. 575:24-576:7.
[160] Tr. 603:14-18.

PLA.[161] Again, Plaintiff could have appealed any or all of the decisions it believed were incorrect or unlawful to the Board of Zoning Appeals[162], but opted, instead, to attack the motives of staff for valid interpretations of the zoning code.

iv. The Town never received or relied on confidential information improperly obtained by opponents of the Garage.

163. Plaintiff offered no evidence that the Town or any member of Town Council or staff member did anything to improperly take or use Plaintiff's confidential information.

Plaintiff's Claim for Damages

164. PLA Section 1.07 entitled "Rent" provides that "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…, 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 release from escrow upon the Rent Commencement Date.

165. Section 1.09 License Year provides, "A License Year shall be successive period of twelve (12) calendar months commencing on the Rental Commencement Date."

166. Section 1.10 License Term: Rental Commencement Date states in relevant part, "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.

167. The pertinent part of Section 6.01 explains the damages available Plaintiff in the event of default by the Licensee and provides, "In addition, Licensor shall be entitled to bring an

[161] Tr. pp. 521:23-522:15.
[162] Tr. pp. 522:16-19.

action for specific performance or breach of contract against Licensee but agrees that it sole and exclusive remedy shall be the Rent Payments ***due under this Agreement***."

The PLA Does Not Permit Plaintiff to Recover 15 Years of Rent.

168. As demonstrated above, both the PLA's Rental Commencement Date and the License Term commenced on the date of issuance of certificate of occupancy by the Town, which was July 28, 2017.[163] Importantly however, Plaintiff terminated the Agreement on June 23, 2016, approximately one year before the Town issued the Certificate of Occupancy.[164] As such, neither the Rental Commencement Date nor the License Term of the PLA had even started when Plaintiff terminated the Agreement.

169. Assuming *arguendo* the Court determines the Town breached the PLA and Plaintiff is entitled to damages prescribed in Section 6.01, the most that the Town is obligated to pay at the time Plaintiff terminated the Agreement was the first year of rent paid into escrow on the date Plaintiff commenced construction of the Garage as required by Section 1.07. However, Section 1.07 also provided that the first rent payment could not be released to Plaintiff until the Rent Commencement Date, which was the date the Certificate of Occupancy issued and after Plaintiff terminated the Agreement. Simply, no rent was due to Plaintiff when it terminated the Agreement.

170. Section 8.17, titled "Survival of Obligations" provides, "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." Plaintiff argues that this provision allows it to recover ALL 15 years of rent payments despite the fact it terminated the Agreement before the Rent Commencement Date and such an interpretation is absurd and goes against the clear intent of the parties.

171. Plaintiff testified that as the parties negotiated the Agreement, the Town insisted that neither consequential nor punitive damages could be recoverable.[165]

172. Plaintiff admitted that the Town insisted that the acceleration clause in the original draft be removed.[166] The absence of the acceleration clause removed by the Town is inconsistent with Plaintiff's claim for immediate payment of all 15 years of rent payments.

[163] Tr. pp. 707:19-708:2; Defendant's Exhibit 28.
[164] Defendant's Exhibit 23.
[165] Tr. 240:9-20.
[166] Tr. 240:9-20.

If the PLA's liquidated damages provision requires 15 years of payments, then it is an unenforceable penalty.

173. The touchstone question in determining whether a sum stipulated in a contract is a liquidated damage or an unenforceable penalty is whether the amount is "reasonably intended by the parties as the predetermined measure of compensation for actual damages *that might be sustained* by reason of nonperformance...."[167]

174. Whether a stipulation is one for liquidated damages or for a penalty is, of course primarily a matter of the intention of the parties. Implicit in the meaning of liquidated damages, is the idea of compensation; in that of "penalty", the idea of punishment.[168] If it is clear that the stipulation is for liquidated damages, breach of the contract will generally entitle the offended party to retain or recover the sum stipulated, and neither more nor less without proof of damage actually sustained.[169]

175. The language used by the parties in this Agreement is conclusive of the question of whether the stipulation is for liquidated damages or for a penalty.[170] Interpretation of the contract is governed by the objective manifestation of the parties' assent at the time the contract was made.[171]

176. In Foster v. Roach[172], our supreme court identified criteria to utilize in making a determination as to the qualification of damages:

> In order to determine whether the sum named in a contract as a forfeiture for noncompliance is intended as a penalty or liquidated damages, it is necessary to ***look at the whole contract***, its subject-matter, the ease or difficulty in measuring the breach in damages and the magnitude of the stipulated sum, not only as compared with the value of the subject of the contract, but in proportion to the probable consequences of the breach.

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[167] Erie Ins. Co. v. Winter Const. Co., 393 S.C. 455, 462, 713 S.E.2d 318, 322 (Ct. App. 2011)(citing Tate v. Master, 231 S.C. 429, 441, 99 S.E.2d at 46 (1957) (emphasis added); see also Restatement (Second) of Contracts § 356 (1981).
[168] Tate v. Master, 231 S.C. 429 at 441, 99 S.E.2d at 46 (1957).
[169] Id.
[170] Id. (citing Ould v. Spartanburg Realty Co., 94 S.C. 184, 77 S.E. 866 (1913)).
[171] Bannon v. Knauss, 282 S.C. 589, 593 320 S.E.2d 470 (1984).
[172] 119 S.C. 102, 107, 111 S.E. 897, 899 (1922) (emphasis added).

177. Where the sum stipulated in an Agreement is so large that it is plainly disproportionate to any probable damage resulting from a breach of contract, the stipulation would be held one for penalty and not for liquidated damages, regardless of its terminology.[173] If the provision be for a penalty, recovery is measured not by the sum stipulated, but by the amount of ***actual damage*** proven to have been sustained as the result of the breach.[174]

178. In the case of Erie Ins. Co. As Assignee v. the Winter Constr. Co.,[175] the parties entered into a contract with a liquidated damages provision that permitted the nonbreaching party to recover an administrative fee of 15% of the outstanding work remaining in the contract. The court found this to be a reasonable and fair liquidated damages provision.

179. PLA Section 8.17 allows the survival of all provisions that relate to "the obligation to pay any sum owing…" Further, the parties waived any claims to consequential or punitive damages, with Plaintiff's sole remedy being a claim for "rent payments ***due*** under the Agreement."[176]

180. In the present case, Plaintiff argues that "rent payments ***due*** under the Agreement" allows it to recover the 100% of the of the rent for the entire fifteen years of the PLA as if it was fully performed. To award Plaintiff 100% of the rent due would neither be fair nor reasonable, but rather a penalty. Further, the Court finds that requiring Defendant to pay 100% of fifteen years of rent is plainly disproportionate to any actual damages suffered by Defendant's alleged breach. Plaintiff testified to the ultimate success of the Garage project and the thousands of patrons who had parked there. Further, it was Plaintiff who terminated the PLA before it was even entitled to receive the first rent payment.

ORDER

THEREFORE, it is ordered that judgment be entered in the favor of Defendant, the Town of Mount Pleasant, South Carolina.

And it is further ordered that Defendant submit an affidavit of all costs and attorneys' fees that it seeks to be awarded in this action, within fifteen days of this Order and that Plaintiff shall have an opportunity to object to any such costs and fees by submitting an objection thereto within fifteen days of Defendant's submittal of said affidavit. A hearing will be set within fifteen days

[173] Tate v. Master, 231 S.C. 429 at 441, 99 S.E.2d at 46 (1957) (citing 15 Am. Jur. Damages, Sec. 249, p. 681.).
[174] Id. (citing 25 C.J.S. Damages § 116b, p. 704) (emphasis added).
[175] 393 S.C. 455, 713 S.E.2d 318 (Ct. App. 2011).
[176] Sec. 6.01

following Plaintiff's objections, if any.

AND IT IS SO ORDERED.

_____

The Honorable Maite Murphy

Charleston, South Carolina

_____, 2020

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Maite Murphy, Circuit Court Judge

Case No. 2017-CP-10-5493

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

v.

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

NOTICE OF APPEAL

The Appellant Town of Mount Pleasant, South Carolina hereby appeals the judgment entered on July 13, 2020 and the following Orders issued by the Honorable Maite Murphy, in addition to all pre-trial and trial rulings made during the trial held on February 3-6, 2020:

(1) Order filed July 13, 2020;

(2) Order Denying Defendant's Motions for New Trial and to Reconsider, Alter or Amend Order, filed September 17, 2020;

(3) 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; and

(4) Order Granting Plaintiff's Motion to Strike Defendant's Expert Witness, filed January 8, 2020.

The Appellant's counsel received written notice of entry of the Order filed September 17, 2020, on that same date.

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October 16, 2020

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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August 16, 2021

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Town of Mount Pleasant certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

BY: *s/ Andrew F. Lindemann*

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