

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge
Trial Court Case No. 2021-CP-07-01078

SEP 05 2023

SC Court of Appeals

Appellate Case No. 2023-000581

James Ware, Alisa Ware, Henry Spahr, Elaine Spahr, Julie Sanders,
William Craig Denny, Jeff Toomer, Allyson Toomer, Louise E. Davis,
Donna Nutty, Thomas J. MacDonald, Michael G. MacDonald,
Susanne B. MacDonald, Arlene Coleman, William H. McGee,
Patti M. MacDonald, Scott M. MacDonald, Rose F. McGee, Jason
DuBose, Amanda DuBose, Ronald L. Broome, Lawrence E. Jones,
D. Diane Burr, Mark H. Thomas, Kelly C. Thomas, William Matthew
Yollo, Nancy H. Yollo, Joseph DeAngelis, Beth DeAngelis, Shelly Horn,
Theodore Brammer, Allison Brammer, Waymon W. Durden,
Constance C. Durden, David C. Powell,

Respondents,

v.

Beaufort County, HPCCA Ferry Company, Inc., and
The Daufuskie Island Ferry Service, LLC,

Defendants,

Of which Beaufort County is the

Appellant.

RECORD ON APPEAL
VOLUME 2

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
LOUIS E. DAVIS, DONNA)
NUTTY, THOMAS J.)
MacDONALD, MICHAEL G.)
MacDONALD, SUSANNE B.)
MacDONALD, ARLENE)
COLEMAN, WILLIAM H.)
McGEE, PATTI M. MacDONALD,)
SCOTT M. MacDONALD, ROSE)
F. McGEE, JASON DuBOSE,)
AMANDA DuBOSE, RONALD L.)
BROOME, LAWRENCE E.)
JONES, D. DIANE BURR, MARK)
H. THOMAS, KELLY C.)
THOMAS, WILLIAM)
MATTHEW YOLLO, NANCY H.)
YOLLO, JOSEPH DeANGELIS,)
BETH DeANGELIS, SHELLY)
HORN, THEODORE BRAMMER,)
ALLISON BRAMMER,)
WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

Plaintiffs,)

vs.)

AFFIDAVIT OF ALISA WARE

BEAUFORT COUNTY, HPCCA)
 FERRY COMPANY, INC., and THE)
 DAUFUSKIE ISLAND FERRY)
 SERVICE, LLC,)

Defendants.

BEFORE THE UNDERSIGNED officer duly authorized to take and administer oaths, came Alisa Ware, who, being duly sworn, deposed, and stated as follows:

1. My name is Alisa Ware. I am above the age of majority, and I give this Affidavit based upon my personal knowledge in support of the Plaintiff's Motion for Partial Summary Judgment and a Temporary Injunction.
2. My husband James Ware and I live at 1 Big Oak, in Buckingham Landing in southern Beaufort County, in a house adjacent to Beaufort County's current embarkation / debarkation area for the Daufuskie Island Ferry. We are Plaintiffs in this action.
3. I have reviewed Beaufort County's Responses to our Requests to Admit as were made on November 22, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000, located across the residential road from our home, for a commercial ferry operation, is a "lawful use." (See page 2, response to Request No. 4 in Exhibit A to this Affidavit)
4. I have also reviewed Beaufort County's Responses to our Interrogatories, as made on November 24, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000 is not an illegal nonconformity under the Community Development Code, "but is a legal use." As the basis for this claim, the County states that the "Beaufort County Zoning and Development Administration, on May 4, 2009, issued a Zoning Permit for a Commercial Dock for the subject property at Buckingham Landing." The County goes on to contend that the Zoning Permit indicates that the Zoning Board approved a variance for the dock on July 24, 2008 related to OCRM Permit 2004-1E-110-P. The County finally contends that "The Zoning Permit establishes the legality of the commercial use of the dock at Buckingham Landing." (See pages 16-17, response to Interrogatory No. 23, in Exhibit B to this Affidavit)

5. I have also reviewed the more than 1000 pages of documents that the County has produced in discovery and affirmatively state that the documents show that if the Board of Zoning Appeals actually issued a variance permit on July 24, 2008, it was issued solely to allow the then owner of the property, Wilbert Roller, to construct a dock that exceeded the 300 foot maximum length the County ordinances set. The letter from Wilbert Roller's legal counsel Thomas R. Goldstein to Beaufort County Zoning and Development Administrator Hillary A. Austin wherein Mr. Goldstein advised:

As I am sure you are aware from the numerous previous submissions, there is nothing commercial about the dock. The application is indistinguishable from any of the thousands of docks constructed in Beaufort County. Mr. Roller does not propose to sell fuel, provide pump out services, overnight berthing, rent slips or otherwise engage in any commercial enterprise on the dock. The dock is intended to serve entirely as an amenity to his restaurant.

(Beaufort County Bates numbered document BC00136-00137. See Exhibit C to this Affidavit)

6. The County's production also shows that in Wilbert Roller's "Amended Application to the Zoning Board of Appeals", Mr. Roller made clear the dock was simply to be used as a visual aid for the promotion of his seafood restaurant and to allow docking by restaurant patrons that he presumed would come by boat:

The existence of a dock is critical both from the standpoint of curb appeal to its customers, but also to permit boaters, who are a main target of Mr. Roller's business plan, to reach the restaurant.

The Application went on to contend that Roller's use of the restaurant dock would not affect the neighborhood at all because it would not create street or foot traffic—it would simply offer a "tie-up" for boaters coming to the restaurant: "[N]o one can seriously assert that any surrounding property owner or owners will be affected in any way by the issuance of a dock. First of all, as a riparian property owner, the applicant is entitled to make use of the water, as O.C.R.M. so found when it issued the dock permit. Second, many property owners in the area have docks, some significantly longer than 300 feet. The County has an obligation to treat similarly situated property owners in the same fashion."

(Beaufort County Bates numbered document BC00014. See Exhibit D to this Affidavit)

7. The County's production also revealed that the Board of Zoning Appeals specifically stated, in its Order granting the dock variance on December 10, 2008 to Wilbert Roller:

"7. (1)... "We find a dock, whether residential or commercial, is not a "use" of the property. In this case, the commercial restaurant is the "use" of the property....."

"(3) The particular facts of this case demonstrate that a commercial dock on the property appurtenant to this seafood restaurant is merely an active "practice" incidental to the "use" of the property as a restaurant. The dock is not a land use in itself; it is solely associated with and related to the business on the land. It serves, in other words, as an amenity to the restaurant, but does not involve any independent commercial use."

(Beaufort County Bates numbered document BC00173. See Exhibit E to this Affidavit)

8. In my review of the documents produced by the County in response to discovery requests, I have found no evidence that the Board of Zoning Appeals, nor any other authorizing agency or body, has granted a variance for commercial use to Wilbert Roller, Queensborough National Bank & Trust (the foreclosing bank against Roller), Beaufort County or Haig Point for any commercial operations, including commercial ferry operations, on R600-041-000-0009-0000 and R600-041-000-0008-0000.
9. Upon information and belief, pursuant to the Order issued by Justice Finney in 2002, Mr. Roller was affirmed to have existing development rights which the Court deemed grandfathered in. It was not issued as a Use Variance.
10. Upon information and belief, Beaufort County enacted the Buckingham Landing Community Preservation District in 2007 which details what commercial activities are permitted within the Preservation District. A commercial ferry operation is not listed as a permitted commercial activity.

(Beaufort County Community Development Code Appendix A.10. See Exhibit F to this Affidavit)

11. Upon information and belief, The Buckingham Landing Community Preservation Plan was adopted as Appendix 4F of the 2010 Beaufort County Comprehensive Plan. Page 12 of the Buckingham Landing Community Preservation Plan specifically states:

“Zoning the Existing Commercial Uses:

5)Any nonconforming use shall be considered abandoned if vacant or unused for 120 days. Abandoned uses shall only be replaced with conforming uses and structures.”

(Pg. 12 Buckingham Landing Community Preservation Plan. See Exhibit G to this Affidavit)

12. Upon information and belief, the last entity operating as a restaurant known as Sunset Bay ceased operations in September 2013 (See Attached Exhibit H to this Affidavit) and the property remained vacant until January 2017 when Daufuskie Island Ferry Service began operations.
13. According to the County’s documents, at BC00007 (Exhibit I to this Affidavit), the original lease agreement dated January 27, 2017 between Wilbert Roller and the Defendant Daufuskie Island Ferry Service, contained no rights to use the building because it was closed. “The building is closed and is not a part [sic] the lease agreement.”
14. I have personally witnessed since the ferry began operating out of Buckingham Landing the following:
 - a. An exponential increase in daily traffic flow on Fording Island Road Ext.
 - b. Illegal parking in the boat landing and along roadways on Fording Island Road Ext. and Big Oak St.
 - c. Numerous cars parked under the Bluffton Parkway flyover bridge and behind the gas station as overflow parking for the ferry service.
 - d. Ferry passengers trespassing on my property as well as other neighboring properties.
 - e. The County operated shuttle bus using the public boat landing as a designated pick up/drop off location for ferry passengers in violation of County Ordinance 102 Article II.
 - f. Numerous cars excessively speeding on Fording Island Road Ext.
 - g. On several occasions, walkers and bikers (including children) being forced off the road by speeding ferry passengers.
 - h. Excessive noise emitting from the ferry dock and parking lot beginning as early as 6:00am until after 9:00pm.
 - i. Ferry passengers allowing their dogs to roam unleashed within Buckingham Landing and defecate on my and other neighboring properties.

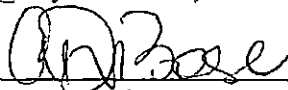
- j. Ferry passengers parking and blocking access to the BJWSA pump station, fire hydrant and AED station.
 - k. Ferry passengers using Fording Island Road Ext. and the boat landing to unload and load their belongings in violation of County Ordinance 102 Article II.
 - l. Ferry passengers blocking access to my driveway.
15. Upon information and belief, the County's has allowed Haig Point to sublease dock space to other commercial operations and/or private individuals.
16. Our family has altered our home, our yard, and our lives in response to the incredible nuisance the Ferry company has created on and near our property:
- a. We have constructed a large gate and fence in an effort to gain some privacy in our yard.
 - b. We have added expensive privacy blinds and shutters in an effort to gain some privacy in our home.
 - c. We have planted expensive landscaping in an effort to gain some privacy in our yard.
 - d. We spend less time outside our home enjoying our yard due to the discomfort of constant invasions of privacy from Ferry customers, even considering the measures we have taken to decrease these invasions.

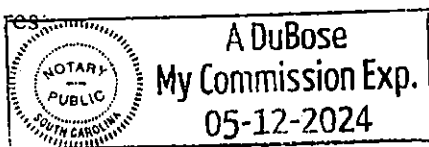
FURTHER AFFIANT SAYETH NOT.


 ALISA WARE
 PLAINTIFF

Sworn to before me this

2nd day of March, 2022.


 Notary Public for the State of South Carolina
 My commission expires



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

James Ware, Alisa Ware, Henry Spahr, Elaine
Spahr, Julie Sanders, William Craig Denny, Jeff
Toomer, Allyson Toomer, Louise E. Davis,
Donna Nutty, Thomas J. MacDonald, Michael
G. MacDonald, Susanne B. MacDonald, Arlene
Coleman, William H. McGee, Patti M.
MacDonald, Scott M. MacDonald, Rose F.
McGee, Jason DuBose, Amanda DuBose,
Ronald L. Broome, Lawrence E. Jones, D.
Diane Burr, Mark H. Thomas, Kelly C. Thomas,
William Matthew Yollo, Nancy H. Yollo,
Joseph DeAngelis, Beth DeAngelis, Shelly
Horn, Theodore Brammer, Allison Brammer,
Waymon W. Durden, Constance C. Durden,
David C. Powell,

Plaintiffs,

v.

Beaufort County, HPCCA Ferry Company, Inc.,
and The Daufuskie Island Ferry Service, LLC,

Defendants.

Civil Action Number: 2021-CP-07-01078

**BEAUFORT COUNTY'S FURTHER
RESPONSES TO PLAINTIFFS'
REQUEST TO ADMIT**

TO: PLAINTIFFS AND THEIR COUNSEL, THOMAS C. TAYLOR, ESQUIRE:

These Responses are provided as further responses following the Court's Orders filed on November 4 and 5, 2021, with the later Order controlling. Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant Beaufort County hereby further responds to Plaintiffs' Request to Admit as follows:

1. Admit that Pinckney Island is the only designated ferry access point for the Daufuskie Island Ferry under Beaufort County's current ordinances.

RESPONSE: Denied. The County Code does not "designate" Pinckney Island as the "only" ferry access point to Daufuskie Island. This Defendant admits only that Pinckney Island Landing is described in Article II of Chapter 102 of the County Code of Ordinances as "a ferry access to Daufuskie Island."

2. Admit that Beaufort County took the legal position that the then owner of parcels R600-041-000-0009-0000 and R600-041-0008-0000 in Buckingham Landing had no vested rights to construct a restaurant in that zoning district in or around 2000.

RESPONSE: No further response is required beyond the original response of an objection.

3. Admit that the County Council adopted the Buckingham Landing Community Preservation District in part to prohibit commercial businesses from operating within the Buckingham Landing neighborhood.

RESPONSE: Denied. The District does not prohibit all commercial businesses.

4. Admit that the operation of a commercial ferry terminal on parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 violates the Buckingham Landing Community Preservation District ordinance.

RESPONSE: Denied. The use as a commercial ferry is a lawful use.

5. Admit that the operation of a commercial ferry terminal on parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 is in derogation of the letter and spirit of the Buckingham Landing Community Preservation District ordinance.

RESPONSE: No further response is required beyond the original response of an objection.

6. Admit that the Sea Traveler restaurant (formerly located on parcels R600-041-000-0009-0000 and R600-041-000-0008-0000), was abandoned or closed for more than 120 days after Hurricane Matthew struck Beaufort County.

RESPONSE: No further response is required beyond the original response of an objection.

7. Admit that the Sea Traveler restaurant (formerly located on parcels R600-041-0000-0009-0000 and R600-041-000-0008-0000), lost its "non-conforming" status under Beaufort County's ordinances when it was abandoned or closed for more than 120 days after Hurricane Matthew struck Beaufort County.

RESPONSE: Denied.

8. Admit that Beaufort County's administrator in 2017 knew that the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 was not in compliance with the Buckingham Landing Community Preservation District ordinance when the County first began to use the property for those purposes.

RESPONSE: Denied.

9. Admit that Beaufort County's then administrator advised the County Council that the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 was not in compliance with the Buckingham Landing Community Preservation District ordinance when the County first began to use the property for those purposes.

RESPONSE: Denied.

10. Admit that the Beaufort County Council has known that the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 was not in compliance with the Buckingham Landing Community Preservation District ordinance from at least January 1, 2019, until the date of service of this Request to Admit.

RESPONSE: Denied.

11. Admit that although the Beaufort County Council has known that the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 was not in compliance with the Buckingham Landing Community Preservation District ordinance from at least January 1, 2019, until the date of service of this Request to Admit, that representatives of the County have during that time period, repeatedly advised homeowners in Buckingham Landing that the County was within its legal rights to continue to operate the ferry service from these parcels.

RESPONSE: Denied.

12. Admit that the Beaufort County Council has known the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 between January 1, 2019, until the date of service of this Request to Admit, has resulted in increased levels of traffic and unwanted tourists in the Buckingham Landing neighborhood.

RESPONSE: This Request was withdrawn by Plaintiffs at the Court hearing on October 29, 2021.

13. Admit that every Beaufort County administrator who has served in that position since 2017 has known that the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 was not in compliance with the Buckingham Landing Community Preservation District ordinance when the Administrator served in the role.

RESPONSE: Denied.

14. Admit that every individual who has served as the Planning and Zoning Department Director for Beaufort County since 2017 has known that the operation of the Daufuskie Island ferry from and to parcels R600-041-000-0009-0000 and R600-041-000-0008-0000 was not in compliance with the Buckingham Landing Community Preservation District ordinance when the individual served in the role of Director.

RESPONSE: Denied.

s/Danny C. Crowe

Danny C. Crowe (S.C. Bar No. 1480)

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Columbia, South Carolina 29202

Phone: (803) 724-5728

danny@crowelafave.com

Attorney for Beaufort County

November 22, 2021

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) FOURTEENTH JUDICIAL CIRCUIT

)

James Ware, Alisa Ware, Henry Spahr, Elaine
 Spahr, Julie Sanders, William Craig Denny,
 Jeff Toomer, Allyson Toomer, Louise E.
 Davis, Donna Nutty, Thomas J. MacDonald,
 Michael G. MacDonald, Susanne B.
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) Civil Action Number: 2021-CP-07-01078

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Plaintiffs,

v.

Beaufort County, HPCCA Ferry Company,
 Inc., and The Daufuskie Island Ferry Service,
 LLC,

Defendants.

TO: PLAINTIFFS AND THEIR ATTORNEY:

Defendant Beaufort County ("the County") hereby answers to Plaintiffs' First Continuing Interrogatories. In setting forth these answers, the County does not waive the attorney-client privilege, work product privilege, or any other privilege or immunity from disclosure that may attach to information called for or responsive to these Interrogatories. These answers are provided subject to, and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving: (1) all questions as to relevancy, materiality, and admissibility as

evidence for any purpose in the trial of this action or in any other proceeding prior to trial; and (2) the right to object to other discovery procedures involving or relating to the subject matter of those Interrogatories.

The County further objects to any instructions accompanying the Interrogatories to the extent they are not contained in Rule 33, SCRCP, or are inconsistent with the provisions of Rule 33, SCRCP. The County also objects to any Interrogatory which references or seeks "all" or "any and all" of any document or thing on the ground that such a discovery request, by requiring or seeking to require that the County conduct more than a reasonable search of records kept in the ordinary course of business where such records are normally located, is unduly and unreasonably burdensome, expensive and oppressive.

This discovery response is based on information obtained to date and will be supplemented seasonably as additional responsive information is obtained by the undersigned attorney.

ADDITIONAL RESPONSE TO DISCOVERY REQUEST

As related previously by undersigned counsel for the County to the counsel for Plaintiffs, the County, in order to locate relevant documents and information related to the litigation and to provide responsive documents and information in discovery to the attorney for the Plaintiffs, requested that County IT staff undertake computer searches and retrievals of the County's electronic data base using certain search terms. These initial efforts at search and retrieval have resulted in extremely large volumes of data delivered by pdf attachments, drop box, and zip drives with compressed data, representing many thousands of pages of documents.

To locate relevant documents and responsive documents, it then is necessary that the attorney for the County and his firm open drop boxes and zip drives to review the data, designate and extract documents from the data, designate privileged documents and prepare a privilege log,

save the documents to folders, number the pages of the documents, and save the documents on a thumb drive or OneDrive.

The County's undersigned attorney is undertaking this review, designation, and assembly of documents. However, this process is not complete and is on-going. The County intends to supplement seasonably its responses to discovery requests.

Subject to the above as to all Interrogatories, and based on the information currently available to the undersigned, the County answers the First Continuing Interrogatories of the Plaintiffs as follows:

1. Give the names and addresses of persons known to Beaufort County (hereinafter sometimes referred to as the "County") or counsel, to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

As presently determined,

- (a) Eric Greenway
- (b) Monica Spells
- (c) Josh Gruber
- (d) Anthony Criscitiello
- (e) Thomas Keaveny
- (f) Hillary Austin
- (g) Robert Merchant
- (h) David Wilhelm
- (i) Jared Fralix
- (j) Gary Kubic
- (k) Richard Inglis
- (l) Doug Egly
- (m) Wilbert Roller
- (n) The Plaintiffs

The address for current County employees (a), (f), (g), (h), and (i) is c/o Beaufort County Government, 100 Ribaut Road, Beaufort, South Carolina 29902. The address for current County employee (e) is c/o Beaufort County Legal Department, 102 Industrial Village, Building 1, Beaufort, South Carolina 29901.

The current addresses for former County employees (b), (c), (d), and (j) will be determined and this answer supplemented. Witnesses (k) and (l) are representatives of the co-Defendants. The address for witness (m) is not now known. The addresses for the Plaintiffs are known to the Plaintiffs.

The undersigned currently is aware of no written or recorded statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the County that relate to the claim or defense in the case.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

- (a) Those documents produced with the County's Response to First Request for Production of Documents, and First Supplemental Response.
- (b) Those documents to be produced with further supplemental responses to Plaintiffs' First Request for Production of Documents.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amounts of liability coverage provided in each policy.

ANSWER: None.

4. Please state the name, address, place of employment and qualifications of each and every expert witness the Beaufort County plans to call at the trial of this case. As to each person named in this Interrogatory response, state:

- a) The subject matter on which the expert or experts are expected to testify;

- b) The substance of the facts and opinions to which each of the experts named is expected to testify;
- c) Furnish a summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this Interrogatory;
- d) Whether or not a written report, memorandum or other written document was prepared by each expert witness;
- e) Whether said expert has conducted any investigation, inspection, examination and/or testing in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, examination and/or testing, the results of same and the dates on which sch work was performed;
- f) A complete list of any and all records, documents, journals, periodicals, texts, treatises, statements, photographs, videos, electronic information, and any other source of information which the expert reviewed in formulating his or her opinion(s) in this case; and
- g) A complete list of all documents created by each expert, including all original notes, photographs and emails.

ANSWER: No expert witness has been identified for trial at present.

5. For each person known to the County or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiffs of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

No written or recorded statements known to the undersigned.

Witness (a) is the current County Administrator and it is anticipated that he has general knowledge of the status of Buckingham Landing as a ferry access point during his tenure, the purpose of the ferry service, the involvement of the County in the ferry operations, and the discussions of the future of the ferry at Buckingham Landing.

Witness (b) is a former Assistant County Administrator who, until about September 2021, was involved in administration of the County's contract and involvement with the co-defendants, and, generally, the operations as involving the public who used the ferry and, to some extent, the community on Buckingham Landing.

Witness (c) is a former County Attorney, Deputy County Attorney, Assistant County Administrator, and Interim County Administrator. It is anticipated that he will have general knowledge of matters involving the start-up of the ferry access point after Hurricane Matthew at Bluffton Oyster Factory and later at Buckingham Landing, and operations with the ferry during his tenure, as well as issues related to relocation of the ferry from Buckingham Landing. He will have knowledge subject to assertions of attorney-client privilege and attorney-client communications.

Witness (d) is a former Planning Director. It is anticipated that he will have knowledge of zoning issues related to location of the ferry service access at Buckingham Landing.

Witness (e) is currently a Deputy County Attorney and is a former County Attorney and former Interim County Administrator. It is anticipated he will have knowledge, subject to assertions of attorney-client privilege and attorney-client communications, of issues involved with the provision of the ferry service after Hurricane Matthew, the contract and renewals with DIFS, the relationship between the co-Defendants as understood by the County, the DIFS leases with Wilbert Roller, Jr., zoning issues related to the property, inquiries by neighborhood residents, and relocation considerations for the future of the ferry at Buckingham Landing.

Witness (f) is the current Zoning and Development Administrator. She has knowledge of zoning code provisions, and of the variance and zoning permit issues for Roller and related litigation and history.

Witness (g) is the current Planning Director. He is involved in the administrative determination of any illegal nonconforming use of the dock and ferry pending at this time. He also has knowledge of the zoning code provisions.

Witness (h) is the current Director of Special Projects for the County. He has knowledge of the issues involved with relocation of the ferry from Buckingham Landing.

Witness (i) is a current Assistant County Administrator and former Purchasing Director. He has knowledge of contract and other financial aspects of the ferry service.

Witness (j) is a former County Administrator, including during the time of relocation of the ferry service after Hurricane Matthew. It is anticipated that he will have general knowledge of the Sea Trawler property and Buckingham Landing location, and of the start-up at Buckingham Landing.

Witness (k) and (l) are, or were, representatives of the co-Defendants who were involved in the services provided by the co-Defendants to the County for the ferry, the relocations after Hurricane Matthew, the leases from Roller to DIFS, contractual arrangements with the County, operation of the dock and ferry, and issues involving the Buckingham Landing neighborhood.

Witness (m) is the former owner of the Sea Trawler property. It is anticipated that he will have knowledge of the history of the property, its relationship to the Buckingham Landing neighborhood, the variance and commercial dock OCRM permit and zoning permit and related litigation, the building and uses of the dock, the uses of the property and dock over time, any cessation of business in connection with the uses of the property, and the foreclosure and subsequent transfers of ownership of the property.

Witnesses (n) are the Plaintiffs. Their knowledge is known to the Plaintiffs.

6. Set forth with specificity and detail the history the County's relationship(s) with each of its two co-defendants, as to each, stating the dates of initial contact, describing the history of each relationship (identifying all contracts or agreements related to the relationship) and setting forth the current relationship including all agreements (whether written or verbal) that exist between the County and the co-Defendants. Identify all documents (including emails) that refer to, relate to, or otherwise evidence the history of those relationships.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

The contract for Daufuskie Island ferry services was entered into between co-Defendant DIFS, LLC, and the County on August 1, 2016. A copy of the Contract was provided with the County's Responses to First Request for Production of Documents. The Contract followed a proposal dated August 29, 2016, in response to the County's request for proposals. Any subsequent renewal and lease contracts will be identified and provided with supplemental responses.

7. State with specificity and detail the history of the County's purchase and use of those parcels identified as R600-041-000-0009-0000 and R600-041-000-0008-0000, from the first contact with the foreclosing bank until the date of your answer of this interrogatory. Included in the history should be all consideration given by the County to various uses for the property, including the current usage. Identify all documents (including emails) that refer to, relate to, or otherwise evidence the history of the purchase and use.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

A copy of the deed to the County has been provided. Additional responsive documents will be provided with supplemental responses.

8. State with specificity and detail the history of the County's investigation, thought processes, guesses, opinions or the like, concerning the property and/or legality of using these parcels of land (R600-041-000-0009-0000 and R600-041-000-0008-0000), as the embarkation/debarkation points for the Daufuskie Island Ferry. Identify all documents (including emails) that refer to, relate to, or otherwise evidence those actions.

ANSWER AND OBJECTION:

Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer will be supplemented seasonably as additional responsive information is determined.

The County also objects to the Interrogatory as to any communications or actions taken by the County or occurring after the filing of the Complaint on the ground that they are not relevant to the subject matter or reasonably calculated to lead to the discovery of admissible evidence.

Subject to this and any other appropriate objection (including attorney-client privilege and attorney-client communications), this Answer will be supplemented.

9. Identify the current home addresses, email addresses and business and cell telephone numbers of all persons who have served as the County Administrator and the Director of the County's Community Development division since January 1, 2017.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

County Administrators since January 1, 2017, known to the undersigned, are Gary Kubic, Ashley Jacobs, Josh Gruber (Interim), Thomas Keaveny (Interim), and Eric Greenway. Planning Directors since January 1, 2017, known to the undersigned, are Anthony Criscitiello and Robert Merchant. This Answer will be supplemented.

10. State with specificity and detail all the actions that were taken between January 1, 2017, and the date of your reply to this interrogatory, by Beaufort County, and any of its agents, officers, administrators and lawyers, to verify the zoning of R600-041-000-0008-0000, either pursuant to the request of Thomas C. Taylor made to Hillary Austin on May 6, 2021, or pursuant to any other request made by any individual, as to the propriety of Beaufort County operating a commercial ferry service in the Buckingham Landing community during that time period. Identify all documents (including emails) that refer to, relate to, or otherwise evidence those actions.

ANSWER AND OBJECTION:

Discovery, retrieval, and assembly of information is ongoing and is not completed.

The County also objects to the Interrogatory as to any communications or actions taken by the County or occurring after the filing of the Complaint on the ground that they are not relevant to the subject matter or reasonably calculated to lead to the discovery of admissible evidence.

Subject to this and any other appropriate objection (including attorney-client privilege and attorney-client communication), this Answer will be supplemented.

11. Specifically identify each and every lawyer that Beaufort County contends it has sought or received legal advice from in this case, provide each of their e-mail addresses, and state the date when each first began to give the County legal advice in this case. As to outside counsel, identify all retainer documents.

OBJECTION: The County also objects to this Interrogatory, and its several subparts, on the ground that the matters described are not relevant to the subject matter and not reasonably calculated to lead to the discovery of admissible evidence.

12. Identify with specificity and detail, all actions that the County or any of its elected officials have taken since January 1, 2017, to plan for or implement the movement of the Daufuskie Island Ferry embarkation/debarkation point from Buckingham Landing to any other place. Identify all documents (including emails) that refer to, relate to, or otherwise evidence those actions.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

County staff evaluated options to relocate the embarkation site by analyzing factors as to and evaluating alternative sites. A list of the sites along with a narrative of factors as to each respective site are shown below:

1. Bluffton Oyster Factory Landing – Not viable due to insufficient parking.
2. Alljoy Landing – Not viable due to insufficient parking.
3. CC Haigh Jr. Landing – Potentially usable. Parking very limited due to shared use of lot as public boat landing and fishing pier. NOTE: this site will be directly impacted by the construction of the Highway 278 new bridge construction. Potential use of this site would not be available until after completion of the bridge project (4 – 6 years?).
4. Pinckney Island “East” – Opposite the existing boat landing on Pinckney Island. Same issues and concerns as option #3.
5. Jenkins Island – Privately owned; very limited parking.

6. Squire Pope Road – Town of Hilton Head Island owned; part of public open park.
7. Broad Creek Marina – Privately owned; very limited parking.
8. Palmetto Bay Marina – Privately owned; very limited parking.
9. Cross Island Landing – Town of Hilton Head Island owned; very limited parking.

Staff issued a Request For Proposals (RFP) for ferry services to Daufuskie Island. Proposers were asked to provide pricing for daily ferry services and also to submit options for embarkation site. On March 1, 2021, Beaufort County Purchasing Department received three proposals. Poseidon Ferry submitted a very high cost and did not provide any information on embarkation sites. Island Head submitted an annual cost of \$417,500 and proposed to use the Broad Creek Marina as the mainland embarkation. Haig Point submitted an annual cost of \$259,000 and proposed to use the existing Buckingham site.

A five-person evaluation committee selected Haig Point as the most responsive. A recommendation was made at the May 17, 2021, Public Facilities Committee meeting to award the contract to Haig Point. A contract was executed with Haig Point on August 2, 2021.

13. Identify with specificity and detail each and every meeting, conference, video conference, gathering or the like that has occurred since January 1, 2017, where two or more individuals affiliated with the County as elected officials, employees, agents, lawyers, or consultants, met among themselves or with others, where the topic of the propriety of operating the Daufuskie Island Ferry in Buckingham Landing or in other locations was discussed or considered. Identify all documents, including emails and minutes, relating to, or referring to those gatherings.

OBJECTION: The County also objects to this Interrogatory as overly broad and vague, vexatious in nature, and unreasonably burdensome, taking into account the factors provided in Rule 26(a), SCRCP, including the needs of the case.

14. Referring to Exhibit A to these Interrogatories, and specifically the e-mail dated May 24, 2021, from Kurt Taylor to Tom Taylor, please identify with specificity and detail all of

the information that the staff was asked to assimilate “that is necessary for a response to your request,” all of the information that was gathered by the staff and supplied to Kurt Taylor, and the dates and manner of communication for both the requests and the replies. Identify all documents (including emails) that refer to, relate to, or otherwise evidence those actions.

ANSWER: Identification, retrieval, and assembly of information is ongoing and is not completed. This Answer will be supplemented seasonably, subject to objections as to attorney-client privilege and communications and other appropriate objections, as responsive nonprivileged information is determined.

15. If Robert Merchant or any other employee, agent or lawyer for the County, has, between January 1, 2017, and the date of your reply to this interrogatory, provided the County with his or her opinion as to whether the operation of the current Daufuskie Island Ferry in Buckingham Landing is or is not an illegal nonconformity under the Community Development Code or any other applicable ordinance, state specifically where and how the opinion was made, when, and identify all documents (including emails) that refer to, relate to, or otherwise evidence those opinion(s). (If you claim some type of privilege as to this information, please provide a Privilege Log identifying the documents by date, author, and subject matter for Court review.)

ANSWER AND OBJECTION:

The County also objects, as violative of attorney-client privilege and attorney-client communications, to any inquiries as to any communications of legal opinion by lawyers for or employed by the County as sought by this Interrogatory.

Discovery, retrieval, and assembly of information is ongoing and is not completed. Subject to appropriate objections, responsive nonprivileged information will be determined and identified and this Answer will be supplemented seasonably.

16. Set forth in detail and with specificity, for each calendar year of 2018, 2019, 2020 and the portion of 2021 until the date of your reply to this interrogatory, the following:

- a) the number of Daufuskie Island residents who rode the Daufuskie Island Ferry during the year;
- b) the number of non-Daufuskie Island residents who rode the Daufuskie Island Ferry during the year;
- c) the amount of money generated by the purchase of tickets or passes by the non-Daufuskie Island resident riders of the ferry service during the year, and,
- d) the amount of other money that was generated during the year by other services/attractions being offered by Beaufort County's ferry service providers at the Buckingham Landing.

Identify all documents (including emails) that refer to, relate to, or otherwise evidence those passenger numbers and dollar amounts.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. It will be supplemented seasonably as additional responsive information is determined. However, the County currently believes that the information sought is in the possession of the co-Defendants and not the County.

17. List with specificity and detail each and every notice, complaint, letter, email or the like, that Beaufort County has received from any residents, guests, or visitors concerning the Daufuskie Island Ferry operations in Buckingham Landing since the County placed the ferry services there, and as to each, state whether the County responded to the notice, complaint, letter, email or the like. Identify all documents (including emails) that refer to, relate to, or otherwise evidence those complaints, notices, letters, emails or the like.

ANSWER AND OBJECTION:

The County also objects to this Interrogatory as overly broad and vexatious, impossible of performance, and unreasonably burdensome, taking into account the factors provided in Rule 26(a), SCRPC, including the needs of the case.

The County's reasonable efforts at retrieval, determination, identification, and assembly of responsive documents is ongoing and is not completed. This Answer will be supplemented seasonably.

18. State with specificity and detail the total amount of government monetary (or “in-kind”) contribution (including contribution from Beaufort County, the federal government, government grants or the like) that each of Beaufort County’s designated vendors providing ferry service to Daufuskie Island, has received since January 1, 2017, breaking the support down on an annual basis and by provider.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer will be supplemented seasonably as additional responsive information is determined.

19. Describe in detail the history of Beaufort County’s participation in the dispute over The Trawler restaurant’s attempted commercial use of R600-041-000-0009-000 and/or R600-041-000-0008-000 between 1980 and 2017, and identify all documents that refer to, relate to, or otherwise evidence Beaufort County’s participation in that dispute.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

Certain of the County’s actions are shown in the documents produced with the County’s Responses to First Request for Production of Documents.

20. Describe in detail the history of Beaufort County’s participation in the creation, drafting and implementation of the Buckingham Landing Community Preservation District ordinance, setting forth a timeline for its implementation. Identify all documents (including emails) that refer to, relate to, or otherwise evidence the history of the creation, implementation and codification of that ordinance.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

See the historical information and chronology indicated by the 2007 Ordinance and attachment of the Buckingham Landing Community Preservation Plan, produced with supplemental Responses served on this date.

21. As of the date of your response to this interrogatory, set forth with specificity and detail, all options that the County sees for alternative placement of the Daufuskie Island Ferry embarkation and debarkation point, and as to each option, set forth with specificity and detail, all actions that the County has taken or initiated in good faith to evaluate the option and move it forward toward potential adoption. Identify all documents (including emails) that refer to, relate to, or otherwise evidence the history of each potential option that has been, or is being, considered.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

See Answer to Interrogatory 12.

22. If Beaufort County contends that either the anticipated future widening and/or reconstruction of US 278, or any other future road project, has prevented or is prohibiting or preventing the County from moving the Daufuskie Island Ferry operations from Buckingham Landing, identify with specificity and detail the specific projects, state how each would effect the County's moving of the ferry debarkation/embarkation point, state what efforts the County made to address this issue, and state what decisions were made. Identify all documents (including emails) that refer to, relate to, or otherwise evidence each future road project and how it might impact the County's efforts to move the ferry operations out of Buckingham Landing.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. It will be supplemented seasonably as additional responsive information is determined.

Pinckney Island is a potential ferry embarkation site. Two possible locations exist on Pinckney Island. One is on the west side of the island at the existing

fishing pier. The other potential site is on the east side of the island. The planned Highway 278 bridge project will impact the design and construction of the ferry embarkation at both locations. SCDOT's preferred alternative has the new bridge being built directly over both potential ferry embarkation sites. The new bridge will require a substantial area for construction material staging and for the construction of the bridge itself. The potential new embarkation sites on Pinckney Island cannot be built until the new Highway 278 bridge is completed.

Also, see Answer to Interrogatory 12.

23. If the County contends that the existing Daufuskie Island Ferry operations in Buckingham Landing do not violate the ordinance of Beaufort County, explain in specific detail how it comports with the Buckingham Landing Community Preservation District, citing the specific provisions that allow the operation of same in this location.

ANSWER: Discovery, retrieval, and assembly of information is ongoing and is not completed. This Answer is based on information as presently determined by the undersigned. This Answer will be supplemented.

The County's position in this litigation is that the use of the dock for a ferry service is not an "illegal nonconformity" under the CDC but is a legal use.

The Beaufort County Zoning and Development Administration, on May 4, 2009, issued a Zoning Permit for a "Commercial Dock" for the subject property at Buckingham Landing. (Copy of Zoning Permit has been provided). This is the dock and property that later was acquired by the County in July 2018 (copy of deed has been provided).

The Zoning Permit, on its face, indicates that the Zoning Board approved a variance for the dock on July 24, 2008 related to OCRM Permit 2004-1E-110-P (copy of the OCRM Permit for a Commercial Dock on the property has been provided). A "commercial dock" for purposes of the OCRM Permit is defined, in S.C. Code of Regulations R. 30-1(D)(19)(b), as "a docking facility used for commercial purposes."

The dock (and the property known as the Sea Trawler Restaurant property) were leased by the then-owner Wilbert Roller, Jr. to the County's ferry service contractor beginning on January 27, 2017 (copies of leases have been provided). The County began providing the ferry service at the Buckingham Landing dock on February 13, 2017 (copy of County News Release has been provided).

The Zoning Permit establishes the legality of the commercial use of the dock at Buckingham Landing. The Zoning Permit sets out no conditions restricting or limiting the permitted nature of the commercial use of the dock. The Zoning Permit indicates no time limitations and no expiration date. The Zoning Permit conclusively establishes the use granted by the Permit as a lawful use. As with a variance, the commercial dock use permitted by the Zoning Permit runs with the land and is not affected by subsequent changes in ownership. Commercial use of the dock by the County as the current owner, including commercial use as a ferry service, remains valid and lawful. It is not an "illegal nonconformity."

Additionally, the County will assert that the use of the Buckingham Landing dock as a ferry access point was and is allowed for reasons of public necessity and as an emergency public service use. See, for example, CDC section 1.3.50.B.

Further, the County will take the additional position that the use of the property, and particularly the dock, was not abandoned and was continued so that, even if the legal use of the dock is not established by the Zoning Permit, it remains a legal nonconformity.

24. As to the last five (5) times the Planning and Zoning Department conducted a complete review of an alleged "legal nonconforming use" or an alleged "illegal nonconforming use," state with specificity and detail all actions that were taken, all contacts of appropriate parties made, describe all evidence gathered, and detail how the careful review of all the facts was made and how a determination was rendered. Identify all documents that refer to, relate to, or otherwise evidence each of the five (5) earlier determinations.

OBJECTION: The County also objects to this Interrogatory, and its several subparts, on the ground that the matters described are not relevant to the subject matter and are not reasonably calculated to lead to the discovery of admissible evidence.

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CROWE LAFAVE, LLC

s/Danny C. Crowe

Danny C. Crowe, SC BAR #1480

P.O. Box 1149

Columbia, SC 29202

803.724.5728

danny@crowelafave.com

Attorneys for Defendant Beaufort County

November 24, 2021

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

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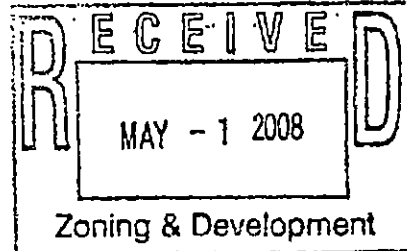
ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

March 12, 2008

EXHIBIT

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
h: (843) 554-4291
x: (843) 554-5566

Ms. Hillary A. Austin
Zoning & Development Administrator
Beaufort County Zoning and Development
100 Ribault Road
P.O. Drawer 1228
Beaufort, S. C. 29901-1228



Re: Dock permit

Dear Ms. Austin,

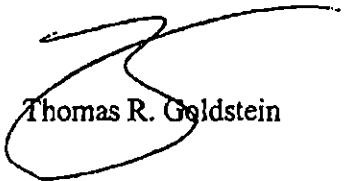
In conformity with our agreement before the Board of Zoning Appeals, please allow this letter to serve as our request on behalf of Wilbert Roller for a construction permit to construct a dock in accordance with the concessions made last night at the Board of Zoning Appeals. As we discussed at the Board of Zoning Appeal, we have withdrawn the appeal from your decision without prejudice and are resubmitting our application for a permit for a dock not to exceed 300 feet. As I understand Beaufort County's ordinance, since the construction will be reduced to 300 feet, Beaufort County has no further involvement in the permit. In other words, as I understand your ordinance, once we reduce the length to 300 feet the permit is between us and OCRM.

Last night there was also some discussion by Mr. Achurch that Mr. Roller may not be entitled to any dock at all because the proposed dock is "commercial." As I am sure you are aware from the numerous previous submissions, there is nothing commercial about the dock. The application is indistinguishable from any of the thousands of docks constructed in Beaufort County. Mr. Roller does not propose to sell fuel, provide pump-out services, overnight berthing, rent slips or otherwise engage in any commercial enterprise on the dock. The dock is intended to serve entirely as an amenity to his restaurant. If The City is now going to adopt the position that he is entitled to no dock at all, I ask that you state so clearly and unequivocally so that we do not waste valuable resources pursuing an application that the County has no intention of issuing. To that end I enclose a self-addressed stamped envelope for your convenience in replying. If the County contends that we are required to submit anything in addition to what has already been submitted, I ask that you identify with particularity the steps we must go through in order to process this application in the most economical fashion.

I thank you in advance for your attention to this request. By copy of this letter, I am letting Mr. Achurch know that I have written to you directly on behalf of Mr. Roller. It may be that Mr. Achurch prefer that these matters go through him, and if he does, I will direct all future communications to him. With kind regards, I am

Very truly yours,

Belk Cobb Infinger & Goldstein, P.A.



Thomas R. Goldstein

enclosure: return envelope
cc: Robert Achurch, Esq.
Wilbert Roller

Amended Application to the Zoning Board of Appeals

5. If this is an appeal, please state the nature of your appeal. (Attach additional sheets as necessary.)

This is an appeal from an adverse decision by the Zoning Administrator. The Zoning Administrator has adopted a peculiar and non-uniform method of measuring Mr. Roller's dock. Instead of measuring in a straight line, the Zoning Administrator has measured Mr. Roller's dock along a curve (circumference rather than diameter). If the County measures the dock in a straight line as it has for all other dock applications, then Mr. Roller does not require a variance, and the County has improperly interfered in O.C.R.M.'s decision to grant the dock permit on January 19, 2005.

In addition, the County's limitation on Mr. Roller's dock is unconstitutional. The ordinance that limits Mr. Roller's dock to 300 feet is premised upon the County's designation of McKay Creek as a "small tidal creek." See Beaufort County ordinance 106-912(b)(2): "Small tidal creeks and shallows, which fall within the county, are defined as those bodies of water, [being tidally influenced] as per the Beaufort County official small tidal creek delineation map." This definition is, of course, not a definition at all. It contains no objective criteria by which a "tidal creek" may be measured. McKay Creek is tidal (as is the Atlantic Ocean, the intercoastal water-way, and many major rivers), but other than being tidal, there is nothing "small" about it. It is served by a public boat landing, located next door to Mr. Roller's property, and is the home of several commercial fishing vessels. It is crossed by a United States Highway, and is capable of being navigated by large vessels even at low tide. Therefore, the application of "small tidal creek" to the body of water on which Mr. Roller's commercial property is situated is not only a misnomer, but also not supported by any fact.

6. Please describe each variance and how it differs from the requirements. (Attach additional sheets as necessary)

Assuming that Mr. Roller does require a variance, the applicant respectfully submits that he meets all the tests required for a variance. The General Assembly has set forth the tests in § 6-29-800, S. C. Code, ann. as follows:

- (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (b) these conditions do not generally apply to other property in the vicinity;
- (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Mr. Roller meets all of these tests. Subsection (a) is written to apply to different applications than a dock permit, especially where, as here, O.C.R.M. has already approved the application. To the extent that this Board believes subsection (a) is applicable, the extraordinary and exception conditions are that Mr. Roller's property is and always has been zoned commercial. Because of the topology and size of the lot, no water dependent commercial enterprise is possible without a dock. Mr. Roller's parking is limited, and it is a matter of common knowledge that commercial waterfront businesses are necessarily dependent on access to the water in order to survive and compete. While there probably are inland seafood restaurants that are not dependent upon access to the water, it is impossible to think of a successful seafood restaurant on the water that does not have access to the water. Mackay Creek is and continues to be a commercial waterway, serving as home to several commercial fishing trawlers and is located alongside a public boat landing. Mr. Roller can no more survive commercially being separated from the water than the adjoining public boat ramp or the commercial trawlers.

As to subsection (b), I think all the parties agree that Mr. Roller's property is the only commercially zoned property in the vicinity, and thus the variance application is for a unique situation. To the extent that all riparian owners are entitled to have access to the water, Mr. Roller's situation is not unique; however, he is the only waterfront seafood restaurant in the area, and because of this, his application for a dock permit is by definition unique.

As to subsection (c), the maps verify that Mr. Roller's lot makes the successful operation of waterfront seafood restaurant a close proposition. The existence of a dock is critical both from the standpoint of curb appeal to its customers, but also to permit boaters, who are a main target of Mr. Roller's business plan, to reach the restaurant.

As to subsection (d), no one can seriously assert that any surrounding property owner or owners will be affected in any way by the issuance of a dock. First of all, as a riparian property owner, the applicant is entitled to make use of the water, as O.C.R.M. so found when it issued the dock permit. Second, many property owners in the area have docks, some significantly longer than 300 feet. The County has an obligation to treat similarly situated property owners in the same fashion. Our Supreme Court even addressed this issue in a dock case, Weaver v. S. C. Coastal Council, 309 S.C. 368, 423 S.E.2d 340 (1992):

The record reflects, when viewed as a whole and in the proper posture, that there is substantial evidence that the circumstances surrounding the application of the respondent and the other three individuals granted permits are similar, and that the existence of respondent's dock would create an effect distinguishable from that occasioned by the other three existing docks. . . . the respondent was entitled to be treated in the same manner as other applicants. We conclude that Council violated the equal protection and due process provisions of the state and federal constitutions in treating the respondent in a manner different from Beckmann, Cope and Crowley, thereby denying her a benefit granted to the others similarly situated.

Interestingly, if the County had not thwarted Mr. Roller's building plans for over ten years, he could have constructed his dock without being required to seek the approval of the County. (Mr. Roller began his project in 1998, which included, among other things, O.C.R.M. issuing him a dock permit. This was a year before the County adopted the dock ordinance now under consideration. The County stopped the project, and Mr. Roller had to hire counsel and litigate the County's action. Justice Finney, sitting as a hearing officer, heard the case in July 2001 and issued his written opinion on March 28, 2002. The County appealed, and on October 1, 2003, Judge Thomas Kemmerlin entered his order affirming the order of Justice Finney. The County took no appeal from that order, and thus it is the law of the case. Since Mr. Roller had a dock permit in hand, and since the County prevented him from moving forward, the applicant actually has met all the elements of *res judicata* with reference to the dock. Even if he could not, the County's wrongful termination of his building permit is itself an independent ground of hardship.)

Therefore, if this Board finds that the applicant is required to get a variance, he easily meets all of the statutory tests.

EXHIBIT

E

13

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN RE:)

WILBERT ROLLER)

Appellant)

BEAUFORT COUNTY ZONING
ADMINISTRATOR)

Respondent)

BEFORE THE BEAUFORT COUNTY

ZONING BOARD OF APPEALS

ORDER

Date of hearing: May 22 and July 24, 2008
 Applicant's Attorneys: Thomas Goldstein (May 22) and David Tedder (July 24)
 County Attorney: Robert Achurch (May 22) and Mary Lohr (July 24)
 Court Reporter: Kelly A. Ball

STATEMENT OF THE CASE

The Beaufort County Zoning Board of Appeals (ZBOA) held public hearings on May 22, and July 24, 2008, to consider the Appeal and Request for Variance filed by Mr. Wilbert Roller (hereinafter, "appellant" or "Roller") in regards to the actions of Beaufort County in processing a request for a County "dock permit," and an Administrative Interpretation of Section 106-1912, *Water Dependant Use*, and specifically subsections 106-1912 (2) (b) – "...No dock shall be permitted to be constructed where the length of the dock shall exceed 300 feet in total length, inclusive of pier-heads, floats, boatlifts, ramps, mooring, pilings and other associated structures...", and 106-1912 (2)(h) – "The use of docks shall be limited to private, non-commercial uses, unless allowed for as part of a Commercial Fishing Village Overlay District." Beaufort County refused to issue an approval/zoning permit for the construction of a commercial dock at the property located at

35 Fording Island Road, PID – R600-041-000-0008/0009, owned by the appellant¹.

This matter came before the Board after proper notice to all persons, and after carefully considering the various written memorandum, the exhibits, the controlling orders issued by Justice Finney, and the argument of counsel, this board determined in a 4-1 vote, that it was persuaded by the evidence and argument of counsel for Mr. Roller that all statutory requirements for a variance to be granted have been met, and orders a variance granted as requested by Mr. Roller.

PROCEDURAL MATTERS

This matter came before the Board of Zoning Appeals as both: (1) an appeal from an adverse decision by the Zoning Administrator and (2) an application for a variance. Prior to the commencement of the May hearing, the Board inquired of counsel as to the nature of the application before the Board, one difference being that if it is an appeal, then the Board does not allow public comment. On the other hand, if the matter is an application for a variance, then members of the public and those who may be affected by the permit are given an opportunity to speak. After discussion with counsel, the Board determined to address the matter at the May hearing as an appeal, with Roller's attorney noting that the matter might subsequently have to be heard as a variance. After hearing from both parties at the lengthy May ZBOA meeting, the appeal was withdrawn without prejudice, with Mr. Roller stating he would reduce the length of the dock structure to 300 feet, and the County noting that there still may be a problem with subsection 106-1912(2)(h) regarding commercial docks on small tidal creeks.

The July 24th hearing was heard as a request for a variance, with Mr. Roller's attorney

¹ Technically, the land is titled in the name of "The Sea Trawler, L.L.C.," which is owned by Wilbert Roller and his son. All the parties agree that Wilbert Roller is an authorized person to make an application for a dock permit, and this appeal/variance.

reserving his rights under the appeal. Public comment was taken at the July hearing. The Board did not take up the issues raised by the appeal at this final hearing because we voted to grant the variance. We note that the parties submitted exhibits and memoranda at both hearings, and this Board considered all the evidence in reaching its decision.

FINDINGS OF FACT

1. This is the written decision and Order of the ZBOA entered, filed and provided to all parties as required by S.C. Code §6-29-800(F). To the extent that any finding contains or is more properly denominated a conclusion of law, it or they, is/are so adopted as a conclusion below as if set forth verbatim.
2. Timely and proper notices of the ZBOA public hearings of May 22nd and July 24, 2008, were provided pursuant to S.C. Code §6-29-790 and Beaufort County Zoning and Development Standards Ordinance (hereinafter ZDSO), 106-173 & 106-402, as follows: (a) publication in the Beaufort Gazette, a newspaper of general circulation in Beaufort County; (b) mailing by certified mail, return receipt requested, to required majority owners of record, the return receipts made part of the record herein; and (c) posting the requisite signs on the proposed site.
3. The proposed site is situated within the unincorporated confines of the County of Beaufort, and jurisdiction is proper.
4. The proposed site consists of two (2) parcels of property totaling approximately 1.40+/- acres of land. The parcels are currently designated by Beaufort County Tax Map Numbers as:
 - a. (1) R600-041-000-0008-0000 consisting of approximately 0.42 acre
 - b. (2) R600-041-000-0009-0000 consisting of approximately 0.98 acre
5. At the Board's July 24, 2008 public hearing, a motion was made to approve the variance request after hearing arguments of counsel, examining the memorandum and exhibits, and

discussion by the Board. The ZBOA finds that the granting of the variance as requested in the application and memoranda of the appellant is supported by the following specific findings:

- (1) **There are extraordinary and exceptional conditions pertaining to the particular piece of property.**
 - (a) Geographically, this is a unique parcel of land as it comprises the tip of a peninsula, bounded on 3 sides by the marshes and waters of McKay's Creek and the Intracoastal Waterway. The area of water immediately in front of this parcel is the only area of McKay's Creek which is labeled on the County's zoning maps (the "Small Tidal Creek Map" is incorporated by reference in the ZDSO) as a small tidal creek, although the area is the entranceway into the creek from the Intracoastal Waterway, and there are numerous docks further up the creek.
 - (b) The County issued building permits in 1991 for the construction of a seafood restaurant known as the Sea Trawler.
 - (c) The County issued a stop work order in 1993 relating to these permits, and advised Mr. Roller that his permits were revoked; the last action by the County regarding these permits was in April of 1994.
 - (d) Roller had applied with the S.C. Coastal Council (now known as the Office of Coastal Resource Management, or OCRM) in 1993 for a commercial dock, which is the subject of this variance request. In 1993 the County did not have a local dock ordinance and so this dock in 1993 was only subject to state permitting.
 - (e) In October 1993, Mr. Roller received a letter from Richard Chinnis of the SC Coastal Council (now O.C.R.M.) notifying him that the dock permit application was being cancelled because the County had determined that his building permit for the associated commercial use (the restaurant) had expired. Further

testimony and argument on this point reveals that O.C.R.M. will not issue a commercial dock permit unless there is a commercial use appurtenant. (See affidavit and testimony of Rocky Browder, Regional Permit Administrator of O.C.R.M. until 2007, as well as the testimony of current O.C.R.M. officials.)

- (f) In May of 2000, Beaufort County enacted the "dock ordinance," including Sections 106-1912 (2) (b) and (h).
- (g) In 2000, Roller requested a vested rights determination relating to the building permit for his restaurant under Beaufort County's Ordinances.
- (h) Pursuant to the vested rights procedure, the Honorable Ernest A. Finney, as a hearing officer, heard the case July 9, 2001. Following a plenary hearing, Justice Finney issued his written order on March 28, 2002, finding that Mr. Roller's 1993 permit remained valid, and he had a vested right to continue construction. Beaufort County appealed that decision; and on October 8, 2003, the Beaufort County Court of Common Pleas issued its order affirming Justice Finney's decision. (See order 02-CP-07-724; 02-CP-07-733). Beaufort County sought no further appeal.
- (i) In 2004, Roller obtained a renewed building permit and resubmitted his application for a dock with OCRM. OCRM issued the permit for a commercial dock in early 2005.
- (j) Testimony from Mr. Geordie Madlinger, Project Manager with OCRM, indicated that had the County not stopped work on the project and determined the permit to be expired, OCRM would likely have granted the dock permit applied for in 1993. Testimony and an affidavit from Mr. Rocky Browder, who was with OCRM for 18 years as a Regional Administrator in Beaufort, including the time during which the OCRM permits for Mr. Roller's project were considered,

corroborated this fact, as well as providing an OCRM permitting history of the project.

- (k) The County's actions in erroneously revoking Mr. Roller's permit in 1993, ultimately resolved in his favor in 2003, create a unique circumstance unique to this parcel. Under the facts as we find them, but for the actions of Beaufort County, the restaurant and dock would have been completed nearly 14 years ago.

(l)

(2) These conditions do not generally apply to other property in the vicinity.

- (a) The conditions discussed above regarding the circumstances of this property, including the erroneously revoked permit, apply uniquely to this property.
- (b) This is the only parcel in the area with both a commercial use, specifically, a seafood restaurant, and water access.
- (c) No other property in the area has the waterway adjacent to it denoted as a "small tidal creek" on the official map.

(3) Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property.

- (a) Mr. Roller's property is uniquely situated on the water and properly zoned for a commercial seafood restaurant.
- (b) It would be unreasonable to deny water access by a dock to a seafood restaurant that abuts the water through the application of an ordinance enacted while the permits were unlawfully revoked.
- (c) The strict application of the County's dock ordinance would result in the unreasonable deprivation of an amenity common to waterfront restaurants.

(4) The authorization of a variance would not adversely affect adjacent property or the public good. Also, the character of the district would not be harmed by the granting of the variance.

(a) McKay's Creek already has docks for commercial shrimp trawlers, one of which is approximately 800 feet in length. There are other docks in the area of length more than 300 feet. The landing adjacent to the parcel is used by commercial barge operators and dock builders. We do not find Mr. Roller's dock request to impose an adverse effect on an area that is already heavily involved in water dependent uses, including commercial use of docks.

6. The ZBOA also finds that the granting of the variance was in accordance with the following:

(1) Is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.

(a) The dock permit issued by O.C.R.M. is in fact smaller than that which would have been allowed in 1993, as the width has been reduced, and is otherwise in accordance with State requirements and limitations.

(b) It is reasonable to allow this reduced in size dock as currently authorized by OCRM, as we have found that but for the actions of the County in unlawfully revoking the permit in 1993, the State permit would have been issued and a larger dock already would be in place, as well as the other considerations noted herein.

(2) Will not be injurious to the neighborhood surrounding the land where the variance is proposed and is otherwise not detrimental to the public welfare.

(a) As noted above, McKay's Creek already has docks for commercial shrimp trawlers, one of which is approximately 800 feet in length. There are other docks in the area of length more than 300 feet. The landing adjacent to the parcel is used by commercial barge operators and dock builders. We do not find Mr.

Roller's dock would impose an adverse or injurious effect, or be detrimental to the public welfare, in this area that is already heavily involved in water dependent uses, including commercial use of docks and the adjacent landing.

7. **The County's contention that this variance is a "Use Variance."** At the July hearing, the County Attorney suggested that this Board lacks authority to grant a variance for Mr. Roller because this Board is not authorized to grant a "use" variance. This argument implicates the issue of whether Roller's dock is a nonconforming "use" or a "practice" associated with the operation of his business. See Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 552 S.E.2d 42 at 45 (Ct. App. 2001) (where the question was whether the outdoor display of furniture was a use or a practice). The dock connects to a piece of property that has a restaurant on it, which would be used by patrons of the restaurant. This makes the dock commercial under OCRM regulations.

(1) We find a dock, whether residential or commercial, is not a "use" of the property. In this case, the commercial restaurant is the "use" of the property.

(2) This Board has granted variances for docks based on hardships arising from inadvertence or inattention to the landowners' O.C.R.M. permit expiring and losing its "grandfathering" status under newly enacted County ordinances. This is the first instance where the granting of a dock variance has been characterized as a "use variance," whether residential or commercial.

(3) The particular facts of this case demonstrate that a commercial dock on the property appurtenant to this seafood restaurant is merely an active "practice" incidental to the "use" of the property as a restaurant. The dock is not a land use in itself; it is solely associated with and related to the business on the land. It serves, in other words, as an amenity to the restaurant, but does not involve any independent commercial use.

8. **Other Considerations.** Mr. Roller argued that the variance should be granted on equitable principles, as more particularly set forth in the July memorandum submitted. We find Mr. Roller diligently re-applied for the permit after the South Carolina courts affirmed the decision of Beaufort County's own Hearing Officer, the former Chief Justice of the South Carolina Supreme Court. But for the actions of the County, the construction authorized by the state permit would have been completed many years before the County adopted the ordinances restricting commercial docks and lengths. As noted above, it would be inequitable to prevent Mr. Roller from completing a dock that could have been built long before there was a county dock ordinance except for the revocation of the underlying county permit necessary to obtain the O.C.R.M. permit. The equities of this matter clearly lie with Mr. Roller.

CONCLUSIONS OF LAW

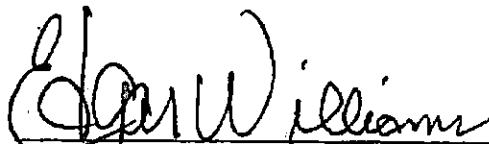
1. All findings of fact set forth above which are more properly denominated conclusions of law are incorporated by reference herein as if set forth verbatim herein.
2. All notices required under the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code §6-29-310 and the County's ZDSO were timely and properly provided.
3. The purpose of the variance procedure is to permit, under limited circumstances, a building or a structure that does not comply with this chapter's standards when strict enforcement would represent a unique, undue, and unnecessary hardship.
4. In making the determinations hereinabove, the Board is mindful that zoning ordinances are in derogation of a landowner's ownership rights, which includes riparian rights, and that ambiguities are to be construed in favor of the landowner.

5. All requirements of County ordinances and statutory law regarding the granting of this variance have been met.
6. Applying the reasoning of Heilker v. City of Beaufort, we are persuaded that the proposed or activity for which the "land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained is a restaurant; the dock is an incidental amenity or practice. This variance as granted is not a "use variance".

ORDER

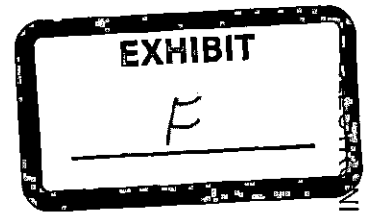
Based upon the above separately stated findings of fact and conclusions of law, it is Ordered that the application for a variance is Granted as requested, Mr. Roller is thereby authorized to build the dock as set forth in the O.C.R.M. permit, and the County is directed to issue the appropriate county permit without further delay.

AND IT IS SO ORDERED.


 Edgar Williams, Vice Chairman, Zoning Board of Appeals, the Presiding Hearing Officer

Beaufort, South Carolina

This 12 day of 12, 2008



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A.10.10 - Purpose

The purpose of the Buckingham Landing Community Preservation District (BLCP) is to conserve the existing residential neighborhood and to improve the quality of life and public safety for their residents.

A.10.20 - Applicability

The Buckingham Landing Community Preservation District requirements apply to all uses within the BLCP boundaries. The Beaufort County Community Development Code shall apply to all development within this district, unless expressly exempted or otherwise provided for in this section.

A.10.30 - District Boundaries

The delineation of areas that fall under the BLCP zoning designation is outlined on the Official Zoning Map of Beaufort County. BLCP standards and requirements apply to all uses within the BLCP boundaries and only those within the BLCP boundaries.

A.10.40 - Permitted Activities

The permitted uses in the BLCP are primarily residential. Table A.10.40 includes descriptions of permitted uses for the BLCP District. Uses not listed are prohibited.

Table A.10.40: Buckingham Landing Community Preservation District Land Use		
Land Use	Use Definition	Use Permission
Residential		
Single-family detached	An unattached (stand alone) dwelling unit intended for only one family.	P

Duplex	A building containing two single-family dwelling units totally separated from one another by an unpierced wall extending from foundation to roof. All units are to be consistent in design and scale with the surrounding neighborhood.	C
Accessory dwelling unit	A second dwelling unit, clearly subordinate but similar in design and appearance to the principal unit. The unit (a complete independent living facility) may be in or added to an existing owner-occupied single-family detached dwelling, or in a separate accessory structure on the same lot as the owner-occupied dwelling. An accessory dwelling unit may be leased or rented, but not sold. Neither manufactured homes nor recreational vehicles may be used as accessory dwelling units.	C
Group home	Less than eight unrelated persons residing in a dwelling unit categorized as a single-family unit. The group's operations are controlled by the residents in a family living environment.	P
Home-based business	A business, profession, or trade operated out of a single-family residence and/or accessory structures. The employment of up to three unrelated individuals including independent contractors operating from the facility, but not including farm workers is permitted.	C
Offices and Services		
Bed and breakfast	A lodging establishment in which there are no more than eight guestrooms, or suites of rooms available for temporary occupancy for varying lengths of time by the general public with compensation to the owner. Meals may be prepared, provided that no meals are sold to persons other than guests. The establishment must be the owner's principal place of residence (NAICS 721191).	C

Home day care, child	A facility in a private owner-occupied home that is operated by one or more persons duly licensed by the state for the purpose of providing child day care for one to not more than eight children at any one time, who are not relatives of the day care provider. (NAICS 62441) Hours of operation are limited to between 6:00 A.M. and 9:00 P.M.	P
Recreation, Education, Safety, Public Assembly		
Public boat landing	Facilities designed to launch and retrieve recreational watercraft from a trailer. Structures are not permitted.	P
Infrastructure, Transportation, Communications		
Local utility	Utility substations or transmission and local distribution facilities, including electric, telephone, wastewater and water treatment plants and all government-owned utilities. Not included are generation facilities, storage of combustibles, regional facilities, and landfills or mining operations. (NAICS 221122, 22121) Utility agencies shall submit service radii and other locational criteria that demonstrate the need to place facilities as requested.	P
"P" indicates a Use that is Permitted By Right. "C" indicates a Use that is Permitted with Conditions. "S" indicates a Use that is Permitted as a Special Use.		

A.10.50 - Conditional and Special Use Standards

This section describes the standards governing the conditional and special uses designated in Table 1. These standards are in addition to other standards required Beaufort County Community Development Code (CDC), but supersede the conditional, special use, and accessory use standards

in Article 4 of the CDC. New uses within the BLCP shall be consistent with surrounding neighborhood character in size, scale and architecture.

A. **Duplex:** When located adjacent to single-family dwellings, the design and appearance of a duplex must have similar massing, height, roof pitch and architectural features.

B. **Accessory dwelling unit:**

1. The regulations for accessory dwelling units in this zoning district supersede the ordinances for accessory dwelling units found in Article 4 of the Beaufort County Community Development Code.
2. The property owner must occupy the principal unit as his/her permanent or seasonal residence.
3. No more than one accessory dwelling unit is permitted per lot.
4. An accessory dwelling unit may be rented or leased, but not sold.
5. An attached dwelling unit shall be designed to maintain the architectural design (facade, roof pitch, siding and windows) of the principle unit. An unattached dwelling unit shall maintain the design and character of the principle dwelling unit.
6. An accessory dwelling unit may be located above a garage.
7. One additional off-street parking space shall be provided on-site.

C. **Bed and breakfast:**

1. One sign is permitted per bed and breakfast (this number is not to be interpreted as one sign per room). Signs must be constructed of solid wood or other durable, non-plastic materials and cannot exceed four square feet in size.
2. Parking must be off-street and screened from adjoining properties.
3. If newly constructed for use as a bed and breakfast, the building must be compatible with the neighborhood, preferably using traditional or "Lowcountry" design.
4. A ten-foot wide planted buffer is required within the setback.

D. **Home-based business:**

1. The regulations for home-based businesses in this zoning district supersede the ordinances for home businesses and home occupations found in the Beaufort County Community Development Code.
2. The owner of the home-based business shall reside on the property or immediately adjacent thereto.
3. Home-based businesses shall be clearly incidental and secondary to the dwelling and shall not change its character or use as a residence.
4. The use of colors, materials, construction, lighting, or other means inconsistent with a

residential use shall be prohibited.

5. Customer/client visits shall be limited to the hours between 6:00 A.M. and 9:00 P.M.
6. The following uses are specifically not allowed:
 - a) Restaurants, bars or clubs.
 - b) Adult entertainment.
 - c) Mortuaries and funeral parlors.
 - d) Repair of appliances, small engines, motor vehicles and motorcycles.
 - e) Tattooing and body piercing.
 - f) Trucking companies.
7. The equipment used by the home-based business and the operations of the home-based business shall not:
 - a) Create any vibrations, heat, glare, dust, odors or smoke discernable at the property lines.
 - b) Create any electrical, magnetic or other interference off the premises.
 - c) Use, store and/or dispose of toxic, explosive, flammable, or other hazardous materials except as directed by the manufacturer, EPA, fire officials, county public works, or other agencies.
8. Outside storage of goods, products, equipment, or other materials associated with the home-based business shall be screened from view.
9. Outside displays of products are not permitted.
10. Outdoor trash receptacles or dumpsters are limited to one per business and must be screened from view.
11. One sign no larger than four square feet in area may be placed on the property.
12. The type and volume of traffic generated by a home-based business shall be consistent with the traffic generation characteristics of other dwellings in the area.
13. Additional parking for a home-based business may be provided, but is limited to two on-site, off-road parking spaces behind all required setbacks and buffers. If paved, parking spaces must be constructed of pervious materials.
14. On-site employment of up to three unrelated individuals, including independent contractors operating from the facility but not including farm workers, is permitted.

A.10.60 - Development Standards

Development standards address how a land use is situated on a parcel. In addition to the following standards, the development standards of the Beaufort County ZDSO shall apply.

A. Lot and Building Standards:

Table A.10.60.A Lot and Building Standards

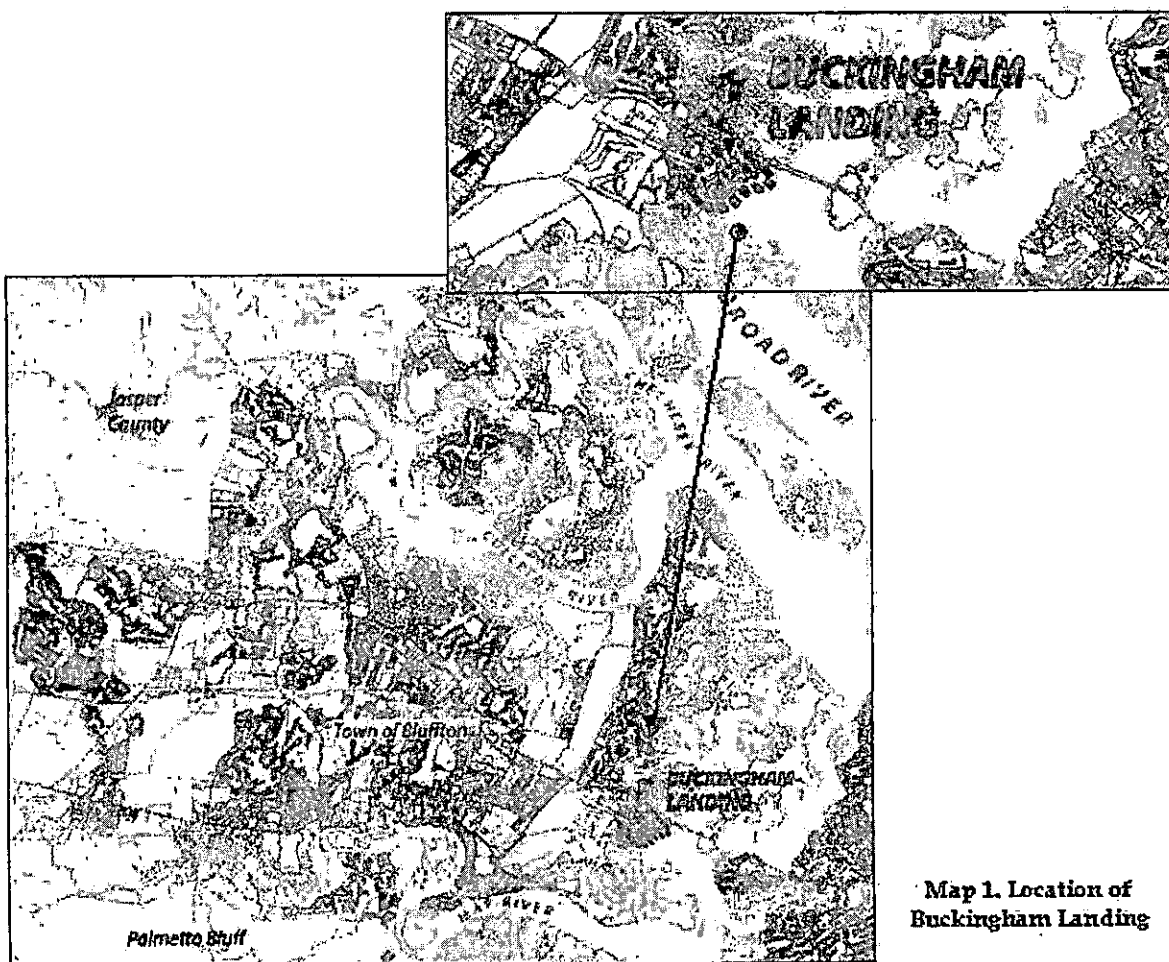
Development Type	Minimum					Maximum
	Lot Area (sf.)	Lot Width (feet)	Street Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Height (feet)
With Sewer	10,890	60	15	10	20	35
Without Sewer	14,520	60	15	10	20	35

- B. **Open Space:** Residential construction must leave a minimum of ten percent of the lot as pervious open space. The ten percent shall not include land area within required setbacks.
- C. **Planting Requirements:** A minimum of two trees (new or existing) are required on all lots.
- D. **River Buffer Requirements:** River buffer requirements included in Article 5, Section 5.11.60 of the CDC shall apply to affected lots.
- E. **Parking:** There shall be no on-street or on right-of-way or off-premises parking permitted in the district. Excluding property owners' vehicles, a maximum of four cars may be temporarily parked on a single lot. Driveways may be placed in setbacks.
- F. **Fences:**
1. All fences shall measure no more than six feet in height.
 2. No fences shall be constructed of, or include in its construction, barbed wire or discarded materials.
 3. Plastic weaving strips on chain link fences are not permitted.
 4. The finished side of the fence shall face outward with mounting poles located on the inside of the fence.
 5. Planting vegetative buffers along fences is encouraged.

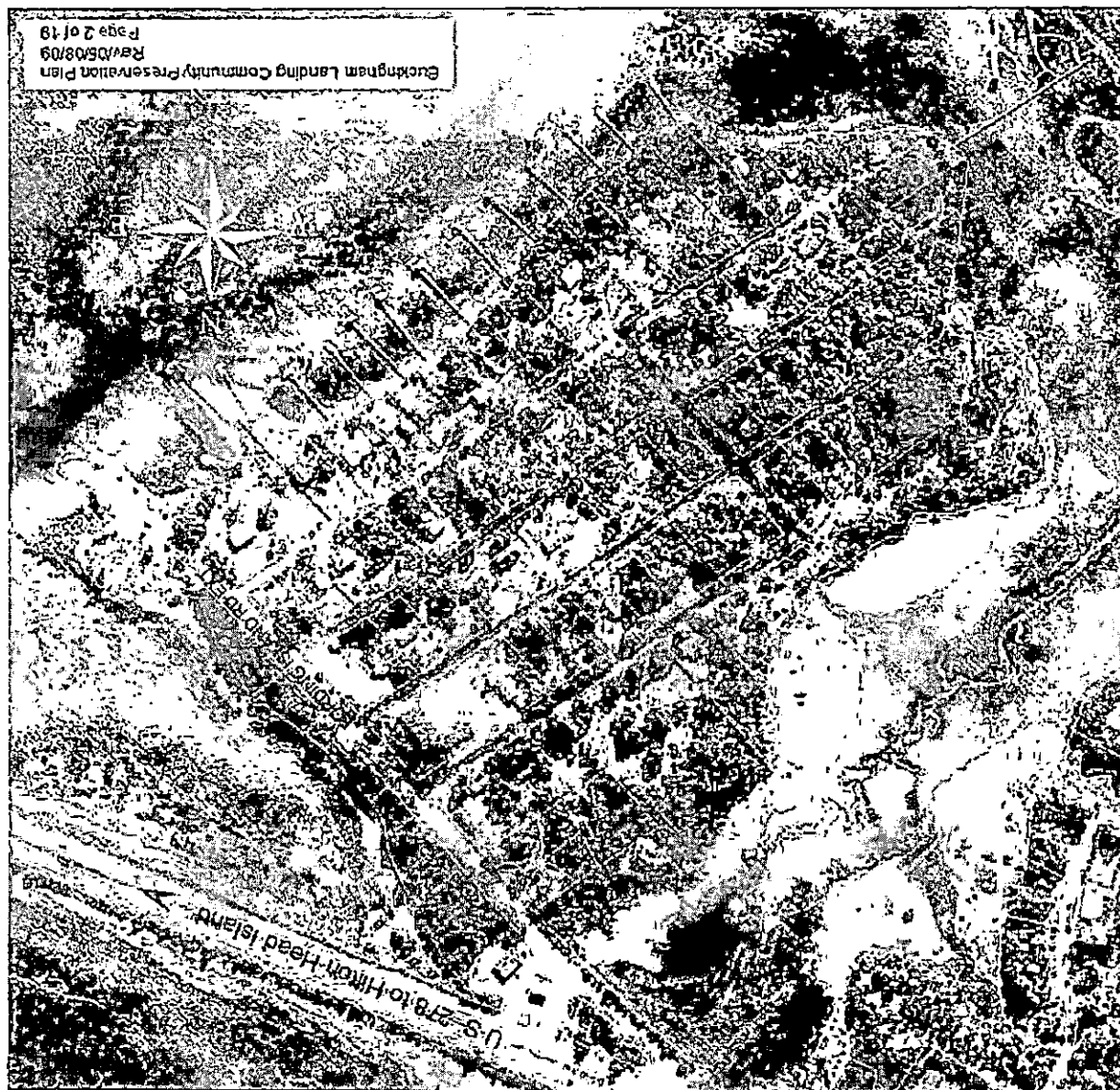
Appendix 4-F

The Buckingham Landing Community Preservation Plan

The purpose of the Buckingham Landing Community Preservation Plan is to define the neighborhood's existing character and convey the residents' vision of its future. The Plan addresses public safety, transportation, land use, the environment and recreational opportunities. Also included is an examination of mitigation activities to minimize impacts resulting from the construction of the restaurant at the end of Fording Island Extension. The adoption of this Plan and its policy statements form the base on which land use regulations for the community will be developed. The Buckingham Landing community is shown in Maps 1 and 2.



Map 1. Location of
Buckingham Landing



The Planning Process

A community meeting was held on May 3, 2006 to initiate the Community Preservation (CP) process. At that time, residents interested in serving on the Buckingham Landing Community Preservation Committee submitted their names. An eleven-member group was selected from the submittals to form the CP Committee.

At the community meeting, a list of issues facing the community were identified and discussed. These issues form the framework for the CP Plan:

- Public safety
- Transportation, including vehicular access to the neighborhood, the condition of local roads and barge usage at the public boat ramp
- Environmental standards
- Land use, including impacts from the construction and operation of the new restaurant and housing
- Historic preservation
- Recreational activities and access to the boat ramp.

The Buckingham Landing CP Committee held meetings twice a month beginning on June 27, 2006. Guest speakers included Colin Kinton of Beaufort County Engineering; Fran and Bill Marscher, residents of Buckingham Landing and initiators of the Clean Water Task Force; Eddie Bellamy, Director of Beaufort County Public Works; Audra Antonacci, Codes Enforcement Supervisor; Capt. Marvin Morrison and SSgt. Larry Swigart, Sheriff's Office; and Dick Duell, Senior Engineer of the Beaufort-Jasper Water-Sewer Authority.

The CP Committee presented the Final Draft Buckingham Landing Community Preservation Plan and ordinances at a public hearing on February 6, 2007. Comments made concerning the Plan were discussed and incorporated into the Final documents. The Plan is then submitted to the Beaufort County Planning Commission for approval and then to the Beaufort County Council for adoption as a policy document appended to Beaufort County's Comprehensive Plan. It will be used to guide zoning, subdivision and facilities funding in Buckingham Landing.

Community Issues and Goals

Based on community input at both public meetings and intense discussions of the issues listed above, the following goals were identified. Specific actions to be undertaken to achieve each goal are also included. In some instances, the CP Committee has taken the opportunity to accomplish some of the specific actions through dialog with County staff and other speakers at Committee meetings.

Public Safety: The primary goal for every community is the safety of its residents. For Buckingham Landing issues of public safety include addressing speed and traffic patterns within the neighborhood and reducing crime. Another public safety factor to be considered is the Landing's single-entrance character. Vehicular traffic can only enter and leave the community through the intersection at fording Island Road Extension and US 278. Until restaurant construction began, this limited traffic to residents and those using the public boat landing. Any future designs for alternate roadways through the

area should maintain a single entrance/exit to Buckingham Landing to keep traffic counts as low as possible.

- ▣ Speed limits: Community residents and Committee members agree that speed limits must be lowered on neighborhood roads to protect children, walkers, pets as well as the drivers themselves. Existing speed limits are 30 miles per hour on Fording Island Road Extension and Big Oak Drive (State roads) and 25 miles per hour on all other roads (owned and maintained by Beaufort County). CP Committee members asked the Sheriff's Office representative and the County's Public Works Director to work on reducing speed limits to the lowest permitted rate.
- ▣ Impacts to traffic from construction and operation of the restaurant: Vehicles entering the neighborhood during construction of the restaurant at the end of Fording Island Road Extension are traveling at relatively high rates of speed through the narrow roads. The drivers travel through the community to make a loop, arriving back onto Fording Island Road Extension to position themselves to enter the construction site in reverse. The completion of restaurant construction will greatly reduce the number of heavy trucks traveling the neighborhood, but trips by delivery vehicles during restaurant operations will remain high. Increased enforcement of speed limits may inspire drivers to use lower speeds while traveling through the community, improving public safety.

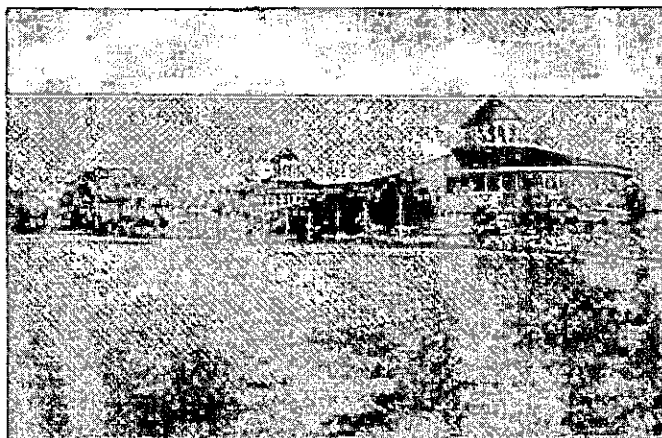


Photo 1. Restaurant as Seen from Public Boat Landing

Based on trip generation manuals, the restaurant, when opened, can be expected to double existing traffic (adding between 20 and 65 cars during peak hours of operation), especially in the first few months after opening and during peak tourist seasons. This potential traffic increase and its accompanying safety issues (pedestrian safety, speeding, accidents, illegal parking, and such) is a major concern for neighbors. These safety impacts are based on the existing number of parking spaces permitted with restaurant development. Restaurant owners, managers and patrons must be limited to using the parking spaces permitted under the existing development design. Permitting the restaurant additional parking spaces on or near the property will significantly increase traffic impacts and increase safety hazards for the community's children and pedestrians.

Residents near Alljoy Beach had similar problems with on-street parking by visitors to the beach. After a study conducted by SCDOT, "No Parking" signs were put up by the County near Alljoy Beach because there was an issue of public safety – the presence of parked cars limited access by emergency vehicles. Captain Morrison has requested SCDOT conduct a similar public safety study for Buckingham Landing.

GOAL: Improve safety on Buckingham Landing roads for children, pedestrians, and drivers.

- 1) Request lower speed limits for community roads and additional enforcement for these lower speeds.
- 2) Request that SCDOT prepare a public safety analysis for Buckingham Landing with special attention to impacts from restaurant operation.
- 3) Request additional enforcement to eliminate the use of neighborhood roads by heavy trucks.
- 4) Eliminate all on-street parking within Buckingham Landing by ordinance and enforcement.
- 5) Send a copy of this Community Plan to members of the Development Review Team to notify them of the strong community opposition to additional parking at or near the restaurant.
- 6) Request SCDOT and Beaufort County to install safety signs such as "Children at Play" and "No Through Traffic."
- 7) Work with Beaufort County Engineering and SCDOT to arrive at the best practicable solution to the traffic safety issues at US 278, while maintaining a single entrance to the community.

- **Crime:** According the Beaufort County Sheriff's Office, crime rates in Buckingham Landing are very low, residents disagree. At one CP Committee meeting, representatives of the Beaufort County Sheriff's Office attended and the group discussed crime in the neighborhood. Committee members asked for "more of a presence" from the Sheriff's Office for crime deterrence. The Committee was told that when calling the Sheriff's Office to report a crime, get an incident number. This number is required for any follow-up or further investigation of a crime. For example, if someone parks illegally on your property, you can have the car towed. But, the tow truck driver will require an incident number. Also, if a Beaufort County resident witnesses a crime, (s)he has the right to make a police report and go to the Magistrate's court to get a warrant for the perpetrator's arrest.

GOAL: Reduce crime in Buckingham Landing.

- 1) Request increased enforcement patrols from the Beaufort County Sheriff.
- 2) Ask Beaufort County to erect signs at the public landing that describe rules for use of the landing and the consequences of rule-breaking.
- 3) Establish a Neighborhood Watch.

- Fire prevention: Currently, there are no water lines on the Island and consequently, no fire protection in the form of hydrants. The provision of water to the restaurant will bring water lines and hydrants along Fording Island Road Extension. In the interest of public safety, liwater lines should be installed throughout the community to provide for a higher level of fire protection.

GOAL: Increase fire protection in Buckingham Landing.

Actively pursue installation of public water within the community.

Transportation: Buckingham Landing is only accessible by land at the intersection of US 278 and Fording Island Road Extension. Residents prefer this single-entrance arrangement as it virtually eliminates through traffic. There is water access to the community at the public boat landing at the end of Fording Island Road Extension. Recreational and commercial boaters using the public landing once produced the only additional traffic on the neighborhood's roads.

- Vehicular traffic – US 278: Two significant occurrences have changed traffic patterns: the widening and re-structuring of US 278 and construction of the restaurant. Making a turn onto the very heavily-traveled US 278 from Buckingham Landing has been a long-standing problem. The widening and re-structuring of US 278 is almost completed. Under the re-structuring of the road, many access crossings have been closed and traffic is forced to travel past their destination and make a u-turn to get back to the original destination. The access point to the Kangaroo gas station just east of the intersection of US 278 and Fording Island Road Extension has been closed and the cross-over point at the intersection, Buckingham Landing's only access point, is now the designated u-turn for access to the gas station. This has not only increased the number of vehicles using this access point, but has complicated traffic patterns and increased drivers' risk of accident.

Colin Kinton of Beaufort County Engineering attended a CP Committee meeting and listened to the complaints and comments offered by Committee members and visitors. Because the widening project was nearing completion, there was little that could be done to improve access to the community. However, within a week of the meeting, Mr. Kinton had arranged to have concrete traffic control devices installed at the US 278/Fording Island Road Extension intersection as shown in Figure 1.

Another part of the intersection's problems is that the cross-over lies within a depression created by the first widening of US 278, limiting the visibility of on-coming traffic to those within the cross-over. Any future road work in this section of US 278 must include elimination of this depression.

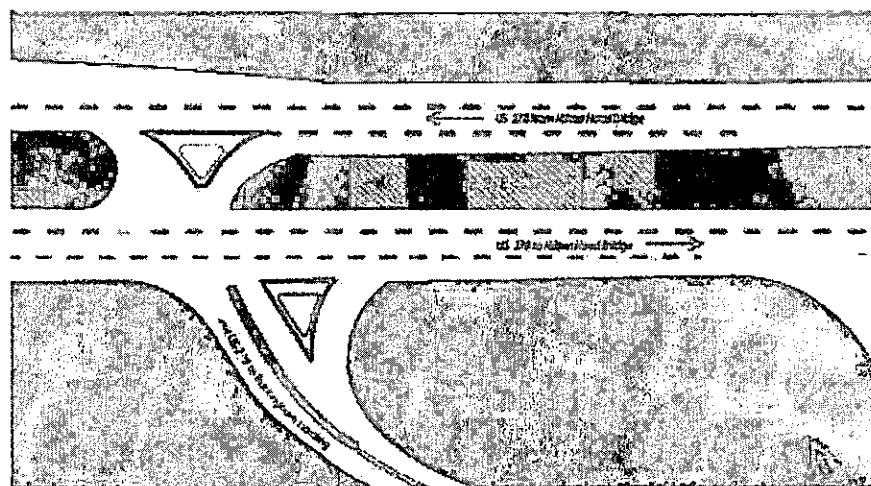


Figure 1. New Traffic Control Devices at the Intersection of US 278 and Fording Island Road Extension

- **Vehicular traffic – Bluffton Parkway:** Plans for the Bluffton Parkway, a limited-access road paralleling Fording Island Road (US 278), were underway when the Buckingham Landing CP project began. A public meeting to discuss potential alignments for the Parkway. Proposed designs did not indicate any plans for a connection with US 278 near Buckingham Landing. Because the intersection of US 278 and Fording Island Road Extension is becoming more dangerous with the increase in both travel lanes and traffic, the Committee decided that preliminary alignments should at least consider a connection to Buckingham Landing. The Community Planner was tasked with presenting the community's request to the Parkway Steering Committee. At the next public meeting for the Parkway, the designs for Phase 5-A (the portion nearest Hilton Head Island) indicated two possible linkages to US 278 via a flying bridge passing near the Landing that would allow direct access to the Landing to the Parkway. One of these proposed designs is shown in Figure 2. The most recent proposed road alignment shows the Parkway's flying bridge passing near Buckingham Landing, without direct access from the Landing to the Parkway (Figure 3).

This new design has disadvantages to the residents of Buckingham Landing including the continued use of a dangerous intersection, increased activity near that intersection (the merging lanes dropping more east-bound traffic). Using an access like the one pictured in Figure 2 would possibly be less expensive than the one in Figure 3, with no requirement for flying bridges. In addition, access such as Figure 2 would likely remove one obstacle to even traffic flow, the convenience mart and produce stand. These activities currently attract many motorists, most of whom cross traffic to enter and exit. Clearly, the more beneficial access to Buckingham Landing would be a separate access similar to that in Figure 2.

An important issue concerning vehicular access is the importance of maintaining a single access point to the community. If direct access to the Bluffton Parkway becomes open to Buckingham Landing residents, the access point at Fording Island

Road Extension must be closed. If, not, the Landing will become a short cut resulting in heavy through-traffic and increased threats to public safety.

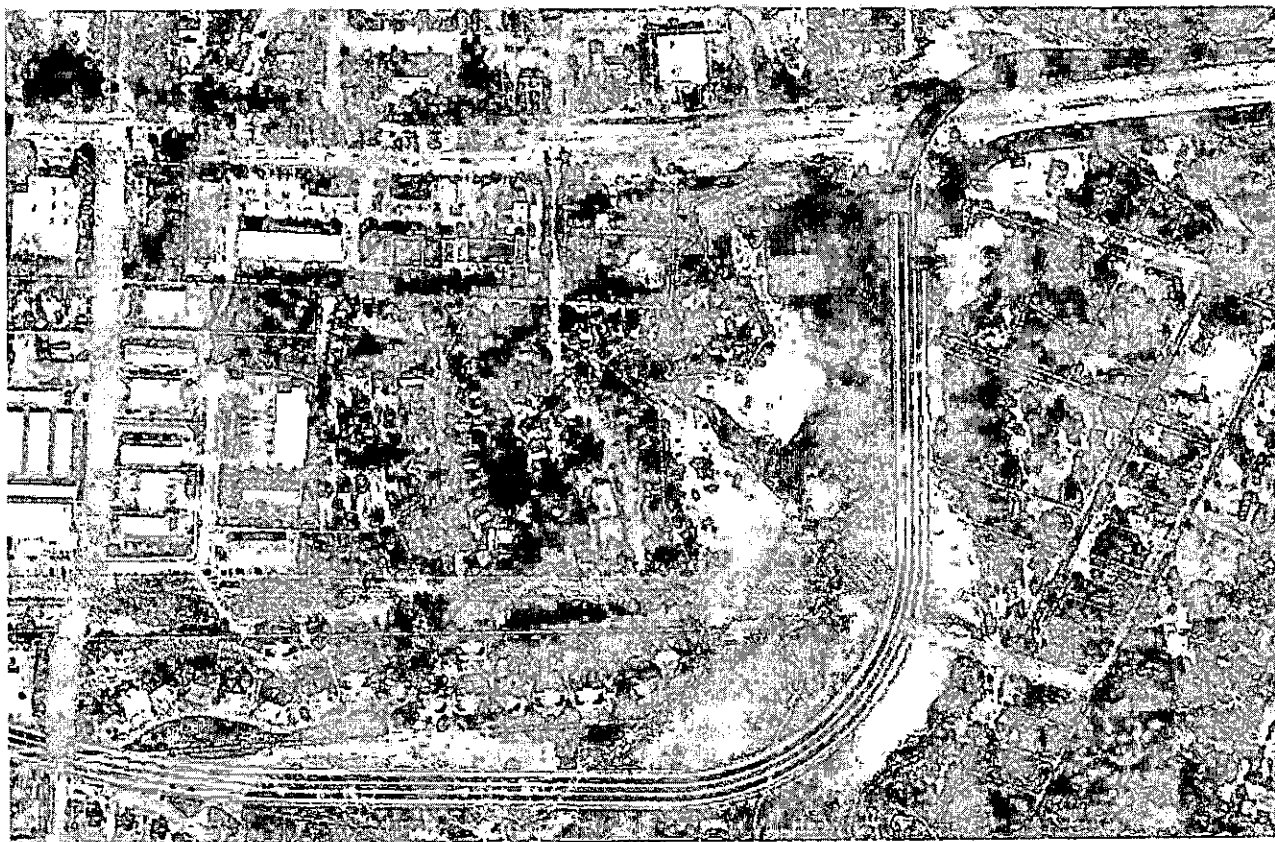


Figure 2. Bluffton Parkway Phase 5 Alternative Alignment 3, October 2006

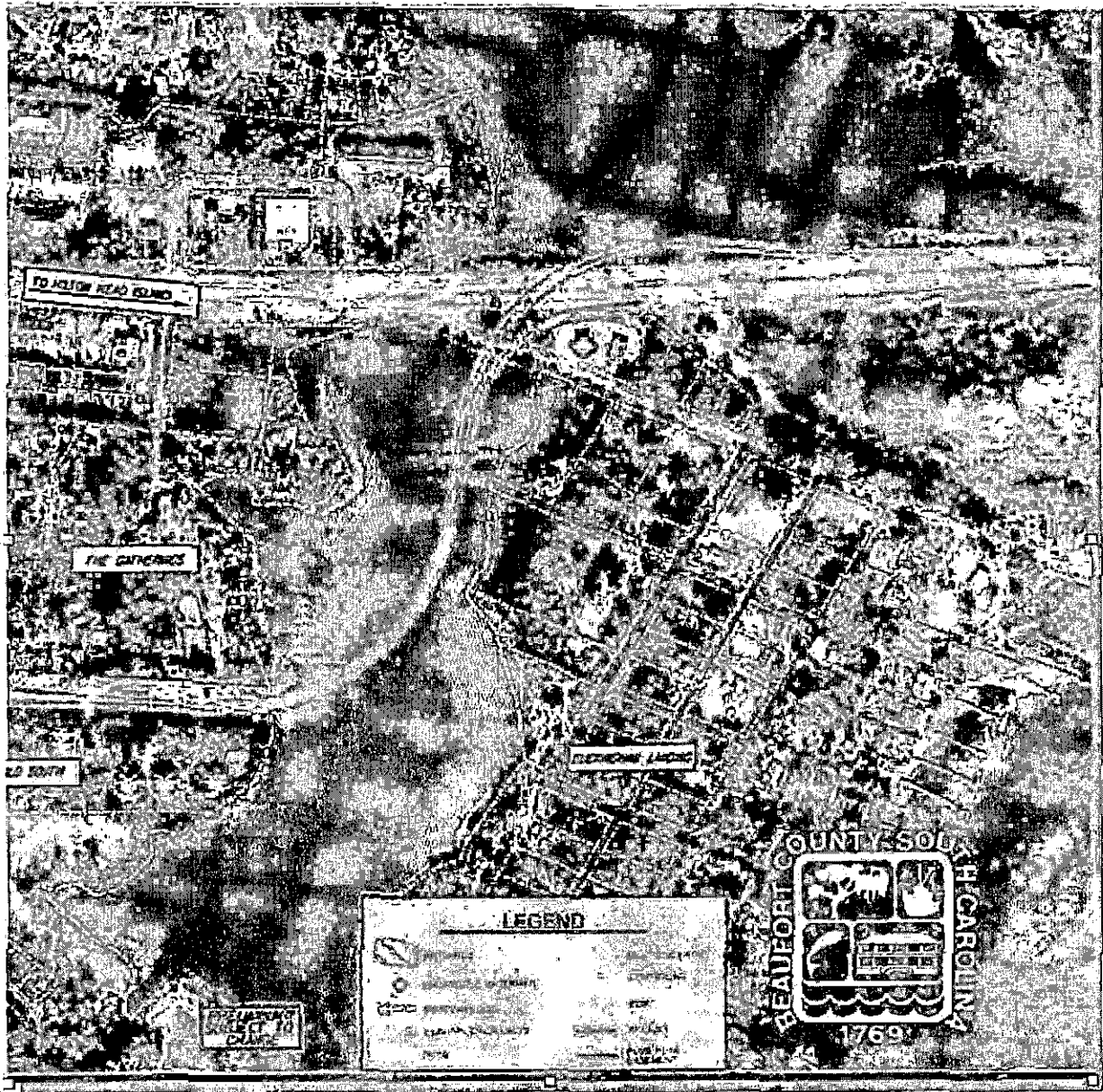


Figure 3. Alignment of Bluffton Parkway Phase 5, March 2007

GOAL: *Improve external vehicular access to the community while maintaining the neighborhood's single-entrance character.*

- 1) Hold discussions with Beaufort County Engineers concerning improving direct access to Buckingham Landing via US 278 until such time as the Bluffton Parkway is completed with direct access to Buckingham Landing.
- 2) Closely follow plans for the Bluffton Parkway and become active in asking for direct linkages between the Parkway and Buckingham Landing .

- 3) If direct access to Buckingham Landing becomes available from the Bluffton Parkway, ensure that the access to US 278 is sealed.

Residential Land Use: Because Buckingham Landing is an established community with few lots left open for development, the CP Committee decided that any new land use ordinance should be designed to preserve the existing eclectic character of the neighborhood.

GOAL: Maintaining the existing character of Buckingham Landing.

Prepare a zoning district with the following characteristics:

- **Density:** To be set by minimum lot size.
- **Minimum lot size:** No less than 10,890 square feet for lots connected to public sewer and 14,520 square feet for lots with septic systems.
- **Permitted uses:** Single-family detached homes, home daycare for children, public boat landings.
- **Limited uses:** Duplexes, accessory dwelling units, bed and breakfasts, home-based businesses.
- **Special uses:** None.
- **Limiting standards:** These will be based on and may exceed the standards included in the Beaufort County Zoning and Development Standards Ordinance.

Commercial Land Use: Currently, there are five lots in the CP district on which are existing commercial activities. These are shown in Figure 4. All five parcels contain nonconforming uses:

- **Parcel #1: R600-041-000-0002-0000:** This one-acre parcel is situated at the intersection of US 278 (Fording Island Road) and Fording Island Road Extension. It has direct access to US 278 and is currently home to a store/produce stand. The store has been permitted as a traditional shop, which is defined as a small store (less than 1,500 square feet) that sells grocery items and household supplies.
- **Parcel #2: R600-041-000-002B-0000:** Adjacent to parcel #1, this parcel (1.57 acres in size) also has direct access to US 278. Existing land use includes a gas station with a convenience store.

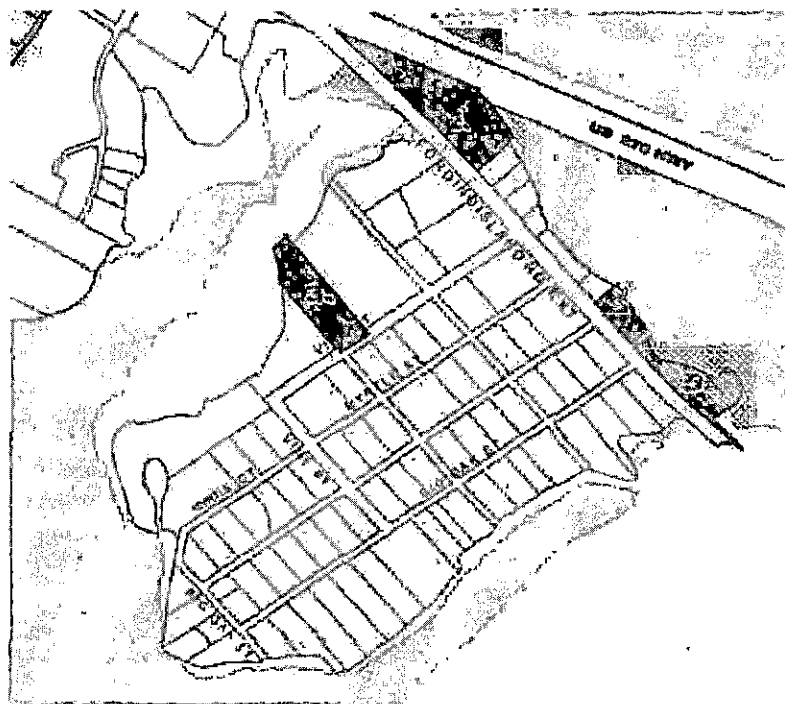


Figure 4. Nonconforming Parcels

- **Parcel #3: R600-041-000-0046-0000** – Located on Vine Street along the northern edge of the Island, existing land use on this parcel is a rental services company that provides plants for weddings and other activities. There are living quarters on the 1.12-acre parcel, but the owner is not in residence.
- **Parcels #4 and #5: R600-041-000-0009-0000 and R600-041-000-0008-0000** – On the water's edge at the end of Fording Island Road Extension, these parcels are adjacent to the County's public boat landing. A restaurant is currently under construction on the one-acre site. The property owner of these parcels disagreed with the County as to his right to develop the parcels as he was permitted under a development permit granted him in 1988.

The 1999 Beaufort County Zoning and Development Standards Ordinance (ZDSO) contained a process through which a property owner could appeal decisions made by zoning officials on "vested rights." The 1994 South Carolina Local Government Comprehensive Planning and Enabling Act did not address resolution of vested rights disputes. That has since been rectified and the County's process deleted in favor of the State's ordinance.

In general, granting a property owner vested rights in a development means that (s)he can construct the project as though it was being built at the time of application, under the regulations in place at that time. Vested rights are usually granted to a developer who has at least partially completed the project before

abandonment.

The Buckingham Landing parcel appeal was made before a Hearing Officer selected for that specific purpose by the County Administrator, John Kachmar. Judge Finney, retired Chief Justice of the South Carolina Supreme Court, heard the case. Attorneys for the County and the property owner presented their sides of the argument and the judge made his decision, which was binding on the participants. Thus, the property owner was permitted to construct a restaurant in accordance with a development plan submitted to the County in 1988.

While the restaurant is permitted to be constructed following land use regulations in place in 1988, there are two standards that have been developed since that time and that are applicable to this project: current lighting standards and signage standards. The new development must also comply with existing nuisance ordinances, especially regarding noise abatement. Parking is required to be on-site under both sets of zoning ordinances.

- **Zoning the Existing Commercial Uses:** None of the above parcels contains uses that conform to the existing Community Preservation land use ordinance. In this respect, the uses are considered to be nonconforming and subject to specific certain limitations (ZDSO Table 106-9):
 - 1) "Disturbed area expansion" is limited to 15% of the parcel within required setbacks and with maximum feasible buffers.
 - 2) Nonconforming uses can become conforming by correcting the unconformity or by approval of a special use permit. (Please note, this does not apply to parcels #4 and #5.)
 - 3) Nonconforming use with damage greater than 50% of their market value shall be replaced by conforming uses.
 - 4) Any partially destroyed nonconforming use shall be considered abandoned if substantial reconstruction of the damaged use has not been initiated within 180 days of the destruction date. Abandoned uses shall only be replaced with conforming uses and structures.
 - 5) Any nonconforming use shall be considered abandoned if vacant or unused for 120 days. Abandoned uses shall only be replaced with conforming uses and structures.

For each of the above parcels, the CP Committee had to select one of the following zoning solutions for each of these parcels:

- 1) Keep the parcel within the Buckingham Landing CP District and create a commercial zoning district that would apply to one or all of the above parcels, thereby making the use conforming.
- 2) Keep the parcel within the Buckingham Landing CP District, which will be residential uses only, thereby creating a nonconforming use.
- 3) Exclude the parcel from the CP District and request rezoning of the parcel to Commercial Regional, an existing Beaufort County zoning district.

The Buckingham Landing CP Committee unanimously voted to keep the CP District

outline as it is currently designated, creating five non-conforming (grandfathered) parcels.

GOAL: Prepare and ordinance that will not permit commercial uses in Buckingham Landing.

- 1) Write a new zoning ordinance that permits only residential uses and home-based businesses.

Home-based Businesses: Several changes in business and technology over the past few years have changed home businesses, but zoning definitions have not always kept pace. Remote-location telecommuting and internet sales activities don't fit well into existing land use ordinances. Many residents in Buckingham Landing use their homes as a base of operations for a business. Residents would like to continue to operate these businesses and to do so with the fewest impacts on other residents. Currently, Beaufort County has three categories of home-based businesses and each is a limited use. No single one of these types of home businesses fits the needs of the residents or their visions for the future land uses within the community. The following presents some of the issues involved with each of the existing types:

- Home occupation: A business located entirely within a home, but not exceeding 25 percent of the home's total floor space. This specific floor space requirement is difficult to enforce. The designation also does not allow the use of accessory structures for the business or the hiring of additional employees.
- Home business: This category extends activity to accessory units and up to three employees as long as the operator (not specifically the owner) of the business resides on or adjacent to the property. Residents of Buckingham Landing believe that the property and business owner should also be the primary resident of the property.
- Cottage industry: Light industrial uses located on a minimum 10-acre lot with a residential unit on the lot. The industry can have up to six employees and the operator must reside on or adjacent to the property. The Committee decided that the uses included under "light industrial" in the ZDSO are too intense for Buckingham Landing.

For these reasons, the Buckingham Landing CP Committee decided that their best course would be to tailor a definition of home-based business specifically to fit the community.

GOAL: Limit new commercial activities to home-based businesses. Encourage home-based business by easing restrictions on these activities while still maintaining the residential character of the community.

- Prepare a zoning district with the following characteristics at a minimum:
 - 1) Commercial activity: Not permitted.
 - 2) Home-based businesses: Owner must reside on premises; limited hours of operation; neighborhood compatibility; no nuisances created; screened outside

storage; limited signage; no on-street parking; appropriate permits and licenses still required.

Environmental Standards: Buckingham Landing is a small peninsula on the far eastern end of the mainland surrounded by Mackay Creek and its wetlands (Map 1). Mackay Creek and its tributaries are part of the Broad River estuary, a drowned river valley system and the largest of the Sea Island Coastal Region estuaries, covering 219 square kilometers. A water quality monitoring plan was initiated in 1999 for the Broad river system. Monitoring results at water quality station 20-07, located at the bridge near Buckingham Landing, showed that water here met standards for an Approved classification, meaning that shellfish harvested at this location are approved for human consumption (SCDHEC 2006).

SCDHEC concluded that the Broad River estuary is affected by three major sources of pollution: nonpoint source pollution (stormwater runoff), sewage treatment and disposal systems, and boating impacts (primarily improper discharge of untreated or partially treated sewage).

For Buckingham Landing, stormwater runoff is the major pathway for pollutants to enter the marshes and waterways. Other contamination sources include fecal coliform from pets and wildlife, failing septic systems, and drainage from roads and other impervious surfaces. Committee members have reported that a large amount of trash from the Kangaroo station and fruit stand ends up in the neighborhood and in local waterways, another source of contamination. Stormwater management systems also need to function properly.

Methods for reducing nonpoint source pollution within Buckingham Landing include lessening the amount of impervious surfaces, keeping development and land disturbance away from wetlands, reducing neighborhood chemical usage (fertilizers, pesticides and herbicides), inform residents of the impacts arising from filling in or otherwise altering stormwater drainage ditches.

Because many of the lots on Buckingham Landing are small, there may be no room for alternate drain fields when an on-site sewer system fails. At some point it will also be important for residents to consider connecting to a public sewer system. Public water access may become necessary if salt water intrusion into the local aquifer begins to affect neighborhood wells.

The environmental impacts from barge usage are caused by actual landings of barges on land. Because almost all barge use at Buckingham Landing is via cranes, the impact from barge traffic is minimal.

GOAL: Maintain the community's character and quality of life through protection of the local ecology and surrounding shellfish waters.

- Prepare a zoning ordinance that will maintain the existing low-density residential character of the neighborhood.

- 1) Permit only single-family, duplex, and accessory dwelling units.

- 2) Limit commercial use to home-based businesses.
- 3) Establish minimum lot sizes based on the availability of public sewer.
- Ask the County and BJWSA for assistance in obtaining funding and/or payment methods to assist residents to hook up to public water and sewer.
- Support existing river buffer zone restrictions including setbacks and maximum structure footprints.
- Oppose construction of parking in setbacks from the critical line.
- Provide education to residents concerning limiting impacts to local waterways, including information about:
 - 1) Impacts from landscape chemicals and how to lessen these impacts.
 - 2) The use of pervious materials rather than impervious materials.
 - 3) The importance of maintaining septic systems and drain fields.
- Assist Beaufort County in maintaining a storm water management system that both prevents flooding and prevents pollution from moving to nearby waterways.
 - 1) Inform Public Works when ditches become clogged and when flooding occurs.
 - 2) Educate neighbors in the importance of keeping drainage ditches maintained.

Historic Preservation: For decades Buckingham Landing served as a primary access point to Hilton Head Island, with ferry service for passengers and barges for cargo. Private ferries like the *Clivedon* (Hilton Head Island, 1998) provided regular service connections between Hilton Head Island and the mainland in the late 1800s that augmented the services provided by bateau owners since transport between Hilton Head Island and the mainland was needed.

In 1953, a State-operated car ferry began running from Buckingham Landing to Jenkins Island on Hilton Head. The first ferry, the *Gay Times*, held four cars and the second, *Pocahontas*, held nine. The cost to ride was 10 cents per person and \$1.25 per car (Hilton Head Island, 1998). Some evidence of the earlier residences and other structures on Buckingham Landing are visible as tabby remnants. Tabby is a concrete made from lime, sand and oyster shells. The largest collection of tabby remnants is located on the smaller of the two parcels on which the restaurant is being constructed. When the first development review was completed on the proposed project in 1988, the State Historic Preservation Office was requested to evaluate these tabby remains.

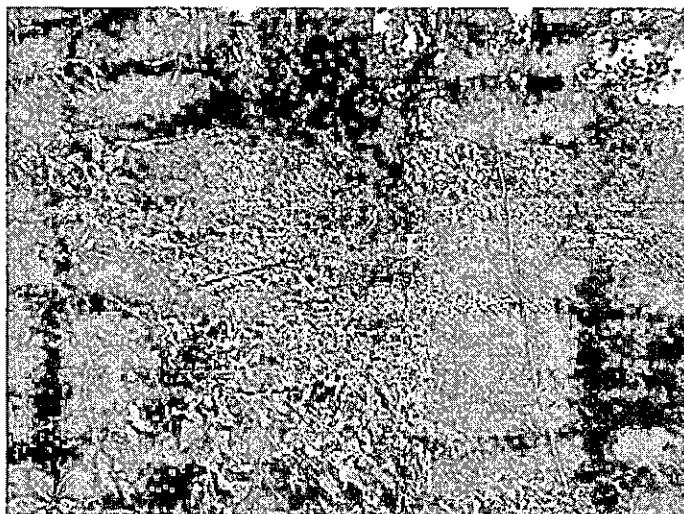
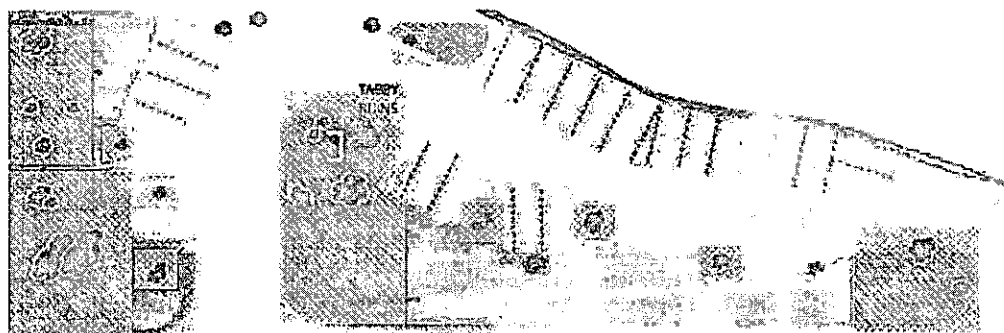


**Photo 2. One of the Remaining Pieces of Tabby on
Buckingham Landing**

The person in charge of these as the top tabby determinations, regarded expert in South Carolina at the time indicated that the tabby group did not qualify as a significant historic structure. However, they do represent the last remaining evidence of historical properties in Buckingham Landing, so they have community historical significance. The approved plan for restaurant construction shows that the tabby ruins are to remain standing within the restaurant parking lot. Building Codes personnel have been making frequent checks for construction compliance and should include the status of the tabby as part of their observations.



FORDING ISLAND ROAD EXTENSION

Figure 5. Sketch of Tabby Protection in Approved Restaurant Plans

GOAL: Request that Beaufort County ensure the preservation of the tabby ruins.

- Send copies of the approved Community Plan to those involved in monitoring restaurant construction.

Public Recreation: Currently, public recreation in Buckingham Landing is limited to the public landing. There are no parks or other forms of active or passive recreation except those activities provided to owners of waterfront property, who have virtually unlimited access to water sports. There is no existing public pressure to expand County recreational activities to the community. However, there is a significant demand that opportunities for private usage of the existing landing be shared equally with commercial users of the same landing.

GOAL: *Ensure that ample public access at the boat landing is maintained.*

- Review the proposed Beaufort County public boat landing ordinance amendments and make comments as appropriate.
- Address public parking issues when preparing the new land use ordinance.

Public Water and Sewer: The Committee was asked to address “other issues” as they arose. The only significant “other issue” to come out of the CP Committee meetings was access to public water and sewer. As discussed in Section 6 Environmental Standards, to ensure continued high water quality near the Landing, there will come a time that on-site disposal systems should be replaced and homes connected to public sewer. Also, continued draw down on the Floridan Aquifer may result in saltwater intrusion into community wells, requiring connection to public water systems.

Mr. Dick Duell, a representative from Beaufort-Jasper Water and Sewer Authority (BJWSA) attended a CP Committee meeting to discuss the current status of water and sewer access to the Community. Current restaurant plans call for an 8” water line following Fording Island Road Extension. This line will tie into the pump station at the restaurant property and then return to the convenience store where it will connect with a 24” water line. BJWSA will put a 4” forced main in now if the community expresses “enough interest”.

Also, BJWSA intends to run a 2” forced main for sewer transfer between the restaurant pump station and the convenience store. Because Fording Island Road Extension has just been repaved, the preferred utility line construction method would be to install water along one side of the road and sewer along the other.

Providing service to the entire community would be costly. Six thousand feet of 8” pipe would be needed to serve the neighborhood at a cost of approximately \$10,000 for water service alone, and approximately \$20,000 for both water and sewer (sewer cannot be installed separately. Meter fees (meter installation charges) are \$500 per parcel. Current upkeep charges for grinder pumps total \$27 a month; however, this is anticipated to drop to \$10 in the near future. Attaching fees may be paid over time. There is some grant funding available, however, most are aimed at low-to moderate-income families.

BJWSA will consider providing water and/or sewer service to a neighborhood on the basis of a referendum with one vote per parcel owner. If at least 75 percent of the neighborhood property owners vote on a referendum for water/sewer service, BJWSA will consider the project. If at least 60 percent of that 75 percent vote in favor of the

referendum BJWSA approves the project. Once approved, every resident must tie in. If the referendum fails, but at least 50percent of the neighborhood voted for the project, a new referendum can be put up for a vote after 12 months. If less than 50 percent voted, the neighborhood must wait at least 2 years to hold another referendum.

GOAL: *Work toward installation of public water and sewer in the community.*

- Write a letter to BJWSA indicating community interest in the installation of a 4" forced main in place of the currently planned 2" line. Initiate additional contacts as needed to prove there is "enough interest" in the community for the project.
- Contact the BJWSA public communications staff member to initiate a referendum process.
- Request the Beaufort County Grants Administrator to investigate and apply for all appropriate utility grants.

Plan implementation: The Community Preservation Committee has identified the above goals and objectives as fundamentally important for maintaining and improving the Buckingham Landing community's character and the health and safety of its residents. Many of the above objectives were completed during the preparation of the Plan and ordinance. To ensure that existing momentum is not lost for achieving the community's goals, the CP Committee has agreed to continue meeting on a quarterly basis at a minimum. Committee members can also call meeting to address immediate concerns.



Figure 6. The Future We're Trying to Avoid

1:03



◀ Sunset Bay Restaurant ▶

Home Reviews Photos Posts Community



Sunset Bay Restaurant

Jan 14, 2014 · @

The Sunset Bay Restaurant is permanently closed. As many of you know, we had to close in September 2013 due to roof and equipment damage caused by leaks in the restaurant. This has been an ongoing issue since we opened in November, 2012. The condition of the roof continues to deteriorate, and the structural integrity of the roof is not sound. Engineers and specialists evaluated the roof and its condition on numerous occasions and requested that a full replacement be performed. Anything short of a full overhaul would only be a temporary solution and not address the structural integrity of the whole building. The landlord refused to repair or replace the roof, leaving the Sunset Bay owners and investors no choice but to vacate the building and begin legal action against the building's owner. The investors at Sunset Bay will not put its guests or staff at risk of mold exposure in the future, as the wood in the roof is continuing to accrue moisture. After numerous lease violations from the Landlord were made, legal actions were taken by Sunset Bay LLC. Attempts were made at an out of court settlement, including roof repair. The building owner refused to make any agreement and will move forward with the building in its current condition. We apologize to the community.





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1:04



< Q Sunset Bay Restaurant



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building. The landlord refused to repair or replace the roof, leaving the Sunset Bay owners and investors no choice but to vacate the building and begin legal action against the building's owner. The investors at Sunset Bay will not put its guests or staff at risk of mold exposure in the future, as the wood in the roof is continuing to accrue moisture. After numerous lease violations from the Landlord were made, legal actions were taken by Sunset Bay LLC. Attempts were made at an out of court settlement, including roof repair. The building owner refused to make any agreement and will move forward with the building in its current condition. We apologize to the community and all of our valued guests. Our establishment had become a home away from home for many people in our community. It has been devastating to all staff members at Sunset Bay as well as the investors. Once the restaurant gets relocated, we will post more information on our website and facebook account. Please contact: legal@sunsetbayrestaurant.com with questions or comments.

11

11 Comments 8 Shares



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Sunset Bay Restaurant

Dec 20, 2013



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Menu

35 Fording Island Road

Lessor: Mr. Wilbert Roller Jr.

Lessee: Daufuskie Island Ferry Service (DIFS, LLC.)

Daufuskie Island Ferry Service (DIFS) agrees to lease the property located at 35 Fording Island Extension Road, the parcel known as the Sea Trawler Restaurant property.

DIFS will have exclusive rights to use the parking lot and the entire dock for the purpose of operating the public ferry service to Daufuskie Island.

DIFS will provide a deposit in the amount of \$10,000 on January 16, 2017. A formal lease agreement based on the terms outlined in this document will be finalized on or before February 1, 2017.

Ferry operations are anticipated to begin on or about February 15, 2017.

DIFS will provide proof of general liability insurance and will hold the land owner harmless for any and all liability of passengers while using this facility.

DIFS will provide trash service and pay the electricity cost to power parking lot, grounds and dock lighting only. DIFS will negotiate with the utility companies to activate utility services.

The building is closed and is not part of this lease agreement. However, DIFS will use the area under the building for passenger shelter and for processing cargo as part of this lease agreement. DIFS wishes to discuss the possibility of leasing the smaller of the two buildings on the property for the purpose of providing passenger reception space and access to restroom facilities. It is anticipated that prior to activation of the land and dock lease we may reach an agreement on the building.

The owner will make sure the property is clean and free of debris. A video will be made of the property prior to commencement of operations to document the condition of the property. The property will be turned back over at the end of the lease in like manner. DIFS reserves the right to make alterations to the property and dock systems to facilitate passenger vessel operations.

DIFS assumes no responsibility for any debt, loans, mortgages or legal action against or associated with this property.

Terms: Month to month. Both parties may cancel the agreement without cause with 30 day notice.

Lease Fee: \$500 per month due on the first day of each month. The potential building lease will be negotiated very soon.

Lessor:

Wilbert Roller Jr.

Date:

1-16-17

Wilbert Roller Jr., 35 Fording Island Road Extension, Property Owner

Lessee:

Doug Kelly

Date:

1-16-17

Doug Kelly, Daufuskie Island Ferry Service, Representative

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
LOUIS E. DAVIS, DONNA)
NUTTY, THOMAS J.)
MacDONALD, MICHAEL G.)
MacDONALD, SUSANNE B.)
MacDONALD, ARLENE)
COLEMAN, WILLIAM H.)
McGEE, PATTI M. MacDONALD,)
SCOTT M. MacDONALD, ROSE)
F. McGEE, JASON DuBOSE,)
AMANDA DuBOSE, RONALD L.)
BROOME, LAWRENCE E.)
JONES, D. DIANE BURR, MARK)
H. THOMAS, KELLY C.)
THOMAS, WILLIAM)
MATTHEW YOLLO, NANCY H.)
YOLLO, JOSEPH DeANGELIS,)
BETH DeANGELIS, SHELLY)
HORN, THEODORE BRAMMER,)
ALLISON BRAMMER,)
WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

Plaintiffs,)

vs.)

BEAUFORT COUNTY, HPCCA)
FERRY COMPANY, INC., and THE)
DAUFUSKIE ISLAND FERRY)
SERVICE, LLC,)

Defendants.)

AFFIDAVIT OF AMANDA DUBOSE

BEFORE THE UNDERSIGNED officer duly authorized to take and administer oaths, came Amanda DuBose, who, being duly sworn, deposed, and stated as follows:

1. My name is Amanda DuBose. I am above the age of majority, and I give this Affidavit based upon my personal knowledge in support of the Plaintiff's Motion for Partial Summary Judgment and a Temporary Injunction.
2. My husband Jason DuBose and I live at 5 Big Oak Street, in Buckingham Landing in southern Beaufort County. We are Plaintiffs in this action.
3. We purchased our home at 5 Big Oak Street in August of 2015 and moved in shortly thereafter.
4. At that time, the restaurant that was located in the current location of the Daufuskie Island Ferry was closed and the building was vacant. No other business operated out of that location until the Daufuskie Island Ferry opened in January 2017.
5. I have reviewed Beaufort County's Responses to our Requests to Admit as were made on November 22, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000, located across the residential road from our home, for a commercial ferry operation, is a "lawful use." (See page 2, response to Request No. 4 in Exhibit A to this Affidavit)
6. I have also reviewed Beaufort County's Responses to our Interrogatories, as made on November 24, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000 is not an illegal nonconformity under the Community Development Code, "but is a legal use." As the basis for this claim, the County states that the "Beaufort County Zoning and Development Administration, on May 4, 2009, issued a Zoning Permit for a Commercial Dock for the subject property at Buckingham Landing." The County goes on to contend that the Zoning Permit indicates that the Zoning Board approved a variance for the dock on July 24, 2008 related to OCRM Permit 2004-1E-110-P. The County finally contends that "The Zoning Permit establishes the legality of the commercial use of the dock at Buckingham Landing." (See pages 16-17, response to Interrogatory No. 23, in Exhibit B to this Affidavit)
7. I have also reviewed the more than 1000 pages of documents that the County has produced in discovery and affirmatively state that the documents show that if the Board of Zoning Appeals actually issued a variance permit on July 24, 2008, it was issued solely to allow the then owner of the property, Wilbert Roller, to construct a dock that exceeded the 300 foot maximum length the County ordinances set. The letter from Wilbert Roller's legal counsel Thomas R. Goldstein to Beaufort County Zoning and Development Administrator Hillary A. Austin wherein Mr. Goldstein advised:

As I am sure you are aware from the numerous previous submissions, there is nothing commercial about the dock. The application is indistinguishable from any of the thousands of docks constructed in Beaufort County. Mr. Roller does not propose to sell fuel, provide pump out services, overnight berthing, rent slips or otherwise engage in any commercial enterprise on the dock. The dock is intended to serve entirely as an amenity to his restaurant.

(Beaufort County Bates numbered document BC00136-00137. See Exhibit C to this Affidavit)

8. The County's production also shows that in Wilbert Roller's "Amended Application to the Zoning Board of Appeals", Mr. Roller made clear the dock was simply to be used as a visual aid for the promotion of his seafood restaurant and to allow docking by restaurant patrons that he presumed would come by boat:

The existence of a dock is critical both from the standpoint of curb appeal to its customers, but also to permit boaters, who are a main target of Mr. Roller's business plan, to reach the restaurant.

The Application went on to contend that Roller's use of the restaurant dock would not affect the neighborhood at all because it would not create street or foot traffic—it would simply offer a "tie-up" for boaters coming to the restaurant: "[N]o one can seriously assert that any surrounding property owner or owners will be affected in any way by the issuance of a dock. First of all, as a riparian property owner, the applicant is entitled to make use of the water, as O.C.R.M. so found when it issued the dock permit. Second, many property owners in the area have docks, some significantly longer than 300 feet. The County has an obligation to treat similarly situated property owners in the same fashion."

(Beaufort County Bates numbered document BC00014. See Exhibit D to this Affidavit)

9. The County's production also revealed that the Board of Zoning Appeals specifically stated, in its Order granting the dock variance on December 10, 2008 to Wilbert Roller:

"7. (1)... "We find a dock, whether residential or commercial, is not a "use" of the property. In this case, the commercial restaurant is the "use" of the property....."

"(3) The particular facts of this case demonstrate that a commercial dock on the property appurtenant to this seafood restaurant is merely an active "practice" incidental to the "use" of the property as a restaurant. The dock is not a land use in itself: it is solely associated with and related to the business on the land. It serves, in other words, as an amenity to the restaurant, but does not involve any independent commercial use."

(Beaufort County Bates numbered document BC00173. See Exhibit E to this Affidavit)

10. In my review of the documents produced by the County in response to discovery requests, I have found no evidence that the Board of Zoning Appeals, nor any other authorizing agency or body, has granted a variance for commercial use to Wilbert Roller, Queensborough National Bank & Trust (the foreclosing bank against Roller), Beaufort County or Haig Point for any commercial operations, including commercial ferry operations, on R600-041-000-0009-0000 and R600-041-000-0008-0000.
11. Upon information and belief, pursuant to the Order issued by Justice Finney in 2002, Mr. Roller was affirmed to have existing development rights which the Court deemed grandfathered in. It was not issued as a Use Variance.
12. Upon information and belief, Beaufort County enacted the Buckingham Landing Community Preservation District in 2007 which details what commercial activities are permitted within the Preservation District. A commercial ferry operation is not listed as a permitted commercial activity.

(Beaufort County Community Development Code Appendix A.10. See Exhibit F to this Affidavit)

13. Upon information and belief, The Buckingham Landing Community Preservation Plan was adopted as Appendix 4F of the 2010 Beaufort County Comprehensive Plan. Page 12 of the Buckingham Landing Community Preservation Plan specifically states:

“Zoning the Existing Commercial Uses:

5) Any nonconforming use shall be considered abandoned if vacant or unused for 120 days. Abandoned uses shall only be replaced with conforming uses and structures.”

(Pg. 12 Buckingham Landing Community Preservation Plan. See Exhibit G to this Affidavit)

14. Upon information and belief, the last entity operating as a restaurant known as Sunset Bay ceased operations in September 2013 (See Attached Exhibit H to this Affidavit) and the property remained vacant until January 2017 when Daufuskie Island Ferry Service began operations.
15. According to the County’s documents, at BC00007 (Exhibit I to this Affidavit), the original lease agreement dated January 27, 2017 between Wilbert Roller and the Defendant Daufuskie

Island Ferry Service, contained no rights to use the building because it was closed. "The building is closed and is not a part [sic] the lease agreement."

16. I have personally witnessed since the ferry began operating out of Buckingham Landing the following:

- a. An exponential increase in daily traffic flow on Fording Island Road Ext.
- b. Illegal parking in the boat landing and along roadways on Fording Island Road Ext. and Big Oak St.
- c. Numerous cars parked under the Bluffton Parkway flyover bridge and behind the gas station as overflow parking for the ferry service.
- d. Ferry passengers trespassing on private property.
- e. The County operated shuttle bus using the public boat landing as a designated pick up/drop off location for ferry passengers in violation of County Ordinance 102 Article II.
- f. Numerous cars excessively speeding on Fording Island Road Ext.
- g. On several occasions, walkers and bikers (including children) being forced off the road by speeding ferry passengers.
- h. Excessive noise emitting from the ferry dock and parking lot beginning as early as 6:00am until after 9:00pm.
- i. Ferry passengers allowing their dogs to roam unleashed within Buckingham Landing and defecate on private properties.
- j. Ferry passengers parking and blocking access to the BJWSA pump station, fire hydrant and AED station.
- k. Ferry passengers using Fording Island Road Ext. and the boat landing to unload and load their belongings in violation of County Ordinance 102 Article II.

17. Upon information and belief, the County's has allowed Haig Point to sublease dock space to other commercial operations and/or private individuals.

FURTHER AFFIANT SAYETH NOT


AMANDA DUBOSE
PLAINTIFF

Sworn to before me this

4TH day of MARCH, 2022.


Notary Public for the State of South Carolina
My commission expires:

Ariene K. Coleman
NOTARY PUBLIC
State of South Carolina
My Commission Expires October 6, 2030

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
LOUIS E. DAVIS, DONNA)
NUTTY, THOMAS J.)
MacDONALD, MICHAEL G.)
MacDONALD, SUSANNE B.)
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HORN, THEODORE BRAMMER,)
ALLISON BRAMMER,)
WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

AFFIDAVIT OF JAMES WARE

Plaintiffs,)

vs.)

BEAUFORT COUNTY, HPCCA)
 FERRY COMPANY, INC., and THE)
 DAUFUSKIE ISLAND FERRY)
 SERVICE, LLC,)

Defendants.)

BEFORE THE UNDERSIGNED officer duly authorized to take and administer oaths, came Alisa Ware, who, being duly sworn, deposed, and stated as follows:

1. My name is James Ware. I am above the age of majority, and I give this Affidavit based upon my personal knowledge in support of the Plaintiff's Motion for Partial Summary Judgment and a Temporary Injunction.
2. My wife Alisa Ware and I live at 1 Big Oak, in Buckingham Landing in southern Beaufort County, in a house adjacent to Beaufort County's current embarkation / debarkation area for the Daufuskie Island Ferry. We are Plaintiffs in this action.
3. I have reviewed Beaufort County's Responses to our Requests to Admit as were made on November 22, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000, located across the residential road from our home, for a commercial ferry operation, is a "lawful use." (See page 2, response to Request No. 4 in Exhibit A to this Affidavit)
4. I have also reviewed Beaufort County's Responses to our Interrogatories, as made on November 24, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000 is not an illegal nonconformity under the Community Development Code, "but is a legal use." As the basis for this claim, the County states that the "Beaufort County Zoning and Development Administration, on May 4, 2009, issued a Zoning Permit for a Commercial Dock for the subject property at Buckingham Landing." The County goes on to contend that the Zoning Permit indicates that the Zoning Board approved a variance for the dock on July 24, 2008 related to OCRM Permit 2004-1E-110-P. The County finally contends that "The Zoning Permit establishes the legality of the commercial use of the dock at Buckingham Landing." (See pages 16-17, response to Interrogatory No. 23, in Exhibit B to this Affidavit)

5. I have also reviewed the more than 1000 pages of documents that the County has produced in discovery and affirmatively state that the documents show that if the Board of Zoning Appeals actually issued a variance permit on July 24, 2008, it was issued solely to allow the then owner of the property, Wilbert Roller, to construct a dock that exceeded the 300 foot maximum length the County ordinances set. The letter from Wilbert Roller's legal counsel Thomas R. Goldstein to Beaufort County Zoning and Development Administrator Hillary A. Austin wherein Mr. Goldstein advised:

As I am sure you are aware from the numerous previous submissions, there is nothing commercial about the dock. The application is indistinguishable from any of the thousands of docks constructed in Beaufort County. Mr. Roller does not propose to sell fuel, provide pump out services, overnight berthing, rent slips or otherwise engage in any commercial enterprise on the dock. The dock is intended to serve entirely as an amenity to his restaurant.
(Beaufort County Bates numbered document BC00136-00137. See Exhibit C to this Affidavit)

6. The County's production also shows that in Wilbert Roller's "Amended Application to the Zoning Board of Appeals", Mr. Roller made clear the dock was simply to be used as a visual aid for the promotion of his seafood restaurant and to allow docking by restaurant patrons that he presumed would come by boat:

The existence of a dock is critical both from the standpoint of curb appeal to its customers, but also to permit boaters, who are a main target of Mr. Roller's business plan, to reach the restaurant.

The Application went on to contend that Roller's use of the restaurant dock would not affect the neighborhood at all because it would not create street or foot traffic—it would simply offer a "tie-up" for boaters coming to the restaurant: "[N]o one can seriously assert that any surrounding property owner or owners will be affected in any way by the issuance of a dock. First of all, as a riparian property owner, the applicant is entitled to make use of the water, as O.C.R.M. so found when it issued the dock permit. Second, many property owners in the area have docks, some significantly longer than 300 feet. The County has an obligation to treat similarly situated property owners in the same fashion."

(Beaufort County Bates numbered document BC00014. See Exhibit D to this Affidavit)

7. The County's production also revealed that the Board of Zoning Appeals specifically stated, in its Order granting the dock variance on December 10, 2008 to Wilbert Roller:

"7. (1)... "We find a dock, whether residential or commercial, is not a "use" of the property. In this case, the commercial restaurant is the "use" of the property....."

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(Beaufort County Bates numbered document BC00173. See Exhibit E to this Affidavit)

8. In my review of the documents produced by the County in response to discovery requests, I have found no evidence that the Board of Zoning Appeals, nor any other authorizing agency or body, has granted a variance for commercial use to Wilbert Roller, Queensborough National Bank & Trust (the foreclosing bank against Roller), Beaufort County or Haig Point for any commercial operations, including commercial ferry operations, on R600-041-000-0009-0000 and R600-041-000-0008-0000.
9. Upon information and belief, pursuant to the Order issued by Justice Finney in 2002, Mr. Roller was affirmed to have existing development rights which the Court deemed grandfathered in. It was not issued as a Use Variance.
10. Upon information and belief, Beaufort County enacted the Buckingham Landing Community Preservation District in 2007 which details what commercial activities are permitted within the Preservation District. A commercial ferry operation is not listed as a permitted commercial activity.

(Beaufort County Community Development Code Appendix A.10. See Exhibit F to this Affidavit)

11. Upon information and belief, The Buckingham Landing Community Preservation Plan was adopted as Appendix 4F of the 2010 Beaufort County Comprehensive Plan. Page 12 of the Buckingham Landing Community Preservation Plan specifically states:

“Zoning the Existing Commercial Uses:

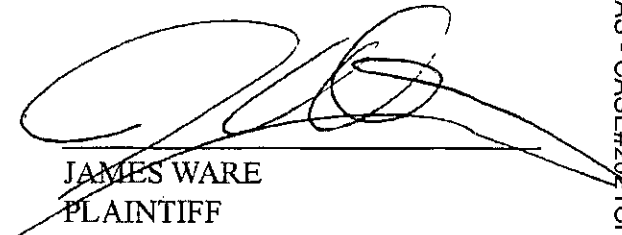
5)Any nonconforming use shall be considered abandoned if vacant or unused for 120 days. Abandoned uses shall only be replaced with conforming uses and structures.”

(Pg. 12 Buckingham Landing Community Preservation Plan. See Exhibit G to this Affidavit)

12. Upon information and belief, the last entity operating as a restaurant known as Sunset Bay ceased operations in September 2013 (See Attached Exhibit H to this Affidavit) and the property remained vacant until January 2017 when Daufuskie Island Ferry Service began operations.
13. According to the County’s documents, at BC00007 (Exhibit I to this Affidavit), the original lease agreement dated January 27, 2017 between Wilbert Roller and the Defendant Daufuskie Island Ferry Service, contained no rights to use the building because it was closed. “The building is closed and is not a part [sic] the lease agreement.”
14. I have personally witnessed since the ferry began operating out of Buckingham Landing the following:
 - a. An exponential increase in daily traffic flow on Fording Island Road Ext.
 - b. Illegal parking in the boat landing and along roadways on Fording Island Road Ext. and Big Oak St.
 - c. Numerous cars parked under the Bluffton Parkway flyover bridge and behind the gas station as overflow parking for the ferry service.
 - d. Ferry passengers trespassing on my property as well as other neighboring properties.
 - e. The County operated shuttle bus using the public boat landing as a designated pick up/drop off location for ferry passengers in violation of County Ordinance 102 Article II.
 - f. Numerous cars excessively speeding on Fording Island Road Ext.
 - g. On several occasions, walkers and bikers (including children) being forced off the road by speeding ferry passengers.
 - h. Excessive noise emitting from the ferry dock and parking lot beginning as early as 6:00am until after 9:00pm.
 - i. Ferry passengers allowing their dogs to roam unleashed within Buckingham Landing and defecate on my and other neighboring properties.

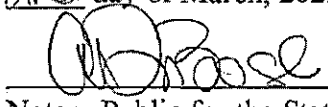
- j. Ferry passengers parking and blocking access to the BJWSA pump station, fire hydrant and AED station.
 - k. Ferry passengers using Fording Island Road Ext. and the boat landing to unload and load their belongings in violation of County Ordinance 102 Article II.
 - l. Ferry passengers blocking access to my driveway.
15. Upon information and belief, the County's has allowed Haig Point to sublease dock space to other commercial operations and/or private individuals.
16. Our family has altered our home, our yard, and our lives in response to the incredible nuisance the Ferry company has created on and near our property:
- a. We have constructed a large gate and fence in an effort to gain some privacy in our yard.
 - b. We have added expensive privacy blinds and shutters in an effort to gain some privacy in our home.
 - c. We have planted expensive landscaping in an effort to gain some privacy in our yard.
 - d. We spend less time outside our home enjoying our yard due to the discomfort of constant invasions of privacy from Ferry customers, even considering the measures we have taken to decrease these invasions.

FURTHER AFFIANT SAYETH NOT.

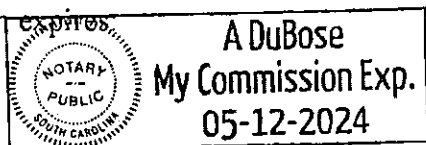

JAMES WARE
PLAINTIFF

Sworn to before me this

2nd day of March, 2022.


Notary Public for the State of South Carolina

My commission expires



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
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HORN, THEODORE BRAMMER,)
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WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

Plaintiffs,)

vs.)

BEAUFORT COUNTY, HPCCA)
FERRY COMPANY, INC., and THE)
DAUFUSKIE ISLAND FERRY)
SERVICE, LLC,)

Defendants.)

AFFIDAVIT OF RONALD L. BROOME

BEFORE THE UNDERSIGNED officer duly authorized to take and administer oaths, came Ronald L. Broome, who, being duly sworn, deposed, and stated as follows:

1. My name is Ronald L. Broome. I am above the age of majority, and I give this Affidavit based upon my personal knowledge in support of the Plaintiff's Motion for Partial Summary Judgment and a Temporary Injunction.
2. I live at 23 Fording Island Road Ext., in Buckingham Landing in southern Beaufort County, in a house sharing a property line with Beaufort County's current embarkation / debarkation area for the Daufuskie Island Ferry. I am a Plaintiff in this action.
3. I have reviewed Beaufort County's Responses to our Requests to Admit as were made on November 22, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000, located next to my home, for a commercial ferry operation, is a "lawful use." (See page 2, response to Request No. 4 in Exhibit A to this Affidavit)
4. I have also reviewed Beaufort County's Responses to our Interrogatories, as made on November 24, 2021. In that response, the County contends that its use of the parcels identified in our Complaint as R600-041-000-0009-0000 and R600-041-000-0008-0000 is not an illegal nonconformity under the Community Development Code, "but is a legal use." As the basis for this claim, the County states that the "Beaufort County Zoning and Development Administration, on May 4, 2009, issued a Zoning Permit for a Commercial Dock for the subject property at Buckingham Landing." The County goes on to contend that the Zoning Permit indicates that the Zoning Board approved a variance for the dock on July 24, 2008 related to OCRM Permit 2004-1E-110-P. The County finally contends that "The Zoning Permit establishes the legality of the commercial use of the dock at Buckingham Landing." (See pages 16-17, response to Interrogatory No. 23, in Exhibit B to this Affidavit)
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14. I have personally provided documentation to Beaufort County Staff of traffic, parking and safety issues in the Buckingham Landing neighborhood with this being just one example on July 8, 2019 where Beaufort County Staff acknowledged the issues:

a. On Jul 8, 2019, at 10:10 AM, Wilhelm, David <dwilhelm@bcgov.net> wrote: Good Morning Mr. Broome. Thank you for email. We are aware of the challenges regarding parking at the Buckingham Landing location. There are several departments within Beaufort County that are impacted by this issue. Together we are working as quickly as possible to find the best long-term solution.

We will keep you updated on the status.

Best Regards,

Dave

David M. Wilhelm, P.E.

Director of Public Works

15. I have personally witnessed since the ferry began operating out of Buckingham Landing the following:

- a. An exponential increase in daily traffic flow on Fording Island Road Ext.
- b. Illegal parking in the boat landing and along roadways on Fording Island Road Ext. and Big Oak St.
- c. Numerous cars parked under the Bluffton Parkway flyover bridge and behind the gas station as overflow parking for the ferry service.
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- g. On several occasions, walkers and bikers (including children) being forced off the road by speeding ferry passengers.
- h. Excessive noise emitting from the ferry dock and parking lot beginning as early as 6:00am until after 9:00pm.
- i. Ferry passengers allowing their dogs to roam unleashed within Buckingham Landing and defecate on my and other neighboring properties.
- j. Ferry passengers parking and blocking access to the BJWSA pump station, fire hydrant and AED station.
- k. Ferry passengers using Fording Island Road Ext. and the boat landing to unload and load their belongings in violation of County Ordinance 102 Article II.
- l. Ferry passengers blocking access to my driveway.

16. Upon information and belief, the County's has allowed Haig Point to sublease dock space to other commercial operations and/or private individuals.

FURTHER AFFIANT SAYETH NOT.

Ronald L. Broome
Ronald L. Broome
PLAINTIFF

Sworn to before me this

3rd day of March, 2022.

A DuBose
Notary Public for the State of South Carolina

My commission expires:



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
LOUIS E. DAVIS, DONNA)
NUTTY, THOMAS J.)
MacDONALD, MICHAEL G.)
MacDONALD, SUSANNE B.)
MacDONALD, ARLENE)
COLEMAN, WILLIAM H.)
McGEE, PATTI M. MacDONALD,)
SCOTT M. MacDONALD, ROSE)
F. McGEE, JASON DuBOSE,)
AMANDA DuBOSE, RONALD L.)
BROOME, LAWRENCE E.)
JONES, D. DIANE BURR, MARK)
H. THOMAS, KELLY C.)
THOMAS, WILLIAM)
MATTHEW YOLLO, NANCY H.)
YOLLO, JOSEPH DeANGELIS,)
BETH DeANGELIS, SHELLY)
HORN, THEODORE BRAMMER,)
ALLISON BRAMMER,)
WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

AFFIDAVIT OF ZACH DRESCHER

Plaintiffs,

vs.

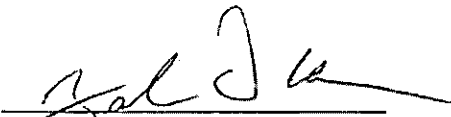
BEAUFORT COUNTY, HPCCA)
FERRY COMPANY, INC., and THE)
DAUFUSKIE ISLAND FERRY)
SERVICE, LLC,)

Defendants.

BEFORE THE UNDERSIGNED officer duly authorized to take and administer oaths, came Zach Drescher, who, being duly sworn, deposed, and stated as follows:

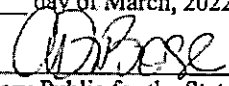
1. My name is Zach Drescher. I am above the age of majority, and I give this Affidavit based upon my personal knowledge.
2. In September, 2013, I was employed as the General Manager of the Sunset Bay Restaurant, located at the end of Fording Island Road Ext. in Buckingham Landing, Beaufort County, SC.
3. The Sunset Bay Restaurant closed permanently sometime in September 2013.

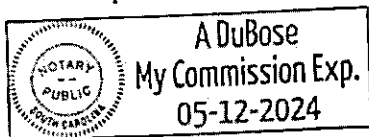
FURTHER AFFIANT SAYETH NOT.


ZACH DRESCHER

Sworn to before me this

11th day of March, 2022.


Notary Public for the State of South Carolina
My commission expires:



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
LOUIS E. DAVIS, DONNA)
NUTTY, THOMAS J.)
MacDONALD, MICHAEL G.)
MacDONALD, SUSANNE B.)
MacDONALD, ARLENE)
COLEMAN, WILLIAM H.)
McGEE, PATTI M. MacDONALD,)
SCOTT M. MacDONALD, ROSE)
F. McGEE, JASON DuBOSE,)
AMANDA DuBOSE, RONALD L.)
BROOME, LAWRENCE E.)
JONES, D. DIANE BURR, MARK)
H. THOMAS, KELLY C.)
THOMAS, WILLIAM)
MATTHEW YOLLO, NANCY H.)
YOLLO, JOSEPH DeANGELIS,)
BETH DeANGELIS, SHELLY)
HORN, THEODORE BRAMMER,)
ALLISON BRAMMER,)
WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

Plaintiffs,)

vs.)

BEAUFORT COUNTY, HPCCA)
FERRY COMPANY, INC., and THE)
DAUFUSKIE ISLAND FERRY)
SERVICE, LLC,)

Defendants.)

AFFIDAVIT OF
THOMAS C. TAYLOR

BEFORE THE UNDERSIGNED OFFICER duly authorized to take and administer oaths came Thomas C. Taylor, who, being duly sworn, deposed, and stated as follows:

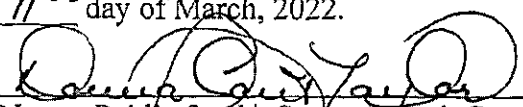
1. My name is Thomas C. Taylor. I am a practicing lawyer in the State of South Carolina and represent the Plaintiffs in this case. I am of majority, of sound mind and body, a member of the South Carolina Bar and fully capable to providing this sworn testimony.
2. I give this Affidavit to identify the attached Exhibits 1, 2 and 3 for this Court's consideration of the Plaintiffs' pending Motion for Partial Summary Judgment.
3. Exhibit A to this Affidavit is a true and correct copy of a letter I wrote Beaufort County's Robert Merchant on September 15, 2021.
4. Exhibit B to this Affidavit is a true and correct copy of Robert Merchant's reply letter to me, received on or about September 24, 2021.
5. Exhibit C to this Affidavit is a true and correct copy of an email I sent to Beaufort County's attorney in this matter, Danny Crowe, Esq., on February 18, 2022.
6. I have not received any reply as of the date of this Affidavit to my email to Mr. Crowe of February 18, 2022, nor have I received any other reply from Mr. Merchant.

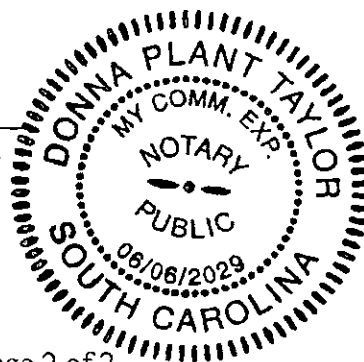
FURTHER AFFIANT SAYETH NOT.

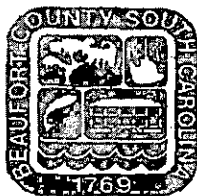

Thomas C. Taylor

Sworn to before me this

11th day of March, 2022.

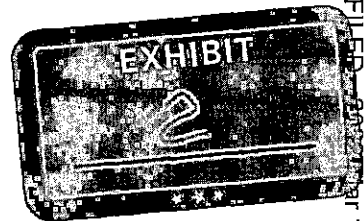

Notary Public for the State of South Carolina
My commission expires: 06-06-2029





**COUNTY COUNCIL OF BEAUFORT COUNTY
PLANNING AND ZONING DEPARTMENT**

Multi Government Center, 100 Ribaut Road, Room 115
P.O. Drawer 1228, Beaufort, SC 29901-1228
Phone: (843) 255-2140 // FAX: (843) 255-9432



September 20, 2021

Thomas C. Taylor, Esq.
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head Island, SC 29928

RE: Request of Planning and Zoning Director determination of legality of use of R600 041 000 0008 0000 by Beaufort County, HPPCA Ferry Company, Inc. and the Daufuskie Island Ferry Service, LLC

Dear Mr. Taylor:

I am in receipt of your request that the Planning and Zoning Director provide a determination of whether or not the commercial ferry operation at the Buckingham Boat Landing (R600 041 000 0008 0000) is operating as a legal nonconforming use. We are in agreement that this determination is a very important matter to all parties involved and therefore needs to be carefully researched. Therefore, five days is insufficient for us to do a complete review of all the facts to make this determination.

The Planning and Zoning Department will need 60 days to do a complete review of this matter. We will need this time to contact all the appropriate parties, gather all the evidence, and make careful review of all the facts. Once we make this determination, we will provide for you our findings. Thank you for your patience on this matter.

Sincerely,

Robert Merchant, AICP
Acting Director

cc: Tom Keaveny, Esq. (via email)
Danny C. Crowe, Esq. (via email)
Robert M. Deeb, Jr., Esq. (via email)
Eric Greenway (via email)

ELECTRONICALLY FILED - 2021 SEP 21 14:29 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

ADMITTED TO THE UNITED STATES
SUPREME COURT BAR

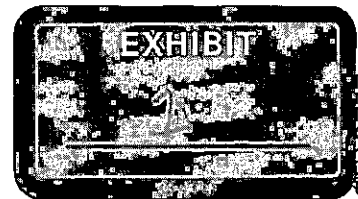
ADMITTED IN SOUTH CAROLINA,
COLORADO AND GEORGIA

CERTIFIED SC CIRCUIT
COURT MEDIATOR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928

TELEPHONE 843-785-5050
TELECOPIER 843-785-5030
www.thomastaylorlaw.com • tom@thomastaylorlaw.com



P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

ELECTRONICALLY FILED - 2022 Mar 14 2:29 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

September 15, 2021

Via US Mail and E-Mail Attachment to: robm@begov.net

Mr. Robert Merchant
Director
Beaufort County Community Development
PO Drawer 1228
Beaufort SC 29901-1228

Re: Complaint about improper use of TMS R600 041 000 0008 0000 by Beaufort County, HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC and request for immediate action by you as the Director

Dear Mr. Merchant:

I represent James Ware, Alisa Ware, Jason Dubose, and Amanda DuBose, who live in Buckingham Landing. As you are probably aware, they—along with 32 other Buckingham Landing residents—have filed suit against the County and the ferry companies alleging that the County and the companies are running a commercial ferry operation on a piece of property where commercial ferry operations are prohibited. The County has argued to the Court that the Buckingham Landing residents have not properly asked you as the Director, to make a determination as to the propriety of the use of the property and take appropriate steps to abate the illegal use, and that therefore, the County asserts the residents may not proceed in court until they take this step.

Of course, our position is that we did make such a request by my letter to Hillary Austin of May 6, 2021, a copy of which I attach along with the email chain response I received from the County in reply, which I think speaks volumes. However, I want to make sure we are doing everything we can to move these issues forward, and thus, SPECIFICALLY RESERVING OUR CONTENTION IN 2021-CP-07-1078 THAT NO REQUEST TO THE COUNTY IS NECESSARY AS A PRELUDE TO THAT CIVIL ACTION, on behalf of the Wares and DuBoses. I report the following and ask you to take action in good faith to abate the illegal operations occurring on the property:

Mr. Robert Merchant • Beaufort County Community Development

Re: Complaint about improper use of TMS R600 041 000 0008 0000 by Beaufort County, HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC and request for immediate action by you as the Director

September 15, 2021 • Page 2

We believe that Beaufort County, the HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC, are operating a commercial ferry operation on TMS R600 041 000 0008 0000, in derogation of the County's current zoning standards applicable to the property. We believe the operation is an "illegal nonconformity" under the Community Development Code. We further contend that the continuing operation of this commercial ferry operation causes an immediate danger to the residents and tenants of the community and thus we ask that you immediately investigate the propriety of the current commercial ferry operations on the above-referenced property, and presuming your good faith investigation confirms that the County and/or the ferry companies are operating an illegal nonconforming business thereon, take such action as is set forth in the Community Development Code at Section 8.1.20: "Illegal nonconformities are subject to cessation by the County upon a determination of such illegality by the Director."

With the extensive work that was done between May 6, 2021 and June 8, 2021 by the staff and the county lawyers, I believe it is reasonable to ask for you to advise us of your findings within five (5) days of this letter, or as soon thereafter as you can reasonably make such a good faith determination. Please respond in writing to me detailing the result of your investigation and the rationale behind your finding. And please remember that the citizens and families of Buckingham Landing are being exposed to the dangers created by this illegal conformity on a daily basis, and thus please do not delay your response unnecessarily.

So that there is no mistake by your legal counsel as to the intention of this letter, this is not an offer of compromise and settlement of any claims, and this letter is written for the express purpose of using as evidence in this case (or any other that may be appropriate) to show the notice, the demand, and the urgency of the matter.

I look forward to your findings and to learning of the action that you choose to take in good faith to enforce the Community Development Code, and thank you as always for your professionalism in responding to these questions. Have a great rest of the week.

Cordially yours,

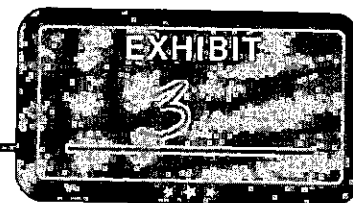


Thomas C. Taylor

TCT/dpt

Enclosures: Hillary Austin letter and email attachments

cc: Mr. and Mrs. Ware and Mr. and Mrs. DuBose via email
Tom Keaveny, Esq., via email
Danny Crowe, Esq., via email



ELECTRONICALLY FILED - 2022 Mar 14 2:29 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

Tom Taylor

From: Tom Taylor
Sent: Friday, February 18, 2022 11:42 AM
To: Danny Crowe
Cc: Donna P. Taylor, Legal Assistant (donna@thomastaylorlaw.com)
Subject: Ware v. Beaufort County, 2021-CP-07-1078; Taylor letter to Merchant of September 2021 requesting Director's action
Attachments: Taylor to Rob Merchant of the County on 9.15.2021.pdf; Merchant letter to Taylor in Ware matter of 9.20.2021 telling Taylor it will take 60 days.pdf

Danny—Good Friday to you. I hope and trust this finds you well.

I'm writing today to request a written update as to where the County stands regarding my request to Mr. Merchant of September 15, 2021, to investigate the County's use of the restaurant building in Buckingham Landing to operate its commercial ferry service, and take action to stop it. A copy of my letter is attached, as is Rob Merchant's reply to me advising that the County would need until November 20, 2021 "to do a complete review of this matter." The Wares and I were also advised that "We will need this time to contact all the appropriate parties, gather all the evidence, and make a careful review of all the facts. Once we make this determination, we will provide for your our findings. Thank you for your patience on this matter."

Neither I nor the Wares have received a response from Mr. Merchant providing us with his findings, which is now three months later than the original 60 day delay. Please provide me with an explanation as to the continuing delay, tell me where he is in his investigation and give us a date that we can expect Mr. Merchant's findings. Thank you.

Tom Taylor

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head, SC 29928
843-785-5050 (office)
843-785-5030 (fax)
843-301-6900 (cell)

Mailing Address:
P.O. Box 5550
Hilton Head, SC 29938

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify this Law Office by telephone call or e-mail immediately and return the original message to me and destroy all printed and electronic copies. Nothing in this e-mail is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly stated. The intentional interception or dissemination of electronic mail not belonging to you, may violate federal and/or state law.

IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachments to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may

be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

James Ware, Alisa Ware, Henry Spahr, Elaine) Civil Action Number: 2021-CP-07-01078
Spahr, Julie Sanders, William Craig Denny,)
Jeff Toomer, Allyson Toomer, Louise E.)
Davis, Donna Nutty, Thomas J. MacDonald,)
Michael G. MacDonald, Susanne B.)
MacDonald, Arlene Coleman, William H.)
McGee, Patti M. MacDonald, Scott M.)
MacDonald, Rose F. McGee, Jason DuBose,)
Amanda DuBose, Ronald L. Broome,)
Lawrence E. Jones, D. Diane Burr, Mark H.)
Thomas, Kelly C. Thomas, William Matthew)
Yollo, Nancy H. Yollo, Joseph DeAngelis,)
Beth DeAngelis, Shelly Horn, Theodore)
Brammer, Allison Brammer, Waymon W.)
Durden, Constance C. Durden, David C.)
Powell,)

AFFIDAVIT OF DAVID WILHELM

Plaintiffs,

v.

Beaufort County, HPCCA Ferry Company,
Inc., and The Daufuskie Island Ferry Service,
LLC,

Defendants.

PERSONALLY APPEARED BEFORE ME, David Wilhelm, who being duly sworn,
states:

1. I am the Deputy Director of Public Works for Beaufort County and formerly served as
Director of Special Projects for Beaufort County. In those capacities, I have been, and am,
involved for the County in various issues concerning Beaufort County's public ferry service for
Daufuskie Island and am familiar with the ferry service operations.

2. Since February 2017 (following damage to the original embarkation point from Hurricane Matthew in 2016), the County public ferry service has included an embarkation point at an area known as Buckingham Landing along Mackay Creek just below and south of the U.S. Highway 278 bridge from Bluffton to Hilton Head Island. This ferry embarkation point is on County-owned property (acquired in July 2018) along a portion of the water side of Fording Island Road Extension. It includes a County-owned commercial dock. The County-owned ferry service property (including the commercial dock) formerly were the site of a seafood restaurant (the Sea Trawler). This County property also adjoins a long-time County-owned public boat landing at the land's end of Fording Island Road Extension.

3. The photo attached to this Affidavit illustrates the location of the Buckingham Landing embarkation point, the public boat landing, and the nearby neighborhood. In the photo, the County-owned commercial dock appears just below photo center to be jutting into the Creek toward the Highway 278 bridge, the County-owned public boat landing appears as a white patch adjoining it, and the County property extends up the water side of Fording Island Road Extension to just beyond the portion of the paved road that appears to be white in color.

4. Fording Island Road Extension is a State-owned two-lane paved public road. It is maintained by SCDOT. Big Oak Street in the neighborhood (which is the neighborhood road closest to the Creek that runs parallel to the Creek) also is a State-owned and State-maintained road. A gas station/convenience store and a fruit/vegetable stand are located on Fording Island Road Extension at the entrance to the Buckingham Landing area off Highway 278. This public road is within the law enforcement jurisdiction of the Beaufort County Sheriff's Department, and is patrolled by the Beaufort County Sheriff's Department. As a public road, Fording Island Road Extension is open to use by all members of the public at all hours every day, and entrance into

the road is not controlled or restricted. The Buckingham Landing neighborhood is located on public streets and is not a private, restricted access enclave.

5. The shoulders of Fording Island Road Extension along and across from the County-owned property are posted with "No Parking" signs. The County provides a parking lot for the ferry service passengers on the water side of Fording Island Road Extension across from the neighborhood, as well as a remote parking area at the Daufuskie Island Visitor Center at 1536 Fording Island Road (Highway 278) and shuttle bus service to the embarkation site.

6. The shuttle bus that services the ferry passengers to and from the Visitor Center is permitted on the public road and at the embarkation site.

7. Upon information provided to me by the ferry service operator, the gate to the BJWSA pump station is marked with no parking signs and cones to discourage parking and blocking the gate, and access to the fire hydrant and AED station are similarly open.

8. The Buckingham Landing area, and the streets within the area, are subject to the law enforcement jurisdiction of the Sheriff. However, law enforcement cannot always prevent the actions of persons who make noise, park illegally along the roads, trespass on private property, speed in vehicles, or fail to pick up after their animals. Law enforcement by government is not a 24/7 security guard service and law enforcement officers are not always present to observe and prevent offenses. When possible, and when sufficient information is provided or available, these offenses can be addressed after the fact by law enforcement upon complaint to law enforcement.

FURTHER AFFIANT SAYETH NOT.

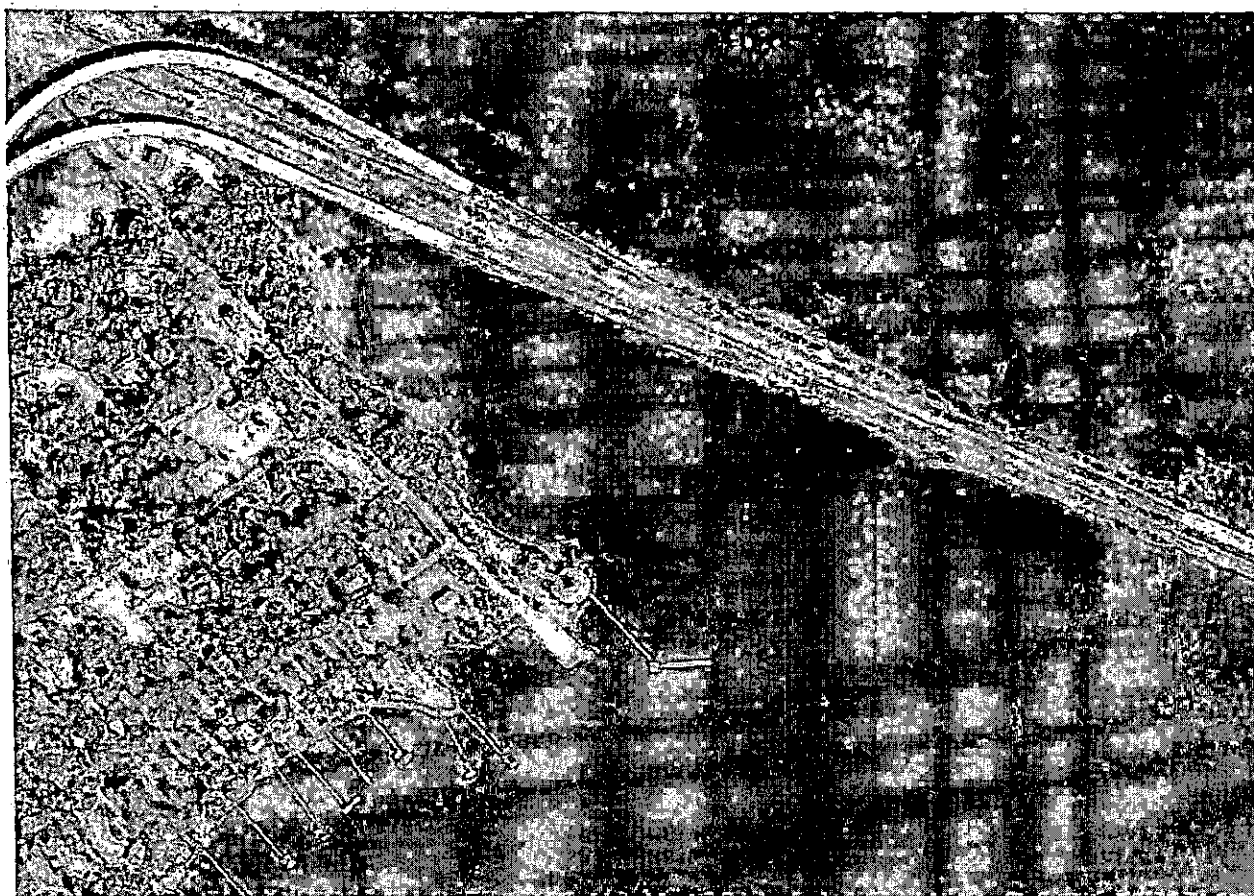
[Signature line and notarization on next page.]


David Wilhelm

SWORN to before me this
13th day of May 2022


Notary Public for South Carolina
My Commission Expires: 6/9/30

Buckingham Landing



ELECTRONICALLY FILED - 2022 May 16 9:13 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT

James Ware, Alisa Ware, Henry Spahr, Elaine)
Spahr, Julie Sanders, William Craig Denny,)
Jeff Toomer, Allyson Toomer, Louise E.)
Davis, Donna Nutty, Thomas J. MacDonald,)
Michael G. MacDonald, Susanne B.)
MacDonald, Arlene Coleman, William H.)
McGee, Patti M. MacDonald, Scott M.)
MacDonald, Rose F. McGee, Jason DuBose,)
Amanda DuBose, Ronald L. Broome,)
Lawrence E. Jones, D. Diane Burr, Mark H.)
Thomas, Kelly C. Thomas, William Matthew)
Yollo, Nancy H. Yollo, Joseph DeAngelis,)
Beth DeAngelis, Shelly Horn, Theodore)
Brammer, Allison Brammer, Waymon W.)
Durden, Constance C. Durden, David C.)
Powell,)

Civil Action Number: 2021-CP-07-01078

**AFFIDAVIT OF ROBERT
MERCHANT**

Plaintiffs,

V.

Beaufort County, HPCCA Ferry Company,)
Inc., and The Daufuskie Island Ferry Service,)
LLC,)

Defendants.

PERSONALLY APPEARED BEFORE ME, Robert Merchant, who being duly sworn,
states:

1. I am the Director of the Beaufort County Planning and Zoning Department, and, as such, also function as the "Director" within the meaning of Sections 7.5.60 and 10.1.40 of the Beaufort County Community Development Code (the "Development Code"). Among my assigned duties are the providing of interpretations of the Development Code pursuant to Section

7.3.60 of the Development Code and determinations of the legality or illegality of nonconformities pursuant to Section 8.1.20 of the Development Code. These interpretations and determinations are subject to appeal to the Zoning Board of Appeals pursuant to Section 7.3.70 of the Development Code (copy attached as Exhibit 1).

2. By letter dated September 15, 2021, I received from the attorney for the Plaintiffs in this case, a request for an administrative interpretation and determination as to whether the County's use of Buckingham Landing for a ferry operation was an illegal use or illegal nonconformity (copy of letter without attachments attached as Exhibit 2). I responded initially on procedural aspects by my letter of September 20, 2021 (copy attached as Exhibit 3).

3. On November 19, 2021, the attorney for Beaufort County in this lawsuit submitted to me a response (with attachments) to Attorney Taylor's September request (copy of that response and its attachments attached as Exhibit 4).

4. I issued my administrative interpretation and determination by letter dated April 21, 2022 (copy attached as Exhibit 5). The gist of my determination was that the County's use of the dock for a ferry service is a legal use under the Development Code.

5. My administrative interpretation and determination is final unless appealed to the Zoning Board of Appeals within thirty days after receipt pursuant to Section 7.3.70 of the Development Code.

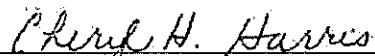
FURTHER AFFIANT SAYETH NOT.

[Signature line and notarization on next page.]



Robert Merchant

SWORN to before me this
12th day of May 2022



Notary Public for South Carolina

My Commission Expires: 8/24/2028

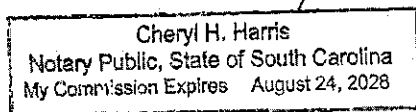


Exhibit 1

7.3.70 - Appeals

- A. **Purpose.** The purpose of this Section is to establish an appeal for an aggrieved party affected by a decision made by an administrative decision-maker to determine if the decision complies with the requirements of this Development Code.
- B. **Types of Appeal.** Appeals may be taken by an aggrieved party from the following decisions, to either the ZBOA, or the Planning Commission, as follows:
 1. **ZBOA.** The ZBOA is authorized to serve as the appellate body for decisions on:
 - a. Zoning Permits, see Section 7.2.20 (Zoning Permit);
 - b. Modulation Permits, see Section 7.2.30 (Modulation Permit);
 - c. Sign Permits, see Section 7.2.40 (Sign Permit);
 - d. Tree Removal Permits, see Section 7.2.50 (Tree Removal Permit); and
 - e. Interpretations of all provisions of this Development Code, except for Zone District Map Boundaries, see Section 7.3.60 (Interpretations).
 2. **Planning Commission.** The Planning Commission is authorized to serve as the appellate body for decisions on:
 - a. Minor Land Development Plans, see Section 7.2.60 (Land Development Plan);
 - b. Major Land Development Plans (Concept Plan and Final Land Development Plan), see Section 7.2.60 (Land Development Plan);
 - c. Minor Subdivisions, see Section 7.2.70 (Subdivision Plat);
 - d. Major Subdivisions (Concept Plat and Final Plat), see Section 7.2.70 (Subdivision Plat);
 - e. Traditional Community Plans (TCP), see Section 7.2.90; and
 - f. Interpretations of zoning district boundaries, see Section 7.3.60 (Interpretations).
- C. **Appeal Procedure.**
 1. **Pre-Application Conference is Optional.** See Section 7.4.20 (Pre-Application Conference).
 2. **Application Submittal and Acceptance.** See Section 7.4.30 (Application Submittal and Acceptance). An Appeal application shall specify the grounds for the appeal and shall be submitted to the Director within 30 days after receipt of notice of the decision being appealed.
 3. **Staff Review and Action.** See Section 7.4.40 (Staff Review and Action). On accepting an Appeal application, the Director shall transmit the appeal and the record of material

ELECTRONICALLY FILED - 2022 May 16 9:11 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

considered by the decision-maker in making the decision (including but not limited to, for example, the application and support materials, staff report, other plans, documents, reports and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision). These materials, plus the Comprehensive Plan and this Development Code shall constitute the record of the appeal.

4. **Public Hearing Scheduling and Notice.** See Section 7.4.50 (Public Hearing Scheduling and Notice). The Director shall also provide notice of the public hearing to the applicant for the decision being appealed, if different from the appellant.
5. **Public Hearing Procedures.** See Section 7.4.70 (Public Hearing Procedures). Appeals from a decision of administrative agents shall be heard by the ZBOA or the Planning Commission as appropriate, based solely on the materials (plans, documents, reports, studies, drawings, and testimony) available to the body or agent rendering the initial decision and advisory bodies prior to the decision. Appeals shall not consider new or altered plans, except that information submitted, but not discussed or considered in rendering a decision, shall be considered part of the original evidence. If hearings were held and testimony given, transcripts and other record items of those proceedings shall be the exclusive basis of the appeal. The appeal shall also consider this Section's standards and state law.
6. **Decision-Making Body Review and Decision.** Applicable to a decision by the appropriate appellate body following a public hearing. See Section 7.4.90, (Decision-Making Body Review and Decision). The public hearing shall be on the record of the appeal, with presentations limited to arguments on the record of the appeal as it relates to the grounds for appeal specified in the Appeal application.
 - a. The appellate body shall base its decision solely on the record of the appeal, as supplemented by arguments presented at the public hearing, and the standards in Subsection 7.30.70.D. The final decision of the appellate body shall be one of the following:
 - (1) Affirmation of the decision or interpretation (in whole or in part);
 - (2) Modification of the decision or interpretation (in whole or in part); or
 - (3) Reversal of the decision or interpretation (in whole or in part).
 - b. Reserved.
7. **Appeal.** The decision of the appellate body may be appealed to the Circuit Court.

D. Appeal Review Standards.

1. An appellate body is limited to the following determinations in considering the appeal, which shall be based on clear and substantial evidence in the record:
 - a. The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
 - b. The decision-maker made the decision based on a standard not contained in this Development Code or other appropriate County ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Development Code was applied. (This Development Code does not allow administrative decision-makers to consider or create standards not officially adopted) or
 - c. The decision-maker made an error in applying a standard or measuring a standard.
2. Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.
3. The appellate body shall not hear any evidence or make any decision based on hardships or special conditions.

E. Effect of Pending Appeal. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Director certifies to the appellate body, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(Ord. No. 2021/16, 3-8-21)

Exhibit 2

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

ADMITTED TO THE UNITED STATES
 SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA,
 COLORADO AND GEORGIA

CERTIFIED SC CIRCUIT
 COURT MEDIATOR

22 BOW CIRCLE
 SUITE A
 HILTON HEAD ISLAND, SC 29928

TELEPHONE 843-785-5050
 TELECOPIER 843-785-5030
 www.thomastaylorlaw.com • tom@thomastaylorlaw.com

MAILING ADDRESS
 P.O. BOX 5550
 HILTON HEAD ISLAND, SC
 29938

September 15, 2021

Via US Mail and E-Mail Attachment to: robm@bcgov.net

Mr. Robert Merchant
 Director
 Beaufort County Community Development
 PO Drawer 1228
 Beaufort SC 29901-1228

Re: Complaint about improper use of TMS R600 041 000 0008 0000 by Beaufort County, HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC and request for immediate action by you as the Director

Dear Mr. Merchant:

I represent James Ware, Alisa Ware, Jason Dubose, and Amanda DuBose, who live in Buckingham Landing. As you are probably aware, they—along with 32 other Buckingham Landing residents—have filed suit against the County and the ferry companies alleging that the County and the companies are running a commercial ferry operation on a piece of property where commercial ferry operations are prohibited. The County has argued to the Court that the Buckingham Landing residents have not properly asked you as the Director, to make a determination as to the propriety of the use of the property and take appropriate steps to abate the illegal use, and that therefore, the County asserts the residents may not proceed in court until they take this step.

Of course, our position is that we did make such a request by my letter to Hillary Austin of May 6, 2021, a copy of which I attach along with the email chain response I received from the County in reply, which I think speaks volumes. However, I want to make sure we are doing everything we can to move these issues forward, and thus, SPECIFICALLY RESERVING OUR CONTENTION IN 2021-CP-07-1078 THAT NO REQUEST TO THE COUNTY IS NECESSARY AS A PRELUDE TO THAT CIVIL ACTION, on behalf of the Wares and DuBoses, I report the following and ask you to take action in good faith to abate the illegal operations occurring on the property:

Mr. Robert Merchant • Beaufort County Community Development

Re: Complaint about improper use of TMS R600 041 000 0008 0000 by Beaufort County, HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC and request for immediate action by you as the Director

September 15, 2021 • Page 2

We believe that Beaufort County, the HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC, are operating a commercial ferry operation on TMS R600 041 000 0008 0000, in derogation of the County's current zoning standards applicable to the property. We believe the operation is an "illegal nonconformity" under the Community Development Code. We further contend that the continuing operation of this commercial ferry operation causes an immediate danger to the residents and tenants of the community and thus we ask that you immediately investigate the propriety of the current commercial ferry operations on the above-referenced property, and presuming your good faith investigation confirms that the County and/or the ferry companies are operating an illegal nonconforming business thereon, take such action as is set forth in the Community Development Code at Section 8.1.20: "Illegal nonconformities are subject to cessation by the County upon a determination of such illegality by the Director."

With the extensive work that was done between May 6, 2021 and June 8, 2021 by the staff and the county lawyers, I believe it is reasonable to ask for you to advise us of your findings within five (5) days of this letter, or as soon thereafter as you can reasonably make such a good faith determination. Please respond in writing to me detailing the result of your investigation and the rationale behind your finding. And please remember that the citizens and families of Buckingham Landing are being exposed to the dangers created by this illegal conformity on a daily basis, and thus please do not delay your response unnecessarily.

So that there is no mistake by your legal counsel as to the intention of this letter, this is not an offer of compromise and settlement of any claims, and this letter is written for the express purpose of using as evidence in this case (or any other that may be appropriate) to show the notice, the demand, and the urgency of the matter.

I look forward to your findings and to learning of the action that you choose to take in good faith to enforce the Community Development Code, and thank you as always for your professionalism in responding to these questions. Have a great rest of the week.

Cordially yours,



Thomas C. Taylor

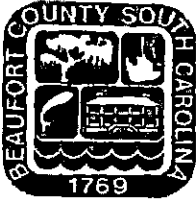
TCT/dpt

Enclosures: Hillary Austin letter and email attachments

cc: Mr. and Mrs. Ware and Mr. and Mrs. DuBose via email

Tom Keaveny, Esq., via email

Danny Crowe, Esq., via email



**COUNTY COUNCIL OF BEAUFORT COUNTY
PLANNING AND ZONING DEPARTMENT**

Multi Government Center, 100 Ribaut Road, Room 115
P.O. Drawer 1228, Beaufort, SC 29901-1228
Phone: (843) 255-2140 // FAX: (843) 255-9432

September 20, 2021

Thomas C. Taylor, Esq.
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head Island, SC 29928

RE: Request of Planning and Zoning Director determination of legality of use of R600 041 000 0008 0000 by
Beaufort County, HPCCA Ferry Company, Inc. and the Daufuskie Island Ferry Service, LLC

Dear Mr. Taylor:

I am in receipt of your request that the Planning and Zoning Director provide a determination of whether or not the commercial ferry operation at the Buckingham Boat Landing (R600 041 000 0008 0000) is operating as a legal nonconforming use. We are in agreement that this determination is a very important matter to all parties involved and therefore needs to be carefully researched. Therefore, five days is insufficient for us to do a complete review of all the facts to make this determination.

The Planning and Zoning Department will need 60 days to do a complete review of this matter. We will need this time to contact all the appropriate parties, gather all the evidence, and make careful review of all the facts. Once we make this determination, we will provide for you our findings. Thank you for your patience on this matter.

Sincerely,

Robert Merchant, AICP
Acting Director

cc: Tom Keaveny, Esq. (via email)
Danny C. Crowe, Esq. (via email)
Robert M. Deeb, Jr., Esq. (via email)
Eric Greenway (via email)

ELECTRONICALLY FILED - 2022 May 16 9:11 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

Exhibit 4

Subject: Response of County to request for determination concerning Buckingham Landing
Date: Friday, November 19, 2021 at 4:25:07 PM Eastern Standard Time
From: Danny Crowe
To: Merchant, Robert
CC: Tom Taylor, Robert Deeb, Keaveny, Thomas, Greenway, Eric
Attachments: image001.png, 11192 Attachments.pdf

Mr. Merchant:

As the attorney for the County in the Buckingham Landing litigation concerning the dock and the ferry service, I am submitting this brief e-mail, and its attachments, for your consideration and as a response to Mr. Taylor's assertions, in his letter to you of September 15, that the ferry service is an "illegal nonconformity" under the CDC.

The County's position in this litigation is that the use of the dock for a ferry service is not an "illegal nonconformity" under the CDC but is a legal use. The Beaufort County Zoning and Development Administration, on May 4, 2009, issued a Zoning Permit for a "Commercial Dock" for the subject property at Buckingham Landing (copy of Zoning Permit attached). This is the dock and property that later was acquired by the County in July 2018 (copy of deed attached).

The Zoning Permit, on its face, indicates that the Zoning Board approved a variance for the dock on July 24, 2008 related to OCRM Permit 2004-1E-110-P (copy of the OCRM Permit for a Commercial Dock on the property attached). A "commercial dock" for purposes of the OCRM Permit is defined, in S.C. Code of Regulations R. 30-1(D)(19)(b), as "a docking facility used for commercial purposes."

The dock (and the property known as the Sea Trawler Restaurant property) were leased by the then-owner Wilbert Roller, Jr. to the County's ferry service contractor beginning on January 27, 2017 (copies of leases attached). The County began providing the ferry service at the Buckingham Landing dock on February 13, 2017 (copy of County News Release attached).

The Zoning Permit establishes the legality of the commercial use of the dock at Buckingham Landing. The Zoning Permit sets out no conditions restricting or limiting the permitted nature of the commercial use of the dock. The Zoning Permit indicates no time limitations and no expiration date. The Zoning Permit conclusively establishes the use granted by the Permit as a lawful use. As with a variance, the commercial dock use permitted by the Zoning Permit runs with the land and is not affected by subsequent changes in ownership. Commercial use of the dock by the

County as the current owner, including commercial use as a ferry service, remains valid and lawful. It is not an "illegal nonconformity."

Please let me know if you wish me to provide any other information or response.

Danny Crowe

Danny C. Crowe



500 Taylor Street, Suite 202 | Columbia, SC 29201
Post Office Box 1149 | Columbia, SC 29202
Direct: 803.724.5728 | Cell: 803.767.0050
Fax: 803.724.5730 | Web: crowelafave.com

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Beaufort County, South Carolina
ZONING PERMIT
Zoning & Development Administration

27

Permit Number 24003 Zone CD(BUCKINGHAM) Date Issued 5/4/09
Applicant's Name WILBERT ROLLER JR. COMMERCIAL DOCK
Property Owner's Name SEA TRAWLER, LLC
Address 35 FORDING ISLAND ROAD EXT, BLUFFTON
District/Map/Parcel Number 600-41-9 Approved Use COMMERCIAL DOCK

THIS PERMIT CERTIFIES THAT THE ABOVE NAMED
HAS MET AND IS ACCORDANCE WITH THE BEAUFORT
COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE

BY: Olivia A. Hines

CONDITIONS OF PERMIT APPROVAL:

- ZBOA APPROVED DOCK VARIANCE ON JULY 24, 2008 FOR OCEAN PERMIT 2004-1E-110-P.

*to be sent
Howell*

RECORDED
2018 Aug -10 01:11 PM

B. Dent
BEAUFORT COUNTY AUDITOR

ADD DMP Record 8/1/2018 01:03:47 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	041	000	0008	0000	00

BEAUFORT COUNTY SC - ROD
BK 3687 Pgs 1233-1238
FILE NUM 2018040785
07/27/2018 03:09:27 PM
REC'D BY kposton RCPT# 899845
RECORDING FEES \$0.00

(Please do not write above this line - Reserved for Register of Deeds Office)

Prepared by: Howell Gibson and Hughes PA
Post Office Box 40
Beaufort, SC 29901-0040

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS:

THAT, QUEENSBOROUGH NATIONAL BANK & TRUST COMPANY, of Columbia County, Georgia, ("GRANTOR"), for and in consideration of the sum of TWO MILLION, TWO HUNDRED THOUSAND AND NO/100 (\$2,200,000.00) DOLLARS to it in hand paid at and before the sealing of these presents BEAUFORT COUNTY, with an address of Post Office Box 1228, Beaufort, South Carolina 29901 ("GRANTEE"), in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do hereby grant, bargain, sell, and release unto the said BEAUFORT COUNTY, its successors and assigns forever in fee simple, the following described real property, to-wit:

SEE ATTACHED PROPERTY DESCRIPTION AS EXHIBIT "A"

APPROVED FOR RECORDING
BY: *[Signature]*
BEAUFORT COUNTY ATTORNEY
DATE: *7-27-18*

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging to or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the BEAUFORT COUNTY, its successors and assigns forever.

And the said Grantor does hereby bind itself, and its successors and assigns to warrant and forever defend all and singular the said premises unto the said BEAUFORT COUNTY, hereinabove provided against it and its successors and assigns, and any person, persons or entities whomssoever lawfully claiming or to claim the same, or any part thereof.

WITNESS our hand and seal this 27 day of July, 2018.

Signed, Sealed and Delivered

In the Presence of:

Queensborough National
Bank & Trust Company

Angele m. Clark
Witness #1

William F. Easterlin, III
William F. Easterlin, III
Its: President / CEO

[Signature]
Witness #2

STATE OF GEORGIA

COUNTY OF Jefferson

)
)
)

ACKNOWLEDGMENT

I, Julie W. Evans do hereby certify that William F. Easterlin, III, President and CEO of Queensborough National Bank & Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 27th day of July, 2018.

Julie W. Evans

Notary Public of Georgia

My Commission Expires: 3/2/21

[SEAL OR STAMP REQUIRED]



EXHIBIT "A"

Exhibit A

ALL that certain piece, tract or parcel of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, designated as 1.355 acres on a plat entitled "A Plat of 1.355 acres on Buckingham Rd., A Section of Bluffton Township," prepared by Coastal Surveying Co., Inc. dated October 24, 1984, revised on November 8, 1984, which plat is not recorded. .

This being the same property conveyed to the within Grantor by Deed In Lieu of Foreclosure, recorded on December 1, 2017 in the Office of the Register of Deeds for Beaufort County, South Carolina in Records Book 3626 at Page 94.

DMP: R600 041 000 0008 0000

This deed was prepared by the law offices of Howell, Gibson and Hughes, PA, Post Office Box 40, Beaufort, SC 29901-0040.

SCDHEC- Office of Ocean and
Coastal Resource Management

CONSTRUCTION AUTHORIZATION

Permittee/

Property Owner: **Wilbert Roller, Jr**

Expiration

Date: **November 4, 2009**

Address of Permittee/ **40 MILL WRIGHT DRIVE**

Permit

Property Owner: **HILTON HEAD ISLAND SC**
29926

Number: **2004-1E-110-P**

Contractor's Name: **Steadfast Marine Inc**

Date

(if none provided, then property
owner name)

Issued: **January 11, 2005**

Location:

35 Fording Island Road
Ext

Contractor's License #: **12625**

Authorized Work: **Commercial Docks**

Waterway: **Mackay Creek**

City:

Hilton Head Island

County:

Beaufort

Kyamaker
Project Manager **Kathleen Lamaker**

May 04, 2009

Date

> This Notice Must Be Conspicuously Displayed at the Work Site <

35 Fording Island Road

Lessor: Mr. Wilbert Roller Jr.

Lessee: Daufuskie Island Ferry Service (DIFS, LLC.)

Daufuskie Island Ferry Service (DIFS) agrees to lease the property located at 35 Fording Island Extension Road, the parcel known as the Sea Trawler Restaurant property.

DIFS will have exclusive rights to use the parking lot and the entire dock for the purpose of operating the public ferry service to Daufuskie Island.

DIFS will provide a deposit in the amount of [REDACTED] on January 16, 2017. A formal lease agreement based on the terms outlined in this document will be finalized on or before February 1, 2017.

Ferry operations are anticipated to begin on or about February 15, 2017.

DIFS will provide proof of general liability insurance and will hold the land owner harmless for any and all liability of passengers while using this facility.

DIFS will provide trash service and pay the electricity cost to power parking lot, grounds and dock lighting only. DIFS will negotiate with the utility companies to activate utility services.

The building is closed and is not part of this lease agreement. However, DIFS will use the area under the building for passenger shelter and for processing cargo as part of this lease agreement. DIFS wishes to discuss the possibility of leasing the smaller of the two buildings on the property for the purpose of providing passenger reception space and access to restroom facilities. It is anticipated that prior to activation of the land and dock lease we may reach an agreement on the building.

The owner will make sure the property is clean and free of debris. A video will be made of the property prior to commencement of operations to document the condition of the property. The property will be turned back over at the end of the lease in like manner. DIFS reserves the right to make alterations to the property and dock systems to facilitate passenger vessel operations.

DIFS assumes no responsibility for any debt, liens, mortgages or legal action against or associated with this property.

Terms: Month to month. Both parties may cancel the agreement without cause with 30 day notice.

Lease Fee: \$[REDACTED] per month due on the first day of each month. The potential building lease will be negotiated very soon.

Lessor Wilbert Roller Jr. Date 1-27-17
 Wilbert Roller Jr., 35 Fording Island Road Extension, Property Owner
 Lessee Doug Ely Date 1-16-17
 Doug Ely, Daufuskie Island Ferry Service, Representative

Lease Agreement

35 Fording Island Road

Lessor: Mr. Wilbert Roller Jr.

Lessee: Daufuskie Island Ferry Service (DIFS, LLC.)

Daufuskie Island Ferry Service (DIFS) agrees to lease the property located at 35 Fording Island Extension Road, the parcel known as the Sea Trawler Restaurant property

DIFS will have exclusive rights to use the parking lot and the entire dock for the purpose of operating the public ferry service to Daufuskie Island.

DIFS will provide proof of general liability insurance and will hold the land owner harmless for any and all liability of passengers while using this facility.

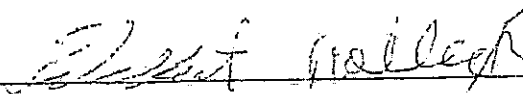
DIFS will provide trash service and pay the electricity cost to power parking lot, grounds and dock lighting only. DIFS will negotiate with the utility companies to activate utility services.

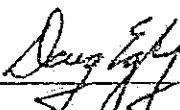
Effective August 1, 2017 until August 1, 2018, Haig Point will increase the monthly rent payment to a total of \$10,000 per month in exchange for the exclusive use of the dock, parking lot and small building located at 35 Fording Island Road Ext. Haig Point will be responsible for all utility fees and will provide a certificate of liability insurance to cover patrons while on the property or in the building. The monthly rent payment of \$10,000 shall not be increased during the term of this agreement.

The owner will make sure the property is clean and free of debris. A video will be made of the property prior to commencement of operations to document the condition of the property. The property will be turned back over at the end of the lease in like manner. DIFS reserves the right to make alterations to the property and dock systems to facilitate passenger vessel operations.

DIFS assumes no responsibility for any debt, loans, mortgages or legal action against or associated with this property.

This agreement may be terminated without cause by either party with 30 days written notice.

Lessor  Date 8-1-17
 Wilbert Roller Jr., 35 Fording Island Road Extension, Property Owner

Lessee  Date 8-1-17
 Doug Egly, Daufuskie Island Ferry Service, Representative



Beaufort County News Release

February 9, 2017

Daufuskie Island Ferry Service to Relocate to Buckingham Landing

The County's embarkation location for public ferry service to Daufuskie Island will relocate Monday, Feb. 13, to Buckingham Landing at 35 Fording Island Road Extension in Bluffton.

After damages to the original embarkation site at Palmetto Bay Marina, the site was first relocated to Oyster Factory Park Landing. To expedite the transition to the new site at Buckingham Landing, the County's ferry services contractor, Daufuskie Island Ferry Service, LLC, will provide complimentary shuttle service between the parking lots at Oyster Factory Park Landing and Buckingham Landing from Feb. 11 through Feb. 15.

For example, passengers taking the ferry on Monday can get off at Buckingham Landing, where a shuttle will take them to their car at the Oyster Factory Park Landing. When they return for a ferry ride, they should park at Buckingham Landing.

The updated schedule is as follows:

From Buckingham Landing

Monday-Friday 7 a.m., 10 a.m., 1 p.m., 4 p.m.

Fridays Only 9 p.m.

From Daufuskie Island

Monday - Friday: 8:30 a.m., 11:30 a.m., 2:30 p.m., 5:30 p.m.

Fridays Only: 10:15 p.m.

For more information, send an email to info@DaufuskieIslandFerry.com or call 843-940-7704.

Directions to Buckingham Landing

From Bluffton

Go east on U.S. Highway 278. Watch for the BP Gas Station and Wesley's Fruit Stand on your right. Take a slight right turn onto Fording Island Road Extension and continue to the end.

From Hilton Head Island

Take U.S. Highway 278 West to Fording Island Road Extension. Watch for the BP Gas Station and Wesley's Fruit Stand on your left. Take a sharp left onto Fording Island Road

Extension, which ends at the landing.

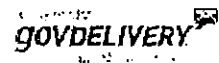
County Council of Beaufort County

Administration Building | 100 Ribaut Road | PO Drawer 1228 | Beaufort, SC 29901
www.bcgov.net | communications@bcgov.net

Subscriber Services:

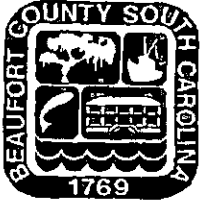
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Exhibit 5



**COUNTY COUNCIL OF BEAUFORT COUNTY
PLANNING AND ZONING DEPARTMENT**

Multi Government Center, 100 Ribaut Road, Room 115
P.O. Drawer 1228, Beaufort, SC 29901-1228
Phone: (843) 255-2140 // FAX: (843) 255-9432

ELECTRONICALLY FILED - 2022 May 16 9:11 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

April 21, 2022

Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head, SC 29928

RE: Request for Staff Determination on Use of the Commercial Dock Located at 35 Fording Island Road Extension, Bluffton, SC

Dear Mr. Taylor:

I am writing in response to your request for a determination from the Beaufort County Planning and Zoning Department on whether the County's use of the Commercial Dock located at 35 Fording Island Road Extension is in violation of the Community Development Code.

The Planning and Zoning Department has determined that use of the dock for an embarkation point for ferry service is a legal use under section 7.2.140.E of the Community Development Code. Prior to the adoption of the Community Development Code, the Beaufort County Zoning Department issued a permit for a Commercial Dock on May 4, 2009 for the property located at 35 Fording Island Road Extension. The issuance of this zoning permit was subsequent to the Zoning Board of Appeals (ZBOA) approving a variance for the dock on July 24, 2008. Beaufort County later leased the property from Wilbert Roller, Jr. to operate a ferry service to Daufuskie Island on January 27, 2017. The County then acquired the property on July 27, 2018 to continue the use of the property for ferry service.

It is the Planning and Zoning Department's determination that the use of the commercial dock as a ferry landing conforms to the original zoning permit that was issued on May 4, 2009. The permit did not establish any conditions or time restrictions. Additionally, the approval of the variance runs with the land, shall be binding on the landowners and their successors and assigns, and shall not be affected by a change in ownership.

If I can be of further assistance, please contact our office at (843) 255-2148.

Sincerely,

Robert Merchant, AICP
Director, Beaufort County Planning and Zoning Department

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
)

James Ware, Alisa Ware, Henry Spahr, Elaine) Civil Action Number: 2021-CP-07-01078
Spahr, Julie Sanders, William Craig Denny,)
Jeff Toomer, Allyson Toomer, Louise E.)
Davis, Donna Nutty, Thomas J. MacDonald,)
Michael G. MacDonald, Susanne B.)
MacDonald, Arlene Coleman, William H.)
McGee, Patti M. MacDonald, Scott M.)
MacDonald, Rose F. McGee, Jason DuBose,)
Amanda DuBose, Ronald L. Broome,)
Lawrence E. Jones, D. Diane Burr, Mark H.)
Thomas, Kelly C. Thomas, William Matthew)
Yollo, Nancy H. Yollo, Joseph DeAngelis,)
Beth DeAngelis, Shelly Horn, Theodore)
Brammer, Allison Brammer, Waymon W.)
Durden, Constance C. Durden, David C.)
Powell,)

**DEFENDANT BEAUFORT COUNTY'S
SECOND AFFIDAVIT OF ROBERT
MERCHANT IN OPPOSITION TO
PLAINTIFFS' RENEWED MOTION
FOR PRELIMINARY INJUNCTION**

Plaintiffs,

v.

Beaufort County, HPCCA Ferry Company,
Inc., and The Daufuskie Island Ferry Service,
LLC,

Defendants.

The Defendant Beaufort County files, in opposition to Plaintiffs' Renewed Motion for Preliminary Injunction, the attached Second Affidavit of Robert Merchant (with its Exhibits 1, 2, and 3).

s/Danny C. Crowe

Danny C. Crowe, SC Bar #1480
CROWE LAFAYE GARFIELD & BAGLEY, LLC
2019 Park Street
Columbia, South Carolina 29201
803-724-5728
danny@crowelafave.com
ATTORNEYS FOR DEFENDANT
BEAUFORT COUNTY

October 11, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

James Ware, Alisa Ware, Henry Spahr, Elaine) Civil Action Number: 2021-CP-07-01078
Spahr, Julie Sanders, William Craig Denny, Jeff)
Toomer, Allyson Toomer, Louise E. Davis,)
Donna Nutty, Thomas J. MacDonald, Michael)
G. MacDonald, Susanne B. MacDonald, Arlene)
Coleman, William H. McGee, Patti M.)
MacDonald, Scott M. MacDonald, Rose F.)
McGee, Jason DuBose, Amanda DuBose,)
Ronald L. Broome, Lawrence E. Jones, D.)
Diane Burr, Mark H. Thomas, Kelly C. Thomas,)
William Matthew Yollo, Nancy H. Yollo,)
Joseph DeAngelis, Beth DeAngelis, Shelly)
Horn, Theodore Brammer, Allison Brammer,)
Waymon W. Durden, Constance C. Durden,)
David C. Powell,)
Plaintiffs,)
v.)
Beaufort County, HPCCA Ferry Company, Inc.,)
and The Daufuskie Island Ferry Service, LLC,)
Defendants.)

**SECOND AFFIDAVIT OF
ROBERT MERCHANT**

PERSONALLY APPEARED BEFORE ME, Robert Merchant, who being duly sworn,
states:

1. I am the Director of the Beaufort County Planning and Zoning Department, and, as
such, also function as the "Director" within the meaning of Sections 7.5.60 and 10.1.40 of the
Beaufort County Community Development Code (the "Development Code"). I previously
submitted an Affidavit in this case that was filed on May 16, 2022.

2. Among my assigned duties are the providing of interpretations of the Development Code pursuant to Section 7.3.60 of the Development Code and determinations of the legality or illegality of nonconformities pursuant to Section 8.1.20 of the Development Code. These interpretations and determinations are subject to appeal to the Zoning Board of Appeals pursuant to Section 7.3.70 of the Development Code.

3. By letter dated September 15, 2021, I received from the attorney for the Plaintiffs in this case, a request for an administrative interpretation and determination as to whether the County's use of Buckingham Landing for a ferry operation was an illegal use or illegal nonconformity. (A copy of the request letter without attachments is attached as Exhibit 1).

4. I issued my administrative interpretation and determination by letter dated April 21, 2022. (A copy of my interpretation and determination is attached as Exhibit 2). The gist of my determination was that the County's use of the dock at Buckingham Landing for a ferry service is a legal use under the County Development Code.

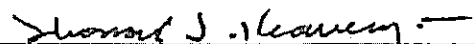
5. My administrative interpretation and determination was appealed by the attorney for the Plaintiffs to the Beaufort County Zoning Board of Appeals (the ZBOA). At the ZBOA hearing on the appeal on July 28, 2022, a motion to overturn my interpretation and determination failed for lack of a majority of favorable votes. After that vote, the attorney for the Plaintiffs stated that he agreed with the ZBOA Chair's ruling that the effect of the failure of the motion was denial of the appeal. The attorney for the Plaintiffs filed a Petition for Reconsideration with the ZBOA on August 2 that was denied by a majority vote of the ZBOA at its meeting on August 25, 2022. (See the Decision and Order of the ZBOA dated September 16, 2022, attached as Exhibit 3).

6. The attorney for the Plaintiffs, on August 23, 2022, filed a Notice of Appeal and Petition in Circuit Court (Case # 2022-CP-07-01598) from the ZBOA decision at the July 28 meeting. That appeal is pending.

FURTHER AFFIANT SAYETH NOT.


Robert Merchant

SWORN to before me this
10th day of October 2022


Notary Public for South Carolina
My Commission Expires: 10.13.2025

SECOND AFFIDAVIT OF ROBERT MERCHANT

Exhibit 1

“Request Letter without attachments dated September 15, 2021”

James Ware, et al. v. Beaufort County, et al.
Civil Action Number 2021-CP-07-010787

ADMITTED TO THE UNITED STATES
SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA,
COLORADO AND GEORGIA

CERTIFIED SC CIRCUIT
COURT MEDIATOR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928

TELEPHONE 843-785-5050
TELECOPIER 843-785-5030
www.thomastaylorlaw.com • tom@thomastaylorlaw.com

MAILING ADDRESS
P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

September 15, 2021

Via US Mail and E-Mail Attachment to: robm@bcgov.net

Mr. Robert Merchant
Director
Beaufort County Community Development
PO Drawer 1228
Beaufort SC 29901-1228

Re: Complaint about improper use of TMS R600 041 000 0008 0000 by Beaufort County, HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC and request for immediate action by you as the Director

Dear Mr. Merchant:

I represent James Ware, Alisa Ware, Jason Dubose, and Amanda DuBose, who live in Buckingham Landing. As you are probably aware, they—along with 32 other Buckingham Landing residents—have filed suit against the County and the ferry companies alleging that the County and the companies are running a commercial ferry operation on a piece of property where commercial ferry operations are prohibited. The County has argued to the Court that the Buckingham Landing residents have not properly asked you as the Director, to make a determination as to the propriety of the use of the property and take appropriate steps to abate the illegal use, and that therefore, the County asserts the residents may not proceed in court until they take this step.

Of course, our position is that we did make such a request by my letter to Hillary Austin of May 6, 2021, a copy of which I attach along with the email chain response I received from the County in reply, which I think speaks volumes. However, I want to make sure we are doing everything we can to move these issues forward, and thus, SPECIFICALLY RESERVING OUR CONTENTION IN 2021-CP-07-1078 THAT NO REQUEST TO THE COUNTY IS NECESSARY AS A PRELUDE TO THAT CIVIL ACTION, on behalf of the Wares and DuBoses, I report the following and ask you to take action in good faith to abate the illegal operations occurring on the property:

Mr. Robert Merchant • Beaufort County Community Development

Re: Complaint about improper use of TMS R600 041 000 0008 0000 by Beaufort County, HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC and request for immediate action by you as the Director

September 15, 2021 • Page 2

We believe that Beaufort County, the HPCCA Ferry Company, Inc. and The Daufuskie Island Ferry Service, LLC, are operating a commercial ferry operation on TMS R600 041 000 0008 0000, in derogation of the County's current zoning standards applicable to the property. We believe the operation is an "illegal nonconformity" under the Community Development Code. We further contend that the continuing operation of this commercial ferry operation causes an immediate danger to the residents and tenants of the community and thus we ask that you immediately investigate the propriety of the current commercial ferry operations on the above-referenced property, and presuming your good faith investigation confirms that the County and/or the ferry companies are operating an illegal nonconforming business thereon, take such action as is set forth in the Community Development Code at Section 8.1.20: "Illegal nonconformities are subject to cessation by the County upon a determination of such illegality by the Director."

With the extensive work that was done between May 6, 2021 and June 8, 2021 by the staff and the county lawyers, I believe it is reasonable to ask for you to advise us of your findings within five (5) days of this letter, or as soon thereafter as you can reasonably make such a good faith determination. Please respond in writing to me detailing the result of your investigation and the rationale behind your finding. And please remember that the citizens and families of Buckingham Landing are being exposed to the dangers created by this illegal conformity on a daily basis, and thus please do not delay your response unnecessarily.

So that there is no mistake by your legal counsel as to the intention of this letter, this is not an offer of compromise and settlement of any claims, and this letter is written for the express purpose of using as evidence in this case (or any other that may be appropriate) to show the notice, the demand, and the urgency of the matter.

I look forward to your findings and to learning of the action that you choose to take in good faith to enforce the Community Development Code, and thank you as always for your professionalism in responding to these questions. Have a great rest of the week.

Cordially yours,



Thomas C. Taylor

TCT/dpt

Enclosures: Hillary Austin letter and email attachments

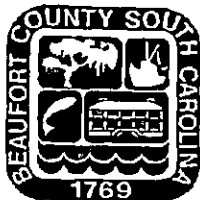
cc: Mr. and Mrs. Ware and Mr. and Mrs. DuBose via email
Tom Keaveny, Esq., via email
Danny Crowe, Esq., via email

SECOND AFFIDAVIT OF ROBERT MERCHANT

Exhibit 2

“Interpretation and Determination dated April 21, 2022”

James Ware, et al. v. Beaufort County, et al.
Civil Action Number 2021-CP-07-010787



**COUNTY COUNCIL OF BEAUFORT COUNTY
PLANNING AND ZONING DEPARTMENT**
Multi Government Center, 100 Ribaut Road, Room 115
P.O. Drawer 1228, Beaufort, SC 29901-1228
Phone: (843) 255-2140 // FAX: (843) 255-9432

April 21, 2022

Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head, SC 29928

RE: Request for Staff Determination on Use of the Commercial Dock Located at 35 Fording Island Road Extension, Bluffton, SC

Dear Mr. Taylor:

I am writing in response to your request for a determination from the Beaufort County Planning and Zoning Department on whether the County's use of the Commercial Dock located at 35 Fording Island Road Extension is in violation of the Community Development Code.

The Planning and Zoning Department has determined that use of the dock for an embarkation point for ferry service is a legal use under section 7.2.140.E of the Community Development Code. Prior to the adoption of the Community Development Code, the Beaufort County Zoning Department issued a permit for a Commercial Dock on May 4, 2009 for the property located at 35 Fording Island Road Extension. The issuance of this zoning permit was subsequent to the Zoning Board of Appeals (ZBOA) approving a variance for the dock on July 24, 2008. Beaufort County later leased the property from Wilbert Roller, Jr. to operate a ferry service to Daufuskie Island on January 27, 2017. The County then acquired the property on July 27, 2018 to continue the use of the property for ferry service.

It is the Planning and Zoning Department's determination that the use of the commercial dock as a ferry landing conforms to the original zoning permit that was issued on May 4, 2009. The permit did not establish any conditions or time restrictions. Additionally, the approval of the variance runs with the land, shall be binding on the landowners and their successors and assigns, and shall not be affected by a change in ownership.

If I can be of further assistance, please contact our office at (843) 255-2148.

Sincerely,

Robert Merchant, AICP
Director, Beaufort County Planning and Zoning Department

ELECTRONICALLY FILED - 2022 May 16 19:29 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701078

SECOND AFFIDAVIT OF ROBERT MERCHANT

Exhibit 3

“Decision and Order of the ZBOA dated September 16, 2022”

James Ware, et al. v. Beaufort County, et al.
Civil Action Number 2021-CP-07-010787

STATE OF SOUTH CAROLINA)	BEFORE THE BEAUFORT COUNTY
COUNTY OF BEAUFORT)	ZONING BOARD OF APPEALS
IN RE:)	
JAMES & ALICIA WARE/)	
AMANDA DUBOSE,)	
ADMINISTRATIVE DECISION)	
APPEAL)	
Appellants,)	DECISION AND ORDER AND NOTICE OF
BEAUFORT COUNTY)	DECISION OF THE BEAUFORT COUNTY
PLANNING DIRECTOR,)	ZONING BOARD OF APPEALS
Respondent.)	

2022 SEP 27 PM 12:10
JERRI ANN ROSENEA
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATEMENT OF THE CASE

On May 20, 2022, Appellants James & Alicia Ware and Amanda Dubose appealed the Planning and Zoning Director Robert Merchant's ("Director") Staff Determination dated April 21, 2022, ("Interpretation") that use of the dock for an embarkation point for a ferry service is a legal use under section 7.2.140 E of the Beaufort County Community Development Code ("CDC"). The Beaufort County Zoning Board of Appeals ("Board") published notice of the hearing as required by law and heard the appeal on July 28, 2022 ("Hearing"). Present were the Appellants and their Attorney Thomas Taylor, and for the Director and staff, Danny Crowe, Esquire. Subsequent to the Hearing, a Petition for Reconsideration was filed by the Appellants and was considered at the August 25, 2022 Board meeting.

BACKGROUND

A public water ferry service is located at 35 Fording Island Road Extension and has a PIN# PIN R600 041 000 0008 0000, is located in unincorporated Beaufort County, and is currently

owned by Beaufort County ("Property"). The Property is improved with a commercial structure which formerly was a restaurant and a commercial dock. The dock is an embarkation/debarkation point for ferry service to and from Daufuskie Island. The Property's zoning falls under the Buckingham Landing Community Preservation District.

On January 11, 2005, the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("DHEC") issued a Critical Area & Water Quality Certification Permit for the construction of a dock for commercial use and the docking of boats on the Property ("DHEC Permit"). On July 24, 2008, the County Zoning Board granted a variance for a commercial dock on the Property. On May 4, 2009, the Beaufort County Zoning & Development Administration issued Zoning Permit Number 24003 for the Approved Use of the Property as a Commercial Dock. DHEC also issued a Construction Authorization for the construction of a commercial dock on May 4, 2009. On or about January 27, 2017, the Property was leased for the purpose of operating a public ferry service to and from Daufuskie Island.

On May 20, 2022, Appellants appealed to this Board from the April 21, 2022 determination by the Director regarding the use of the Property (also referred to as the "Interpretation"). In his Interpretation, the Director stated that the use of the commercial dock for an embarkation point for the ferry service on the Property is a legal use pursuant to Section 7.2.140.E of the CDC. The Director also stated in the Interpretation that the use of the commercial dock as a ferry landing conforms to the original County Zoning Permit that was issued on May 4, 2009, that the Zoning Permit did not establish any conditions or time restrictions on the commercial use of the dock, and that the approval of the variance for a commercial dock by the County Zoning Board in 2008 runs with the land, is binding on the landowners and their successors and assigns, and is not affected by a change of ownership.

FINDINGS OF FACT

1. This written Decision and Order of the ZBOA is entered, filed and provided to all parties as required by S.C. Code Sec. 6-29-800 (F), 1976, as amended.
2. Pursuant to the Beaufort County Community Development Code Section 7.4.50.B(2), notice of the public hearing was published in the Island Packet/Beaufort Gazette, a newspaper of general circulation in Beaufort County.
3. The Subject Property is situated within the unincorporated boundaries of Beaufort County, South Carolina, and as such is subject to the Beaufort County Community Development Code. Jurisdiction in this matter is proper.
4. Based upon all the supporting documents and testimony, on July 24, 2008, this Board granted a variance for a commercial dock on the Property.
5. On May 4, 2009, the Beaufort County Zoning & Development Administration issued County Zoning Permit Number 24003 for the Approved Use of the Property as a Commercial Dock.
6. The written Interpretation of the Director and all supporting documents were offered and accepted into evidence and are incorporated herein.
7. After hearing the arguments of the Appellants and Director, and after reviewing the record provided, and after considering the Appellants' Notice of Appeal and Petition and their Petition for Reconsideration, the Board finds and concludes that the Director's Interpretation of the commercial dock as a legal use of the Subject Property for the embarkation point for the ferry service is correct and proper, and should be upheld.

CONCLUSIONS OF LAW

1. At the conclusion of the presentation of evidence at the July Hearing, based upon the record, it was moved and seconded that the Director's Interpretation be overturned. However, the motion failed for a lack of a majority of the votes¹ resulting in the Interpretation being upheld.

2. Since the Appellants had the burden of proof and persuasion, the Chair of the Board interpreted the failure of the motion to overturn as a basis for denial of the appeal, and ruled that the appeal was denied. Neither the Board nor the attorney for the Appellants challenged or otherwise objected to this ruling at the July hearing. The attorney for the Appellants specifically agreed at that hearing with the ruling of denial as the effect of the failure of the motion to overturn.

3. Subsequently, Appellants filed a Petition for Reconsideration which, among other things, reasserted Appellants' original grounds for appeal. On August 25, 2022, the Board considered Appellant's Petition for Reconsideration and its points of argument, including its reassertion of the original grounds for appeal. A motion to deny the Petition for Reconsideration was seconded and was passed by a majority vote of the Board. By operation of the Board's Rules of Procedure, the effect of a vote denying a Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.²

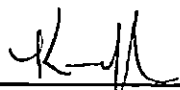
¹ Six members of the ZBOA were present with three members voting to overturn the Interpretation and three members voted against.

² See Zoning Board of Appeals Rules of Procedure (Amended) adopted August 26, 2021, Article VIII Procedure for Reconsideration, Paragraph (C)(2).

ORDER

Based upon the findings of fact and conclusions of law, it is ORDERED that the appeal be DENIED, and that the Interpretation of the Director be affirmed.

IT IS SO ORDERED.



Kevin Mack
Chairman, Zoning Board of Appeals
Beaufort, South Carolina

This 16 day of September 2022.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
)

James Ware, Alisa Ware, Henry Spahr, Elaine) Civil Action Number: 2021-CP-07-01078
Spahr, Julie Sanders, William Craig Denny,)
Jeff Toomer, Allyson Toomer, Louise E.)
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Amanda DuBose, Ronald L. Broome,)
Lawrence E. Jones, D. Diane Burr, Mark H.)
Thomas, Kelly C. Thomas, William Matthew)
Yollo, Nancy H. Yollo, Joseph DeAngelis,)
Beth DeAngelis, Shelly Horn, Theodore)
Brammer, Allison Brammer, Waymon W.)
Durden, Constance C. Durden, David C.)
Powell,)

**DEFENDANT BEAUFORT COUNTY'S
AFFIDAVIT OF JARED FRALIX, P.E.,
IN OPPOSITION TO PLAINTIFFS'
RENEWED MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiffs,

v.

Beaufort County, HPCCA Ferry Company,
Inc., and The Daufuskie Island Ferry Service,
LLC,

Defendants.

The Defendant Beaufort County files, in opposition to Plaintiffs' Renewed Motion for Preliminary Injunction, the attached Affidavit of Jared Fralix, P.E.

s/Danny C. Crowe

Danny C. Crowe, SC Bar #1480
CROWE LAFAYE GARFIELD & BAGLEY, LLC
2019 Park Street
Columbia, South Carolina 29201
803-724-5728
danny@crowelafave.com

ATTORNEYS FOR DEFENDANT
BEAUFORT COUNTY

October 11, 2022

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

James Ware, Alisa Ware, Henry Spahr, Elaine)
Spahr, Julie Sanders, William Craig Denny,)
Jeff Toomer, Allyson Toomer, Louise E.)
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Brammer, Allison Brammer, Waymon W.)
Durden, Constance C. Durden, David C.)
Powell,)

Civil Action Number: 2021-CP-07-01078

**AFFIDAVIT OF
JARED FRALIX, P.E.**

Plaintiffs,

V.

Beaufort County, HPCCA Ferry Company, Inc., and The Daufuskie Island Ferry Service, LLC,

Defendants,

PERSONALLY APPEARED BEFORE ME, Jared Fralix, P.E., who being duly sworn,
states:

1. I am the Assistant County Administrator of Infrastructure for Beaufort County. One of my current roles is to serve as a division manager overseeing capital improvements required to relocate the Daufuskie Island Ferry service from its current location at Buckingham Landing. In

that role, I am familiar with the actions needed to be undertaken by the County and other entities and persons in order to relocate the ferry landing.

2. The project requirements and actions for the development process for the relocation, already undertaken and to be undertaken, can be summarized as follows:

- In recent weeks and months, the County has worked diligently seeking out properties that would be suitable for future Daufuskie Island Ferry service operations.
- After evaluating several parcels, the County has recently filed condemnation paperwork on two parcels of property for the future embarkation points.
- Prior to filing the condemnation paperwork, the County sought opinions from a marine design engineer and contractor to ensure the lots would be suitable for the intended use and that a ferry dock permit would appear feasible. Based on each of their knowledge and experiences, no extenuating circumstances for the sites were identified.
- Our staff is currently working on drafting two requests for qualifications (RFQs) for two design engineers. One engineer will be specific to the site design for land improvements and the other engineer will be responsible for the marine improvements.
- Once drafted, the solicitation for responses to the RFQs will be advertised for 30 days per our procurement code. Once the advertisement period is closed, a staff review team will evaluate the proposals to select the most qualified consultant for each RFQ. Interviews with the top proposers may take place if decided by the evaluation team to further determine the most qualified firm. Once the firms are ranked, staff will work with the highest qualified consultant on a scope and fee. If a fee cannot be negotiated with the top consultant, correspondence with that consultant is discontinued and negotiations are engaged with the next highest rank consultant.
- Once the scope and fee are finalized, a recommendation by staff is taken to the Public Facilities Committee (PFC) for approval of a contract award.
- Upon approval by PFC, the recommendation of contract award is sent to County Council for final approval.
- Upon final approval, the procurement office works with the consultant on getting the contract documents signed for work to begin.
- The site design engineer will plan for the parking lot layout, stormwater design, and shelter improvements. The necessary improvements will require a site development permit from the local municipality, an encroachment permit from SCDOT, a

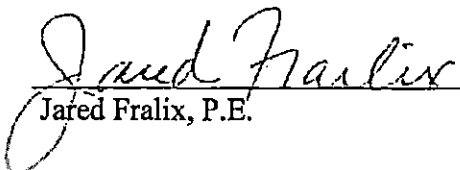
stormwater permit from DHEC, a coastal zone consistency certification from OCRM, and a jurisdictional determination and possible wetlands permit through USCOE.

- The marine design engineer will perform a geotechnical investigation of the riverbed and a structural design of the proposed ferry dock. The necessary improvements will require a dock permit from USCOE, a coastal zone consistency certification from OCRM, a navigational permit from USCG, and a habitat permit from USFW.
- As the design and permits are being finalized, staff will work with the design engineers to develop bid documents and project specifications.
- The solicitation for bids will be advertised for 30 days per our procurement code. Once closed and an apparent low bidder is announced, staff will review the submitted bid documents to ensure the low bidder is a responsible vendor and has provided a complete and responsive bid.
- Once the lowest, responsive bidder is determined, a recommendation by staff is taken to the Public Facilities Committee (PFC) for approval of a contract award.
- Upon approval by PFC, the recommendation of contract award is sent to County Council for final approval.
- Upon final approval, the procurement office works with the contractor on getting the contract documents signed for work to begin.
- Work will be managed by staff. Any change orders above the County Administrator's authorization level will have to seek permission from the PFC or from both the PFC and County Council depending on the amount of the change order per the thresholds set in the procurement code.
- As the construction draws to a close, a substantial completion notification will be given, and a final inspection will be conducted. Any punch list items identified in the inspection will have up to 30 days to be completed in order to finalize the construction contract.
- Once all punch list items have been completed, we can work with our ferry service provider to begin relocating the ferry operations from the Buckingham Landing location.

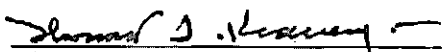
3. The County also has considered existing alternative sites for temporary ferry relocation, and those considerations have generated concerns that can be summarized as follows:

- Staff has evaluated numerous short-term relocation options. Each option identified has had its own specific drawbacks or shortcomings that have proved to be sub-standard to the current operations at Buckingham Landing.
- Two specific locations identified and evaluated include C.C. Haig and Jenkins Island.
- Drawbacks to C.C. Haig include:
 - Existing fishing pier would need some minor enhancements for the ferry docking operations.
 - Fishing pier is next to the existing boat landing. This boat landing is the busiest landing in the entire county.
 - The County has an existing lease with the US Fish and Wildlife (USFW) for boat landing and fishing pier operations. The lease would need to be negotiated and amended with USFW for additional ferry operations. As part of the lease, there is limited space of which the County is allowed to occupy. On the weekends during highest boating season, the available open area is fully used leaving no room for parking for ferry users.
 - The existing access into and out of the boat landing is already a major safety concern. Adding additional traffic would only worsen the situation.
 - A covered shelter area and bathroom facilities would need to be constructed for passengers waiting on the ferry to arrive. A building design and building permit would be required.
- Drawbacks to Jenkins Island include:
 - The current dock is owned by a private entity and a lease would need to be negotiated.
 - Improvements to the dock would be required to facilitate ferry operations
 - A covered shelter area and bathroom facilities would need to be constructed for passengers waiting on the ferry to arrive. A building design and building permit would be required.
 - Currently, there are existing known parking issues at this location between the existing business, a restaurant, a marina, and the adjacent RV condominium development. Offsite parking would be required.
 - The County owns Jenkins Island Rd, but all property outside of the right-of-way is owned by the Town of Hilton Head. There is not ample room in the right-of-way for on-street parking. Permissions, or possible acquisitions, from the Town would be required to facilitate on-street parking. On-street parking would also have to be approved by County/Town zoning. Permits from the Town, SCDHEC, OCRM, and possibly from USCOE would be required to construct the parking.
 - Potential of off-street parking under nearby transmission lines was also considered. This property is owned by the Town and within Town limits. Permissions, or possible acquisitions, from the Town would be required as well as permissions from Santee Cooper to park within their power line easement. Permits from the Town, SCDHEC, OCRM and possibly USCOE would be required.

FURTHER AFFIANT SAYETH NOT.


Jared Fralix, P.E.

SWORN to before me this
10th day of October 2022


Notary Public for South Carolina
My Commission Expires: 10.13.2025

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JAMES WARE, ALISA WARE, HENRY SPAHR, ELAINE SPAHR, JULIE SANDERS, WILLIAM CRAIG DENNY, JEFF TOOMER, ALLYSON TOOMER, LOUISE E. DAVIS, DONNA NUTTY, THOMAS J. MACDONALD, MICHAEL G. MACDONALD, SUSANNE B. MACDONALD, ARLENE COLEMAN, WILLIAM H. MCGEE, PATTI M. MACDONALD, SCOTT M. MACDONALD, ROSE F. MCGEE, JASON DUBOSE, AMANDA DUBOSE, RONALD L. BROOME, LAWRENCE E. JONES, D. DIANE BURR, MARK H. THOMAS, KELLY C. THOMAS, WILLIAM MATTHEW YOLLO, NANCY H. YOLLO, JOSEPH DEANGELIS, BETH DEANGELIS, SHELLY HORN, THEODORE BRAMMER, ALLISON BRAMMER, WAYMON W. DURDEN, CONSTANCE C. DURDEN, DAVID C. POWELL,

Plaintiffs,

v.

BEAUFORT COUNTY, HPCCA FERRY COMPANY, INC. and THE DAUFUSKIE ISLAND FERRY SERVICE, LLC

Defendants.

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT**

Civil Action Number: 2021-CP-07-01078

AFFIDAVIT OF HENRY CRISS

PERSONALLY APPEARED BEFORE ME, Henry Criss, who being duly sworn, deposes and says that:

1 of 3



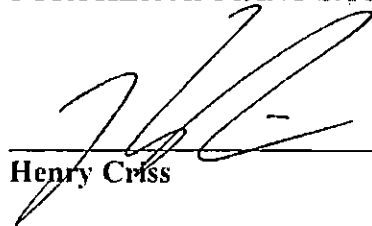
1. My name is Henry Criss, and I am a resident of Beaufort County, over the age of eighteen years old, of sound mind. I am competent to testify to the matters set out hereinbelow.
2. I am employed by the HPCCA FERRY COMPANY, INC. and THE DAUFUSKIE ISLAND FERRY SERVICE, LLC (collectively "Defendants") as the Director of Marine Operations and Special Projects, and I am responsible for overseeing the operations of the Daufuskie Island Ferry Service ("DIFS") which provides ferry transportation for Beaufort County residents and others between Buckingham Landing in Beaufort County and Freeport Marina on Daufuskie Island.
3. The Defendants' ferry service is the only public transportation for Beaufort County residents and others to access Daufuskie Island, and the Defendants and Beaufort County have a contract to provide such public transportation to and from Daufuskie Island to the mainland of South Carolina.
4. In the course of routine business, the Defendants maintain records pertaining to the operation of the Defendants, including but not limited to the number of individual ferry trips provided.
5. In the year preceding September 2022, the Defendants provided approximately 19,100 trips for Beaufort County residents, mostly consisting of Daufuskie Island residents, via the Daufuskie Island ferry service operated by the Defendants.

2 of 3

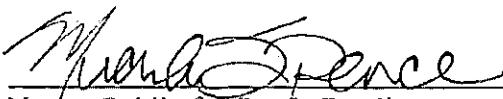


6. During twelve months ending October 31, 2022, an average of approximately 1.596 ferry trips a month were used by Beaufort County residents, mostly being Daufuskie Island residents or employees accessing jobs on Daufuskie Island.

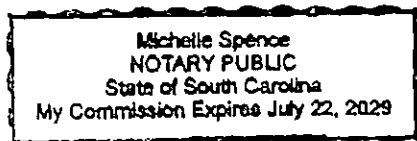
FURTHER AFFIANT SAYETH NAUGHT.


Henry Criss

SWORN to before me this 12th day of October, 2022


Notary Public for South Carolina

My Commission Expires: _____



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
)

James Ware, Alisa Ware, Henry Spahr, Elaine) Civil Action Number: 2021-CP-07-01078
Spahr, Julie Sanders, William Craig Denny,)
Jeff Toomer, Allyson Toomer, Louise E.)
Davis, Donna Nutty, Thomas J. MacDonald,)
Michael G. MacDonald, Susanne B.)
MacDonald, Arlene Coleman, William H.)
McGee, Patti M. MacDonald, Scott M.)
MacDonald, Rose F. McGee, Jason DuBose,)
Amanda DuBose, Ronald L. Broome,)
Lawrence E. Jones, D. Diane Burr, Mark H.)
Thomas, Kelly C. Thomas, William Matthew)
Yollo, Nancy H. Yollo, Joseph DeAngelis,)
Beth DeAngelis, Shelly Horn, Theodore)
Brammer, Allison Brammer, Waymon W.)
Durden, Constance C. Durden, David C.)
Powell,)

Plaintiffs,)

v.)

Beaufort County, HPCCA Ferry Company,)
Inc., and The Daufuskie Island Ferry Service,)
LLC,)

Defendants.)

**DEFENDANT BEAUFORT COUNTY'S
AFFIDAVIT OF HENRY AMUNDSON
IN OPPOSITION TO PLAINTIFFS'
MOTION AND RENEWED MOTION
FOR PRELIMINARY INJUNCTION**

The Defendant Beaufort County files, in opposition to Plaintiffs' Motion and Renewed Motion for Preliminary Injunction, the attached Affidavit of Henry Amundson.

s/Danny C. Crowe

Danny C. Crowe, SC Bar #1480
CROWE LAFAYE GARFIELD & BAGLEY, LLC
2019 Park Street
Columbia, South Carolina 29201
803-724-5728
danny@crowelafave.com

ATTORNEYS FOR DEFENDANT
BEAUFORT COUNTY

November 14, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

James Ware, Alisa Ware, Henry Spahr, Elaine) Civil Action Number: 2021-CP-07-01078
Spahr, Julie Sanders, William Craig Denny, Jeff)
Toomer, Allyson Toomer, Louise E. Davis,)
Donna Nutty, Thomas J. MacDonald, Michael)
G. MacDonald, Susanne B. MacDonald, Arlene)
Coleman, William H. McGee, Patti M.)
MacDonald, Scott M. MacDonald, Rose F.)
McGee, Jason DuBose, Amanda DuBose,)
Ronald L. Broome, Lawrence E. Jones, D.)
Diane Burr, Mark H. Thomas, Kelly C. Thomas,)
William Matthew Yollo, Nancy H. Yollo,)
Joseph DeAngelis, Beth DeAngelis, Shelly)
Horn, Theodore Brammer, Allison Brammer,)
Waymon W. Durden, Constance C. Durden,)
David C. Powell,)
) **AFFIDAVIT OF**
HENRY AMUNDSON

Plaintiffs,

v.

Beaufort County, HPCCA Ferry Company, Inc.,
and The Daufuskie Island Ferry Service, LLC,

Defendants.

PERSONALLY APPEARED BEFORE ME, Henry Amundson, who being duly sworn,
states:

1. I am now Special Projects Director for Beaufort County and one of my current projects is to assist in the relocation of the Daufuskie Island Ferry service from its current location at Buckingham Landing. In connection with that County project, I am familiar with the actions undertaken, and needed to be undertaken, by the County and other entities and persons in order to relocate the ferry landing from Buckingham Landing.

2. Since the Affidavit of Jared Fralix, P.E, the County, in an effort to streamline this relocation, has implemented alternative methods (that do not involve specific project RFQs) to arrange for land site surveying services and for design services through use of a surveying firm and design engineers (for land site design and for marine design) who are pre-approved for County work. At this point, the marine design engineer is working on the marine dock portion of the project.

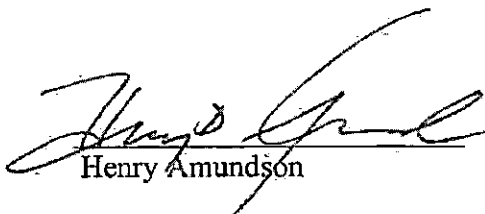
3. However, the ability of the design engineers to finalize plans for the Broad Creek site will be delayed if the County cannot obtain possession due to a legal challenge to condemnation filed by the owner of the site. The County's pending condemnation action for the Broad Creek site is Beaufort County v. Broad Creek Development, L.L.C. (docket number 2022-CP-07-01762). The pending challenge to the County condemnation action is Broad Creek Development, L.L.C. v. Beaufort County (docket number 2022-CP-07-01978). I understand the County has requested priority status for disposition of the challenge action so that it can take possession of the property but that the request is now pending before the Court.

4. Additionally, it appears that further streamlining of the process for the project may be available if cost estimates for site design and marine design are within the Administrator's approval limits so that expenditures can be authorized without County Council involvement.

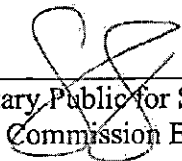
5. In connection with the temporary sites suggested by others and discussed in the Affidavit of Jared Fralix, both the C.C. Haig and Jenkins Island sites have major drawbacks and, if required to be used, would cause the County to incur considerable expense to provide substandard temporary relief that would greatly inconvenience the users. In addition to the matters discussed in the Affidavit of Jared Fralix, the improvements needed for use of the existing fishing pier at the C.C. Haig site and the current dock at the Jenkins Island site would require OCRM and USCOE

permitting in order to handle the ferry docking operations. Also, the property at the Jenkins Island site has restrictions that prohibit overnight parking, and the construction of a new bridge for US 278 also could impact both sites.

FURTHER AFFIANT SAYETH NOT.


Henry Amundson

SWORN to before me this
14th day of November 2022


Notary Public for South Carolina
My Commission Expires: 3/19/31

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01078

JAMES WARE, ALISA WARE,)
HENRY SPAHR, ELAINE)
SPAHR, JULIE SANDERS,)
WILLIAM CRAIG DENNY, JEFF)
TOOMER, ALLYSON TOOMER,)
LOUIS E. DAVIS, DONNA)
NUTTY, THOMAS J.)
MacDONALD, MICHAEL G.)
MacDONALD, SUSANNE B.)
MacDONALD, ARLENE)
COLEMAN, WILLIAM H.)
McGEE, PATTI M. MacDONALD,)
SCOTT M. MacDONALD, ROSE)
F. McGEE, JASON DuBOSE,)
AMANDA DuBOSE, RONALD L.)
BROOME, LAWRENCE E.)
JONES, D. DIANE BURR, MARK)
H. THOMAS, KELLY C.)
THOMAS, WILLIAM)
MATTHEW YOLLO, NANCY H.)
YOLLO, JOSEPH DeANGELIS,)
BETH DeANGELIS, SHELLY)
HORN, THEODORE BRAMMER,)
ALLISON BRAMMER,)
WAYMON W. DURDEN,)
CONSTANCE C. DURDEN,)
DAVID C. POWELL,)

AFFIDAVIT OF NEIL TURNER

Plaintiffs,

vs.

BEAUFORT COUNTY, HPCCA)
FERRY COMPANY, INC., and THE)
DAUFUSKIE ISLAND FERRY)
SERVICE, LLC,)

Defendants.

BEFORE THE UNDERSIGNED officer duly authorized to take and administer oaths, came Neil Turner, who, being duly sworn, deposed, and stated as follows:

1. My name is Neil Turner. I am above the age of majority, and I give this Affidavit based upon my personal knowledge and in support of the Plaintiff's Renewed Motion for Partial Summary Judgment and a Temporary Injunction.
2. I am the President of Turner's Marina LLC, which owns and operates the Hilton Head Harbor Marina, located off Jenkins Island Road, on the northern end of Hilton Head. Over the course of the last two years, I have made good-faith efforts to work with Beaufort County so the county can use the Hilton Head Harbor Marina as a temporary or permanent embarkation/debarkation point for the Daufuskie Island Ferry. I am personally familiar with the ferry operations since I live in Buckingham Landing, and I am knowledgeable as to the requirements of the County for an embarkation/debarkation point.
3. I have reviewed the Affidavit of Henry Amundson filed by the County in this case on November 14, 2022 and the Affidavit of Jared Fralix, P.E., filed by the County in this case on October 11, 2022. Both affidavits list reasons why the County does apparently believe it cannot use the Hilton Head Harbor Marina as the temporary and/or permanent embarkation/debarkation point for the Daufuskie Island Ferry. However, as is set forth below, I and Turner's Marina LLC are ready, willing, eager, and able to address these issues quickly so that the County could move its operations from Buckingham Landing to the Hilton Head Harbor Marina immediately.

4. The ownership of Jenkins Island Road is the key to solving the issue of a new embarkation/debarkation site. Jenkins Island Road is a short, two-lane paved roadway that was originally owned by the State of South Carolina, until January 2021. Beaufort County in the past has publicly declared that it did not want to obtain ownership of the roadway from the State, but changed its mind, after I submitted a request that the road be abandoned to Turner's Marina from the State, and acquired same last year as at no cost from the State. The roadway serves only two properties: the Hilton Head Harbor Marina and the RV Resort and Yacht Club. It serves no general public use.
5. If the County will convey Jenkins Island Road to Turner's Marina LLC, Turner's Marina LLC will within 90 days, undertake the following improvements at its sole cost and will agree to maintain the roadway in the future at its sole cost.
6. Regarding Mr. Fralex's Affidavit and the "Drawbacks to Jenkins Island":
 - a. Turner's Marina is prepared to lease the County the use of an appropriate portion of its deep-water dock for a minimum amount or free for the first year and then at a minimum fee.
 - b. Turner's Marina is prepared to make any "improvements" that are reasonable and necessary to execute the safe and efficient operation of the ferry contract consistent with how the County has operated Buckingham Landing for years.
 - c. I am prepared to immediately undertake the construction of a shelter when all permits are issued by the County, that would provide safety for any waiting guests of the Ferry. I have bathrooms that I can make available.
 - d. As noted above, the County has recently taken ownership of Jenkins Island Road at no cost, even though it had earlier professed that it had no interest in it. There is plenty of parking space available on both sides of Jenkins Island Road. Turner's Marina is ready, willing and able to undertake the construction of parking on both sides of the roadway at its sole cost upon conveyance of Jenkins Island Road to Turner's Marina. Engineered drawings have already been provided to the County

of the parking plan that would be more than sufficient to accommodate the needs of the County's ferry contract.

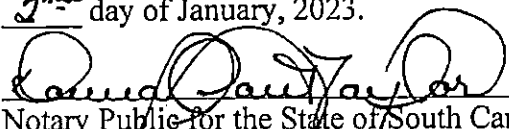
- e. I personally have years of experience in the marina business and am more than willing to donate my time and professional ability to transform Jenkins Island Road for parking and present all other necessary improvements for the ferry service within 90 days of conveyance of the roadway to Turner's Marina LLC.
7. Regarding Mr. Amundson's Affidavit, as noted above, there is no reason the County needs to start improvements to the old county dock located at the end of Jenkins Island Road. I have personally cared for and maintained this dock for over a decade when it was in the States control. Turner's Marina is ready, willing and able to provide immediate access to its deep-water dock at little or no cost to the County. There would be no "considerable expense." Nor would the facilities be "substandard." And there would be no great "inconvenience" to the users.

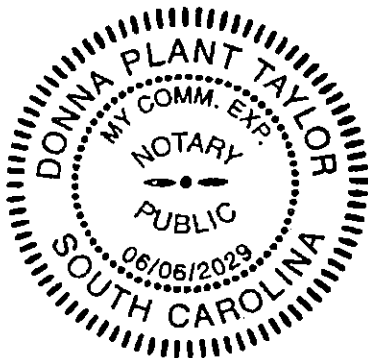
FURTHER AFFIANT SAYETH NOT.


NEIL TURNER

Sworn to before me this

2nd day of January, 2023.


Notary Public for the State of South Carolina
My commission expires:
06/06/2029



State of South Carolina)
) Court of General Sessions
County of Beaufort) 2021-CP-07-01078

James Ware, et al.)
)
 vs.) Transcript of Record
)
Beaufort County, et al.)

January 5, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable Courtney Clyburn Pope, Judge.

A P P E A R A N C E S (All present by video or telephone):

Thomas Taylor
Attorney for the Plaintiff

Danny C. Crowe
Attorney for the Defendant

Robert Deeb
Attorney for the Defendant

TreLinda Wilson
Proofreader

1 THE COURT: All right. Good afternoon.

2 MR. TAYLOR: Good afternoon, Judge.

3 THE COURT: Madam Clerk, will you call the next case
4 please?

5 THE DEPUTY CLERK: Next case is James Ware v. Beaufort
6 County, 2021-CP-07-01078.

7 THE COURT: Thank you.

8 And is Mr. Taylor and Mr. Crowe here?

9 MR. TAYLOR: Ready to go, Your Honor.

10 THE COURT: Very good.

11 All right, Mr. Taylor-- excuse me -- your motion, sir.

12 MR. TAYLOR: Your Honor, thank you. Your Honor, this is
13 a motion for a temporary injunction, and in order to basically
14 familiarize the Court with it, it's necessary for me to give a
15 little bit of historical background if you don't mind. Your
16 Honor, I am cognizant of how long we've already gone and that
17 there are other lawyers waiting, but I want to make sure the
18 Court does understand a little bit about the background here.

19 Your Honor, I represent -- and the plaintiffs are 36
20 residents of a small historic community down in southern
21 Beaufort County in the town of Bluffton called Buckingham
22 Landing. Judge, this is a little neighborhood that reminds me
23 an awful lot, if you ever went in the '60s or '70s to Myrtle
24 Beach and went down to Murrells Inlet to eat, like I did when
25 my daddy took me, of the little neighborhoods that used to be

1 developed along the waterways in South Carolina before all the
2 big developers discovered it. It's small, working-class
3 families. Most of them have young children that play out in
4 the streets. And it's a very protected neighborhood, insofar
5 as there are no through streets going through it or anything
6 like that. And a lot of young people and a lot of older
7 people are living there now. And it's just a beautiful little
8 historic neighborhood.

9 Also of importance in this case, Judge, is Daufuskie
10 Island. And I don't want to presume what you know about it,
11 Your Honor, so I'm going to give you just a little bit of
12 background on that. Daufuskie Island is an island off the
13 coast of Hilton Head and Beaufort. It is not accessible by
14 bridge. The only way to get back and forth to it is by boat.
15 It was, as the Court probably knows, the heart of the oyster
16 canning industry in the late 1800s, early 1900s. But then the
17 Savannah fiber plants killed all of the oysters by the
18 pollution in the water. And Daufuskie Island almost went
19 barren in the '40s and '50s.

20 There are a handful -- there were a handful in the '60s
21 of native islanders who still resided in Daufuskie. And then,
22 in the late '70s, developers also discovered it and began to
23 start putting in big developments over there. There have been
24 a series of bankruptcies and other things associated with
25 several of the developments. But a lot of people have now

1 bought private land there and do have the need to get back and
2 forth. And when I say a lot, Judge, that's probably in the
3 low hundreds as far as numbers go.

4 And Judge, I'm a little bit familiar with the issues of
5 the Daufuskie Island because I served on the county council
6 here for many years in the '90s, and therefore, I have a
7 little bit of background knowledge, which I don't think Danny,
8 my opposition, would contest about how we got to where we are.

9 Basically, the county council, Judge, in the 1970s
10 elected to start providing ferry service over to Daufuskie
11 Island for the residents because it was about the only
12 government services any of them got for paying their taxes.
13 The county up through the 1990s would routinely issue requests
14 for proposal for vendors to do this, and various vendors have
15 done it over the years. And the county's request for
16 proposals were always cited along the need for 35 to 40
17 parking spaces for the ferry on this side, or on the mainland
18 side, meaning that the county recognized that they were trying
19 to provide the residents of Daufuskie with transportation, not
20 all the tourists of Daufuskie.

21 And as history continued, Your Honor, to go forward with
22 development, the only real, long-time gated community
23 development on Daufuskie, which is known as Haig Point,
24 actually and not surprisingly, started its own private ferry
25 service. Of course, Haig Point does not allow others to ride

1 it. As my good friend Tommy Kimberlin (phonetic) down here
2 used to call the hoi -- they don't want the hoi polloi on
3 their private ferry boat. So the county has continued to
4 provide ferry service back and forth from Hilton Head for many
5 years to Daufuskie for the Daufuskie Island.

6 In the '90s and in the early 2000s, the people who had
7 the contract for the ferry service began to realize they could
8 provide ferry service for tourists also and make some
9 additional money. And so that started.

10 And so we developed through the 2000s into the 2000-
11 teens, and what we basically found ourselves, Judge, in 2016,
12 was that the county had contracted with a private vendor to
13 use the marina on Hilton Head, known as Palmetto Bay Marina,
14 for the embarkation and debarkation point of the ferry.
15 Meaning that that is where people would come and get on the
16 ferry, and they would ride over to Daufuskie and get off. And
17 then, they can park their cars here on Hilton Head at Palmetto
18 Bay. And then, they could go over there for the day, or they
19 could leave a car over here if they were residents of
20 Daufuskie.

21 In October of 2016, Judge, Hurricane Matthew came roaring
22 through Beaufort County. And if you saw it any time after it,
23 it was just a horrible mess for about six months. Hurricane
24 Matthew completely wiped out Palmetto Bay Marina, and the
25 county had absolutely no place at that moment to dock its

1 ferry boat. The county, as we kind of started coming back
2 online in October and November of 2016, began to look around.
3 And trying to serve the residents of Daufuskie, they went to
4 the Buckingham Landing neighborhood, which I talked about
5 earlier, which, Judge, is located just as you come onto Hilton
6 Head. If you've ever crossed the bridge coming onto Hilton
7 Head, if you look to your right, there's a big old restaurant
8 right there, which is at the heart of this issue. And then,
9 there's a neighborhood right behind it. That's Buckingham
10 Landing.

11 Well, the county went to Buckingham Landing in 2016 and
12 said, we need to make a temporary embarkation point for the
13 ferry here. And at that point in time, Judge, a vacant
14 restaurant was sitting there -- a vacant seafood restaurant,
15 which had been permitted back in the late 1900s, and which,
16 Judge, there is some specific information in the brief, but I
17 won't go through it about, but that we know without doubt
18 closed for good in 2013. And that date's important because
19 there is a walkaway provision when you lose any nonconforming
20 status in Beaufort County. And it can be debated by the
21 county that that was either 120 days or one year between it.
22 But nobody really seriously argues that that nonconforming
23 property, which came into play before zoning in Beaufort
24 County, definitely lost its nonconforming status by virtue of
25 being closed down since October of 2013.

1 So the restaurant sat vacant and closed for four years.
2 And then, the county came to Buckingham Landing and said,
3 we're going to run the ferry service from here to Daufuskie
4 because it's an emergency. And residents of Buckingham
5 Landing, like almost everybody in Beaufort County at that
6 point in time, were trying to help each other, and they said,
7 fine, we understand.

8 Now, Your Honor, this was in direct contravention to the
9 Buckingham Landing Community Preservation District overlay,
10 which applies to this province. Nobody disputes that. The
11 Buckingham Landing Community Preservation District overlay
12 specifically prohibits commercial operations within that area,
13 and it's basically all of the neighborhood except for what
14 were determined in 2006 to be five nonconforming properties,
15 the seafood restaurant being one of them.

16 So the county came in. They first leased the premises
17 from the bank, which had by that time taken over the property.
18 And the county continued to operate -- or started to operate
19 the ferry service for the Daufuskie residents on January 1st
20 of 2017.

21 In 2018, the county went to the bank that was foreclosing
22 and was about to sell it and said, we want to buy it. And the
23 county bought it. And again, Your Honor, as you can see from
24 the affidavits that have been earlier submitted by Amanda
25 Dubois (phonetic), James Ware, and Alicia Ware (phonetic),

1 repeated assurances were made to the Wares, who were property
2 owners adjacent to the seafood restaurant, and to other
3 neighborhood members, that the county was going to move this
4 embarkation point soon.

5 So 2018 came and went. 2019 came and went. And 2020
6 came and went. And during all of these years, the vendor for
7 the county, now being an offshoot of Haig Point, operating a
8 private ferry service, built up ferry service to a phenomenal
9 extent by running tourists and people who are not residents of
10 Daufuskie back and forth.

11 And Your Honor, I'd call the Court's attention, very
12 interesting to me, there was an affidavit filed by a man named
13 Henry Crose (sic) by the county -- by Henry Cress (phonetic)
14 that affirms that they basically run 19,000 trips a year out
15 of this embarkation point. They are moving that many people
16 back and forth from this. And the community of Buckingham
17 Landing continued to try to work with the county but continued
18 to complain about this because it was causing serious and
19 substantial dangers within the neighborhood, Your Honor. And
20 as the service to the tourists grew, it only continued to get
21 worse.

22 And you can see from the affidavits of the Wares and Ms.
23 Dubois that there are repeated incidents of cars who are
24 coming fast down through the middle of the neighborhood. They
25 have created, without question, I don't think, a nuisance

1 within the neighborhood. And it is as dangerous as it can be
2 for these neighborhood residents because the tourists come
3 down, they pull off onto private property, they walk around,
4 they look in -- they go onto people's lots. All of this is
5 affirmed by affidavits that are in the -- that are in this
6 file, Judge.

7 And it became a real issue around 2000 (sic). And then
8 in 2021, the neighbors finally went to the county and said,
9 look, if you don't do something, we are going to have to file
10 suit. And when the county did not do so, the neighborhood
11 hired me, and 36 plaintiffs and I filed suit in June of 2021,
12 alleging that the county was violating its own standards by
13 grossly, grossly violating the Buckingham Landing Community
14 Preservation District and operating a commercial ferry service
15 out of the county.

16 We sued both the county and the vendors, Your Honor, the
17 Haig Point private concessionaires. And the county first
18 moved to dismiss it saying that we could not file suit without
19 going through the Zoning Board of Appeals and making a request
20 through them for some determination. And Judge Goodstein
21 declined that argument and said, no, there's a provision in
22 the ordinance that allows a direct private cause of action.

23 So we went forward in late 2021, and the county finally
24 responded with some discovery. And as we got into early 2022,
25 there were meetings held, there were further assurances made

1 to the public. But in March of 2022, Judge, we filed a motion
2 for partial summary judgment and a temporary injunction.

3 Judge Price heard the initial motion on May 18th. And on
4 May the 24th, he issued an order temporarily enjoining them
5 from continuing operations only through Labor Day, and said
6 that by Labor Day, the county needed to find another place in
7 order to take its ferry boats away from.

8 Mr. Crowe, on behalf of the county, who works in -- I'm
9 sure you know Danny, Judge. He represents a lot of counties
10 all over, and he is an excellent lawyer. Danny moved the
11 court to alter or amend that judgment. And when it was heard
12 in August, by that time, Judge, the county had found a new
13 piece of land and had started the process of passing
14 ordinances to allow for the purchase of a piece of land on
15 Hilton Head, where they said they were going to ultimately
16 build a new embarkation point.

17 Judge Price then did alter his order in August in order
18 to say that the county had shown a sufficient compliance with
19 his May 24th order. And then, he said that he would not then
20 prohibit the operations after Labor Day. But that if we did
21 not come to an agreement at mediation, which was scheduled to
22 occur in September, that the plaintiffs could file a new
23 motion for temporary injunction should they be so inclined
24 after the scheduled mediation of the case on September (audio
25 interference).

1 And Judge, I'm fully aware of the fact that we are not to
2 discuss mediation. The only thing I will say about it is that
3 there was no -- there was no common ground met.

4 We then refiled the current motion that is in front of
5 you, Judge, for a temporary injunction. And it has been met
6 with affidavits from the county that basically say they are
7 working on this, they are going to move, but give us about
8 three years, because that seems to be the process timeline at
9 this point.

10 Judge, in response to that, and I would ask the Court's
11 direct attention when you are reviewing this a little bit
12 later, we have filed an affidavit from a businessman on the
13 northern end of Hilton Head by the name of Neil Turner. Mr.
14 Turner, through Turner's Marina LLC, owns and operates the
15 Hilton Head harbor, which has a large dock that is currently
16 in deep water. And it is available for the county, and in
17 fact, Mr. Turner has tried to work with the county
18 extensively, as his affidavit says, in order to allow the
19 county to use this as its temporary embarkation and
20 debarkation point.

21 Mr. Turner specifically addresses in affidavits that the
22 county has filed, which not surprisingly said why they
23 couldn't use those other places on a temporary basis. And Mr.
24 Turner, I think, unequivocally calls out the fact that he was
25 prepared to offer dock space at a minimal or free use for the

1 first year and then at a very reasonable use, and that he can
2 make parking available along the roadway there for the
3 Daufuskie Island residents that need it.

4 There's really, when you look at the affidavit, Judge, no
5 reason in the world that the county should not be working with
6 Mr. Turner and using this on a temporary basis for the
7 embarkation point. And for that reason, Judge, we believe
8 that it's clear -- and Your Honor, I certainly want to note
9 for the record that we believe that we have shown through the
10 affidavits that there is after six years, and Judge, really,
11 this is the epitome of no good deed goes unpunished by the
12 neighborhood who allowed this usage outside the county's
13 current zoning, that they are suffering irreparable harm.
14 They will continue to suffer it if an injunction is not
15 granted.

16 We have a high likelihood of success on the merits of the
17 litigation, given the law and the acknowledgement that there
18 was an abandonment of any nonconforming (indiscernible). And
19 that there is no adequate remedy at law.

20 Judge, based upon what we have submitted, we would ask
21 that the Court issue an injunction. And we would certainly --
22 would basically request that the Court issue an injunction
23 that provides that as of April the 15th, 2023, county may not
24 use Buckingham Landing anymore for their ferry service.

25 That would, Your Honor, comport with Mr. Turner's

1 affidavit. He says he can provide them with everything they
2 need within 90 days. It would give the county 90 days --
3 well, a little bit more than 90 days to go in and get ready to
4 transition to this if they are of a mindset in good faith to
5 actually try to do it.

6 And Your Honor, alternatively, because, again, I know
7 what a good lawyer Danny is and that he's going to argue lots
8 of different things, alternatively, we would suggest that the
9 Court -- excuse me, Judge -- we would suggest the Court look
10 back at Judge Price's earlier order, which, Your Honor, is
11 obvious was the only thing that ever got the county to move
12 off of the dime of saying, nope. We've got the legal right to
13 do it, and we're going to, to the point where they said, okay,
14 we are buying new property, and we're going to move it.

15 Judge, if you don't enter this, then all we're going to
16 do is be back to another two or three years of the county
17 saying, we're working on it. And we would suggest that the
18 type of order that Judge Price entered before that would
19 provide that the county can continue to operate until April
20 the 15th, and that if they have not moved the ferry service by
21 then, then the plaintiffs can come back and seek further
22 relief from the court, will put the requisite type of pressure
23 on the county again to move forward and do something.

24 Your Honor, we ask that the Court consider this and issue
25 the temporary injunction.

1 THE COURT: All right. Thank you, Mr. Taylor.

2 Mr. Crowe?

3 MR. CROWE: Your Honor, Danny Crowe representing Beaufort
4 County. Beaufort County requests that the Court deny
5 plaintiffs' motion for preliminary injunction. This case
6 involves a number of disputed factual issues and a number of
7 contested legal issues. I do not agree with Mr. Taylor's
8 recitation of his understanding of the facts, most of which is
9 not supported in the record. But I would like, in opposition
10 to the motion for preliminary injunction, to emphasize to the
11 Court six key points, and then to briefly discuss the
12 significance of the filed affidavits and other documents that
13 are already in the record. These are summarized or listed in
14 a two-page document that I provided to the Court's law clerk
15 yesterday --

16 THE COURT: Yes.

17 MR. CROWE: -- with copies to other counsel, of course.

18 I'd also like to mention that representing the ferry
19 companies is Attorney Robert Deeb, who's also present, and may
20 wish to be heard on this -- swiftly after I finish my comment.
21 But he's free to jump in if he wishes.

22 Your Honor, the six key points are these. Number 1, a
23 vital public interest is at stake with this motion. The
24 public ferry service at Buckingham Landing is the only means
25 of public transportation connecting Daufuskie Island and the

1 mainland. As the Court knows, there is no roadway connection.
2 The plaintiffs' requested relief here would sever the public
3 ferry connection. What is at issue then is millions of
4 dollars and whether the county is moving fast enough to suit
5 Mr. Taylor and his clients in developing the alternative site.

6 My second key point is that contrary to the allegation in
7 the motion, the county is -- contrary to the allegation in the
8 motion is that the county is not undertaking good faith
9 efforts to replace the ferry service location. Our position
10 is that the county is actively seeking to secure its selected
11 alternative site.

12 In August, the county by ordinance allocated 3.4 million
13 dollars for acquisition of five acres on Helmsman Way in
14 Hilton Head for the replacement site for what is now the
15 Buckingham Landing ferry. That ordinance is attached to Mr.
16 Taylor's motion for preliminary injunction.

17 After negotiations with the owner of the property failed,
18 the county initiated a condemnation action in circuit court in
19 August and tendered the 3.4 million dollars. That action is
20 pending. In the listing of documents, and also in the
21 affidavits, we provide the docket number for that action, as
22 well as the owner's subsequent challenge action to the
23 condemnation, that also is pending and has stayed the
24 condemnation actions. So it's clear that the county is
25 prepared to and is trying to acquire the property for an

1 alternative site, through no fault of its own that is the
2 challenge action by the owner, that condemnation action has
3 been delayed and is pending in the circuit court.

4 The third key point here for the Court's consideration is
5 that the County Zoning Board of Appeals had hearings in July
6 and August, and with a written order in September, upheld the
7 zoning administrator's determination. In response to the
8 request of four of the plaintiffs, the zoning administrator
9 determined that the county's use of the property at Buckingham
10 Landing for ferry service is a, quote, lawful use under the
11 county zoning ordinance based on a state commercial dock
12 permit and a 2009 county zoning permit for a commercial dock.

13 There are two affidavits in the record that I'll discuss
14 shortly from the zoning administrator that provide the
15 background for his determination, as well as the history of
16 the consideration -- the appeal of that determination by the
17 plaintiffs to the Zoning Board of Appeals and now to the
18 circuit court, where it is pending. The plaintiffs, by their
19 motion, are seeking to collaterally attack the zoning
20 administrator decision and the zoning board decision that are
21 now under appeal by the plaintiffs in a separate action. So
22 when they say it is unlawful or illegal zoning, that is
23 contrary to the determination of the zoning board and will be
24 a matter determined by the circuit court in another lawsuit.

25 Now, our fourth key point is that the plaintiffs'

1 affidavits are insufficient to establish entitlement to the
2 drastic remedy of injunctive relief under the requirements of
3 state law for preliminary injunctions well known to the Court
4 of irreparable harm if the injunction is not granted,
5 likelihood of succeeding on the merits of the litigation, and
6 an inadequate remedy at law. The plaintiffs' affidavits are
7 insufficient to establish a legal right to prevail. They fail
8 to show immediate and irreparable harm to the plaintiffs. And
9 they fail to show a likelihood of success on the merits.

10 Additionally, they also do not show an inadequate remedy
11 at law, particularly since the complaint seeks money damages
12 by four of its causes of action for nuisance, negligence,
13 inverse condemnation, and promissory estoppel. The
14 allegations in the plaintiffs' affidavits that relate to
15 damages, as the Court will see, are predominantly general and
16 vague in nature. They fail to establish an irreparable injury
17 or a legal nuisance. For example, the plaintiffs' affidavits
18 provide no allegations as to frequency, duration, or
19 repetition of occurrences of the instances of behavior of
20 which they complain. Those incidents are anecdotal. The
21 affidavits provide no objective measures of inappropriate
22 parking or of increased traffic volume. And they do not
23 differentiate among vehicular and pedestrian traffic related
24 to the public ferry, the public boat landing that sits between
25 the county-owned dock and the subdivision. The neighborhood

1 travelers who may just be lost or general sight-seeing. So
2 the affidavits themselves are inconclusive in providing a
3 basis for the Court to determine as a matter of fact that a
4 nuisance (sic) situation was created by reason of the location
5 and operation of the public ferry.

6 Now, Mr. Taylor mentioned the affidavit of Neil Turner
7 that was filed this week. However, that affidavit adds no
8 weight to the plaintiffs' argument that a temporary solution
9 is available. As the Court will note, when it has the
10 opportunity to review Mr. Turner's affidavit, what he says is
11 that if the county will provide him with a road, Jenkins
12 Island Road, that the county owns, that serves his property,
13 he then will cooperate with the county in providing these
14 facilities that Mr. Taylor mentioned.

15 That road, according to the Turner affidavit, serves not
16 only Mr. Turner's property, which is also called Hilton Head
17 Harbor Marina, but also the RV resort and yacht club that's
18 located in that area. What Mr. Turner's affidavit does not
19 reveal is that he is currently involved in litigation against
20 that RV park in which he is represented by Attorney Taylor.

21 Additionally, the affidavits provided by the county and
22 of record show numerous reasons why Mr. Turner's site is not a
23 good site for even a temporary relocation of the ferry.

24 Our fifth key point is that the doctrine of judicial
25 estoppel, which is argued in the plaintiffs' memo, is not

1 applicable here. The legal requirements for application of
2 that doctrine are summarized in the South Carolina
3 Jurisprudence chapter on estoppel and waiver, section 27.1.
4 And particularly those requirements that are not shown to have
5 been satisfied here by the plaintiffs are that the party
6 taking the position must have been successful in maintaining
7 that position previously and have received some benefit from
8 that, and also that any inconsistency in position must be part
9 of an intentional effort to mislead the court. Certainly,
10 there's no allegation here that the county is intending to
11 mislead the Court by what the plaintiffs describes as
12 inconsistent positions.

13 The reality is that the county's previous appeal of the
14 grant of a variance for the prior owner of the property where
15 the dock is located was dismissed, withdrawn by the county, so
16 that the previous owner's entitlement to the variance and the
17 dock permit became the law of the case. So in reality, there
18 is no inconsistent position, but the county is merely
19 following the law that was previously established.

20 Our sixth key point is that this case is under a
21 scheduling order with discovery to continue through the end of
22 January, and dispositive motions scheduled to be filed by the
23 end of February. So trial is eminent. And the county urges
24 that any injunctive relief should more appropriately be
25 determined by the trial judge, who would have the benefit of

1 viewing the witnesses and determining their credibility, as in
2 the case of Mr. Turner, and also would have the benefit of a
3 full presentation of the facts.

4 As I mentioned, I would like to take just a minute to
5 briefly direct the Court to the affidavits that are of record
6 and discuss a little bit about the significance of those in
7 the Court's determination of this matter. The affidavit of
8 David Willhelm, deputy director of public works for the
9 county, was filed in May of 2022. I would urge the Court to
10 start with a review of that affidavit. It includes, as its
11 only exhibit, a bird's eye aerial photo of this location that
12 shows the Buckingham Landing neighborhood, its proximity to
13 Highway 278 and the flyover bridge to Hilton Head, as well as
14 the public road that serves that subdivision and the county-
15 owned public boat landing, which has been present for many,
16 many years and was originally the only means of access for
17 boats to Hilton Head. And that photo also shows clearly the
18 former restaurant that's been discussed, as well as the dock
19 that's involved here.

20 Mr. Willhelm also discusses the circumstance at 40 Island
21 Road extension, which is the road that leads both to the boat
22 landing and the ferry, is a public road. And under the
23 jurisdiction of the county sheriff, it is a state-owned, DOT-
24 owned road, with no parking signs along the road, as well as
25 cones to discourage parking blocking the gate. It has posted

1 speed limit signs. So Mr. Willhelm points out the difficulty
2 in any efforts to keep the public from using a public road to
3 access publicly owned facilities.

4 The affidavit of Robert Merchant -- there are two; the
5 first one filed in May of 2022 -- describes Mr. Merchant's
6 determination as the zoning director, that there was a -- that
7 the county's use of the property was a lawful use. It
8 includes a copy of the state permit for a commercial dock, as
9 well as the county zoning permit, issued in May of 2009, for a
10 commercial dock, which as mentioned by Mr. Taylor was
11 subsequently acquired by the county. That determination, as I
12 mentioned, was appealed by some of the plaintiffs to the
13 county zoning board of appeals.

14 In his second affidavit, Mr. Merchant provides a copy of
15 the zoning board's decision that upheld his interpretation of
16 the zoning ordinance and the lawful use by the county. That
17 is the zoning board decision that's under appeal now by those
18 plaintiffs in circuit court. And the docket number for that
19 case is also provided in the affidavits and in the listing of
20 exhibits provided yesterday.

21 The county also provided, in opposition to this motion, a
22 copy of the transcript of the hearing at which Judge Price
23 agreed to modify and amend his previous order of prohibiting
24 the county from operating a ferry service after Labor Day of
25 2022. It includes Judge Price's explanation as to why he

1 ordered that injunction, which was essentially to encourage
2 the county to come up with an alternative site. In that
3 transcript, at page 5, Judge Price says, "They've done it",
4 and that is determine an alternative site. "And that is
5 obviously something that the plaintiffs had been seeking this
6 entire time, so they're doing what I'm asking them to do. So
7 on Labor Day", says Judge Price, "I'm not shutting it down. I
8 would never do that because people got to get to and from the
9 island. They've got to make money. The county's got to run a
10 marina. I mean, that's just the way life goes. But my plan
11 worked. So I'm not going to stop on Labor Day".

12 We offer this for a particular consideration by the
13 Court, as filed of record, to illustrate that the judge's
14 motive in temporarily requiring the county to come up with an
15 alternative site was not to function as a permanent resolution
16 and should not function as an exemplar for this court in
17 determining that preliminary injunction is appropriate.

18 The county also filed an affidavit by Jarod Fralace, a
19 professional engineer, who's an assistant county administrator
20 for infrastructure for Beaufort County. I would commend that
21 affidavit was filed in October of 2022. That affidavit in
22 detail sets out the steps that were necessary for the county
23 to develop plans for and bid out a new embarkation/debarkation
24 site, once it acquires the property for that alternative site.
25 As the Court is aware, any such contract's performance by the

1 county requires considerations of public bidding and is
2 necessarily time-consuming. But we would encourage the Court
3 to review that affidavit.

4 Mr. Fralace also discusses why other possible temporary
5 sites would not work. One is what's called the CCA (phonetic)
6 site. And importantly, the other is what's called the Jenkins
7 Island site, which is the area that Mr. Turner would propose
8 as a temporary solution. And Mr. Fralace explains why that
9 site would not be workable as a temporary solution.

10 In November of 2022, the county filed an affidavit by
11 Henry Avenson, who is the special projects director for the
12 county and is in charge of the relocation of the ferry
13 service. Mr. Avenson discusses the efforts that had been made
14 by the county to shortcut some of the requirements that were
15 discussed in the Fralace affidavit and we submit is
16 significant in showing that the county is trying to move
17 forward with all possible speed for the alternative location.
18 He also cites the current condemnation action as well as the
19 challenge action that I previously mentioned.

20 Your Honor, the county urges that this is a serious
21 matter, that the circumstance that public monies are
22 required -- significant public monies are required, and that
23 action by the public requires compliance with certain
24 procurement regulations and laws, as well as permitting laws,
25 show that substitution of a new site, even a temporary site,

1 for Buckingham Landing cannot occur quickly. Nevertheless,
2 the county contends that it is moving forward as expeditiously
3 as it can with an alternative site. For that reason, we would
4 urge that the Court consider, in addition to the public
5 interest, the circumstance of the county's attempts at good
6 faith compliance with finding an alternative site.

7 And for those reasons, and all the reasons mentioned, we
8 would urge that the Court deny the preliminary injunctive
9 relief sought by the plaintiffs. Thank you, Your Honor.

10 THE COURT: All right. Thank you, Mr. Crowe.

11 Mr. Taylor, is there any brief response, sir?

12 MR. TAYLOR: Your Honor, I believe Mr. Deeb has raised
13 his hand and would like to be heard before I.

14 THE COURT: All right --

15 MR. DEEB: I raised it online virtually, Your Honor,
16 (audio interference) here.

17 THE COURT: Oh, I did not see. Oh. I see it now.

18 MR. DEEB: Okay. I'm getting used to this as well, Your
19 Honor.

20 Your Honor, my name is Bob Deeb. I represent the
21 codefendants, Daufuskie Island Ferry Service and the HPCCA
22 ferry company. And I don't have much to add. I won't waste
23 your time with repeating the arguments that cocounsel made.
24 But I did want to comment on what I see as exaggerations of
25 the plaintiffs' arguments. This Buckingham Landing little

1 neighborhood was, in fact, a little neighborhood at one point
2 in time. But all of southern Beaufort County has become
3 little neighborhoods turned into very wealthy, opulent
4 neighborhoods, and especially this one which is right on the
5 main river. And it's a beautiful community, and the homes
6 there are in excess of a million dollars. These aren't blue-
7 collar workers who are suffering any great damage by a couple
8 of cars and trolleys going down to access the Daufuskie Island
9 Ferry Service.

10 If you were to take a bird's eye view of where this dock
11 is on the county's property, it's right next to Highway 278, a
12 six-lane road leading all the way from Bluffton to Hilton Head
13 Island. And you can see the six-lane road right from the
14 ferry. It departs from there four times a day. Not in the
15 middle of the night. Four times a day. It arrives back four
16 times a day. There's not constant traffic. And it's a
17 straight shot from Highway 278, the six-lane road, right down
18 to where Beaufort County's property is.

19 So it doesn't meander through Buckingham Landing
20 plantation or Buckingham Landing's communities. There's a lot
21 of little smaller roads that do. This is a straight shot.
22 And the passengers who come down there drive their cars. They
23 either park at the forty parking spaces that are there on the
24 county's property, or my clients provided a trolley service
25 where they can go ahead and park in a little strip mall, if

1 you will, on 278. And the trolley will take them down there,
2 and they'll go off.

3 As far as being a nuisance, it's a public road. All
4 people are allowed to travel down this Buckingham Landing
5 Road. And not only that, there's -- other than the self-
6 serving affidavits filed by the plaintiffs, there's been no
7 reports from Beaufort County Sheriff's Department, no reports
8 that I can find or my client can find, of any imminent rise to
9 a real nuisance or criminal activity, or anything other than
10 people going up and down a public road. I mean, they alleged
11 dog defecating on their property, things like that. But if
12 you look at the map, very few of these properties of these
13 plaintiffs even front the Buckingham Landing Road. They're on
14 the smaller side streets. So I just don't see it as rising to
15 a level of nuisance which we shut off our ferry service, which
16 provides transportation for Beaufort County property owners to
17 access jobs in Daufuskie Islands or their own houses on
18 Daufuskie Islands.

19 Plaintiffs make a lot about tourists traveling on this
20 ferry service. There's about four other private ferry
21 services that cater to tourists only. Two of them are located
22 on Hilton Head Island. One is farther up the main river.
23 This caters to both tourists, yes, but also to Beaufort County
24 residents. They have a discount they get on the ferry
25 service. So that's how they access jobs on Daufuskie Island.

1 And there's plenty of Beaufort County residents who go to work
2 on Daufuskie Island. And this would be cut off from their
3 employment. So we talk about irreparable harm, we're going to
4 see Beaufort County residents losing their jobs or not having
5 access to their jobs so a few people in Buckingham Landing
6 don't have to watch them walk down a public road or drive a
7 car down a public road to a public ferry service. That's the
8 real tragedy I see here in this motion.

9 As far as judicial estoppel goes, Mr. Crowe made a great
10 argument there. I just want to point out that in the same
11 case that Mr. Taylor cites in his memorandum, if you go on to
12 keep reading the same language of the court in that, it talks
13 about parties to the same litigation, related litigation,
14 taking inconsistence -- recitation of facts or positions.

15 The 2009 circumstances that Mr. Taylor refers to was not
16 litigation. It was an OCRM amendment to a dock permit. And
17 Beaufort County wrote -- or at least the Beaufort County
18 Council chairman wrote a couple of letters to OCRM there. So
19 first, it wasn't consistent. Second, it was not a judicial
20 hearing. It wasn't litigation where you have a plaintiff or
21 parties in litigation. Taking one position and then taking
22 another on appeal, yes, that would compromise the Court's
23 determination. But there was no court determination hearing.
24 There was no litigation hearing. This was an OCRM amendment
25 to a dock permit, in which some letters were written. So that

1 argument, I don't see how it even applies here.

2 That's all I've got, Your Honor. I'll wrap it up. Thank
3 you --

4 MR. TAYLOR: I heard you say a moment ago briefly. May
5 I? Briefly.

6 THE COURT: Yes, Mr. Taylor.

7 MR. TAYLOR: Judge, thank you.

8 Judge, with all due respect to my good friend Bob Deeb,
9 if you listened carefully to what he had to say, you'll hear
10 what my clients have been hearing for the last six years.
11 Judge, the fact of the matter is this is not a serious issue
12 to them. They don't really care. When you throw out things
13 like, these are all multi-million-dollar homes, Judge, there's
14 only four houses in there that would appraise over a million
15 dollars. Most of them are trailers that have been in there
16 and converted into residences. This is a working-class
17 neighborhood. But it really shouldn't matter what kind of
18 neighborhood it is. It's a violation of Beaufort County's own
19 ordinance.

20 And Judge, just to touch on a couple of other things that
21 they said. One of the issues, Judge -- and I pray that you
22 will take a look at the briefs. The reason why the words
23 judicial estoppel never came out of my mouth, yet you've heard
24 the argument from both of the county's -- or both the county
25 lawyer and Haig Point's lawyer, is because it is so

1 embarrassing to see that the county fought tooth and nail in
2 2006, 2007, 2008, and 2009, arguing everywhere you could that
3 you couldn't operate a commercial facility in this
4 neighborhood, and then when they bought and they need it, now
5 say, nah, we changed our mind, Tom. It really is okay to do
6 that. But that's why they're talking so much about the
7 judicial estoppel.

8 Judge, also, and Mr. Crowe talked a little bit about
9 focusing only on whether it's an ordinance. Of course, we are
10 pleading that they have also established a nuisance within the
11 county. I would note that the residents have supplied copies
12 of hundreds of emails to the county concerning complaints that
13 had been made.

14 Your Honor, we'll look at the issue of the roadway that
15 Neil Turner says he would like to have conveyed; that is not a
16 public roadway that has been in existence for many, many
17 years. This is a state two-lane road that leads to only two
18 things, the RV resort and Neil Turner's property at the Hilton
19 Head Marina. The state owned it until last year when Neil
20 Turner asked the state to deed it over to him, and he would
21 privately maintain it. And the states went to the county and
22 said, before we give it to Turner, do you want it? And the
23 county said, sure, we'll take it. So the county owns that
24 roadway, but it does not serve a major purpose. And yes, Mr.
25 Turner has said, he'd need to own it so that he could put the

1 parking on either side of it. But Judge, all of this, I
2 believe is explained basically in the briefs.

3 And Judge, I would wrap up with saying, once again, this
4 is one of those very, very important practical cases where you
5 can get in the weeds on the issue of the Board of Zoning and
6 Appeals, which Your Honor, please look at that because there
7 was no decision by the Board of Zoning and Appeals affirming
8 Mr. Merchant. There was a tie vote, three to three. There
9 was no affirmation. There was no declining. It was a tie
10 vote of three to three. And we contend that was no vote
11 whatsoever and carries no weight. And that'll be up for Judge
12 Dukes to look at.

13 So Judge, what we really got, bottom line is, the 500-
14 pound-gorilla in the room is the county. They feel like and
15 have done whatever they want to do, and it has taken them six
16 years to get to the point where they have finally said, okay.
17 We understand we shouldn't be in Buckingham Landing. We're
18 going to move. And if the Court does not do the same thing
19 that Judge Price did and give them a stick across the butt in
20 order to encourage them, we'll just be sitting here another
21 three years while they say, don't question us about our good
22 faith, Tom. We'll get to it when we can. And Judge, again,
23 we ask the Court to impose an order that requires them to move
24 forward with all possible haste.

25 THE COURT: Thank you, Mr. Taylor.

1 Mr. Crowe, you had another motion -- or you have a
2 motion, and that is the motion for a stay for further
3 proceedings. Do you wish for me to hear oral argument, or do
4 you -- on this motion, or do you wish for me to just make a
5 decision based on your briefs on both of these motions?

6 MR. CROWE: Your Honor, if I could, my argument on this
7 will be very brief. I think the grounds for that are stated
8 in the motion itself. It's a speaking motion. It is a
9 conditional motion should the Court decide that it wishes to
10 issue a preliminary injunction, the county would ask -- the
11 county, which will appeal, would ask that the Court also stay
12 the entire case, because as the Court knows, while the
13 appellate court can hear an interlocutory order such as a
14 preliminary injunction, that proceeding, that appeal, does not
15 stay the entire case unless the trial judge issues a stay.

16 So we would ask as a conditional matter, if a preliminary
17 injunction is granted, as sought by the plaintiffs, that this
18 Court also order a stay of the proceedings in the entire case
19 so that the county can pursue an appeal.

20 THE COURT: All right. Mr. Deeb, anything to add to
21 that?

22 MR. DEEB: No. No. Not to Mr. Crowe's motion there. I
23 did want to add one thing regarding the Mr. Turner's
24 affidavit, which Mr. Turner owns the -- I think it's called
25 the RV Marina here on Hilton Head. As a matter of fact, what

1 the affidavit did not mention was Mr. Turner lives across the
2 street from Mr. Ware, who is the main plaintiff -- or at least
3 the first plaintiff in the caption of this case. And the RV
4 resort is quite a populated resort of recreational vehicles.
5 And at the culmination of that long road, through the woods
6 over there, you have this marina that is owned by Mr. Turner
7 apparently that also has jet ski rentals, that also has a
8 restaurant, that also serves that whole RV resort, which is at
9 least a hundred or so lots of RVS there. There's heavy
10 traffic over there. And it also has a gas and diesel fuel
11 pumps out. So I don't even know why the plaintiffs would
12 present that as some kind of argument that we have an
13 alternative site. It's up to Beaufort County and my clients
14 to decide what's the best site rather than a private marina
15 that invites jet skiers and has traffic problems and is in a
16 bad location and in fact is owned by the person who's across
17 the street from Mr. Ware. So I just would like to bring that
18 to the Court's attention.

19 THE COURT: All right. Thank you, Mr. Deeb.

20 Mr. Taylor?

21 MR. TAYLOR: Yes?

22 THE COURT: Do you wish to respond to the motion to stay,
23 sir?

24 MR. TAYLOR: Yes. I'll do it in two minutes if that's
25 okay or less, Judge. Thank you.

1 THE COURT: Okay.

2 MR. TAYLOR: Judge, the only thing to Mr. Deeb, because
3 it sounded so bad, please look at Mr. Turner's affidavit, in
4 which he says, "I live in Buckingham Landing". He certainly
5 disclosed that he lives in there. There's nothing wrong with
6 all of that.

7 Secondly, Judge, as to the motions, Your Honor, we find
8 this to be a completely baseless motion. We don't do
9 conditional motions in South Carolina based upon what may
10 happen. I believe, and the plaintiffs believe, this is simply
11 a motion letting the Court know how serious this is to the
12 county and that they will appeal, Your Honor, immediately to
13 the court of appeals for whatever purpose that may bring at
14 this moment.

15 We certainly acknowledge that should the Court enter a
16 temporary injunction, Mr. Crowe and the Haig Point people
17 would have every right to appeal to the court of appeals
18 because the statutes allow it. But at this moment, it's a
19 conditional motion. And we don't do those in South Carolina.
20 So we urge that the Court deny it as baseless. Thank you.

21 THE COURT: All right. Thank you, Mr. Taylor.

22 Mr. Deeb, Mr. Taylor, and Mr. Crowe, thank you all for
23 your arguments. I will get you a decision as soon as
24 possible.

25 MR. TAYLOR: Thank you.

1 MR. DEEB: Thank you, Your Honor.

2 THE COURT: All right.

3 (End of Transcript of Record)

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CERTIFICATE OF PROOFREADER

State of South Carolina)
)
County of Beaufort)

I, TRELINDA WILSON, a court-approved proofreader, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 5th day of January, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 9, 2023

Trelinda Wilson

Trelinda Wilson
Proofreader

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

August 17, 2023

/s/Danny C. Crowe

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