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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable R. Kirk Griffin, Circuit Court Judge

Case No. 2019-CP-22-00212
Appellate Case No. 2023-00646

The Gulfstream Café, Inc.Appellant,

v.

Georgetown County; Georgetown County Council;
and Steve Goggans, individually and in his official
capacity as Georgetown County Councilmember..... Respondents.

**RECORD ON APPEAL
(VOLUME III)**

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2019-CP-22-00212

THE GULFSTREAM CAFÉ, INC.,)

Plaintiff,)

vs.)

August 29-September 1, 2022

GEORGETOWN COUNTY, GEORGETOWN)

COUNTY COUNCIL, AND STEVE)

GOGGANS, INDIVIDUALLY AND IN)

HIS OFFICIAL CAPACITY AS A)

GEORGETOWN COUNTY)

COUNCILMEMBER,)

Defendants.)

Transcript of Record

B E F O R E:

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Georgetown County Courthouse
Georgetown, South Carolina

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1 **AUGUST 29, 2022 - DAY ONE**

2 **ON THE RECORD - 11:38 A.M.**

3 VOIR DIRE:

4 THE COURT: All right. Ladies and gentlemen, we are
5 about to begin the jury selection process for civil action
6 number 2019-CP-22-00212, the Gulfstream Café, Incorporated
7 versus Georgetown County, Georgetown County Council, Steve
8 Goggans, individually, and in his official capacity as
9 Georgetown County Councilmember.

10 Ladies and gentlemen, in this case, the plaintiff, the
11 Gulfstream Café has asserted claims against Defendants for a
12 violation of the county's ordinances and Gulfstream Café's
13 constitutional rights under the South Carolina Constitution
14 and the United States Constitution. Plaintiff's claims are
15 based on Georgetown County's approval of a zoning amendment
16 submitted by non-party Palmetto Industrial Development, LLC.

17 Now, ladies and gentlemen, that's not comments about what
18 is at issue in this case, are just to give you a way or by way
19 of illustration as to the issues which would be before the
20 Court this week. The Court certainly doesn't make any comment
21 about any of the allegations. At this point in time, they are
22 merely allegations in the plaintiff's complaint, but they are
23 necessary to kind of give you a flavor of what this case is
24 going to be about.

25 And ladies and gentlemen in that regard, I've got a bunch

1 of questions to ask of you to determine your eligibility to
2 serve as jurors on this particular case. So, listen closely.
3 We're gonna follow the same procedure here that we did
4 downstairs. If any of these questions apply to you, please
5 stand. I'll ask for your number and then we'll go into a
6 little bit more detail. I just want to caution you, please
7 don't offer any information that I haven't asked for. I will
8 direct you as the questions that I feel need to be answered.
9 So, if anything applies, just stand and give us your name and
10 number.

11 First, ladies and gentlemen, I'm gonna introduce -- have
12 the lawyers introduce themselves to you and any members who
13 will be assisting with the trial of this case.

14 So, Mr. Bloom, for the plaintiff, if you'd go first.

15 MR. BLOOM: Thank you, Your Honor. Do you mind if we
16 flip our chairs to the other side?

17 THE COURT: I have no problem. Just orient yourself
18 however you're most comfortable which will make you the most
19 effective.

20 MR. BLOOM: Thank you, Your Honor.

21 Ladies and gentlemen, my name is Simon Bloom. I
22 represent the plaintiff in this case, Gulfstream Café. I'm
23 joined by my partner Andrea Pearson, and our colleague Sean
24 Foerster, and Vince Van Brunt is the company rep for
25 Gulfstream Café.

1 Thank you, Your Honor.

2 THE COURT: Thank you very much.

3 MS. GOLDING: Thank you, Your Honor.

4 Good morning. I'm Henrietta Golding. I practice law
5 with Burr & Foreman, and my office is in Myrtle Beach, South
6 Carolina. My partner is Taylor Voegel; she'll be with me
7 trying the case. And with us today we'll have Holly
8 Richardson, she is with the -- she's the head of Horry --
9 excuse me -- Georgetown County Building and Zoning Department;
10 and also, not a party to the case, but Jay Watson, he is
11 general counsel for the County of Georgetown. Thank you.

12 THE COURT: All right. Ladies and gentlemen of the jury
13 panel, is there any member of the jury panel related by blood
14 or marriage, or have a close personal or social relationship
15 with any of these lawyers or any of the individuals that they
16 introduced to you here this morning? If so, please stand.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: All right. Is any member of the jury panel
19 related by blood or marriage to any of this list of following
20 individuals: Greg Greenbaum, Jerry Greenbaum, Jef Kirk, Vince
21 Van Brunt, Linda Barnaba, George "Jake" Knight, Jim Moring,
22 Jody Bishop, Robert Castles, Theresa Floyd, Lilly Johnson,
23 Louis Morant, George Redman, Ludi Sobchuk, Beth Novak, J. Mark
24 Lawhon, Christopher Lawhon, Boyd Johnson, Holly Richardson,
25 Tiffany Coleman, Judy Blankenship, Steve Goggans, Dan Stacy,

1 Travis Avant, and Nancy Gardner. Related by blood or marriage
2 to any of those individuals, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Does any member of the jury panel or any
5 members of your immediate family maintain any social,
6 personal, church, or employment relationship with Greg
7 Greenbaum, Jerry Greenbaum, Jef Kirk, Vince Van Brunt, Linda
8 Barnaba, George "Jake" Knight, Jim Moring, Jody Bishop, Robert
9 Castles, Theresa Floyd, Lilly Johnson, Louis Morant, Ludig
10 Sobchuk, Beth Novak, George Redman, J. Mark Lawhon,
11 Christopher Lawhon, Boyd Johnson, Holly Richardson, Tiffany
12 Coleman, Judy Blankenship, Steve Goggans, Dan Stacy, Travis
13 Avant, and Nancy Gardner? If that applies to any member of
14 the jury panel, please stand.

15 All right, ma'am, in the black top. Yes, ma'am?

16 JUROR 1: Number 1.

17 THE COURT: Number 1, Ms. Abernathy?

18 JUROR 1: Yes.

19 THE COURT: Which individual that I named, and what is
20 the connection?

21 JUROR 1: Dan Stacy; he's my attorney.

22 THE COURT: All right. Is he currently your attorney?

23 JUROR 1: No, has been in the past; he's been employed in
24 the past.

25 THE COURT: All right. Would the fact that Dan Stacy has

1 been your attorney in the past, would that impact your ability
2 to be fair and impartial to both the plaintiff and Defendants
3 in this particular case?

4 JUROR 1: It wouldn't impact at all.

5 THE COURT: Wouldn't impact it at all? You could set
6 aside that prior relationship and base your verdict solely
7 upon the evidence that you heard from inside this courtroom?

8 JUROR 1: Yes, sir.

9 THE COURT: All right. Thank you, ma'am. You can have a
10 seat.

11 All right, ma'am, in the white.

12 JUROR 85: Number 85.

13 THE COURT: Okay.

14 JUROR 85: Prior relationship with Dan Stacy and Steve
15 Goggans.

16 THE COURT: All right. And without going into the
17 details, what's the nature of that relationship?

18 JUROR 85: Dan Stacy has previously been my attorney; and
19 Steve Goggans, we have worked with on church things, and also
20 with him and his wife through the school district.

21 THE COURT: All right. And your number was 85?

22 JUROR 85: Yes, sir.

23 THE COURT: Is it Ms. Cox?

24 JUROR 85: Yes.

25 THE COURT: All right. Ms. Cox, would the fact that you

1 have those relationships with those two individuals, Mr. Stacy
2 and Mr. Goggans, would those relationships impact your ability
3 to be both fair and impartial to the plaintiff and Defendants
4 in this matter?

5 JUROR 85: Yes.

6 THE COURT: All right. We will set Juror Number 85 aside
7 in this matter for cause.

8 Yes, ma'am?

9 JUROR 127: 127, Holly Richardson.

10 THE COURT: Hold on -- stay with us, ma'am. Okay.

11 Yes, ma'am? 127?

12 JUROR 127: 127.

13 THE COURT: And you are Ms. Lewis?

14 JUROR 127: Correct.

15 THE COURT: And you said you had a relationship with
16 Holly Richardson?

17 JUROR 127: Son-in-law, former recent employee of Holly
18 on the Zoning and Planning Commission.

19 THE COURT: Your son-in-law was a former employee?

20 JUROR 127: Yes, with Zoning and Planning.

21 THE COURT: All right. Would the fact that your son-in-
22 law was formerly employed with Zoning and Planning, would that
23 impact your ability to be fair and impartial to both the
24 plaintiff and Defendants in the trial of this particular case?

25 JUROR 127: No, sir.

1 THE COURT: And you can set aside any relationship or any
2 issues that relationship would cause and base your verdict
3 solely upon the evidence which was presented to you from
4 inside this courtroom?

5 JUROR 127: Yes, sir.

6 THE COURT: Thank you, ma'am.

7 Yes, ma'am?

8 JUROR 54: Yes, Juror 54.

9 THE COURT: All right. Ms. Di Maria?

10 JUROR 54: Yes.

11 THE COURT: Who was your relationship with?

12 JUROR 54: Nancy Gardner. I believe she's -- if it's the
13 same Nancy Gardner, she's with Surfside Realty, and she's on
14 the board of like my condo association, so, I mean, I'm not
15 like -- she's just on the board, so I'm not -- that would not
16 influence me at all.

17 THE COURT: So, she would be, I guess, classified as
18 maybe an acquaintance of yours?

19 JUROR 54: Right, exactly.

20 THE COURT: And I think you already said it but let's
21 make it clear for the record. The fact that you are
22 acquainted with Ms. Gardner, would that impact your ability to
23 be both fair and impartial to the plaintiff and Defendants in
24 this matter?

25 JUROR 54: No.

1 THE COURT: All right. You could set aside any -- that
2 relationship and base your verdict solely upon the evidence
3 you heard from inside this courtroom?

4 JUROR 54: Absolutely.

5 THE COURT: All right. Thank you, ma'am. You can have a
6 seat.

7 Yes, ma'am?

8 JUROR 52: 52, Laura Dechamplain. My husband and Dan
9 Stacy have a hunt club together.

10 THE COURT: They have a what together?

11 JUROR 52: A hunt club; they hunt.

12 THE COURT: They're both members of the same hunt club?

13 JUROR 52: Yes.

14 THE COURT: All right. Would the fact that your husband
15 is members of this hunt club with Mr. Stacy and has a social
16 relationship with him, would that impact your ability to be
17 fair and impartial to both the plaintiff and Defendants in
18 this case?

19 JUROR 52: No, sir.

20 THE COURT: You could set aside that relationship and
21 base your verdict solely upon the evidence presented to you
22 from inside this courtroom?

23 JUROR 52: Yes, sir.

24 THE COURT: All right. Thank you. You can have a seat.

25 Is any member of the jury panel currently or has been

1 employed in the past by any of the following entities: The
2 Gulfstream Café, Incorporated; the Gulfstream Café Restaurant;
3 CentraArchy Restaurant Group; California Dreaming; California
4 Roadhouse; Chophouse 47; Chophouse New Orleans; Joey D's; New
5 York Prime; Greens Beverages; and Greens Warehouse Discount
6 Beverages? If you are currently employed or have been
7 employed in the past by any of these entities, please stand.
8 (REPORTER'S NOTE: No response.)

9 THE COURT: Has any member of the jury panel or any
10 member of your immediate family ever eaten at or shopped at
11 any of the following restaurants/stores: The Gulfstream Café;
12 California Dreaming; California Roadhouse; Chophouse 47;
13 Chophouse New Orleans; Joey D's; New York Prime; Greens
14 Beverages; Green Warehouse Discount Beverages?

15 THE COURT: All right. We're just gonna go from my left.
16 Ma'am, closest to the wall; what's your name and number?

17 JUROR 81: 81, Kathryn Gray.

18 THE COURT: All right, ma'am. And which of those
19 businesses have you been a patron of?

20 JUROR 81: California Dreaming.

21 THE COURT: All right. Would the fact that you have been
22 a patron of California Dreaming impact your ability to be fair
23 and impartial to the plaintiff and Defendants in this case?

24 JUROR 81: No, sir.

25 THE COURT: All right. Thank you, ma'am.

1 JUROR 176: 176, Britney Pope.

2 THE COURT: All right. Which entity is ---

3 JUROR 176: California Dreaming.

4 THE COURT: All right. Would that -- the fact that you
5 have patronized the business, would that impact your ability
6 to be both fair and impartial to ---

7 JUROR 176: No, sir.

8 THE COURT: All right. Thank you very much.

9 JUROR 205: Number 205, Sharon Sisti.

10 THE COURT: All right, ma'am. Which business ---

11 JUROR 205: Gulfstream and California Dreaming.

12 THE COURT: All right. Would the fact that you have
13 patronized those businesses impact your ability to be fair and
14 impartial to both the plaintiff and Defendants in this case?

15 JUROR 205: No.

16 THE COURT: Thank you, ma'am.

17 All right, ma'am, in the white.

18 JUROR 195: 195, Catherine Sabia.

19 THE COURT: All right. Which business entity?

20 JUROR 195: Gulfstream, New York Prime, California
21 Dreaming.

22 THE COURT: All right. And would the fact that you have
23 patronized those ---

24 JUROR 195: No, sir, does not bother me.

25 THE COURT: You can be fair and impartial?

1 JUROR 195: Yes, sir.

2 THE COURT: And I guess y'all have figured it out now,
3 that question is gonna follow everyone. So ---

4 All right. Yes, ma'am, in the black.

5 JUROR 77: Number 77, Donna Goldberg, Gulfstream.

6 THE COURT: All right. Would that impact your ability to
7 be fair and impartial in this particular case?

8 JUROR 77: No, it would not.

9 THE COURT: All right. Thank you, ma'am. Have a seat.
10 Yes, ma'am?

11 JUROR 170: Juror 170, Mary Nudo. And California
12 Dreaming; and no, I would have no problem.

13 THE COURT: All right. You can be fair and impartial?

14 JUROR 170: Yes, sir.

15 THE COURT: All right.

16 Yes, sir?

17 JUROR 139: 139, Timothy Clark; and New York Prime and
18 California Dreaming, Greens, just about -- several of them.

19 THE COURT: Almost all of them sounds like. Would that
20 fact impact your ability to be fair and impartial to the
21 plaintiff and Defendants in this matter?

22 JUROR 139: Not at all.

23 THE COURT: All right. Thank you,

24 JUROR 74: Number 74, Kathryn Gaouette; Gulfstream Café
25 and California Dreaming.

1 THE COURT: All right. Would -- same question, ma'am,
2 would you be able to be fair and impartial in this particular
3 case?

4 JUROR 74: Yes, sir; I can.

5 THE COURT: All right. Thank you.

6 Yes, sir, against the wall?

7 JUROR 27: Yes, Number 27, Richard Cannon; California
8 Dreaming, I eat there all the time, but -- also, I didn't know
9 that was Holly Richardson. At this point we are at a HOA
10 debate on the County for a development behind the house.

11 THE COURT: Okay. Hold -- let's back up a little bit.

12 JUROR 27: Yeah, just ---

13 THE COURT: Give me your name and number again.

14 JUROR 27: 27, Richard Cannon. I'm on the board of an
15 association. Lee Hewitt has all my information that the HOA
16 is pursuing the County, for corrections of a development where
17 I own a house.

18 THE COURT: All right. Mr. Cannon, two parts, first I
19 think is probably the easier one, would your patronage of
20 these businesses be -- impact your ability to be fair and
21 impartial to the plaintiff and Defendants in this matter?

22 JUROR 27: I'm not sure if I can answer that honestly.

23 THE COURT: Okay. Don't go into any details. Let's talk
24 about the other issue. You say you've got some issue before
25 the zoning board right now?

1 JUROR 27: Yes.

2 THE COURT: Would that impact your ability to be fair and
3 impartial in this particular case, without going into the
4 details of your specific issue?

5 JUROR 27: I believe it would.

6 THE COURT: All right. We're gonna set Mr. Cannon aside
7 for cause with regard to the zoning matter.

8 Have a seat, sir. Thank you.

9 JUROR 27: Thank you.

10 THE COURT: All right, sir, in the green?

11 JUROR 171: 171, William O'Donnell, most of the places
12 listed I've been a patron of; and no, it would not impact my
13 ability to remain neutral in the matter.

14 THE COURT: All right. Thank you, sir.

15 JUROR 246: Juror 246, patron of California Dreaming and
16 Green's, and it would impact my ability to be impartial.

17 THE COURT: You said 246?

18 JUROR 246: Yes, sir.

19 THE COURT: Give me your name again, ma'am?

20 JUROR 246: Desiree Wright.

21 THE COURT: I overlooked it; I'm sorry. All right.
22 We'll set Ms. Wright aside.

23 In the back, again, ma'am?

24 JUROR 52: Number 52, Laura Dechamplain, California
25 Dreaming and New York Prime, and it would not affect my

1 ability.

2 THE COURT: All right. Thank you, ma'am. You can have a
3 seat.

4 All right, ma'am, in the blue-and-white dress?

5 JUROR 110: 110, Graycynne Judy. I've been to California
6 Dreaming, and it would not affect my ability.

7 THE COURT: Okay. Thank you, ma'am.

8 JUROR 97: Juror 97, Kellie Howard, California Dreaming,
9 and it would not affect my...

10 THE COURT: All right.

11 JUROR 127: 127, Carolyn Lewis; Gulfstream Café and
12 California Dreaming; and it would not affect my ability to...

13 THE COURT: All right. Thank you, ma'am.

14 Ma'am, in the green?

15 JUROR 95: Juror 95, Theresa Honeygosky; and it would not
16 impact my ability to ---

17 THE COURT: Okay. What businesses have you been to?

18 JUROR 95: Gulfstream.

19 THE COURT: Okay. Thank you, ma'am. Have a seat.

20 JUROR 43: 43, Sean Corley.

21 THE COURT: Okay. And which businesses have you
22 patronized?

23 JUROR 43: Gulfstream, California Dreaming, Green's.

24 THE COURT: Would that impact your ability to be fair and
25 impartial to the plaintiff and Defendants in this particular

1 trial?

2 JUROR 43: No, sir.

3 THE COURT: All right. Thank you. You can have a seat.
4 Yes, ma'am?

5 JUROR 54: Yes, Juror 54, Virginia Di Maria. I -- New
6 York Prime, my son worked there for two years during his
7 college years; and also, Gulfstream, too, they're part of ---

8 THE COURT: All right. Would the fact that you have a
9 son who worked for one of these entities and that you've
10 patronized some of the others, would that impact your ability
11 to be fair and impartial?

12 JUROR 54: No.

13 THE COURT: It would not?

14 JUROR 54: No.

15 THE COURT: Thank you, ma'am. You can have a seat.
16 Yes, sir?

17 JUROR 61: 61, Norm Elberson, Gulfstream and California
18 Dreaming; and I don't think that'll affect me.

19 THE COURT: All right. You can be fair and impartial to
20 both the plaintiff and the defense?

21 JUROR 61: Yes, sir.

22 THE COURT: All right. Thank you, sir.

23 JUROR 200: Juror 200, Angela Sell; New York Prime,
24 Gulfstream, California Dreaming, Green's.

25 THE COURT: All right. Would the fact that you have

1 patronized those businesses impact your ability to be fair and
2 impartial?

3 JUROR 200: No, sir.

4 THE COURT: Thank you. You can have a seat.

5 Yes, sir, in the back?

6 JUROR 209: 209, Parker Smith; New York Prime, California
7 Dreaming, and Gulfstream; and I do believe it would impact me.

8 THE COURT: All right. Give me your number again, sir.

9 JUROR 209: 209.

10 THE COURT: 209. All right. We'll set Juror Number 209
11 aside.

12 Has any member of the jury panel ever been employed by
13 the Marlin Quay Marina? If so, please stand.

14 THE COURT: Mr. Cannon, we've set you aside, sir; you can
15 have a seat. Thank you very much.

16 JUROR 54: Does your grandchild count? My grandson
17 worked there.

18 THE COURT: He worked there?

19 JUROR 54: Yeah, last summer.

20 THE COURT: Okay.

21 JUROR 54: He's high school, he just took care of -- he
22 worked with the boats.

23 THE COURT: All right. Would the fact that you've had a
24 family member that was employed by Marlin Quay Marina, would
25 that impact your ability to be fair and impartial?

1 JUROR 54: No.

2 THE COURT: All right. Thank you, ma'am.

3 Has any member of the jury panel ever been to the Marlin
4 Quay Marina Store and Restaurant? If so, please stand.

5 Ms. Di Maria, you might just have to keep -- you might
6 just have to stand up the whole time.

7 All right. Ma'am, give me your number again, I'm sorry.

8 JUROR 195: 195.

9 THE COURT: All right. You've been to the Marlin Quay
10 Marina Store and Restaurant?

11 JUROR 195: I feel like I go there a lot.

12 THE COURT: Would that impact your ability to be fair and
13 impartial to the plaintiff and Defendants in this matter?

14 JUROR 195: I don't think so.

15 THE COURT: All right. Thank you.

16 Yes, ma'am, on the front?

17 JUROR 203: 203, Carol Simons. I have been to Marlin
18 Quay Restaurant; and no, it will not impact me.

19 THE COURT: All right. Thank you, ma'am.

20 JUROR 54: Juror 54, Virginia Di Maria. I just went
21 there to eat; it wouldn't impact me.

22 THE COURT: Okay. Would that impact your ability to be
23 fair and impartial to both the plaintiff and Defendant in this
24 case?

25 JUROR 54: Not at all.

1 THE COURT: All right. Thank you, ma'am.

2 Yes, ma'am?

3 JUROR 200: Juror 200, Angela Sell. And I've been to the
4 marina and to the restaurant; it would not impact.

5 THE COURT: All right. Thank you very much.

6 Is any member of the jury panel or anyone in your
7 immediate family employed by the following employers: SGA
8 Architecture; Palmetto Industrial Development, LLC; or
9 Georgetown County? If so, please stand.

10 JUROR 97: You said or Georgetown County?

11 THE COURT: Yes, sir.

12 JUROR 97: 97, Kelly Howard. My mom works for Kensington
13 Elementary in the cafeteria.

14 THE COURT: Okay.

15 JUROR 165: 165, I work for the Department of Social
16 Services.

17 THE COURT: Okay. And what's your name, sir?

18 JUROR 165: Michael Nichols.

19 THE COURT: All right. Juror Number 165, would the fact
20 that you are employed by Georgetown County, would that impact
21 your ability to be fair and impartial?

22 JUROR 165: No, sir.

23 THE COURT: All right. Thank you very much.

24 Is any member of the jury panel ---

25 MS. GOLDING: Judge ---

1 THE COURT: Oh, I'm sorry. Yes, ma'am?

2 JUROR 146: Yes, 146, my name is Melisa McConnell; I am
3 employed with Georgetown County through Georgetown County
4 School District.

5 THE COURT: Okay. Would the fact that you're employed
6 through the school district, would that impact your ability to
7 be fair and impartial in this trial?

8 JUROR 146: No, sir, not at all.

9 THE COURT: Is any member of the jury panel a member of
10 the Georgetown County Zoning Department, Planning Department,
11 or Building Department? If so, please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Is there any family members of any jury panel
14 member employed by the Georgetown County Zoning, Planning, or
15 Building Department?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Any member of the jury panel or any member of
18 their immediate family serve on the Georgetown County Board of
19 Zoning Appeals, Planning Commission, or County Council? If
20 so, please stand.

21 Yes, ma'am?

22 JUROR 81: 81, Kathryn Gray.

23 THE COURT: Okay. What's your situation with regard to
24 that question?

25 JUROR 81: My executive director is the chairperson for

1 the planning committee -- commission right now.

2 THE COURT: All right. Give me a little bit of back --
3 your executive director, tell me what that means.

4 JUROR 81: I work for the Georgetown County Board of
5 Disabilities and Special Needs. And right now, she serves as
6 the president for the Planning Commission for Georgetown
7 County.

8 THE COURT: All right. Would the fact that your -- I'm
9 assuming since she is the executive director, she would
10 technically be your boss?

11 JUROR 81: Yes.

12 THE COURT: All right. Would that impact your ability to
13 be fair and impartial to the plaintiff and Defendant in this
14 particular case?

15 JUROR 81: It will not.

16 THE COURT: You could set aside your relationship and
17 base your verdict solely upon the evidence you hear from
18 inside this courtroom?

19 JUROR 81: I can.

20 THE COURT: Yes, ma'am. Thank you very much.

21 Ladies and gentlemen, now some of these questions may be
22 somewhat repetitive. I've got a list of a bunch of questions
23 and they're sort of asked multiple times in different ways.
24 So, if I get repetitive, I apologize, but we've got to make
25 sure that these questions get asked.

1 Has any member of the jury panel -- and if you've
2 answered this question before, just bear with us and stand up
3 again. Has any member of the jury panel ever dined or had
4 drinks at the Marlin Quay Marina Restaurant and Bar?

5 All right. For the record, I believe that's the same
6 four that answered the question previously.

7 All right. Thank you, ladies; you can have a seat.

8 Has any member of the jury panel or any member of your
9 immediate family ever been employed in the legal profession?
10 If so, please stand.

11 All right. Ma'am, on the front?

12 JUROR 195: One of my cousins is an attorney in Horry
13 County.

14 THE COURT: Okay. And what's your name and number again?

15 JUROR 195: My name is Catherine Sabia and 195.

16 THE COURT: I'm gonna have to -- I have to ask those
17 questions over and over because it has to be recorded.

18 JUROR 195: That's fine.

19 THE COURT: And would the fact that you have a cousin who
20 is an attorney, would that impact your ability to be fair and
21 impartial in this matter?

22 JUROR 195: No.

23 THE COURT: Thank you. Have a seat.

24 Yes, ma'am?

25 JUROR 170: Number 170, Mary Nudo. My cousin is an

1 attorney in Peoria, Illinois, and it wouldn't affect my
2 judgment.

3 THE COURT: All right. Thank you, ma'am.

4 Yes, sir, in the green?

5 JUROR 171: Yes, sir. Woody O'Donnell, 171. My father's
6 brother is a police officer in East Orange, New Jersey; and my
7 brother, until he passed away recently, was an attorney.

8 THE COURT: All right. Would those relationships impact
9 your ability to be fair and impartial to the plaintiff and
10 Defendants in this matter?

11 JUROR 171: No, sir.

12 THE COURT: Thank you, sir.

13 JUROR 246: Juror 246, I don't know if you wanted me to
14 stand again, but my husband is in the legal profession and has
15 multiple relatives that are judges and attorneys throughout
16 the state of South Carolina and North Carolina.

17 THE COURT: Okay. Give us your name and number again.

18 JUROR 246: Desiree Wright, Juror 246.

19 THE COURT: All right. I set you aside, ma'am. Thank
20 you for standing, though.

21 JUROR 246: Thank you.

22 JUROR 52: 52, Laura Dechamplain. My sister-in-law is an
23 attorney in Dallas, Texas, and it would not affect my ability.

24 THE COURT: All right. Thank you, ma'am.

25 Ms. ---

1 JUROR 54: I didn't stand because it was out of state, so
2 I didn't stand, but ---

3 THE COURT: That's okay.

4 JUROR 54: I'm 54, Virginia Di Maria. My father-in-law
5 was an attorney in the state of New Jersey.

6 THE COURT: All right. Would that impact your ability to
7 be fair and impartial in this matter?

8 JUROR 54: Not at all.

9 THE COURT: Thank you, ma'am.

10 And, sir, I believe we set you aside, sir; so, you can
11 have a seat.

12 Is there any member of the jury panel who has worked or
13 had any training in the field of real estate, including land
14 use planning, real estate appraising, or brokerage? If so,
15 please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Is there any member of the jury panel who has
18 had any specific training or experience in the construction
19 field? If so, please stand.

20 JUROR 64: Number 64, James Evans.

21 THE COURT: All right. Mr. Evans, you've been employed
22 in the construction field?

23 JUROR 64: Yes, residential construction supervisor, and
24 occasionally come here to Georgetown courthouse for permits
25 and stuff.

1 THE COURT: All right. Thank you, sir. You can have a
2 seat.

3 JUROR 39: I'm a general contractor.

4 THE COURT: Give me your name and number, again, sir?

5 JUROR 39: Timothy Clark, 39.

6 THE COURT: All right. Thank you very much, sir.

7 JUROR 61: 61, Norm Elbersen. I've worked for developers
8 around town and now out of state, but that's what I do.

9 THE COURT: Okay. All right. Thank you, sir.

10 Is there any member of the jury panel who has ever worked
11 or had any training in the field of restaurants and
12 hospitality? If so, please stand.

13 Yes, ma'am, in the blue-and-white dress?

14 JUROR 110: 110, Graycynne Judy. I've worked at several
15 restaurants in Georgetown.

16 THE COURT: All right. Thank you, ma'am.

17 JUROR 97: 97, Kellie Howard. Before I got my job as a
18 pharmacy technician three years ago, I worked previously three
19 years at restaurants and bars.

20 THE COURT: All right.

21 JUROR 43: 43, Sean Corley. I've worked at several
22 restaurants.

23 THE COURT: All right. Thank you, sir.

24 Yes, ma'am, in the back?

25 JUROR 10: Number 10, Mary Barron. When I was younger, I

1 mean, I worked in all aspects of restaurants.

2 THE COURT: Okay. Thank you, ma'am.

3 UNIDENTIFIED JUROR: I have bartended and waited tables
4 in Murrells Inlet when I was in college.

5 THE COURT: All right. Thank you, ma'am.

6 All right. Ladies and gentlemen, this case involves, as
7 I mentioned earlier, property -- Counsel, is this technically
8 in Garden City or Murrells Inlet, the specific locale? I
9 think it's right on ---

10 MR. BLOOM: Garden City is the mailing address, Your
11 Honor.

12 MS. GOLDING: Okay. Yes, sir. Garden City.

13 THE COURT: Okay. This case involves property that's
14 located in Garden City, South Carolina. Does any member of
15 the jury panel own property in Garden City? If so, please
16 stand.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: The property is part of the -- as you
19 probably have guessed by now is part of a development known as
20 the Marlin Quay Marina. Does any member of the jury panel own
21 property in the Marlin Quay Marina?

22 (REPORTER'S NOTE: No response.)

23 THE COURT: Does any member of the jury panel own a
24 business that operates out of the Marlin Quay Marina?

25 (REPORTER'S NOTE: No response.)

1 THE COURT: And has any member worked at a business
2 located within the Marlin Quay Marina?

3 (REPORTER'S NOTE: No response.)

4 THE COURT: All right. Ladies and gentlemen, has any
5 member of the jury panel or any member of your immediate
6 family ever filed or contemplated filing a lawsuit against a
7 governmental entity? If that applies to anyone, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Has any member of the jury panel or anyone in
10 your immediate family ever been involved in a dispute with
11 Georgetown County or any of its departments? If so, please
12 stand.

13 JUROR 86: 86, I believe

14 THE COURT: Mr. Hartley? Is that your name, sir?

15 JUROR 86: Yes, sir.

16 THE COURT: All right, Mr. Hartley, without going into
17 any of the specific details at least at this point, you have
18 been in a dispute with one of the governmental entities of
19 Georgetown County?

20 JUROR 86: Georgetown County Sheriff's Department.

21 THE COURT: Okay. Is that current or was it in the past?

22 JUROR 86: It was a lawsuit.

23 THE COURT: All right. And this suit against the
24 sheriff's department, would that impact your ability to be
25 fair and impartial to both the plaintiff and Defendant knowing

1 that an entity of Georgetown County is one of the parties?

2 JUROR 86: No.

3 THE COURT: All right. You can set aside your experience
4 and base your verdict solely upon the evidence that you heard
5 from within the courtroom?

6 JUROR 86: Yes, sir.

7 THE COURT: Thank you, sir.

8 Has any member of the jury panel ever been charged with a
9 fine, warning, or other similar notice issued by Georgetown
10 County?

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Has any member of the jury panel attended any
13 Georgetown County Council Meetings? If so, please stand.

14 JUROR 54: Number 54, Virginia Di Maria. With Keep It
15 Green, I don't know if you're familiar with that, the Keep It
16 Green group that's trying to keep things from getting so
17 overdeveloped in our area, and ---

18 THE COURT: All right. Now, when you went to these
19 meetings, without saying what you said, did you address County
20 Council?

21 JUROR 54: I did not.

22 THE COURT: Okay. And you attended in support of the
23 Keep It Green group?

24 JUROR 54: Yes.

25 THE COURT: All right. Thank you, ma'am.

1 Yes, ma'am, on the front row?

2 JUROR 54: 203, Carol Simons. Exactly what she said.

3 THE COURT: Okay. And you were present but did not
4 speak; is that correct?

5 JUROR 54: Correct.

6 THE COURT: And you were there ---

7 JUROR 54: In support of Keep It Green.

8 THE COURT: In support of them. Okay. Thank you, ma'am.
9 Have a seat.

10 JUROR 95: 95, Theresa Honeygosky. Just like they said.
11 I only attended one meeting in support of Keep It Green.

12 MS. GOLDING: What was her number again?

13 JUROR 95: 95.

14 THE COURT: Has any member of the jury panel ever
15 attended local government council meetings for another
16 governmental entity other than Georgetown County?

17 (REPORTER'S NOTE: No response.)

18 THE COURT: Without going into specific details, has any
19 member of the jury panel ever had an issue with a neighbor's
20 use of his or her property that you felt interfered with your
21 ability to enjoy your property? If so, please stand.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: Does any member of the jury panel currently
24 own a business or have you owned a business in the past? If
25 so, please stand.

1 All right, sir. You can have a seat. You've been set
2 aside.

3 JUROR 64: Number 64, home inspection business.

4 THE COURT: A what business, sir?

5 JUROR 64: Home inspection.

6 THE COURT: Home inspection? And you currently own the
7 home inspection business?

8 JUROR 64: Yes, sir.

9 THE COURT: All right. Thank you very much.

10 JUROR 39: Number 39, Timothy Clark.

11 THE COURT: And that ---

12 JUROR 39: Home design and build company.

13 THE COURT: All right. Thank you, sir.

14 JUROR 63: Number 63, James Ethridge, Jr. I got a small
15 trucking company, got one truck right here in Georgetown.

16 THE COURT: All right. Thank you, sir.

17 JUROR 171: 171, William O'Donnell. Retired, but we
18 owned a kitchen products manufacturing business.

19 THE COURT: All right. Thank you, sir.

20 For those of you who just responded to the question about
21 owning a business, I'm gonna need y'all to stand back up.

22 I've got some follow-up questions.

23 Those of you that own a business, do you own the property
24 from which your business operates, meaning the real property?

25 JUROR 64: 64; yes, sir.

1 UNIDENTIFIED JUROR: No.

2 UNIDENTIFIED JUROR: No.

3 UNIDENTIFIED JUROR: Yes.

4 THE COURT: And that was in the past though, sir?

5 UNIDENTIFIED JUROR: Yes, sir.

6 THE COURT: So, you don't ---

7 UNIDENTIFIED JUROR: I still own the property but the
8 business is shut down now.

9 THE COURT: And y'all just remain standing.

10 JUROR 54: Does it have to be in Georgetown County or can
11 it -- we've owned a business in Jersey, so...

12 THE COURT: It can be anywhere. You owned a business in
13 New Jersey?

14 JUROR 54: Yes, title insurance company.

15 THE COURT: All right. And is that -- that business, is
16 it currently in operation?

17 JUROR 54: No.

18 THE COURT: Did you own or lease the building or the
19 property?

20 JUROR 54: Owned the building.

21 THE COURT: You owned it? All right.

22 COURT REPORTER: I'm sorry. Your number again?

23 JUROR 54: 54.

24 THE COURT: All right. Regardless of whether you owned
25 or leased the property from where your business operates, have

1 you been required to purchase or lease parking?

2 JUROR 64: No, sir; Number 64.

3 JUROR 39: 39, no, sir.

4 JUROR 63: No, sir; 63.

5 JUROR 171: 171, no.

6 THE COURT: And Ms. De Maria?

7 JUROR 54: 54; and it had it's parking in another lot.

8 THE COURT: All right.

9 All right. Is there any member of the jury panel who has
10 experience in reading a real estate plat or survey? If so,
11 please stand.

12 Y'all can have seat; I'm sorry.

13 JUROR 64: Number 64; yes, sir.

14 JUROR 39: 39, yes.

15 JUROR 54: Title insurance, yes.

16 THE COURT: All right. 54, right?

17 JUROR 54: I'm sorry.

18 THE COURT: And this likely applies to all three of you.
19 Does any member of the jury panel have experience reading
20 construction plans?

21 UNIDENTIFIED JUROR: Yes.

22 JUROR 64: Yes, 64.

23 JUROR 54: Yes.

24 THE COURT: Okay. So, let's go back with -- 64?

25 JUROR 64: Yes.

1 JUROR 39: 39.

2 JUROR 54: 54.

3 JUROR 61: 61.

4 THE COURT: All right. Thank you, sir.

5 Has any member of the jury panel ever been involved with
6 a business transaction that ended up in a dispute over that
7 transaction? If so, please stand.

8 All right. Without going into the details, give me the
9 specifics of this business dispute?

10 JUROR 54: It was ---

11 THE COURT: The nature of it.

12 JUROR 54: Between the partners.

13 THE COURT: Two partners of ---

14 JUROR 54: The partners of the business.

15 THE COURT: Of a business?

16 JUROR 54: Uh-huh, (affirmative response).

17 THE COURT: Were you one of those two partners?

18 JUROR 54: Yes.

19 THE COURT: All right. Did that dispute involve real
20 estate?

21 JUROR 54: Yes.

22 THE COURT: And did that dispute necessitate filing of a
23 lawsuit?

24 JUROR 54: Yes.

25 THE COURT: Would the fact that you've been in a business

1 -- in litigation involving a business dispute, would that
2 impact your ability to be fair and impartial to the plaintiff
3 and Defendant in the trial of this particular case?

4 JUROR 54: It would not.

5 THE COURT: You can base your verdict solely upon the
6 evidence you heard from within this courtroom?

7 JUROR 54: Absolutely, yes.

8 THE COURT: All right. Thank you, ma'am. You can have a
9 seat.

10 Has any member of the jury panel ever been involved in a
11 dispute that involved real estate? If so, please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Has any member of the jury panel ever dealt
14 with an issue involving an easement? If so, please stand.

15 (REPORTER'S NOTE: No response.)

16 THE COURT: Has any member of the jury panel ever owned -
17 -- excuse me, I'm sorry.

18 JUROR 54: I'm so sorry. 54. There was an issue with a
19 company with a -- a problem with an easement that did go into
20 a lawsuit after my husband left, though.

21 THE COURT: Okay.

22 JUROR 54: Okay, so ---

23 THE COURT: So, you have knowledge of it but it wasn't

24 ---

25 JUROR 54: Well, not -- yeah, it was the company, but my

1 husband had already left the company.

2 THE COURT: All right. Thank you, ma'am.

3 Has any member of the jury panel ever owned an easement
4 on someone else's property? If so, please stand.

5 Yes, ma'am?

6 JUROR 52: My neighbor and I share an easement into our
7 properties.

8 THE COURT: Okay. Your name and number again?

9 JUROR 52: 52, Laura Dechamplain. We've never had a
10 problem with it.

11 THE COURT: All right. Thank you, ma'am.

12 And this is the same question on the other -- in the
13 other way, has -- have you or any member of your immediate
14 family ever granted an easement, that means given an easement
15 to someone else across your property?

16 JUROR 52: Yes.

17 THE COURT: And your name and number again, ma'am?

18 JUROR 52: 52, Laura Dechamplain.

19 THE COURT: Thank you.

20 Has any member of the jury panel ever applied for a
21 building permit or assisted someone else with a building
22 permit?

23 JUROR 64: 64, yes.

24 JUROR 39: 39, yes.

25 JUROR 171: 171, yes.

1 JUROR 52: 52, yes.

2 JUROR 54: 54, yes.

3 JUROR 200: 200, yes.

4 THE COURT: All right. Thank y'all very much.

5 Has any member of the jury panel ever applied for a
6 rezoning of property or assisted someone else with rezoning?

7 JUROR 54: 54, yes.

8 THE COURT: Ms. De Maria, we're gonna -- we're gonna know
9 your whole life story by the time this is over. Thank you
10 very much.

11 JUROR 65: 65.

12 THE COURT: Has any member of the jury panel ever asked a
13 court to prevent someone from doing something with their
14 property? If so, please stand.

15 (REPORTER'S NOTE: No response.)

16 THE COURT: Has any member of the jury panel ever been
17 involved with -- has any member of the jury panel ever been
18 involved in a case with the government that dealt with
19 condemnation? If so, please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: All right. The next set of questions deal
22 with prior jury service and exposure to the jury system. Has
23 any member of the jury panel ever served on a jury before? If
24 so, please stand.

25 All right. Ma'am, on the front row, your name and number

1 and the type of -- the type of court it was; civil or
2 criminal?

3 JUROR 205: I've done -- 205 is my number; Sharron Sisti
4 is my name. I've been on three criminal trials and one civil.

5 THE COURT: All right. And without going into the
6 specifics, tell me the nature of the civil trial.

7 JUROR 205: It was a traffic accident.

8 THE COURT: All right.

9 JUROR 205: Between a trucking company and a private
10 person.

11 THE COURT: All right. Thank you, ma'am. You can have a
12 seat.

13 All right. Ma'am, in the middle of the row. Yes, ma'am,
14 with the mask on.

15 JUROR 50: Number 50, Xaviera Deas. It was a criminal
16 case, and I think it was drugs.

17 THE COURT: Okay. But you haven't been on a civil jury?

18 JUROR 50: No.

19 THE COURT: Okay. You can have a seat. Thank you.
20 Yes, sir?

21 JUROR 39: 39, Timothy Clark. I've served on a civil
22 case before.

23 THE COURT: Okay. And what was the nature of the case?

24 JUROR 39: It's been so long ago, like 25 years ago. I
25 think it was over some real estate, you know, back in the day.

1 THE COURT: All right. Thank you, sir.

2 JUROR 74: Number 74. I've been on a criminal and a
3 civil case.

4 THE COURT: Okay. And what was the nature of that civil
5 case?

6 JUROR 74: The civil case was a bride and groom who were
7 suing a restaurant.

8 THE COURT: Okay. All right, ma'am. You can have a
9 seat. Thank you.

10 Yes, ma'am, against the wall?

11 JUROR 26: 26, Kimberly Buttone. I think it was like a
12 traffic stop or something like that. It's been so long ago.

13 THE COURT: All right. Thank you, ma'am.

14 JUROR 52: 52, Laura Dechamplain. It was a real estate
15 matter involving a homeowner's association and the buyers and
16 sellers.

17 THE COURT: Thank you, ma'am.

18 Yes, sir?

19 JUROR 109: Timmy Jordan, 109. It was a traffic
20 violation and a domestic violence charge.

21 THE COURT: Thank you, sir.

22 Yes, ma'am, against the wall?

23 JUROR 128: 128. And it was civil; it was a accident,
24 log truck versus passenger vehicle.

25 THE COURT: All right. Thank you, ma'am.

1 Yes, sir?

2 JUROR 165: 165, Michael Nichols. It was an auto
3 accident.

4 THE COURT: All right.

5 Has any member of the jury panel themselves or had a
6 close family member, who was involved in civil litigation,
7 that means you were either a plaintiff or a defendant in a
8 case in civil court? If that applies to anyone, please stand.

9 JUROR 54: Juror 54, Virginia Di Maria, it was a civil
10 case with our company.

11 THE COURT: And were -- without going into the details,
12 were you the plaintiff or Defendant?

13 JUROR 54: We were Defendant.

14 THE COURT: All right. Thank you, ma'am.

15 Has any member of the jury panel ever hired an attorney
16 to represent them on a civil dispute? If so, please stand.

17 All right. And again, I'm just looking for the type of
18 dispute it was, not any of the specific facts or any of your
19 particular feelings one way or the other.

20 THE COURT: Sir, again, your ---

21 JUROR 59: 59, Timothy Clark. Sued a former business
22 partner.

23 THE COURT: Okay. Were you the plaintiff or Defendant?

24 JUROR 59: Plaintiff.

25 JUROR 171: Defendant on a personal liability matter

1 related to a product that we sold to a retailer, who sold it
2 to the person who claimed injury.

3 THE COURT: All right. So, you were -- your business was
4 one of Defendants?

5 JUROR 171: Correct.

6 THE COURT: All right. Thank you, sir.

7 COURT REPORTER: I'm sorry; your number?

8 JUROR 171: I'm sorry?

9 THE COURT: Your number, sir?

10 JUROR 171: Oh, 171.

11 THE COURT: Thank you, sir.

12 JUROR 54: Number 54. We were Defendants in a
13 partnership case.

14 JUROR 240: 240. Injury.

15 THE COURT: All right. Thank you, ma'am.

16 JUROR 43: 43, Sean Corley. Worker's comp.

17 THE COURT: All right.

18 All right. Folks, we're getting to the end of this.

19 Has any member of the jury panel ever been employed or
20 anyone that you are related to by blood or marriage ever been
21 employed by the law firm of Burr & Forman, LLP? If so, please
22 stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: Has any member of the jury panel ever been
25 employed or you're related by blood or marriage to anyone who

1 is currently or formerly employed by the law firm of Rogers,
2 Townsend & Thomas? If so, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Have you ever been employed or are you
5 related by blood or marriage to anyone who is currently or
6 formerly employed for the law firm of Bloom, Parham, LLP? If
7 so, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Has any member of the jury panel formed an
10 opinion about any issue involving this case based on what you
11 may've heard or seen in any news media, that means television,
12 social media, internet, by any media? If you know anything
13 about this case, please stand.

14 JUROR 54: 54, I just read a lot about it in the
15 newspaper.

16 THE COURT: Okay. Based upon what you've read, don't
17 tell me your personal thoughts or anything, but based on the
18 fact that you have read about this matter in the newspaper,
19 would that impact -- have any impact on your ability to be
20 fair and impartial in this case?

21 JUROR 54: No.

22 THE COURT: You could set aside your prior knowledge and
23 base your verdict upon what you've heard from this courtroom?

24 JUROR 54: Just what I hear.

25 THE COURT: All right. Thank you, ma'am.

1 Does any member of the jury panel know of any reason
2 whatsoever why he or she should not serve as a juror in this
3 case with particular emphasis being placed on your ability to
4 be fair and impartial to both the plaintiff and Defendants?
5 If you know of any reason why you don't feel like you can be
6 fair and impartial, please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: All right. Ladies and gentlemen, that
9 concludes the list of questions that I'm gonna ask that are
10 specific to the issues which may arise in this particular
11 case. Ladies and gentlemen, what's gonna happen now is the
12 clerk's office is gonna print a random list based upon the
13 jurors who were excused from this trial based upon their
14 answers, and then the attorneys will have the opportunity to
15 review the list and then select the jurors that they wish to
16 have serve on this case. And this is done by computers. As
17 you can see the officers or the employees of the clerk staff
18 are generating this list as we speak. Back in the old days,
19 every courthouse in the state had a big drum in it and they
20 would put your names in these little capsules, and they'd
21 rotate the drum, and they would pull those numbers out at
22 random. We don't do that anymore. So, once the list is
23 printed, it'll be distributed to the lawyers and I will give
24 them an appropriate amount of time to review the names which
25 have been published on the list, and then we will select the

1 jury.

2 MS. GOLDING: Your Honor, we've been provided with the
3 list.

4 THE COURT: It's gonna be a new list -- it's gonna be a
5 new random list because we had -- we took some of the names
6 were stricken ---

7 MS. GOLDING: Okay.

8 THE COURT: --- based on their answers.

9 And counsel, we're gonna prepare for two alternates in
10 this matter?

11 MS. GOLDING: Yes, sir.

12 THE COURT: Folks, how much time would y'all like to have
13 to review the list once it's printed in final fashion?

14 MR. BLOOM: I'd say 10 to 15 minutes, Your Honor.

15 THE COURT: All right.

16 MS. GOLDING: Your Honor, may we be excused to go into
17 the anteroom?

18 THE COURT: Yes, ma'am.

19 Folks, what we're gonna do now is I'm gonna give the
20 attorneys some time to go over the list that's been prepared.
21 And so, we're gonna be in recess until five minutes till 1:00.
22 At that time, we'll reconvene and select the members of the
23 jury for this case. You are free to leave the courtroom but
24 don't go far because we're gonna start right back at five
25 minutes till 1:00.

1 MR. BLOOM: Plaintiff strikes Number 3.
2 THE CLERK: Defendant?
3 MS. GOLDING: Defendant strikes Number 6.
4 THE CLERK: Plaintiff?
5 MR. BLOOM: Plaintiff strikes Number 7.
6 THE CLERK: Defendant?
7 MS. GOLDING: Defendant strikes Number 8.
8 THE CLERK: Plaintiff?
9 MR. BLOOM: Plaintiff strikes Number 15.
10 THE CLERK: Defendant?
11 MS. GOLDING: Defendant strikes 18.
12 THE CLERK: Plaintiff?
13 MR. BLOOM: Plaintiff strikes Number 14.
14 THE CLERK: Defendant?
15 MS. GOLDING: Defendant strikes Number 16.
16 THE CLERK: For our first alternate, Numbers 21 through
17 23.
18 Plaintiff?
19 MR. BLOOM: Plaintiff strikes 23.
20 THE CLERK: Defendant?
21 MS. GOLDING: Defendant strikes 21.
22 THE CLERK: Okay. For our next alternate, 24 through 26.
23 Plaintiff?
24 MR. BLOOM: 24.
25 THE CLERK: Defendant?

1 MS. GOLDING: 26.

2 THE CLERK: For confirmation, the plaintiff struck
3 Numbers 3, 7, 14, 15, 23, and 24; is that correct?

4 MR. BLOOM: Yes, ma'am.

5 THE CLERK: Okay. Defendant struck Numbers 6, 8, 16, 18,
6 21, and 26; is that correct?

7 MS. GOLDING: Yes, ma'am.

8 THE CLERK: When I call your names, jurors, bring your
9 personal belongings and come and take a seat in the jury box.

10 Juror Number 244, Sanford Wise.

11 Juror Number 109, Timothy Jordan.

12 Juror Number 240, Rita White.

13 Juror Number 149, Harold McFadden.

14 Juror Number 128, Milessa Lightcap.

15 Juror Number 97, Kellie Howard.

16 Juror Number 50, Xaviera Deas.

17 Juror Number 157, Benjamin Miller.

18 Juror Number 82, Alford Grayson.

19 Juror Number 65, Rhoda Fischer.

20 Juror Number 86, David Hartley.

21 Juror Number 185, Juraitta Reed.

22 For our first alternate, Juror Number 170, Mary Nudo.

23 And our second alternate, Juror Number 77, Donna
24 Goldberg.

25 THE COURT: Let me see counsel at the bench for one brief

1 second.

2 (REPORTER'S NOTE: Bench conference is held off the record in
3 the presence of but outside the hearing of the jury.)

4 THE COURT: All right. Ladies and gentlemen, those of
5 you that were not selected as the jury who will hear this
6 case, I've got good news for you. I'm gonna be able to let
7 you go for the balance of the day, with the following
8 instruction. You were given a number with your information
9 that you can call to determine when we may need you back for
10 the remainder of this week. It'll say one of three things.
11 It'll say either we need you to call back at another time in
12 the future, that we need you to report back to the courthouse
13 at a particular time, or that you've been excused for the
14 week. And, ladies and gentlemen, as each day passes, as we go
15 through the week, the likelihood of that last message
16 increases.

17 So, Madame Clerk, they need to call back after 6:00 is
18 that ---

19 So, if you'd call that number tonight after 6 o'clock,
20 there will be a message on it, and it will instruct you to do
21 one of those three things. And, like I said, at some point it
22 will tell you that you have been excused.

23 So, you are free to go about your business for the
24 remainder of the day and, depending on what the message says
25 -- you know, just follow what it -- do what it tells you to

1 do. It'll be just a recording. You won't be able to argue
2 with it because it won't argue back. But we appreciate you
3 being here. We appreciate your willingness to serve as jurors
4 this week. And just remember to call that number after 6
5 o'clock tonight.

6 Thank you very much.

7 (REPORTER'S NOTE: Remaining jury venire exits courtroom @
8 1:09 p.m.)

9 THE COURT: All right. Ladies and gentlemen, those of
10 you who have been selected for the jury in this case, give me
11 your attention here briefly. As you can tell, we are past the
12 normal lunch hour, which usually happens on Mondays. We've
13 got a lot to do to get a jury selected. You now know how many
14 moving parts there are in selecting a jury and getting
15 everything where it needs to be. So, I'm gonna excuse you,
16 ladies and gentlemen, for the balance of the day because we
17 have some matters that need to be taken up outside your
18 presence before the trial can start. If we take, you know, an
19 hour, an hour and fifteen minutes for lunch, that'll put us
20 close to 2 o'clock. And so, I don't think we would be in a
21 position to begin the actual trial at any point this
22 afternoon. So, rather than have you sitting here waiting on
23 us to finish these pretrial preliminary matters, I'm gonna
24 excuse you for the balance of the day with the instruction
25 that you come back tomorrow morning at 9:15.

1 When you come back tomorrow morning, I want you to select
2 a foreperson who will be essentially the jury's spokesperson
3 as we go through this trial. The foreperson has no greater
4 power or their vote doesn't count any more. They're just the
5 person who is charged with presiding in the deliberation room
6 and bringing anything to the Court's attention as it arises
7 through the trial.

8 So, if you would come back at 9:15 tomorrow morning and
9 select a foreperson, it can be by any means y'all decide. It
10 can be on paper, you can just raise your hands or, you know,
11 however y'all want to conduct the vote, but if you would
12 select someone to be your foreperson, I would certainly
13 appreciate it.

14 And I'm about to tell you something that you're gonna
15 hear every time I send you out of this courtroom as we go
16 through this trial. You're gonna get tired of hearing it.
17 Frankly, I get tired of saying it but I have to say it. You
18 haven't heard anything about this case other than what has
19 been shared with you through this jury selection process. Do
20 not seek to do any independent research about this matter by
21 any means whatsoever. Your verdict in this matter will need
22 to come from this witness stand and any exhibits which are
23 admitted. So, don't get on the internet, don't get on social
24 media, don't do any research by any means, you know, don't
25 undertake to do your own investigation about anything by any

1 means whatsoever. The 14 of you, likely this is the only
2 thing you have in common as you -- the bailiff is gonna show
3 you to your deliberation room when you get in tomorrow
4 morning, elect the foreperson. You can talk about anything in
5 the world you want to other than this case. And the reason
6 for that is you can't begin deliberating about it until you've
7 heard everything. So, every time I send you away for lunch,
8 for a break, as we go through this trial, I'm gonna give you
9 the same instructions and it's gonna be you can't begin your
10 deliberations and don't do any research by any means
11 whatsoever.

12 Now, when you come into the courthouse tomorrow morning,
13 you know, ordinarily you can bring your phones in but the
14 bailiffs are gonna take them from you and you can use them
15 while we're on breaks or for lunch and give them back at the
16 end of the day, but while you're in the courtroom, no
17 telephones. And when you're outside of the courtroom, don't
18 use that phone to do any research about this matter. Because
19 like I said, it needs -- the evidence will come from within
20 these four walls, from the testimony you hear from the
21 witnesses, and from the exhibits which are admitted.

22 So, with those instructions, I want you to go with the
23 bailiff. She will show you where you're to report in the
24 morning. And if you'd be back at 9:15.

25 We thank you very much.

1 (REPORTER'S NOTE: Jury exits courtroom @ 1:15 p.m. The
2 following takes place outside the presence of the jury.)

3 BY THE COURT:

4 MS. GOLDING: Your Honor, just a point, last time we were
5 involved in litigation, I was representing Palmetto
6 Industrial, and Judge John tried that case for a little over a
7 week. He instructed Plaintiff's counsel we don't rise in
8 South Carolina for the jury, and I would ask that same
9 instruction.

10 THE COURT: Yeah, it's not -- it's not customary. Some
11 people do it, some people don't. I -- as you see, I don't get
12 up for the jury.

13 I see you shaking your head, Mr. Bloom. Let me hear your
14 opinion on that.

15 MR. BLOOM: I've heard a lot of objections; that may be
16 the silliest one I've ever heard, Judge. I do it as a matter
17 of respect. I was trained to respect the people that are
18 charged with making this decision. If Your Honor tells me not
19 to do it, I won't do it, but an instruction to opposing
20 counsel not to rise, just because it's not customary; I've
21 never heard of such a thing.

22 THE COURT: Well, I don't rise. I don't see the need of
23 it. Obviously, so, I think we'll -- since I'm not -- you see
24 I don't get up when they come in or out. We're all gonna do
25 the same thing. We can all just remain seated as the jury

1 comes in and out. It's -- I don't know that they would take
2 offense it one way or the other, but we'll all do the same
3 thing. Since I'm seated, we'll all remain seated. All right?

4 MR. BLOOM: Yes, sir.

5 THE COURT: And, folks, it's obviously time for us to
6 break for lunch. What time do y'all want to start back?

7 MS. GOLDING: 2:30 would be fine, Your Honor, if that's

8 ---

9 THE COURT: Okay. I think that should give us enough
10 time to figure out where to eat in Georgetown and get
11 something good. So, we'll be -- we'll be back at 2:30. And
12 if we start a little bit after that, that's fine.

13 I know we've got the motions in limine to discuss, and
14 then the issue with regard to the causes of action. Have
15 y'all had a -- I know you probably haven't had an opportunity
16 to discuss the jury versus non-jury components of these causes
17 of action. So, I guess, we can just talk about those at least
18 preliminary when we return. But we'll deal with the motions
19 in limine. And, again, if y'all have some that you can agree
20 on, we'll take those up first and get those out of the way.

21 And if there's nothing else, we'll be in recess until
22 2:30.

23 MS. GOLDING: Thank you, Your Honor.

24 THE COURT: Thank y'all very much.

25 MS. GOLDING: Thank you.

1 RECESS - 1:18 P.M.

2 *****OFF THE RECORD*****

3 ON THE RECORD - 2:49 P.M.

4 MOTIONS:

5 THE COURT: All right, folks. I know we have quite a few
6 matters to cover all the motions in limine. So, are there any
7 that we can get out of the way through consent? Have y'all
8 talked about those at all?

9 MR. BLOOM: Your Honor, it seems to me -- I've had a
10 chance to read now the supplemental brief filed this morning
11 that we would be best served, I humbly suggest, taking up this
12 issue about what issues are triable by the jury versus not
13 triable by the jury, because if Your Honor determines that as
14 the relief requested in that brief seeks, which is that all of
15 our claims are to go before Your Honor in a bench trial, then
16 the motion in limine list gets very, very short. And so, I
17 would suggest that we try to get that resolved. Frankly, I
18 think we have to get that resolved before we can go any
19 further.

20 THE COURT: Ms. Golding?

21 MS. GOLDING: I have no objection to that, Your Honor.

22 THE COURT: All right. And I think that probably does
23 make the most sense.

24 If you will just give me a second, I'm trying to get
25 hooked up to the Wi-Fi so I can have access to these things.

1 All right, folks. I'm ready to go forward. And, I guess
2 procedurally, since this is the defense's -- or the defense
3 brought these issues to light, I will let them go first.

4 Ms. Golding?

5 MS. GOLDING: Thank you, Your Honor. I would like to ask
6 if the court could inquire of the plaintiff if they disagree
7 -- if the plaintiff disagrees that the constitutionality of a
8 statutory enactment is for the Court, not the jury.

9 MR. BLOOM: Yeah, Judge, we agree -- we agree with the
10 relief that she has requested. We think that Your Honor is
11 authorized to try all of these causes of action, and this is
12 kind of an awkward place to be because we just spent four
13 hours, you know, striking the jury, but ---

14 THE COURT: Well, and I think, if I have read and
15 analyzed what Ms. Golding has submitted correctly, if I
16 determine that there has been a taking, then it would be --
17 there would at least be that issue for the jury to decide. I
18 guess -- are we all in agreement that that would be the only
19 manner that will be submitted to the jury?

20 MR. BLOOM: Well, Judge, I think that -- sorry -- I think
21 that the caselaw says, and particularly the *Dunes* case says
22 that either party may request that the compensation to be
23 awarded as a result of the taking be determined by the jury,
24 but I don't read any cases to require a jury to determine the
25 amount of compensation, if Your Honor finds that there was in

1 fact an inverse condemnation. And so, I've been thinking
2 about this since I got this brief, and it's like, you know,
3 there's a number of ways to skin this cat. We could go all
4 bench, presumably if we both consent, and Your Honor takes,
5 you know, takes the whole shooting match all the way through
6 to the end, really to a 1988 to termination of attorney's
7 fees. Theoretically, you could hybridize it where we took all
8 the issues that were not related to the damages for
9 compensation, but I think that gets incredibly complicated
10 because you're gonna have witnesses coming back to testify and
11 to bifurcate. So, from our perspective, we are willing to
12 consent to Your Honor trying the entire case. Let me just put
13 it that way.

14 MS. GOLDING: Your Honor, then, I think that makes my
15 argument moot. We also consent to that, Your Honor.

16 THE COURT: All right. Well, and that -- you know,
17 that's -- it's kind of a double-edged sword for me. It's
18 obviously gonna give me more time to consider these issues and
19 not be constrained by the time that we would have with this
20 jury this week. So, I think it may be a better -- a better
21 plan to have me decide everything. And, when the jury reports
22 tomorrow, we can just tell them that we -- come up with some
23 language to the effect that their presence is not required to
24 resolve the remaining issues before the Court, something like
25 that, you know, something that will not let them know that we

1 unfortunately wasted their time this morning. But, so yeah,
2 as long as all the parties consent to the Court deciding all
3 the issues, that's -- I think that's the way we can go and
4 that will make our hopefully make our afternoon lot better.

5 MR. BLOOM: Yes, sir.

6 THE COURT: So, given the posture that the case is now
7 in, do y'all need a few minutes to look over the motions in
8 limine to determine which ones we need to argue about, or are
9 we ready to go forward? It's up to y'all.

10 MS. GOLDING: I'll agree to the fact that the plaintiff's
11 counsel is from Atlanta; I won't mention that, Your Honor. I
12 really -- that's a jest, but obviously since the matter is now
13 before the Court, that does create some easier motions in
14 limine issues. I didn't know if we wanted to go through some
15 of the plaintiff's because, for instance, like Number 2 about
16 the building and, of course, Number 3 about the wealth, I'm
17 not sure that -- you know, I really wasn't going to mention
18 the wealth at all, but I do want the tax returns into
19 evidence. But, the health issues of an expert, I certainly
20 have no intentions of going into that.

21 THE COURT: Okay. Well, let's just -- why don't we do it
22 this way; why don't we go one by one on the plaintiff's list,
23 Ms. Golding, and you tell me which ones we don't need to argue
24 about. And then we'll do the same the other way and then get
25 down to what we actually need to decide.

1 MS. GOLDING: Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. GOLDING: In the plaintiff's motion in limine, it has
4 the roman numeral number II, and there was a summary judgment
5 that I had filed in this case which was denied, and the
6 plaintiff takes the position that denial of that summary
7 judgment ruled as a matter of law that the plaintiff timely
8 brought the lawsuit. And of course, Your Honor, that is not
9 the law in South Carolina. The law in South Carolina is clear
10 that a summary judgment determination, if it's denied, it's
11 not -- cannot be considered as the law of the case.

12 It is the case of -- Your Honor, I have it here. It's
13 the case of *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155,
14 that's a Court of Appeals case, 2014, and it's directly on
15 point with the Court stating that a denial of a summary
16 judgment does not establish the law of the case. It goes on
17 to more of analysis, but it just doesn't establish the law of
18 the case, Your Honor.

19 Did you want me to continue further?

20 THE COURT: Well, what I had envisioned was just going
21 through the ones that were not gonna be at issue.

22 MS. GOLDING: I'm sorry. I'm sorry.

23 THE COURT: So, we could just kind of narrow it -- pare
24 down the list of things that really needed attention.

25 MS. GOLDING: Number 2 about the status of the current

1 building, the only evidence I would have to that, Your Honor,
2 I would -- I don't agree with that.

3 Number 3, I agreed to, Your Honor.

4 Number 5, I agree to.

5 And, Number 6, I agree to.

6 THE COURT: All right. So, it looks like Number 1,
7 Number 2, and Number 4 are still in play; is that correct?

8 MS. GOLDING: Yes, Your Honor.

9 THE COURT: All right. And, Mr. Bloom, looking at
10 Defendants' motion, are there any -- any that you're gonna be
11 in a position to, to waive at this point?

12 MR. BLOOM: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. BLOOM: 5, we're not arguing that the County violated
15 the easements.

16 7, we are not contending that the -- that this Court in
17 the -- let's call it the easement case, so that Your Honor
18 knows what we're talking about. The case that was tried by
19 Judge John between Palmetto and Gulfstream to a jury. I call
20 it the easement case, but someone might have a better nickname
21 for it.

22 THE COURT: Right, right. We're on the same page.

23 MR. BLOOM: We are not contending that that case
24 determined that the 2018 ordinance was illegal for unlawful.

25 We're not gonna argue Number 9, Judge, that Palmetto's

1 construction of the building violates the zoning ordinance. I
2 don't know why that would come into this case. That's another
3 case down the road.

4 Number 10, Judge, is -- just to give the Court one bit of
5 context, this case was set for a jury trial in March. We had
6 an expert lined up to be our appraiser. That expert had some
7 health problems. We didn't know if that expert was gonna be
8 able to perform his duties, so we hired a backup expert.
9 That's who Joey Bishop is. And if Jake Knight is able to
10 testify, which we have -- every indication is that he will be,
11 then we have no need Joey Bishop.

12 THE COURT: Okay.

13 MR. BLOOM: On 11, we have no intention of calling Linda
14 Barnaba, and we have no intention of calling Teresa Floyd if
15 we can further document our agreement about some documents.

16 We will have to, I think, probably argue about Jef Kirk;
17 That's Number 11.

18 And I think Exhibit -- I'm sorry -- category Number 14
19 has been resolved. There was a missing attachment or
20 something like that that I think we've resolved.

21 And it's impossible for me to go through 16 through 24.
22 I mean, there's 100 exhibits there, or 50 exhibits.

23 THE COURT: Well, in the individual exhibits, I mean, I
24 think since there's no jury here, there's no threat of
25 prejudice for something to be shown. I would -- I would

1 suggest we just, as though exhibits are offered that if there
2 is any objection over those, we do it at the time -- I mean,
3 you know, contemporaneously with them being offered. There's
4 nobody that's here that would be, you know, if I find it is
5 inadmissible, I won't consider it; if I allow it, then I will.
6 So, I think we can be a little more flexible in terms of how
7 to handle those matters procedurally since there won't be a
8 jury here.

9 All right. I know we're doing a lot of jumping back and
10 forth, but let's -- let's get to the meat of why we're here
11 and then we'll go back to -- Ms. Golding, the plaintiff's
12 motions. The timing in bringing the lawsuit, you've made your
13 argument with regard to that issue. *Watson v. Underwood*, is
14 the case you have cited, which you assert is controlling.

15 Mr. Bloom, what's your argument with regard to -- in
16 response to Ms. Golding?

17 MR. BLOOM: Your Honor, this is -- it's a different
18 animal now that we don't have a jury. Your Honor can consider
19 the ruling on the motion for summary judgment as part of the
20 record. Whether it's dispositive of any particular legal
21 issue, I don't take a position one way or the other. A
22 complication would be if -- if before the jury, there was some
23 debate about that. But Your Honor is just certainly empowered
24 and able to see what the ruling by other judges sitting in
25 that chair did in this case if the same defenses present

1 themselves. You know, one of the complicated things is that
2 Your Honor didn't hear that motion and didn't get briefed on
3 that motion. And so, to the extent that that defense has
4 raised again, Your Honor will be able to look to how that was
5 ruled upon. That's the only time it really would come up now
6 that were in a bench trial, in my opinion.

7 THE COURT: Okay. We'll -- you know, if that defense,
8 defenses raised, I will certainly consider the case which is
9 been cited by Ms. Golding. And like I said before, I think we
10 can be a little let's formal in terms of having definitive
11 rulings on these matters because there is not a jury. So, I
12 will certainly -- I certainly review the case that's been
13 cited. In making my decision, I will certainly follow, follow
14 what I believe the law to be with regard to the prior ruling,
15 so, you know, I can -- I have read -- I read that order in
16 anticipation of the case, so I'm a little bit familiar with
17 it.

18 So, I think we can move on to Number 2, the current
19 status of the building.

20 Ms. Golding, what's your position on that one?

21 MS. GOLDING: I don't see why -- I believe that's
22 relevant, Your Honor. With respect to issuance of -- the
23 size, for instance, there's a dispute as to the size that you
24 will hear about.

25 THE COURT: And wasn't there -- in the case that was

1 tried previously, wasn't there some injunctive relief with
2 regard to building -- rebuilding in the same footprint?

3 MS. GOLDING: That's correct, Your Honor. And that is
4 what has occurred. That's the MQ3 ordinance, which the sole
5 reason for that ordinance was to put that building in the
6 footprint.

7 THE COURT: All right. Mr. Bloom?

8 MR. BLOOM: Yes, Your Honor. We have to kind of move
9 backwards in order to be able to move forwards on this issue.
10 This case is about whether the County properly or improperly
11 passed a zoning ordinance, period. Whatever happened after
12 that is completely irrelevant; there's no relevance
13 whatsoever. What -- all that matters to Your Honor's
14 consideration under substantive due process, procedural due
15 process, and a violation of their own ordinance and state law
16 is what happened before they dropped the gavel and decided to
17 allow the rezoning of 3.0. They call it MQ3; we call it 3.0.
18 Maybe we can agree on what the nickname for that is so we're
19 all singing off the same page of music. But Your Honor is now
20 -- consideration should focus solely on the things that were
21 done right or wrong, whether it was arbitrary or capricious,
22 rational or irrational, a legitimate government -- government
23 interest, et cetera. All that analysis ends once they decide
24 if 3.0 comes in. What happened after that -- in fact, they
25 have a motion in limine about that we should not put in

1 testimony or evidence about the things that happened
2 afterwards. So, it would be a goose/gander type situation,
3 Judge, in that regard. But, what they actually built, whether
4 it's compliant with the zoning or it isn't, whether it's
5 compliant with the building permit or it isn't. What's on the
6 ground doesn't have anything to do with whether the process of
7 passing 3.0 was infected by arbitrary and capricious conduct
8 by the County. I was worried about it because the 12 in the
9 box might start thinking to themselves, gosh, if I find this
10 zoning to be invalid, what does that mean for the building,
11 are they gonna have to tear it down, these kinds of things. I
12 have the greatest confidence that Your Honor will not be
13 swayed by such considerations. And that whether there's a
14 building there or not doesn't dictate whether they were
15 arbitrary or capricious in the passage of the ordinance. So,
16 the heavens have spoken on this matter.

17 THE COURT: Well, you know, I think, just to better
18 orient me, as I told you in chambers earlier this morning,
19 I've been to the Gulfstream Café, I've been in the parking
20 lot. I think I want to see at least how it looks today, you
21 know, in terms of a better way to orient myself with what I'm
22 dealing with. I think, Ms. Golding, you can offer evidence to
23 show how the grounds look now, and I'll -- you know, I just
24 want to be better oriented with what I'm dealing with. You
25 know, like you said, the jury is not here, and I will give it

1 whatever weight I think is proper. I want to see kind of the
2 big picture of everything that has gone on even though whether
3 the building is outside or inside the former footprint may or
4 may not be relevant to whether the zoning ordinance was proper
5 or arbitrary and capricious. You know, I guess I'm rambling
6 in a way to say that I just want to be oriented with what I'm
7 looking at, and I will give any evidence offered as to the
8 current status of the property the appropriate weight that it
9 deserves. Just don't go too far down that road, Ms. Golding.
10 Just present ---

11 MS. GOLDING: I will not.

12 THE COURT: Present that -- evidence of that type.

13 MS. GOLDING: Thank you, Your Honor. I won't.

14 THE COURT: All right. Number 4 is Gulfstream's tax
15 returns.

16 MS. GOLDING: Yes, sir, Your Honor. They have an expert
17 who will testify as to the marketability of the restaurant.
18 And of course, he's gonna testify it's not marketable anymore.
19 As a practical matter, Your Honor, on cross-examination, I
20 want to show that marketability also is premised upon was it
21 income producing, revenue, and these tax returns will show
22 that this business had no taxable income.

23 MR. BLOOM: A couple of things, Judge. First of all, our
24 expert doesn't rely upon the income method at all at arriving
25 at his opinion of value. If you don't use income method, then

1 revenue and expenses have nothing to do with the value of
2 which you arrived at. Your Honor maybe familiar eminent
3 domain cases where you do evaluations based upon sales comps;
4 that's what the expert look that with sales comps. So, that's
5 number one. So, the question of whether the second -- let me
6 make sure I'm right about that, because I'm being overruled.

7 THE COURT: Well, because, I mean, fundamentally I think
8 any time that profit is at issue -- I kind of feel like I --
9 my gut tells me I want to see the tax returns just to have a
10 full picture of the plaintiff's financial situation. So, I
11 mean, if there's -- you know, I'm not gonna disclose any, any
12 of these items to anybody. My -- I'll tell you, Mr. Bloom, my
13 gut says I want to see the tax returns, but I am certainly
14 willing to hear from you further.

15 MR. BLOOM: Judge, on that point, I'm wrong. Apparently,
16 Mr. Knight does do the income method. But the income method
17 does not rely on tax returns; it relies on the financials from
18 the restaurant. Those are two different animals. We don't
19 have any accountant to come in and testify about what the
20 gross sales were. There's no witnesses gonna provide that
21 testimony through the tax returns. The tax returns are a
22 whole different animal. We all know there's a big difference
23 between the gross revenue for the gross income that one or a
24 company receives and the taxable income. And so, while there
25 may be zero taxable income, that doesn't mean that the

1 restaurant didn't make any money; it just means that there's
2 no taxable income. Those are a completely different animal.
3 I don't really care as much if Your Honor wants to see the tax
4 returns, I don't care, but I want to just -- I do want to
5 highlight this issue that from a standpoint of the
6 marketability of the restaurant, it doesn't matter whether
7 they were good tax planners or not, right? There's
8 depreciation that goes on the returns. There's all kinds of
9 other mechanisms that go on in preparing the tax return that
10 would not bear upon whether there's net operating income out
11 of the store, which would be what an appraiser would use to
12 determine value based upon a direct capitalization method.

13 THE COURT: Ms. Golding, any response to that?

14 MS. GOLDING: Yes, sir. If in the report by the expert,
15 the appraiser, he does reference his expenses, he references
16 his management fees. In the actual management fees, what the
17 expert relied upon, is wrong, and you can see that in the tax
18 returns. And so, to me, the tax returns do show that this
19 business has not been successful for a long time.

20 MR. BLOOM: I just need to -- sorry, Judge ---

21 THE COURT: No, go ahead. Go ahead.

22 MR. BLOOM: I just think that this opens up a can of
23 worms that -- I appreciate the argument. Make the argument
24 all day long. The tax returns are not the documents to show
25 whether the company was -- the restaurant was profitable or it

1 wasn't. I submit it has nothing to do with the value of the
2 property anyhow, whether the restaurant was profitable and how
3 profitable doesn't impact the value of the property
4 necessarily. But the point is that we don't have an
5 accountant, there's no accountant or CPA on the witness list
6 for either side to be able to help Your Honor, not that Your
7 Honor needs it, but ---

8 THE COURT: Oh, if you're talking about tax returns, I'm
9 certain that I wouldn't rely on my expertise whatsoever. But
10 I think -- I think the defense ought to be able to, if there
11 are grounds for cross-examination of the expert -- and I don't
12 know what he's gonna say, you know, so I'm kind of flying
13 blind, but I think that if there are discrepancies that could
14 be pointed out through the use of the tax return, you know,
15 they -- they might be relevant; they might not. And again, we
16 don't have a jury, so I'm not gonna foreclose the use of the
17 tax returns. I guess we'll just have to wait and see how this
18 thing shakes out, but, like I said, my gut instinct tells me I
19 want to at least have them available for use, especially if
20 the defense has cited that there may be some discrepancy, you
21 know, like I said, y'all have been living with this case a lot
22 longer than I have, so, you know since it has morphed into a
23 nonjury matter, you know, I think I'll make a final ruling on
24 the tax returns when and if it becomes an issue.

25 MR. BLOOM: Yes, sir.

1 THE COURT: All right?

2 All right. Turning to Defendants' motions ---

3 MS. GOLDING: Your Honor, the ---

4 THE COURT: Yes, ma'am.

5 MS. GOLDING: Was there something that you want me to
6 argue?

7 THE COURT: Well, I mean, I -- that's fine. We can do it
8 anyway you want to.

9 MS. GOLDING: Well, Number 1, the first item is that one
10 of Defendants is Steve Goggans, he's an architect, Your Honor.
11 He also sits on County Council. He was the -- while he wasn't
12 the original architect, he started as being the architect I
13 believe in early 2016. And the initial filing by the property
14 owner was for a minor amendment, which was permitted under the
15 zoning ordinance. Then Gulfstream appealed that minor
16 amendment before the Zoning Board of Appeals, and that hearing
17 before the Zoning Board of Appeals was on February 2, 2017.
18 Mr. Goggans was called as a witness at that time. Mr. Goggans
19 did not realize, did not understand he could not appeal. As a
20 result, Gulfstream filed a grievance, a complaint with the
21 South Carolina Ethics Commission. And subsequently, that took
22 a number of -- some time, but Mr. Goggans entered into a
23 consent agreement with the Ethics Commission, I believe it was
24 in September of 2019 in which he agreed he should not appear.
25 I believe there was a 700 or a \$750 fine, total cost was

1 \$1,000, and all related to the -- his appearance on February
2 2, 2017. Plaintiffs have -- are introducing the transcript of
3 the hearing before the Zoning Board of -- Zoning Board. They
4 want that. That's Plaintiff's Exhibit Number 9. They want
5 the consent judgment, which I believe, if I can read my
6 handwriting, is Exhibit Number 57. And they also have
7 correspondence between Mr. Goggans and the property owner,
8 which are Exhibits 6, 7, and 8. What occurred before the
9 Zoning Board of Appeals has no relevancy to MQ2 or MQ3, the
10 major amendments. They are not relevant to the passage of the
11 one amendment that's before this Court that occurred in
12 January 2019. Furthermore, I believe that Plaintiff will try
13 to utilize that as a bad act but it does not fall within Rule
14 404(b) under the five exceptions, none of those apply. So,
15 the bottom line is that the transcript of the hearing, the
16 consent judgment are not appropriate under Rule 404.
17 Furthermore, they contain hearsay. The transcript of the
18 hearing with matters and people testifying in another
19 proceeding clearly should not be admissible. So, but I
20 believe that it would be error if those exhibits were
21 permitted, and those were Exhibits 6, 7, 8, and 9, and I
22 believe that's 57. And I believe that the cross-examination
23 of Mr. Goggans, since we've got this issue before the Court
24 should not be permitted into his appearance before the Zoning
25 Board of Appeals or the ethics violation and this consent

1 order.

2 Thank you, Your Honor.

3 THE COURT: All right. Mr. Bloom?

4 MR. BLOOM: Yes, Your Honor. So, again, this is -- yes,
5 you haven't been living with this case and we have. So, let
6 me provide a little bit more -- a little bit more background.

7 THE COURT: Let me give you -- and I'm not trying to cut
8 you off, but let me give you my thoughts on this and see if we
9 might be thinking the same way. I think -- I think there are
10 certainly grounds for cross-examination with regard to
11 potential bias of his -- in his actions. You know, this --
12 you know, being on -- being the architect that proposed these
13 amendments and then sitting on the board that's gonna hear it.
14 So, I think that is the ground that certainly wouldn't be
15 affected by whether he was convicted or -- convicted, former
16 prosecutor, I'm sorry -- whether he was found to be in
17 violation by the Ethics Board, I think there's obviously a
18 bias issue. You know, if this case were -- I'm concerned
19 about the 404(b) issue, the prior bad acts. I mean, you know,
20 I think if a jury were hearing this case, I would probably err
21 on the side of keeping that out, given -- you know, given the
22 prejudice that it would -- undue prejudice that I think
23 admission of a prior bad act would cause. But, I mean, I see
24 the -- I see the point of it being unusual for a person to be
25 the architect on the project that's being submitted before the

1 board that he sits on. You know, I see that. I guess what
2 I'm trying to say is I know where you're going. I don't know
3 that I would need anything further about the ethics act. I
4 mean, it's -- it jumps off the page to me that it's probably
5 improper. So, I guess with that caveat, I'll be happy to hear
6 from you. You know, I think we are thinking along the same
7 lines. I just don't think I need to -- you know, the fact
8 that he was fined and consented to whatever discipline he
9 consented to, I -- you know, I wouldn't use that for any
10 legitimate purpose in making my decision, and I do see that
11 there's some obviously a built-in bias and issue with that.
12 So, but I'll be happy to hear from you, sir.

13 MR. BLOOM: Your Honor, do you mind if I grab this
14 podium?

15 THE COURT: I don't mind at all.

16 MR. BLOOM: So, I don't have to keep switching my
17 glasses.

18 I agree with almost everything Your Honor just said. I
19 would just want to highlight a couple of things for Your
20 Honor's consideration.

21 THE COURT: Okay.

22 MR. BLOOM: Let me be really, really specific. Exhibit 9
23 does not need to be an exhibit. We agree. Exhibit 9 is the
24 transcript from the BZA hearing. There should be no debate
25 that he was there. A hundred people can testify that he was

1 there; he's not gonna deny it was there. So that the exhibits
2 -- Number 9 does not need to be in exhibits. Of course, one
3 can impeach with a prior sworn statement without making the
4 document an exhibit. So, just like every other depo
5 transcript or sworn statements doesn't need to be an exhibit;
6 so, we can withdraw it as an exhibit. It doesn't mean I might
7 not have to use it, but I think Your Honor understands where
8 I'm coming from.

9 So, now there's two other things going on. Is
10 referencing his ethical violations and the consent order that
11 he entered into is kind of in one bucket, and then it's
12 Exhibits 6 through 8, which were his conduct in attempting to
13 push forward this project. That's what 6 through 8 deal with.
14 They are very different animals. But let me deal with the
15 first one first. Do I think that the fact that the Ethics
16 Committee and counsel for Goggans came to a deal and there's
17 basically a confession or a plea is going to drive your
18 decision one way or the other? No. However, this is not a
19 404(b) problem, because 404(b) talks about other acts being
20 inadmissible unless motive, intent, scheme, et cetera.
21 There's a keyword in 404(b) that talks about other acts. Your
22 Honor, this conduct that he was found guilty or pled to is the
23 act that forms the basis for our 1983 claim against him. And
24 so, here are the ways in which this is very relevant. Now, we
25 don't need to retry the ethics case, but the consent order,

1 which is Exhibit 57, is very clear about the ethical
2 principles or the rules of ethics that he violated, and goes
3 through them and marches through them quite nicely. He does
4 plea out, and those are in fact the acts that started this
5 story in 2015 and in 2016. So, Lawhon, who is Palmetto, hires
6 Goggans to be his architect. Goggans is not only the
7 architect for the project but is also charged with moving the
8 project through the administrative process. Yes, he is also
9 the county councilman that's hires and fires the planning
10 staff and promotes and does all the things you would think
11 that a county councilman does vis-à-vis employees of the
12 County. And so that is precisely why it is unethical for one
13 who also serves as a county councilperson to, quote, represent
14 another party before that very body. That is right in the
15 heart of this case. We -- that is -- there is not a more
16 important plot in this case than the fact that the only reason
17 that this project was first allowed to be a minor amendment,
18 which we strenuously objected to. And to give Your Honor --
19 just a slight digression -- when you're amending a planned
20 development, you can go in and get a minor amendment, which is
21 done -- and if I'm being remedial and you already know this
22 tell me.

23 THE COURT: No. Go ahead.

24 MR. BLOOM: Okay. You can get a minor amendment, which
25 is just going and having meetings with the planning staff and

1 saying, hey, we just want to change the color of the roof tile
2 or we want to do a little something to change this, move this
3 here, move that there, it doesn't rise to the level of needing
4 a major amendment, but little stuff. I'm paraphrasing.

5 THE COURT: Right.

6 MR. BLOOM: Here's what's important about that, Judge.
7 For minor amendments, there's no notice to the papers, there's
8 no posting or advertising that the amendment is taking place.
9 There's no letters that go out to the neighbors and say, hey,
10 we're changing something on the zoning. There are no public
11 hearings. There is nothing that would alert the public to the
12 fact that the zoning on this property is changing, not even
13 from the other owners on that property, like my clients. It
14 was a major victory for County Councilman Goggans to negotiate
15 and convince his employees that it could be a minor amendment.
16 And that is a cornerstone of our case, cornerstone. That
17 started the process, Your Honor. We appealed that. We said
18 this is not a minor amendment. You're going from 4500 square
19 feet to ten-and-one-and-a-half stories to 10,000 square feet
20 and four stories. They are apples and oranges. You need a
21 major amendment. The BZA, which is charged with hearing those
22 appeals over the staff, that's the judicial review for the
23 staff decision, sided with the staff, not surprisingly. And
24 then we appealed that to Circuit Court. That started this
25 whole saga, Your Honor. It is then Goggans goes and he --

1 they shift gears, and they apply for a major amendment, which
2 does require notice of hearings, et cetera, et cetera. They
3 passed the major amendment as 2.0; and then they passed this
4 one, which is 3.0. That whole story has Goggans square in the
5 middle of it. And his -- we contend his conduct infected the
6 process, which goes right to whether it was an irrational
7 decision; it goes right to whether it was arbitrary and
8 capricious; it goes right to whether there was substantive due
9 process and procedural due process violations. And it goes
10 right to whether he's liable under 1983 for acting under color
11 of state law in violating his constitutional rights. So, it's
12 not other bad acts. It's not a DUI. It's not something that
13 he did in another city, state, or time. It's this course of
14 conduct that we submit is directly relevant. Yes, it's
15 prejudicial, but it's not more prejudicial than probative,
16 which is obviously the standard. And even under 404(b) test,
17 I submit Your Honor if you were gonna apply it, it still
18 passes. It shows the course of conduct. It shows its intent.
19 Why is intent important? Your Honor, I think they're gonna
20 raise an immunity defense. And if they do, we have to be able
21 to pierce immunity, and we have to be able to pierce immunity
22 for Mr. Coggins. And putting in the evidence of this course
23 of conduct is the way we do it. And so, it's a long-winded
24 way of saying Your Honor that evidence about his ethics
25 violations and the substance of those violations, and the

1 ethics code sections that he violated, or all probative and
2 bear directly upon whether the process that resulted in the
3 passage of 3.0 was infected by his misconduct. And, it goes
4 directly to 1983, the constitutional violations, and it goes
5 directly to his immunity defense. So that all of that stuff
6 is competent and admissible extrinsic evidence must come in in
7 order for us to make our case about his personal liability.

8 The -- I don't intend, Your Honor, to retry the ethics
9 case, if you will. But it certainly is appropriate fodder for
10 him on cross-examination to point out to Your Honor where he
11 broke the rules. Now, he's gonna say to the attorneys said I
12 could do it. Fine. That's for Your Honor to then determine
13 was Goggans's involvement so improper as to result in the
14 arbitrariness and capriciousness, and irrationality of the
15 passage of 3.0.

16 And I'll say one more thing and then sit down. When Your
17 Honor is making that consideration -- and those are the
18 standards, I'm throwing out these really important terms,
19 because that is what Your Honor is gonna be charged with
20 figuring out. It's the only explanation for why the County
21 ignored its own rules at every single turn. It ignored its
22 notice rules. It ignored procedural rules. It ignored its
23 own parking calculations. And you've got in 6 through 8,
24 you've got Goggans bragging about this, about his ability to
25 push this thing through because the planning staff are his,

1 quote, in his words, friends, and they're gonna, quote, help
2 him out. I'm paraphrasing again. So, that testimony and that
3 evidence, Judge, goes directly towards the process that
4 resulted in the passage of 3.0, and why it is in fact
5 unconstitutional and invalid.

6 THE COURT: So, 6, 7, and 8 are -- they're emails; is
7 that right?

8 MR. BLOOM: Yes, I think so, Judge.

9 MS. GOLDING: Yes, Your Honor.

10 MR. BLOOM: 6 is an email from Goggans -- I'm sorry --
11 from Lawhon to Goggans -- strike that -- the bottom half is
12 really important, Judge. There's a May 4th, 2016 email where
13 Goggans is writing to his clients, Lawhon, Mark, and Chris.
14 And if you need a copy of this, I have these exhibits if you
15 would like to see them, Your Honor.

16 THE COURT: Yeah, you may as well go ahead and hand them
17 to me.

18 MR. BLOOM: May I approach, Judge?

19 THE COURT: Yes, sir.

20 MR. BLOOM: Judge, 6 is the first of the three exhibits.
21 If I could direct your attention, Your Honor, to the -- this
22 is the May 2016 timeframe, to give context, this is when
23 Goggans is negotiating with the planning staff to convince the
24 planning staff of the changes that they want to make to the
25 planned development zoning are worthy of a minor amendment

1 that can be done in secret as opposed to a major amendment
2 that has to be done publicly and with notes. And you'll see
3 him updating, I guess, his clients where he says in the fourth
4 line, Boyd and Holly are friends, by the way, and they're
5 usually helpful in my efforts. So, I think we've got a good
6 interpretation here with one exception, Holly saying that the
7 restaurant must be the size of the original. Next sentence,
8 in our latest sketch, the restaurant and kitchen are about a
9 thousand square feet larger than the original. I talked to
10 Boyd today -- and by the way, Boyd and Holly are the planning
11 director and chief planners for the County. Where he says,
12 And he and Holly are going to see if they can find a way to,
13 quote, help. This is the heart of our case.

14 THE COURT: Well, and I think these -- you know, this
15 email specifically -- it doesn't have anything to do with any
16 ethical findings by the Ethics Commission. I mean, this is
17 what I was getting at when I'm talking about evidence of bias.
18 So, assuming 7 and 8 are of a similar nature ---

19 MR. BLOOM: 7 is not as -- 8 definitely is. 8 is, in
20 fact, where Goggans is telling his client that he needs a
21 \$72,000 bonus for, quote, personally engaged in numerous
22 negotiations with local regulatory authorities resulting in
23 favorable outcomes for a variety of issues. It goes on to
24 talk about parking requirements in Number 1, existing parking.
25 So, all of these -- this is all Number 8, Your Honor -- all of

1 these Items 1 through 6 are him basically saying to his
2 client, hey, I did such a great job with the public authority,
3 I need another 72 grand, he says -- paragraph, therefore, I
4 would respectfully request a fee modification in the amount of
5 an additional 72 grand. So, again, Judge, this goes to the
6 core of our case that Goggans is using his power to get paid
7 by Palmetto and to get 3.0 approved. And I totally agree with
8 Your Honor, this is what I was saying is the other bucket.
9 You know, the ethics consent order is one bucket; and 6, 7,
10 and 8 are another bucket. But counsel sought to have them all
11 excluded, which is why I took them up in that way.

12 Thank you, Your Honor.

13 THE COURT: All right. Ms. Golding, with regard to 6, 7,
14 and 8, I mean, they don't appear to be of the same nature of
15 the ethics issues and, you know, just at first blush they seem
16 to be -- seem to be relevant and seemed to not be -- they are
17 not violative of 403 and -- at least preliminarily.

18 MS. GOLDING: Yes, sir, Your Honor. I understand what
19 you're saying at this stage.

20 Your Honor, this is May of 2016. The major amendment,
21 which is the subject of Plaintiff's lawsuit, the application
22 was filed on August 27, 2018, and the ordinance passed in
23 January 2019. These three exhibits do not relate to that
24 ordinance. These three exhibits, aside from the fact they're
25 hearsay, Your Honor, but ---

1 THE COURT: Well, they are a statement from -- Mr.
2 Goggans is an individual party, correct?

3 MS. GOLDING: Yes, sir. But they are to a third party,
4 so ---

5 THE COURT: Well, not -- we can talk about hearsay later,
6 but ---

7 MS. GOLDING: Yes, sir.

8 THE COURT: So, I guess your argument is this was for --
9 this wasn't for 3.0 or MQ3; is that the heart of it?

10 MS. GOLDING: That's correct, Your Honor.

11 And, Your Honor, Mr. Goggans did not vote on the MQ3.
12 There is no evidence, none, that shows that Mr. Goggans had
13 any influence on the passage of MQ3. Plaintiff's position
14 that Mr. Goggans infected the process doesn't work under the
15 law. This is not a res ipsa loquitur analysis. That has to
16 be proved that Mr. Goggans actually improperly or unethically
17 participated in MQ3, and that did not happen, Your Honor.

18 Thank you, Your Honor.

19 THE COURT: All right. I'm -- as far as 6, 7, and 8 go,
20 I'm not gonna rule them out at this point in time. You know,
21 whether -- whether they are relevant to MQ3 or 3.0 -- let's
22 just call it -- 3.0 is easier for me to get -- it's probably
23 easier on the court reporter as well. You know, I guess
24 assuming the appropriate foundation can be laid, 6, 7, and --
25 I'm not gonna exclude 6, 7, and 8 at this point in time.

1 We'll just have to see how -- how the testimony goes, but I
2 think there's -- I'm not convinced that they're irrelevant at
3 this point.

4 MS. GOLDING: Thank you.

5 Your Honor, the number two issue is the questions about
6 solicitation of how Mr. Goggans is gonna be testified about.
7 And the only reason I have this issue in the motion in limine
8 is simply because to educate the plaintiffs because they
9 didn't know about this in the depositions about the
10 legislative immunity. They can't go into certain questions
11 about deliberations. And there are several councilmembers
12 they've also subpoenaed, so I wanted to bring it up to the
13 Court simply for the plaintiff to know that the questioning of
14 legislatures is not the same way as questioning anyone else.
15 And, of course, I would be objecting on legislative immunity
16 if they go into improper questions. Judge Culbertson issued
17 an order basically outlining what Plaintiff could ask in the
18 depositions because they were going into a great deal of
19 legislative immunity, legislative privilege questions. And
20 that's the only reason -- I'm not seeking a ruling from the
21 Court at this time, it is just my way of saying, Plaintiffs,
22 you've got this legislative privilege that has to be
23 recognized.

24 Your Honor, the third issue is that there are photographs
25 of the old building, and I am guessing that that they're gonna

1 ask questions of the seating capacity in the old building,
2 when in fact there's no evidence in the photographs of any
3 seating capacity, heated square foot. I mean, those
4 photographs do not establish anything with regard to what the
5 criteria was set forth in the -- I think it's MQ30 -- in MQ30.
6 And that's why I think that trying to use those photographs to
7 say that would be improper. I believe Plaintiff's counsel has
8 agreed to Number 5 ---

9 MR. BLOOM: Do you mind if I respond before ---

10 MS. GOLDING: Oh, I'm sorry.

11 THE COURT: Yeah. Go ahead, sir.

12 MR. BLOOM: Is that the way you want to do it, Judge?

13 THE COURT: Yeah. I think you may as well. It'll be
14 easier for me to keep track of everything if we have a back
15 and forth instead of a one side makes all their arguments and
16 then the other side responds.

17 MR. BLOOM: It'll be a lot easier for me to keep track of
18 as well.

19 THE COURT: Right.

20 MR. BLOOM: Exhibit 11 is a picture of what the one-and-
21 a-half story, 4500 square-foot original snack bar and ship
22 store look like from the outside. If there is testimony as to
23 what was inside and how big it was and how many seats it had,
24 and how many tables it had, that has nothing to do with the
25 picture. And counsel can certainly cross-examine the basis

1 for that knowledge and information as to what was inside the
2 store and how big it was. But, Your Honor, has seen what it
3 looked like in the before is directly relevant to whether this
4 was an arbitrary and capricious decision to pass 3.0, which
5 allowed a 10,000 square-foot, four-story, steel structure to
6 be built, because the fundamental defense of the County is
7 that it was the right decision because they were building the
8 same thing that was there. Your Honor needs to be able to see
9 what was there. That's why Exhibit 11 is absolutely relevant.
10 I didn't hear a prejudicial 403 problem or a 404 problem.
11 And, we'll lay the foundation to get 11 in, so...

12 THE COURT: And I wanted to see the picture of the new
13 building to orient myself; I think I want to see a picture of
14 the old building as well. So, assuming the appropriate
15 foundation is laid, the picture of the old building will come
16 in.

17 MS. GOLDING: Your Honor, the next item is Number 4, the
18 issue of the hours of operation, Your Honor. And the reason I
19 bring that up is because there have been discussions by some
20 of the plaintiff's witnesses as to hours of operation. That
21 is not a factor, Your Honor, in the ordinance. It certainly
22 -- it's not about -- he's already agreed that the easement is
23 not in there. The easement has some suggestive language you
24 can use -- or one can use, but there's no -- as Plaintiff
25 placed in their pretrial brief that there is some right to use

1 the parking lot during certain hours. That's not correct.
2 There is no right to use the parking lot at night to the
3 exclusion of anyone else. That's not consideration for
4 passage of the ordinance. That's not a factor under the
5 zoning. And therefore, that would be improper to bring that
6 type of information to the Court.

7 MR. BLOOM: The easements that entitled Gulfstream to use
8 the parking lot our Exhibits 2 and 3. They are directly
9 relevant because they set forth why and how Gulfstream gets to
10 park in the 62 parking spaces between the two buildings. The
11 whole question about whether allowing the new 10,000 square-
12 foot, four-story building to be built goes towards the essence
13 of all zoning decisions. Is it in the best interest of the
14 public health, safety, welfare? Was it arbitrary and
15 capricious? Was it advancing legitimate government interest?
16 The right to use those spaces is the essence of why allowing
17 that building to be built and to be used by up to 360 people
18 was an arbitrary and capricious decision. It tells the story
19 about the sharing of a parking lot. Now, Your Honor can look
20 and see in the easement what it says is what it says. It says
21 that the owner of the parking lot, which is now Palmetto, will
22 allow Gulfstream to use the 62 spaces. The parties' intent --
23 this is in the language -- is that the ship store in the snack
24 bar will use the parking spaces primarily during the day, and
25 that the restaurant will use the parking spaces primarily at

1 night. You can take that language and use it for whatever you
2 like, but that is the genesis of our rights to use those
3 parking spaces, and that -- I haven't heard anything that
4 renders the easements themselves inadmissible, more
5 prejudicial than probative. It's certainly not gonna cause
6 confusion. It actually enlightens the Court as to why we have
7 the right to park there in the first place. And more
8 importantly, Judge, why for 30-something years there was no
9 problem with the parking lot. Before the new owner in 2014
10 decided he wanted to redevelop the ship store and the snack
11 bar, before that for the 30 years before that there was no
12 problem, because it was a marina, and the cars parked there
13 during the day, and Gulfstream only served dinner. And so,
14 the cars left when they came back off the boats, and cars came
15 in to go to dinner at Gulfstream. So, all of that, Your
16 Honor, is the context for why these easements are important
17 and why the decision to allow the new building was arbitrary
18 and capricious.

19 MS. GOLDING: Your Honor, I think at this time some of
20 the facts that Mr. Bloom has presented to this Court are
21 inaccurate. Just the simple fact that it was a marina, it was
22 a marina and restaurant. And yeah, they didn't have problems
23 for 30 years, but the Marlin Quay Restaurant served dinner.
24 It had steak night. It had fried chicken night. It had
25 shrimp night. It served alcohol, hard liquor, and beer and

1 wine. They've even had their own people go there at night
2 after the Gulfstream closed up, the Gulfstream Café closed up,
3 people went there at night. So, to make some presentation to
4 this Court -- I think that -- I guess I'm getting at the point
5 of it is is that the issue about not using at night is
6 incorrect. But more importantly, it has nothing to do with
7 the passage of the ordinance. There's nothing in the zoning
8 ordinance that limits anybody from doing business or parking
9 at night. So, that's an improper consideration, Your Honor.
10 And that's why I would say that the testimony with respect to
11 that would not be admissible.

12 Thank you, Your Honor.

13 MR. BLOOM: Your Honor, may I be heard on one more ---

14 THE COURT: Yes, sir.

15 MR. BLOOM: One more volley, if you will.

16 THE COURT: Yes, sir.

17 MR. BLOOM: Judge, we can debate what the evidence is
18 gonna be. I don't think that advances the ball at all. But
19 to say that it's not relevant, let me explain one reason why
20 in addition to what I've already said that's relevant, and it
21 has nothing to do with the passage of 3.0. When the County
22 analyzed 3.0, one of the primary things that they looked at
23 was whether there was enough parking. That is what they all
24 did and testified about. You can look at emails starting in
25 2015 through 2018. The discussion about parking is throughout

1 -- this whole case is about parking, period, paragraph. When
2 they analyzed the wisdom of passing 3.0, the planning staff
3 said that there was no problem with parking. They calculated
4 the parking based upon the proposed new building. And the
5 reason that it is so relevant to the passaging -- and the
6 stupidity of passing 3.0 is because they all testified that
7 when they passed 3.0, and they recommended passage of 3.0,
8 they didn't take into consideration how much parking
9 Gulfstream needed, nor how much parking the marina needed.
10 That is 100 percent the testimony of the two people in charge
11 of the planning process that recommended approval of 3.0. And
12 the point here is that it goes to the heart of how irrational
13 it was to approve this building is that in their own process
14 they said no, no, I didn't consider that Gulfstream needed
15 parking spaces, and I didn't consider that the marina needed
16 its's parking spaces. In my ordinance, Article XI, and
17 particularly in 11. -- 1102.3 says that if you've got three
18 uses -- I've got to calculate the parking required for use
19 number one; I've got to calculate the parking required use
20 number two; and I've got to calculate the parking required for
21 use number three. And I can't double count the number of
22 spaces available off-street, in the parking lot. If the total
23 was 200 spaces and I've only got 50, it's not a very good idea
24 to approve the new building. That's the heart of our case,
25 Judge.

1 THE COURT: Mr. Bloom, it sounds like you can use those
2 items as you referenced to prove that part of your case
3 without referencing necessarily -- I mean, I understand that
4 the easement is like the -- the existence of this parking
5 easement is what ties this all together. But, you know, it
6 sounds to me if you've got other evidence of we didn't do
7 these calculations appropriately, I don't think that goes to
8 necessarily the business hours of each place. So, I mean, I
9 think you can get to where you want to go without necessarily
10 making direct reference to we were only supposed to be open
11 until -- Marlin Quay was only open until 6 o'clock in the
12 afternoon, because I don't know whether, you know, they said
13 people would go to Marlin Quay at night. I've never -- never
14 been to the Marlin Quay Restaurant. I don't know whether, you
15 know, I'm just kind of supposing based on what the arguments
16 are. I mean, I guess right now I don't see where the business
17 operation hours are necessarily relevant to the calculations
18 which were done in regard to whether this amendment would
19 allow for kind of adequate parking for these entities. So, I
20 guess I'm just gonna have to rule on that one as the evidence
21 unfolds because I'm just -- I feel like I'm giving an advisory
22 opinion, and I don't really want to do that. So, I'll be on
23 the lookout for that issue when and if it arises.

24 And that brings us to Number 6.

25 MS. GOLDING: Your Honor, with respect to Number 6.

1 There may be some testimony of somebody saying there was a
2 wreck back in who knows when. And I understand there might
3 have been a wreck back in the 1990s or something the big
4 fishing tournament the Governor's Cup was being held there or
5 somebody was really drunk on a motorcycle. But nobody knows.
6 There was -- we've checked with the sheriff and there are,
7 there is no record of any accident.

8 MR. BLOOM: Your Honor, excuse me. I'm sorry to
9 interrupt you. But I'd have to object to that because there's
10 nothing in the record about any sheriff's reports or the
11 sheriff's record. And unless there's some exhibit that I've
12 never seen about a sheriff's report, I'd have to respectfully
13 object to if Your Honor's considering what some sheriff's
14 report says or doesn't say.

15 THE COURT: Well, what is the -- let's look at this --
16 what is it in Exhibit 44. I guess I've got it in front of me.

17 MS. GOLDING: Exhibit Number 44, minutes of County
18 Council meeting, Your Honor. And some of the members stood up
19 and said that there was some type of wreck that went on. They
20 didn't know about it. I believe those were just assumptions,
21 Your Honor, with respect to those were statements made by the
22 public. For instance, like on Page 2 of Exhibit 44, there is
23 a colloq that said that somebody was fatally -- there'd been a
24 fatality on the road, and this will make the situation worse,
25 when in fact there is no evidence. There is admissible

1 evidence. Nobody saw it, so, you know, -- so, that's what --
2 I had this, Your Honor, because of the jury. This was
3 directed primarily because I believed this was gonna go to the
4 jury. I wanted this redacted, because in fact Plaintiff will
5 not be able to put up any admissible evidence with respect to
6 any accidents.

7 THE COURT: Is Mr. Clete Skipper ---

8 MS. GOLDING: He's not a witness, Your Honor.

9 THE COURT: He's not on any witness list?

10 MS. GOLDING: No, sir. And the same is true is a Micah
11 Sawyer. Micah Sawyer, on the next page, not a witness. Rob
12 Morris, on the next page, not a witness. These are just --
13 so, and that was the reason I had -- my primary concern was
14 going to the jury and the jury won't know the difference if
15 somebody believed something might've happened versus something
16 what actually happened.

17 Thank you, Your Honor.

18 THE COURT: Yes, ma'am.

19 MR. BLOOM: I'm having a hard time arguing these because
20 there aren't any evidentiary rules being discussed.

21 THE COURT: Well, I mean, if those witnesses aren't here
22 to testify to something within their own personal knowledge, I
23 mean, hearsay is the one that jumps immediately.

24 MR. BLOOM: I anticipate the hearsay objection, and if we
25 fail to set up the proper foundation, then a hearsay objection

1 would certainly be appropriate, and I am confident Your Honor
2 will be able to rule on that. But, at this point, I can tell
3 you why this document is completely admissible. It's self-
4 authenticating because it's a public record. It's -- it's an
5 exception to hearsay because it is a public record. It is
6 documentation of what occurred at the County Council meeting.
7 And if counsel wants to argue that what was being said was
8 said without proper foundation, that's her argument. But most
9 importantly, Judge, if it is an accurate recitation of what
10 occurred at the meeting, think about it. You've got a bunch
11 of public people sitting up there and saying this is a
12 terrible parking situation; there are accidents all the time;
13 don't approve this; it's gonna make worse. The fact that that
14 was presented to the County and the County ignored it is
15 competent evidence that the decision was arbitrary and
16 capricious. Your Honor can decide whether sufficient
17 foundation for the underlying assertions of fact, that's
18 within the realm and province of the trier of fact.

19 THE COURT: Well, I agree with you that the document in
20 and of itself would make -- meet the public record exception,
21 but there is hearsay within -- there's, in my view,
22 inadmissible hearsay within the document which is subject to a
23 hearsay exception. So, you know, if you offer this as
24 evidence and, you know, I can consider the document on its
25 face as a whole, as a whole but, you know, these statements

1 that are -- by these witnesses that aren't here. And, you
2 know, just looking at Clete Skipper, he said there's already
3 been a fatality on the road in front of Marlin Quay, and this
4 will make the situation worse. You know, and I don't know
5 what, what County Council considered how much weight they gave
6 that statement. They might've -- they might've given it very
7 little weight given how vague it was. I mean, I think the
8 document is admissible. I think there are things in the
9 document, if this were going to the jury, that would likely
10 have to be redacted. And if I don't believe they're
11 admissible, I'm not gonna consider them.

12 MS. GOLDING: Thank you, Your Honor.

13 Your Honor, I do want to point out a previous motion in
14 limine, a previous point I raised, and Mr. Bloom just
15 asserted, he said that the County did not consider. That
16 cannot be asked. That is directly with respect to the
17 legislative privilege, and that's what I'm very concerned
18 about is that Mr. Bloom or one of the plaintiff's attorneys
19 will go into that area, because that statement in and of
20 itself is prohibited. You cannot go into what the County
21 considered in passage of 3.0.

22 MR. BLOOM: That is absolutely not the law. I cannot ask
23 the County Councilmembers what they considered or didn't
24 considered, or why they voted the way they voted, but I can
25 certainly point out what was in front of them to be

1 considered. That's -- how else would you be able to prove it
2 was arbitrary and capricious if you didn't -- if you couldn't
3 show this is all the evidence in front of you that shows that
4 this is gonna be a death trap and you still voted to approve
5 it. That's the trier of facts province to decide, boy,
6 there's a lot of evidence that looks like this is a stupid
7 decision. I agree that it was arbitrary and capricious. I
8 don't need any additional lectures about how legislative
9 immunity works. But asking questions of councilmembers is far
10 different than putting in the minutes from the meeting, which
11 is in fact a public record and not immune from consideration.

12 THE COURT: Well, and I will, assuming that these -- the
13 minutes from these meetings are offered and admitted, I will
14 give them the weight that they are due.

15 I mean, you know, Ms. Golding, if you feel like you need
16 to object over, you know, a question on privilege or immunity
17 grounds, we'll take it up at the time.

18 MS. GOLDING: Thank you, Your Honor.

19 THE COURT: Uh-huh, (affirmative response).

20 MS. GOLDING: Your Honor, the next item I believe is
21 Number 8. It's an aerial photograph. That was -- discovery
22 in this case ended on September 23, 2021. I tried to get
23 discovery extended. Plaintiffs would not consent, and the
24 court denied my request, Judge Culbertson. So, this matter --
25 this aerial photograph came in on March -- was presented on

1 March 14, 2022, when we were supposed to try the case. I'd
2 never seen it before. I don't know who took it. I don't know
3 when it was taken. It was outside discovery, and I would ask
4 that it not be permitted in the case.

5 THE COURT: Can I see it?

6 MR. BLOOM: Yes. Beautiful picture of the sunset.

7 THE COURT: Ms. Golding, do you have a copy of the photo?

8 MS. GOLDING: Yes, I do have a copy. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 Ms. Golding, understanding that this came in after
12 discovery was closed, what's the -- other than the technical
13 violation of tit coming after, what's -- what's the prejudice
14 asserted?

15 MS. GOLDING: It's the technical violation, Your Honor.

16 THE COURT: Okay. Since we don't have a jury, I don't
17 see the harm in allowing this.

18 MS. GOLDING: Thank you, Your Honor.

19 THE COURT: Defendant has not asserted any prejudice, so
20 assuming the appropriate foundation is laid, this will likely
21 be admitted.

22 And, Mr. Bloom, I want to hand you this copy back.

23 MR. BLOOM: It's your copy, Judge.

24 THE COURT: Oh, sorry. It was taken out of my notebook.

25 MR. BLOOM: Yes, sir.

1 THE COURT: All right. Good deal.

2 MS. GOLDING: The next line is, Your Honor, Number 11.
3 It's a testimony of Jef Kirk, or witness Jef Kirk, Linda
4 Barnaba, Teresa Floyd. Plaintiff's counsel has already said
5 Linda Barnaba and Teresa Floyd will not be witnesses, so it's
6 only with respect to Jef Kirk. Your Honor, he was not
7 identified as a witness. I understand he is the general
8 manager of Gulfstream. Had he been identified as a witness, I
9 would've taken his deposition. The first time I had any
10 knowledge that he was to be a witness was in March 2022 when I
11 received their pretrial brief.

12 THE COURT: And that was after discovery had closed?

13 MS. GOLDING: Yes, sir. Discovery had been closed for
14 nine months or so.

15 THE COURT: All right. Mr. Bloom, what's the plaintiff's
16 position on Mr. Kirk?

17 MR. BLOOM: Judge, the appropriate test for determining
18 the admission or the permission of a witness that is
19 technically not been properly identified is the *Jumper* test.
20 Your Honor is probably familiar with the *Bryson* case at 378
21 S.C. 502, as a Court of Appeals decision in 2008. The *Bryson*
22 Court tells us that the decision of whether or not to allow
23 witness to testify who has not been previously listed on
24 interrogatory answers rests within the sound discretion of the
25 court. The sanction of excluding a witness should never be

1 lightly invoked. That's set forth in the *Burke* case at 421
2 S.C. 553, which is another Court of Appeals case in 2017. The
3 *Jumper* case, which is at 348 S.C. 142, is the seminal case on
4 determining whether in fact the sanction of an exclusion of a
5 witness should be handed down.

6 First of all, *Jumper* was an expert witness case. You've
7 got 26(a) rules that are a whole different animal from a fact
8 witness. Mr. Kirk is a fact witness. Mr. Kirk is the general
9 manager of Gulfstream and has been since 2012. And so, when
10 you go through the factors, you've heard nothing from counsel
11 regarding any actual prejudice or degree of surprise, which
12 are factors four and five of the *Jumper* test.

13 So, let me tell you the story. The story is that Mr.
14 Kirk has been involved in this case, if you will, both the
15 case against the County and then the case between the
16 neighbors since 2017. Mr. -- Ms. Golding deposed Mr. Kirk in
17 2017. She cross-examined him in this room in 2018. And
18 contrary to what she just said, in the fall of 2021, about a
19 year ago now, Mr. Kirk submitted his affidavit in opposition
20 to a motion for summary judgment filed by the County. So,
21 when you look at -- and then, yes, in our first witness list
22 in March 2022 when the case was originally scheduled, we
23 identified him as a testifying witness. So, when you look at
24 the *Jumper* elements, what was the type of witness involved;
25 it's a fact witness not an expert. The requirements, and I

1 would submit that it's at the scrutiny level for an expert,
2 which should be higher. Although we found in the *Davis* case,
3 which is an unrecorded case, that they allowed an expert to
4 testify that had been disclosed the day before trial when
5 there was the ability for opposing counsel to depose that
6 expert. At any rate, this is a fact witness. The content of
7 the evidence emanating from the proffered witness -- in this
8 case, Judge, Mr. Kirk's testimony is critical to our case. He
9 has been front and center on the front lines of this zoning
10 process since 2015. He is the one that has all of the
11 personal knowledge with respect to what happened both on the
12 ground, what happened within the County administrative walls
13 in terms of different hearings. He was on the front lines of
14 this case from the very beginning. He is no surprise to
15 defense counsel. He was, in fact, the key witness or a key
16 witness in the first case and a key witness in our defending
17 the summary judgment that they filed in this case. But,
18 Judge, factor number three, asks the Court to examine the
19 nature of the failure for a neglect or refusal. It's not
20 refusal to furnish his name. The nature of the neglect was
21 our fault.

22 I don't know why, as I sit here today, my law firm did
23 not disclose him in our interrogatory responses. It is as
24 vexing to me as it may be to Your Honor. He is the guy. He
25 is the Gulfstream guy sitting right there. He's been living

1 this case for seven years. And why we -- and I take the
2 blame, my name is on the door, while we did not identify him
3 in interrogatory response I do not know. I wish I could tell
4 you, but it was a mistake. And this mistake could have been
5 cured on multiple occasions since his affidavit in the fall of
6 '21.

7 The degree of surprise is the fourth element, and in
8 particular it says the degree of surprise to the other party
9 including the prior knowledge of the name of the witness.
10 Well, there's no surprise. He submitted an affidavit in this
11 case in the fall of 2021 with his name on it. So, they knew
12 he was a key witness in terms of this case.

13 And then, obviously, number five, Judge. There is no
14 prejudice whatsoever to Defendant with the identification of
15 this witness. We identified him in the fall of 21. We
16 identified him again in March 2022. And I expect, and I've
17 already heard it once that because discovery had closed that
18 there was not the opportunity to depose him. Au contraire.
19 When the parties had an issue with respect to Defendants'
20 expert, we agreed to reopen discovery for the purposes of
21 allowing that deposition to take place, but counsel for
22 Defendant made no effort whatsoever to cure what may now be
23 argued as prejudice. And so it -- it smells more like a
24 classic sandbagging when you do nothing to fix what you are
25 now contending is such a grave prejudice or problem in your

1 case when you've had at least since March 2022, which is,
2 what, five months, to fix the problem. And not until this
3 motion in limine which was filed, I guess, last week, did
4 counsel for Defendant object to Mr. Kirk and raise arms to say
5 that witness cannot come in.

6 Mr. Kirk -- Mr. Kirk's testimony is not a surprise. It
7 was -- there was no effort by Defendant to cure whatever
8 prejudice they think they might have. Mr. Kirk's testimony is
9 sworn testimony and can be found already in the deposition
10 that he gave in the first case, and in his affidavit in this
11 case. And if it will cure any potential prejudice that Your
12 Honor sees might exist, we'll put them up for deposition any
13 time. Which, if counsel had raised this with me in March,
14 wait a minute, Simon, Kirk's on your list, we haven't had a
15 chance to dispose him; that's easy peasy. It's in my -- 100
16 percent in my interest to say you tell me when and where and
17 I'll have him there for deposition. But there was no effort
18 made by Defendant to cure what may now be argued as prejudice
19 as a result of the, quote/unquote, late disclosure of Mr.
20 Kirk.

21 Do not punish Gulfstream for my mistake, my firm's
22 mistake in not identifying him in the interrogatory response.

23 Thank you, Your Honor.

24 MS. GOLDING: I guess it's my fault they didn't list him;
25 that's all I can say, Your Honor.

1 THE COURT: Well, I -- I'm gonna read these cases that
2 have been cited.

3 MS. GOLDING: Okay.

4 THE COURT: Mr. Bloom, if you can give us the cite for
5 the *Jumper* case, that'll make my law clerk's life a lot
6 easier.

7 MR. BLOOM: I'm sorry, I sped too fast. It's 348 S.C.
8 142.

9 THE COURT: I'll give y'all an answer on that one in the
10 morning.

11 MS. GOLDING: Thank you, Your Honor.

12 THE COURT: All right.

13 MS. GOLDING: Just for the Court to again hear what he
14 said, Mr. Kirk is crucial. We had sets of interrogatories to
15 each councilmember that was sued by Gulfstream as well as the
16 County. We have a book. They had to answer these
17 interrogatories not once but nine different times. They
18 supplemented the interrogatories five times, with the last
19 supplement adding Joe Bishop a few weeks ago as a witness.
20 Never once did they add Mr. Kirk, their supposed critical
21 witness. I would've taken his deposition without doubt had he
22 been listed as a witness.

23 Thank you, Your Honor.

24 THE COURT: All right.

25 All right. That brings us to Number 12.

1 MS. GOLDING: Those are the export reports, Your Honor.
2 They have identified their expert reports as well as the
3 working file of each expert, and those are Exhibits --
4 Plaintiff's Exhibits 47, 70, 72, 73, and 74. I believe the
5 law is clear in South Carolina that expert reports are not
6 admissible, and cited the cases -- the caselaw. *Duncan v.*
7 *Ford Motor Company*, 385 S.C. 119, 682 S.E.2d 877. Experts are
8 subjective opinions that are not to be introduced into
9 evidence, Your Honor. I've never -- I've tried a good many
10 cases. I've never seen before without -- if it's without the
11 consent, the reports -- expert reports just don't come into
12 evidence. Is their testimony. And their work file,
13 obviously, doesn't come in as well.

14 Thank you, Your Honor.

15 THE COURT: Well, since we don't have a jury to worry
16 about being prejudiced by some of the contents of the expert
17 reports, I feel like it might help me as I go through this to
18 refresh my recollection as to their -- the witnesses'
19 testimony. Now, the work files, I agree with you. You know,
20 I don't think those certainly need to come in but, you know, I
21 anticipate taking this matter under advisement and study on it
22 as we say back on for a while. So, you know, I would -- I'd
23 like to at least be able to review the report prepared by each
24 expert, and I don't think that they're in a league of danger
25 of undue prejudice exists when you don't have a jury. Again,

1 you know, I think -- I think it's gonna be my job to figure
2 out what weight to give these individual pieces of evidence,
3 and I would -- I'm not trying to strong-arm you, Ms. Golding,
4 but, I mean, I think it might assist the trier of fact if
5 those were to come in in this circumstance.

6 MS. GOLDING: Thank you, Your Honor.

7 Then the next item was the Exhibit Number 18. Plaintiff
8 wants to put in the jury verdict form for the first case. I
9 don't think that's admissible. The jury verdict -- I mean, we
10 have to go and explain, that trial was over a week. The jury
11 came back, found for the plaintiff with zero damages. Judge
12 John said, you've got to find some damages. So, he sent them
13 back and they brought out \$1,000. So, I don't see the
14 relevancy in that. It's not relating to the ordinance, so...

15 THE COURT: Mr. Bloom?

16 MR. BLOOM: Judge, I don't think it's prejudicial in any
17 way. I don't know that I'll use it. I don't know how I'll
18 use it yet. I don't think Your Honor needs it as res gestae.
19 It's not the verdict as to the damages amount. That verdict
20 form also includes the injunction. This is one I think we can
21 take on the fly. I just haven't -- I don't see any real
22 prejudicial ---

23 THE COURT: I mean, at this point, I don't know how it
24 would assist -- necessarily assist me. I mean, there's -- if
25 there's no, no allegation that the injunction which set the

1 parameters of the new build as violated, I'm not sure how it
2 would be relevant, but we can take that one up if and when it
3 comes.

4 MS. GOLDING: Thank you, Your Honor.

5 I believe, Your Honor, next was Exhibit 60, which is
6 Plaintiff's counsel's letter to County Council. And in light
7 of the fact that this is a judge-only trial, I just didn't
8 want to have legal position of Plaintiff in handwritten form
9 going to the jury, and that's why I had moved to exclude that.
10 So, I'll withdraw that, Your Honor.

11 THE COURT: Okay.

12 MS. GOLDING: Next is Number 16, Your Honor. There are
13 -- there is communications that relate to the minor amendment.
14 And those emails are set forth with respect to the minor
15 amendment. We have Plaintiff's 10, 76, 77, 78, 79, and 80,
16 81, 82, and 83. I think, Your Honor, these could be handled
17 if and when they're gonna be introduced.

18 THE COURT: Okay.

19 MS. GOLDING: Thank you, Your Honor.

20 Next, Number 17, these are communications, I again think
21 they can be handled when they are being brought up. I'm
22 trying to remember what they are. Communications regarding
23 the building code, this is a lawsuit about the zoning code,
24 not the building code. And they may not present them.

25 With respect to Number 18, Your Honor, 18 -- Plaintiff

1 has listed exhibits as exhibits emails that occurred after the
2 passage of 3.0. And as Mr. Bloom stated earlier all we're
3 about is the passage of 3.0. Nothing that occurred after the
4 passage, and that would be premise of Number 18.

5 I didn't know if we wanted to continue this.

6 THE COURT: Mr. Bloom, you got any ---

7 MR. BLOOM: I think this is another one, Judge, that we
8 can take up as we go along.

9 THE COURT: Okay.

10 MS. GOLDING: Your Honor, Number 19 is the deposition of
11 Mr. Goggans that was taken in the first case in which, of
12 course, Georgetown County was not a party to, neither was Mr.
13 Goggans, and that as an exhibit would be improper.

14 MR. BLOOM: Agreed.

15 MS. GOLDING: Okay. Thank you.

16 THE COURT: Now, that wouldn't preclude it being used if
17 he were to testify inconsistently ---

18 MS. GOLDING: Prior inconsistent ---

19 THE COURT: Yeah, okay.

20 MS. GOLDING: No, sir. No, sir. It's just having that
21 as an exhibit.

22 THE COURT: I'm with you. All right.

23 MS. GOLDING: Okay. Number 20, Defendants have
24 identified -- excuse me -- Plaintiff has identified
25 Defendants' Answers to Interrogatories, and those aren't

1 proper to be introduced into evidence, as the case of *Lynch v.*
2 *Carolina Self Storage Centers*. It's clear that that's not
3 proper. You certainly can use them for cross-examination
4 impeachment purposes, but actually introducing the answers to
5 interrogatories would not be proper, Your Honor.

6 MR. BLOOM: I agree.

7 THE COURT: Okay. That's what I like to hear.

8 21.

9 MS. GOLDING: There again, this is something I was -- did
10 not want the jury to see law, so I'm withdrawing it at this
11 time.

12 THE COURT: Okay.

13 MS. GOLDING: Number 22, Exhibit 39 is an email exchange.
14 Wesley Bryant was the County attorney, and it's exchange
15 between Boyd Johnson and Wesley Bryant. Wesley -- that's -- I
16 don't know how it got involved, got in it, but it's obviously
17 attorney/client privilege. Excuse me. I see -- I remembered
18 Mr. Stacy was copied on that, so it's out of attorney/client
19 privilege, Your Honor. So, I'm gonna withdraw that exception
20 at this time, Your Honor.

21 THE COURT: Okay.

22 MS. GOLDING: And the last one, 23 are Plaintiff's
23 counsel's invoices, and of course that would come up
24 subsequent to the trial depending on the judge's rulings.

25 THE COURT: All right. What I normally do in a case

1 where attorneys' fees maybe at issue that I'm sitting is the
2 finder of fact, I'll probably just ask that you submit the
3 invoices and I'll, you know, just so I don't have to ask for
4 them a second time, if I make a decision that entitles either
5 side to attorney's fees, I will at least have the -- you're
6 talking about like a fee affidavit; is that what we're talking
7 about? Or am I ---

8 MS. GOLDING: No, just their invoices. They just had the
9 invoices.

10 THE COURT: Okay. Well, strike that. I went sideways a
11 little bit.

12 24.

13 MS. GOLDING: Oh, I thought that was the last one. I
14 apologize, Your Honor.

15 THE COURT: Judicial notice ---

16 MS. GOLDING: Oh, excuse me.

17 THE COURT: The Form IV.

18 MS. GOLDING: Yes, sir. That is just -- at the end of
19 the trial with -- against Palmetto, one of the issues they
20 wanted at posttrial is Plaintiffs wanted the court to issue a
21 ruling that parking can only be by Palmetto during the day and
22 Plaintiffs at night. But in light of the fact of the Court's
23 ruling that the hours of parking are not to be -- are not
24 basically relevant, then that would take care of that. That
25 doesn't need to come in.

1 THE COURT: Yeah, I -- I mean, short of something
2 happening which may make it relevant, I don't think it's -- at
3 least right now I don't think it's something that I would
4 necessarily consider in determining whether an ordinance was
5 passed properly.

6 MS. GOLDING: Thank you, Your Honor.

7 THE COURT: All right.

8 BY THE COURT:

9 THE COURT: It's now 21 after 4:00 by the wall clock. My
10 watch says 4:19. If y'all want to put some testimony up
11 today, I'll do it. If you want to start fresh in the morning,
12 I do that, too.

13 MR. BLOOM: It's been a long day, Judge. We'd prefer the
14 latter.

15 THE COURT: I think that's probably the best course of
16 action but, you never know, some people are gluttons for
17 punishment.

18 MS. GOLDING: We would -- can we inquire of the plaintiff
19 who that will be presenting as witnesses tomorrow?

20 MR. BLOOM: You know, Judge, what I'd like to do is
21 usually have an attorney-to-attorney agreement that will
22 always tell each other who's on deck for the next day. We're
23 happy to do that. So, understanding Your Honor's ruling about
24 Jef Kirk, will have a direct impact on that, because he's our
25 first witness.

1 THE COURT: Yeah, and I just want to be able to read
2 those cases you cited and apply the factors to the facts as
3 they exist, or at least assertions as they exist at this time.
4 So, will start the day off with a ruling on that matter and
5 then we'll get rolling.

6 How many -- just ballpark, Mr. Bloom -- how many
7 witnesses do you intend to call in your case in chief?

8 MR. BLOOM: Well, that's a tough one. I thought you were
9 just gonna say how many do I anticipate tomorrow.

10 THE COURT: Judges are always trying to plan their week.
11 And this can be the roughest of rough estimations. You know,
12 I'm just looking for, you know, you say 25 or 75.

13 MR. BLOOM: No, I can certainly give more of an order of
14 magnitude. No fewer than six and I would say no more than 10.
15 How is that? Is that a fair answer?

16 THE COURT: That is a fair answer.

17 And, Ms. Golding, I know you're in the position to reply,
18 so this could change, but what's your ballpark?

19 MS. GOLDING: I may have none, Your Honor, because my
20 witnesses have been subpoenaed by the plaintiff, and that's
21 why need to know.

22 THE COURT: I got you.

23 MS. GOLDING: They're on standby and so if -- are you
24 gonna call any of my witnesses tomorrow? I need to let them
25 know.

1 MR. BLOOM: Will shoot you an email ---

2 MS. GOLDING: Okay. Thank you.

3 THE COURT: All right. Let's just -- let's just make
4 sure that since y'all share witnesses or witnesses are on each
5 list that the defense knows who you intend to call the next
6 day so they can plan accordingly and not keep a witness in
7 limbo.

8 When I was a practicing lawyer, mostly in prosecution,
9 the thing I hated the most was having to keep a witness in
10 limbo well -- you know, if you weren't the first case up for
11 the trial week, you were at the mercy of what happened ahead
12 of you, and I -- I hated feeling like I was juggling -- trying
13 to juggle a witness and keep them from their job or their
14 family or whatever. So, if y'all would cooperate on that, I
15 think we will be able to move forward with this case and get
16 it done in a timely manner, not that I'm trying to rush
17 anybody. Cooperation always -- on things like that are always
18 -- is always appreciated.

19 MR. BLOOM: Yes, Judge. And now that we're in a
20 different posture, do you want -- Your Honor want to keep the
21 same working hours? We're happy to start earlier, since we
22 don't have a jury to chase down, we are happy to start early,
23 go later. I want to try this case and get it done, you know,
24 as quickly as we can and certainly this week. I don't see any
25 reason we can't. We've got openings I suppose Your Honor will

1 want to hear tomorrow morning?

2 THE COURT: I'd like to hear brief openings. I mean,
3 they don't have to be as -- let me think of best -- a better
4 way to put this. They don't need to be necessarily as
5 impassioned as you might be in front of a jury. Just kind of
6 set -- give me a true -- you know, everybody says opening
7 statements are a roadmap for what's gonna be proven. If y'all
8 would each give me a roadmap that's probably no longer than
9 about 15 minutes each side, I can -- we can start at 9 o'clock
10 suits me just fine to start, you know, and like I said I'm not
11 -- I'm not trying to rush except I would love to be able to
12 finish this. Whenever we bleed over it causes a lot of things
13 to have to be changed when I'm in Georgetown County on a
14 Monday morning when I'm supposed to be in Orangeburg next
15 Monday. So, if we could get this thing wrapped up by, you
16 know, and we'll work -- we'll work as early and as late,
17 within reason, to make sure that it gets done.

18 MS. GOLDING: Your Honor, I will say this, I do have two
19 witnesses. I have an expert, at least, and then another --
20 and a lady to testify. So, I'll have at least two witnesses
21 that they have not subpoenaed.

22 THE COURT: Okay. All right.

23 All right. Well, we'll see y'all tomorrow morning at
24 9:00.

25 MR. BLOOM: Thank you, Your Honor.

1 MS. GOLDING: Very good; thank you.

2 **RECESS - 4:25 P.M. - END OF DAY ONE**

3 *****OFF THE RECORD*****

4 **AUGUST 30, 2022 - DAY TWO**

5 **ON THE RECORD - 9:25 A.M.**

6 BY THE COURT:

7 THE COURT: The first thing I need to do is I need to
8 excuse the jury, and we can do it one of two ways. I can
9 bring them in and formally excuse them, or just have someone
10 from the clerk's office advise them that they -- that their
11 services are needed to resolve the issues which are before the
12 Court. I don't think it really matters, but ---

13 MR. BLOOM: Probably not, Judge, but would you mind just
14 doing it on the record with them in the box? I hate to ---

15 THE COURT: I don't mind doing that, and I'll just tell
16 them that, like I said, the issues that are -- that remain
17 before -- that remain in this case are to be determined by the
18 Judge, and therefore we don't need a jury in this matter.

19 So, let's go ahead and get them in and excuse them.

20 (REPORTER'S NOTE: Jury enters courtroom @ 9:26 a.m.)

21 THE COURT: Good morning, ladies and gentlemen of the
22 jury. Thank you for your prompt return here this morning. I
23 do have an update for you that will change how you're gonna
24 spend the rest of your week.

25 After our pretrial matters that we conducted yesterday

1 afternoon, the issues that remain in this case do not require
2 the services of a jury. So, that means I'm gonna be able to
3 let y'all go. You have earned your exemption for three years.
4 So, if you get called the rest of this year, 2023, or 2024,
5 you are exempt from jury service because of your service
6 yesterday and today.

7 So, you have my thanks, you have the thanks of Georgetown
8 County. If you need a work excuse, the clerk's office can
9 provide those. And you are all free to go. I hope you enjoy
10 the rest of your week, and we appreciate you being here.

11 Thank you very much.

12 (REPORTER'S NOTE: Jury exits courtroom @ 9:39 a.m.)

13 THE COURT: All right. Folks, I think one issue we need
14 to cover before we get started with the trial is the issue of
15 Mr. Kirk and his being left off the list of witnesses
16 throughout the discovery process. Does anybody -- either side
17 feel the need to be heard further on that matter in terms of
18 argument?

19 MR. BLOOM: Judge, one other observation very briefly as
20 in terms of arguing prejudice and what defense counsel would
21 or wouldn't have done, it should be noted that in the entire
22 process of discovery the defense conducted only one
23 deposition. Despite disclosing lots and lots and lots of
24 people in our interrogatory responses that they only took one
25 deposition.

1 MS. GOLDING: Your Honor, I apologize. That's
2 misleading, Your Honor. I took a 30(b)(6). And you saw the
3 list of names, the councilmembers were the list of names;
4 Horry County, I mean -- excuse me -- Georgetown County
5 building Department were the list of names. I'm simply not
6 going to take the depositions of my own witnesses.

7 Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 All right. As was alluded to yesterday, the case which
10 controls this issue is *Jumper v. Hawkins*, 348 S.C. 142, 558
11 S.E.2d 911. And in that case a five-factor test is utilized
12 when analyzing this issue, and these factors are: The type of
13 witness involved; the content of the evidence emanating from
14 the proffered witness; the nature of the failure or neglect or
15 refusal to furnish the witness's name; the degree of surprise
16 to the other party including prior knowledge of the name of
17 the witness; and the prejudice to the opposing party.

18 Number one, the type of witness involved. It's my
19 understanding that Mr. Kirk is a fact witness. Fact witnesses
20 are -- is a lower standard than a witness like an expert
21 witness. The Plaintiff has alleged he is a critical witness
22 in the plaintiff's case. And so, analyzing that factor, I
23 think the fact that it's -- that Mr. Kirk is not an expert
24 witness certainly leans more in favor of allowing testimony in
25 terms of that factor.

1 The contents of the evidence emanating from the proffered
2 witness, that kind of dovetails into the first factor. I
3 don't know what Mr. Kirk is going to say, but Plaintiff has
4 alleged he is, again, a vital witness to the to them being
5 able to try their case. So, his degree of importance is high.

6 The nature or failure, or neglect, or refusal to furnish
7 the witness's name. Obviously, we don't have a refusal in
8 this matter. It was apparently just an oversight. However,
9 he did give an affidavit, and throughout the course of this
10 litigation in terms of a motion -- defending a motion for
11 summary judgment. He is not an unknown or surprise witness in
12 the situation. So, I don't think there was any malicious
13 intent on behalf of the plaintiff for failing to produce his
14 name.

15 The degree of surprise to the other party including the
16 prior knowledge of the name of the witness. Again, he was
17 known, he gave an affidavit in this matter, he was deposed in
18 the prior case. So, I don't think it's a high degree of
19 surprise.

20 And the prejudice to the opposing party, certainly -- as
21 Ms. Golden said, she would've likely taken his deposition had
22 his name been produced in the discovery responses. That is
23 mitigated by the amount of time that has passed since those
24 discovery responses were first produced and further mitigated
25 by the fact that he did give an affidavit in this matter,

1 which I guess someone could conclude that if he's offering
2 affidavits in defense of a motion for summary judgment that he
3 would have relevant information in the prosecution of the
4 case.

5 So, I think there is some prejudice, Ms. Golding, but I
6 think weighing all five factors in totality, I am going to
7 allow Mr. Kirk to testify.

8 And, Ms. Golden, did you want to -- I know you objected
9 yesterday. Do you want to note that objection further for the
10 record?

11 MS. GOLDING: Yes, sir. Obviously, I respect the Court's
12 opinion, but I do have a continuing objection. But, if it's
13 okay with the Court, I would prefer -- I would just note it
14 for the record now and state no more.

15 THE COURT: All right. Well, that's -- I just wanted to
16 make sure that -- that we had it contemporaneously with the
17 further argument this morning and my analysis of the five
18 factors from *Jumper*. So, I do note your objection for the
19 record. All right?

20 MS. GOLDING: Thank you, Your Honor.

21 THE COURT: Thank you.

22 All right, folks, are we prepared to move forward with
23 our opening statements?

24 MR. BLOOM: Yes, Your Honor. I just wanted to make sure
25 we put the stipulated exhibits into the record. We can do it

1 before the opening or after.

2 THE COURT: Yeah, let's go ahead and do it right now.

3 (REPORTER'S NOTE: Counsel confers off the record.)

4 MR. BLOOM: All right, Judge. The following exhibits
5 have been stipulated as to admissibility: 12, 13, 14, 15, 20,
6 21, 22, 24, 25, 27, 28, 29, 30, 34, 35, 36, 37, 42, 44, 45,
7 46, 84, 85, 86.

8 Judge, there's one thing about 44. Ms. Pearson reminds
9 me -- and maybe why counsel is standing -- but 44 remember are
10 the County Council meeting minutes. So, with the potential
11 arguing about what gets redacted and doesn't get redacted, I
12 just wanted to be completely transparent that 44 was the one
13 we argued about yesterday talking about the fatality and all
14 that.

15 THE COURT: And that was the one with the handwritten --
16 the handwritten notes or ---

17 MR. BLOOM: No, this is the one that has the minutes from
18 the County Council meeting where Clete, and Bob, and all the
19 other people talked about accidents.

20 THE COURT: Okay. Gotcha. Yeah, and I think as I stated
21 before, you know, in my view there is some hearsay within
22 hearsay in that exhibit. I will not consider anything that's
23 contained within that exhibit that I feel is inadmissible.

24 MS. GOLDING: Thank you, Your Honor. What Mr. Bloom has
25 represented to the Court, I consent to that those are the

1 stipulated exhibits.

2 THE COURT: All right. The list that was read by Mr.
3 Bloom into the record, those exhibits are agreed upon and
4 stipulated and will be admitted without objection.

5 PLAINTIFF'S EXHIBIT NUMBERS 12, 13, 14, 15,
6 20, 21, 22, 24, 25, 27, 28, 29, 30, 34, 35,
7 36, 37, 42, 44, 45, 46, 84, 85, 86

8 ADMITTED INTO EVIDENCE

9 MR. BLOOM: And, Judge, I'm just gonna put -- this is the
10 notebook with all those stipulated exhibits.

11 THE COURT: All right.

12 MR. BLOOM: I'm sorry. I didn't ask for leave to
13 approach.

14 THE COURT: You -- that's -- we don't have a jury --
15 y'all don't have to do -- we're not gonna -- we're gonna
16 maintain proper decorum, but the somewhat antiquated
17 formalities we can dispense with those. Since there's no
18 jury, just move about freely. You don't have to ask
19 permission to approach. I don't know that I've ever told the
20 lawyer no, so it's kind of -- kind of a waste of time, so just
21 move about freely. You don't have to ask for permission to
22 approach me or the witness if you're approaching to hand them
23 a document.

24 All right?

25 MR. BLOOM: Yes, sir. Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 (REPORTER'S NOTE: Brief break in record to set up video.)

3 MR. BLOOM: Okay, Your Honor.

4 THE COURT: Yes, sir.

5 MR. BLOOM: May it please the Court?

6 THE COURT: Yes, sir.

7 OPENING BY BLOOM:

8 MR. BLOOM: My name is Simon Bloom. It's my honor and
9 privilege to represent Gulfstream Café in the matter before
10 Your Honor. I'm reminded of Your Honor's direction yesterday
11 to keep openings around 15 minutes. I'm also reminded of a
12 quote from Abraham Lincoln when he talked about his preacher.
13 He said he'd write and give shorter sermons but, once he gets
14 going, he's too lazy to stop. Well, I'm gonna try to -- I'm
15 gonna try to avoid that and keep it to just the roadmap that
16 Your Honor asked for.

17 This case, as was previewed yesterday, very much about
18 the validity of a county ordinance. And we talked about 3.0,
19 but it should be said and we should be reminded that
20 Georgetown County passed an amendment to its zoning ordinance
21 in 2019 when it approved an amendment, a major amendment to
22 the PD zoning of the Marlin Quay Planned Development. Let me
23 say that again. It's a lot to digest. When they passed the
24 2019 ordinance in February, they were amending their zoning
25 code. And it's hard for -- conceptually to make that fit, but

1 if you practice a lot of land use law, when the County has a
2 zoning code, part of that zoning code is a zoning map. In the
3 zoning map are all the zoning designations for the entire
4 county. You see -- looks like a tax parcel map. So, when you
5 are actually amending your zoning, you're amending that map.
6 When you amend that map, you're amending the entire zoning
7 code, which is why they go through the same process of
8 amending any other -- or passing any other ordinance. That is
9 why a constitutional challenge to this ordinance is more than
10 just did they get it right or wrong with respect to 3.0 being
11 good or bad. It is actually -- we are -- you, Your Honor, is
12 testing the constitutionality and the validity of the county
13 ordinance. That's the context. It's no different than if it
14 were an ordinance regarding, I don't know, speeding limits or
15 where to park or drinking laws or anything else; it's the law
16 of the county. I felt like needed to kind of provide that
17 context because it's -- I think it sometimes gets lost. The
18 county passed a law, and in this case the law was a very, very
19 bad idea. And so, the way that fits into this constitutional
20 analysis is that when the County amended the PD, the planned
21 development, it was amending the zoning of the entire planned
22 development. It was amending the zoning -- it was amending
23 the zoning of this entire area outside the red. It was
24 amending the zoning. This is the entire PD, the system
25 planned development. It's the restaurant, the parking lot,

1 and this is where the snack bar and store used to be. This PD
2 actually includes the marina. All of these boat slips are in
3 this planned unit development. So, that's what we're talking
4 about being amended by this ordinance.

5 And so, the Court is charged with evaluating in our
6 prayers and in our counts the validity of that amendment and
7 the validity of that ordinance. And we submit, Your Honor,
8 that the passage of this ordinance is invalid. It's invalid
9 because it's unconstitutional. It violates the South Carolina
10 Constitution. It violates the United States Constitution.
11 And it violates their -- the County's own ordinance. So, why
12 is it invalid? It violates the County's own ordinance; it
13 violates the South Carolina Constitution; and it violates the
14 United States Constitution.

15 The evaluation that we would ask the Court to do is to
16 determine based upon those challenges whether this ordinance
17 is valid or invalid. Reminder, Your Honor actually doesn't
18 have to find a violation of the South Carolina or United
19 States Constitutions to declare that the ordinance is invalid.
20 Your Honor could actually declare the ordinance invalid but
21 not unconstitutional, because if it is a violation of the
22 County's own code, it can be invalid, but not
23 unconstitutional. We submit that it's all the above, but just
24 a reminder on that point for Your Honor to be thinking about.
25 The overlay or the addition of evidence that Your Honor will

1 hear -- you've already got a preview of it yesterday -- is
2 that -- I'm reminded, we'd like to invoke the rule of
3 sequestration for witnesses.

4 THE COURT: Okay.

5 MR. BLOOM: I should've done it before I started. With
6 the technological confusion and distraction, I forgot about
7 it.

8 THE COURT: All right. So, in terms of sequestration,
9 ordinarily, you know, if it's for an individual client,
10 obviously the individual client can stay. Do you have a
11 designee from Gulfstream that you'd like to have stay in the
12 room?

13 MR. BLOOM: Yes, Your Honor. And that's Vince Van Brunt.
14 But my two witnesses -- well, Barnaba is not a witness, so I
15 think she can stay. That's Mr. Kirk, but he would have to
16 leave, I think, until he testifies and after he's done
17 testifying he can stay, if I understand the rule correctly.

18 THE COURT: That's my understanding of the rule.
19 Ms. Golding, you got any issue with sequestration?

20 MS. GOLDING: Your Honor, the County representative is
21 Holly Richardson. Mr. Steve Goggans, he's a party defendant.
22 So, it would apply to Mr. Boyd Johnson; he would have to
23 leave.

24 THE COURT: All right. We'll sequester the witnesses.
25 The representatives of the entities who are parties may stay.

1 Mr. Goggans can stay as a party defendant. And once a witness
2 testifies, they can stay in the room.

3 Now, you mentioned Ms. Barnaba. If there's any chance
4 that she may testify -- I'll leave this up to you, Mr. Bloom,
5 but if there's any chance she may testify, you might want to
6 have her out but, you know, just ---

7 MR. BLOOM: I'll roll those dice.

8 THE COURT: Okay. All right. Sounds good.

9 MR. BLOOM: I apologize for the sliced opening, Judge.

10 THE COURT: No problem. You can go ahead.

11 MR. BLOOM: But I think it's important.

12 So, Judge, where I left off was in talking about the
13 invalidity and unconstitutionality of this ordinance, one
14 other consideration should be made, and that is the
15 involvement of Mr. Goggans. Mr. Goggans is a separate
16 defendant in this case. Mr. Goggans is being -- I don't want
17 to say charged, but the counts for liability against Mr.
18 Goggans are 1983, and a violation of Gulfstream's
19 constitutional rights due to his conduct under the color of
20 state law. The Court I think is familiar with the 1983
21 standard. But the practical reality that we previewed
22 yesterday, Judge, is that the infection of this ordinance by
23 Mr. Goggans's conduct, in violating the state code of ethics
24 in his participation in representing the owner, Palmetto in
25 this rezoning -- in this ordinance amendment, that further

1 undermines and invalidates the ordinance. And so, when you
2 think about why the ordinance is invalid, I would submit to
3 you, Your Honor, that there are -- there's a list of reasons,
4 and I want to just lay them out for the Court. Number one, it
5 violates their own county code.

6 There are two subparts to that. The first subpart is the
7 substantive subpart, and that is that it violates their own
8 parking requirements in Article XI of the code.

9 The second subpart to that is a procedural subpart. It
10 violates their own procedures for passing an ordinance. So,
11 there's a substantive challenge and a procedural challenge,
12 violated their own code. Secondly, it violates the South
13 Carolina protection of substantive due process. It violates
14 the South Carolina protection of procedural due process. It
15 violates the United States Constitution substantive due
16 process. And it violates the United States Constitution
17 protection and procedural due process in the Fourteenth
18 Amendment. Added to that, Mr. Goggans's violation of his code
19 of ethics, and those are the reasons that this ordinance is
20 invalid. I want to give a second for that to sink in. I have
21 a cheat sheet for the Court that, once I get a copy for Ms.
22 Goggans -- from Ms. Golding, I'll provide it to you and Ms.
23 Golding. But it basically is what I just said. It's easier
24 for me to keep track of these things when I write them down,
25 and that's why I've done that.

1 So, the only -- the only explanation that I think Your
2 Honor will arrive at as to why the County went out on a limb,
3 and that's what it did here it went out on a limb to pass this
4 ordinance to allow the redevelopment of the marina store and
5 snack bar to go from a 4500 square-foot, one-and-a-half story
6 building to 10,000 square-foot, four-story building in the
7 same footprint. The only reason it went out on that limb
8 without requiring any additional parking, is because of Mr.
9 Goggans's influence. And the testimony and evidence will
10 prove that without any shadow of a doubt.

11 So, Your Honor, when you look at this case and what is it
12 all about, it is absolutely about the ability of the other
13 uses within the PD to survive after the approval of the 10,000
14 square-foot restaurant and bar. And the reason they cannot
15 survive and will not survive is because there simply is not
16 enough parking. Parking sounds like a small thing to a
17 layperson until you go try to find somewhere to park after you
18 have driven around the hook down in Garden City to go eat and
19 there's nowhere for you to park.

20 The testimony will be and the evidence will be that
21 people come to that parking lot before the restaurant -- the
22 Marlin Quay Restaurant is even open and have nowhere to park,
23 turn around and leave; or they park illegally on the median;
24 or, they don't come at all. When you add another 10,000 feet
25 to that space, to that property, and another restaurant

1 operating at 7,000 of those 10,000 feet, there is no way that
2 those two restaurants can survive and coexist on 62 parking
3 spaces. And when you add the 22 parking spaces that the
4 marina needs, they're simply by their own code legally aren't
5 enough parking spaces. So, there's a legal problem that
6 violates their own code, and there's just a practical problem.

7 And so why is this important? Because Your Honor is
8 charged with evaluating whether this was an arbitrary and
9 capricious decision. That's the standard on substantive due
10 process. Your Honor is charged with determining whether this
11 advances a legitimate government interest. Your Honor is
12 charged with determining whether this is for the benefit of
13 the public health, safety, or welfare. I submit to the Court
14 that passing and allowing this ordinance that is going to add
15 a 10,000 square-foot building to that footprint not only does
16 not advance the public health, safety, and welfare, it
17 directly offends the public health, safety, and welfare. And
18 it is for that reason among all these others that Your Honor
19 should find that that ordinance is in fact invalid. The
20 evidence will, I think, demonstrate to the Court that all of
21 the substantive challenges that we have offered and suggested
22 this morning, Your Honor, will be proven. And Your Honor will
23 probably get tired of looking at Article XI. But Article XI
24 of their own code is where the laws of parking live. That's
25 where their code talks about parking requirements. We'll walk

1 through them -- I'm not gonna do it now because we're gonna do
2 it in our case in chief. And I think that Your Honor can read
3 the code just like anybody else to determine that those are
4 the parking requirements that must be satisfied in order to
5 allow the redevelopment of this property. And in this case,
6 the County simply didn't require them. Again, the County did
7 not adhere to the parking requirements; did not require that
8 the new building adhere to the parking requirements; and did
9 not even analyze whether the additional square footage and
10 what impact it would have on the other two uses in this PD.

11 Now, let me say that again, because we hadn't talked
12 about a lot about that. When you decide to change the rules
13 of this entire PD, you have to determine whether adding 10,000
14 feet here is going to accommodate -- or I should say is going
15 to impact the ability of the other two uses, the marina and
16 the Gulfstream Restaurant, to be able to park. And the code
17 is very clear, if you got three separate uses in the same
18 premises, i.e. in this PD, you have to add up all three of
19 those parking requirements. And the evidence will be that
20 Gulfstream required about 70 spaces on its own, the new
21 10,000-foot building would require about 70 spaces on its own,
22 and the marina requires about 22 spaces. So, that's over 160
23 spaces that their parking code requires in this PD. And guess
24 how many spaces there are; 62. And you will hear -- I don't
25 think there's gonna be a dispute about this, Judge. Nobody

1 says that they undertook to do that analysis. They all agree
2 in the County that they didn't do that count. They didn't
3 figure out how many spaces Gulfstream needed. They didn't
4 figure out how many spaces the marina needed. And they
5 incorrectly figured out how many spaces that the new
6 restaurant would need. Whether it's five, 10, or 15 off,
7 we're talking about a 2X overburdening of the parking. And
8 what does that result in? I understand Your Honor's
9 preliminary take on what accidents -- car accidents did or
10 didn't happen. We'll get to that. But it is a matter of
11 common sense that if you have insufficient parking in an area
12 that is now swamped with cars, cars like Ms. Golding's this
13 morning are gonna get run into and people are gonna get hurt,
14 and that is common sense. We don't need any judicial notice
15 or any other evidence of that. Your Honor can use your own
16 common sense to arrive at that deduction, and that strikes
17 directly contrary to what zoning regulations are designed to
18 do, which is to promote the public health, safety, and
19 welfare.

20 I would say, Judge, I want make one more point as far as
21 the roadmap. If you're gonna read any case in this case, I
22 encourage Your Honor to read the *Dunes* case. It is the
23 seminal case in South Carolina. In 2013, the South Carolina
24 Supreme Court outlined how substantive due process challenges
25 work and outlined how takings work.

1 Now, I have to turn now to the other part of this case so
2 that -- again, roadmap. Invalidity of the ordinance for all
3 the reasons we've talked about. If for some reason Your Honor
4 concludes that the ordinance is fine, you're not gonna
5 invalidate its, it's not unconstitutional, it's not illegal,
6 it stays, then, Your Honor must turn to the inverse
7 condemnation question. And the outline for that is -- I wish
8 I could say it was simple, but I'm gonna try to simplify it.
9 The *Byrd* case in South Carolina calls upon the Court to make
10 an initial determination about whether inverse condemnation
11 applies. Two prongs, whether there was a positive government
12 action, that's easy. Of course, there was; they passed an
13 ordinance. And then prong two, which is a little harder is to
14 determine whether in fact there was a taking. So, again, I
15 don't mean to be remedial, but only if you find that the
16 ordinance stands do you get to the inverse condemnation
17 analysis. It sounds a little strange because it is a little
18 strange. You could actually find that the ordinance is
19 invalid and causes damages under 1983. We can't double
20 recover. So, only if you find that the ordinance is valid,
21 doesn't cause damages under 1983, then you turn to the inverse
22 condemnation analysis. I hope that's about as clear as mud,
23 but reading *Dunes* will help clarify what I fail to clarify.
24 So, once you get to prong (b) of the *Byrd* test, there are two
25 types of takings. One is called a *Lucas* taking, that named

1 after the Supreme Court case, and that is what is called a per
2 se or categorical taking. That essentially means in a
3 nutshell that the government action has effectively eliminated
4 all value of the property. We submit that we satisfy that
5 taking test. Or you can find that there is a regulatory
6 taking, which is the *Penn Central* test. Again, the United
7 States Supreme Court case laying out the factors that the
8 Court considers when determining whether a regulatory taking
9 has occurred. The primary of which is the investment-backed
10 expectations of the property owner whose property has been
11 taken. And again, we'll get into all the evidence. We'll
12 have experts who talk about appraisals and things like that.
13 But, Judge, when you're in this analysis, I want to remind the
14 Court respectfully that we can satisfy the taking prong of the
15 *Byrd* test by either showing a complete taking of value or
16 showing a significant diminution of value caused by the
17 government action for which compensation must be paid. That's
18 how all this works. It's confusing to most because when you
19 talk about a taking you think DOT, power company, road
20 frontage, et cetera. Obviously, that's not this case.
21 There's no actual fee simple or easement taking going on here.
22 You also think about what's called physical taking, which
23 would be for example the County set up a chicken foundry next
24 door to your house, and the smells and the runoff and all that
25 cause a physical invasion into your property, that would be a

1 taking. We're not talking about that either. We're talking
2 about what *Dunes* has laid out and contemplated as regulatory
3 takings or categorical takings caused by the passage of an
4 ordinance. And in this case, it's a zoning ordinance. *Dunes*
5 turns out against the property owner, but it doesn't matter,
6 that was about a golf course and the -- the caselaw, the
7 discussion of how these principles work is very, very helpful.

8 So, Judge, I've probably gone over 15, but I think that
9 this is not stuff that many judges see every day. It is not
10 stuff that many lawyers in the country deal with every day.
11 It's complicated. I thank Your Honor for taking on this.
12 It's not gonna be -- it's not a car wreck case. It's a
13 complicated case, and I appreciate the Court's willingness to
14 dive in and roll up sleeves, because this is got some
15 constitutional doctrines, and it's been things like this that
16 are all interweaved.

17 But what I was gonna say to the jury I say to Your Honor,
18 in the end was this a good decision or not? Was it a good
19 idea to add 10,000 feet on that little footprint with 7,000
20 feet of restaurant when there was already insufficient parking
21 in the PD for the other two uses. I submit that the answer is
22 a resounding no. It rises to the level of invalidity on its
23 own ordinance, unconstitutionality, and then when you add the
24 elements of Mr. Goggans's participation in this process -- not
25 just his testimony at the BZA, but you'll see evidence of his

1 involvement in the process. Then I'd submit to Your Honor
2 that the correct result here is to invalidate the 2019
3 ordinance and find that it is illegal, and that is the relief
4 that we are requesting.

5 If you find that relief, we are also entitled to damages.
6 And if you find that we have satisfied and prevail on either
7 the 1983 case claims, we are entitled to attorney's fees under
8 1988. Again, if not invalid, i.e. if valid, then you go to
9 the inverse condemnation analysis. I think the evidence is
10 overwhelming that you will find that this is in fact invalid
11 and unconstitutional, and I'd ask you to do so.

12 Thank you, sir.

13 THE COURT: Thank you.

14 MS. GOLDING: Good morning, Your Honor.

15 THE COURT: Good morning.

16 OPENING BY GOLDING:

17 MS. GOLDING: As you know I represent Georgetown County
18 and Steve Goggans, who is a councilmember.

19 I noted when Plaintiff presented its statement to you it
20 didn't mention South Carolina caselaw as to the standards with
21 respect to passage of ordinances for the determination of
22 constitutionality. A municipal ordinance is a legislative
23 enactment and is presumed to be constitutional. That is a
24 legal presumption, Your Honor. The power to declare an
25 ordinance unconstitutional must be done carefully, cautiously,

1 because it is not the function of this Court to pass upon
2 wisdom or expediency of the ordinance. That is the *McMaster*
3 decision, Your Honor. It's a procurement from the South
4 Carolina Supreme Court, *McMaster v. Columbia Board of Zoning*
5 *Appeals*, it's 395 S.C. 499, 719 S.E.2d 660. The *Dunes West*
6 *Club* case, Your Honor, states it is not the function of the
7 Court to pass upon the wisdom or the folly of the ordinance or
8 regulation. There are numerous South Carolina cases that go
9 into a great detail as to what the Court can and cannot do
10 with respect to legislative enactments. And the burden, Your
11 Honor, to prove there is an unconstitutionality or inverse
12 condemnation or a taking in an inverse is clear and convincing
13 evidence.

14 So, with that backdrop, Your Honor, let's look at some of
15 the facts. This property that is before you is in what we
16 call a PD, a planned development. The planned development
17 came into existence in 1982. Gulfstream was not part of that
18 planned development in 1982, at least the Gulfstream that is
19 owned today by Mr. Greenbaum. Mr. Greenbaum bought into
20 Gulfstream or bought the Gulfstream after the PD was
21 established. When he bought into this PD, what existed? His
22 restaurant, the marina, the marina store, the marina
23 restaurant, Marlin Quay. All those existed when Plaintiff
24 bought in. Today, they all exist.

25 Now, what is a PD? It's more like a mini zoning

1 ordinance. It's sort of like -- I was told it's like a zoning
2 ordinance in a zoning ordinance. And the land in that PD has
3 to comply with what's in that PD, in that planning
4 development. In Georgetown County there are a good number of
5 planning developments, PDs. You'll hear from Holly Richardson
6 who will explain to you in detail with respect to planned
7 developments. Now, why do we have planned developments? To
8 give flexibility, reasons like this planned development has no
9 setback lines. That in and of itself is a positive for the
10 marina, positive for Marlin Quay condos, positive for both
11 restaurants. So, at this time when Marlin Quay -- the PD came
12 into existence a few years after that, and Jerry Greenbaum
13 bought it, the restaurant. He is sole owner of that
14 corporation. Now, what's in dispute is the parking lot that
15 has been in existence between these two restaurants.
16 Gulfstream has its own 17 parking spaces on the other side of
17 this restaurant. I understand it also uses some parking
18 underneath this restaurant. Gulfstream shares this parking
19 lot with Marlin Quay Restaurant. Marlin Quay Restaurant has
20 existed for a long time. It sold alcohol for a long time,
21 liquor, beer, and wine. It's had a full menu for a long time.
22 It's provided food and beverages at night for a long time.
23 It's had night hours for a long time. What changed was there
24 became a new owner of the Marlin Quay Store and Restaurant.
25 It's Palmetto Industrial, a gentleman by the name of Dr. Mark

1 Lawhon. He bought the property in 2014 from the Stones, a
2 Charles Stone. Interesting to note that at that time Jerry
3 Greenbaum's son, Greg Greenbaum, who is -- basically calls all
4 the shots, came to Marlin Quay with the broker from Dunes
5 Realty, Jim Allison, looked at all the property. The Marlin
6 Quay listing price was 600. Gulfstream offered 500. And when
7 I took Mr. Greenbaum's deposition said 600 was too much. He
8 walked away. Your Honor, that is the second time Gulfstream
9 walked away from the opportunity to buy the Marlin Quay Marina
10 Store and Restaurant. Mr. Greenbaum, Greg Greenbaum,
11 testified that he had that same opportunity in 1996 ---

12 MR. BLOOM: Your Honor, I'm sorry. I'm sorry. I hate to
13 do it, but I have to object to all of this discussion about
14 who bought what or who didn't buy what. Mr. Greg Greenbaum is
15 not a witness in this case, his testimony is not gonna be
16 offered in this case. Therefore, anything he said or did or
17 didn't do is hearsay. This is from the first case. This is
18 -- and it has nothing to do with the issues, so a relevance
19 objection as well. I'm sorry to interrupt an opening, I hate
20 to do it, but this is going far afield.

21 THE COURT: Well, and this isn't evidence. This is just
22 a roadmap. I'm not gonna use any of your statement or her
23 statement in the decision I make.

24 So, Ms. Golding, stick to what's gonna be offered in this
25 trial, but I'm not gonna severely limit an opening statement.

1 MS. GOLDING: Your Honor, just for -- to rebut what Mr.
2 Bloom just said, Greg Greenbaum, the son, he appeared as a
3 30(b)(6) witness in this case. There is testimony in that
4 deposition about the opportunity Gulfstream had to buy the
5 marina store and restaurant and that he foolishly did not do
6 it.

7 Now, this restaurant and store was demolished in November
8 2016. A demolition permit was obtained from Georgetown
9 County. Prior to that time, it was common knowledge that
10 there was going to be a new building, a replacement building.
11 You'll even hear Jef Kirk, he testified in a previous trial
12 that he knew and was happy that they were gonna bring a new
13 building, a replacement building, because this old building
14 was sinking, didn't comply with flood, had no ADA compliance.
15 It had to be replaced. And this old building could not serve
16 the marina, could not provide the services that were needed at
17 that time. So, as a result, Georgetown County received
18 several applications to amend the zoning ordinance. And
19 that's what you do, you amend this PD. The first one was a
20 minor change, I think you've heard some statements about the
21 minor change. When Georgetown -- when Gulfstream made
22 objection to it being a minor change, even though it was
23 proper, Palmetto Industrial switched to a major amendment.
24 And that was done -- I believe it was done in November 2017.
25 And at that point in time after the public hearing before the

1 Planning Commission, the three public readings, all of which
2 were attended by Gulfstream representatives. Version 2.0
3 passed.

4 Now, Your Honor, Version 2.0 -- when it passed, Version
5 2.0 provided for heated square feet not to exceed 4,598 square
6 feet, 62 parking places, the height of the building and total
7 seating not to exceed hundred and 10 persons. This total
8 seating came from the old building. The heated square feet
9 came from the old building. When Version 2 passed, Gulfstream
10 did nothing, did not appeal, did nothing. And then there was
11 -- Judge John issued an order in June 2018 that the building
12 had to be within the footprint of the old building. So, in
13 order to make that shift, and it wasn't a very big shift in
14 the building -- into the footprint, another application had to
15 be filed. That was filed in August 2018, Your Honor. And
16 nothing changed from Version 2 other than the site plan. The
17 public hearing for Version 3, the three readings for Version
18 3, all were attended by Gulfstream. Gulfstream had an
19 opportunity to appear and present its positions. Version 3
20 passed in January 2018. Your Honor, Version 3, it didn't
21 change the heated square feet; that was the existing law. It
22 did not change the 62 parking spaces; that was the existing
23 law. It did not change the 110 persons; that was the existing
24 law. There was a minor change in the height from 45 to 47.
25 It was only after -- Version 3 passed two months later there

1 was a lawsuit, which of course is contrary to state law
2 because they should have appeal within 60 days after Version
3 2. They did not. So, by that, they lost the opportunity to
4 complain about square footage, parking, and seating occupancy.

5 Now, Your Honor, there will be some attempts by
6 Gulfstream to confuse this Court. This lawsuit is about a
7 zoning ordinance, not about a building ordinance, the building
8 code, not about the fire ordinance. You will hear Gulfstream
9 try to say that this new building permits 350-some people.
10 Your Honor, that's the fire ordinance. That doesn't have
11 anything to do with the zoning ordinance.

12 So, now, they are here before you and saying our
13 constitutional rights have been violated because you,
14 Georgetown County, did not follow your amendment procedures.
15 We followed them, Your Honor. Holly Richardson and Boyd
16 Johnson are gonna testify that we followed those procedures.
17 While the zoning ordinance itself and state law -- there's a
18 statutory provision that states you don't have to dot your I's
19 or cross your T's, substantial compliance is all we find. We
20 complied, Your Honor.

21 So, what's the real reason why we're here, Judge?
22 Because Gulfstream doesn't want competition anymore. It only
23 -- it wants to be the only restaurant, even though it never
24 was the only restaurant in the area. So, what's Gulfstream
25 doing now? Saying you ruined my business, and you ruined it

1 to buy procedural due process -- substantive due process.
2 Instead of going through each of the procedural items, Your
3 Honor, that Plaintiff relies upon, the witness, Holly
4 Richardson, will testify as to each item. And with the
5 procedural due process you will see that there was compliance.
6 With substantive due process, there must be a rational basis,
7 only a rational basis.

8 You know, when we went to law school a long time ago,
9 what I remember is strict scrutiny. Strict scrutiny is not
10 applicable here; this is a rational basis. And we will
11 provide to the Court law to say that -- there is a case that
12 says that's a very low bar. There is a rational basis for the
13 reason that this new building came into existence. It
14 replaced a building that needed to be replaced. It's a
15 building that serves the area. It's now a very safe building
16 that complies with FEMA and the ADA. It was a sound decision
17 to improve this building. A replacement of a building that
18 existed there for over 30 years.

19 Your Honor, with respect to -- I'm not gonna go into the
20 economic, the inverse condemnation. I think you will see
21 through the cross-examination that they have not lost the
22 economic ability to operate the restaurant.

23 But I will say this about Steve Goggans, he made a
24 mistake in February 2017 when he was asked by Palmetto
25 Industrial's lawyer to appear at the Zoning Board of Appeals.

1 Gulfstream immediately filed a grievance with the ethics
2 commission. Mr. Goggans, he never influenced Version 2,
3 Version 3. He did not communicate in any way with County
4 Council members. There were other architects in his firm that
5 became the principal architects. He excused himself each time
6 a vote was taken. There is no evidence, Your Honor, that he
7 in any way influenced the vote with Version 2 or Version 3.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 All right. Mr. Bloom, you may call your first witness.

11 MR. BLOOM: Plaintiff calls Jef Kirk.

12 THE COURT: Mr. Kirk, please come forward, sir.

13 JEF KIRK, HAVING BEEN DULY SWORN,

14 TESTIFIED AS FOLLOWS:

15 THE CLERK: Thank you. Please be seated. State and
16 spell your first and last name.

17 MR. KIRK: My name is Jef Kirk. It's J-E-F, K-I-R-K.

18 DIRECT EXAMINATION OF JEF KIRK BY MR. BLOOM:

19 Q: Tell the Court who you are and what you do.

20 A: My name is Jef Kirk. I'm the operating partner or
21 general manager at Gulfstream Café.

22 Q: And how long have you worked at Gulfstream Café?

23 A: Since 2010; so, 12 years.

24 Q: Did you say you were the operating partner or general
25 manager or both?

1 A: It's the same -- it's the same position.

2 Q: So, you're the guy in charge on the ground at Gulfstream?

3 A: I manage all aspects of the restaurant. I'm responsible
4 for everything in the restaurant.

5 Q: And how many employees do you have there?

6 A: Sixty, roughly.

7 Q: And how many folks do you serve in a typical dinner
8 service?

9 A: Average in-season is around 350.

10 Q: And before Gulfstream, did you work in the restaurant
11 business?

12 A: I've been in the restaurant business for 20 years.

13 Q: Are you familiar with the history of the Gulfstream Café?

14 A: Yes, I am.

15 Q: Do you know when the Gulfstream Café was built?

16 A: 1985.

17 Q: And it's been under its current ownership since when?

18 A: 1995.

19 Q: Can you tell the Judge where the restaurant is located?

20 A: It sits at 1536 South Waccamaw Drive, which is in Garden
21 City on the body of water, Murrells Inlet, across the street
22 from the ocean in the Marlin Quay Planned Development.

23 Q: The Marlin Quay Planned Development. Let's -- the Judge
24 has heard a lot about it, but let's look at it. You have
25 Exhibit 1 in front of you on the screen?

1 A: No.

2 Q: Look in the black notebook for Exhibit 1.

3 A: Yes, I do.

4 Q: When we're talking about this planned development, is
5 that the planned development that you are referring to that
6 Gulfstream is a part of?

7 A: Yes, it is.

8 Q: Can you point out for the Court where the Gulfstream
9 Restaurant is in that exhibit?

10 A: Yeah. It's towards the top of the page in the -- it'd be
11 Phase 5, which would be the most southern area of this map,
12 which would be top of the page.

13 Q: So, if yours looks like mine, and I'm looking at in a
14 landscape orientation, the upper left-hand corner is the area
15 you're talking about?

16 A: Yes.

17 MR. BLOOM: Judge, do you have it on your screen?

18 THE COURT: I do.

19 BY MR. BLOOM:

20 Q: Is the rest of this PUD program on Exhibit 1 a true and
21 accurate depiction of what's on the ground, and what is the
22 zoning of the subject property?

23 A: Yes.

24 MR. BLOOM: Tender Number 1.

25 MS. GOLDING: That's already been admitted, Your Honor.

1 I thought that was part of the stipulations.

2 THE COURT: No, the stipulation started with 12 is what I
3 wrote down.

4 MS. GOLDING: I apologize. No objection, Your Honor.

5 THE COURT: All right. Plaintiff's 1 is admitted without
6 objection.

7 PLAINTIFF'S EXHIBIT NUMBER 1

8 ADMITTED INTO EVIDENCE

9 MR. BLOOM: Thank you.

10 BY MR. BLOOM:

11 Q: Orient the Court ---

12 MS. GOLDING: The only -- I'm sorry, Mr. Bloom. The only
13 thing I -- I recall now, that is the original ordinance.
14 There have been subsequent amendments, and I think it was
15 styled the zoning ordinance, and I ask that that be identified
16 as the original.

17 MR. BLOOM: I don't have a problem with that, Judge.

18 THE COURT: All right.

19 MS. GOLDING: Thank you, Your Honor.

20 BY MR. BLOOM:

21 Q: If you would, please, quickly orient the Court as to what
22 the other uses in the original PUD are.

23 A: Sure. Towards the bottom of the page off of Basin Drive,
24 those are the condominiums, the Marlin Quay Ship Store was
25 just south of that where the green meets the blue. And then

1 you can see the parking lot, which is in light orange. And
2 then you can see the marina docks.

3 Q: So, the marina docks are in the blue off of that T?

4 A: Correct.

5 Q: Upper left-hand corner is Gulfstream Restaurant?

6 A: Correct.

7 Q: Orange is parking lot?

8 A: Correct.

9 Q: And then the little box adjacent to the orange is the
10 marina store?

11 A: Yeah, it'd be Phase 4 on this, right, bluish box.

12 MR. BLOOM: Your Honor can see all that?

13 BY MR. BLOOM:

14 Q: And at the time of the original PD, Gulfstream was a
15 restaurant?

16 A: Yes. It's always been a restaurant.

17 Q: And at the time of the original PD, this says it was --
18 there was a marina store, does it say there was a restaurant
19 there?

20 A: No.

21 Q: If Gulfstream ceases to exist as a restaurant on the
22 subject property, how many employees will lose their jobs?

23 A: Over 60.

24 Q: What kind of restaurant is Gulfstream?

25 A: It's a upscale fine dining, steak, seafood.

1 Q: Who do y'all serve?

2 A: It various. A lot of people come for special occasions,
3 so there are a lot of locals. In-season, there are a lot of
4 tourists. This time of year, golfers. We're open 365, so it
5 varies, but we stay busy.

6 Q: Do you have enough parking right now before any other
7 restaurant opens in the Marlin Quay Marina Store footprint?

8 A: No. It's tight as it is.

9 Q: Tell the Court a little bit about that.

10 A: On a daily bases, serving about 350 guests. We turn the
11 parking lot probably two to three times. Guests circle
12 around, they call for the reservations, they let us know that
13 they're running late because they're waiting for someone else
14 to leave so they can take their spots. Guests have been known
15 to leave because they don't have anywhere to park. So, it's
16 an ongoing issue.

17 Q: And have there been any altercations or accidents in or
18 adjacent to the parking lot?

19 A: There's been several ---

20 MS. GOLDING: Your Honor, I'm gonna make an objection.
21 There has to be a foundation laid that this individual was
22 present at the time and -- there is no foundation laid for
23 this witness to testify as to any such altercations or
24 accidents, Your Honor.

25 THE COURT: Mr. Bloom, if you can lay a foundation for

1 anything within his personal knowledge, I think that would be
2 admissible. So, lay the proper foundation.

3 MR. BLOOM: Yes, Your Honor.

4 BY MR. BLOOM:

5 Q: Do you have personal knowledge of any accidents or
6 altercations taking place within the parking lot or
7 immediately adjacent thereto?

8 A: Yes, I do.

9 Q: Tell the Court what they are.

10 A: July 16th, 2021, there was a Cherokee leaving the marina
11 and it was hit at the north entrance. I did take a photograph
12 of it. I also let Vince Van Brunt know that it happened
13 because the road is two lanes, so it cut off all my
14 reservations from coming to the restaurant that evening. So,
15 in the middle of July I have to explain why I did 150 less
16 guests than I was supposed to do because they couldn't get to
17 the restaurant.

18 Q: So, the road that's two lanes, is that Waccamaw?

19 A: That's South Waccamaw Drive, yes.

20 Q: Not a divided highway, just a regular two lanes?

21 A: One north, one south.

22 Q: Have you ever yourself been in the parking lot trying to
23 direct cars and parking yourself?

24 A: All the time.

25 Q: Tell the Court a little bit about that.

1 A: Generally, you know, when guests are leaving you see
2 people circling, you know, you run out, hey, these folks are
3 leaving, you know, I'll have a spot right here. You're kind
4 of like a valet at some points when you're trying to turn the
5 restaurant.

6 Q: And did you have that experience after the ship store and
7 snack bar was torn down in 2016?

8 A: Yes.

9 Q: So, you had these parking problems even when there was
10 nothing on the footprint of the Marlin Quay Ship Store?

11 A: Correct.

12 Q: And now, they're suggesting -- or they have passed,
13 County has passed an ordinance to allow a 10,000 square-foot
14 building to go in that footprint ---

15 MS. GOLDING: Your Honor, I'm gonna make an objection.
16 Mr. Bloom has been leading the witness. And generally, that's
17 okay, but his question is loaded with he thinks facts but
18 they're not. And I think that is erroneous. So, I would ask
19 that the Court not -- direct Mr. Bloom not to lead the
20 witness.

21 THE COURT: Just ask questions that don't suggest the
22 answer, Mr. Bloom.

23 BY MR. BLOOM:

24 Q: Are you familiar with what the County has passed to go on
25 the Marlin Quay Ship Store and snack bars footprint?

1 A: Yes, I am.

2 Q: How many feet is it gonna be?

3 A: It's four stories.

4 Q: How many square feet?

5 A: Ten thousand.

6 Q: Do you know how many square feet of that 10,000 is the
7 restaurant?

8 A: I believe at least 4,000.

9 Q: Okay. And do you know how -- what the occupancy number
10 by the fire ---

11 MS. GOLDING: Your Honor ---

12 MR. BLOOM: Your Honor, there's no evidentiary objection
13 to whether he knows what the occupancy limit is for the new
14 building. She asked me to set a foundation; that's what I'm
15 doing.

16 THE COURT: Let me hear -- let me hear her objection
17 first.

18 MS. GOLDING: Occupancy is not part of the zoning quote,
19 and so that would be improper to introduce into this trial.

20 MR. BLOOM: Does that mean it's irrelevant; it's more
21 prejudicial than probative; what's the evidentiary rule that I
22 have to respond to?

23 THE COURT: Just hold on one second. I'm gonna let him
24 testify as to what he believes the occupancy is. I can
25 distinguish between whether it's a part of the zoning

1 ordinance versus the ---

2 MS. GOLDING: It's the fire ordinance.

3 THE COURT: Right, I understand -- and I'm certain that you
4 will make that point on cross-examination.

5 MR. BLOOM: And I'll save the trouble. I don't disagree
6 that it's part of the fire ordinance.

7 THE COURT: Okay.

8 MR. BLOOM: But the code -- Georgetown's code allows 360
9 people to occupy this property. That seems to bear on whether
10 it's a good idea to pass the ordinance.

11 THE COURT: You can question the witness about his
12 knowledge of the occupancy. I understand there is -- I
13 understand there is a distinction.

14 MR. BLOOM: Thank you, Your Honor.

15 BY MR. BLOOM:

16 Q: Do you know how many occupants or people can occupy the
17 newly approved building?

18 A: I was gonna say 350, but right.

19 Q: Okay. All right. So, you've testified to this Court
20 what the parking problems are without any building on the
21 footprint. You understand now, do you, what the County has
22 approved to go on the footprint. In your opinion, is that
23 going to cause Gulfstream any harm?

24 A: Yes, it will.

25 MS. GOLDING: Your Honor, I'm gonna make an objection.

1 This witness is not an expert. No foundation has been
2 established for him to give any type of opinion.

3 MR. BLOOM: Your Honor, he does not have to -- he doesn't
4 have to be qualified as an expert in anything particular to
5 testify as to the impact on the property that he manages from
6 the -- as a result of the rezoning.

7 THE COURT: I think the -- I think the use of the word
8 opinion is the problematic one. He can -- I think he can
9 testify as based upon his knowledge of being the manager of
10 this restaurant and what he has seen over the course of that
11 time. I think he can testify as to what impact he believes it
12 will have. So, he can say what he believes; just steer clear
13 of terming his testimony opinion. It's belief based upon his
14 personal knowledge.

15 MR. BLOOM: Yes, Your Honor.

16 BY MR. BLOOM:

17 Q: What do you believe the impact of the approval of the new
18 building at Marlin Quay will have on the parking situation at
19 Gulfstream?

20 A: I believe it will be devastating. I do -- you know, with
21 my background, we do look at numbers, we do forecasts, we do
22 budget, we look at previous sales. There are a lot of factors
23 that we look into when it comes to scheduling, purchasing, and
24 knowing what my guest count is is really important for my job.
25 Knowing how many times I can turn that restaurant is really

1 important for my job. So, not being able to have that
2 parking, I know will be a reduction in guest count, which in
3 turn will lead to a reduction in profit and revenue.

4 Q: So, Mr. Kirk, with no -- I think it this is actually --
5 but with no building on the footprint, you've had parking
6 problems; is that correct? Yes or no?

7 A: Yes.

8 Q: When you add one more person from another business trying
9 to get parking, is that going to be good for parking or bad
10 for parking?

11 A: It's gonna be bad for parking.

12 Q: In front of -- I'd like to direct your attention to
13 Exhibit 68.

14 MS. GOLDING: Your Honor, we have objected to that
15 exhibit.

16 THE COURT: Yes, ma'am. I note your objection. And from
17 a procedural standpoint, I'm gonna -- assuming the foundation
18 can be laid, I'm gonna overrule the procedural objection, and
19 if it's offered for -- well, just go ahead, Mr. Bloom.

20 MR. BLOOM: Thank you, Your Honor.

21 BY MR. BLOOM:

22 Q: You see 68?

23 A: Yes.

24 Q: Tell the Court what it is.

25 A: It's a picture of the Marlin Quay Planned Development.

1 It shows the condos, the marina site, and then the Gulfstream.

2 Q: Who took the picture?

3 A: His name is Robbie Bischoff. He does a lot of aerial
4 drone photography in the area. We sometimes use his photos on
5 our social media pages.

6 Q: And is that a true and accurate depiction of what the
7 property looked like on or around the time he took the
8 picture?

9 A: Yes.

10 MR. BLOOM: Tender 68.

11 MS. GOLDING: Your Honor, he never established the time.
12 If he did, I didn't hear it, and I apologize.

13 A: It was taken in November of ---

14 BY MR. BLOOM:

15 Q: Of?

16 A: I'd say 2017 or '18, by the looks of the building.

17 THE COURT: All right. Over Defendants' objection,
18 Number 68 is admitted.

19 PLAINTIFF'S EXHIBIT NUMBER 68

20 ADMITTED INTO EVIDENCE

21 MR. BLOOM: Please put up 75.

22 BY MR. BLOOM:

23 Q: Tell the Court what this is.

24 A: This is another diagram of the PUD. It has the plats on
25 it.

1 Q: You have of copy of this -- do you have a copy of this
2 image in your records?

3 A: Yes, I have.

4 Q: Is it a true and accurate depiction of what the planned
5 development looks like?

6 A: Yes, it is.

7 MR. BLOOM: Tender 75.

8 THE COURT: Ms. Golding?

9 MS. GOLDING: I'm gonna make an objection, Your Honor.
10 This is a plat that is referenced I believe in the easement,
11 Your Honor. And because I object to the easement, I will
12 object to the plat, but it is an accurate plat representation
13 of the plat that's recorded in the public records.

14 THE COURT: All right. Plaintiff's 75 is admitted over
15 the objection of Defendant.

16 PLAINTIFF'S EXHIBIT NUMBER 75

17 ADMITTED INTO EVIDENCE

18 BY MR. BLOOM:

19 Q: Let's look at Exhibit 2, please. Do you see two on your
20 screen?

21 A: Yes.

22 Q: Tell the Court what it is.

23 A: This is a copy of the easement. I believe it's the 1985
24 easement.

25 Q: Do you maintain a copy of this in your records as the

1 custodian for the Gulfstream company?

2 A: Yes.

3 Q: Is it a true and accurate copy of the easement entered
4 into in or around 1985 granting Gulfstream access and rights
5 to park on the subject parking lot?

6 A: Yes.

7 MR. BLOOM: Tender 2.

8 MS. GOLDING: Your Honor, again, the easement is -- it
9 was not subject to -- it's not a part of this lawsuit.

10 THE COURT: I understand your objection, Ms. Golding.
11 I'm -- I think it's admissible as a public document on file
12 and, you know, I certainly think while it's not a part of this
13 lawsuit, it's certainly relevant to the background of what
14 brings this matter before the court. So, I'm gonna admit it
15 and give it whatever weight that I see fit.

16 MR. BLOOM: Thank you, Your Honor.

17 PLAINTIFF'S EXHIBIT NUMBER 2

18 ADMITTED INTO EVIDENCE

19 BY MR. BLOOM:

20 Q: So, if you look at the date, this looks like it was filed
21 and recorded April 2nd, 1986 -- do you see that -- in
22 Georgetown County? Upper right-hand corner?

23 A: Yes.

24 Q: And what does this easement allow Gulfstream to do with
25 the parking lot?

1 A: Allows ---

2 MS. GOLDING: Your Honor, the easement speaks for itself.
3 I don't think this witness is proper to make testimony trying
4 to interpret the document.

5 MR. BLOOM: He can read English.

6 THE COURT: Well, Mr. Bloom, I think it's been admitted
7 -- you know, I -- and I think I can -- I think to save time, I
8 can read the document. You don't have to go through all ---

9 MR. BLOOM: I wasn't asking him to go through all of it.

10 THE COURT: Okay.

11 MR. BLOOM: I just wanted to give -- ask him to tell
12 Your Honor what it lets him do.

13 THE COURT: All right. Go ahead.

14 A: It allows me to have full ingress and egress of the
15 parking lot to maintain, to make repairs. Primarily, we use
16 it during the evening, and they use it -- the marina uses it
17 during the day.

18 BY MR. BLOOM:

19 Q: So, that's the only thing I wanted to then follow up on.
20 If you look maybe three-quarters of the way down of the first
21 full paragraph on the right side, it says it is anticipated by
22 the parties. Do you see where I'm reading?

23 A: Yes, sir.

24 Q: It is anticipated by the parties that while they will
25 have joint and non-exclusive use of the area covered by this

1 easement that the grantor -- the grantor was who, Stone?

2 A: Yes. It would be the Marlin Quay, yes.

3 Q: --- will primarily utilize the premises during the
4 daytime, and the grantee will primarily utilize the premises
5 -- I'm sorry -- will primarily use the premises in the
6 evening. Is that the way you used this parking lot until
7 Lawhon bought it in 2014?

8 A: Yes.

9 MR. BLOOM: Your Honor, Exhibit 3 is the virtually
10 identical easement that simply is an updated 1990. I will
11 tender 3 -- I'm sorry -- yeah, tender 3.

12 THE COURT: Ms. Golding, Plaintiff has offered Number 3.

13 MS. GOLDING: That would be the same objection, Your
14 Honor. I apologize.

15 THE COURT: That's all right. No problem. I'm gonna
16 admit Number 3 over defense objection.

17 MR. BLOOM: Thank you, Your Honor.

18 PLAINTIFF'S EXHIBIT NUMBER 3

19 ADMITTED INTO EVIDENCE

20 BY MR. BLOOM:

21 Q: So, let's just go back to some of the property
22 characteristics.

23 Just for orientation, would you pull up 93, please.

24 So, please tell the Court a little bit about the
25 surrounding properties. You talked about Waccamaw -- South

1 Waccamaw Road. Is that right here running on the front of the
2 PD?

3 A: Correct; it's South Waccamaw Drive.

4 Q: Okay. Now, tell the Court what this is here. It looks
5 like there's some green on the top of it?

6 A: That's actually the pool for the condominiums.

7 Q: And adjacent to that?

8 A: That would be the site of the Marlin Quay Marina.

9 Q: Okay. Tell the Court about the properties around and
10 surrounding the subject PD.

11 A: There is single-family homes, condominiums, apartments.
12 Most of them are used for vacation rentals.

13 Q: Is there any commercial or public parking within a mile
14 of the subject property?

15 A: There is not.

16 Q: Have you explored possibilities of engaging valet parking
17 to accommodate your parking problem in this area?

18 A: We have.

19 Q: And what has been the result?

20 A: There's no -- there's nowhere to put the cars.

21 Q: The size of the houses, is this to the east? Is this the
22 east?

23 A: That's the east, yes. The ocean would be ---

24 Q: Yeah, right here?

25 A: Correct.

1 Q: So, the size of the houses and the use of the houses
2 immediately across the street and along the South Waccamaw,
3 how big are those houses?

4 A: They're ---

5 MS. GOLDING: Your Honor, I'm gonna make an objection.
6 Unless there is some foundation laid that he has measurements
7 or he went out and looked at -- he doesn't know what the size
8 of the ---

9 MR. BLOOM: I didn't ask him the square footage. If
10 they're big houses, or medium houses, or small houses.

11 THE COURT: I will sustain the objection as to the
12 specific dimensions of any of these houses. I think he can
13 characterize the general nature of these houses based upon his
14 observing those -- if he can testify that he's observed those
15 places in his work at Gulfstream, he can testify as to their
16 general nature.

17 BY MR. BLOOM:

18 Q: Let's pick a house.

19 A: Correct.

20 Q: Can you tell me if any one of these houses and -- based
21 upon your personal knowledge, tell the Court how big they are.

22 A: The house across the street, when it was first built, the
23 gentleman that owned it had us cater an event there. He gave
24 us a tour of the house. It sleeps about 33, and it's huge.
25 It's meant for a family of 15 people. You know, 15 people; it

1 can sleep up to 33. I mean, it has -- it's enormous.

2 Q: Which one is that? Is that the white roof or the one
3 with the pool?

4 A: It's the one with the white roof and the pool.

5 Q: This one here?

6 A: Correct.

7 MR. BLOOM: Your Honor?

8 A: Yeah.

9 BY MR. BLOOM:

10 Q: Are all these, one, two, three, four, five, six -- are
11 those all houses?

12 A: They're all houses.

13 Q: Are they all big houses?

14 A: Yes.

15 Q: Do they all do rental?

16 A: Yes.

17 Q: That's all.

18 COURT REPORTER: Excuse me. Is that Exhibit 3; is it in
19 the book?

20 MR. BLOOM: It is and it is.

21 COURT REPORTER: Okay.

22 MR. BLOOM: Yes, ma'am.

23 BY MR. BLOOM:

24 Q: All right. We talked about the condos, and we talked
25 about the boat slips. We've been allowed to talk about this

1 original building that stood in the Marlin Quay footprint, the
2 snack bar. Did you ever go into it?

3 A: Yes.

4 Q: And, over the course of time that you were an employee of
5 Gulfstream, tell the Court how many stories it was before it
6 was torn down.

7 A: It was one-and-a-half stories.

8 Q: And I'm not gonna ask you for square footage, but
9 described to the Court what was there when you walked in.

10 A: The downstairs area was -- you walked in, there was
11 approximately four tables, a counter -- you know, a sales
12 counter, a retail shop, things you'd find typically in a
13 marina. There was a small kitchen, which would be that black
14 door.

15 Q: Here?

16 A: Correct. And then the other door was the bathrooms,
17 showers ---

18 Q: Were those cages?

19 A: Correct. And then upstairs, there's a small deck. You
20 walk inside, there was a bar.

21 Q: Here?

22 A: Correct.

23 Q: He walked inside there?

24 A: Yes. There was a horseshoe-shaped bar and probably four
25 or five high-top tables.

1 Q: And where was the snack bar itself?

2 A: The kitchen for it was that black door downstairs.

3 Q: Have you ever been in the kitchen?

4 A: Yes.

5 Q: What was in the kitchen?

6 A: It was very basic, maybe one fryer, microwave, maybe a
7 couple of burners; it wasn't very big.

8 Q: Burners like eyes were you put a pan?

9 A: Yes.

10 Q: And in the -- when you walked into the snack bar itself,
11 how many seats or tables were in there?

12 A: I'd say there was about four tables.

13 Q: Four four-tops?

14 A: Four four-tops; so, about 16 seats.

15 Q: And at the bar up here, were there tables or chairs up
16 there?

17 A: There was tables and chairs; maybe around 40, 45.

18 Q: Forty-five, okay. And then you talked about this porch.
19 Is this a true and accurate depiction of what this property
20 looked like before its demolition in 2016?

21 A: Yes.

22 MR. BLOOM: Your Honor, tender 11.

23 MS. GOLDING: Your Honor, we object to 11 simply because
24 the ordinance is not based upon the old building other than
25 the square footage, which was not -- which was not disputed in

1 Number 2; and with respect to the heated, not disputed in
2 Number 2. And that will be the basis for our objection, Your
3 Honor.

4 THE COURT: All right. I'm gonna admit Number 11 over
5 Defendants' objection.

6 PLAINTIFF'S EXHIBIT NUMBER 11

7 ADMITTED INTO EVIDENCE

8 BY MR. BLOOM:

9 Q: Reference was made while you were out of the room about
10 where other parking opportunities are for Gulfstream. Does
11 Gulfstream own 17 of its own parking spaces apart from the 62
12 in the parking lot?

13 A: Yes.

14 Q: Does Gulfstream park any cars of employees or otherwise
15 in a few spots under the Gulfstream building?

16 A: Yes.

17 Q: So, even with its own 17, plus the few under the
18 building, and use of the 62 without competing use, do you
19 still have parking problems?

20 A: Yes. We have roughly per shift maybe 25 employees.

21 Q: You've got 25 employees per shift that have to park
22 somewhere?

23 A: Correct.

24 Q: Plus, you said 300-and-something people in a night?

25 A: In a shift, yes.

1 Q: Is there a bus that takes people to Gulfstream?

2 A: No.

3 Q: Do people Uber or Lyft to Gulfstream?

4 A: It's not very common in that area.

5 Q: Are there bicycles and bicycle racks where people can
6 ride their bikes to Gulfstream?

7 A: We don't have a bicycle rack.

8 Q: So, how do people get to Gulfstream on the end of this
9 peninsula in Garden City if they want to come eat there?

10 A: By vehicle, cars.

11 Q: Have you ever heard of the term of a destination
12 restaurant?

13 A: Yes.

14 Q: What is it? Tell the Court what that is.

15 A: I consider Gulfstream to be a destination restaurant.
16 It's somewhere where people go. People -- we're known for our
17 sunsets. People go there for special occasions just to see
18 the sunset, to highlight our area, to show friends, family,
19 relatives, you know, what Murrells Inlet has to offer.

20 Q: Did a dispute ultimately arise between Gulfstream and
21 Palmetto, Dr. Mark Lawhon, regarding use of the parking lot?

22 A: Yes.

23 Q: How did that dispute arise?

24 A: It arose when he constructed a fence blocking off 50
25 parking spots.

1 Q: You said Dr. Lawhon constructed a fence in the parking
2 lot that you just described blocking off 50 of the 62 spaces?

3 A: Correct.

4 Q: Show the Court where the fence was.

5 A: The fence was right here. This is where we go into the
6 building ---

7 MS. GOLDING: Your Honor, I don't see the relevancy of
8 this ---

9 A: --- to about right here. So, this while area.

10 MS. GOLDING: --- of that legal action were the facts
11 that were the premise of the legal action. It has nothing to
12 do with the ordinances that are before this Court.

13 THE COURT: I agree; sustained.

14 MR. BLOOM: Your Honor, may I be heard before Your Honor
15 rules on that one?

16 THE COURT: You can be heard, but -- I mean, he -- Mr.
17 Lawhon is not a party to this suit. I mean, I -- I'll be
18 happy to hear from you.

19 MR. BLOOM: I beg for your open mind on this one, Your
20 Honor, before ruling. You just heard Ms. Golding talk about
21 the real reason that we're here is about competition. And we
22 don't want another restaurant to be opened up. And she just
23 said all of that in her opening. The real reason that we are
24 here is because Palmetto blocked 50 of the 62 parking spaces
25 and caused this litigation to go on and on and on forever and

1 ever amen. I didn't open that door.

2 THE COURT: Well, it wasn't opened because that's -- what
3 she says isn't evidence. I understand your argument, Mr.
4 Bloom, but I am gonna sustain the objection with regard to Mr.
5 Lawhon's actions in putting this fence across parking lot. He
6 is not a party to this suit. He is not a party to this
7 ordinance being passed, at least not yet, as far as I know.
8 So, I am sustaining the objection.

9 MR. BLOOM: My only request, Judge -- I completely
10 respect Your Honor's ruling -- they have identified him as a
11 witness on their may call, so ---

12 THE COURT: Well, if he testifies, that may change ---

13 MR. BLOOM: That's all I'm saying.

14 THE COURT: It may change the proposition. But as of
15 now, I don't see the relevance of it.

16 MR. BLOOM: I understand. Thank you, Your Honor.

17 BY MR. BLOOM:

18 Q: Mr. Kirk, we don't need to get into the litigation itself
19 other than -- Ms. Golding talked about the jury verdict in
20 front of Judge John. Were you familiar with how that case
21 turned out?

22 A: Yes.

23 Q: And was it in July plaintiff 2018, roughly that June-July
24 timeframe?

25 A: Yes.

1 Q: That's when the jury verdict came out?

2 A: Yes.

3 Q: Did you participate in that trial?

4 A: Yes.

5 Q: During that trial, was Lawhon's application for 2.0
6 pending before the County?

7 A: Yes, it was.

8 MS. GOLDING: Your Honor, I'm gonna make an objection. I
9 don't see where this witness has any type of knowledge as to
10 with respect to the pending application and what that has to
11 do with the lawsuit. The connection is not there, Your Honor.

12 MR. BLOOM: I think that's a relevance objection, Your
13 Honor. And if so, the relevance of this, again, in opening,
14 you heard Ms. Golding argue that we failed to appeal 2.0 when
15 it was approved. And the reason that we didn't appeal 2.0
16 when it was approved was because there was a court order
17 enjoining them from building 2.0. He is allowed to testify to
18 that.

19 THE COURT: As the general manager, would he be the
20 person who would make the decisions on whether to appeal on
21 behalf of the property owner? Wouldn't it be the property
22 owner's decision -- I guess, does he have the authority or
23 agency to make those decisions? I mean, I guess I'm looking
24 for the connection between his role as the general manager and
25 any authority to speak or bind the company or act?

1 MR. BLOOM: All I've asked, the only question on the
2 table right now is whether you were familiar with the
3 application pending before the County on 2.0, which he
4 participated in directly in public hearings and meetings and
5 testimony.

6 THE COURT: Okay. He can answer whether he's familiar
7 with it. We'll see what question comes next, Ms. Golding.

8 MS. GOLDING: Okay. Thank you, Your Honor.

9 THE COURT: Uh-huh, (affirmative response).

10 MR. BLOOM: I can only ---

11 BY MR. BLOOM:

12 Q: So, in the summer of 2017, was Palmetto's application for
13 the amendment to the PD to allow 2.0 pending?

14 A: Yes.

15 Q: And at some point during the summer of 2017, did the
16 County pass 2.0?

17 A: Yes.

18 Q: And at some point after the passage of 2.0, did the jury
19 verdict come down and said that they couldn't build 2.0?

20 A: Yes.

21 Q: That's all I wanted to get before the Court.

22 A: Okay. Yes, sir.

23 Q: I want to be very, very clear. Exhibit 18, would you
24 turn to 18, please? Are you there?

25 THE COURT: Mr. Bloom, hold on one second.

1 MR. BLOOM: Yes, sir.

2 THE COURT: What I'm trying to do is those mics on the
3 tables are very sensitive, and I -- I don't want -- I don't
4 want to overhear something I'm not supposed to hear when y'all
5 are conferring with each other. I think I am limited to
6 either muting all of the microphones except for the mic at the
7 bench, and I want to have a microphone for the witness. So, I
8 would just -- if y'all want to just move the -- orient the
9 microphone away, I don't want -- I don't want to pick up any
10 private strategic conversations between counsel and client or
11 counsel and other -- and co-counsel. I apologize.

12 MR. BLOOM: No problem.

13 BY MR. BLOOM:

14 Q: You see Exhibit 18. Were you there when Exhibit 18 came
15 down from this Court?

16 A: Yes, sir

17 MR. BLOOM: Tender Exhibit 18, Your Honor.

18 MS. GOLDING: Your Honor, I don't see the relevancy of
19 that. Georgetown County nor Mr. Goggans were parties to that
20 lawsuit. Legal theories and that was interference with -- as
21 it shows with the easement, that's not an issue in this case.
22 I think that that exhibit is highly -- it's just simply not
23 relevant.

24 THE COURT: Ms. Golding, I'm gonna allow it for what it's
25 worth. I think it may have a small -- small degree of

1 relevance just for if nothing other than my information about
2 how these -- these issues proceeded through the court system.
3 So, I'm gonna allow it over the defense objection.

4 PLAINTIFF'S EXHIBIT NUMBER 18

5 ADMITTED INTO EVIDENCE

6 BY MR. BLOOM:

7 Q: In July of '18, did this Court enjoin Palmetto from
8 building outside of the footprint of Marlin Quay?

9 A: Yes.

10 Q: So, at some point after that order, what did Palmetto do
11 with respect to seeking rezoning?

12 A: They went before the -- they -- that's when 3.0 started.
13 They went to the Planning Commission again and -- with plans
14 for 3.0.

15 Q: Just so we're clear, so we don't have to re-plow this
16 field, what role did you play in the process from 2016 on
17 where Palmetto was seeking to get approval in that lay term to
18 build its new building?

19 A: So, I went to every meeting. We spoke when we needed to.

20 Q: So, you went to every public hearing?

21 A: Every public hearing, yes.

22 Q: And did you retain -- did you or the company retain
23 counsel to advocate on behalf of Gulfstream?

24 A: We did.

25 Q: Were you in the loop in terms of what was happening in

1 each step of this saga starting in 2016 ending today?

2 A: Yes.

3 Q: Did you see the proposed plans that Palmetto suggested
4 over the course of six years from 2016 on?

5 A: Usually, we would see them after the fact at like the
6 council meetings.

7 Q: And did you -- did you read the plans to see what they
8 were proposing?

9 A: Yes.

10 Q: I'm not asking you to ---

11 A: Sure.

12 Q: --- opine about any particular component, but did you
13 have an understanding about what they wanted to build there?

14 A: I could see the plans for what they were.

15 Q: Okay. And when you were speaking on behalf of Gulfstream
16 and I guess on your own behalf at these various public
17 hearings, what did you tell the County?

18 A: Our concerns for the congestion in the area, the safety
19 on South Waccamaw Drive in front of the area, and just the
20 overburden of the parking lot.

21 Q: Can Gulfstream and a restaurant that is somewhere between
22 4 and 7,000 square feet using the same 62 spaces along with
23 the marina all survive?

24 A: No, not at the same time.

25 Q: And when you gave testimony before the County, you told

1 them what now? I'm sorry, I wasn't able to remember the
2 things that you said. Safety ---

3 A: The safety of South Waccamaw Drive, the overflow of --
4 the overburden of the parking lot, just the general concern
5 about the congestion in the area.

6 Q: You've heard suggestion or maybe not that what you're
7 really concerned about is having a competing restaurant taking
8 all of your business.

9 A: Right.

10 Q: Tell the Judge, are you concerned about having a
11 competing restaurant stealing your customers?

12 A: Very concerned. You know, our concern is without that
13 parking, we're not gonna be able to survive. We're not gonna
14 be able to operate. We're most likely gonna have to close.

15 Q: Are you concerned that they're gonna be a better
16 restaurant or are you concerned that their people are gonna be
17 parking in the parking you need right now?

18 A: I'm not concerned about them being a better restaurant.
19 We have an established reputation. It's just not having
20 access to those spots.

21 Q: Now, are you familiar with the finances of the Gulfstream
22 Restaurant?

23 A: I'm familiar with the P&L, the profit and loss report.

24 Q: Do you have anything to do with the preparation of the
25 tax returns for Gulfstream?

1 A: No.

2 Q: Do you sign them?

3 A: No.

4 Q: Do you review them?

5 A: No.

6 Q: Do you provide any information for their preparation?

7 A: No.

8 Q: Has Gulfstream made money -- and when I say made money, I
9 mean, been profitable, had more revenue than expenses over the
10 last 10 years?

11 A: Yes.

12 Q: Every year?

13 A: With the exception of the COVID year.

14 Q: So, COVID, you didn't make money?

15 A: We -- right.

16 Q: And in the course of the last 10 years, can you give the
17 Judge just a general sense of revenues versus expenses?

18 A: Our -- usually about five to six percent is what we put
19 down as the gross operating profit by the end of the year.

20 Q: So, the spread between revenue and expenses is five or
21 six present of revenue?

22 A: Of sales, yes.

23 Q: Okay. Does Gulfstream invest money into the maintenance,
24 upkeep, and operation of the restaurant?

25 A: Absolutely. We're constantly getting new equipment,

1 updating old equipment. We've been there for almost 40 years,
2 so it takes maintenance.

3 Q: So, do you know what the term capital investment means?

4 A: Yes.

5 Q: Do you make capital investments into the restaurant?

6 A: We do.

7 Q: And do you make those capital investments for the
8 purposes of keeping the restaurant open as a restaurant or for
9 other -- for some other reason?

10 A: For keeping it open as a restaurant. In fact, I have a
11 \$20,000 broiler that was just delivered yesterday. So, yes,
12 we are constantly trying to update our equipment.

13 Q: There's been some suggestion that potentially Gulfstream
14 could operate without parking. Could you remain profitable as
15 a takeout or to-go restaurant?

16 A: No. We -- like I said before, we are a destination
17 restaurant and people come there for the food and the
18 location.

19 Q: And, do you -- have you tried it? Have you tried to ---

20 A: We've tried to-gos. It usually doesn't work. A lot of
21 people are vacationing in the area. They're interested in
22 going to other areas of Murrells Inlet. They're not --
23 they're interested in coming to the restaurant and seeing the
24 restaurant for what it is, not for staying at their house.

25 Q: During the course of your interactions with the folks

1 from Palmetto, at some point when this dispute about parking
2 and the zoning for this project arose, did you have a
3 conversation with Dr. Lawhon about his connections with the
4 County?

5 A: Yes.

6 Q: What did he say ---

7 MS. GOLDING: Your Honor, I'm gonna make an objection.

8 A: He said he has a councilman in his pocket.

9 THE COURT: Hold on one second.

10 MS. GOLDING: That's hearsay. It's soliciting hearsay.

11 MR. BLOOM: Your Honor, if the objection ---

12 THE COURT: Y'all approach -- y'all approach real quick.

13 MR. BLOOM: Yes, sir.

14 (REPORTER'S NOTE: Bench conference is held off the record.)

15 THE COURT: I think that is offered for the truth of the
16 matter asserted, so I'm gonna sustain the objection.

17 MR. BLOOM: Those are my questions, Your Honor.

18 BY MR. BLOOM:

19 Q: Answer Ms. Golding's questions, Mr. Kirk.

20 MS. GOLDING: Before we proceed, may we take a minor
21 restroom break?

22 THE COURT: That would likely be a very good idea.

23 MS. GOLDING: Thank you, Your Honor.

24 THE COURT: Thank you, Ms. Golding.

25 We will be back at 11:15.

1 RECESS - 11:06 A.M.

2 *****OFF THE RECORD*****

3 ON THE RECORD - 11:16 A.M.

4 THE COURT: Come on up, Mr. Kirk.

5 MR. BLOOM: Judge, I just want to move -- just tender 93
6 in.

7 MS. GOLDING: No objection.

8 THE COURT: All right. Plaintiff's 93 is admitted
9 without objection.

10 PLAINTIFF'S EXHIBIT NUMBER 93

11 ADMITTED INTO EVIDENCE

12 THE COURT: Ms. Golding.

13 MS. GOLDING: Thank you, Your Honor.

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION OF JEF KIRK BY MS. GOLDING:

16 Q: Mr. Kirk, with respect to your background, I understand
17 you have no land planning educational background, do you?

18 A: No, ma'am.

19 Q: Okay. And you have no educational background with
20 respect to zoning, do you?

21 A: No, ma'am.

22 Q: And you have no educational background with respect to
23 being a safety consultant, do you?

24 A: A safety consultant?

25 Q: Yes, sir.

1 A: I've had roles in my life where I was responsible for
2 safety of others.

3 Q: Have you ever been a safety consultant?

4 A: I'm not sure what you mean by consultant.

5 Q: Advising other businesses as to safety issues, OSHA?

6 A: I was in the military, so I did a lot of safety -- I've
7 stood safety watches on stuff, so...

8 Q: Have you ever held yourself out to the public as a safety
9 consultant?

10 A: No, ma'am.

11 Q: Okay. And have you ever held yourself out to the public
12 as a traffic consultant?

13 A: I've stood military guard watches where I've done
14 traffic, yes.

15 Q: Have you held yourself out as a traffic consultant?

16 A: No, ma'am.

17 Q: Have you held yourself out as a construction consultant?

18 A: I was an underwater welder at one point in my life, so I
19 did work in the capacity as a consultant when it came to
20 construction, yeah.

21 Q: So, today, have you held yourself out anywhere in
22 Georgetown/Horry County as a construction consultant?

23 A: No.

24 Q: Now, I understand you testified earlier about your
25 authority. Isn't it a fact that the CEO of CentraArchy

1 Management is really the entity that -- is really the
2 individual that has the authority to call the shots for
3 Gulfstream Café?

4 A: I'll follow orders from Vince.

5 Q: He's the CEO?

6 A: Vince is the CEO, yes.

7 Q: And do you recall the trial we had that Gulfstream had
8 against Palmetto, and the big issue was you had no authority;
9 do you recall that?

10 MR. BLOOM: Your Honor, objection. Move to strike. We
11 just got done with this whole debate about what happened in
12 the first case and whether he had authority or didn't have
13 authority. This was -- five of her objections were about not
14 talking about the first injunction case. So, objection;
15 relevance. Objection; you've already ruled on this.

16 THE COURT: Ms. Golding?

17 MS. GOLDING: Your Honor, he's -- on direct examination
18 he was questioned about that he had the authority that he
19 could bind, and in fact that's completely not accurate at all.

20 MR. BLOOM: I never use the word authority once in my
21 whole direct. She used the word authority.

22 THE COURT: Well, I think actually I was the one that
23 raised the agency issues.

24 MS. GOLDING: Your Honor, this is not an issue; it's a
25 practical matter.

1 THE COURT: All right.

2 MS. GOLDING: Okay.

3 THE COURT: Sustained.

4 BY MS. GOLDING:

5 Q: With respect to your work hours, I understand that during
6 the season that you work from, what, 11 a.m. till about 10
7 p.m.; is that right?

8 A: It varies; my work hours vary.

9 Q: But I believe you also testified in your deposition those
10 were the usual hours with respect to your work hours?

11 A: My schedule on Wednesday is from 6:00 to about 6 p.m. --
12 6 a.m. till about 4 to 6 p.m. Generally, I'm there from 10
13 a.m. till 9 p.m. Sundays I'm there from 7 a.m. till about 6
14 p.m.

15 Q: Okay. And in the off season, you don't usually work past
16 7 p.m. at night; is that correct?

17 A: Not anymore.

18 Q: Okay. When you say not anymore, I'm not correct or you
19 don't work past 7 p.m.

20 A: I work -- I work all hours. It depends on what the
21 restaurant staffing needs. I don't necessarily have a set
22 schedule. I work when I need to be there.

23 Q: Okay. With respect to the season, I believe your season
24 is from April through October?

25 A: We can't really say that anymore, because the past couple

1 of years we haven't really had -- since we've reopened after
2 COVID, we don't really have a season. It's -- we just been
3 busy.

4 Q: Okay. So, before COVID you did have a season from April
5 through October; is that correct?

6 A: Yes.

7 Q: Okay. And then before that, the off-season was November
8 through March; is that correct?

9 A: No. It'd to be November through, I'd say January.
10 February, we have Valentine's Day you get busy then. March,
11 spring break, Easter. We're very busy during those months.

12 Q: So, you're saying that for -- since the Gulfstream
13 Restaurant opened -- or Jerry Greenbaum bought it back in 1986
14 until before COVID you had seasons, but after COVID you had no
15 season; is that what you're telling this Court?

16 A: I'm not saying any of that. Jerry Greenbaum hasn't on
17 the property since 1985.

18 Q: Gulfstream Café is owned by whom?

19 A: The -- Greenbaum, but it was 1995. It wasn't owned by
20 Jerry Greenbaum in 1985.

21 Q: I apologize; I got the year wrong. So, you're saying
22 that between 1995 and 2019, Gulfstream Café had seasons?

23 A: I can't speak for the years that I wasn't there.

24 Q: So, you're saying that between 2011 to 2019, Gulfstream
25 had seasons?

1 A: I'm not really sure where you're going with seasons. I
2 mean, November is slow; December you have Christmas, you have
3 Christmas parties, you are busy during the holiday season; and
4 then January you slow down again; February you're busy again
5 for Valentine's season. So, seasons -- I'm not really sure
6 what you're trying to define as a season.

7 Q: Mr. Kirk, you said before COVID y'all had seasons; that's
8 all I'm trying to say. I'm not trying to go anywhere.

9 A: Okay.

10 Q: I just want to confirm that you said that before COVID,
11 which I believe was possibly in March 2022, Gulfstream Café
12 had seasons; is that not correct?

13 A: It was a little more seasonal, but they weren't defined
14 by dates.

15 Q: Okay. And the times that you went to the Marlin Quay
16 Store and Restaurant was, what, 10 to 20 times at night?

17 A: No. I was there one time, and it was dark; I don't know
18 what time of day it was.

19 Q: So, you're saying you never went -- you never testified
20 that you went to the Marlin Quay Restaurant at night?

21 A: I believe I said I went there for beer once with a
22 coworker.

23 Q: Okay. Not 10 to 20 times?

24 A: I have been there several times during the day. When the
25 Stones owned it, I'd go over there weekly.

1 Q: But you would go at night for an occasional beer; is that
2 right?

3 A: No. I went one time for beer at night. I don't make it
4 a have at to drink with my coworkers.

5 Q: And when you went there at night, you had a beer; is that
6 correct? I think that's what you just said.

7 A: I think I said I had a beer, but you're asking me to
8 recall when I had a beer 10 years ago.

9 Q: I'm not asking -- that's what you just testified to.

10 A: Okay.

11 Q: Is that right?

12 A: I went there for a beer once, and it was dark outside,
13 yes.

14 Q: Okay. Okay. And you knew that they serve alcohol?

15 A: I had a beer there.

16 Q: Okay. And you knew they served wine?

17 A: Yes.

18 Q: And you knew they served hard liquor?

19 A: I don't recall.

20 MS. GOLDING: It's gonna take me a second, Your Honor, to
21 find it in the testimony. I didn't expect him to ---

22 THE COURT: Yes, ma'am. I understand.

23 MS. GOLDING: Thank you.

24 Your Honor, this is the trial testimony when he testified
25 at the trial. And obviously, I don't have like a deposition

1 document, Your Honor, but I would like to ask the witness to
2 read the question -- I'll asked to read -- ask the witness to
3 read the question and then read the line and question and the
4 answer.

5 THE COURT: All right.

6 MS. GOLDING: Thank you, Your Honor.

7 BY MS. GOLDING:

8 Q: This is Page 333 and the testimony of Mr. Kirk when he
9 testified at the trial of this matter in June 2018. I'm going
10 to come beside you ---

11 A: Yeah, absolutely; yes.

12 Q: And what I'd like for you to do is read the question on
13 Line 4, and then the answer.

14 A: And they sold liquor there; is that correct? Very
15 limited, yes.

16 Q: Read the question again.

17 A: But they had -- okay. They sold liquor there; is that
18 correct? Very limited, yes.

19 Q: And then read the next question.

20 A: But they had all basic brands; did they not? Basic
21 brands, well, brands, yes.

22 Q: Okay. Now, with respect to when you first found out
23 about the new building, about a replacement building being --
24 and I believe that was 2015, early 2016; is that correct?

25 A: 2016.

1 Q: 2016. You were very happy that there would be a
2 replacement building, were you not?

3 A: I -- I was -- I didn't know the scope of a replacement
4 building. I was happy that they were renovating the area.

5 Q: Okay. And you were very happy because it would be much
6 better for the area; isn't that what you -- isn't that
7 correct?

8 A: Sure. I expected renovation of the former building.

9 Q: You knew that it would be a replacement building; did you
10 not?

11 A: Not until after November 11th, 2016.

12 Q: Uh-huh, (affirmative response). Let's go back to your
13 trial testimony. We'll go to 346. I'm going to do the same
14 thing. I'm gonna ask you to read the question, the answer,
15 and it will be from Line 12 through Line 19 on Page 346.

16 A: Okay. Okay. You also knew that the building would be
17 something good for the area; is that correct? Anything other
18 than what was there would have been better for the area, yes.

19 Q: Mr. Kirk, read your answer to the Court so the Court can
20 know the answer versus the question.

21 A: Anything other than what was there would have been better
22 for the area.

23 Q: And read the next question.

24 A: Okay. In fact, I think you said it would bring this --
25 new building was good for the area and bring value to the

1 area; is that right? Yes.

2 Q: Okay. Thank you. With respect to the Version 2
3 ordinance that passed, I believe it was in January -- February
4 2018. Do you recall attending the Planning Commission meeting
5 that was in October 2017 or November 2017?

6 A: They all run together but, yes, I was there for all the
7 meetings.

8 Q: So, for Version 2 you attended the Planning Commission
9 hearing and you attended each of the three readings before
10 County Council?

11 A: I know I was there for the County Council readings, yes.

12 Q: And with respect to your attendance, you were not by
13 yourself, were you?

14 A: No.

15 Q: Several times, Mr. Bloom was there with you, Simon Bloom?

16 A: I recall him being there maybe for one; it was usually
17 George Redman.

18 Q: And George Redman is an attorney for Gulfstream?

19 A: He was.

20 Q: Do you recall Mr. Adam Nugent, another attorney being
21 present?

22 A: Yes.

23 Q: And you personally spoke -- was that the Planning
24 Commission or one of the readings?

25 A: It was one of the readings.

1 Q: Now, with respect to the business patrons at Gulfstream,
2 there are at least six condominium regimes around the
3 Gulfstream Café; is that correct?

4 A: Yes.

5 Q: Okay. And one of them is Marlin Quay; is that correct?

6 A: Yes.

7 Q: Okay. And Marlin Quay has 60 units?

8 A: I'm not sure of the exact size but, yes, it's a larger
9 building.

10 Q: Okay. And then there's Marlin Quay. There's also Inlet
11 Point; that's very close to Gulfstream Café?

12 A: Yes.

13 Q: And would you agree that Inlet Point, probably has at
14 least 60, maybe more, units?

15 A: Are you referring to the one across the street from the
16 condos? Is that right, Inlet Point?

17 Q: Inlet Point, I believe, is on the north side.

18 A: Okay. Yes. Past the spaceship house. Okay.

19 Q: That has a lot of condominiums?

20 A: Yes.

21 Q: Okay. And then there's also South Pointe Villas; you're
22 familiar with that?

23 A: I'm not -- I don't know the names of all the properties,
24 but I know there are condo developments in the area.

25 Q: Okay. And those condo developments in the area, those

1 are essentially all within walking distance of Gulfstream
2 Café?

3 A: Yes.

4 Q: Okay. And these condo units within walking distance of
5 Café, if you put all the units together, there are probably
6 over, what, 4 to 500 units?

7 A: Yes.

8 Q: And Gulfstream Café gets a lot of walk-ins from these 4
9 to 500 condominium units, does it not?

10 A: I don't have any way of tracking that.

11 Q: Okay. So, Gulfstream Café doesn't track whether an
12 individual or party walked into the restaurant or parked or
13 Uber'd; there's no way that Gulfstream knows; is that correct?

14 A: That's correct.

15 Q: Okay. And also, Gulfstream Café has had Ubers and Lyfts,
16 people contact Uber or Lyft and bring them to the restaurant?
17 Is that ---

18 A: I can't really testify to that; I'm not sure. I have
19 never Uber'd or Lyft there, so...

20 Q: Okay. And you had charter buses, too, as well?

21 A: Yes.

22 Q: Okay. And you had charter buses every season?

23 A: Yes.

24 Q: Okay. And the charter buses, what, have 50 to 60 people
25 on charter buses?

1 A: Roughly.

2 Q: Okay. Now, I noted something that you said on direct
3 examination when Mr. Bloom asked you about bicycles. There's
4 nothing to stop Gulfstream to place a bike rack or bike racks
5 there for bicycles, is there?

6 A: There's nothing but people don't generally ride their
7 bikes at night on South Waccamaw Drive.

8 Q: Okay. But you don't have any type of bicycles?

9 A: We don't have any bicycle racks.

10 Q: Okay, bicycle racks, excuse me.

11 A: No, there's no bicycle racks.

12 Q: There is also in addition to the several hundred
13 condominiums in the area, there are also boat slips, 60 boat
14 slips, correct?

15 A: Correct.

16 Q: Okay. And people that have boats that come on the boats
17 or that take their boat to a boat slip that they rent, they
18 also patronize Gulfstream?

19 A: That's incorrect.

20 Q: And why is that incorrect?

21 A: The marina does not allow boats to park at the marina and
22 use Gulfstream.

23 Q: Oh, I was asking about parking. I'm talking about people
24 that have boat slips that bring their boat to their slip.

25 A: If they individually on one of the 67 boat slips, yes.

1 Q: Okay. And they walk to Gulfstream as well?

2 A: I don't have a way of tracking that. We already
3 discussed that.

4 Q: So, in reality, Gulfstream Café has a lot of walk-in
5 traffic?

6 A: Like we said, I have no way to tell what the difference
7 is.

8 Q: Now, back in 2014, you were present when Greg Greenbaum
9 and his father came and visited the Marlin Quay Marina
10 restaurant, were you not?

11 A: I was on the Gulfstream property, yes.

12 Q: And you saw that they came with the realtor, Jim Allison.

13 A: Uh-huh, (affirmative response); correct.

14 Q: And you knew at that time that the Greenbaum's, the
15 owners of -- or Jerry Greenbaum, the owner of the plaintiff,
16 had an interest in buying the property?

17 MR. BLOOM: Objection, Your Honor. Calls for hearsay.

18 MS. GOLDING: Let me strike that, Your Honor.

19 THE COURT: All right.

20 BY MS. GOLDING:

21 Q: You knew that Gulfstream Café had an interest in buying
22 that property?

23 MR. BLOOM: Objection, Your Honor. Calls for hearsay.

24 Q: Did you not ---

25 THE COURT: Not necessarily whether -- he can testify

1 whether he knew or not without testifying as to what someone
2 said. Now, if his basis is -- if his basis for knowledge is a
3 statement, then we may -- it depends on his answer.

4 MR. BLOOM: Well, I think that's exactly correct. If the
5 basis -- so all I would ask, then, Your Honor, is an
6 instruction to the witness ---

7 THE COURT: I'm gonna let him answer, and if it's -- if
8 it's hearsay, I won't consider it. All right?

9 A: What was the question?

10 BY MS. GOLDING:

11 Q: I apologize. With respect to the visit of Mr. Greenbaum,
12 the owner, and his son, Greg Greenbaum, in 2014 at the Marlin
13 Quay Restaurant and Marina, you saw that they were present; is
14 that correct?

15 A: Yes.

16 Q: Okay. And you also saw they were there with the real
17 estate agent, Jim Allison; is that correct?

18 A: After the fact I knew he was a real estate agent, yes.

19 Q: Okay. And as a result of what you saw, you knew that
20 Gulfstream Café had an interest in purchasing the Marlin Quay
21 Marina and Restaurant?

22 A: I could make that assumption, but I would never ask one
23 of the Greenbaums what their interest was of property.

24 Q: Did you have any knowledge of the previous time that
25 Gulfstream Café attempted to purchase the property?

1 A: No.

2 Q: Now, Gulfstream Café is managed by CentraArchy Restaurant
3 Management Company; is that correct?

4 A: Correct.

5 Q: Okay. And CentraArchy Management Company has its CEO
6 here today?

7 A: Correct.

8 Q: Okay. And CentraArchy, I think, has a total of 20
9 restaurants in the southeast?

10 A: It's -- it's 15.

11 Q: And 10 of those restaurants are in South Carolina?

12 A: I'd have to count, but roughly.

13 Q: Okay. And I think we -- identify the restaurants in this
14 CentraArchy Group.

15 A: Well, the ones in the Myrtle Beach area or all of them?

16 Q: All of them in the Myrtle Beach area.

17 MR. BLOOM: Your Honor, objection, relevance. Move to
18 strike. It has nothing to do with this case.

19 THE COURT: I'm gonna give her a little bit of latitude.
20 I'm not sure whether it does or it doesn't.

21 MS. GOLDING: I'll tie it in, Your Honor.

22 THE COURT: All right.

23 BY MS. GOLDING:

24 Q: Identify the restaurants in Horry and Georgetown County
25 with -- that are managed by the CentraArchy.

1 A: Sure. Gulfstream, obviously; California Dreaming in
2 Surfside; New York Prime in Myrtle Beach; and Carolina
3 Roadhouse.

4 Q: And prior to the individual here that's the CEO, who was
5 the CEO of CentraArchy?

6 A: The CEO would've been Greg Greenbaum prior.

7 Q: Okay. And Greg Greenbaum, how many years was he the CEO
8 of CentraArchy?

9 A: I'm not -- I'm not really sure. The whole time that I've
10 worked there.

11 Q: And just -- when did you start working at Gulfstream?

12 A: At Gulfstream, I started there in 2010.

13 Q: Okay. And when did you start working with CentraArchy?

14 A: 2006, maybe.

15 Q: Okay. Would it be fair to say from 2006 to sometime in
16 October 2018, Greg Greenbaum was the CEO of CentraArchy?

17 A: Yes.

18 Q: And Greg Greenbaum has retired or resigned; is that
19 correct?

20 A: Correct.

21 Q: And CentraArchy charges a management fee for each
22 restaurant it operates; is that correct?

23 A: We pay like an admin fee; I'm not sure what category that
24 falls under.

25 Q: And this management fee now is seven percent of gross

1 sales; is that correct?

2 A: If it's the admin fee, I thought it was six, but I'd have
3 to check, you know.

4 Q: You don't have anything to do with setting the management
5 fees, do you?

6 A: No.

7 Q: Okay. Now, you did say that there was valet parking in
8 addition to walk-ins and the boat slips?

9 A: There was valet parking once Dr. Lawhon put the fence up.
10 We scrambled -- it was right around, I believe it was November
11 11th, 2016. So, it was right around Thanksgiving, so we were
12 scrambling for a solution at that time until we got the
13 injunction to take the fence down. So, that's when we had
14 valet.

15 Q: Okay. There was valet parking before the calendar year
16 2016?

17 A: No, ma'am.

18 Q: Never, okay. And you stopped valet parking because it
19 was too expensive?

20 A: Because -- yeah. I mean, it was expensive, and it was an
21 ongoing thing. And we had the injunction to get the parking
22 spaces back.

23 Q: Now, over the last several years, have you accompanied
24 Greg Greenbaum with respect to looking at the houses that are
25 for sale around the area of the Gulfstream for parking?

1 A: I'm not accompanied him, no.

2 Q: Okay. What do you know about Gulfstream Café looking at
3 houses around the area to buy for parking?

4 A: There was a listing that came up across the street, and I
5 let Vince know that it was for sale.

6 Q: When you say Vince, can you identify completely for the
7 Court?

8 A: Sure. Vince, the CEO of CentraArchy.

9 Q: Okay. And when was that?

10 A: It was recently in the last couple of months.

11 Q: And before that, were there also other homes for sale in
12 that area?

13 A: Not that I'm aware of in the direct area of Gulfstream.

14 Q: And do you know what the CEO of CentraArchy has done with
15 respect to the information you have provided about properties
16 being available?

17 A: No, ma'am.

18 Q: Okay. Now, with respect to parking, there are at least,
19 I think you testified, 17 spaces on the south side of
20 Gulfstream. And those 17 spaces are exclusive to Gulfstream?

21 A: They are Gulfstream's property. I'm not sure if we are -
22 - you said they were exclusive? That are part of Gulfstream's
23 plat, so...

24 Q: Does Gulfstream permit other people to use any of these
25 17 parking spaces?

1 A: There is occasionally, yeah, people from the marina are
2 parked there.

3 Q: Now, I believe you also testified that there are parking
4 areas underneath the Gulfstream business?

5 A: Correct.

6 Q: And is that we have most of your employees park?

7 A: You can generally fit about six cars under there.

8 Q: Is that where your employees like to park?

9 A: Like six of us; myself and maybe four or five others,
10 yes.

11 Q: Okay. Now, with respect to Gulfstream, it hasn't lost
12 any of those 62 parking spaces that are in the lot between
13 Marlin Quay and Gulfstream, has it?

14 A: It's -- there are 61 spots currently, yes.

15 Q: Well, Gulfstream has a sign on one of the lots -- parking
16 spaces, does it not?

17 A: Well, that's not counting those spaces. Of the original
18 62, there's now 61; but that's a different issue, maybe.

19 Q: Well, my question is Gulfstream has not lost one single
20 parking place?

21 A: We have.

22 Q: Okay. And when did that happen?

23 A: Recently.

24 Q: When is recently?

25 A: I'd have to check, but it's within the last couple of

1 months when the fire department installed that FDC connect and
2 the electrical box.

3 Q: So, was one parking space removed?

4 A: It was reduced from being a standard parking space of six
5 feet to you probably about three and a half or four, so it's
6 unusable space, yes.

7 Q: But as of today, though, other than this one space,
8 Gulfstream hasn't lost one single parking space within that
9 parking lot?

10 A: Well, it lost that one space, but right. So, there's 61
11 spaces on the parking lot right now, yes.

12 Q: And Gulfstream today can use any of those 61; is that
13 correct?

14 A: No.

15 Q: And why not?

16 A: There's a sign restricting three of the parking for five-
17 minute Ship Store parking.

18 Q: And so, that's one space, right?

19 A: There's three or four, I believe. The signs go both
20 ways. So, the way there on the spot, they go to the left and
21 right in there into positions, so it's blocking off four
22 spaces.

23 Q: And also, Gulfstream has blocked off for unloading and
24 unloading ---

25 A: There's a back dock, yes. Is the only way for trucks to

1 access the restaurant.

2 Q: And Gulfstream has also got these dumpsters on some of
3 the parking spaces?

4 A: They are not in parking spaces; no, ma'am. They are on
5 the parking lot, yes, next to the Marlin Quay's dumpster.

6 Q: Okay. So, but the parking lot, that is nonexclusive; is
7 that correct? Anybody from Gulfstream, Marlin Quay
8 Restaurant, the store, and the marina can use that parking
9 lot?

10 A: In the 61 spaces; yes, ma'am.

11 Q: Okay. And that has been true since Mr. Greenbaum became
12 the owner of Gulfstream -- I think you said 1996?

13 A: '95, I believe.

14 Q: 1995?

15 A: Uh-huh, (affirmative response).

16 Q: That's been true since 1995?

17 A: Yes.

18 Q: Okay. And do you know that Gulfstream can't exclusively
19 use that parking lot, don't you?

20 A: Yes.

21 Q: Okay. And also, Gulfstream has an obligation to assist
22 in the maintenance cost of that parking lot, does it not?

23 A: I believe that's what it says in the easement, yes.

24 Q: Okay. And isn't it a fact that Gulfstream Café has not
25 paid its share of the maintenance costs?

1 MR. BLOOM: Objection, Your Honor. Relevance. We've
2 already talked about what the interaction between Palmetto and
3 Gulfstream. Counsel's argument was it had nothing to do with
4 this case, and now she's seeking to introduce evidence about
5 what Gulfstream is doing in terms of maintaining the -- paying
6 maintenance obligations with Palmetto. Objection, relevance.

7 MS. GOLDING: Your Honor, it goes to credibility of the
8 plaintiff, and also it's in the easement document, and he also
9 testified on direct about maintenance issues and costs.

10 THE COURT: Mr. Bloom, I'm gonna overrule your objection.
11 The easement is in -- I believe the easement is admitted into
12 evidence ---

13 MS. GOLDING: That's right, yes.

14 THE COURT: So, he can be questioned about it.

15 A: Can you repeat the question?

16 BY MS. GOLDING:

17 Q: Certainly. Mr. Kirk, the easement documents which you
18 recognized earlier -- identified earlier, each of those
19 require that Gulfstream Café pay 50 percent of the maintenance
20 fees relating to the parking lot; is that not correct?

21 A: The easement says we share maintenance, yes.

22 Q: And in fact, Gulfstream Café hasn't paid Palmetto
23 Industrial for the maintenance charges of the parking lot?

24 A: Since this litigation has started, I'm not privy to that
25 information. It's above -- it's above my level.

1 Q: So, you're not familiar with that -- you're not -- you
2 have no knowledge that Gulfstream has made any payments for
3 the maintenance of the parking lot?

4 A: I don't have direct knowledge. I have looked at the
5 Georgetown County website and saw that Palmetto is in
6 litigation with us again, but that's how I found out about it.

7 Q: And that litigation is about the maintenance charges that
8 Gulfstream has not paid?

9 A: I believe there -- it was about them replacing their fuel
10 tanks and putting new concrete on it, which is what I read in
11 some -- maybe some other costs, but, yeah, there is a listing
12 of it online.

13 Q: Now, with respect to the hours of Gulfstream Café,
14 Gulfstream back in 2010 started serving Sunday brunch; is that
15 correct?

16 A: Correct.

17 Q: And Sunday brunch goes from 10 a.m. to 2 p.m.?

18 A: 10:00 to 2:00, yes.

19 Q: Okay. And Sunday brunch is very successful?

20 A: Yes.

21 Q: Okay. And Gulfstream also during the day is operations
22 during the holidays like Easter?

23 A: That's on a Sunday, yes.

24 Q: And I think fairly recently Gulfstream has started
25 opening up at 3 p.m. for early bird specials?

1 A: No, ma'am.

2 Q: It has not?

3 A: It has not.

4 Q: Okay. Now, with respect to the Sunday brunches that
5 y'all started, at no time did any of the other users of the
6 parking lot object to Gulfstream using the parking lot for
7 Sunday brunch, did they?

8 A: No, the Stones were happy for me.

9 Q: Now, I believe, with respect to the old building, I
10 believe you've already testified that that old building was in
11 terrible shape.

12 A: Okay, yes.

13 Q: Was that correct?

14 A: Yes, it was old.

15 Q: Okay. Now, let's go to, I believe it was Exhibit Number
16 -- Plaintiff's Exhibit Number 68. It's a photograph that was
17 introduced.

18 A: Okay.

19 Q: Now, I believe you testified that that photograph was
20 taken in November 2017?

21 A: Yes, ma'am.

22 Q: Okay. And that was on Veterans Day -- Veterans Day; is
23 that correct?

24 A: That's correct.

25 Q: Okay. And Gulfstream Café every year on Veterans Day

1 offers free food all day long?

2 A: No, ma'am. We do half off to veterans.

3 Q: Half off?

4 A: To the veteran's entrée.

5 Q: Okay. And then that is a service -- you open all day on
6 Veterans Day, do you not?

7 A: No, ma'am, unless it's on a Sunday.

8 Q: So, what time do you open on Veterans Day?

9 A: If it's not on a Sunday, it's our regular business hours,
10 which would be 4:00 to 9:00.

11 Q: I'm sorry?

12 A: 4:00 till 9:00 p.m.

13 Q: Okay. Now, also, there is no doubt that Gulfstream Café
14 had notice of the Version 2 and Version 3 applications, and as
15 a result y'all attended the public hearings and the readings;
16 is that correct?

17 A: I'm sorry. Can you repeat the question?

18 Q: There is no doubt that Gulfstream Café had notice of the
19 public hearings and the readings before County Council?

20 A: I recall the attorney letting us know that -- when the
21 meetings were.

22 Q: So, you had notice?

23 A: George Redman, yes.

24 Q: Okay.

25 MS. GOLDING: One moment, Your Honor, please.

1 THE COURT: Yes, ma'am.

2 MS. GOLDING: That's all the questions I have. Thank
3 you, Your Honor.

4 THE COURT: Redirect, Mr. Bloom?

5 MR. BLOOM: No, sir, Your Honor.

6 THE COURT: All right. Thank you, Mr. Kirk, you may step
7 down.

8 A: Thank you.

9 MR. BLOOM: Would the Court entertain our lunch break
10 now, because I think this next witness is going to be somewhat
11 lengthy.

12 THE COURT: Yeah, if the next witness is gonna be on the
13 stand for more than about an hour, I would think now is
14 probably the best time to break for lunch. So, y'all ---

15 MS. GOLDING: May I ask who the next witness will be?

16 MR. BLOOM: Holly Richardson.

17 THE COURT: Ms. Golding, you agree now would be a good
18 time to break?

19 MS. GOLDING: Yes, sir, if you like.

20 THE COURT: We will take a recess for lunch. We will be
21 -- we'll be back at 1:15.

22 MS. GOLDING: Thank you, Your Honor.

23 THE COURT: All right.

24 **RECESS - 11:53 A.M.**

25

*****OFF THE RECORD*****

1 ON THE RECORD - 1:20 P.M.

2 HOLLY RICHARDSON, HAVING BEEN DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: Thank you. Please be seated. State and
5 spell your first and last name.

6 MS. RICHARDSON: My name is Holly Richardson, H-O-L-L-Y,
7 R-I-C-H-A-R-D-S-O-N.

8 DIRECT EXAMINATION OF HOLLY RICHARDSON BY MR. BLOOM:

9 Q: Thank you, Ms. Richardson. Would you please tell the
10 Court where you work right now and what your position is?

11 A: Yes, sir. I work at Georgetown County, and my position
12 is the Director of Planning and Code Enforcement.

13 Q: Is that the seniormost position with the Department of
14 Planning?

15 A: Yes, sir.

16 Q: And when did you start working for Georgetown County?

17 A: December of 2005.

18 Q: And have you been in the Planning Department that entire
19 time?

20 A: Yes.

21 Q: In various capacities?

22 A: Yes.

23 Q: At some point, were you the chief planner?

24 A: Yes.

25 Q: And when were you promoted to the director of the

1 department?

2 A: November of 2020.

3 Q: And whose place did you take?

4 A: Boyd Johnson was the director at that time.

5 Q: And at the time you were promoted, was Mr. Goggans a
6 councilmember?

7 A: Yes, sir; I believe so.

8 Q: And since you were a department head, did County Council
9 have to approve your promotion?

10 A: I don't believe so. I believe that is handled by the
11 County Administrator.

12 Q: And to whom does the County Administrator answer?

13 A: County Council.

14 Q: In my understanding -- would you be kind enough to tell
15 the Court the role that your department plays in consulting
16 the County with respect to zoning and planning issues?

17 A: Consulting the County, meaning ---

18 Q: County Council and the Commission, BZA.

19 A: Yes. We prepare reports when rezonings or zoning text
20 amendments come before Council. We present the facts, the
21 data. We analyze the data, and oftentimes make a

22 recommendation to the Planning Commission. Then, we take
23 Planning Commission's recommendation to the County Council.

24 Q: The actual zoning ordinance, when we talk about the zoning
25 ordinance, I'm gonna show you what has been marked Defendants'

1 1, that's in evidence. Just take a look and make sure that --
2 you might've put this together, but let me know if that's the
3 right document.

4 A: I believe it is; yes, sir.

5 Q: And one of the things you were talking about in your role
6 in the Planning Department with respect to, I assume, zoning
7 for rezoning applications is that you take data provided to
8 you -- my word not yours -- test it against the code, and then
9 make recommendations to the Planning Commission. Is that a
10 fair way to describe it?

11 A: Yes.

12 Q: Is it your job and your department's job to ensure that
13 the zoning ordinance is adhered to in Georgetown County?

14 A: Yes. That is one of our responsibilities.

15 Q: If I am not mistaken, doesn't the Chief Code Enforcement
16 Officer report to you?

17 A: We refer to them as the zoning administrator, but yes.

18 Q: The same function?

19 A: Yes.

20 Q: Got it. So, is it safe to say that the zoning
21 administrator is different and every city and county. The
22 zoning administrator is in an enforcement capacity, and you
23 the chief planner are in more of a plan, review, and advise to
24 the Council and Planning Commission capacity?

25 A: Yes. They deal with more of the day today enforcement of

1 the code. They review permits, but when there are zoning
2 changes or text amendments, then our -- the Planning
3 Department section reviews those.

4 Q: So, let's unpack that for a second. When you refer to a
5 text amendments, that's not what we're dealing with in this
6 case, correct?

7 A: Correct. Usually when I say text amendment, I'm
8 referring to the text of this book that gets changed.

9 Q: And so, for example, Article VI in the zoning ordinance
10 deals with parking requirements, correct?

11 A: I believe it's Article XI.

12 Q: Sorry, Article XI; thank you. Article XI deals with
13 parking requirements. If you were gonna change a rule in the
14 parking requirements section of the zoning ordinance would
15 that be a text amendment?

16 A: Yes.

17 Q: If you were gonna change, for example, the number of
18 square feet per parking space for a restaurant, in Article XI,
19 that would go through a text amendment, correct?

20 A: Yes.

21 Q: All right. So, we're not dealing with the text amendment
22 here, where dealing with a rezoning application that we've
23 been calling 3.0; is that your understanding?

24 A: It is more specifically a major change to the planned
25 development that is a part of the zoning map.

1 Q: So, what we -- what Palmetto attempted to do was to
2 change the planned development -- what would you call it, the
3 planned development site plan or the planned development
4 zoning, or the Marlin Quay PD?

5 A: Correct. The conceptual layout for the Marlin Quay PD.

6 Q: And when Palmetto initially sought to do that, they
7 initially sought to do that through a minor change and not a
8 major change, correct?

9 A: Yes.

10 Q: And so, I've done a little bit of this in my opening, but
11 you're the expert. So, let's -- I want to walk the Judge
12 through a little bit of how this works. So, if we have a --
13 we're only talking about planned developments right now. Some
14 people call them PUDs, have you heard that term?

15 A: Yes, sir.

16 Q: We call them PUDs?

17 A: Yes, sir.

18 Q: And I guess, these planned developments would be
19 considered PUDs, correct?

20 A: Yes. I think that was the older language.

21 Q: And that's usually the generic term that developers and
22 County folks use to talk about a planned development district,
23 they call them PUDs.

24 A: Sometimes.

25 Q: Planned Unit Developments?

1 A: Yes.

2 Q: Okay. Just want to make sure that our nomenclature is
3 the same. So, if I came to you and said, Ms. Richardson, I
4 have a property in a PUD, here's the PUD, and I just want to
5 change the color of the shingles on the roof. Would that be
6 considered to be a minor change or major change?

7 A: That would most likely be a minor change. Most of the
8 time, frankly, we wouldn't regulate that as part of the PUD
9 anyway.

10 Q: What if I wanted to add a pool in the back? So, the site
11 plan for this PUD doesn't show a pool and I wanted to add a
12 pool to the back of a condo building.

13 A: That might be considered a major change in that it would
14 increase the impervious area for the PUD, potentially.

15 Q: If it increased the impervious area, right? I might have
16 a concrete slab back there and now I'm turning it into a pool,
17 there would be no change in impervious area, would there?

18 A: That's right.

19 Q: I know I'm changing the hypothetical a little bit, but
20 I'm trying to understand. Is that fair?

21 A: Yes.

22 Q: Okay. Now, we agree, do we not, that in Georgetown
23 County throughout the time that is relevant to this case, in
24 order to make a major change to a PD, one had to go through
25 the same steps as if you were rezoning a piece of property?

1 A: Yes, sir. The same notification requirements apply; the
2 same public hearing applies; the same number of meetings and
3 readings by County Council.

4 Q: And your role in the Planning Department is largely the
5 same, too, is it not?

6 A: The work that we do is different. The research that we
7 do, the data that we collect would be different. The main
8 functions might be the same if that were still advertising the
9 item, were still posting the sign. Those functions might be
10 the same, but the inner work that we do in our department
11 would be different.

12 Q: Is it a heavier lift for your department for a minor or a
13 heavier lift for major?

14 A: I'm not sure what you mean by heavier lift.

15 Q: More work; you said there's different amounts of work to
16 be done.

17 A: Well, certainly a minor change doesn't require the steps
18 in terms of notification and meetings; but the analysis, the
19 data analysis that we would do, the researching the PD, the
20 documentation, that would apply in either case.

21 Q: And that's what I'm getting at. So, that's why I was
22 confused by the difference. The only real material difference
23 in what your department does for a major is that you've got to
24 participate in the public hearings, you have to comply with
25 the notice requirements, the advertising requirements, the

1 posting requirements, mailing out personal notice; all of
2 those things you do in a major but you do not do in a minor.

3 Have I got that right?

4 A: That's correct.

5 Q: Okay. The things that you do in both would include your
6 analysis of the data, the plans, the statistics that are
7 provided to you as part of the application; is that correct?

8 A: Yes.

9 Q: And you do that in a minor as well as a major, correct?

10 A: Yes. I mean, depending on the case, but mostly, yes.

11 Q: As a general proposition. So, as a general proposition,
12 I come to you, and again it's my hypothetical, and I say, I
13 want to make a -- let's do the pool examples; it's an easy
14 one. I want to make a modification to this PD because I want
15 to add a pool. Let's assume that we're not in the major, but
16 it's an easier process for the applicant to go through to get
17 a minor amendment to a PD, isn't it?

18 A: Yes. In terms of time, it could be a shorter timeframe.

19 Q: And I understand that, again, if we're going to do the
20 same analysis whether it's a minor amendment or major
21 amendment, but in terms of the other things, I can get a minor
22 amendment a lot quicker than I can get a major amendment, can
23 I?

24 A: Most likely.

25 Q: And the public does not have to know in a minor amendment

1 process at all, do they?

2 A: No. There's not a notification requirement for a minor
3 amendment.

4 Q: So, I could be -- so, someone could be my neighbor and
5 I'm getting ready to add a pool, and they're in the same PD,
6 but they don't have a right to know that I'm going through
7 this process with you to add a pool to my property, do they?

8 A: If they ask for the information, anything we have is
9 public information. We don't have a requirement to notify the
10 surrounding property owners for a minor change.

11 Q: That's a fair answer. If they came and asked, sure. If
12 did an open records request, sure. But other than that,
13 there's nothing that I as the applicant or you asked the
14 County have to do to notify my neighbor that I'm getting ready
15 to put a pool in the back, correct?

16 A: That's correct.

17 Q: Okay. And, in terms of this particular project,
18 initially we were calling it 1.0. In terms of 1.0, the
19 applicant came to you, and at the time I believe you were --
20 you might've been chief planner in 2015, 2016?

21 A: Yes.

22 Q: And were you involved in the initial review of the
23 efforts to get a minor amendment to the Marlin Quay PD
24 accomplished?

25 A: Yes.

1 Q: And in that instance, you were working with your boss, I
2 guess at the time was Boyd Johnson?

3 A: Yes.

4 Q: And were there negotiations or discussions that went on
5 between you and the owner's representative as to whether to
6 make it a minor or a major amendment process?

7 A: I think there were emails back and forth. There may have
8 been one meeting that we had.

9 Q: But is it fair to say that the applicant was advocating
10 for a minor change, a minor amendment?

11 A: I don't recall if they used those words specifically or
12 not. I think the discussion in general was more about
13 removing the building and placing a building back in its
14 place.

15 Q: Okay. Maybe they didn't -- I don't know which words you
16 thought I was using, but was it your understanding that the
17 applicant wanted minor amendment process as opposed to a major
18 process?

19 A: Well, it was my understanding that the applicant wanted
20 to remove the building and rebuild the building, and then we,
21 of course, know that that's either got to be a minor or major
22 to know how to move the project forward. So, I don't remember
23 if they initiated the discussion with let's make this -- or
24 can this be a minor amendment, or if once we knew what the
25 issue was at hand then we launched into that discussion

1 between the two.

2 Q: Okay. We just talked about the fact that it would be --
3 it could be faster to do this change through a minor. You
4 knew that the applicant wanted to build the building as
5 quickly as it could, right?

6 A: I don't recall specific discussions about that, but
7 generally an applicant, of course, would prefer a shorter
8 timeframe. I don't remember specific discussions about the
9 timeframe for the project.

10 Q: Okay. And is it common in PD amendments for the owner or
11 the applicant to be represented by either an attorney, or an
12 architect, or an engineer?

13 A: Yes.

14 Q: And in this particular instance, was the applicant
15 Palmetto represented by an architect prior to Goggans and SGA?

16 A: I don't recall one.

17 Q: Okay. At some point though, did you -- did you interact
18 with Mr. Goggans who was representing the applicant in 1.0?

19 A: I think so.

20 Q: Is that -- was it 2015 or 2016; does that sound right?

21 A: I think 2016.

22 Q: And in the normal course of your duties and just being in
23 the County building, do you discuss pending rezoning
24 applications with County Councilman before actually attending
25 the public hearings like the council meeting?

1 A: Not typically. They may call and have questions
2 sometimes about one before it gets to them, but not in a
3 typical course of activity.

4 Q: So, in other words -- I don't know. How often does the
5 County Council meet, once or twice a month?

6 A: Twice a month except in the summer and November and
7 December.

8 Q: And do they -- if there are zoning matters on the docket,
9 do they address them in each of the two meetings when there
10 are two a month?

11 A: Yes.

12 Q: And I guess my question is really the process of those --
13 when I used to watch that commercial "How a bill becomes a
14 law", you may be too young for that, but when it started how
15 this application goes from being presented to you for the very
16 first time all the way to County Council voting on it, that
17 process does not -- does not include a formal or informal
18 meeting where the Planning Department sits down with the
19 County Council people to tell them what's going with those
20 applications; that's what I'm trying to understand.

21 A: No. That formal process does not.

22 Q: Okay. But if someone was walking through the hallways
23 and said, hey, you know, we've got this application going on
24 for this pool of Mr. Bloom's, how's it going, or what do you
25 think; does that ever happen?

1 A: Sure.

2 Q: Okay. But if it's not part of the process to reach out
3 to the County Councilmen to discuss pending PD amendment
4 applications, correct?

5 A: It's not part of the regular process.

6 Q: In this process for 1.0, you did have however multiple
7 meetings, multiple discussions, and multiple correspondence
8 between you and your department and Mr. Goggans, correct?

9 A: I don't know about multiple but, yes, there was
10 discussions.

11 Q: And you are in the process of dealing with an architect
12 who just happened to be a County councilmen, right?

13 A: Yes.

14 Q: And he was advocating representing, presenting,
15 negotiating on behalf of the applicant, and you were
16 representing, negotiating, and advocating on behalf of the
17 County, correct?

18 A: I don't know about advocating and negotiating. We were
19 posing factual questions back and forth. We were looking for
20 the information we needed to make a decision to analyze the
21 data. We were asking them for information, and they were
22 returning it back to us.

23 Q: Let's talk about that for a second. In this process of
24 reviewing the data that's provided to you by the architect or
25 the engineer, you rely on that data and take it on its face

1 value, don't you?

2 A: Yes.

3 Q: In other words, if I say my pools gonna be 40 feet long
4 and 10 feet wide and three and a half feet deep, and I have a
5 building plan that shows that, you take me for my word, right?

6 A: Yes. If you have a plan that demonstrates that.

7 Q: And you hold me to that, right? Theoretically, if I then
8 build a olympic size pool, and you drove by and say, oh,
9 Bloom, I know we approved a little pull, but he's built a big
10 pool, and then you call the zoning administrator, right?

11 A: Then you'd be not in compliance with your permit.

12 Q: And you tend to code enforcement out there, maybe, and
13 get mad at me.

14 A: I wouldn't get mad at you, but I would go through the
15 appropriate steps to remedy the situation.

16 Q: I understand. I think we understand each other. So, in
17 the process of relying upon the data provided to you in this
18 case, it was Mr. Goggans, in 1.0, providing you with that
19 data, correct?

20 A: It was either Mr. Goggans or someone from his office.

21 Q: And he would be, or his office, and/or his office would
22 be providing you things such as floor plans, correct?

23 A: Yes.

24 Q: And square footage on those floor plans, correct?

25 A: Are you talking about the new building or the old

1 building?

2 Q: Well, let's just talk about 1.0 now, the new building
3 that was being proposed in 2016.

4 A: Okay. Yes, that would've come from his office.

5 Q: You have no way of knowing what the applicant is trying
6 to build unless the applicant tells you what they're trying to
7 build, right?

8 A: Yes.

9 Q: Okay. So, during this process in the 2016 with 1.0 and
10 your interactions with Mr. Goggans, the discussion was first
11 around, I assume, determining whether this would be a minor
12 amendment or major amendment; is that fair to say?

13 A: I think so.

14 Q: And you and your department ultimately concluded that it
15 would be processed as a minor amendment, correct?

16 A: Yes.

17 Q: And as a result, there would be no notice -- there would
18 be no public hearings, there'd be no County Council action,
19 there'd be no Planning Commission/Council action, correct?

20 A: Correct.

21 Q: And we already talked about what the neighbors would know
22 or they wouldn't know. But, in this instance, Gulfstream as
23 a, not just a neighbor, but as another owner of a use within
24 the same PD found out that you had decided to treat this
25 application as a minor amendment, correct?

1 A: I don't know how they found out.

2 Q: But they did find out. I think we all can agree they
3 found out?

4 A: Yes.

5 Q: Because they sent you a letter that said this should be a
6 major not a minor, correct?

7 A: Correct.

8 Q: And you -- I guess you disagreed with that or you agreed
9 with that?

10 A: We reviewed it and discussed it amongst staff and
11 concluded that it would still be a minor amendment.

12 Q: Okay. All right. So, the lawyer for Gulfstream made its
13 best case in writing, I guess, to you and you went back and
14 looked at it again and concluded we're gonna stick to our
15 guns, we think it's minor. Is that right?

16 A: Yes. And again, I was the chief planner at this position
17 not the director of the department, but, yes we had
18 conversations about it.

19 Q: You and Boyd; you and Mr. Johnson?

20 A: Yes.

21 Q: And you guys worked collaboratively I'm sure back then,
22 correct?

23 A: Yes.

24 Q: And during those discussions between you and Mr. Johnson,
25 I take it, you know, I could just envision you sitting in the

1 conference room or in his office and batting back and forth
2 the arguments whether it should be minor or major, right?

3 A: Probably. It's difficult to remember conversations from
4 2016, but ---

5 Q: I understand. I understand it is. And at some point,
6 you learned that the owners of Gulfstream were going to appeal
7 your decision or had appealed your decision that this was to
8 be a minor amendment, correct?

9 A: Yes.

10 Q: And so, at that point, do you have to then defend for
11 lack of a better term your decision before the Board of Zoning
12 Appeals? Is that how that works?

13 A: So, it becomes a question of interpretation in front of
14 the Zoning Board of Appeals. The zoning ordinance allows for
15 an appeal of a zoning administrator decision, and the Zoning
16 Board of Appeals is the correct place to hear that appeal.

17 So, we would be presenting our argument to support the zoning
18 administrator's decision or the determination. And then, the
19 -- then Gulfstream would present their argument as well.

20 Q: Okay. And the board of zoning -- do you call it the ZBA
21 or the BZA? I've seen both.

22 A: Either way.

23 Q: Okay. I like BZA.

24 A: Okay.

25 Q: So, your BZA is a group that would then hear Gulfstream's

1 appeal about whether this was a minor or major. They would
2 put on arguments as to why it should be a major and you put on
3 your arguments as to why it would be a minor; is that fair to
4 say?

5 A: That's correct. We prepared a report, and we listed out
6 the information there for their review.

7 Q: Okay. The members of the BZA are individual lay folks,
8 people, right, citizens of Georgetown County?

9 A: Yes.

10 Q: And they're appointed by the County Council, are they
11 not?

12 A: Yes.

13 Q: And in the process of appointing the BZA members, do the
14 County Council members have the ability to nominate a person
15 on their behalf?

16 A: Yes.

17 Q: So, in other words -- that was not a very well put
18 question. But if I'm County Councilman, one of my, I guess,
19 powers is to put forward someone I'd like to see on the BZA?
20 Is that a fair way to say it?

21 A: Yes. I'm not versed in what those requirements are.
22 That's handled at the Council level, but I do know that they
23 will nominate someone for those boards and commissions.

24 Q: And that's what I'm getting at. So, the people that
25 comprise the BZA are nominated by County Councilmembers and

1 then approved by the entire County Council, I assume.

2 A: Yes. That's correct.

3 Q: So, Mr. Goggans had someone that he nominated on the BZA
4 in 2016 when this appeal was being heard, correct?

5 A: I don't know if I can say that for certain. I don't
6 recall who his appointee was and whether or not they were
7 there in 2016.

8 Q: Fair point. But he had -- but he had the right to
9 appoint people on the BZA, correct?

10 A: Yes.

11 Q: And he also had the right to appoint people to the
12 Planning Commission, correct?

13 A: Yes.

14 Q: And I know we haven't gotten to the major amendment
15 process yet, but the Planning Commission makes recommendations
16 with respect to major amendment applications, correct?

17 A: Yes.

18 Q: And so, Mr. Goggans also had the right to appoint at
19 least one member of the Planning Commission; have I got that
20 right?

21 A: Yes.

22 Q: So, on we go into the BZA hearing and I -- and you
23 attended the BZA hearing, correct?

24 A: I believe so.

25 Q: Did Mr. Johnson, quote, defend the minor decision, or did

1 you or somebody else?

2 A: I can't recall. I know that I was involved in the
3 drafting of the report that was presented, so probably either
4 Mr. Johnson or myself would've gone over the report.

5 Q: Fair enough. Fair enough. And so, that proceeding takes
6 place, and in that proceeding you know that Mr. Goggans
7 testified or spoke on behalf of your decision, correct?

8 A: I know that Mr. Goggans was in attendance at that meeting
9 and spoke about the project.

10 Q: You don't like my characterization as far as defending
11 the minor decision?

12 A: I don't know if that's what I would use, but he certainly
13 presented -- I saw him there on behalf of Palmetto, so he
14 certainly was representing Palmetto, and we had agreed to the
15 minor decision. So, I guess we were in agreement at that
16 meeting.

17 Q: Okay. And that's what I want to get to is, after
18 negotiating your department and Mr. Goggans and his people,
19 you arrived at basically an agreement that this application
20 will go forward as a minor. Gulfstream learned about it.
21 They asked you to reconsider; you didn't. They appealed. It
22 goes before the BZA. Mr. Goggans presents to the BZA, and the
23 BZA affirms your decision. Have I got that right?

24 A: Yes. Although I'm not sure I would call it an agreement
25 so much as we made a determination based on the information

1 that was presented.

2 Q: The input that you got from Mr. Goggans.

3 A: And other people on his staff and our research that we
4 did based on information he had in our office.

5 Q: I may be making this up. (Confers with co-counsel.)

6 Okay. We can come back to that.

7 Okay. So, Mr. Goggans makes a presentation, the BZA
8 affirms, and then litigation ensues between Gulfstream and the
9 County related to that. Is that correct, the timeline?

10 A: As I recall it, yes.

11 Q: And let's -- now I'm gonna kind of go back a little bit.

12 MR. BLOOM: And, Judge, this is gonna get remedial. My
13 feelings will not be hurt if you say I got it already.

14 THE COURT: Okay.

15 MR. BLOOM: Bench trial, I can do that; can't with a
16 jury.

17 BY MR. BLOOM:

18 Q: Okay. I take it starting in at least 2015 you became
19 familiar with the Marlin Quay PD, correct?

20 A: Yes.

21 Q: And as you understand it, the Marlin Quay PD includes --
22 what's this?

23 A: You're going to have to come closer.

24 Q: Tell me when to stop.

25 A: Okay. I'm trying to orient myself.

1 Q: Does that reflect the restaurant?

2 A: Yes.

3 Q: It includes 60-some-odd parking spaces.

4 A: Yes.

5 Q: It includes what was formally by the Marina Store and
6 snack bar?

7 A: Marina store and restaurant, yes.

8 Q: And then the condos. I guess the condos go back this
9 way?

10 A: Correct.

11 Q: And it includes the marina?

12 A: Yes.

13 Q: Sixty slips?

14 A: Something like that.

15 Q: Okay. All right. So, in order to make your initial
16 determination regarding minor versus major, you had to
17 familiarize yourself with the PD, correct?

18 A: Yes.

19 Q: And you learned in your research that the PD was zoned
20 that way sometime in the 1980s; is that right?

21 A: 1982.

22 Q: Do we agree that according to the current zoning of the
23 Marlin Quay PD that the only thing that Gulfstream can do with
24 his property is run a restaurant?

25 A: Can you ask that question one more time?

1 Q: Sure. Can we agree that with respect to the zoning of
2 the Marlin Quay Planned Development that the only thing that
3 Gulfstream Inc. can do with its property is run a restaurant?

4 A: Based on the current PD requirements, yes, sir.

5 Q: Thank you.

6 A: But they could potentially amend. I mean, an amendment
7 to that PD can always occur.

8 Q: I didn't ask you that; I just asked you ---

9 MS. GOLDING: Your Honor ---

10 MR. BLOOM: Your Honor, I didn't ask that.

11 THE COURT: She has ---

12 MS. GOLDING: The witness explained the question.

13 THE COURT: She has the right to make a reasonable
14 explanation based upon the question, so...

15 BY MR. BLOOM:

16 Q: You could wake up tomorrow morning and as a staff
17 recommend global rezoning to the County, couldn't you?

18 A: I think at any time the zoning can also be amended. The
19 zoning ordinance text could be amended, and is as well as PD
20 text amendments can always occur, yes.

21 Q: Lots of things could occur, right?

22 A: Um ---

23 MR. BLOOM: Withdrawn. The Judge gets my point.

24 BY MR. BLOOM:

25 Q: Okay. With respect to restaurants, as a general

1 proposition in Georgetown County, you understand that
2 restaurants need to have parking spaces, don't they?

3 A: In most cases, yes, I mean, unless there is some other
4 provision, some other associated parking, or some other way
5 for the individuals to arrive at the location.

6 Q: And Article XI sets out the parking requirements set
7 forth in your zoning ordinance, correct?

8 A: Yes. Parking requirements are found in Article XI.

9 Q: And in Article XI -- and we're gonna get to it in great
10 detail, but just as a general proposition, your ordinance
11 requires that there be one parking space for every 100 square
12 feet of gross area in a restaurant, correct?

13 A: I don't remember the exact numbers, but that sounds
14 correct.

15 Q: And there's also the accommodation or contemplation that
16 restaurants are gonna have outdoor seating? This is, you
17 know, Myrtle Beach, restaurants have outdoor seating, right?

18 A: Yes.

19 Q: And do you know whether the requirements for parking in
20 space being used as outdoor seating is 150 square feet to one
21 parking space?

22 A: I think it is, yes.

23 Q: And then, you've got this table that talks about other
24 uses and all and of the formulas. Is that -- have you ever
25 heard the term that's the parking load; have you heard of that

1 term?

2 A: No, sir.

3 Q: Okay. In 2015, I submit to you, and I'll be able to
4 refresh your recollection in just one second -- but in 2015,
5 the process of seeking to replace the ship store and snack bar
6 began. Did you learn during that process that the original
7 restaurant, you call it a restaurant, we call it a snack bar,
8 the Judge will figure out what he thinks to call it, but the
9 original snack bar that was in the main floor of this
10 structure on Exhibit 11, did you come to learn that that
11 structure -- I'm sorry -- that restaurant comprised only 1957
12 square feet?

13 A: I don't recall that number.

14 Q: Would you please turn to Exhibit 80 in your notebook? It
15 should be in that black notebook on the left and it's gonna
16 come up on the screen to assist you in case you'd rather look
17 at it that way.

18 Is it on the screen?

19 A: Yes. It's on the screen.

20 Q: It might be easier to use the screen because we're ---

21 A: I got it.

22 Q: I'm going to try to refresh your recollection on a couple
23 of things. You indicated you didn't remember whether there
24 was an architect that's preceded Goggans and SGA.

25 A: Yes.

1 Q: Does this help refresh your recollection on that point?

2 A: Yeah. This email came from a Mr. Victoria. I don't
3 recall him, but, yes, that is where this email came from.

4 Q: Does that help to refresh your recollection that there
5 may in fact have been an architect that preceded Mr. Goggans?

6 A: It certainly makes sense based on the fact that they
7 produced this email.

8 Q: Okay. This looks like an email that came from an
9 architect, right, or you know Tungsten is an architect firm?

10 A: I don't know Tungsten is an architect firm, but I see
11 architecture under their signature on the email.

12 Q: If you look at this email, it is an email from the
13 architect to you -- it's interesting, it says to Chris
14 Hollingsworth, your cc'd but it's addressed to Holly, and it
15 says for some square foot sums; do you see that?

16 A: Yes.

17 Q: And it also identifies an Item Number 4 the square
18 footage of the restaurant area in 2015; do you see that?

19 A: Yes.

20 Q: 1957 feet, correct?

21 A: Yes.

22 Q: And it then says in the square footage of the restaurant
23 area in the proposed plan is 1957 square feet; do you see
24 that?

25 A: Yes.

1 Q: Does this help refresh your recollection as to, as to
2 what the owner in 2015 was telling you the size of the
3 existing snack bar was?

4 A: Yeah. I think we had requested this information from
5 them at the time.

6 Q: So, the answer to my question is yes?

7 A: Yes.

8 Q: So, at the time you started this process, which may have
9 been in the summer of 2015, according to this email, the City
10 -- I'm sorry -- the owner was telling you, at least, that the
11 square footage of the existing restaurant was 1957 and the
12 square footage of the proposed restaurant was 1957; have I got
13 that right?

14 A: Yes.

15 Q: And this would appear to be a true and accurate copy.
16 This is a document that you all produced to us in the course
17 of this litigation.

18 MR. BLOOM: So, Your Honor, we tender 80.

19 MS. GOLDING: Your Honor, the only thing, the
20 characterization of Plaintiff is that this is the owner that
21 made these representations. This is not the owner's email.
22 Other than that, I have no objection.

23 THE COURT: All right. Plaintiff's 80 is admitted
24 without objection.

25 MR. BLOOM: Thank you, Your Honor.

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PLAINTIFF'S EXHIBIT NUMBER 80

ADMITTED INTO EVIDENCE

BY MR. BLOOM:

Q: How many square feet of gross area does the 2019 ordinance that is the subject of this litigation approve.

A: Gross area?

Q: Yes.

A: And what do you mean by gross area?

Q: It's in your code. I don't know what you mean by it either, but that's why I'm asking you.

A: I don't think the ordinance specified gross area.

Q: Gross floor area?

A: Gross floor area, the 2018 ordinance; I don't think it refers to gross floor area.

Q: Please look at it yourself. It's in Article XI, 1102; it's in the code.

A: I'm sorry. I misunderstood you. You're talking about Article XI from the Zoning Ordinance.

Q: Yes.

A: Okay. Ask me the question again.

Q: Let me back up. I'm not sure where the disconnect is, but let's try and find it.

A: Okay.

Q: Do you, in the Planning Department from 2015 to present talk about a concept known as gross floor area or gross area,

1 which is that?

2 A: I'm sorry. I follow you. Gross floor area and the
3 parking requirement in Article XI, we interpret that to mean
4 inside area unless it specifically talks about the outside
5 seating area.

6 Q: Okay. So, gross -- is it gross floor area?

7 A: I think so.

8 Q: Gross -- well, let's not guess, because I don't want to
9 guess. Article VI -- yeah -- just so you can see at 1102.1,
10 you refer throughout that table as gross floor area. Do we
11 agree?

12 A: Yes.

13 Q: Okay. So, we're on the same page at gross floor area as
14 your code uses that term means interior space, period,
15 correct?

16 A: Yes.

17 Q: Whether it's heated or unheated, it's part of gross floor
18 area, correct?

19 A: That's correct.

20 Q: Okay. And now in terms of what 3.0 in this ordinance
21 approved, what was the gross floor area that you recommended
22 approval and that the County Council approved as part of this
23 ordinance?

24 A: So, now we're talking about version 3.0?

25 Q: Yes, ma'am. The subject of this case that we are

1 challenging 3.0.

2 A: I do not know what the gross floor area for 3.0 was
3 because we did not use those parking regulations to review
4 that project. We used the Marlin Quay PD because those were
5 the requirements that were in place for this project.

6 Q: All right. So, you don't know what the gross floor area
7 of the building that we are here about is?

8 A: I know that the heated square footage was 4,598 for
9 Version 3 -- I mean, Version -- I'm sorry Version 3 was, I
10 think 4,596.

11 Q: Okay. And what about for the unheated square footage?

12 A: I do not know the total of the unheated square footage.

13 Q: We will get to it.

14 A: Okay.

15 Q: During your processing of the 2015 or 2016 application --
16 let's call it 1.0 -- did you have an occasion to go visit the
17 site of the old snack bar?

18 A: Yes. I know I visited there once. I can't tell you
19 exactly when it was, but it was sometime in that timeframe
20 before it was demolished.

21 Q: We know it was before it was demolished?

22 A: Yes, sir.

23 Q: And it looked just like Exhibit 11?

24 A: I think so.

25 Q: Can we agree that that's one-and-a-half stories high?

1 A: That's what it appears to be from this picture.

2 Q: Can we agree that it's not 10,000 square feet of gross
3 floor area?

4 A: Again, I don't know what the total gross area floor area
5 is.

6 Q: Well, you just told me that you had to know what the
7 gross floor area of the original was, didn't you? Wasn't it
8 -- didn't start off as 4500-and-something feet?

9 A: That's the number that they provided for us here for the
10 heated square footage.

11 Q: And I'm asking you whether you knew at any time what the
12 gross floor area of the Stone property, the original snack bar
13 was?

14 A: Our knowledge of the square footage for that site was
15 limited to the information that was provided in this email.

16 Q: And which one are you referring to now?

17 A: Which email am I referring to?

18 Q: Yeah. Are you talking about Exhibit 80, because the
19 court reporter can't ---

20 A: I'm sorry.

21 Q: She doesn't know what you're pointing at.

22 A: Yes.

23 Q: Okay. So, when Victoria writes to you in 2015, he tells
24 you that the square footage of the restaurant area is 1957,
25 and in Item Number 1, he tells you that the square footage of

1 the existing building is 4600 feet?

2 A: Yes.

3 Q: And so, in 2015, you knew at least that the owner was
4 representing that the whole building was 4600 for that
5 building; is that right?

6 A: Yes.

7 Q: And roughly 2,000 feet of that was the restaurant,
8 correct?

9 A: Yes.

10 Q: When you were processing this application, you knew that
11 Steve Goggans was representing the owner, in 2015 and 2016?

12 A: I'm not sure at what point I knew that Steve was
13 involved, but at some point I did.

14 Q: And 2016 we can agree you found out?

15 A: Yes.

16 Q: He started showing up?

17 A: I don't know about showing up, but his name was on the
18 emails.

19 Q: Okay. And you knew that the architecture firm
20 representing the applicant was SGA, and that's his
21 architectural firm, correct?

22 A: Yes.

23 Q: Okay. And you were promoted from, what, senior planner
24 to chief planner at some point?

25 A: Planner II to chief planner.

1 Q: When was that?

2 A: I want to say that was 2007, somewhere around that time.

3 Q: I'd like to direct your attention to Exhibit 82, please.

4 Do you see it, ma'am?

5 A: Yes.

6 Q: You're copied on it? If you look at the second --

7 technically, the email as part of this email, which is the

8 June 15, 2016 email from Boyd Johnson to Goggans, Richardson;

9 do you see that?

10 A: Yes. I am copied on that original email.

11 Q: And this is a confirmation from Mr. Johnson where he is

12 saying that the Planning Department's response to a letter

13 that I guess the Planning Department got May 26th including

14 our position regarding whether the proposed improvements rise

15 to a level that require a formal zoning amendment process.

16 He's talking about the major amendment process, isn't he?

17 A: Yes.

18 Q: Further down he says that, As stated on your letter, the

19 building being constructed is essentially the same size as the

20 existing building; only the allocation of square footage

21 inside exchanging. Do you see that?

22 A: Yes.

23 Q: Do you agree with that?

24 A: I don't remember exactly Version 1; that's been quite

25 some time ago. And what it looked like -- I do know our

1 discussions at the time centered around the amount of heated
2 square footage of them out for the restaurant and the store
3 staying the same.

4 Q: Can you show me where in your code there is a distinction
5 between heated square footage and unheated square footage?

6 A: I don't know that that is specifically provided for in
7 the code, but that is what we used to interpret that section
8 in order to regulate the intensity of the site and the
9 capacity of the building.

10 Q: I understand that's what you used. That's very clear
11 from the record. What I am asking, though, is where does that
12 distinction have its origin in your code that anyone can pick
13 out of the shelf and read?

14 A: Well, there certainly is not everything that we use
15 mentioned in black-and-white in the code. It's our job to
16 interpret the code. That's why that provision is there for
17 the Zoning Board of Appeals, when there are questions of
18 interpretation that people disagree with, that's why that
19 provision is there. At some points in some areas of gray, we
20 have to utilize our ability to interpret the code as the
21 administrators of the ordinance.

22 Q: So, the answer to my question is there is no distinction
23 made between heated and unheated square footage in your code,
24 correct?

25 A: I can't recall a specific ordinance section in the zoning

1 code that refers to that.

2 Q: Thank you. And in the parking ordinance, there is no
3 distinction made between heated and unheated square footage,
4 is there?

5 A: In Article XI of the zoning code, it refers to indoor
6 seating and outdoor seating gross floor area, but again that
7 is not the parking section that was applicable here since this
8 is a planned development.

9 MR. BLOOM: Your Honor, she's now advocating. I don't --
10 that's not explaining the answer to her question; it's just
11 advocating a position as to what the County's position is why
12 they did what they did. My question is real simple: Is there
13 a distinction between heated and unheated square footage in
14 Article XI of the zoning code? It's as simple question as I
15 can make it.

16 MS. GOLDING: The question has been answered, Your Honor.

17 THE COURT: I think she said -- I think she said no;
18 that's my recollection of her answer before she set out to
19 explain it, but I think she has admitted that there's no -- to
20 her knowledge there's no distinction.

21 BY MR. BLOOM:

22 Q: In fact, the only distinction between types of square
23 footage in Article XI of the zoning code is the difference
24 between gross floor area and outdoor seating in terms of -- or
25 when we're talking about restaurants, correct?

1 A: Correct.

2 Q: And I understand your position is that this was some
3 interpretation of a gray area, but is there anything gray
4 about the term gross floor area? You defined it for me a
5 minute ago. Is there anything gray about that?

6 A: To me, gross floor area is inside square footage.
7 Someone else might argue that it's everything around the
8 building. I mean, I think there can always be shades of gray.

9 Q: Yes. We agree there can always be shades of gray. But
10 my question is, is there any gray with respect to what gross
11 floor area means in Georgetown County?

12 A: I can only tell you how I view gross floor area. I can't
13 speak as to how someone else would, but in my terms it's
14 inside the building square footage.

15 Q: All right. Well, let's not quibble anymore. Is there a
16 section in the zoning code that says when a term is not
17 defined that you shall look to the International Building Code
18 for its definition? Isn't that in your zoning code?

19 A: I'm not sure. I would need to see that section.

20 Q: Okay. And are you familiar with the International
21 Building Code on how it defines gross floor area?

22 A: No.

23 Q: You'll be happy to know that it agrees with you, that
24 gross floor area is also defined as inside the walls. Does
25 that surprise you or that sounds about right?

1 A: It sounds the same as what I've suggested.

2 Q: I agree. I agree. And you are an AICP; what is that?
3 American Institute of Certified Planners?

4 A: Yes, sir

5 Q: That's a highest designation that a planning person can
6 get?

7 A: I think there are fellows and other levels of things.

8 Q: That get more into academia?

9 A: I'm not sure.

10 Q: So, we're back to what you keep calling the
11 interpretation. You are looking at or we were looking at 82.
12 And 82 is where Mr. Johnson was telling Mr. Goggans and you
13 that the conclusion is that the sought after improvements do
14 not constitute a major change; that's the key point about this
15 letter, right?

16 A: Yes.

17 Q: And one of the things that Mr. Johnson relies upon in
18 arriving at this conclusion, I suppose in conjunction with
19 you, was the sentence we've said, we understand that parking
20 can be provided as required in the ZO; zoning ordinance,
21 correct?

22 A: Yes. That's what he says.

23 Q: Is there anything in here that says that we're not gonna
24 look at the zoning ordinance to try to arrive at what the
25 parking requirements are?

1 A: No, there's not. But I think it's implied because we're
2 talking about a planned development that that's what we would
3 review.

4 Q: And is there anything in the zoning code that tells you
5 to look somewhere beyond the parking ordinance to determine
6 the parking necessary for a PD?

7 A: I think the mere definition of a planned development that
8 provides flexibility and differences in land development, and
9 the fact that the ordinance says that the planned development
10 becomes the ordinance itself and is treated just like a zoning
11 ordinance amendment is what we would use for that reason.

12 Q: So, you just completely discarded Article XI when you
13 were evaluating the parking requirements for this property?

14 A: Not that we discarded it, but we went first to the
15 planned development requirements as we do for the numerous
16 planned developments that are in our county.

17 Q: So, what role did the zoning ordinance Article XI parking
18 requirements play in your analysis 1.0, 2.0, or 3.0?

19 A: We use those requirements as a guide in making some
20 determinations.

21 Q: A guide, they were just a guide; is that what you're
22 telling this Court? A guide?

23 A: Yes, and in doing our analysis of the site.

24 Q: So, you used the parking requirements in Article XI as a
25 guide and you relied exclusively on the data that was being

1 provided to you by the owner; have I got that right?

2 A: I think so.

3 Q: If the data provided by -- it's the old garbage-in-
4 garbage-out concept. If the data provided by the owner was no
5 good, then your conclusions and recommendations about parking
6 requirements would be no good, correct?

7 A: Correct, but we have to rely on the information that
8 we're given by professionals that present that to us.

9 Q: Particularly when that professional is a County
10 Councilman, right?

11 A: No. Based on their professional seal and stamp that they
12 have, we have to rely on that as the correct information.

13 Q: If you would please turn your attention to -- well,
14 strike that.

15 MR. BLOOM: I haven't tendered 83, have I?

16 Tender 82, Your Honor.

17 MS. GOLDING: No objection, Your Honor.

18 THE COURT: 82 is admitted without objection.

19 PLAINTIFF'S EXHIBIT NUMBER 82

20 ADMITTED INTO EVIDENCE

21 BY MR. BLOOM:

22 Q: I'd like to direct your attention to Exhibit 7.

23 Are you there, ma'am?

24 A: Yes.

25 Q: Exhibit 7 appears to be two emails. One is from Patrick

1 Williams, it looks like it's an internal email at SGA, right?
2 Patrick Williams worked for SGA, Goggans worked for SGA, Luda
3 worked for SGA, correct?

4 A: Yes.

5 Q: There -- it looked like there was a parking study that
6 was done by SGA; is that consistent with your recollection and
7 what the document says?

8 A: A parking analysis, yes.

9 Q: I'm just reading the subject line that says Marlin Quay
10 parking study.

11 A: Yes, sir.

12 Q: So, the applicant then in the May 13th email providing to
13 you and Boyd a representation about their position on whether
14 there's enough parking for the new building.

15 A: Yes.

16 Q: And did you rely upon that when making your
17 recommendation regarding the approval of 1.0?

18 A: Yes. I mean, we relied on this information in terms of
19 the amount of square footages. We would have checked those
20 calculations ourselves, checked his math.

21 Q: Okay. Did you -- because you don't know what's on the
22 plans at this point or did you? Did you actually see plans by
23 this point to see how many actual square feet were for what
24 use?

25 A: I can't recall that.

1 Q: Well, you know, here Goggans is sending you Patrick's
2 analysis which says that the kitchen and dining is 3060, 3,060
3 square feet that does not include the outdoor deck and bar,
4 and he goes through your math -- in Article XI it says one
5 space per 100 equals 31 spaces; do you see that?

6 A: Uh-huh, (affirmative response), yes.

7 Q: Did you write him back and say no, no, no, no, Patrick,
8 you don't have to use Article XI because that's just a guide.
9 We can just look at what the old PD says for the parking
10 requirements? Did you tell him that?

11 A: I don't think so.

12 Q: Can you point me to any document in this case, any
13 document, before the litigation was filed where you have taken
14 the position or Mr. Johnson has taken the position that
15 Article XI of the zoning ordinance is just a guide? Anywhere
16 in the email correspondence, anywhere in the recommendations
17 for approval of 2.0, 3.0, any internal document anywhere with
18 the word guide for parking is mentioned?

19 A: I cannot call a specific case we use that word, but by
20 the mere fact that this is a planned development, it is known
21 by us and our staff that it has a separate set of
22 requirements.

23 Q: So, the answer is you don't know of any document that
24 says guide?

25 A: No, sir.

1 MR. BLOOM: Your Honor, tender 7, please.

2 MS. GOLDING: Your Honor, the only reason I would object
3 to 7 is that this relates only to the Version 1, has no
4 applicability to 2 or 3. And so, I wanted to make that
5 clear.

6 THE COURT: All right. I'll admit it in consideration.
7 I'll give it the weight that is appropriate.

8 Plaintiff's 7 is admitted.

9 PLAINTIFF'S EXHIBIT NUMBER 7

10 ADMITTED INTO EVIDENCE

11 BY MR. BLOOM:

12 Q: Would you please turn your attention to Exhibit 78?

13 Are you there, Ms. Richardson?

14 A: Yes.

15 Q: Is it up?

16 A: Not yet.

17 Q: 78 appears to be a letter from Mr. Goggans to you and
18 Boyd; is that correct?

19 A: Yes.

20 Q: Interestingly, did he hand-deliver this to you when he
21 was in the County office building, or did this actually go
22 through the mail?

23 A: I have no idea.

24 Q: He could've just handed it off as he was coming to his
25 office at the County building, couldn't he?

1 A: I have no idea.

2 Q: Here Mr. Goggans says that he represents Lawhon and
3 Lawhon, father and son, right?

4 A: Yes.

5 Q: And he tells you that he is confirming certain parameters
6 regarding the construction of their new marina building; do
7 you see that?

8 A: Yes.

9 Q: This first thing is that everybody has agreed that the
10 owners would construct a new building comprising of 4600
11 square feet conditioned (heated space); do you see that?

12 A: Yes.

13 Q: The final point that he makes is he says, Finally, I wish
14 to note that our parking analysis, approximately 31 spaces are
15 needed to accommodate the proposed uses, per the ordinance,
16 and 50 parking spaces are provided. Is there anywhere in
17 there that he talks about the ordinance just to being a guide?

18 A: No.

19 Q: Did you ever say to him in response to this, no, no, no,
20 no, we don't have to follow Article XI; is just a guide when
21 you do PD amendments. You didn't tell him that, did you?

22 A: I don't recall conversations specific to that.

23 Q: But here is a County Councilman, and from what I
24 understand is a very good architect, and his team treating
25 parking requirements as requirements, not just guides, right?

1 A: He refers to those numbers in this letter, yes.

2 Q: Per the ordinance from Article XI, correct?

3 A: He says under the current ordinance.

4 Q: Which was back -- which was what we were talking about,
5 the 2018 ordinance? Same thing, right?

6 A: Yes.

7 Q: So, he does his parking study, Exhibit 7, he applies the
8 formula contained in Article XI of the parking ordinance. He
9 refers to required parking as 42 spaces. He tells you that
10 that's only for heated space, that we're not including the
11 outdoor deck space and that we have enough. And you accepted
12 that, right?

13 A: We took this as part of our review.

14 Q: And you accepted it?

15 A: We accepted it but, also, this indicates the amount of
16 heated square feet for the site, which was important to mean
17 that that was being maintained. That's another piece that's
18 in this letter.

19 Q: I understand you are telling the Court that it's
20 important to you now, but in the code, in Article XI, we've
21 already agreed that there is no distinction between heated and
22 unheated. We don't need to retread that, do we?

23 A: No.

24 Q: All right. So, let's talk a little bit more about this
25 concept that you've offered that this was, as I understand

1 your testimony, that the reason Version 3.0 complies with the
2 County zoning code is because Article XI is just a guide and
3 is not mandatory and is just part of what you look at. Have I
4 got your argument right?

5 A: Well, if I could explain it further. Article XI also
6 talks about when there is a change in use or an expansion of
7 use, and that is not what was at play here. That's why we
8 focused so much on the amount of heated square footage and the
9 seating capacity for the site not being increased.

10 Q: Let's talk about that. I figured you might take that
11 position. You are telling this Court that going from a 4600
12 square-foot building to a 13,000 square-foot building is not
13 an expansion of the use? That's what you're telling the
14 Court?

15 A: I'm telling the Court that the seating capacity did not
16 change.

17 Q: Okay. Where in Article XI does it talk about seating
18 capacity?

19 A: It talks about an increase in the amount. So, in our
20 interpretation, the seating capacity, that heated square
21 footage was not being increased beyond what was there before.

22 Q: Tell me in Article XI, you just referred to Article XI,
23 where in Article 11 does it talk about seating capacity,
24 ma'am? We went over this. All it talks about is the heated
25 floor area and outdoor seating.

1 A: It doesn't use the word seating capacity, but it does
2 talk about an increase in dwelling units, guestrooms, floor
3 area, seating, or bed capacity. It does have the word seating
4 in that section.

5 Q: Okay. And how do you know in 2016 whether there was an
6 increase in seating being proposed by the application? What
7 -- where in the 2016 records does it say what's gonna happen
8 with outdoor seating.

9 A: Well, again, at that time we were also looking at the
10 amount of heated square footage.

11 Q: I know you were. But my question is, where in the record
12 does it tell you what the increase in the outdoor seating was
13 gonna be?

14 A: I don't know that there is a document that refers to the
15 amount of outdoor seating.

16 Q: And even today, you don't know what the increased outdoor
17 seating is for this proposed restaurant, do you?

18 A: I know that has to be limited to 110 based on the
19 ordinance that was passed by County Council.

20 Q: But at the time you were making the recommendation to
21 approve 3.0, you didn't know what the proposed outdoor seating
22 was gonna be for this restaurant. That's several thousand
23 square feet of outdoor decking, and you had no idea how many
24 seats were gonna be on that outdoor decking, did you?

25 A: Well, outdoor decking doesn't automatically correlate to

1 outdoor seating, and ---

2 Q: When the plan says outdoor seating ---

3 MS. GOLDING: Your Honor, Mr. Bloom just interrupted the
4 witness.

5 THE COURT: All right. Let ---

6 MR. BLOOM: If I did, I'm sorry, Judge.

7 THE COURT: Yeah. Let's concentrate on letting Mr. Bloom
8 ask complete questions and letting the witness finish her
9 answer before another question is asked.

10 BY MR. BLOOM:

11 Q: Did you have something that she wanted to say, Ms.
12 Richardson?

13 A: I'm not sure that I can remember. But I think I was
14 gonna say that outdoor decking doesn't necessarily correlate
15 to outdoor seating. But at any rate, 110 based on the
16 ordinance that was passed is the limit.

17 Q: Thank you.

18 And -- thank you.

19 Let's go to this idea that the parking ordinance in
20 Article XI is just a guide and turn your attention to Exhibit
21 76, please.

22 Are you in front of -- do you have a 79, ma'am?

23 A: I'm sorry. I thought you said 76.

24 Q: If I did, then that's where I want you to be at. I
25 could've had the number wrong. So, we're in front -- we've

1 got 76? This was May of 2016. You are negotiating,
2 discussing -- pick your verb, it doesn't matter to me --
3 you're writing Mr. Goggans, copying your boss Mr. Johnson, and
4 the third item looks like you're answering some questions. Is
5 that what's happening here?

6 A: Yes, I think so.

7 Q: And in the third item you say, or it says, do decks count
8 -- decks, like outdoor seating, right?

9 A: It doesn't say outdoor seating; it says decks.

10 Q: I know. But it -- doesn't outdoor seating exist on
11 decks?

12 A: Potentially. It could also be on the patio on the
13 ground.

14 Q: Do decks counts in a total calculation for square footage
15 assuming parking can be accommodated? This was the
16 applicant's question to you and your answer -- that is your
17 answer, correct?

18 A: Yes.

19 Q: I'm not gonna read the whole thing. So, I'm gonna pick
20 up where it says, so any decking on the new building would
21 similarly not be included in this maximum, and that was your
22 maximum of 4600 feet, correct?

23 A: Can I take just a second to read that paragraph?

24 Q: Sure. Of course.

25 A: Okay.

1 Q: Where I was picking up after the parents where it says,
2 So, any decking on the new building would similarly not be
3 included in this maximum. And then here's your kicker, you
4 say, However, any decking area that is to be used for outdoor
5 seating or a bar area must meet the parking requirements. You
6 didn't say guides, you didn't say that Article XI was just a
7 guide. The only thing that you could've meant with this
8 statement was Article XI and the parking code, correct?

9 A: No. I think I could've meant the parking requirements of
10 the Marlin Quay PD.

11 Q: And what were the parking requirements of the Marlin Quay
12 PD, because the Marlin Quay PD that we looked at has no
13 parking requirements for the store.

14 A: The Marlin Quay PD ordinance refers to the conceptual
15 plan. You're right. It doesn't give parking requirements for
16 each use. It refers to the conceptual plan, which is the
17 existing parking lot.

18 Q: So, wait a minute. Are you saying that the reason that
19 the addition of Building 3.0 is okay with the code in your
20 mind is because the 1984 conceptuels or the 1984 site plan
21 that there are 60 parking spots in there?

22 A: I'm saying that the planned development is an ordinance
23 that stands on its own. So, it can deviate from Article IV;
24 it can deviate from any article in the zoning ordinance.
25 That's the purpose of the planned development. So, it can be

1 different from Article XI, it can be different from the
2 parking permits, it can be different in terms of setbacks.
3 The zoning ordinance provides setbacks, and there aren't any
4 in this PD.

5 Q: But where in the PD does it tell you how many parking
6 spaces you're supposed to have for a 13,000 square-foot new
7 building? Please tell this Judge where.

8 A: It does not. The planned development refers to the
9 conceptual plan. That's all we have. All we can go on is
10 what we are provided by -- in the PD.

11 Q: And where in the conceptual plan does it tell this judge
12 that you can have an additional 13,000 square-foot building on
13 the snack bar footprint?

14 A: It does not say that in the PD document.

15 Q: And where does it say what the parking requirements are
16 for this PD if you add a 13,000 square-foot building to the
17 footprint; where does it say that?

18 A: It doesn't. That's why it's incumbent upon us to
19 interpret the ordinances that we are provided with and make
20 some determinations and recommendations to Planning Commission
21 and County Council.

22 Q: And there is only one place in the entire zoning code
23 that informs you about how many parking spaces you need to go
24 with particular uses, and that is Article XI; true or false?

25 A: True.

1 Q: Thank you. So, the only place in the whole code, the
2 zoning map, and all the PDs that tells you how many parking
3 spaces you have to have a restaurant, and how many parking
4 spaces you have to have for a retail store, and how many
5 spaces you have to have for a marina are in Article XI,
6 correct?

7 A: Correct. But a planned development might have its own
8 parameters ---

9 Q: But this one doesn't.

10 MS. GOLDING: Your Honor, he's ---

11 MR. BLOOM: We're going around in circles, Judge.

12 THE COURT: Well, you asked the question. Give her the
13 opportunity to answer it.

14 A: A planned development might have its own parameters. It
15 might be in the situation where a shared parking arrangement
16 is advantageous or needed because of the particulars of that
17 planned development. That's why the planned development
18 section exists.

19 Q: Thank you.

20 MR. BLOOM: Move to strike as nonresponsive and
21 irrelevant.

22 THE COURT: Overruled.

23 BY MR. BLOOM:

24 Q: This PD does not say anything about the parking
25 requirements for that footprint if you add a 13,000 square-

1 foot building, does it?

2 A: No, it does not.

3 Q: Okay.

4 MR. BLOOM: Judge, tender 76.

5 MS. GOLDING: Your Honor, the only reason is that 76
6 refers to Version 1.

7 THE COURT: Yes, ma'am.

8 MS. GOLDING: Thank you.

9 THE COURT: Plaintiff's 76 is admitted.

10 PLAINTIFF'S EXHIBIT NUMBER 76

11 ADMITTED INTO EVIDENCE

12 BY MR. BLOOM:

13 Q: Please turn to 77, Ms. Richardson. Are you there?

14 A: Yes.

15 Q: Is it up? Exhibit 77 is Boyd's response -- have we
16 already put 77 in?

17 MS. GOLDING: Yes. It's another --

18 MS. PEARSON: It's a part of that same -- email, at the
19 bottom.

20 MR. BLOOM: Okay. Then I don't need to review it. Thank
21 you, Ms. Golding.

22 BY MR. BLOOM:

23 Q: And 79? If you can find 79?

24 A: Yes, sir.

25 Q: Are you there?

1 A: Yes.

2 Q: Okay. 79 appears to be an email from you to Boyd and
3 Joanne and Judy. Joanne and Judy worked in your department, I
4 think?

5 A: Judy worked in the Planning Department. Joanne worked in
6 the Zoning Department at that time.

7 Q: Okay. And so, this is in August 2015. This is when this
8 whole issue was kind of getting started; is that fair to say?

9 A: I think so.

10 Q: And it looks like you went and did some research about
11 the PD to see what and how you would be informed on reviewing
12 the application; is that fair to say?

13 A: Yes.

14 Q: In Item Number 7, you said, after a discussion about
15 square footage, so you said in 6(a) options going forward
16 based upon the premise that we are going to allow them to keep
17 the same amount of square footage that is there today, which
18 at that point was around 4600 feet, correct?

19 A: Yes.

20 Q: And then there's this issue we don't need to get into if
21 they had some -- the encroaching on the condo property; do you
22 remember that whole issue?

23 A: Yes. The building was over the line.

24 Q: Right. So, in 7, you say in either case, we need to make
25 sure, make sure, not guideline, make sure that the total area

1 for the store and the total area for the restaurant do not
2 exceed the current amounts. No parking is taken up with the
3 additional -- with the addition, and a letter from the HOA
4 regarding demo. You didn't say that Article XI was a guide.
5 You said we need to make sure that they don't build more than
6 what's there right now; isn't that right?

7 A: Correct.

8 Q: And I know that all you were talking about back then was
9 heated square feet?

10 A: Correct.

11 Q: But they weren't building just 4600 foot of heated square
12 feet, they were building 10 to 13,000 of total building; can
13 we agree on that?

14 A: I don't recall the exact size of Version 1.

15 Q: It was more than 8,000 feet, right?

16 A: I believe it was.

17 Q: Okay.

18 MR. BLOOM: Tender 79.

19 MS. GOLDING: No objection except that it applies as to
20 Number 1.

21 THE COURT: Yes, ma'am.

22 MS. GOLDING: Yes, ma'am.

23 THE COURT: 79 is admitted.

24 PLAINTIFF'S EXHIBIT NUMBER 79

25 ADMITTED INTO EVIDENCE

1 MR. BLOOM: Andrea, 76 in?

2 COURT REPORTER: Yes, sir.

3 (REPORTER'S NOTE: Mr. Bloom confers with co-counsel.)

4 MR. BLOOM: Tender 78, Your Honor. That's the letter
5 from Goggans to Holly and Boyd.

6 MS. GOLDING: The same objection applies to the Version
7 1, Your Honor.

8 THE COURT: 76 or 78?

9 MR. BLOOM: 78, Your Honor. I just want to make sure
10 that 76, 77, 78, and 79 are in.

11 THE COURT: Ms. Golding, is the same objection for all of
12 those?

13 MS. GOLDING: Yes, sir. Yes, sir. They all just apply
14 to Version 1.

15 THE COURT: All right. 76, 77, 78, and 79 would be
16 admitted subject to the clarification that Ms. Golding has
17 offered the Court.

18 MS. GOLDING: Thank you, Your Honor.

19 THE COURT: Thank you.

20 PLAINTIFF'S EXHIBIT NUMBER 77 AND 78

21 ADMITTED INTO EVIDENCE

22 BY MR. BLOOM:

23 Q: Do you need water or anything?

24 A: I would like my bottle of water if that's okay.

25 Thank you.

1 Q: You're welcome.

2 Let's turn our attention, and I think will be able to pop
3 through this a little bit quicker. We stopped at the timeline
4 with the BZA, and then we got off on this parking is a
5 guideline issue. So, I want to come back to the timeline if I
6 may, please.

7 The BZA affirms, Circuit Court lawsuit, and then
8 applicant comes back to the County with 2.0; is that your
9 recollection?

10 A: I think so.

11 Q: Now, with 2.0 as a major amendment change, so you had to
12 go through the same analysis that you went through with 1.0,
13 plus you had to do all the extra work for notice and
14 recommendations and reports and hearings?

15 A: Yes.

16 Q: And at this point, SGA was still the architect for the
17 applicant, wasn't it?

18 A: Yes.

19 Q: And Goggans still owned SGA, correct?

20 A: As far as I know.

21 Q: And the Planning Commission, you do the staff report to
22 the Planning Commission that recommended approval of 2.0,
23 correct?

24 A: Yes.

25 Q: And it was based upon the analysis that you had performed

1 during 1.0 combined with whatever was different in the plans
2 for 2.0, correct?

3 A: Yes.

4 Q: You are using your same -- Judge, this is really
5 important -- you were using your same heated versus unheated
6 gross floor area, I'm looking at the PD instead of Article XI,
7 that same mindset that we just debated for an hour was the
8 same approach you took and the same interpretations you made
9 when you were analyzing 2.0, correct?

10 A: Yes.

11 Q: For example, when you were analyzing 1.0, you decided not
12 to determine the parking requirements for the other uses in
13 the PD when you recommended approval of 2.0, right?

14 A: Correct.

15 Q: And so, what I mean -- just so we're super clear, Judge
16 -- what I mean here is that if this is the PD, you have the
17 store -- that's not the best drawing but I'll try -- you have
18 the marina, all the spaces; you had Gulfstream; and then you
19 had parking; and then you had the condos. We didn't really
20 talk about that because they don't use the parking.

21 A: I don't think they do. I don't believe -- I think they
22 have their own parking lot.

23 Q: That's why we don't talk about that. Okay. All right.
24 So, there are one, two, three uses in this PD that all use
25 parking spaces, correct?

1 A: Yes.

2 Q: And your code actually requires, unless there's a shared
3 parking analysis done, which you never did, correct?

4 A: That's correct.

5 Q: And shared parking analysis, for the Court's benefit, is
6 where you arrive at some conclusion that all these uses can
7 use these same parking spaces because of the hours of
8 operation, what kind of parking you would need for each, that
9 did not happen at all here, correct?

10 A: That's correct.

11 Q: All right. So, at no time in this entire case from 2015
12 until this minute have you ever conducted the analysis to
13 determine how many parking spaces the marina needed, how many
14 parking spaces Gulfstream needed, and you have some opinion
15 about how many parking spaces Marlin Quay needs, right? So,
16 you know this number or at least you've told the Court what
17 you think that number should be -- we'll get two more on that
18 later -- but you never did this analysis, did you?

19 A: I did not because the whole site in terms of our current
20 Article XI parking ordinance would be considered
21 nonconforming. This site was approved in 1982 with some
22 changes that have happened since then, but the whole site is
23 nonconforming in terms of the current Article XI of the zoning
24 ordinance. This was a building that had to be removed and
25 that was being reconstructed. So, our focus was to be sure

1 that the reconstructed building maintained the same level of
2 capacity and the same impact on the parking lot that the
3 previous building had.

4 Q: Let me unpack that. We know that rule one of
5 nonconforming uses in the planning world and layman's world is
6 that nonconforming uses can be legal unless they are
7 increased. We agree on that principle, don't we?

8 A: Yes.

9 MR. BLOOM: So, Judge, for example, I build my house ---

10 MS. GOLDING: Your Honor, I'm gonna have an objection.
11 He needs to ask the questions of the witness and not make any
12 type of statements to the judge.

13 MS. GOLDING: I'm not sure what objection from the
14 evidence code that falls under, Your Honor.

15 THE COURT: Well, let's -- if you've got a hypothetical
16 address the question to the witness and let her answer it. I
17 mean, obviously, questions and answers are directed towards me
18 but just make sure that you're asking her questions and not
19 proposing hypotheticals directed at me. Just ask her your
20 question -- ask her your question and let her answer it.

21 MR. BLOOM: Yes, Your Honor.

22 BY MR. BLOOM:

23 Q: I build a house. And that the time I build my house --
24 you were talking about setbacks a minute ago. At the time I
25 build my house the front yard setback is 10 feet. Let me draw

1 a picture.

2 MR. BLOOM: Again, if this is remedial, Your Honor, I can
3 move on, but I think this is critical.

4 BY MR. BLOOM:

5 Q: Here is the site plan of my house, here's the right-of-
6 way, also the property line, right? This is looking down. In
7 the setback requirement is 10 feet. I build my house. I
8 gotta stay outside of the setback, right? That's the whole
9 point of the setback. I can't build in the setback, right?

10 A: Yes.

11 Q: I build my house, I'm outside of the setback. Two years
12 later the code changes, text amendment like we talked about.
13 Now, residential uses have to have a 20-foot setback. The
14 code and every code in America says that I don't have to tear
15 my house down because the codes change about setbacks. I
16 don't have to tear off 10 feet, right? I am a legal
17 nonconforming use. Is that what this means?

18 A: Yes.

19 Q: And so, what I think I heard you say now, this is your
20 reason for not doing the total calculations, is that since the
21 PD is in violation of the parking code, you didn't total up
22 what the parking loads, that's what I call him. But what the
23 parking requirements were for all of these to know how much
24 parking was necessary. Have I got that right?

25 A: Among other reasons, yes.

1 Q: Okay. So, again, legal nonconforming use, rule one about
2 legal nonconforming uses, this is land use 101, is that you
3 cannot increase the nonconformity. Can we agree on that?

4 A: Yes.

5 Q: So, for example, I am legal nonconforming with my house
6 even though the setback requirements have changed, but I can't
7 tear it down and build two times the size of the house, can I?

8 A: No.

9 Q: I have to build the exact same house if a hurricane came
10 and swept me out of there, right?

11 A: It's hard to talk in terms of hypothetical without
12 knowing exactly what code would apply, but I follow your
13 analysis.

14 Q: And I'm just using your code as an example. We can talk
15 about Article IV later because that's your nonconforming use
16 code section.

17 A: Yes.

18 Q: But, as the Georgetown principle and a Georgetown rule,
19 if I want to keep the 10-foot setback I originally built under
20 I have to replace the house with a like house, right?

21 A: With the footprint, potentially.

22 Q: Well, yes, definitely with the footprint, but that's my
23 question. What if I want to -- if I had a one story nice
24 little ranch with my 10-foot setback that changes to 20 feet
25 and a hurricane comes and blows it away and now want to build

1 a 10-story house on the same footprint, you know you can't do
2 that under your ordinance.

3 A: But your example is referring to the setback. What we're
4 talking about here is a parking requirement. And I think the
5 email that we provided even said you can't infringe upon the
6 parking any further, you can't increase the amount of the
7 restaurant, that's the whole premise of what we are trying to
8 do was maintain what was there in terms of the parking demand
9 on the site.

10 Q: And I understand that, but you can't possibly understand
11 the parking demand on the site if you don't understand what
12 the entire load on the site is from the other uses, can you?

13 A: But nothing was changing about the other uses. So, we
14 took this one use that was proposing a change and tried to
15 maintain what the impact was from the previous building.

16 Q: Okay. But you just admitted that the new building,
17 whether 1.0, 2.0, or 3.0 was gonna be at least twice the size
18 of the original building. Didn't you just tell the Court
19 that?

20 A: I'm not sure if I did, but what we are discussing here is
21 the parking demand. And what we said is the parking demand is
22 based on the seating and the outdoor seating, and that cannot
23 be increased with this new building.

24 Q: I understand that. But when you did your analysis and
25 recommended the approval of 3.0, you didn't know what the

1 proposed outdoor seating was, did you?

2 A: No. At that time we were dealing with, as I have said,
3 the heated square footage amounts as a way to control.

4 Q: That's my point. So, you keep going back to this, we
5 wanted to know the outdoor seating so that we could determine
6 what the parking impact would be, but when you reviewed the
7 application for 3.0, not 1.0, you didn't know how many outdoor
8 seats were being proposed, did you now?

9 A: No, but we said that outdoor seating would have to be the
10 same because of the impact on the parking. We considered that
11 even at Version 1 by virtue of this email.

12 Q: Thank you. Back to this nonconforming use issue. The
13 nonconforming use -- I understand what you're saying, I think.
14 You're saying that it doesn't matter how big I build the
15 replacement building or the new building as long as I don't
16 increase the need for parking. I think that's what you're
17 saying, right?

18 A: If parking is the nonconformity that we're talking about.

19 Q: Well, then we agree that it is.

20 A: If we had issues of setbacks ---

21 Q: I'm not talking about setbacks.

22 A: --- or lot size ---

23 Q: Just parking, ma'am. But here's the question, you don't
24 even know the extent to which the parking lot was inadequate
25 for the entire PD when you are making this recommendation, did

1 you?

2 A: We did not do the shared parking analysis that you are
3 referring to, no.

4 Q: So, you didn't know whether there were maybe one or two
5 parking spaces that were missing or whether they were any
6 parking spaces that were missing, correct?

7 A: I'm not sure what you mean by missing.

8 Q: Missing as in required by each of these uses when you
9 total them all up but not there.

10 A: Well, that's a requirement based on current code. This
11 PD is approved as it was. It was approved as it existed.

12 Q: Were going in circles now, so I'll move on to something
13 else. I think that my point has been made.

14 A: Okay.

15 Q: Okay. We are -- at least we have heard you say that you
16 did not do any of the total analysis. You can't tell the
17 Judge today, can you, how many parking spaces would be needed
18 total for all these three uses?

19 A: No, sir.

20 Q: Okay. So, and you told the Court why you didn't do that.
21 Is parking a public safety issue, public health issue?

22 A: Yes

23 Q: So, let's look at just 3.0 and the analysis that you did
24 when recommending approval to the County Council for 3.0. You
25 testified a minute ago that at the time you reviewed 3.0 you

1 didn't have anything from the applicant that told you how many
2 outdoor seats they were gonna put on all the external decking,
3 did you?

4 A: I don't think I did.

5 Q: So, that was in October -- just to refresh your
6 recollection, that was in October 20 ---

7 A: '18.

8 Q: --- '18. August of 2018 the applicant send you the new
9 application and it contains the application and it's supposed
10 to have a bunch of stuff with it, and we can get you what it
11 did and didn't have in a minute, but one thing we know that it
12 didn't have were any square footage counts, whether it was
13 heated or unheated, outdoor seating versus inside, gross floor
14 area, whatever terms we want to use; they just didn't include
15 it with the application, correct?

16 A: I don't think those numbers came with the application
17 initially.

18 Q: You had to follow up with them to get that subsequently?

19 A: They came later in the process.

20 Q: Let me direct your attention to, let's see, the easiest
21 place to go -- do you have the code open next to your right
22 elbow? Is that the code?

23 A: Yes, sir.

24 Q: Would you be kind enough to turn to Article XI?

25 A: Yes.

1 Q: We want to just, as quickly as we can but not short-
2 shrifting the only place where the parking requirements exist,
3 Article XI.

4 MR. BLOOM: Judge, what's the easiest way for me to put
5 this in front of you? Our exhibit ---

6 THE COURT: I think I've got -- I think I've got ---

7 MR. BLOOM: And we're gonna throw them on the screen,
8 too, Judge, I just know sometimes you want paper.

9 THE COURT: I've got the zoning ordinance right here.

10 MR. BLOOM: Okay.

11 BY MR. BLOOM:

12 Q: Article XI of the zoning ordinance, we agree 1100, the
13 first section talks about the intent of the ordinance. And it
14 says, It is the intent of this section to establish standards
15 for the provision of off-street parking, right?

16 A: Yes.

17 Q: No word about guides just standards, doesn't it?

18 A: Yes.

19 Q: And the next sentence says, These standards will assist
20 in improving the appearance and safety of required parking
21 facilities. Nothing about guides. It says required parking
22 facilities, correct?

23 A: Yes.

24 Q: And then it finishes by saying, thereby improving the
25 public health, safety, and general welfare of the community.

1 And you agree with that, don't you?

2 A: Yes.

3 Q: Bad things happen when you have too many people using too
4 few parking spaces, doesn't it?

5 A: I agree that the intent of the off-street parking
6 regulations is for the general welfare as is all the zoning
7 code.

8 Q: So, my question is, bad things happen when you have too
9 many people with cars trying to use too few parking spaces;
10 isn't that correct?

11 A: I think there are other instances where multiple people
12 could be using a site that may not require so many parking
13 spaces.

14 Q: But, with respect, Ms. Richardson, that wasn't my
15 question. Let me say it again.

16 A: Okay.

17 Q: Bad things happen when too many people in cars are vying
18 for too few parking spaces. Can we agree on that seemingly
19 unremarkable principle?

20 A: I think so.

21 Q: Okay. 1101 is the general requirements. Requirements
22 not guide; it says requirements, does it not?

23 A: Yes.

24 Q: And this is all under the heading of off-street parking,
25 right?

1 A: Yes.

2 Q: Areas suitable for parking or storing automobiles in off-
3 street locations shall hereafter be required in all districts
4 -- PD is a district, isn't it?

5 A: Yes.

6 Q: --- shall hereafter be required to be in all districts --
7 I'm gonna add parens -- including planned development
8 districts, closed parens. Simon's addition. At the time of
9 the initial construction or conversion and use of any
10 principal building which produces or proposes to produce an
11 increase -- and here comes the zinger -- in...floor area. Is
12 that what it says?

13 A: Yes.

14 Q: So, any district, including PD districts where there's
15 gonna be construction or conversion and use, where increases
16 in floor area ---

17 MS. GOLDING: Your Honor, in reading out -- in reading
18 this out, he intentionally did not mention a word initial
19 construction.

20 THE COURT: All right. Mr. Bloom, point me exactly to
21 where you are, sir.

22 MR. BLOOM: I'm in Section 1101 -- I'm sorry, Judge. I
23 thought you were looking. 1101 of Article XI.

24 THE COURT: Okay.

25 MR. BLOOM: It's on the screen highlighted, Judge.

1 Judge, I think I probably ---

2 MS. PEARSON: I do not see it on the screen.

3 A: It's not on the screen.

4 MS. PEARSON: Sorry. My ---

5 THE COURT: Okay. I'm with you.

6 MR. BLOOM: Sorry, Judge. Do you mind if I go through it
7 again?

8 THE COURT: You can go through it again. But if you're
9 gonna read it out, read it word for word.

10 BY MR. BLOOM:

11 Q: Well, let me read the last sentence and then I go back.
12 Off-street parking facilities shall be provided and maintained
13 in accordance with the following requirements -- mandatory
14 language throughout that sentence shall be provided and in
15 accordance with the following requirements. Nothing about
16 guidelines or suggestions, correct?

17 A: Correct.

18 Q: And earlier in that general requirements section it says
19 areas suitable for parking or storing automobiles in off-
20 street locations shall hereafter be required in all districts
21 in the time of initial construction or conversion in use of
22 any principal building which produces or proposes to produce
23 an increase in dwelling units, guestrooms, floor area,
24 seating, or bed capacity -- I read that accurately, ma'am?

25 A: You have.

1 Q: The building that was there in the before in Exhibit 11
2 was 4,000 square feet, and the building that was approved by
3 3.0 was 13,000 square feet, correct?

4 A: Again, I don't know what the total is for Version 3.

5 Q: We agree that it's at least 8000 square feet?

6 A: Correct.

7 Q: So, it is an increase in square footage from building
8 that was there in the before to the building that was proposed
9 to go up in the after, correct?

10 A: Yes, but this refers to initial construction or a
11 conversion in use.

12 Q: Yes. So, what this says is you can't start construction
13 on your building unless you meet these requirements for
14 parking, right?

15 A: In this case in terms of this PD, initial construction
16 would be that original building, and the building also wasn't
17 being converted in use. The uses were staying the same.

18 Q: I understand. When you are applying Article XI, 1101
19 says all districts, including PDs, all districts, and initial
20 construction in this instance is of 3.0; is it not?

21 A: I think the initial construction would be the initial
22 building on this site, which would be the original building.

23 Q: But that building was torn down, so there is no building.
24 You're propo -- I feel like I'm in Wonderland right now, but
25 the building ---

1 MS. GOLDING: Your Honor, I would make that -- I, I --
2 these characterizations of Mr. Bloom, I think ---

3 THE COURT: Let's, let's -- we don't need the argument in
4 the statements, Mr. Bloom. I understand that point you're
5 making.

6 MR. BLOOM: Yes, Your Honor.

7 THE COURT: Determination between initial construction
8 back in '82 when the -- you're saying -- they're saying that's
9 the initial construction, and your point is this rebuilding at
10 3.0. I understand the distinction that each side makes.

11 MR. BLOOM: Thank you, Your Honor.

12 BY MR. BLOOM:

13 Q: If you go further, there's a table in 1102.1. And 1102.1
14 says parking space requirements, not guides, not suggestions.
15 1102.1, minimum parking space provisions, the minimum number
16 of off-street parking spaces to be provided shall be
17 calculated as follows. And then the table says here are the
18 property uses, it kinda talks about property use, and then
19 minimum parking requirements. This is the formula, this is
20 the grail, this is where you figure out how many parking
21 spaces you need for a proposed use, isn't it?

22 A: Yes, in terms of construction of new buildings, yes.
23 This is the ordinance that we use. But again, planned
24 development has its own requirements in terms of parking,
25 setbacks, et cetera.

1 Q: We've covered that. Thank you.

2 A: Uh-huh, (affirmative response).

3 Q: On the second page, 11-2, there is a -- actually, there's
4 a formula for how many parking spaces the marina needs, right?

5 A: Yes.

6 Q: And the marina needs one space for three wet slips,
7 correct?

8 A: A marina, yes.

9 Q: And this marina has 60-plus slips, correct?

10 A: I believe so.

11 Q: So, applying this code of requirements would've required
12 20-something parking spaces, correct?

13 A: Yes.

14 Q: The next page will tell us how many parking spaces you
15 needed for the retail store. Can we agree that the proposed
16 retail store in 3.0 is less than 5,000 square feet?

17 A: Yes.

18 Q: And so, the requirement here would be one space for 200,
19 correct?

20 A: The requirement here says that, yes.

21 Q: So, if a marina, we know that it's three slips for one
22 space. And for the retail store, it is one space -- what did
23 we just say, 200 feet?

24 A: Yes.

25 Q: And then we know if a restaurant is -- and this is the

1 key when we get to restaurants, the code talks about one space
2 for every 100 feet of what?

3 A: Gross floor area.

4 Q: Gross floor area, also sometimes abbreviated as GFA; you
5 ever heard that?

6 A: Yes.

7 Q: And then it says -- it doesn't say anything about heated
8 versus unheated in there, does it?

9 A: Nope.

10 Q: Right. Then it says one space for every 150 square feet
11 of what?

12 A: Outdoor seating area.

13 Q: Outdoor seating area. So, now we have our rules of the
14 road. I understand you don't think we should apply them,
15 they're just a guide, and you look to the PD in the PD doesn't
16 say anything about parking frontage, I got all that. But at
17 least, this is what your Article XI requires you to do when
18 you are analyzing parking, right?

19 A: Yes.

20 Q: And if I were to do a parking study just like Goggans's
21 team did, this is where I would go, isn't it?

22 A: Yes.

23 Q: And this is in fact where Goggans's team went back in
24 2016, in May. They went to Article XI to do their own
25 calculation of parking, didn't they?

1 A: Yes.

2 Q: Okay.

3 MR. BLOOM: 1102.2, Your Honor, deals with large uses.
4 1102.3 is this discussion that I call stacked parking, but you
5 may call it something else.

6 BY MR. BLOOM:

7 Q: 1102.3 talks about the scenario that we explored earlier
8 around multiple uses sharing the same parking spaces. Do you
9 remember that discussion?

10 A: Yes.

11 Q: And you've told this Court you did not do that analysis
12 to total up the total number of spaces. But let's read what
13 the code says. The code says --

14 MR. BLOOM: I'm not gonna read the whole thing, Judge.
15 I'm gonna let you read it and then just get to the last
16 section, the first paragraph.

17 THE COURT: Yeah. Hit the points that you want to make.
18 I'll read it all.

19 BY MR. BLOOM:

20 Q: The final sentence of 1102.3 says the parking spaces
21 provided for one use shall not be used to satisfy the required
22 number of spaces for another. Which means that if Gulfstream
23 requires 70 spaces, you can't say well you can use the 70
24 spaces at the same time as the new restaurant requires its 70
25 spaces, at the same time the marina requires its 30 or 22

1 spaces; that's what that code section means, doesn't it?

2 A: Yes.

3 Q: That's the stacking concept that I was talking about.

4 You can't stack -- or I should say you can't double count
5 parking spaces, right?

6 A: Right.

7 MR. BLOOM: Your Honor, I direct you down to 1102 --
8 sorry, not Your Honor.

9 BY MR. BLOOM:

10 Q: Ms. Richardson, 1102.4 -- I think you agreed to this
11 earlier but let's go to the code. Now, it says in the code
12 any change in the use of an existing building or premises
13 shall require -- no guide, no suggestion -- shall require
14 compliance with the minimum parking requirements applicable to
15 the new use. The minimal -- the minimum parking requirements
16 are in that table we just looked at, right?

17 A: Yes.

18 Q: It's mandatory language. It says shall require, it says
19 any change in the use of any existing building or premises,
20 correct?

21 A: Correct.

22 Q: The next sentence says any expansion of an existing use
23 shall be required to provide additional off-street parking
24 related to the expansion area only and shall not be required
25 to provide additional that off-street parking related to the

1 existing use. We know that in the before you had 4500 square-
2 foot structure, and in the after with 3.0, you were approving
3 at least an 8,000 square-foot structure, correct?

4 A: Correct. But the use was not being expanded in this
5 case.

6 Q: I hear what you're saying, and I know that's your
7 position, but if going from 4600 feet to 8,000 feet is not
8 expanding the use, then what is expanding the use? Give the
9 Court an example.

10 A: Additional restaurant seating area, new seats, new
11 tables, new seats that weren't there before, new heated square
12 footage added, additional dining rooms.

13 Q: Okay. Thank you for that, because I agree with you.
14 Additional seating, how many square feet of seating outside is
15 in this building?

16 A: I don't know.

17 Q: Well, it looks like there's some there, right? That's
18 just a passageway; that's not seating. We can agree on that,
19 can't we?

20 A: I don't see any tables or chairs in the front there.

21 Q: So, you've got some tables and chairs there. And do you
22 know if there are any tables or chairs down there?

23 A: I do not.

24 Q: All right. Can we agree that this was not 1,000 square
25 feet of outdoor seating?

1 A: It doesn't appear to be.

2 Q: Thank you. All right. So, there wasn't 1,000 square
3 feet of outdoor seating in the before, and in the after with
4 3.0, there are several thousand square feet of outdoor
5 seating, aren't there?

6 A: I -- I do not know.

7 Q: Ms. Richardson, if you don't know the answer to that
8 question then how can you tell this judge that there is no
9 expansion of use between what's in 11 and 3.0?

10 A: Because we told them that it couldn't be expanded beyond
11 that. That was our requirement. Even in these emails, we
12 said that outdoor seating cannot be expanded beyond what you
13 had prior to.

14 Q: But by the time you got to 3.0, those emails were two and
15 three years old. You didn't say anything to the applicant
16 when 3.0 was in front of the County saying you can't add
17 outdoor seating beyond what was there in 1.0 -- I mean,
18 Exhibit 11.

19 A: By the time we got to 3.0, we had already limited the
20 amount of seating. So, 110 seats to 110 seats.

21 Q: And where -- well, we've already talked about that.
22 There's nothing in the plans that talk about the proposed
23 number of seats in the outdoor seating component for this
24 project, is there?

25 A: I don't think so.

1 Q: So, we agree that if there is -- that your definition of
2 expanded use would be that the new building had more seating,
3 more square footage of usable space for dining. What about
4 bars? What if they put a -- and actually do; that add a whole
5 additional bar up on the third floor on 3.0. Don't people
6 stand when they go to bars sometimes?

7 A: I think so.

8 Q: So, while you were saying that, well, we saw through this
9 problem and we made sure there was no increasing or expansion
10 of use by limiting seating, but at least according to the fire
11 marshal, 360 people can go to this 3.0, right?

12 A: But that's not what we use in determining parking is the
13 fire marshal's maximum for the building.

14 Q: I hear what you're saying. Do you think that makes any
15 sense?

16 A: Well, the ordinance -- like you pointed out, the
17 ordinance itself refers to outdoor seating area. The word
18 seating is there. That's what we've got to use.

19 Q: Isn't your number one obligation to protect the public
20 health, safety, and welfare?

21 A: Yes, it is. But I'm also bound by my ordinances and
22 enforcing what's there.

23 Q: And you recommended the approval of a structure that was
24 going to include several thousand square feet of outdoor
25 seating, outdoor bars, additional bars, with the maximum of

1 350 people, all of whom might drive cars at any one time.
2 Even if half of them drove their cars to get there, even if a
3 quarter of them drove their car to get there, you can
4 appreciate that that might in some way implicate the number of
5 parking spaces that are available. You can appreciate that,
6 can't you, just as a person and a land planner?

7 A: I'm not sure I understand what you're asking me.

8 Q: You said that the reason you didn't think there was an
9 increase in the use was because you limited the number of
10 seats?

11 A: Yes.

12 Q: We also know that seats does not always translate into
13 people, which does not always translate into the number of
14 cars coming to the site; we agree on that, right?

15 A: It could, potentially.

16 Q: It could, but it also could not. It could also be that
17 everybody came, and they were all standing around having a ye
18 good time, and they all drove separately, and there were 360
19 cars vying for 60 spaces, plus the 70 spaces that Gulfstream
20 needed, plus a 22 spaces that the marina needed. Are you
21 saying that's in the best interest of the public health,
22 safety, and welfare?

23 A: I'm saying that we reviewed the building. We reviewed
24 the building for a new safer building that met code
25 requirements. We worked to limit the square footage amount,

1 we worked to limit the seating capacity to retain it as to
2 what was there with the redevelopment of a new safer building
3 for the public.

4 Q: Thank you. There's been some suggestion in this case
5 that the uses in that PD ought to go off-site for parking, so
6 that's getting us to on-site off-street parking; those are the
7 60 spaces as opposed to off-site parking, which is going to
8 use another parking lot not on the property, correct?

9 A: Yes.

10 Q: And the code has a provision for that, doesn't it?

11 A: Yes.

12 Q: So, if Your Honor and the witness turn to 1106.5, that
13 sets forth the off-site parking requirements and you know,
14 having done this job for 17 years, that in this county you
15 can't use residential zoned property for off-site parking,
16 right?

17 A: That is correct, for commercial use.

18 Q: All the uses at the PD are commercial, right?

19 A: Except for the condos.

20 Q: We're just talking about what's using the 60 spaces.
21 Gulfstream Marina and the store bar, all those are commercial
22 uses. So, according to your code the parking requirements
23 cannot be met by any parking that is in the neighborhood under
24 residential zoned property, right?

25 A: That's right. In order to develop an off-street

1 commercial parking lot, you would have to rezone a residential
2 lot. You would have to apply to rezone a residential lot.

3 Q: Right. First, you'd have to buy it, right?

4 A: Well, you don't have to buy it to apply to rezone it.
5 You would need the owner's permission.

6 Q: Okay. So, you're gonna have to get -- you know what's --
7 what's in these houses all up and down -- do you know what
8 these houses are? Have you been there?

9 A: I haven't been inside of them; no, sir.

10 Q: Well, you driven down the street, I hope.

11 A: I have.

12 Q: Are any of them wanting parking lots in their front yard?

13 A: Not that I'm aware of.

14 Q: And so, we agree that the only way that the users, the
15 marina, Gulfstream, Marlin Quay could park some of their cars
16 along South Waccamaw would be to get some of those houses of
17 condo projects rezoned to commercial, correct?

18 A: Well, you don't have the zoning map there, so I can't say
19 for certain where adjacent commercial zoning is, but it would
20 stand that across the street there would be zoned residential
21 across from the site.

22 Q: We can agree on that.

23 A: Yes.

24 Q: Okay. You did not undertake to determine whether there
25 was any commercially zoned property within the immediate

1 vicinity to the subject property?

2 A: I don't recall.

3 Q: 1106.7 tells us that you can't have multiple users using
4 an off-site parking space together, right?

5 A: Right.

6 Q: So, let's say that someone went and bought or rezoned one
7 of those mansions for a commercial parking lot, only one of
8 the three users could actually make that their off-site
9 parking, couldn't they?

10 A: Right.

11 Q: Couldn't have more than one is my point.

12 A: That's correct.

13 Q: I'd like to address your attention, please, to Exhibit
14 Number 24.

15 MS. GOLDING: Your Honor, can I inquire of the Court,
16 would this be a good time to take a break?

17 MR. BLOOM: That's fine with me.

18 THE COURT: Yeah, it's probably a good idea. We'll be
19 back -- it is 3:11 by my clock. We'll be back at 3:25.

20 THE COURT: Ms. Richardson, you are still under oath.
21 Don't discuss your testimony with anybody.

22 MS. RICHARDSON: Yes, sir.

23 THE COURT: Including your lawyers.

24 MS. RICHARDSON: Yes, sir.

25 THE COURT: All right?

1 RECESS - 3:11 P.M.

2 *****OFF THE RECORD*****

3 ON THE RECORD - 3:31 P.M.

4 THE COURT: Ms. Richardson, if you'd retake the witness
5 stand, please.

6 CONTINUATION OF DIRECT EXAMINATION OF HOLLY RICHARDSON BY MR.

7 BLOOM:

8 Q: Okay. Are you settled back in?

9 A: Yes, sir.

10 MR. BLOOM: Judge?

11 THE COURT: Yes, sir; go ahead.

12 BY MR. BLOOM:

13 Q: Let's direct our attention to Exhibit 24, please. Are
14 you with me?

15 A: I'm not sure that I see one marked 24.

16 Q: That's the black notebook. There is also a white
17 notebook.

18 MR. BLOOM: Judge, 24 has been stipulated to.

19 THE COURT: Yes.

20 BY MR. BLOOM:

21 Q: Are you with me?

22 A: Yes.

23 Q: Okay. 24 appears to be an email from Beth Novak, with
24 Mr. Goggans's architectural firm, to you, Luda, copying
25 Attorney Stacy, and Mark Lawhon, correct?

1 A: Yes.

2 Q: And, this is not a test of your memory, but is this
3 October 10, 2018 email, does it contain plans and
4 calculations, and parameters being proposed for 3.0?

5 A: I think so. It looks like it based on the attachments
6 line that is there.

7 Q: And, if you would be kind enough -- so, this is in
8 October 2018, October 10th in particular, this was before you
9 made your planning staff report recommendation to the County
10 Council or even before Planning Commission, I think, right?

11 A: The Planning Commission met on October 18th.

12 Q: Right. So, you were in the process of putting together
13 your planning staff report to the Planning Commission at this
14 time?

15 A: Yes.

16 Q: And you get some more information from the architect,
17 right?

18 A: Uh-huh, (affirmative response), yes.

19 Q: And in that information if you would turn to the third
20 page of the exhibit there is a site plan sheet AS101, did do
21 you see that? I've turned my notebook landscape-wise to make
22 it easier to see?

23 A: Yes.

24 MR. BLOOM: Can you blow up the table in the bottom right
25 corner, please.

1 It's a little bit hard to see, so, Judge, we'll pull it
2 up.

3 BY MR. BLOOM:

4 Q: Ms. Richardson, it might be easier to see on the screen,
5 I don't know. Here is a table provided by the applicant
6 wherein they lay out the statistics of the floor plan,
7 correct?

8 A: Yes.

9 Q: And they call for building area, and they say on the
10 first story -- on the first story, make sure I'm reading this
11 correctly, is gonna be mercantile occupancy; is that the same
12 as the retail store?

13 A: I think so.

14 Q: And is that then gonna trigger the retail store parking
15 requirements that we saw in the code earlier?

16 A: Under Article XI it would.

17 Q: And that's what I'm asking. Fair point.

18 How do you calculate the parking requirement under
19 Article XI for deck area of a retail store?

20 A: If you were applying Article XI here, I don't think you
21 would, because I think that's based on gross -- like we
22 discussed, gross floor area.

23 Q: Well, I want to make sure. I want to make sure that I'm
24 not leading us down a bad path. The table for retail stores
25 -- yes, gross floor area. So, we can agree that we wouldn't

1 count space in the first floor outside of the walls of the
2 building, right?

3 A: If we were using Article XI ---

4 Q: Yes.

5 A: --- to make a parking determination.

6 Q: Correct.

7 A: Okay.

8 Q: Yes. We agree. But you would then add the 1801 square
9 feet and the 1418 square feet together to come up with the
10 number of parking spaces required applying Article XI,
11 correct?

12 A: I'm not sure -- I might have to know what the unheated
13 area applied to.

14 Q: You'd need to know what, ma'am?

15 A: I might need to know the specifics of what the unheated
16 area applied to.

17 Q: Well, could you determine that by looking in the other
18 pages of the plans attached and provided to you in Exhibit 24?

19 A: Maybe.

20 Q: Okay. So, if there were heated or unheated square
21 footage on the first floor used for the retail store, some of
22 it might be not counted when you're applying your 200 square
23 feet per parking space?

24 A: Maybe. I mean, I'd have to consider that. I'd have to
25 consider that in terms of is it a staircase -- potential

1 staircase area, or, you know, exactly what in this mix use
2 exactly what the use was for the unheated area.

3 Q: Did you do that here?

4 A: Again, I think our focus here was to look at the -- the
5 focus was on the heated area and the heated square footage,
6 and maintaining the previous building.

7 Q: My question is simple, Did you calculate the number of
8 parking spaces on the first floor of the retail store based
9 upon the gross floor area provided to you by the owner?

10 A: I don't recall the exact calculation that we used.

11 Q: So, you don't know whether you did or you didn't?

12 A: Correct.

13 Q: On the second floor, it says Assembly A-2; is that the
14 restaurant?

15 A: I think so.

16 Q: And the third floor is Assembly A-2; that's also
17 restaurant?

18 A: I think so.

19 Q: All right. So, with the deck area here, you've got two
20 entries of deck area, 747 feet and 1721 feet; is that correct?

21 A: Uh-huh, (affirmative response), yes.

22 Q: Would you please add those together for the Judge?

23 A: 2,468.

24 Q: So, for the restaurant, we know we have deck space, so
25 you've got retail. Tell me what the retail number again was.

1 Would you add those together? The non-deck retail square
2 footage.

3 A: The non-deck retail square footage. So, the unheated and
4 heated for the first floor?

5 Q: Yes, please.

6 A: 3,219.

7 Q: So, we don't know as we sit here today how many of that
8 square footage should be removed from the gross floor area, if
9 it's like a stairwell. So, if we calculated one parking space
10 for every 200 square feet, it would be about, what, 16 spaces?

11 A: Yes, if you assumed all that.

12 Q: And I -- I mean, I don't -- if you can tell me otherwise,
13 I'm happy to go with a different number, but for what we know,
14 it requires 16. So, the restaurant -- give us the number, if
15 you would, please, the deck number.

16 A: The two deck numbers added together?

17 Q: Yes, please.

18 A: 2468.

19 Q: 2468. And if -- again, we don't know what the seating
20 plan is, but we know that the code under Article XI says that
21 you're supposed to have 150 foot for one parking space for
22 outdoor seating, right?

23 A: Right. But we do know the seating plan, the capacity is
24 listed on the -- this sheet.

25 Q: It says, what, that there's gonna be 55 seats on each --

1 on each of the second and the third floor?

2 A: Yes.

3 Q: Okay. Well, where do you calcu -- where does that fit in
4 through the calculations in the table? It doesn't say
5 anything about number of seats in 1102, does it?

6 A: No, but it's provided in this document.

7 Q: Well, I hear you, but when you're applying -- your job
8 the last 17 years is to apply the code to what the owner gives
9 you -- we went all over that. The owner is giving you -- what
10 did you say the 2468, 2500 square foot of decking that calls
11 for outdoor seating. If you go to the table, 1102.1, it's 150
12 square feet requires one parking space for outdoor seating.
13 It doesn't say anything in there about the number of seats,
14 nothing.

15 A: But I don't know that all this outdoor decking is outdoor
16 seating.

17 Q: Well, let's look because the plans actually would show
18 you that. Did you do this before you wrote this 3.0 staff
19 report, what we're doing right now?

20 A: I certainly did review the plans, yes.

21 Q: But go through and do the math on each of these floors
22 with heated versus unheated and all that?

23 A: I can't recall exact calculations that I would've done

24 ---

25 Q: Okay.

1 A: --- that long ago.

2 Q: If you go to A101, which is Bates Number 00131, do you
3 see it includes the second and third floor floorplans?

4 A: Yes.

5 Q: And you can see, looking at just the one on the left,
6 which is the second floor, there's outdoor seating mentioned
7 at the top of the page there's some outdoor seating.

8 MR. BLOOM: Have you got it up, Andrea?

9 MS. PEARSON: Yes.

10 MR. BLOOM: Oh, good, thanks.

11 BY MR. BLOOM:

12 Q: So, she's gonna highlight it if you want to look at the
13 screen. There's outdoor seating at the top of the page.
14 There's outdoor -- or there's seating/tables along the left
15 side of the second floor. Do you see those references?

16 A: Yes.

17 Q: Did you take out a ruler and use a legend to figure how
18 many square feet was in the outdoor seating part that they
19 called for on their own plans?

20 A: No.

21 Q: Okay. And then on the third floor, half of that floor is
22 outdoor seating, isn't it?

23 A: Between outdoor seating and unheated storage.

24 Q: I'm just talking about the top half of that floor. If
25 you go about the midpoint of that diagram, you go from

1 midpoint up -- yeah, Andrea has got it -- go all the way to
2 the left. All of that is outdoor seating, seating tables, and
3 seating tables, right?

4 A: You have some deck areas on there, but yes.

5 Q: And there's nothing -- there's nothing in the plans that
6 they provided you that said how many seats they're gonna put
7 it in anywhere, right?

8 A: Well, not beyond the table that's on the other page that
9 we looked at where they themselves show the number of seating
10 at 110.

11 Q: And I hear you. And when you look at the code
12 requirements, it doesn't ask you to count seats. It asks you
13 to count square footage of outdoor seating. You appreciate
14 the difference, don't you?

15 A: But the overriding ordinance that was approved says 110
16 seats.

17 Q: I understand.

18 A: That's the limiting factor in this case.

19 MR. BLOOM: Your Honor, move to strike as nonresponsive.

20 BY MR. BLOOM:

21 Q: My question is simple. Do you understand the difference
22 between outdoor seating and square footage and actual seats.
23 Do you understand that difference?

24 A: Yes.

25 Q: And do you agree that Article XI requires you to apply

1 150 square foot for one parking space for outdoor seating
2 square footage; do you agree with that?

3 A: It says outdoor seating area.

4 Q: Okay. So, you didn't do that when you recommended 2.0
5 for approval, and you didn't do that when you recommended 3.0
6 for approval, did you?

7 A: I did not get out a ruler and make the calculations for
8 outdoor seating area, correct.

9 Q: And nobody told you what the square footage of the
10 outdoor seating area for 3.0 was either, did they?

11 A: Not that I recall.

12 Q: So, all we know is in the table from the owner, it calls
13 for decking of 2500 square feet, right? That's all we know.
14 And we look at the plans and we see what's there, correct?

15 A: Yes.

16 Q: So, would you please divide 150 into 2468?

17 A: It's 16.45.

18 Q: We'll round down. So, now we know, based upon the stuff
19 that you got from the applicant that you need -- before you
20 even get to the heated square footage, you need 32 parking
21 spaces, again with the assumptions that we've already made and
22 talked about, right?

23 A: With the assumptions that we've already discussed.

24 Q: Now, when you get to the heated and unheated area,
25 because the parking code calls for gross floor area. It

1 doesn't distinguish between heated and unheated. So, if you
2 add together 2616 -- would you be kind enough to do this for
3 me, please -- 2616, 579, 1164, and 2801.

4 A: 7160.

5 Q: So, that's the gross floor area of the restaurant, 7160.
6 And would you please divide that by 100; I think I know the
7 number.

8 A: 71.6

9 Q: Wow. That sounds about right. So, if you added these
10 parking spaces, 71 plus 16 plus 16, that's 104, I think -- or
11 103 if my math is right, isn't it?

12 A: What would you like me to add?

13 Q: 16 and 16 is 32, plus 71, I think is 130.

14 A: Yes, sir.

15 Q: And the total square footage that the applicant is
16 telling you in 2018 that he plans to build on this chart is
17 13,000 square feet; do you see that? It's in the table that
18 we were on AS101.

19 A: Yes. I see that number.

20 Q: So, earlier you were uncertain about how much building --
21 gross building the applicant sought in 3.0, and you said you
22 knew it was at least 8,000. We now know that it was 13,000
23 square feet, right?

24 A: Yes, based on this document.

25 Q: Which was submitted to you during the time you were

1 making a recommendation for 3.0?

2 A: Yes.

3 Q: And we know that this whole building in the before was
4 4600 square feet, right?

5 A: Based on that email that we received.

6 Q: And the restaurant in the before -- the restaurant in the
7 before was 2,000 square feet, right?

8 A: I don't recall that exact number, but...

9 Q: But 1957, do you remember that number?

10 A: Yes.

11 Q: So, the restaurant in the before -- and this one was
12 1957. And so, you've gone from a restaurant of 1957 square
13 feet to a restaurant of 7160 plus 2468, which is about 9600
14 square feet. And your testimony to this judge is that that
15 was not an increase in the use of the subject property?

16 A: The heated square footage for the restaurant area
17 remained the same, and we placed a limitation on the seating
18 for the restaurant, so the use, which is the use -- the dining
19 that takes place there did not increase.

20 Q: You -- I hear you say that, we've already debated and I'm
21 not gonna get into it again. But even under your use of -- of
22 this use of heated square feet, which appears nowhere in the
23 code, but just using heated square feet, that's still not true
24 if you look at your table, is it? Look at the table. The
25 heated square feet of the restaurant is 2216 plus 579 of just

1 the restaurant, and we've just got done saying that the
2 restaurant in the before was 1957. So, even that's not true.

3 A: Well, I'm not sure that in this case, if assembly equates
4 to restaurant or not. I mean, I know assembly is the use for
5 the -- the building code classification for the whole site.
6 I'm not sure that that's the use.

7 Q: It's pretty important to be able to know that -- whether
8 that was in fact the use of the restaurant in order to do
9 these parking calculations, isn't it?

10 A: The ordinance that was passed is the overriding document
11 that comes into play here.

12 MR. BLOOM: Your Honor, I'd ask that the witness answer
13 my question first and then you've already instructed her she
14 can explain, but she's not answering my questions. Is it ---

15 MS. GOLDING: Your Honor, she is attempting. He's
16 interrupting her.

17 THE COURT: Answer the question, Ms. Richardson, and give
18 -- you can explain it, but answer the question that he's asked
19 first and then you can explain it.

20 BY MR. BLOOM:

21 Q: Is it pretty important, because now you've said something
22 new that you're not even sure that the reference to Assembly
23 A-2 and Assembly A-2 on the second and third floor is the
24 restaurant. You're not even sure of that as you sit here
25 today. Isn't that pretty important to be able to recommend to

1 the County Council whether this complies with the zoning
2 ordinance?

3 A: Yes. I think it is important. But, as I sit here today,
4 I don't have that information in my head. When we were
5 reviewing this, I was doing a complete and total review, the
6 calculations were going back and forth. We were looking at
7 numbers. As I sit here today and this is put in front of me,
8 I'm unsure as to exactly where those numbers stand.

9 Q: And with respect to the 13,039 square foot building, is
10 it your testimony that that is not increased floor area over
11 the original building, Exhibit 11?

12 A: Again, and this may've been the email, but I'm not unsure
13 of the unheated in the previous building. But some things
14 about -- if I could clarify, some things about the new
15 building did necessitate additional square footage like wider
16 staircases, ADA requirements, those kind of things. Some of
17 the code requirements would kick in with the new building.

18 Q: Now, that is fascinating. Your testimony as I understand
19 it is that some code requirements are applicable to the new
20 building, but that the parking code requirements are not
21 applicable to the new building because the whole thing is a
22 non-conforming use? Is that what you're saying?

23 A: Parking requirements are part of the zoning ordinance,
24 and that is what can be varied within a planned development.
25 The building code requirements are not varied in a planned

1 development. The building itself still has to meet the
2 building code.

3 Q: So, when you build a new building and there are new
4 building code requirements, you have to conform to those new
5 code requirements, don't you?

6 A: Yes.

7 Q: If you would please turn to Page A211, which is Bates
8 Numbers 00136. Is this -- are these elevation depictions of
9 what the applicant was proposing to build in 3.0?

10 A: I'm sorry; I'm not to that page yet.

11 Q: That's okay. A211 is the sheet.

12 A: Okay. I'm there.

13 Q: The A211, do you see the two views of the proposed 3.0,
14 correct?

15 A: Yes.

16 Q: That is what the applicant was proposing to build when
17 you were reviewing the parking requirements in October of
18 2018, correct?

19 A: Yes.

20 Q: And when you arrived at your conclusions about whether
21 what is depicted on Exhibit 24 constitutes an increase in the
22 size of the building, you're saying, no, it wasn't the
23 relevant increase of the size wasn't -- did not warrant
24 additional parking; have I got that right?

25 A: Yes. The relevant increase, so the things that we

1 reviewed.

2 Q: Heated square feet, which is nowhere in the code,
3 correct?

4 A: Heated square feet, which is our interpretation of this
5 PD and the seating capacity.

6 Q: And so, if you look at 24, you can see all the decking
7 that we were talking about, right? The top left corner
8 picture, that third floor has got all that deck space. Do you
9 see that?

10 A: Yes.

11 Q: And like we said earlier it's about half of that floor is
12 an open-air deck space, correct?

13 A: Perhaps, yes.

14 Q: And then you've got deck space on the second floor, and
15 then it looks like you've even got some porch on the first
16 floor; do you see that?

17 A: Yes.

18 MR. BLOOM: Your Honor, Defendants' 1 is the code, the
19 2018 code. I think we stipulated to it, but I'd like to just
20 tender it to make sure it's in.

21 MS. GOLDING: It's been stipulated to, Your Honor.

22 THE COURT: All right.

23 THE COURT: Defendants' 1, which is the 2018 Zoning
24 Ordinance is admitted.

25 DEFENDANTS' EXHIBIT NUMBER 1

1 ADMITTED INTO EVIDENCE

2 BY MR. BLOOM:

3 Q: Okay. Let's focus our attention now on the procedural
4 defects in the application. If you would turn your attention
5 ---

6 MS. GOLDING: Your Honor, I'm gonna make an objection as
7 to the statement of procedural defects. There were none. I
8 think that's an improper characterization.

9 MR. BLOOM: That's the difference between argument and
10 preparatory introduction to a question.

11 THE COURT: Well, they're the things that you allege
12 would be procedural defects, correct, Mr. Bloom?

13 MR. BLOOM: Yes, sir.

14 THE COURT: So, I mean, taking them as -- stating that
15 they are procedural defects is probably more argumentative
16 than anything else. So, just question her about what you
17 perceive or allege are procedural defects and see if -- we'll
18 just see what her answers are.

19 MR. BLOOM: Yes, Your Honor.

20 BY MR. BLOOM:

21 Q: On D1, if you would please turn to section 1702.1. Are
22 you there?

23 A: Yes, sir.

24 Q: 1702.1 is what some land use professionals call the
25 penalty box. Have you ever heard that term?

1 A: No, sir.

2 Q: Twelve -- it's a 12-month refractory period during which
3 you can't reapply for a rezoning. Are you familiar with the
4 concept?

5 A: Yes.

6 Q: Is that what 1702.1 prevents or prohibits?

7 A: It discusses that among other things, yes.

8 Q: I'm just asking you whether -- is that what the code
9 section prohibits, ma'am?

10 A: It does.

11 Q: Thank you. Which means in Georgetown County they count
12 the 12 months differently than they do in other season
13 counties. So, they count -- let's call it Day 1 of a 12-month
14 period as when the Planning Commission for the prior rezoning
15 application makes its recommendation, correct?

16 A: Yes. Original recommendation by the Planning Commission.

17 Q: And so, in 2.0 there was a Planning Commission hearing
18 and there was a Planning Commission recommendation, correct?

19 A: Yes.

20 Q: And that was December 21, 2017; does that sound right?

21 A: Yes.

22 Q: So, that would be the first date that you look at, and
23 then you would compare it to the rest of what that code
24 provision says is when you applied for another rezoning on the
25 same property, right?

1 A: Right.

2 Q: And the application for 3.0 occurred on August 27, 2018,
3 correct?

4 A: Yes, it did.

5 Q: And is that more or less than 12 months after the
6 Planning Commission rendered its recommendation?

7 A: That is less than 12 months, but I would say that this is
8 not for the same zoning classification that this section
9 refers to, and it was not the same request. It was a
10 different version. It had changed from their previous
11 request.

12 Q: And the testimony about the different versions, they had
13 to move it over so it was in the footprint, correct?

14 A: To comply with the judge's order.

15 Q: Am I correct?

16 A: Yes. I'm sorry.

17 Q: It just had to move into the -- make sure it was in the
18 same footprint?

19 A: Yes.

20 Q: Other than that, 3.0 and 2.0 are not different hardly at
21 all, are they?

22 A: I think there was a slight change in height.

23 Q: Okay. So, other than slight change in height and moving
24 the footprint 3.0 and 2.0 were -- a request for a zoning
25 change on the same piece of property with the same project,

1 correct?

2 A: Yes, but not a change in zoning classification.

3 Q: Well, we can debate that, we can argue about that because
4 you spent three hours telling this Court that the zoning
5 classification for this property is the PD. It is the PD and
6 whatever is in the PD, right? Those are the zoning rules, you
7 said.

8 A: Yes.

9 Q: That is the zoning?

10 A: Yes.

11 Q: And so, you are amending or moving to amend the zoning of
12 the subject property, correct?

13 A: That's right. But the zoning type is planned
14 development.

15 Q: Ah. Well, please tell me where it says zoning type in
16 1702.1?

17 A: Type and classification, I'm using those -- the zoning
18 classification is PD.

19 Q: So, type is not in there?

20 A: No, sir.

21 Q: Okay. Is this another gray area?

22 A: No, I think a zoning -- PD is a zoning classification.
23 We have them listed in the table of contents, the different
24 zoning classifications and PD is one of those.

25 Q: And let's turn to the application and what it is required

1 to include. In the -- I think we're still in Exhibit 20,
2 which is the application, right? Plaintiff's 20. Ma'am?

3 A: Yes, sir.

4 Q: Okay. The purpose of getting the complete application is
5 to allow the staff to conduct its analysis and make
6 recommendations about what is being proposed, is it not?

7 A: Yes.

8 Q: That's the reason that you have a list of things that you
9 want an applicant to provide with the application, right?

10 A: Correct.

11 Q: And in your 17 years, you've probably rejected
12 applications because it has not included the stuff that is
13 required by the code section, correct?

14 A: If it doesn't include the application, the fee, the
15 required property owner notice information, such as the
16 envelopes, and then whatever the application for that case
17 requires.

18 Q: So, the answer is yes, you have rejected applications in
19 the last 17 years when they were incomplete, correct?

20 A: I don't have a lot of examples, but yes; there have been
21 instances.

22 Q: One of the other reasons that you want to have and that
23 the code requires a complete application 45 days in advance of
24 the Planning Commission hearing is so that the public can see
25 what's being proposed, correct?

1 A: I think the main reason to require the complete
2 application is so that staff can begin their review.
3 Certainly, anything that's submitted to us is for the -- is
4 public information for the public to review.

5 Q: And maybe I'm not asking my questions clearly. I know
6 it's late in the day. But all I asked was, isn't another
7 important reason to have a complete application 45 days in
8 advance of the Planning Commission meeting so that if the
9 public wants to see what's being proposed that they can see
10 it?

11 A: I would agree with you that that's important, but there
12 are instances where information comes later throughout the
13 process. And once that is available to us, that becomes
14 available to the public as well.

15 Q: So, what do I need to do if I'm a neighbor? Check in
16 with you every day to see if you've gotten more information
17 from the applicant?

18 A: You certainly could, and I would be glad to respond to
19 you and give you whatever information we have.

20 Q: But, if you don't have it, you can't give it to me, can
21 you?

22 A: That's correct.

23 Q: Okay. There are very specific notice requirements the
24 code has when you're doing a rezoning amendment like 3.0,
25 correct?

1 A: Yes.

2 Q: And the application in Exhibit 20 did not contain all of
3 the things that were required by the code, did it?

4 A: I don't think I agree with that. I think the application
5 was complete in its proper form.

6 Q: In August 27, 2018?

7 A: Yes. We may have received additional information.

8 Q: Do you remember giving a deposition in this case?

9 A: Yes.

10 Q: Do you -- did you swear to tell the truth, the whole
11 truth, and nothing but the truth during that deposition?

12 A: Yes.

13 Q: Similar to the oath that you gave today?

14 A: Yes.

15 Q: Was the parking site in the original -- the parking site
16 plan in the original application?

17 A: To my recollection, the original application did have a
18 conceptual plan.

19 Q: I'm just asking whether you know with the original
20 application submitted in August of 2018, whether the site plan
21 was included?

22 A: Yes, I think so.

23 Q: Could you show me which one? And I'm not just asking
24 about any site plan; I'm asking about the parking site plan
25 that's required by your code.

1 A: I think this DEFS8 shows the building layout. The
2 parking wasn't changing in this.

3 Q: It doesn't show anything about parking?

4 A: It doesn't show the parking; no, sir.

5 Q: Okay. So, you don't have parking information at the time
6 this application was provided, did you?

7 A: No. But again, the parking wasn't changing.

8 Q: I understand, but your code asks -- it doesn't ask; it
9 requires the applicant to provide the parking information with
10 the application, doesn't it?

11 A: The code says it requires a parking plan?

12 Q: Your code, Ms. Richardson, not mine.

13 A: The code 1702.2 said completed forms together with an
14 application fee to cover the costs, plus any additional
15 information the applicant feels to be pertinent.

16 Q: So, what is required, according to the code, at the time
17 of the providing of the application?

18 A: The application, the fee, on the other additional
19 information, which in this case -- remember in this case, this
20 was a change from Version 2 to Version 3, so a site plan of
21 what changed, which would be the building layout.

22 Q: Woah, woah, woah, you just got done telling the Judge
23 that the 12 months didn't apply because this was not a change
24 in the zoning classification, but I think what you just said
25 was that we didn't need all the same stuff over again because

1 they had already provided it to us and 2.0? Is that what
2 you're saying?

3 A: I think I said that it was not a change in zoning
4 classification, and PD is still in the zoning classification,
5 and PD is the zoning classification for Version 2 and Version
6 3. But I think what I did say that the building layout
7 changed. That was a change, and that's the change that was
8 reflected here in what they submitted with their application.

9 Q: All right. So, would you please look at Exhibit 29?
10 That's when Mr. Stacy, on October 12th, 2018, which is two
11 months plus from the original application, is providing you
12 with -- as he says, the final plans had not yet been completed
13 when we made our application, but I wanted to make sure you
14 confirm this for your records and for your discussion among
15 staff and the Planning Commission. So, here, Mr. Stacy is
16 conceding, is he not, that the final plans were not provided
17 as part of the application; isn't that right?

18 A: That's correct, but final plans are not what's required
19 at the time of submission.

20 Q: What if they change the, the seating plan or the heated
21 square feet between the application in October when you're
22 drawing up the plan? Your whole plan -- your whole
23 recommendation might change, right?

24 A: Yes. And we would have to take that into consideration
25 as we were doing our review.

1 Q: With that -- I'm sorry to keep pushing you back to Number
2 20 -- were there any elevations provided with the application
3 of 3.0?

4 A: No, sir; and they were not required.

5 Q: Where in Exhibit 20 does it talk about the seating
6 layout, where the seats are gonna be on the decks?

7 A: It does not.

8 Q: Where does it tell you the difference in the heated
9 versus unheated square feet or the gross floor area in the
10 application that you received in August 2018?

11 A: It is not. That came through conversations that we had
12 after the initial submittal of the application.

13 Q: And how was the public supposed to learn about those
14 conversations?

15 A: Again, any information we have is made available to the
16 public, and the information that we present to the Planning
17 Commission a week ahead of time is also made available to the
18 public.

19 Q: By made available you mean if I asked for it you'd give
20 it to me?

21 A: I believe it is also put on our website; the packet is
22 uploaded on the County's website and can be viewed by the
23 public.

24 Q: The packet that the Planning Commission is supposed to
25 review and the County Council is ultimately put on the website

1 made available to the County Council, right?

2 A: Yes.

3 Q: That's the packet you're talking about?

4 A: Yes.

5 Q: And is there anything else -- have you reviewed the
6 packet that was provided to County Council in consideration of
7 3.0?

8 A: Not recently in great detail.

9 Q: Do you know whether the actual packet that was provided
10 to County Council for the consideration of 3.0 in 2019
11 included all the things that we've been talking about?

12 A: I think it did; yes, sir.

13 Q: Do you know?

14 A: To my knowledge it did.

15 Q: Let's talk about notice. The -- can we agree that the
16 code requires that the -- in a zoning amendment like 3.0, that
17 it is the responsibility of the County and/or the applicant to
18 make sure that personal notice by US mail is delivered to all
19 property owners within 400 feet of the subject property?
20 Isn't that right?

21 A: Yes.

22 Q: The code requires that?

23 A: The code requires that.

24 Q: And there are -- counsel elicited this testimony, you
25 were sitting here, but there's 60-some-odd owners of property

1 within the Marlin Quay condominium building, correct?

2 A: Yes.

3 Q: And neither the County nor the applicant since written
4 mail notice to the 60 owners, did it?

5 A: No, because based on the tax records, which is what our
6 ordinance says, that information was not available to us based
7 upon the customary method that we used to pull that 400-foot
8 radius from our GIS maps, those names did not come up.

9 Because we knew that, we then sent a letter to the POA, and we
10 also notified her by email and asked her for to forward that
11 to those individual property owners.

12 Q: Emails?

13 A: Yes.

14 Q: And did she forward -- did you have the email address for
15 all 60 owners?

16 A: I think she came back later and told us that she did
17 forward it to her list.

18 MR. BLOOM: Your Honor, I'm gonna have to move to strike
19 that last portion as hearsay.

20 MS. GOLDING: Your Honor, he asked her a question if she
21 knew. She responded, yes, I was told it had.

22 THE COURT: You asked the question; you're stuck with the
23 answer you got. Overruled.

24 MR. BLOOM: I think the question was slightly different
25 than that, Judge, but it's not a huge -- well ---

1 THE COURT: Well, I mean, she said ---

2 MR. BLOOM: It is a big point, actually.

3 THE COURT: She said that they were outside the 400 feet.

4 MR. BLOOM: No, that's not what she said; I'm sorry.

5 Respectfully, Judge, the issue is we all agreed that the
6 Marlin Quay condo building is within the 400 square feet,
7 don't we?

8 A: Yes.

9 MS. GOLDING: No, not all of it, Your Honor.

10 MR. BLOOM: Judge, she can't testify.

11 THE COURT: Hold on. Guys, it's -- it's too late in the
12 day for us to argue. Is it true or not, Mr. Bloom, that the
13 entirety of the condominiums is within the 400 feet. Is that
14 your ---

15 MR. BLOOM: That's what I'm asking, sir.

16 THE COURT: My recollection is that they pulled -- using
17 their GIS program and determined which people were within the
18 400 feet -- within 400 feet and which were not. Let's go over
19 that again, since there's an obvious misunderstanding.

20 MR. BLOOM: Yes, sir.

21 THE COURT: Let's go back to the notice issue.

22 MR. BLOOM: Yes, sir.

23 BY MR. BLOOM:

24 Q: When you -- well, first of all let me ask this, Whose
25 responsibility is it to ensure that written mailed notice gets

1 to all property owners within 400 feet of the subject?

2 A: The Planning Department.

3 Q: And does the code actually also require the applicant to
4 state the list of those 400 -- I'm sorry -- the list of those
5 owners within 400 feet?

6 A: Can I take just a minute?

7 Q: Oh, yeah, sure. 1702.206.

8 A: It says letters addressed to each property owner within
9 400 feet of the subject property.

10 Q: Must be included with the application?

11 A: Yes.

12 Q: And were letters addressed to all of the people that
13 owned property within 400 feet of the subject property
14 included with the application? Yes or no?

15 A: The applicant provided the envelopes ---

16 MR. BLOOM: Your Honor ---

17 MS. GOLDING: Your Honor, she's trying -- please ---

18 MR. BLOOM: I'd like a yes or no answer.

19 THE COURT: Let's see what she says was -- all we know is
20 the envelopes were provided. We don't know what those
21 envelopes -- ask her what -- ask her what the envelopes
22 stated. What were the -- you know, we know there are
23 envelopes, we don't know what was in the envelopes.

24 MR. BLOOM: Your Honor, I know it's getting late in the
25 day, but that -- I didn't ask about envelopes. My question is

1 ---

2 THE COURT: How else would you know if letters were
3 included if they weren't in envelopes?

4 MR. BLOOM: It requires a list, Judge. Applicants ---

5 THE COURT: Well, you didn't ask about a list. You asked
6 about letters.

7 MR. BLOOM: I'll ask about a list now.

8 THE COURT: You asked about letters.

9 MR. BLOOM: I won't argue -- if that's what I said, then
10 I -- we'll do it again. I know it's getting late.

11 BY MR. BLOOM:

12 Q: What does the code require the applicant to do in respect
13 to written notice mailed to owners within 400 feet?

14 A: The code says, Letters addressed to each property owner
15 within 400 feet of the subject property. And then it the last
16 sentence refers to a list of all property owners as reflected
17 by the tax records must accompany the application.

18 Q: So, what does the applicant have to provide in the
19 application, both envelopes and the list, just the envelopes,
20 just the list; what's the requirement? This is your -- what
21 you do for a living. Please tell the Judge what is required.

22 A: Okay. 1702.206 refers to letters and a list. But I
23 would like to speak to how we certify that that information is
24 provided.

25 Q: You're gonna have an opportunity to be redirected ---

1 MS. GOLDING: Your Honor ---

2 MR. BLOOM: Judge, this is not -- this is not an
3 opportunity for the witness to just talk about whatever she
4 wants. I've asked a simple question. And the question is ---

5 THE COURT: Okay. Here is the question that needs to be
6 answered. What was provided with the application by way of
7 letters and a list? And if she -- I want that direct question
8 answered first. And if it requires further examination, we'll
9 see, but what was -- if this is what the code -- the ordinance
10 requires to be produced, I need to know what came with the
11 application.

12 So, Ms. Richardson, go ahead.

13 A: Applicant provided envelopes for those within 400 feet.
14 I cannot speak to whether or not there was a list included
15 because I didn't do the intake. I was informed by my staff
16 that a list was provided, but I am not the one that takes that
17 information in and checks it when it comes into the office.

18 BY MR. BLOOM:

19 Q: Would you please point the Court out to where in Exhibit
20 there is anything about any envelopes or any lists included
21 from the applicant's application?

22 A: Well, the envelopes that he sent aren't included here
23 because they were then subsequently mailed out. But I don't
24 see a list shown here.

25 Q: All right. So, at least we agree on that. The applicant

1 did not comply with the last part of 1702.206, which says a
2 list of all property owners as reflected by the tax records to
3 whom letters are addressed must accompany the application.

4 Can we at least agree that was not complied with by the
5 applicant?

6 A: I can agree that that's not here in Number 20.

7 Q: And can we also agree that there were property owners
8 that lived in the condo building, in the Marlin Quay condo
9 building that did not get written mailed notice from either
10 the planning staff or the applicant?

11 A: I can agree to that, but that was based on the
12 information we pulled from the tax records. Those names did
13 not come up when we pulled that information that was reflected
14 on the tax records that we could access from our office.

15 Q: So, let me ask -- thank you for the answer. Let me ask
16 this question. When you look at a tax record, when you look
17 at the GIS and you look at a tax parcel and it shows a condo
18 building, is there a way to then click on that condo building
19 and find out who all the 60 owners are?

20 A: Not that I'm aware of. Sometimes it depends if it's a
21 townhome arrangement and they might own the dirt; sometimes it
22 comes up differently based on whether it's in HPR or what type
23 development it is.

24 Q: So, certainly, this is not the first time that you have
25 had to provide notice to condo owners in a tax map in the GIS

1 system was insufficient to tell you who they were, right?

2 Surely that's come up. There are lots of condos. You went
3 through 400 of them in the immediate vicinity.

4 A: I'm sure it has come up, and our approach in those cases
5 to my knowledge was the same as what we did here. We reached
6 out to the POA, who would be a representative of those people,
7 and made sure that they had the current information.

8 MR. BLOOM: And that is the answer that was hearsay that
9 I did not ask for, Your Honor. We're back to exactly where we
10 started on this issue. I did not ask for what someone told
11 her they did or didn't do at all.

12 THE COURT: Well, I mean, I think you've made your point
13 that you are highlighting that this notice may have been
14 deficient under 1702.206, so I understand the point you're
15 trying to make. You can move on.

16 MR. BLOOM: Yes, sir.

17 BY MR. BLOOM:

18 Q: I direct your attention to Exhibit 26.

19 A: Now, where back to the black notebook?

20 MR. BLOOM: 26 stipulated?

21 COURT REPORTER: No, sir.

22 BY MR. BLOOM:

23 Q: Then, yes, were in the black notebook. Do you see the
24 bottom third or bottom half of that email is an email from a
25 woman named Constance Lowry (spelled phonetically) to you,

1 correct?

2 A: It looks like it's to Tiffany, but I am copied.

3 Q: Yes. And there's an -- she writes to Tiffany, and the re
4 line is notice of public hearing, Thursday, October 18th,
5 amendment of the Marlin Quay Planed Development. Do you know
6 who Ms. Lowry is?

7 A: I think I remember who she is.

8 Q: Who is she?

9 A: I think she is a condo owner at Marlin Quay.

10 Q: One of the 60 that was required to receive written notice
11 of the proposed plan amendment change?

12 A: Yes. She is a member of the Marlin Quay condo within the
13 400 feet.

14 Q: Thank you. And Ms. Lowry writes to you and identifies
15 some -- what she perceived are deficiencies in the
16 application. She says I note that you forwarded the notice to
17 Nancy Gardner of the above meeting. I also note that you
18 forwarded to Chris Sanders, Marlin Quay homeowner by email the
19 application to amend the PD submitted by Attorney Stacy for
20 Palmetto. While I see signatures of Mr. Stacy and Dr. Lawhon
21 on Page 3, no dates appear. Is she right? You can look at
22 20.

23 A: Can I jump back to 20?

24 Q: Yes, please.

25 MS. GOLDING: Your Honor, just a matter of course, I had

1 objected to this email because of what he just read out to Ms.
2 Constance, she's not a witness -- Ms. Constance Lowry, excuse
3 me. She's not a witness and I advised Plaintiff's counsel
4 that that would be inadmissible due to hearsay.

5 MR. BLOOM: Those records were sent to us, Judge. This
6 was their production, their document, they -- they -- this is
7 an email that they had in their records. I can go about
8 laying the foundation if you'd like.

9 THE COURT: I will allow it. Objection overruled.

10 BY MR. BLOOM:

11 Q: Are you back to 20?

12 A: Yes, sir.

13 Q: The applicant didn't sign the application, did it?

14 A: It, it ---

15 Q: I'm sorry. Didn't date it. I'm sorry.

16 A: Yes. It's signed on Page 3, but there isn't a date after
17 the signature.

18 Q: The next observation by Ms. Lowry is that there were
19 preliminary redlined drawings but no hard information as to
20 the elevations or number of floors of the planned building
21 included. Is she right about that?

22 A: I would assume so.

23 Q: And then she says, I am most interested in knowing of
24 this latter information. Do you see where she says that?

25 A: Yes.

1 Q: And this is exactly what we were talking about before.
2 Why it's important to make sure, number one, that the
3 applicant provides you with all of this critical information
4 so that the public can understand what's being proposed.
5 Isn't that what we talked about earlier?

6 A: We did talk about that earlier. But in this case, I did
7 send Ms. Lowry that information as soon as it became
8 available, I believe.

9 Q: Don't disagree. I don't blame you, but let's look at the
10 next page. She says, I own two units within 400 feet of the
11 subject property and did not receive this notice in the US
12 Mail. Do you see that?

13 A: Yes.

14 Q: Do you have any reason to dispute that?

15 A: No.

16 Q: I submit that Paragraphs 1 and 2 on Page 3 have not
17 properly been executed. I agree that the many owners within
18 400 feet of the subject property are entitled to receive this
19 notice of public hearing by US Mail as outlined in the
20 application, not a two-step to three-step blanket process of
21 email. Do you see that?

22 A: Yes.

23 Q: So, certainly, when you were made aware of this in
24 October of 2018, did you stop the presses and say, we need to
25 make sure that we do this right. We've got to hold off on

1 doing the Planning Commission. We've got to comply with the
2 notice requirements and get mailed notices to everyone like
3 this. Did you do any of that?

4 A: No, I did not do that, but like I said, I did I believe
5 continue to email correspondence with Ms. Lowry to make sure
6 she had the information that she requested.

7 MR. BLOOM: Tender 26, Your Honor.

8 THE COURT: Yes, sir. It's admitted over Defendants'
9 objection.

10 MR. BLOOM: Thank you.

11 PLAINTIFF'S EXHIBIT NUMBER 26

12 ADMITTED INTO EVIDENCE

13 BY MR. BLOOM:

14 Q: Turn to Exhibit 33 if you would, please, I think still
15 within the black notebook. Are you there?

16 A: Yes, sir.

17 Q: Did you receive a copy of this letter from my law firm on
18 or around October 17th, 2018?

19 A: I think so.

20 Q: And this is the document that would've been retained by
21 the Planning Department in its records relating to this file?

22 A: Yes.

23 Q: And in this letter, my partner, former partner, is
24 writing around some of these procedural defects that we
25 contend occurred in respect to 3.0?

1 A: Yes.

2 Q: And I know you don't agree with them, but you've got
3 notice from us of what we perceived to be procedural defects,
4 correct?

5 A: Yes.

6 Q: And you did not -- you nor anyone in the department or
7 the county hold off on going forward with the Planning
8 Commission meeting, right? You kept going?

9 A: We did

10 Q: Even though Ms. Lowrey has told you that there are
11 procedural mistakes, we've told you there are procedural
12 mistakes, and I think George Redman at some point tells you
13 there all right procedural mistakes, but you didn't pump the
14 breaks and postpone the meeting, you just kept on going,
15 correct?

16 A: We did, because we discussed it amongst our department
17 and perhaps with Mr. Bryant here, and we felt that from our
18 perspective there were not procedural issues and that the case
19 could move forward.

20 Q: This was such a contentious project, right? You had a
21 mad neighbor owner, Gulfstream, you had homeowners that were
22 raising arms, you could've eliminated any procedural questions
23 about defects simply by honoring what the code said, and it
24 may be delayed what 30 days? Right? Couldn't you have done
25 that?

1 A: Again ---

2 MR. BLOOM: Your Honor, could I get a yes or no, first,
3 please?

4 A: My concern is ---

5 THE COURT: Answer ---

6 A: Yes, yes.

7 THE COURT: And now you can explain it.

8 A: We could've done that. Our concern is that the Planning
9 Commission does have to act within an application within so
10 many days; so we were concerned about that piece of it. And
11 again, we met, and me along with my director, and with Mr.
12 Bryant at the time and went over those procedural issues and
13 determined we felt like they had been complied with.

14 BY MR. BLOOM:

15 Q: And you maintain that position today, I think, right?

16 A: Yes, sir.

17 Q: You still don't think there were any procedural defects
18 in the process of 3.0?

19 A: That is correct.

20 Q: Even after we just went through all the problems, not
21 having a list, not getting mail notice to everybody, the 12-
22 month penalty box, none of those are defects in your opinion?

23 A: No, sir, because I think I've explained what we did in
24 terms of addressing the people within 400 feet.

25 Q: Okay. The email, that was the email stuff you talked

1 about.

2 A: Yes.

3 Q: And so, you didn't pump the brakes on the process going
4 to Planning Commission, and in October of 2018, who -- what
5 company was the architect firm for the applicant?

6 A: SGA.

7 Q: And who owned SGA in 2018?

8 A: I'm not sure about the ownership. I would assume Steve
9 Goggans.

10 Q: It's SGA for Steve Goggans Architects, right?

11 A: Yes, sir. That's why I would make that assumption.

12 Q: Thank you. Those are my questions.

13 MS. GOLDING: May I proceed, Your Honor?

14 THE COURT: Yes, ma'am.

15 MS. GOLDING: Thank you, Your Honor.

16 THE COURT: Ms. Richardson do you need any more water or
17 anything?

18 MS. RICHARDSON: I think I could use some water if it's
19 okay.

20 THE COURT: If y'all will -- if someone will pour her a
21 cup of water.

22 MS. RICHARDSON: Thank you.

23 CROSS-EXAMINATION OF HOLLY RICHARDSON BY MS. GOLDING:

24 Q: Ms. Richardson, can you -- let's go back and fill in some
25 of the information that's not been provided to the Court.

1 Give us your educational background.

2 A: I have a Bachelor of Arts from Wofford College, and a
3 Master in public administration from the University of South
4 Carolina.

5 Q: And with respect, when did you get your master's degree?

6 A: 1999.

7 Q: And with respect to your master's degree, did that
8 involve studies regarding land planning, zoning, and things of
9 that nature?

10 A: Not specific. Sometimes with planning and zoning,
11 although it did involve local government administration.

12 Q: Do you have any membership in any type of professional
13 associations?

14 A: I'm a member of the American Planning Association and the
15 American Institute of Certified Planners.

16 Q: And what is the American Institute of Certified Planners?

17 A: It's a designation for planners. It means that you have
18 completed the requirements to sit for an exam in terms of a
19 mixture of education and experience. You have to feel out an
20 application to take the exam. You have to pass the exam. And
21 then there are continuing education hours that are required
22 every year to maintain the status.

23 Q: And have you complied and abided with the continuing
24 education requirements each year?

25 A: Yes.

1 Q: Okay. I didn't ask you, how long have you been a member
2 of this association -- I believe it was American Institute of
3 Certified Planners?

4 A: I believe since 2008.

5 Q: And what -- how large an association is that
6 organization?

7 A: Over 10,000, I believe.

8 Q: And what's the importance or significance of you being a
9 member of the American Institute of Certified Planners?

10 A: It means that I get training every year to keep up with
11 the current events, networking with other professionals, some
12 -- it means we adhere to some ethics standards. It kind of
13 gives validity to the profession.

14 Q: When you say communication in association with other
15 individuals that are certified planners, is that in the State
16 of South Carolina or is it throughout the Southeast, or in
17 what ---

18 A: It's both. Because of budget, usually my networking is
19 typically to the state association meetings. Sometimes, we
20 have ones with North Carolina, and I have been to the APA
21 Association meeting once.

22 Q: With respect to that being in the American Institute of
23 Certified Planners, does that's also involved planned
24 developments, PDs, or PUDs are sometimes called?

25 A: There would certainly be sessions on that from time to

1 time, different zoning requirements.

2 Q: Okay. With respect to Georgetown County, what size is
3 this county geographically?

4 A: I believe it's over 800 square miles.

5 Q: And what is its approximate population?

6 A: A little over 60,000 the last number I saw.

7 Q: And is this a fast-growing county or one of the slowest-
8 growing counties; how would you describe it?

9 A: Georgetown County has a fast-growing area on the Waccamaw
10 Neck, but overall I don't think our numbers have been fast
11 growing as a county.

12 Q: What type of government is in Georgetown County?

13 A: It's the council administrator form.

14 Q: Okay. And with the council administrator form, who then
15 essentially operates the county government?

16 A: The County Administrator.

17 Q: Okay. And who is the County administrator?

18 A: Her name is Angela Christian.

19 Q: Okay. And how many employees are there in the county
20 government?

21 A: I think there's a little over 700 on a typical day to
22 day.

23 Q: I believe this may've been covered, but when did you
24 start working with Georgetown County?

25 A: December of 2005.

1 Q: And have you been exclusively employed with Georgetown
2 County since December of 2005 to today?

3 A: Yes, ma'am.

4 Q: And as a current -- what is your position currently?

5 A: Director of Planning and Code Enforcement.

6 Q: And how long have you been in that position?

7 A: Since November of 2020.

8 Q: And what is your responsibilities in that position?

9 A: I oversee the Building Department, the Zoning Department,
10 and the Planning Department. We oversee the development of a
11 comprehensive plan and the enforcement of the zoning ordinance
12 and the land development regulations. We write and make our
13 recommendations to the Planning Commission, which then go up
14 to County Council. We also staff the Board of Zoning Appeals.
15 We deal with transportation issues. And overall, general -- I
16 oversee the general planning function for the County.

17 Q: And with respect to PDs, can you approximate the number
18 of PDs we have in Georgetown County?

19 A: Over 100.

20 Q: And are PDs unique to Georgetown County?

21 A: No, ma'am. That is a zoning tool that is provided for in
22 the state enabling legislation.

23 Q: And if this zoning tool, PDs, is that something that is a
24 integral part of county zoning, or is it separate and apart
25 from county zoning?

1 A: It is an integral part of county zoning, just based on
2 the fact that we have so many. But each planned development
3 is its own zoning and has its own requirements.

4 Q: Okay. Could you describe that -- a PD as a zoning
5 district within the zoning ordinance?

6 A: Yes.

7 Q: Okay. Now, we've heard some talk about the building
8 code, the fire codes, the zoning code. Are those three
9 different codes?

10 A: Yes.

11 Q: And when you handle zoning matters such as this
12 amendment, the Number 3 amendment we are talking about, do you
13 go in and use the building code to determine the efficiency of
14 an application for an amendment?

15 A: No, ma'am.

16 Q: Okay. Do you use the fire code to determine the
17 efficiency or the applicability or the approvability of an
18 amendment to zoning?

19 A: No, ma'am.

20 Q: With respect to Marlin Quay, I heard that it was -- it
21 became a PD in about 1982; is that correct?

22 A: Yes.

23 Q: Okay. And over the years since 1982 to the present, have
24 there been a number of amendments to that PD?

25 A: Yes.

1 Q: Do you know approximately how many?

2 A: I'm speaking on this based on my review of the file and
3 the information I can pull from there. But based on that it
4 appears to me that maybe five or six times it went before
5 either Planning Commission or Council for changes and
6 amendments.

7 Q: Okay. And do any of those -- do you recall if any of
8 those amendments were made by Gulfstream Restaurant or Café?

9 A: Not to my knowledge.

10 Q: With respect to the -- you've heard some information or
11 testimony about easements, what -- how do easements play into
12 the zoning staff review of an amendment to a zoning ordinance?

13 A: We don't review easements as part of the zoning
14 ordinance. Those are generally between individual property
15 owners as a civil matter.

16 Q: Does the zoning staff -- do you staff when you get an
17 amendment application? Is there a title search conducted?

18 A: No, ma'am.

19 Q: With respect to the application for Version 2, do you
20 recall when Version 2 was first submitted?

21 A: Version 2 went to the Planning Commission in December
22 21st, so it would've been submitted sometime in early
23 November, November 3rd, I believe.

24 Q: I'm gonna give you this notebook with some of Defendants'
25 exhibits, and I'm going to ask you to look at several of the

1 exhibits and identify them so we can get them introduced into
2 evidence. Sorry about all these notebooks in front of you.

3 In that notebook, I will ask you to look at Defendants'
4 Exhibit Number 2 and ask you to identify that document,
5 please.

6 A: This is the ad in a newspaper, the notification of the
7 public hearing that was taking place on December 21st before
8 the Planning Commission.

9 Q: And this -- was this an ad for Version 2?

10 A: Yes, ma'am.

11 MS. GOLDING: Your Honor, we would offer Defendants'
12 Exhibit Number 2 into evidence.

13 THE COURT: Mr. Bloom?

14 MR. BLOOM: Objection, relevance. It has nothing to do
15 with 3.0. She said it was 2.0.

16 MS. GOLDING: It is for 2.0, Your Honor.

17 THE COURT: Well, 2.0 has been discussed plenty in this
18 case. So, I think it's relevant. I'll admit it over the
19 plaintiff's objection.

20 DEFENDANTS' EXHIBIT NUMBER 2

21 ADMITTED INTO EVIDENCE

22 BY MS. GOLDING:

23 Q: Next, look at Defendants' Exhibit Number 3, Ms.
24 Richardson. Have you got that in front of you?

25 A: Yes, ma'am.

1 Q: Defendants' Number 3, is that an ad from the Coastal
2 Observer for December 21, 2017 Planning Commission public
3 hearing?

4 A: Yes, ma'am.

5 Q: And is that to do with the application for Version 2?

6 A: Yes.

7 MS. GOLDING: Your Honor, we would offer Exhibit Number 3
8 into evidence.

9 MR. BLOOM: Same objection.

10 THE COURT: Number 3 is admitted over Plaintiff's
11 objection.

12 DEFENDANTS' EXHIBIT NUMBER 3

13 ADMITTED INTO EVIDENCE

14 BY MS. GOLDING:

15 Q: Next, ask you to look at Defendants' Exhibit Number 4.
16 Are those emails from Judy Blankenship to the Georgetown Times
17 and the Coastal Observer regarding the notice of public
18 hearing on December 21, 2017?

19 A: Yes.

20 Q: And do these emails relate to the advertising for Version
21 2?

22 A: Yes.

23 MS. GOLDING: Your Honor, we would offer Defendants'
24 Exhibit 4 into evidence.

25 MR. BLOOM: Same objection.

1 THE COURT: It's admitted over ---

2 MR. BLOOM: Actually, now I'll add cumulative. We've
3 gone and fully established with the Planning Commission
4 hearing was scheduled for.

5 THE COURT: Well, I'm gonna admit it for whatever it's
6 worth over your objection, Mr. Bloom. Plaintiff's -- or
7 excuse me -- Defendants' 4 is admitted over Plaintiff's
8 objection.

9 DEFENDANTS' EXHIBIT NUMBER 4

10 ADMITTED INTO EVIDENCE

11 BY MS. GOLDING:

12 Q: Defendants' Exhibit Number 5, which is the Planning
13 Commission staff report for the December 21, 2017. Is that
14 staff report relate -- for Version 2?

15 A: Yes, ma'am.

16 MS. GOLDING: Your Honor, we would offer Defendants'
17 Exhibit 5 into evidence.

18 MR. BLOOM: Same objection, Your Honor.

19 THE COURT: All right. Defendants' 5 is admitted over
20 Plaintiff's objection.

21 DEFENDANTS' EXHIBIT NUMBER 5

22 ADMITTED INTO EVIDENCE

23 BY MS. GOLDING:

24 Q: Defendants' Exhibit Number 6, the minutes of the
25 Georgetown County Council for January 9, 2018 meeting for the

1 first reading to hear -- to pass the proposed ordinance for
2 Version 2. Is that a true and accurate copy of those minutes?

3 A: Yes.

4 MS. GOLDING: Your Honor, we would offer Defendants'
5 Exhibit Number 6 into evidence.

6 MR. BLOOM: Objection, relevance.

7 THE COURT: What do you have to say about that, Ms.
8 Golding?

9 MS. GOLDING: It shows the attendance at the first
10 reading with Gulfstream Café being present at that time, Your
11 Honor. It also shows that Steve Goggans excused himself when
12 the matter came up.

13 THE COURT: All right. I believe based on what I see
14 that those, those issues do weigh in favor of relevance. So,
15 I will admit Number 6 over Plaintiff's objection.

16 DEFENDANTS' EXHIBIT NUMBER 6

17 ADMITTED INTO EVIDENCE

18 BY MS. GOLDING:

19 Q: Ms. Richardson, Defendants' Exhibit Number 7, the minutes
20 of the Georgetown Council meeting for February 13, 2018, the
21 second reading. Does Defendants' Exhibit Number 7, are those
22 true and accurate copies of the minutes of that meeting?

23 A: Yes.

24 MS. GOLDING: Your Honor, we would offer Exhibit 7 into
25 evidence.

1 MR. BLOOM: Objection, relevance.

2 THE COURT: Same grounds, Ms. Golding MS. GOLDING:

3 Same grounds, Your Honor.

4 THE COURT: Defendant 7 is admitted over the plaintiff's
5 objection.

6 DEFENDANTS' EXHIBIT NUMBER 7

7 ADMITTED INTO EVIDENCE

8 BY MS. GOLDING:

9 Q: Defendants' Exhibit Number 8 is the minutes of the
10 Georgetown County Council for February 27, 2018 meeting, which
11 is the third reading. Is Defendants' Exhibit Number 8 a true
12 and accurate copy of the minutes of that County Council
13 meeting?

14 A: Yes, ma'am.

15 MS. GOLDING: We would offer Defendants' Exhibit Number 8
16 into evidence.

17 MR. BLOOM: Objection, relevance.

18 THE COURT: Same grounds?

19 MS. GOLDING: Again, the same reasons, Your Honor.

20 THE COURT: All right. Defendants' 8 is admitted over
21 the plaintiff's objection.

22 DEFENDANTS' EXHIBIT NUMBER 8

23 ADMITTED INTO EVIDENCE

24 BY MS. GOLDING:

25 Q: Defendants' Exhibit Number 9, Ms. Richardson, is an

1 Ordinance Number 2018-03 that was adopted February 27, 2018.

2 Can you identify that ordinance, please?

3 A: Yes. This is an ordinance for MQ2, Version 2.

4 MS. GOLDING: Your Honor, we would offer Defendants'
5 Exhibit Number 9 into evidence.

6 MR. BLOOM: No objection.

7 THE COURT: All right. Defendants' 9 is admitted without
8 objection.

9 DEFENDANTS' EXHIBIT NUMBER 9

10 ADMITTED INTO EVIDENCE

11 BY MS. GOLDING:

12 Q: Ms. Richardson, Defendants' Exhibit Number 10 is a hand-
13 delivered letter dated August 27, 2018, from Oxner & Stacy, PA
14 to Georgetown Planning Commission. Is that a true and
15 accurate copy of the letter that was delivered to the Planning
16 Commission?

17 A: Yes, ma'am.

18 Q: And that letter -- can you please read the letter out?

19 MR. BLOOM: Your Honor, it hasn't been -- well, my
20 objection would be to the admission of this document as
21 hearsay. No foundation has been set for that purpose.

22 MS. GOLDING: That's the reason I wanted to read ---

23 BY MS. GOLDING:

24 Q: With respect to that letter, what was the purpose -- what
25 is set forth as the purpose of that letter?

1 MR. BLOOM: Your Honor, that does not set the foundation
2 for the hearsay exception, if she seeks to enter it around
3 through a hearsay exception, the foundation has not been laid.

4 THE COURT: It looks to me -- can't we all agree that --
5 it looks to me this letter is in connection with the
6 application fee, and this would be the type of letter that
7 would generally be a business record under 803(6)?

8 MS. GOLDING: Yes, sir, Your Honor

9 THE COURT: I mean, I -- Mr. Bloom, we don't have a jury.
10 I mean, I know what this is for. I think it -- I think it
11 comes in to show actions that are in furtherance of the
12 ordinary course of the Planning Department's business. So, I
13 -- I don't see any harm in letting it in. I will ---

14 MR. BLOOM: Your Honor -- I'm sorry.

15 THE COURT: I will -- I was gonna say I will assign
16 whatever the appropriate amount of weight that I see fit, but
17 I think it is -- I think it's admissible.

18 MR. BLOOM: Your Honor, if I may?

19 THE COURT: Yes, sir.

20 MR. BLOOM: One of the primary problems with this letter
21 is it says, Please find the stamped envelopes to use to mail
22 out the owner notification letters, and there are no
23 envelopes.

24 THE COURT: Well, I think that goes -- I think that goes
25 to the weight not the admissibility, Mr. Bloom. You know, I

1 understand where you're coming from, but whether the envelopes
2 were sent will have to be a finding of fact that I -- will be
3 a finding of fact that I have to make or not. We've got
4 testimony that it wasn't done properly, so I will weigh the
5 evidence and make that decision in the future. But I think
6 that this falls into 803(6).

7 MR. BLOOM: And, Judge, just want to make sure that the
8 record reflects the completeness -- the completeness doctrine
9 objection. I also may -- and I think I might've been talking
10 over Your Honor. I just want to make sure the record reflects
11 that accurately.

12 THE COURT: All right. It's so shall reflect.

13 MS. GOLDING: Thank you, Your Honor.

14 BY MS. GOLDING:

15 Q: Ms. Richardson, with respect to the hand-delivered letter
16 and as indicated in the letter in Exhibit Number 10, the
17 envelopes were accompanying, what happened to the envelopes
18 that came with the letter?

19 A: They were checked and then they were mailed to the people
20 that they were dressed to in order to send notice of the
21 meeting.

22 MR. BLOOM: Object and move to strike that answer to the
23 extent that it relies upon hearsay for her to know that. She
24 doesn't have personal knowledge of what happened to the
25 envelopes, then she could only find that out through someone

1 else's testimony or information told to her.

2 THE COURT: Ms. Golding, rephrase your question, ma'am.

3 BY MS. GOLDING:

4 Q: To your knowledge, do you know what happened to the
5 envelopes that accompanied the letter from Oxner & Stacy on
6 August 27, 2018?

7 A: To my knowledge, they were reviewed and checked by
8 someone in our staff and then mailed out.

9 MR. BLOOM: Judge, that's the whole point of the hearsay
10 objection. To your knowledge does not call for personal
11 knowledge; it is just another way of saying that somebody tell
12 you what happened to the envelopes.

13 THE COURT: Maybe the question can be asked this way. Is
14 it the -- was the standard of practice of the Planning
15 Department when these issues arise?

16 BY MS. GOLDING:

17 Q: Ms. Richardson, you were -- on August 27, 2018, what was
18 your position at the Planning Department?

19 A: Chief planner.

20 Q: And as chief planner, did you have under -- did you have
21 under your supervision individuals that were responsible for
22 mailing out envelopes that accompanied application amendments
23 for zoning?

24 A: Yes, ma'am.

25 Q: Okay. And who was that individual?

1 A: Tiffany Coleman is who typically would handle that.

2 Q: And is the normal practice of the Planning Department to
3 -- what is the normal practice of the Planning Department when
4 envelopes were delivered with an application to amend the
5 zoning ordinance?

6 A: They would be reviewed and checked against the list we
7 produced, people within 400 feet, and then we would include
8 the notification inside the letters, inside the envelopes, and
9 mail those out.

10 Q: When you say the notification inside the envelopes, what
11 are you referring to?

12 A: We call that the adjacent property owner notice,
13 sometimes the APN. It basically says there will be a meeting
14 held on this topic. It gives the location, tells when and
15 where the meeting will be and what time, and there is a
16 location map on the back of the letter of the notice.

17 Q: And is that standard and customary practice in your
18 office to have that type of notice?

19 A: Yes, ma'am.

20 Q: Is it also standard and customary in your office to copy
21 the envelopes that are delivered placed in the file?

22 A: No, ma'am.

23 Q: Okay. Next, with respect to Defendants' Exhibit Number
24 11, that's a picture of a signpost ---

25 THE COURT: Let's go back to Number 10 real quick.

1 MS. GOLDING: Certainly.

2 THE COURT: And just for the record, I think it's
3 admissible under 803(6). I also think that it's admissible
4 under Rule 406, which is habit, routine practice.

5 MS. GOLDING: Thank you, Your Honor.

6 DEFENDANTS' EXHIBIT NUMBER 10

7 ADMITTED INTO EVIDENCE

8 BY MS. GOLDING:

9 Q: We've heard testimony when you earlier testified to
10 questions of Mr. Bloom with respect to the letters that are
11 sent out to the property owners within that 400 feet. Can you
12 tell me what are those letters?

13 A: The letters that are mailed to the adjacent property
14 owners?

15 Q: Yes, ma'am.

16 A: That's what I was just referring to, the public notice.

17 Q: Okay. Going to Defendants' Exhibit Number 11. Is that a
18 picture of a sign that was posted for the Planning Commission
19 meeting in October 2018?

20 MR. BLOOM: Objection. Object, Your Honor, lacks
21 foundation.

22 MS. GOLDING: Let me withdraw that, Your Honor.

23 THE COURT: All right.

24 MS. GOLDING: Okay.

25 BY MS. GOLDING:

1 Q: Ms. Richardson, with respect to your -- the Planning
2 Department and sending out notice and providing notice to the
3 public, tell this Court about what is customarily done and
4 what is the practice with respect to posting of signs.

5 A: Okay. We -- when we get a request, we have to post a
6 sign on the right-of-way or so it can be seen from the right-
7 of-way in front of the property in question that notifies the
8 public that there will be a public hearing taking place. So,
9 a member of our staff -- it's typically the zoning staff goes
10 out the required number of days prior to the meeting and posts
11 the sign. And we try to take a picture to verify that the
12 property was posted as required.

13 Q: And is the photograph of that sign, is that customary and
14 standard when respect -- with respect to advertising
15 applications to amend the zoning ordinance?

16 A: Yes, for a zoning map change or a PD change.

17 Q: And with respect to Defendants' Exhibit Number 11, is
18 that a photograph of the sign that was posted for the Version
19 3 amendment to the zoning ordinance?

20 MR. BLOOM: Your Honor, objection, lacks foundation. She
21 can't tell you when this picture was taken, she can't tell you
22 when this post was posted. You can't even tell from the
23 picture whether it's for 2.0 or 3.0. There is simply no
24 foundation for this witness to provide personal knowledge as
25 to where that -- where that posting was made, when it was

1 made, and for which application it was made.

2 THE COURT: Ms. Richardson, do you know by looking at
3 this photo that this is the posting of the sign for Version 3?

4 A: Not sure what about it would tell me it's Version 3. I
5 -- no, I'm not certain I could say that's for Version 3.

6 THE COURT: All right. Any ---

7 MS. GOLDING: May I ask her one more question?

8 THE COURT: Yes, ma'am.

9 BY MS. GOLDING:

10 Q: With respect to Defendants' Exhibit 11, did this
11 photograph come from your department's file relating to the
12 advertising and the notice of publications for Version 3?

13 A: Yes.

14 MS. GOLDING: I believe that's the foundation that's
15 sufficient, Your Honor.

16 THE COURT: Mr. Bloom, anything else?

17 MR. BLOOM: It does not set the foundation for whether in
18 fact this photograph was taken at the time 3.0 was posted or
19 not posted. This is an important point, Your Honor. In order
20 to prove that the posting was sufficient for 3.0, they need
21 someone to testify that this posting was in place on the
22 right-of-way with sufficient advance notice of the 3.0
23 Planning Commission hearing, and this witness cannot do that.
24 Simply saying it was in their files does not establish that
25 the posting requirement was satisfied.

1 MS. GOLDING: She said more than that, Your Honor. She's
2 also testified as to its practice and procedures and what is
3 done, and she's also with respect to posting of these notices,
4 having a photograph taken and putting in the file.

5 MR. BLOOM: Your Honor, this is akin to a chain of
6 custody issue as well that you might analogize it to. There's
7 no chain of custody for this picture whatsoever.

8 THE COURT: Well, I think, again, that -- she's testified
9 that it was the photograph of the notice that was placed in
10 the file. I think that, again, goes to the weight of the
11 evidence and not its admissibility. It looks like the
12 condominium building perhaps is behind the, the hallmark
13 trailer. You know, I'm just supposing that, but I think it's
14 a close call, Mr. Bloom, but I think, you know, she has
15 testified enough to lay the foundation. So, I'm gonna allow
16 Defendants' 11 over Plaintiff's objection.

17 MR. BLOOM: Your Honor, may I perfect the record on this
18 just one more point.

19 THE COURT: Sure.

20 MR. BLOOM: 11 does not set forth any date on the sign
21 itself where you could tell for which Planning Commission it
22 was being posted. If you look at the actual sign, it just
23 says there's a Planning Commission Committee meeting coming
24 up, and if you want to know the date and time you call the
25 phone number. So, that's number one. Number two, there has

1 been insufficient foundation to establish that this is
2 authentic. Number three, it's inadmissible for lack of
3 foundation just under normal admissibility requirements.

4 THE COURT: All right. Well, I appreciate you
5 delineating those grounds. I think the first two, again, go
6 to the weight of the evidence and perhaps that the notice was
7 deficient. But as far as the admissibility of the photograph,
8 I don't think those really go to the admissibility. I think
9 number three, like I said, I think it was a close call, but
10 she testified as to what she did to ensure that this was the
11 sign that was posted in relation to Version 3.0. So, I think
12 sufficient foundation has been laid, and I will note your
13 exception and objection for the record to Defendants' 11.

14 MR. BLOOM: Thank you, Your Honor.

15 DEFENDANTS' EXHIBIT NUMBER 11

16 ADMITTED INTO EVIDENCE

17 BY MS. GOLDING:

18 Q: Next, Ms. Richardson, I asked you to go to Exhibit Number
19 19, Defendants' Exhibit. Is that the public sign-in sheet for
20 the Planning Commission hearing that occurred on October 18,
21 2018?

22 A: Yes, ma'am.

23 Q: And with respect to this document, the sign-in sheet, how
24 is this document maintained after -- at the close of the
25 Planning Commission?

1 A: After the meeting, then a staff member would take it and
2 include it with a binder we keep of the Planning Commission
3 meetings with all the relevant information and would include
4 it at the front of that meeting agenda packet.

5 MS. GOLDING: Your Honor, we would offer Defendants'
6 Exhibit 19 into evidence.

7 MR. BLOOM: Objection, relevance.

8 MS. GOLDING: It just shows Gulfstream attending that
9 Planning Commission hearing, Your Honor.

10 THE COURT: And I assume you are meaning Mr. Greg
11 Greenbaum?

12 MS. GOLDING: Yes. Yes, Your Honor.

13 THE COURT: All right. I think -- I think it's relevant
14 for showing whether the plaintiff received notice. So, I will
15 admit Defendants' 19 over the plaintiff's objection.

16 MR. BLOOM: Judge, may I further perfect -- and I don't
17 -- this is not something that needs to be belabored, but I
18 think Your Honor knows that we're not challenging the
19 procedural due process compliance for 2.0. We're not saying
20 that we didn't get notice for 2.0.

21 THE COURT: I understand that but ---

22 MS. GOLDING: Your Honor, this is for Number 3. This is
23 for Version 3.

24 MR. BLOOM: Same objection, Judge, lack of foundation.

25 THE COURT: I'm gonna admit it. I think, you know, it's

1 -- I think the foundation has been sufficiently laid and I
2 overrule your objection, Mr. Bloom, and note it for the
3 record.

4 MR. BLOOM: Thank you.

5 DEFENDANTS' EXHIBIT NUMBER 19

6 ADMITTED INTO EVIDENCE

7 BY MS. GOLDING:

8 Q: Ms. Richardson, I next direct you to Defendants' Exhibit
9 Number 20, which is a sign-in sheet for a County Council
10 meeting that occurred on December 11, 2018. Do you see that
11 document?

12 A: Yes, ma'am.

13 Q: At the County Council meeting on December 11, 2018, was
14 Version Number 3 brought up as a first reading?

15 A: Yes, I believe so.

16 Q: And with respect to the sign-in sheet for a County
17 Council meeting on December 18, 2018, does it reflect
18 individuals that signed on behalf or appeared on behalf of
19 Gulfstream Café?

20 A: Yes, it does.

21 MS. GOLDING: We would offer Defendants Exhibit 20 into
22 evidence, Your Honor.

23 MR. BLOOM: No objection.

24 THE COURT: Defendants' 20 is admitted without objection.

25 DEFENDANTS' EXHIBIT NUMBER 20

ADMITTED INTO EVIDENCE

1
2 BY MS. GOLDING:

3 Q: Ms. Richardson, with respect to the Planning Commission
4 meeting that occurred in October, 2018, were you present
5 during that time for Version 3?

6 A: I believe that's the meeting that I did not attend.

7 Q: Did you then thereafter attend the County Council meeting
8 readings one, two, and three for Version 3?

9 A: It's hard to remember. We had several meetings on this
10 topic, but it would have been unusual for me to attend a
11 Council meeting at that time as Mr. Johnson was the director
12 and he attended that those.

13 Q: With respect to Mr. Goggans, you've known Mr. Goggans?

14 A: Yes, ma'am.

15 Q: You classify Mr. Goggans as a personal friend?

16 A: No, ma'am. We are acquaintances, friendly. Certainly, I
17 have known him a long time in a work capacity.

18 Q: With respect to Mr. Goggans and the Version 2 that was
19 passed or the application that occurred on November 3, 2017,
20 and subsequently Version 2, do you recall having any
21 communications with Mr. Goggans with respect to the approval
22 of Version 2?

23 A: No.

24 Q: Same question with respect to the approval of Version 3.
25 Do you recall having any communication, contact with Mr.

1 Goggans with respect to the approval of Version 3?

2 A: No.

3 Q: Who else -- who on behalf of SGA Architect was involved
4 with respect to the approval of Version 3?

5 A: You said with regards to SGA Architects?

6 Q: Yes, ma'am.

7 A: My main contact at that time was Luda Sobchuk.

8 Q: Is there any way you can spell that for the court
9 reporter?

10 A: Luda, L-U-D-A; and the last name is S-O-B-C-H-U-K.

11 Q: Thank you. Now, with respect to the application that was
12 submitted, and I believe that is Plaintiff's Exhibit Number 20
13 that was submitted on August 27, 2018, if I recall, it may be
14 24th, the application is Plaintiff's Exhibit 20?

15 A: Yes, ma'am.

16 Q: Exhibit Number 20, is this the application form that your
17 department has with respect to seeking an application to amend
18 a PD?

19 A: Yes, ma'am.

20 Q: Does this application apply to amend anything else but a
21 PD?

22 A: No.

23 Q: This application that is set form in Plaintiff's Exhibit
24 20, is this the form that is provided to the public ---

25 A: Yes.

1 Q: --- and used by your department?

2 A: Yes.

3 Q: With respect to an application to amend a PD, do you
4 accept an application to amend a PD in any other form other
5 than as in Plaintiff's Exhibit 20?

6 A: No.

7 Q: Is Plaintiff's Exhibit 20 then the proper form that was
8 used to apply for an amendment to a PD?

9 A: Yes.

10 Q: Going through this application, go to the third page. It
11 has Section B. There are some blanks in Section B, setback
12 amendment. There is nothing that is provided. Why is that?

13 A: Because they weren't requesting a setback amendment for
14 this PD.

15 Q: Okay. So, if there is no request for setback amendment,
16 that section doesn't have to be completed; is that correct?

17 A: Yes.

18 Q: The same question for the next section, Section C,
19 signage amendment. Why is that part incomplete?

20 A: They were requesting a change to the signage for the PD.

21 Q: Then, Section D has a site plan amendment, and is
22 information provided as for the site plan amendment?

23 A: Yes.

24 Q: And what was the purpose of that is set forth in this
25 request?

1 A: The purpose that's listed here is to bring the site into
2 compliance with a court order.

3 Q: Okay. And is that a proper purpose with respect to the
4 public in zoning?

5 A: Yes, I think so. It applies to convenience, it applies
6 to the general welfare of bringing the site into compliance
7 with a court order. It is certainly good zoning practice.
8 And, putting the building wholly on property that the property
9 owner owned is certainly good zoning practice, and part of the
10 general welfare provision.

11 Q: When it has Section D, it has site plan amendment. That
12 is the form, the site plan amendment; is that correct?

13 A: Yes. That only which comes from the form.

14 Q: And, also, has proposed amendment request, that is also
15 part of the form?

16 A: I think so, yes.

17 Q: And that was completed; is that correct?

18 A: Yes.

19 Q: Then the next item has reason for amendment, and there's
20 a reason provided; is that correct?

21 A: Yes.

22 Q: But then it has submittal requirements, and to your
23 knowledge were all these submittal requirements met?

24 A: Yes. We did get further calculations on the site
25 throughout the review process.

1 Q: Let me ask you about that. With respect to your
2 department and obtaining amendments to the zoning or PD, does
3 your department and your staff members do y'all communicate
4 with the applicants or the applicant's representatives?

5 A: Yes, almost every time.

6 Q: Okay. And is it only with regard to Marlin Quay or is it
7 with every PD, every application?

8 A: There's always a back and forth between us and the
9 applicant or the applicant's agent as to further information
10 we might need, further questions we've come across. We start
11 our analysis once we see the application and once we receive
12 in information that's provided. So, that often many times
13 leads to further clarifications, further information that's
14 needed.

15 Q: Okay. Is that customary and standard in the Planning
16 Department to have these constant communications with the
17 applicant or the applicant's representative?

18 A: In my experience it certainly has been.

19 Q: And with respect to your experience, is it your
20 experience that this process of amending a PD, for instance,
21 or amending any part of the zoning, is that an adversarial
22 process?

23 A: Not -- not typically, no. I mean, we receive the
24 information they submit, and we review it from a neutral
25 position and analyze the data, and then make our report.

1 Q: In your report, is that a recommendation that is done?

2 A: Well, we -- in this case, yes, we did make a
3 recommendation at the end of the report.

4 Q: Okay. Let's look at Plaintiff's Exhibit Number 35. Do
5 you have that in front of you?

6 A: Yes.

7 Q: Okay. Plaintiff's Exhibit 35 --

8 MS. GOLDING: I believe it is already been admitted into
9 evidence, Your Honor.

10 BY MS. GOLDING:

11 Q: And to the Court, tell -- what is Exhibit 35?

12 A: Exhibit 35 is the staff report that my office prepares to
13 present to the Planning Commission on a -- in this case, on a
14 PD amendment.

15 Q: Okay. And with respect to Exhibit 35, did you go into
16 the calculations of what the existing PD ordinance was and
17 what was requested to be altered to a new PD ordinance or
18 rezoning?

19 A: I think we give some of the background on the situation
20 here, but the main reason -- at this point, we were at Version
21 3, so a lot of this report gets to the differences between
22 what they approved for Version 2 and what's being proposed for
23 Version 3.

24 Q: Is that on the second page of your staff report?

25 A: Yes.

1 Q: Okay. And on the -- in Defendants' Exhibit -- excuse me
2 -- Plaintiff's Exhibit 35, with respect to Version 2, what was
3 the total restaurant heated square footage?

4 A: 2,641.

5 Q: And what was the total heated square footage in the
6 restaurant for Version 3?

7 A: 2,630.

8 Q: And what is the difference?

9 A: Reduction of 11 square feet.

10 Q: And with respect to the unheated total restaurant, was
11 there a difference between Version 2 and Version 3?

12 A: Yes.

13 Q: And what was the difference?

14 A: A reduction of 51 square feet.

15 Q: Then, with respect to the marina retail, was there a
16 difference in the retail square footage between the two
17 versions?

18 A: Heated or unheated?

19 Q: Both.

20 A: It looks like the heated increased 11 square feet, and
21 the unheated increased 220 square feet.

22 Q: Okay. Over the total heated square feet between Version
23 2 and Version 3, was there any change?

24 A: This is showing no change.

25 Q: Okay. And the total heated in Version 2 was what?

1 A: The total heated in Version 2 was 4,596.

2 Q: And the total for Version 3 was the same?

3 A: This shows the same, yes.

4 Q: Ms. Richardson, I forgot to ask you, did you ever go to
5 the Marlin Quay Restaurant?

6 A: You're referring to the previous building?

7 Q: Yes.

8 A: Yes.

9 Q: Okay. And for what purpose did you go?

10 A: I think I went in 2015-2016, when we started kind of
11 talking about the site and the question of demolishing it came
12 up.

13 Q: And did you dine at the restaurant?

14 A: Yes; we had lunch there.

15 Q: And did you sit at a table and were served with food?

16 A: Yes.

17 Q: Okay. Now, with respect to Version 2, the ordinance that
18 was passed on Version 2, that ordinance had -- of course, we
19 talked about the heated square feet not to exceed 4,598. Why
20 was that recommended by your department?

21 A: Because we were seeking to maintain the same amount of
22 heated square footage for the building that it had in its
23 previous location before it was demolished.

24 Q: And that previous square footage, how did you receive
25 that information?

1 A: We received it in an email from an architect/engineer.

2 Q: Okay. And was that Mr. Goggans?

3 A: I think that was the email from Mr. Victoria, Chris
4 Hollingsworth, one of those.

5 Q: And then it had in Version 2, it had 62 parking spaces
6 will be provided, with three compact spaces. And what was the
7 basis for the 62 parking spaces?

8 A: I think the 62 parking spaces is the parking spaces in
9 the parking lot at the time.

10 Q: We've heard a lot about the parking portion of the zoning
11 ordinance. Tell the Court why that does not apply?

12 A: A couple of reasons. We are dealing with the planned
13 development. It has its own requirements. The section -- the
14 planned development section of the zoning ordinance talks
15 about the PD providing flexibility in terms of parking,
16 landscaping setbacks. It also says that the planned
17 development ordinance is treated as an amendment to the zoning
18 ordinance. So, it's just as if you took the zoning ordinance
19 and went through as happens and had to Council amend the
20 zoning, but the PD is the same thing as an amendment to the
21 zoning ordinance and is treated as such. That's what we were
22 dealing with in this case was a planned development. Also,
23 Article XI refers to changes in use beyond the initial
24 construction, and here we were dealing with the building that
25 had to be torn down based on its current state and had to be

1 replaced. And so, our review was based on maintaining the
2 capacity of that previous building so that the impact on
3 parking remained the same.

4 Q: So, under the auspices of parking regulation, Article XI,
5 it has general requirements. Area suitable for parking or
6 storing automobiles shall hereafter be required in all
7 districts at the time of initial construction. We use the
8 word at the time of initial construction. When was the
9 initial construction of this building?

10 A: The initial construction of the building that was there
11 prior, I'm not sure when it was built.

12 Q: Okay. Or conversion in use, was there any conversion of
13 use from the prior building to the building now?

14 A: That building contained a restaurant and a retail store,
15 as does the new building.

16 Q: Okay. And what was the purpose for then the total
17 seating capacity should not exceed 110; what was the purpose
18 of that?

19 A: Again, the purpose of that was to make sure that the
20 impact of the new building in terms of parking demand remained
21 the same with the new construction.

22 Q: And the 110 seating capacity, does that apply to the
23 whole building?

24 A: Yes.

25 Q: And that 110, where did you obtain that information from?

1 A: That information came from the applicant.

2 Q: Okay. After the passage of Version 2, did Gulfstream
3 appeal Version 2 in any way?

4 A: I don't think so; no.

5 Q: Next, I just want to hit highlights of what they contend
6 for some of the -- we heard earlier that there had to be a 12-
7 month delay in the zoning ordinance under the amendment
8 provision, did that apply to the application that Marlin Quay
9 had on August 27, 2018?

10 A: No.

11 Q: And why not?

12 A: Because it was not a request for a different zoning
13 classification. It was a planned development before and it
14 was a planned development after. That is the zoning
15 classification for the property. And it was a different
16 request in terms of the location of the building.

17 Q: The information that was provided with respect to a list
18 of property owners as reflected by the tax records -- and the
19 tax records that are utilized by the Planning Commission, what
20 is that call?

21 A: We use the GIS mapping system that's available online to
22 pull those names.

23 Q: Is that an internal Georgetown County system?

24 A: Yes.

25 Q: Okay. And is that the system that is utilized routinely

1 by your department to obtain the tax records of the
2 individuals within the 400 feet?

3 A: That's what we use every time.

4 MS. GOLDING: Indulgence of the Court for just a minute,
5 Your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. GOLDING:

8 Q: With respect to the ordinance that was passed, which we
9 refer to as Version 2, and the ordinance that was passed with
10 respect to Version 3, what is the difference between them?
11 How was this -- the PD zoning ordinance, how was it amended
12 from 2 to 3.

13 A: Again, the location of the building changed, each refers
14 to a different site plan. The height changed slightly. I
15 think the square feet went down two square feet. Seating
16 capacity is the same. The parking statement is the same. I
17 think that's about the differences.

18 MS. GOLDING: I believe that -- that concludes my
19 examination, Your Honor.

20 THE COURT: All right. Thank you, ma'am.

21 Mr. Bloom, any redirect?

22 MR. BLOOM: No, sir.

23 BY THE COURT:

24 THE COURT: All right. Folks, I assume this is a good
25 time for us to end for the day.

1 MR. BLOOM: Yes, sir.

2 THE COURT: All right. Y'all want to start at 9 o'clock
3 tomorrow morning?

4 MR. BLOOM: Yes, please.

5 THE COURT: All right. We'll be in recess until 9
6 o'clock tomorrow morning.

7 MS. GOLDING: Thank you. Can I ask Plaintiff's counsel
8 as to who they will call tomorrow?

9 MR. BLOOM: Boyd, Goggans, and I think those are your
10 people for tomorrow. And Castles and Moring, at a minimum.
11 And Knight will be on standby.

12 MS. GOLDING: And may I inquire, they've also subpoenaed
13 Dan Stacy, Tiffany Coleman, Teresa Floyd, Louis Morant, and
14 Lilly Johnson. Everybody wants to know if they're going to be
15 here and when they're gonna be here.

16 MR. BLOOM: Well, two of those -- two of those are
17 dependent upon whether you stipulate to those documents.

18 MS. GOLDING: What documents are you talking about?

19 MR. BLOOM: We don't need to do this in front of the
20 Judge.

21 MS. GOLDING: The only reason is, I have all of these
22 people asking me. They want me to tell him at night.

23 THE COURT: How about let's do this, I'll hang around for
24 a little while longer, y'all talk. If you need me to mediate
25 anything I'll be willing to, but, you know, I certainly don't

1 feel like Mr. Bloom is trying to play hide the ball with any
2 of his witnesses. So, if y'all can nail down who is expected
3 tomorrow to give Ms. Golding's folks some better idea of when
4 they will be required to be here, I think that'd be -- would
5 be beneficial for all of us.

6 MR. BLOOM: Well, Judge, let me be very clear.
7 Tomorrow's lineup is Boyd Johnson, Steve Goggans, Moring, Jake
8 Knight, and Castles, five witnesses. I don't know if we're
9 gonna get to past five witnesses, but that's what I said and
10 that's what we're gonna do.

11 THE COURT: All right. If ---

12 MS. GOLDING: That tells me enough, so I know what to ---

13 THE COURT: I hope will be able to do five witnesses
14 tomorrow. But if we don't, we won't, so that's all right.

15 All right?

16 Will be in recess until 9 o'clock.

17 MS. GOLDING: Thank you, Your Honor.

18 **RECESS - 5:21 P.M. - END OF DAY TWO**

19 *****OFF THE RECORD*****

20 **AUGUST 31, 2022 - DAY THREE**

21 **ON THE RECORD - 9:07 A.M.**

22 BY THE COURT:

23 THE COURT: Mr. Bloom, are you ready to proceed with the
24 plaintiff's case?

25 MR. BLOOM: Yes, Your Honor; we are.

1 MS. GOLDING: Your Honor, just as a matter. Yesterday
2 afternoon, as we closed, I provided opposing counsel, as well
3 as I believe it was delivered to you, excerpts from the
4 30(b)(6) deposition of Gulfstream Café. I'd like to, when I
5 get into my case, I'd like to have those read to reflect -- if
6 the Court desires, I will provide the sealed deposition.

7 THE COURT: Okay. All right. Thank you, ma'am.

8 MS. GOLDING: Would the Court care for me to mark it as
9 an exhibit or just have him present it is fine?

10 MR. BLOOM: We haven't looked at them yet. We're happy
11 to take a look at them. We're happy to have the Court read it
12 as opposed to someone reading them in. I don't -- if we had a
13 jury, it may be different, but you'll end up reading it anyway
14 so...

15 THE COURT: Right.

16 MR. BLOOM: And we want to be economical with our time.
17 So, just give us a chance to take a look, and if there are any
18 objections that we need to reiterate, we can take those up,
19 but I anticipate we'll probably just stipulate to the
20 transcript.

21 MS. GOLDING: Okay. I'll just hand this to the court
22 reporter then, the identification ---

23 THE COURT: Yes, ma'am.

24 MS. GOLDING: Thank you Your Honor.

25 THE COURT: Mr. Bloom?

1 MR. BLOOM: Yes, Your Honor. The Plaintiffs call Boyd
2 Johnson.

3 THE COURT: Come on up, Mr. Johnson.

4 LESTER BOYD JOHNSON, HAVING BEEN DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: Thank you. Please be seated, state and spell
7 your first and last name.

8 MR. JOHNSON: Lester Boyd Johnson, Jr.; L-E-S-T-E-R, B-O-
9 Y-D, J-O-H-N-S-O-N, J-R.

10 DIRECT EXAMINATION OF LESTER BOYD JOHNSON BY MR. BLOOM:

11 Q: Thank you. Good morning, Mr. Johnson, please tell the
12 Court what you do, please.

13 A: I am retired.

14 Q: The envy of all of us in this room I take it?

15 A: Yes.

16 Q: And you've been retired for how long?

17 A: Since September-October of 2020.

18 Q: And at that time, Ms. Holly Richardson assumed your role
19 with Georgetown County?

20 A: That's correct.

21 Q: And when did you start working for Georgetown County?

22 A: 2005.

23 Q: And were you in the Planning Department throughout your
24 15 years that you were there?

25 A: Yes, I was.

1 Q: And when did you ascend to becoming the director of
2 planning?

3 A: I was hired as -- I can't remember if the title was chief
4 planner or senior planner, like I said, in October of '05.
5 And approximately six months later the planning director left
6 to go take a job in Horry County, and I was promoted at that
7 time. So, about six months after I was hired, I was promoted
8 to planning director.

9 Q: You were the director of planning for Georgetown County
10 at the time the subject PD amendment was proposed by Palmetto;
11 is that correct?

12 A: Yes, I was.

13 Q: And you were familiar in the 2015-2016 timeframe with the
14 efforts of Mark Lawhon and Palmetto to redevelop the ship
15 store and snack bar at Marlin Quay?

16 A: I am, the best I can remember, yes.

17 Q: And do you recall it being basically redevelopment effort
18 of that Marlin Quay Marina store that they wanted to tear down
19 what was there and put something else up in its place?

20 A: Yes.

21 Q: And I'm not gonna test your memory. We've got documents
22 to refresh if we need them. And at the time that this
23 started, let's just say 2016, Dr. Lawhon was represented by
24 Dan Stacy and Steve Goggans; is that correct?

25 A: I certainly remember Dan Stacy initially, and

1 subsequently Steve Goggans. I'm not sure if Steve Goggans was
2 there the very first time but he -- yes, he was at some point.

3 Q: And I will submit to you that the record has already been
4 established that a guy named Victoria was the architect in the
5 beginning, and then January of 2016 Mr. Goggans came on; does
6 that sound roughly for me here?

7 A: Yes, roughly, yes.

8 Q: Is it fair to say that you had multiple conversations
9 with both Stacy and Goggans about this project starting in
10 2016?

11 A: Some conversations, yes. I don't recall how many, but
12 some, more than one.

13 Q: And I'm not asking for a number; definitely more than
14 one.

15 A: More than one.

16 Q: Maybe less than a hundred, but more than one.

17 A: Absolutely, yes.

18 Q: And in the beginning, when Mr. Goggans and his
19 architectural firm, SGA, were representing the owner. And at
20 the time in 2016 -- I guess you would call them the applicant
21 -- to seek a minor amendment to the PD, the Marlin Quay PD; is
22 that your recollection?

23 A: Yes; yes, sir.

24 Q: And would you agree that Mr. Goggans was advocating on
25 behalf of the owner to make the amendment process a minor

1 amendment as opposed to a major amendment?

2 A: At that timeframe, yes.

3 Q: And we can agree that -- the Judge has already heard this
4 -- but a minor amendment involves no public notice, no public
5 hearings, no Planning Commission recommendations, no County
6 Council action; do we agree on that?

7 A: Yes, sir.

8 Q: A major change, you've got to have all that stuff.

9 A: That's correct.

10 Q: And so, unless a neighboring property owner either
11 provided you with a records request or came and asked, a
12 neighboring property owner would not necessarily know that a
13 minor amendment was going through the process, would he?

14 A: That's correct.

15 Q: And I think this goes without saying, but you knew at the
16 time that Mr. Goggans was advocating and representing
17 Palmetto, that he was also a County Councilman, correct?

18 A: Yes, sir.

19 Q: Had he been involved with the County before being elected
20 to -- as a councilman?

21 A: Being that he was involved with -- as an architect with
22 projects.

23 Q: I mean, as an official with the County, Planning
24 Commission, BZA, volunteer on any boards or other commissions.

25 A: That was before my time, but I think they had an

1 architectural committee that he was a part of to come up with
2 architectural guidelines for Highway 17. I do not believe he
3 was on the Planning Commission or ZBA.

4 Q: And in 2016, let's see, you had been -- you had been at
5 the County for 11 years, and Mr. Goggans had been doing
6 projects as an architect for some or all that time? I am
7 trying to get back to when you first started interacting with
8 Mr. Goggans on any level.

9 A: On any level?

10 Q: Yes.

11 A: Even at my prior employment with the City of Georgetown,
12 I was the -- left as the City Administrator in 2005. Mr.
13 Goggans, with the City, would occasionally have a project that
14 the City would be involved with from a review perspective.

15 Q: Do you remember how long back those interactions might've
16 gone?

17 A: Pretty much as long as I would work with the City of
18 Georgetown, and I started in Georgetown in '86 or '87; it was
19 probably as long as I was there. It wasn't a lot, but I just
20 remember certain occasions.

21 Q: Okay. So, is it safe to say at least as early as 1990
22 you started interacting with Mr. Goggans on a professional
23 level?

24 A: Yes, sir.

25 Q: You on behalf of the public authority and he on behalf of

1 the owner?

2 A: Yes, sir.

3 Q: And then I think he said he was in his seventh or eighth
4 year. Do you remember when he came on as a councilmember?

5 A: I do not remember.

6 Q: I think it was '14-'15; we'll ask him. But certainly,
7 this was the first time that you can recall Mr. Goggans as a
8 councilman also advocating for a project for an applicant in
9 Georgetown County, correct?

10 A: I don't recall any other cases exactly like that, like
11 you're describing.

12 Q: Just so we are really clear, when Mr. Goggans advocated
13 and represented Palmetto with the subject application starting
14 in 2016, he was also a councilman, and it was the first time
15 and only time you can recall him advocating for an applicant
16 while at the same time being a councilman. Do I have that
17 right?

18 A: There were other projects that didn't go. For instance,
19 rise to the level maybe of Planning Commission like reviewing
20 house plans in DeBordieu to see if they met building codes.
21 There were issues like that, yes, sir, that didn't involve
22 County Council.

23 Q: Right, but in terms of a major amendment or a minor
24 amendment, this was the only time that it fit that scenario?

25 A: I can't remember any other cases.

1 Q: Okay. We got into this a little bit yesterday, but what
2 body approves the budget for the Planning Department?

3 A: Ultimately, well, the city administration along with the
4 department heads, and particularly the Finance Department
5 prepares the budget, and Georgetown County Council has to have
6 three readings to adopt it, an ordinance adopting the budget;
7 so, Georgetown County Council ultimately.

8 Q: The body on which Mr. Goggans sat in 2016 through 2019?

9 A: Yes, sir.

10 Q: Was he on the budget committee for the Council?

11 A: I don't know that there was actually a budget committee;
12 there wasn't one to my knowledge.

13 Q: Your compensation would be included as part of that
14 budget?

15 A: Yes, sir.

16 Q: Any raises, COLAs or other raises would be included as
17 far as that budget?

18 A: Yes, sir.

19 Q: Are you generally familiar with the Marlin Quay PD?

20 A: Generally, yes, sir.

21 Q: Exhibit 93 -- would you pull it up, please. Again, it's
22 not a memory test, I just want to make sure that we're all
23 talking about the same thing.

24 Do you know what these different uses are?

25 A: Yes, sir. I would say, you know, the condos are part of

1 the PD as well.

2 Q: Agreed.

3 A: Not just what's in red; yes, sir.

4 Q: Oh, I agree. I don't mean to indicate we think it's just
5 in red.

6 A: Okay. Thank you.

7 Q: I'm gonna trace what I think is the PD, you tell me if
8 you agree. I think that's probably it?

9 A: Yes, sir; I think so.

10 Q: So, the uses would be Gulfstream Restaurant, the marina
11 slips, the ship store, the snack bar, and the condos?

12 A: Yes, sir.

13 Q: So, those are the uses in the Marlin Quay PD. Do you
14 agree that the PD starting in 2016 and even up until today
15 requires that Gulfstream be a restaurant -- be used as a
16 restaurant?

17 A: Gulfstream? I believe that would be the case, yes.

18 Q: And when calculating parking requirements, that's
19 something that you I'm sure did more times than you'd like to
20 remember in your various roles with Planning Departments?

21 A: Primarily staff under me, but, yes, I'm familiar with it.

22 Q: One day at some point, you were part -- you were that
23 staff, weren't you, in just -- being the director?

24 A: Right. One day, I certainly -- cases I would be sitting
25 in just with the staff doing it.

1 Q: And at some point in your history, did you actually run
2 parking calculations for City or County or another authority?

3 A: At some -- at some point of my career, I'm certain I
4 pulled up a book and calculated something -- parking for
5 proposed use, yes, sir.

6 Q: And when you pull up a book, you'd look at the book
7 which, I guess you mean the zoning ordinance to see what the
8 parking requirements were.

9 A: Yes, sir.

10 Q: So, you'd pull up the book, you look at a table, you'd
11 see what the use was, and then you'd see how many square feet
12 of that use there was, and you'd look at the ratio of square
13 feet to parking spaces. Is that basically the process?

14 A: However the ordinance calculated it, yes, sir.

15 Q: But isn't that the way most ordinances calculate parking
16 requirements?

17 A: Yes. Depending on the use, some may do square footage,
18 some may do seating for instance, but primarily, yes, sir.

19 Q: Okay. And in this instance with Georgetown County, the
20 data that you would need to know to calculate parking
21 requirements would be, first of all, what the use was. Was it
22 a restaurant, or a church, or a house, or an office or a
23 retail -- you'd have to know the use, correct?

24 A: Yes, sir, in general. And specific to this PD, you know,
25 it was obviously a different process, but yes.

1 Q: You'd have to know the use and you'd also have to know
2 the number of square feet of that use, correct?

3 A: Generally, yes, sir.

4 Q: And if you knew the use and the number of square feet of
5 that use, you could look at the ratio contained in the table
6 and determine the number of parking spaces required, correct?

7 A: If that's what the ordinance dictated that particular use
8 for it to be like requiring square footage, then, yes, sir.

9 Q: And in the subject proposed development, the proposed new
10 building included two uses. Do you remember?

11 A: Yes, sir.

12 Q: What were the two uses?

13 A: Restaurant and a ship store.

14 Q: So, the restaurant would be considered a restaurant ---

15 A: Yes, sir.

16 Q: --- under the various categories under Article XI of the
17 code, and the ship store would be considered retail, correct?

18 A: Yes, sir. In general, not specific to the parking
19 ordinance, but in general that's right, to the PD. They were
20 a restaurant and they were a store.

21 Q: Okay. Well, you saw not specific to the parking
22 ordinance ---

23 A: Well, I'm just saying there are other -- it could -- yes,
24 it is for the parking, but the PD specifically said it could
25 be a store, it could be restaurant, it could be a marina. So,

1 yes, I'm saying that PD dictated the uses, too; that's all I'm
2 saying.

3 Q: I'm not asking about what uses were dictated. I'm just
4 asking about the parking. The parking -- in order to
5 determine the parking requirements for various uses, you need
6 to know what the use is, you need to know how many square feet
7 is that use, and then you apply the ratio and Article XI.

8 A: For what we call straight zoning, correct, but not
9 necessarily in a PD.

10 Q: Got it. I'd like -- I don't know what's in front of you
11 anymore. Are there any notebooks there?

12 You've got them all here. Okay.

13 Pull up Article XI please.

14 It'll be both on the screen and in this book.

15 A: Okay.

16 Q: Whichever you prefer. Probably easier on the screen,
17 because Ms. Pearson will highlight things that I'm talking
18 about.

19 A: Okay.

20 Q: Let's start with 1102.1, the table.

21 A: Yes, sir. I see it.

22 Q: And this is in fact the table of parking requirements
23 that are contained in Article XI of the Georgetown County
24 Zoning Ordinance, correct?

25 A: I believe it to be, yes.

1 Q: And if you look at 1102.1, you will see this table that
2 we've talked about, and it does exactly what you and I just
3 talked about. It tells you what the property use is, and then
4 it tells you what the minimum parking requirements are,
5 correct?

6 A: Yes, sir.

7 Q: So, if we find out what the uses were and, in this
8 instance, we have a marina; we had general retail use on Page
9 11-3; and we had a restaurant, standard, correct?

10 A: Yes, sir.

11 Q: And in the restaurant, standard, it requires one space
12 per 100 square feet of gross floor area, correct?

13 A: Yes, sir, but not in this PD; but, yes, sir.

14 Q: I understand that's the County's argument.

15 A: Okay.

16 Q: I'm just asking you what this says. This says one -- one
17 space per 100 square feet of gross floor area. Gross floor
18 area is everything inside the walls of the building?

19 A: Yes, sir. Yes, sir; that's correct.

20 Q: It could be heated, it could be unheated, but is
21 everything inside the walls?

22 A: Yes, sir.

23 Q: There is a distinction between what's inside the walls,
24 regardless of its heating status, and outdoor seating area.

25 Do you see that in the table?

1 A: Yes, sir.

2 Q: So, in order to calculate parking pursuant to Article XI,
3 you would have to know how many gross -- I put the gross floor
4 area or GFA is, and you run a calculation of that total gross
5 floor area divided by hundred and you know you parking spaces,
6 correct?

7 A: Yes, sir.

8 Q: And in order to determine your parking spaces required
9 for the outdoor seating, you would have to notice square
10 footage of the outdoor seating area, correct?

11 A: I don't know. This is a little fuzzy, but I -- I can
12 barely read it to make -- can I look in the book?

13 Q: Yes, of course you can. It's at 11-3 in the book. It's
14 in the highlighted on the screen, but if it's fuzzy, it's
15 fuzzy.

16 A: Yes, sir; that's correct.

17 Q: Now, when you look at the ratio for outdoor seating area,
18 it tells you that you have to have one space for every 150
19 square feet, correct?

20 A: Yes, sir.

21 Q: It does not say anywhere in that table that you count the
22 number of seats, does it?

23 A: Not in this table, no.

24 Q: And nowhere in the Article XI parking ordinance does it
25 say you look at how many seats are there, does it?

1 A: Not current -- not the current ordinance, no.

2 Q: Okay.

3 A: The reason I say that is it used to, and the Planning
4 Commission several or many years ago changed it to square
5 footage instead of that.

6 Q: Well, that's interesting. So, at some point early --
7 earlier on in your time in Georgetown County that asked for
8 seats and they then made a text amendment to change it to just
9 look at square footage?

10 A: The Planning Commission did, yes. I don't remember the
11 timeframe but it was a long time ago.

12 Q: But we know at least in 2018, the applicable code that's
13 in front of you does not ask you to count seats, it asked you
14 to count square footage for outdoor seating, correct?

15 A: Yes, sir. That's the task -- what that table says.

16 Q: For retail, it's one parking space for every 200 square
17 feet of gross floor area, correct?

18 A: That sounds correct.

19 Q: Don't take my word for it, is just higher up on that same
20 page.

21 A: Under retail trade, general, yes, sir.

22 Q: Can you point this Court to any distinction in the
23 parking or amidst Article 11 where there was a distinction
24 between heated and unheated space when you're counting for
25 parking spaces?

1 A: I don't recall that being in there, no.

2 Q: So, that distinction does not exist when you are
3 evaluating parking spaces, does it?

4 A: In Article XI, I believe that to be the case, correct.

5 Q: When you're counting parking spaces for an amendment,
6 applying Article XI, looking at a restaurant, the only things
7 you need to know for the restaurant are how much gross floor
8 area, the square footage inside walls, and how much outdoor
9 seating area, correct?

10 A: You use the word for amendment, certainly for an initial
11 construction, yes. And then an amendment would be, obviously,
12 depending on what the amendment was.

13 Q: So, anytime you build a new building, you've got to make
14 sure that you comply with parking, don't you?

15 A: Not necessarily in a PD, but generally, yes.

16 Q: But generally, when you're building a new building you
17 have to -- and why is that? Why is it so important that when
18 you build a new building, you've got to make sure that you've
19 got enough parking?

20 A: It kind of depends on the location. For instance, if
21 you're on Highway 17, you obviously don't want cars out on
22 Highway 17 stacking up because of the traffic volume.
23 Basically, you want the customers contained in that space and
24 not -- you know, basically contained in space being able to
25 park and get to the building.

1 Q: It's a public health and safety issue, isn't it?

2 A: Yes.

3 Q: And my thinking, but you can tell me what yours is,
4 please, is the reason that land use ordinances require on-site
5 off-street parking because that puts fewer people trying to
6 cross streets and walk up and down the streets to go park
7 their car to make the -- to use whatever the subject use is?

8 A: Depending on a particular location, that could be one,
9 yes.

10 Q: And in -- on South Waccamaw Drive, there are no
11 sidewalks, are there?

12 A: I don't believe there are.

13 Q: And so, if you were gonna walk to Marlin Quay Marina,
14 you'd have to walk on the street to get there, wouldn't you?

15 A: You could walk in the median adjacent to the street which
16 obviously is a tremendous amount of people to do that it being
17 a beach community.

18 Q: Right.

19 A: Or drive their golf cart, one of the two.

20 Q: Right.

21 A: But walking is extremely common on that road if that's
22 the question.

23 Q: How many people have been run over doing that?

24 A: I don't know, but certainly that's the way beach
25 communities work.

1 Q: And is there some reason that the County did not see fit
2 to put sidewalk on South Waccamaw?

3 A: I think that's actually a state road. I believe it's a
4 state road, so that would be up to South Carolina DOT. And
5 they're -- it's probably a right-of-way issue, width issues, I
6 would assume.

7 Q: If you would be kind enough to turn your attention to
8 Exhibit 35. Exhibit 35 is the staff report that you reviewed,
9 approved, signed, and submitted to the Planning Commission for
10 its consideration of what we've been calling 3.0, the last
11 iteration of this proposed project, was that right?

12 A: So, this is MQ3.

13 Q: You all call it MQ3. I think we've agreed in this room
14 to call it 3.0.

15 A: Okay.

16 Q: But that's the same thing.

17 A: Yes, sir.

18 Q: And like I said, you -- I think someone else might've put
19 pen to paper on this, but you reviewed it, maybe commented on
20 it, approved it, and signed it, correct?

21 A: Yes, sir.

22 Q: And in doing so, you adopted all of the content of this
23 document, correct?

24 A: Agreed to it or you said adopted it?

25 Q: Adopted it. You signed your name to it?

1 A: Okay. I just wouldn't use the word adopted, but, yes, I
2 signed it; I approved it.

3 Q: Okay. If you would look at the bottom of the first page,
4 it says points to consider, and there is Item 2.

5 A: Yes, sir; I see it.

6 Q: If you look at the very bottom line of that the word --
7 the line start -- or the sentence starts with, According to an
8 email.

9 A: Yes, sir; I see that.

10 Q: It says according to an email from the property owner's
11 representative, the building contained in title 4603 square
12 feet at that time. And that's the time it was demolished. Is
13 that consistent with your recollection?

14 A: Yes, sir.

15 Q: If you look at point Number 3, I'll give you a chance to
16 read it, but essentially it takes the position that the
17 proposed square -- the proposed heated square feet in the new
18 building will be the same as the square feet in the old
19 building. Is that your understanding of what you wrote there?

20 A: Yes, sir. I believe it actually is slightly less.

21 Q: Slightly less? So, the proposed square -- the proposed
22 heated square feet of the new building is slightly less than
23 the total square footage of the old building, correct?

24 A: Yes, sir.

25 Q: You aren't comparing apples to apples, are you?

1 A: I don't understand the question.

2 Q: This comparison, in Points to Consider Number 3, compares
3 the total amount of heated square feet in the new building to
4 total square feet of the old building. Do you see that?

5 A: Yes, sir. This table is actually comparing MQ -- what we
6 call -- 2, and MQ3.

7 Q: I'm not asking you about the table, Mr. Johnson. I'm
8 asking you about Item Number 3.

9 A: I read 3. What was your question again? I'm sorry.

10 Q: So, let's talk about what we already know.

11 We know that the total square footage of the original building
12 was 4603, we just read that. That was in Item Number 2,
13 correct?

14 A: Yes, sir.

15 Q: And in Item Number 3, it says that the proposed heated
16 square footage is less than the original 4603 for the original
17 building. But what we know by logical extension is that this
18 Item Number 3 is comparing the heated square footage of the
19 proposed building to the total square footage of the prior
20 building. They're not comparing total square footage to total
21 square footage, are they?

22 A: No, sir. We -- using the heated square footage in like
23 -- in this sentence, for instance, it starts with the proposed
24 heated square feet.

25 Q: That's right. And so when you made a comparison of the

1 old building to the proposed building, if you were gonna do
2 total square footage to total square footage, it would be more
3 like 4603 in the old to 13,000 in the new, wouldn't it?

4 A: I'm assuming you're using deck space in that number you
5 just used.

6 Q: Total square footage is total square footage, isn't it?

7 A: If you were to ask me in general a building, how many
8 square feet in the building, I wouldn't necessarily -- I would
9 not include the outdoor decking in that answer.

10 Q: Where do I find that in the code?

11 A: I'm not sure where you would find that.

12 Q: But you, your report makes a distinction between heated
13 square footage, so I won't even count the decks. We don't
14 even need to count the decks for the purposes of this
15 discussion. There is unheated square footage in the proposed
16 building that is far -- that is more than the 4600 square feet
17 of heated, correct?

18 A: Unheated ---

19 Q: Unheated.

20 A: Yes, sir.

21 Q: So, you're still not comparing apples to apples. You're
22 not comparing heated square foot of the original to heated
23 square foot of the new, and you're not comparing total square
24 foot of the original to total square foot of the new.

25 A: Again, in the table in Number 3 ---

1 Q: I'm not asking about the table.

2 MS. GOLDING: Your Honor, he's interrupting the witness.

3 A: Well, that's where the answer is.

4 MS. GOLDING: He's done that a couple of times. Please
5 let the witness ---

6 MR. BLOOM: The witness has prefaced his answer with a
7 misnomer.

8 THE COURT: I understand that. Let's -- if you want to
9 talk about the table, he's asked you about the references in
10 the Item Number 3. So, answer the question he's asked. If
11 you want to explain it further, you may, but answer the direct
12 question.

13 A: Yes, sir.

14 THE COURT: And let's, again, not interrupt the witness
15 when he's answering the question.

16 MR. BLOOM: Yes, sir.

17 THE COURT: All right. Mr. Johnson, go ahead.

18 BY MR. BLOOM:

19 Q: Again, just focusing on Item Number 3 in your report, you
20 were comparing the total square footage of the original
21 building to only the heated square footage of the proposed
22 building; is that correct?

23 A: Where we used the term -- the number 4603, that would be
24 correct.

25 Q: And in fact, when you add the unheated square footage of

1 the proposed building, it becomes more than 4603 in the new
2 building?

3 A: That is my recollection.

4 Q: A couple of thousand feet more, actually. Now, you can
5 look at the table to see the answer to that question.

6 A: Okay.

7 Q: You're adding 2943 of unheated restaurant and 1224 of
8 unheated retail. So, you're actually adding 4100 square feet
9 of unheated space in the new building, correct?

10 A: I'm sorry; I'm not following that.

11 Q: If you look at the table, on the left side it says total
12 restaurant unheated ---

13 Do you have the table up? Yeah.

14 A: Yes, sir. I see that.

15 Q: So, 2943 is MQ3, that's 2943 of unheated restaurant, and
16 you would add that to -- a couple of lines down where it says
17 total marina retail, 1224. If my math is correct, that's
18 about 4100 feet.

19 A: Yes, sir. I see -- yes, sir. I see that.

20 Q: So, we agree that 4603 with the original building's total
21 square feet. And when you compare -- even without the decks
22 to the heated/unheated, all the square feet inside the walls,
23 it's an extra 4100 square feet in the proposed building,
24 right?

25 A: Based on what we just said -- looked at on the table,

1 yes, sir.

2 Q: Next -- so, that's an increase, isn't it? The proposed
3 square footage of the new building is 40 -- at least 4100
4 square feet greater than the original building, right?

5 A: Not when you just look at heated, which is what we were
6 focusing on primarily.

7 Q: I know -- sorry -- I know that's what you were focusing
8 on, but we've now realized the error of our ways, and if you
9 were going to compare total to total -- you just told me don't
10 use the decks, I'm not using the decks -- total to total, you
11 had 4603 in the before and you had a proposal of 4603 plus
12 4100, correct?

13 MS. GOLDING: Your Honor, I'm gonna make an objection to
14 the question. He began -- we now recognize the error of our
15 ways, I think that's completely improper, that's not what's
16 the evidence been before this Court.

17 THE COURT: That's more argumentative, so I'll sustain
18 the objection. Strike, we've realized the error of our ways,
19 but the remainder of the question is appropriate.

20 A: Okay. Repeat the question; I'm sorry.

21 BY MR. BLOOM:

22 Q: That's fine. I know that you keep going back to heated
23 versus unheated, but we've already agreed that that
24 distinction does not exist in Article XI of your code, right?

25 A: I'm not a hundred percent sure on that; I don't remember

1 that.

2 Q: When, in Item Number 3 -- you're telling -- this is the
3 report that goes to County Council to tell them your
4 recommendation about a rezoning amendment and what you
5 recommend and why, isn't it?

6 A: If it's going to County Council, no, sir; it's the
7 recommendation from the Planning Commission.

8 Q: Well, didn't the same recommendation go to the County
9 Council?

10 A: The Planning Commission did adopt -- did approve the
11 project, and I'm sure they used these points in their
12 approval.

13 Q: That's all I'm asking.

14 A: Yes, sir.

15 Q: And you know when you write this recommendation that
16 there's a good chance that that recommendation is gonna be
17 what's presented to the County Council as to why you think
18 approval is warranted, right?

19 A: No. There are plenty of times where that doesn't happen.

20 Q: Okay. But when you write it, you do the best you can to
21 analyze the data and make a recommendation to whoever the
22 audience is gonna be?

23 A: Planning Commission, yes, sir.

24 Q: And in this instance, you told the audience, whether it
25 be Planning Commission or County Council, that there was a

1 comparison that you made. You compared the total square
2 footage of the original building of 4603 feet and you compared
3 it to only the heated square footage of the proposed building;
4 have we got that right?

5 A: Yes, sir.

6 Q: And had -- so, you actually touted the fact that there
7 was gonna be less square footage when you used heated, didn't
8 you?

9 A: When heated was used, yes.

10 Q: The more complete comparison that you did not draw was
11 the comparison of the original square footage of the building
12 of 4603 with the total square footage of the proposed, which
13 would be over 8,000 feet, correct?

14 A: When you said the more complete answer would be to do
15 that ---

16 Q: Well, let's just put it this way, you didn't point that
17 out?

18 A: It was in the staff report. We wouldn't have said in
19 that sentence about the 4603 if there was something trying to
20 be, you know, hidden or something. So, I mean, just like you
21 read Section 3, they read Section 3.

22 Q: And all I'm saying is you didn't point out a comparison
23 of apples to apples. You didn't compare total square feet to
24 total square feet? That's the only question I'm asking you in
25 this report.

1 A: I don't see that. You're correct; I do not.

2 Q: And you did not tell the Planning Commission or County
3 Council that when you compared total square feet in the
4 original to total square feet in the proposed that the
5 proposed was almost two times the size of total square feet;
6 you did not tell anybody that, Council or the Planning
7 Commission.

8 A: I do not remember, but it's certainly possible during the
9 great discussion that occurred at the Planning Commission that
10 that was brought up. I do not remember that particular thing
11 being stated. But what goes on at the Planning Commission is
12 a lot more than just the staff report. I mean, they ask
13 questions, there's back and forth, people from the audience
14 come up, present their concerns, then the Planning Commission
15 talks about those concerns. So, there are -- I just can't
16 remember if that particular thing was discussed or how it was
17 discussed. But you're right, not in this report.

18 Q: You also identify in this report on Item 4 that's -- you
19 go three lines down, the site contains a total of 62 spaces.
20 Do you see where I'm reading?

21 A: Yes, sir.

22 Q: You then say this exceeds the zoning ordinance
23 requirement of 51 spaces for the proposed building. Do you
24 see that?

25 A: Yes, sir.

1 Q: And that zoning ordinance requirement ZO comes from
2 Article XI, doesn't it?

3 A: Yes, sir. If you used Article XI, that would be how that
4 was calculated.

5 Q: Then, so you -- somebody calculated the parking spaces
6 that the planning staff thought was required using Article XI
7 and put that conclusion in the staff report, didn't they?

8 A: Not that was required, but was given as information.

9 Q: Well, I understand the County's position about that.
10 It's in here, isn't it?

11 A: Yes. That statement is in there.

12 Q: So, someone on your team must've done the calculations
13 using Article XI and the information provided by the applicant
14 in order to arrive at the 51 spaces, correct?

15 A: Yes, sir. You used the term required, and I just wanted
16 to say it was not required.

17 Q: Oh, if I did, I'm sorry. I didn't -- the required would
18 be once you're in Article XI, those are the number of spaces
19 required?

20 A: Yes, sir.

21 Q: Semantics are important, so I appreciate that
22 clarification. You also identified that the parking lot is
23 also used by Gulfstream Café and the marina, don't you?

24 A: Yes, sir.

25 Q: You don't say anything more about how many parking spaces

1 Gulfstream Café or the marina needed according to Article XI,
2 do you?

3 A: We did not.

4 Q: You never conducted that analysis in the entire process
5 going from 2015 to today, have you?

6 A: No, sir.

7 Q: Item Number 16 -- I'm sorry -- Item Number 6 here,
8 there's a discussion of seats. Is there anything in Article
9 XI that calls for you to calculate the number of seats?

10 A: For a restaurant or store, no, sir.

11 Q: Would you be kind enough still in Exhibit 35 to turn to
12 -- I want him to look A101, which are part of the plans that
13 were attached to your staff report, and it is Plan Sheet A101.

14 A: Page 23, is that -- I'm looking at it. It's titled Page
15 23.

16 Q: It may be. I don't have the pages on my version.
17 Do you have it up?

18 It's what's on the screen. Do you see that on the screen
19 -- on the screen here?

20 A: Yes, sir. I see it. It looks like an outline of a
21 building.

22 Q: Does it show the floor plans for Floor 2 and Floor 3?

23 A: Floor 2 and 3.

24 Q: The second and third floor.

25 A: Yes, sir; it does.

1 MR. BLOOM: Do you have it up, Judge?

2 THE COURT: I do.

3 MR. BLOOM: Okay.

4 BY MR. BLOOM:

5 Q: So, if you look at -- and this is what was attached to
6 your recommendation, your staff report and recommendation, if
7 you look at the second and third floors, we can agree
8 throughout the second and third floors that there is outdoor
9 seating, correct?

10 A: It identifies a space as outdoor seating -- yes, sir --
11 on the third floor, I believe.

12 Q: I can't hear you; I'm sorry.

13 A: On the third floor, I see a designation that says outdoor
14 seating.

15 Q: And what about on the second floor?

16 A: Yes, sir. I do now.

17 Q: So, in calculating the 51 spaces that Article XI would
18 require in your staff report, did you take into consideration
19 the outdoor seating in calculating the square footage?

20 A: I do not know the answer to that question.

21 Q: Have you ever run the math yourself?

22 A: No, sir.

23 Q: Would you be kind enough to turn your attention to
24 Exhibit 10? Would you prefer to look at it on the screen, or
25 you like looking at the paper?

1 A: This is -- I can see this. It's the memo.
2 Q: We'll leave this here, too.
3 A: Okay.
4 Q: Okay. We're looking at Exhibit 10. Exhibit 10 appears
5 to be the bottom half is an email from Joanne Ochal to Heather
6 copying you and Holly; is that right?
7 A: Yes, sir.
8 Q: August 25th, 2017, correct?
9 A: Yes, sir.
10 Q: Now, this would be during the process of the
11 consideration of 2.0, or what you call MQ2, wouldn't it?
12 A: I believe that will be the case.
13 Q: Joanne, who worked for you at the time ---
14 A: Yes, sir.
15 Q: --- is giving a meeting summary from August 24th, 2017
16 meeting, correct?
17 A: Yes, sir. She's giving it to Heather and ---
18 Q: And Heather was with Mr. Goggans?
19 A: Yes, sir.
20 Q: And what apparently happened at this meeting was that
21 heated square footage of the proposed building was 4598. We
22 need to make sure that is not any larger than the building
23 that was torn down. That's what you all agreed to, arrived at
24 during that meeting?
25 A: According to Ms. Ochal's note, yes, sir.

1 Q: That statement has absolutely nothing to do with unheated
2 space in the proposed building, correct?

3 A: I do not know the answer to that. I would assume it was
4 heated, but I don't know for sure.

5 Q: Well, the next bullet point clarifies that for us because
6 she said that the proposed unheated area is 4,250, that number
7 sounds familiar because that's what we just talked about based
8 upon your chart, right?

9 A: Yes, sir.

10 Q: And she says that can be constructed as long as parking
11 can be met. Isn't that what she says?

12 A: Yes, sir.

13 Q: And she says the parking calculations have been
14 confirmed, there is adequate parking on-site. Well, who did
15 that calculation?

16 A: Either Heather did it and submitted it to Joanne at this
17 time, or Joanne did it on her own; I do not know the answer.

18 Q: Well, wouldn't it be pretty important to know whether
19 they properly calculated the number of spaces needed for 4250
20 square foot of unheated?

21 A: At that time, obviously, Joanne was the one reviewing the
22 proposal. So, yeah, she would certainly do that.

23 Q: Okay. Well, let's do the math real quickly. I don't
24 know that you'll need that calculator but it's there if you
25 do. We know that if we're applying Article XI in a

1 restaurant, we need 100 -- we need one space for every 100
2 square feet, right?

3 A: For straight zoning, yes sir.

4 Q: And 4600 square feet would require 46 spaces, wouldn't
5 it?

6 A: Yes, sir; I believe so.

7 Q: That's just the heated?

8 A: Uh-huh, (affirmative response).

9 Q: Yes?

10 A: Yes, sir.

11 Q: And if the unheated is 4250, you'd need another 42
12 spaces, wouldn't you?

13 A: For a new restaurant, straight zoning, yes, sir.

14 Q: So, if you were applying Article XI to the proposed
15 building, not even talking about the decks just heated and
16 unheated, you'd need 83 parking spaces, wouldn't you?

17 A: Based on that email, yes.

18 Q: There weren't 83 parking spaces at the Marlin Quay PD,
19 were there?

20 A: My recollection is there is 63, I think.

21 Q: Let me turn your attention if I could, please, sir, to
22 Exhibit 76.

23 MR. BLOOM: Oh, did I tender -- before we go to 76, I
24 would tender 10, Your Honor.

25 THE COURT: Ms. Golding, Plaintiff has offered

1 Plaintiff's Exhibit Number 10.

2 MS. GOLDING: I'm sorry, Your Honor. No objection, Your
3 Honor.

4 THE COURT: All right. Plaintiff's 10 is admitted.

5 PLAINTIFF'S EXHIBIT NUMBER 10

6 ADMITTED INTO EVIDENCE

7 BY MR. BLOOM:

8 Q: Sorry to bounce back and forth, Mr. Johnson. Are you at
9 76 now?

10 A: Yes, sir.

11 Q: Okay. Exhibit 76 -- now I'm turning our timeframe back
12 to 2016. Exhibit 76 deals with a discussion about the Marlin
13 Quay application. And in particular, this was, I guess,
14 during the discussions of minor change versus major change
15 that you were having with Mr. Goggans?

16 A: It was certainly regarding discussing the project; I'm
17 not sure if it was specifically related to major or minor.

18 Q: It was around the same time you were discussing whether
19 it would be minor or a major, wasn't it?

20 A: 2016, I believe so.

21 Q: Well, here's an email from Holly to Steve Goggans,
22 copying you. If you'll turn to the next page, it looks like
23 there were three questions that Holly is telling Steve that
24 she knew were gonna go. Do you see that in the April 28th,
25 1:49 p.m. email?

1 A: Yes, sir. Yes, sir. There's three points?

2 Q: Yes, sir.

3 A: Yes, sir; I do.

4 Q: And you see Item Number 3 in that set of questions, Do
5 decks count in the total calculation for square footage
6 assuming parking can be accommodated? Do you see that?

7 A: Yes, sir.

8 Q: So, I -- I infer from that that Goggans was asking you
9 that question, and that you and Holly were trying to come up
10 with the answer. Is that safe to conclude?

11 A: I believe that would be a conclusion; yes, sir.

12 Q: The answers to those questions are contained in the first
13 page of that email from Holly Richardson to Steve Goggans
14 copying you on May 3rd, 2016, and I'm particularly interested
15 in Item Number 3. She restates the question, and she says
16 that we assume that the decks of the existing building were
17 not included in the total square footage. She then goes on to
18 say, so, any decking on the new building would similarly not
19 be included in this maximum. However, any deck area that is
20 going to be used for outdoor seating or a bar area must meet
21 the parking requirements. Do you see that?

22 A: Yes, sir.

23 Q: And she's talking about Article XI, isn't she?

24 A: I believe so. Or that's where the calculation would come
25 from, yes, sir. Although, let me clarify, since this is a PD

1 that could be -- at the Planning Commission for instance that
2 could be changed to a different number specific to the PD.

3 But yes, they were talking about parking for a deck; only,
4 however, if it was used for outdoor seating or a bar.

5 Q: And we agree that the new project includes at least three
6 or 4,000 square feet of decking that would be included for bar
7 or for outdoor seating. We just looked at the plans.

8 A: I don't agree that it would all be used for outdoor
9 seating, no. If you take a chair -- if you take five chairs
10 and you put them out on that deck, then you've got to remove
11 five chairs from inside of the building, because it's ---

12 Q: I hear you, but where does it say that in Article XI
13 about parking.

14 A: It doesn't. But it says in the PD ordinance that they
15 were limited to 110 seats.

16 Q: I understand that.

17 A: Which is the ordinance for the PD.

18 Q: I understand that. But where in Article XI does it say
19 you count seats?

20 A: It does not.

21 Q: It says you count square footage of outdoor seating area,
22 correct?

23 A: In Article XI; yes, sir.

24 Q: Yes. And we looked at the plan, it had all that square
25 footage of outdoor seating area, correct, that's what we

1 looked at in 35?

2 A: Yes, sir. Yes, sir.

3 Q: And Holly says here that the -- if there's any of this
4 deck area to be used for outdoor seating or bar area, it must
5 meet the parking requirements, period. Right?

6 A: Yes, sir.

7 Q: And there are no actual parking requirements for a new
8 restaurant set forth in the PD for Marlin Quay, are there?

9 A: I'm sorry?

10 Q: Are there any actual parking requirements set forth in
11 the PD from Marlin Quay for the new restaurant?

12 A: No, sir.

13 Q: The only place that you can look to find parking
14 requirements for this new restaurant is in Article 11 correct?

15 A: Yes, sir. The parking is on the ground as it exists or
16 what exists; yes, sir.

17 Q: But to find out what is required of the new building, you
18 have to look to Article XI.

19 A: Yes, sir. In a straight zoning application.

20 Q: Tell me where in Article XI it says -- you keep using
21 this term straight zoning. Where does it say in Article XI
22 that this only applies to a straight zoning?

23 A: It does not. But in the PD section it talks about the
24 purpose of a PD, which gives County Council and Planning
25 Commission the authority to be flexible in how they apply.

1 And basically, the PD is a stand -- it's its own little
2 ordinance. So, it would not have to have everything in it
3 exactly like Article XI.

4 Q: But it has nothing in it ---

5 A: That's ---

6 Q: --- the PD for this -- the PD ordinance, if you will call
7 it, for this planned development, Marlin Quay, has no parking
8 requirements for the new restaurant.

9 A: That's cause we inherited a 1986-87 PD that we had to
10 work with.

11 Q: And you had that to work with no parking requirements,
12 and you had Article XI to work with all the parking
13 requirements, correct?

14 A: Again, we did not believe Article XI applied.

15 Q: I understand that, but Holly must have when she wrote
16 this in Number 3 on Exhibit 76.

17 MS. GOLDING: Your Honor, I'm gonna object. This witness
18 can't testify to what another person believes.

19 MR. BLOOM: Well, he testified to what he thought she
20 meant, and he worked with her for, at this point, 11 years.

21 THE COURT: It's calls for speculation as to what Ms.
22 Richardson believed. So, I sustain the objection.

23 BY MR. BLOOM:

24 Q: Do you remember giving your deposition in this case, sir?

25 A: I remember, yes, sir, I gave a deposition.

1 Q: Well, let me ask the question again to properly impeach.
2 Did you interpret the words on this page to mean that the
3 parking requirements were set forth in Article XI? Did you
4 interpret that?

5 A: For this PD?

6 Q: Yes.

7 A: Or just in general?

8 Q: It's on this page. We're talking about this proposed
9 project.

10 A: I do not agree that parking -- Article XI complies or --
11 I mean, it's not complies -- relates to the specific PD, but
12 that is -- it would not be unusual to use it as a tool.

13 Q: A tool?

14 A: Yes, sir.

15 Q: Got it.

16 A: But it's not a -- it's not required.

17 Q: Okay. She says parking requirements, correct?

18 A: She does.

19 Q: Okay. And did you respond to this email and say, whoa,
20 whoa, whoa, this is just a tool, they're just a guide?

21 A: No, sir.

22 Q: Article XI doesn't apply; Goggans, you don't need to use
23 Article XI; did you do any of that in response to seeing this
24 email?

25 A: Did I do that? No, sir.

1 Q: And did you see Holly do that?

2 A: No, sir.

3 Q: And instead, you and Holly are telling Mr. Goggans that
4 they actually have to meet the parking requirements, correct?

5 A: Is that on Page 2; I'm sorry.

6 Q: No, this is the same page.

7 A: Page 1?

8 Q: Still looking at Item Number 3, your answer.

9 A: Yes, sir. However, any deck that is to be used for
10 outdoor seating or a bar area must meet the parking
11 requirements.

12 Q: And this email uses the word requirement, that goes
13 without saying. It doesn't say parking guidelines or tool or
14 optional or suggestions, correct?

15 A: Parking requirements actually, in this case, could be
16 whatever the Planning Commission and County Council determine
17 them to be, not necessarily Article XI.

18 Q: I understand that, but we don't know that, especially
19 when you're trying to get a minor amendment, there is no
20 Planning Commission involved, right?

21 A: For a minor amendment; that's correct.

22 Q: And that's what you were trying to do here. You had the
23 ult -- you had the ultimate authority in 2016 in the minor
24 amendment process to interpret the parking requirements and
25 tell them how many parking spaces they needed, correct? You

1 had that authority.

2 A: As far as a minor amendment, that's correct.

3 Q: And so back to what I said, this item does not identify
4 that these parking requirements are optional or suggestions or
5 tools or guides, correct?

6 A: Yeah. Too, this is information to Steven Goggans,
7 correct.

8 Q: And that was because the way you and Holly were viewing
9 the proposed new building was that if they were going to put
10 outdoor seating in addition to the 4600 foot of heated, they
11 needed to have parking that complied with Article XI, correct?

12 A: They needed to have parking -- meet the parking
13 requirements, so -- I really can't remember if we specifically
14 said related to park section -- or excuse me -- Chapter XI or
15 not.

16 Q: Okay. Well, let's try to refresh your recollection. In
17 our -- in the deposition you recall me taking your -- or I
18 didn't take your deposition, maybe Nugent did.

19 A: Yes, I remember the deposition.

20 Q: Do you mind if I come over here and show you the
21 transcript?

22 A: No, that's fine, sure.

23 Q: Would you please -- I'll read the question. The question
24 says, It doesn't say that the parking guidelines are optional
25 or that they are a good idea but not necessary to meet,

1 correct? And what was your answer?

2 A: We were getting them steps, ideas at the time of how we
3 would view it.

4 Q: How we would be viewing it?

5 A: Yes, sir.

6 Q: And then, the question was and so staff's idea at this
7 time was that the parking requirements were mandatory for the
8 new building that was proposed? And what was your answer?

9 A: As it required for seating only.

10 Q: And that meant the outdoor seating component?

11 A: Any seating, yes, sir.

12 Q: Any area that was to be used for a seating or a bar; is
13 that right?

14 A: Yes; that's what it says.

15 Q: So, you -- Question: So, in 2016, the staff's opinion was
16 that if an area on a deck was to be used for seating or a bar,
17 then is had to meet parking requirements? Answer?

18 A: That's what -- yes, sir; that's what we said at the time.

19 MR. BLOOM: Judge, that's on Page 231 of Mr. Johnson's
20 deposition taken on March 4th, 2021.

21 BY MR. BLOOM:

22 Q: Now, we make a distinction between, I guess, three
23 different types of use in this restaurant. There's heated
24 square footage, and there's unheated square footage, and when
25 you add those together you get gross floor area, correct?

1 A: Yes, sir.

2 Q: Then, there's decking.

3 A: Yes, sir.

4 Q: It's a different animal, correct?

5 A: Yes, sir.

6 Q: And you agree that 3.0, the proposed building that was
7 passed in 2019 had substantially more decking than the
8 original building?

9 A: I believe that to be the case.

10 Q: And you also agree that even if there are no seats out on
11 the deck that people will come and get drinks and use those
12 decks?

13 A: I would anticipate, yes, somebody would at some point in
14 time be standing and walking around the deck looking at the
15 marsh or whatever as you would do.

16 Q: Go to the bar, get a drink, and then walk over to the
17 railing and look at the marsh?

18 A: Yes, sir.

19 Q: And the staff report, back in Exhibit 35, says nothing
20 about how much additional deck space was going to be added
21 over the original building, does it?

22 A: I don't recall that it did.

23 Q: And you did not tell the Planning Commission nor County
24 Council that the proposed building had substantially more deck
25 space for a bar or restaurant than the original building?

1 A: I don't remember doing that, but they certainly had the
2 plans in front of them.

3 Q: It's certainly not in your report?

4 A: Yeah, but it is -- they had the plans in front of them,
5 though.

6 Q: I understand that. It's not in Exhibit 35 nor the staff
7 report that went to the County Council, correct?

8 A: I can't recall if the term decking was used in those
9 reports or not.

10 Q: Let's talk about what -- I'm gonna try and move through
11 this fast -- let's talk about the idea of what I call
12 stacking, but where multiple uses need parking. You'll very
13 easily get one trip with this, correct? So, let's go back to
14 my terrible drawing, but this box is basically your parking
15 deck, you've got Gulfstream here, you've got the marina here,
16 and you've got the snack bar there. All in the same PD and
17 they all have their own parking requirements. Gulfstream is a
18 restaurant. Do you know how many parking spaces Article XI
19 requires for it?

20 A: No, sir; I don't.

21 Q: Well, if it's 7,000 square feet it needs 70 spaces,
22 basically, right?

23 A: I think that's ---

24 Q: In Article XI?

25 A: I believe that to be the case, yes.

1 Q: And -- let's do that -- and you know about marinas, if
2 one has 60 slips and you apply Article XI, you'd need one
3 space for every three slips, correct?

4 A: I believe that's how it works.

5 Q: So, let's just call that 20 for easy numbers. And then
6 with the snack bar, we've just done the math, and that parking
7 -- if you use Article XI and you calculated total square --
8 total floor area, and the decking used for outdoor seating,
9 you might be as high as 103 spaces, correct?

10 A: You could come up with that; yes, sir.

11 Q: You could?

12 A: Yeah.

13 Q: And so, if you needed 103 spaces here, 70 spaces here,
14 and 20 spaces there, using Article XI, this would be
15 insufficient parking for that area, wouldn't it?

16 A: The total number of spaces in there would not equal what
17 we just said would be required.

18 Q: So, 100 -- that's 193 spaces compared to -- 193 required
19 spaces compared to 62 available spaces, correct?

20 A: Yes, sir. Except we don't -- again, we're not saying
21 it's required.

22 Q: I know that. The Judge has heard that. We all agree
23 that that's the issue.

24 And, when you look at Article XI, you're not allowed to
25 stack -- you're not allowed to double count spaces, correct?

1 A: That's correct; in general, correct, yes, sir.

2 Q: Right. Every separate use has to have dedicated -- let's
3 call it that -- dedicated spaces as required in Article XI,
4 correct?

5 A: Yes, sir.

6 Q: And at the time you were making recommendations to the
7 Planning Commission and to County Council, you hadn't done the
8 math that we just did, had you?

9 A: Had not done the math?

10 Q: Correct.

11 A: No; no, sir.

12 Q: You did not figure out what the parking loads were for
13 any of the other uses that were all sharing the same parking
14 lot?

15 A: No, we -- no, sir.

16 Q: You had at that very time when you were making your
17 recommendations to the Planning Commission and to the County
18 Council, you had people from the public expressing their
19 concern that adding a 13,000 square-foot building would
20 negatively impact an already insufficient parking lot,
21 correct?

22 A: Was the question did we had people saying that?

23 Q: Yes.

24 A: Yes, but also many people saying the exact opposite.

25 Q: I understand, but it -- it was not a mystery to you that

1 people were raising that concern?

2 A: No, sir. No, sir.

3 Q: Now, I understand that you did not administer the fire
4 code?

5 A: That's correct.

6 Q: But you know it exists?

7 A: Yes, sir.

8 Q: And you know what occupancy limits are?

9 A: Yes, sir.

10 Q: And at the time you were making recommendations to County
11 Council about the passage of 3.0, did you take into
12 consideration occupancy limit or occupancy capacity for 3.0?

13 A: We did not. The information did come up and a number was
14 given from -- it came up from the fire department or from the
15 building official, one.

16 Q: So, during your process ---

17 A: So ---

18 Q: I'm sorry.

19 A: So, during that process -- and I think this was in MQ3,
20 actually.

21 Q: Yeah. That's what I'm asking about.

22 A: Yeah. That's -- yes, sir; it did.

23 Q: So, before you or during the time that you were preparing
24 your report and/or presenting your report to the County
25 Council of 3.0, you knew that the occupancy limit for 3.0 was

1 350-some odd people, correct?

2 A: I'm not sure it's -- what stage that number came about.
3 I don't think it came about when we were preparing the report.
4 But, at some stage at the Planning Commission and County
5 Council level it came up; yes, sir.

6 Q: So, you knew that from the fire department standpoint,
7 they could -- the building could accommodate up to 350 people,
8 correct?

9 A: That's my recollection; yes, sir.

10 Q: Is it a bad thing from a planning standpoint to have a
11 commercial business with insufficient parking?

12 A: In a straight zoning application, yes, sir.

13 Q: And you consider the availability and demands for parking
14 when you are evaluating even a PD amendment, a non-straight
15 zoning, right?

16 A: Do we contemplate parking in the PDs?

17 Q: Yes.

18 A: Yes, sir.

19 MR. BLOOM: Those are my questions, Your Honor.

20 THE COURT: All right. Thank you, sir.

21 Ms. Golding?

22 MS. GOLDING: Thank you, Your Honor.

23 CROSS-EXAMINATION LESTER BOYD JOHNSON BY MS. GOLDING:

24 Q: Hello, Mr. Johnson.

25 A: Hello.

1 Q: I wanted to go back to -- there were some questions that
2 seemed to indicate that the process for amending a PD can be
3 minor or major; is that correct?

4 A: Yes.

5 Q: Okay. Can you explain to the Court the minor amendment
6 and then explain to the Court why this Marlin Quay Version 1
7 went from minor to major?

8 A: Well, minor plan -- minor amendments to PDs can be
9 approved at the staff level, and generally there are changes
10 that would not affect perhaps the intensity or not cut down a
11 lot of trees, or basically would have very minimal impact on
12 the project. That was an issue early on, minor or major. It
13 finally did end up going as a major PD. Primarily, the reason
14 -- I would say the reason it ended up going from a major to a
15 minor -- and actually, I think that issue, by the way, did go
16 to the Zoning Board of Appeals who ruled in favor of the
17 staff's interpretation twice, I believe. It finally ended up
18 going -- as a PD, the applicant really requested, finally in
19 MQ3 that, hey, let's -- we want this to be a major amendment
20 because the plaintiffs in this case kept saying they wanted
21 this to be a major amendment so they would have an opportunity
22 to provide input and their information regarding the plans or
23 the project. So, it was going to a major primarily so they
24 would have an opportunity to provide input.

25 Q: Was that the suggestion of the Georgetown County Planning

1 Department to go to a major?

2 A: Actually, the request came from the applicant first, and
3 then we agreed that we would do that and go through that
4 process.

5 Q: With respect to a major amendment, a major amendment
6 involves a process of going to Planning Commission and then
7 County Council?

8 A: Yeah. Planning Commission would hold a public hearing,
9 receive input, one meeting, two meetings, however many they
10 choose. And at the end of the day, they would send a
11 recommendation of either approval or denial or some
12 modification to County Council who would then hold three
13 readings. The second one at which would actually -- I'm not
14 -- I can't remember if they did a public hearing or not, but
15 there is an opportunity for the public to speak at each of
16 those three meetings.

17 Q: So, if -- the questions by Mr. Bloom that you made -- you
18 recommended to County Council, really it is planning -- the
19 commission that recommends to the County Council; is that
20 correct?

21 A: That's correct.

22 Q: Okay.

23 A: And there have been cases where the staff report -- the
24 staff recommended something to the Planning Commission,
25 Planning Commission did not agree -- they took a different

1 action, approval or denial. And then we would actually make a
2 recommendation to County Council that they follow the Planning
3 Commission's recommendation, even though that was not our
4 original recommendation. But we always take Planning
5 Commission's recommendation to County Council, not staff's
6 recommendation.

7 Q: With respect to the Version 3.0, I want you -- there was
8 a staff report which is Plaintiff's Exhibit 35; is that
9 correct?

10 A: I assume so. I don't have it in front of me.

11 Q: You don't have Plaintiff's Exhibit 35 in front of you?
12 I'm sorry.

13 A: I do now. It's on the screen; yes, ma'am.

14 Q: Okay. Good. Now, with respect to this staff report,
15 there are attachments, I believe, that are with the staff
16 report; is that correct?

17 A: Yes; that's correct.

18 Q: Okay. And if you would look at the third page of the
19 staff report. Now, the third page has attachments at the
20 bottom; do you see that?

21 A: Yes. Yes, I do.

22 Q: And it has Attachment 1, application and attachments.
23 Was that provided to the Planning Commission?

24 A: Yes, it was.

25 Q: Okay. Number 2, proposed site and building plans, was

1 that provided to the Planning Commission?

2 A: Yes, it was.

3 Q: Number 3, GIS location map, was that provided to the
4 Planning Commission?

5 A: Yes, it was.

6 Q: Number 4, GIS zoning map, was that provided?

7 A: Yes, it was.

8 Q: And Number 5, GIS aerial map, was that provided?

9 A: Yes, it was.

10 Q: And 6, adjacent property notice, was that provided?

11 A: Yes, it was.

12 Q: And all that information went to the Zoning Commission;
13 is that correct?

14 A: Yes; that's correct.

15 Q: In looking through Plaintiff's Exhibit Number 35 -- I'm
16 sorry, the pages aren't numbered, but do you go -- can you go
17 to the notice of public hearing?

18 A: Okay. I see it.

19 Q: Is that the notice that went to the newspapers and to the
20 surrounding property owners?

21 A: Yes.

22 Q: In all this information that's provided to the Planning
23 Commission, is that provided before the hearing date on
24 October the 11th?

25 A: Yes. They traditionally get their packets the Friday

1 before the Thursday meeting.

2 Q: And so, the Zoning Commission gets all this information
3 and then there's a hearing. And in this case, it was on
4 October 18, 2018.

5 A: I believe so, yes, ma'am.

6 Q: Okay. Do you recall that hearing before the Planning
7 Commission on October 18, 2018?

8 A: Yes, in general; yes.

9 Q: Okay. And were there a number of public participants or
10 members of the public that appeared?

11 A: It was a large number.

12 Q: And when you tell the Court it was a large number, what
13 do you mean by large number?

14 A: The facility, which was the old Georgetown County
15 Courtroom that we use was pretty much full.

16 Q: And do you recall if this Marlin Quay Planned Development
17 issue was the only issue before the Planning Commission or do
18 you recall if there were other matters?

19 A: I wouldn't -- normally, there would be other matters.
20 And their normal mode would be to do this -- I hate to use the
21 term get it out of the way, but do this so that the other
22 people -- there would be room in the courtroom, because
23 usually people leave after their particular subject.

24 Q: With respect to the Planning Commission hearing on
25 October 18, 2018, did partici -- were there pros and cons with

1 respect to this proposed amendment to the PD?

2 A: Yes.

3 Q: And when I say pros and cons, can -- were those -- who
4 were the -- not identify who, but identify who the -- were the
5 cons representatives of Gulfstream Café?

6 A: Yes.

7 Q: And were the pros public members?

8 A: Yes, many.

9 Q: Would it be fair to state that this proposed amendment to
10 the PD was widely publicized?

11 A: Absolutely.

12 Q: Okay. And why do you say that?

13 A: Well, this obviously was the big issue at the time, so,
14 you know, we had lots of people calling asking questions, lots
15 of people coming to our meetings, not just the Planning
16 Commission meeting but the County Council meetings. There was
17 just a lot of -- the news media, obviously, follows things.
18 So, there was a lot of examination of this project.

19 Q: And with respect to the next step after the Planning
20 Commission, what occurred next with regard to Marlin Quay 3.0?

21 A: It would go to the County Council who would have three
22 different readings.

23 Q: And what was the recommendation or what was the position
24 of the Planning Commission with respect to this proposed
25 amendment to the PD?

1 A: That it was a positive recommendation to approve the
2 application.

3 Q: And so, the next step would be County Council?

4 A: Yes.

5 Q: And the -- how many readings would go through?

6 A: Three.

7 Q: Okay. The first reading of County Council, I know the
8 dates -- would that have been around November 13, 2018?

9 A: That's correct.

10 Q: So, it would've been about a month after the planning and
11 zoning?

12 A: Yes; that would be normal.

13 Q: Did you attend the first reading?

14 A: Yes. I generally attended all County Council meetings.

15 Q: So, the three County Council readings with respect to
16 MQ3, you attended all three?

17 A: Yes.

18 Q: The first reading, I believe it was November the 13th of
19 2018, was there a public comment section?

20 A: Yes. County Council has a policy that any member of the
21 public can come to any councilmember -- any normal council
22 meeting and sign up to speak at the beginning of the meeting.
23 There is a time limitation; I can't remember what it was. I
24 think it was maybe five minutes.

25 Q: And is that also proof for the second reading that

1 occurred on December 11, 2018?

2 A: Yes; that is true.

3 Q: Okay. Can you look now to Plaintiff's Exhibit 44?

4 A: Yes, I see it.

5 Q: Okay. Plaintiff's Exhibit 44 are meeting minutes of the
6 second -- of the second reading of this application that
7 occurred on December 11, 2016 -- 2018; is that correct?

8 A: Yes.

9 Q: Okay. And the first page of Plaintiff's 44 has public
10 comments?

11 A: Yes.

12 Q: Okay. Adam Nugent, what does it state with respect to
13 Adam Nugent appearing and making a public comment?

14 A: Mr. Nugent, an attorney representing Gulfstream Café
15 voiced concerns regarding a post amendment to the Marlin Quay
16 Planned Development Ordinance Number 2018-40 currently before
17 County Council. He said there was reason to believe that
18 proper procedure under the County's zoning ordinance had not
19 been followed. He said the building being proposed was far
20 different than the building that was there before.
21 County zoning code requires that County Council -- that County
22 Council consider whether adequate parking accommodations
23 exist. He encouraged council members to observe the situation
24 firsthand to ensure that the proper procedures were followed.
25 This building would be beneficial to the entire area.

1 Q: Okay. I wanted to ask you something about the statement,
2 this building will be beneficial to the entire area. As a
3 member of the Planning Department, did you take into
4 consideration the benefit of the building, or the proposed
5 building to the area?

6 A: Yes. We believed a new building meeting all --
7 particularly the flood requirements and handicap accessibility
8 improvements would be beneficial to the area as opposed to an
9 old -- nearly delapidated, but certainly an old building that
10 was hanging over on somebody else's property line.

11 Q: I'm glad you brought that up, hanging over on somebody
12 else's property. Can you tell the Court about that?

13 A: Yeah. This whole process started really because the
14 original building was, gosh, I don't know, maybe 30, 40
15 percent of the building was hanging over their property line
16 onto the property of the condominiums.

17 Q: Is that the Marlin Quay condominiums?

18 A: Yes. And we had several meetings with them and
19 representatives of the Marlin Quay Condo Association and how
20 to rectify that issue. And all parties came to an agreement
21 that the building would be demolished and placed entirely on
22 applicant's property. We also talked about some square
23 footage, and we stressed and noted that the square footage
24 that the condo association was losing from their property
25 could not be regained by them. They couldn't come in and

1 build something else, more condos for instance, where that
2 building was just because there now was an empty spot. And
3 they agreed to that.

4 Q: With respect to the Planning Department, was that
5 significant to remedy a situation where a property owner was
6 across the line of another property?

7 A: Yeah, we would consider that significant.

8 Q: Is that a significant zoning issue?

9 A: The zoning ordinance doesn't, I mean, except when it gets
10 into setbacks, doesn't really get into that. But from just a
11 planning perspective, we don't -- certainly don't like to see
12 that.

13 Q: And certainly, by this MQ -- excuse me -- Version Number
14 3 building plan that was submitted to County Council, was that
15 solely on the footprint of the old building?

16 A: We believe it to be, yes, because I believe that was the
17 court order that the reason they were coming back for MQ3 is a
18 judge had ruled it had to be in the footprint of the other
19 building.

20 Q: And with respect to the Version 2, the Version 2 that was
21 approved, did that remedy the situation with respect to the
22 property line with the respect to the building being on the
23 Marlin Quay condominiums?

24 A: Yes, it did.

25 Q: Now, with respect to this new proposed building and MQ3,

1 Version 3, did that building have to go up?

2 A: Yes, based on the flood ordinance.

3 Q: Okay. And the old building, was that subject to the
4 flood ordinance?

5 A: It was there. It was there when that building was built
6 I am aware but it did not I'm fairly certain -- fairly certain
7 it did not meet the modern current flood regulations.

8 Q: So, when I -- do you recall the plans of making it go up
9 from the ground level to the bottom of the top floor 14 feet?

10 A: That sounds correct.

11 Q: In addition, you said handicap, with respect to handicap,
12 does that mean that the new building had to comply with the
13 Americans with Disabilities Act?

14 A: Yes.

15 Q: And with respect to restrooms or bathrooms, did that
16 require enlarged restroom facilities?

17 A: Yes, it does.

18 Q: Also, do you recall if the old building had an elevator?

19 A: I do not believe it had an elevator.

20 Q: The new building, MQ3, Version 3, is an elevator
21 required?

22 A: There was certainly one -- there was certainly one in the
23 plans and constructed. I think there would've have to have
24 been some accommodation, for instance, for the handicapped to
25 get to Floor 3 from 2. I'm not sure how else you could do

1 that without an elevator.

2 Q: Would the elevator -- installation of an elevator and use
3 of an elevator over the three floors but require more square
4 footage in the building?

5 A: Yes. The shaft, because of the shaft and all that.

6 Q: Would the use of wider stairways to comply with the ADA,
7 would that require more square footage?

8 A: Not just the ADA, but the building -- even the building
9 code gets into that so people have room to exit the building.

10 Q: Would the enlargement of the restroom facilities require
11 more square footage?

12 A: Yes.

13 Q: Okay. And would the need for having more than one male
14 and one female restroom also require more square footage?

15 A: Yes.

16 Q: Okay.

17 A: The ADA gets in things like -- I mean, excuse me -- yeah.
18 I mean, it's very detailed how many toilets in a bathroom, how
19 many feet has to be for a wheelchair for instance to get in a
20 a stall. All that is very, very precise, which all of that
21 requires larger facilities.

22 Q: These additional square footage in the plan, the Version
23 3 plan, were -- was that additional square footage needed for
24 the general welfare of the public?

25 A: Yes.

1 Q: And I understand there's a marina that exists right by --
2 it existed by the old building and exists by the new building;
3 is that correct?

4 A: Yes.

5 Q: Okay. And to your knowledge, was this retail space --
6 enhanced retail space due to ADA, was it required -- is that a
7 -- needed for the marina, the selling of fuel, the selling of
8 products for the marina?

9 A: I believe that would be the case.

10 Q: Okay. So, having a retail store with these enhanced
11 features for general welfare, that's certainly needed for the
12 marina and the marina owners; is that correct?

13 A: Yes.

14 Q: And the slip owners, I should say.

15 A: Yes.

16 Q: And the boating public as well?

17 A: Yes.

18 Q: Okay. And the service of fuel in that area, whether it
19 be gasoline or diesel, was that -- is that a benefit for the
20 public?

21 A: For the boaters, yes.

22 Q: Okay. And to your knowledge, from where the Marlin Quay
23 is -- well, in fact, if you take it from the Garden City, as
24 you turn on and drive all the way to the end of Garden City,
25 the Marlin Quay Marina Store is the only facility that

1 provides fuel for the boating; is that correct?

2 A: I believe that's correct.

3 Q: Okay. And also with respect to restaurants, do you know
4 how long the old Marlin Quay building restaurant existed?

5 A: I don't unless it was there, you know, when the PD was
6 initially constructed in the mid-80s.

7 Q: But you had knowledge that there was a restaurant that
8 existed at the facility?

9 A: Yes. Yes.

10 Q: And in fact, if you look at Plaintiff's Exhibit Number
11 80. This is an email from a David Victoria in July 2015 which
12 identifies the square footage of the store, and Number 4, the
13 square footage of the restaurant area; is that correct?

14 A: Yes.

15 Q: And David Victoria, do you know him or know of him?

16 A: I do not.

17 Q: Okay. But this information from David Victoria, and it
18 has at the bottom it looks like architect and engineer,
19 general contractor, construction management, architecture. Do
20 you see that?

21 A: Yes, I do.

22 Q: And nowhere on this email, Plaintiff's Exhibit Number 80
23 is Steve Goggans copied, is he?

24 A: No. I do not see where he is copied.

25 Q: Okay. And in fact, to your knowledge, Mr. Goggans nor

1 anyone on behalf of SGA was involved in this project when
2 these numbers came -- were provided to the Georgetown County
3 Building Department, was it?

4 A: I do believe so, not at this time.

5 Q: Okay. Now, with respect to the restaurant, do you know
6 how many years there were two restaurants on this -- in this
7 PD?

8 A: I believe all the way to the original mid-80s date.

9 Q: Okay. And by the -- so, with the existence of two
10 restaurants for many years, were those the only two
11 restaurants basically from the entrance of Garden City on
12 Waccamaw Drive all the way down to the end after the Garden
13 City area?

14 A: I believe that's correct.

15 Q: Okay. And that's a number of miles down there, isn't it?

16 A: Yes, it is.

17 Q: Okay. So, these two restaurants for many years were the
18 only restaurants available to the public for a number of miles
19 in that area; is that correct?

20 A: Yes.

21 Q: And the availability of having two restaurants, is that a
22 benefit for the public?

23 A: Sure; yes, it is.

24 Q: Okay. I'm going back, though, to the second reading that
25 occurred in -- for Version 3. I believe that was the Exhibit

1 44. I believe you only -- the first person that spoke was
2 Adam Nugent, attorney for Gulfstream?

3 A: Yes.

4 Q: And the second person, Vince Van Brunt, is he represented
5 as the CEO of CentraArchy Restaurant Group?

6 A: Yes.

7 Q: And he also spoke at that second reading of the Version 3
8 ordinance?

9 A: Yes.

10 Q: Okay. And Mr. Van Brunt, do you recall -- he's sitting
11 over here at counsel table. I don't -- you can't see him
12 through all these posters.

13 A: Oh, okay.

14 Q: But, did anybody stop Mr. Van Brunt from making any
15 comments to County Council?

16 A: I'm not aware of that.

17 Q: Okay. Then next it has -- on the next page it has Linda
18 Barnaba. Linda Barnaba, do you recall her being as being an
19 employee with CentraArchy?

20 A: No. I do not recall her.

21 Q: Okay. And with respect to Jef Kirk -- it then has Chris
22 Causey, who is an employee, then it is Jef Kirk. Do you
23 recall him appearing?

24 A: I really don't; no.

25 Q: Okay. But you recall at the second reading on November

1 11, 2018, there were a good number of people that spoke for
2 the amendment, a good number of people that spoke against the
3 amendment?

4 A: Yes.

5 Q: Okay. And all of those speakers made their positions
6 known to County Council; is that correct?

7 A: Yes.

8 Q: The parking 101 that has been discussed in your direct
9 examination, and that's in the ordinance book, I believe
10 that's in front of you and your Article XI?

11 A: Yes. I'm sorry. Let me get back to the zoning
12 ordinance.

13 Q: Plaintiff's Exhibit Number 5 is just the parking
14 ordinance. Maybe that's easier to look in.

15 A: Yes; I have it.

16 Q: Okay.

17 A: So, Article XI.

18 Q: And in that parking ordinance, Article XI, 1101, that's
19 titled general requirements. With regard to the general
20 requirements, in the first sentence, it states areas suitable
21 for parking or storing automobiles in off-street locations
22 shall hereafter be required in all districts at the time of
23 initial construction of or conversion in use. What was your
24 interpretation of initial construction?

25 A: What was done in the mid-80s when the PD was first

1 constructed.

2 Q: So, that would be the old building that was demolished?

3 A: Yes.

4 Q: That was the initial construction?

5 A: That's my understanding, yes.

6 Q: Is that your interpretation?

7 A: Yes.

8 Q: Okay. And then or conversion in use. Was there any
9 conversion in use from the old building to the new building?

10 A: No, no.

11 Q: And was there any change -- did the proposed amendment
12 permit any change in the seating capacity?

13 A: The proposed amendment established 110 limit for number
14 of seats in that building.

15 Q: Okay. And 110 was provided information as to the seating
16 capacity of the old building; was that correct?

17 A: At the Planning Commission meeting, yes.

18 Q: Okay. Now with respect to your department, the Building
19 Department, over the years, do you know how many times someone
20 applied for an amendment to a PD?

21 A: Many, many times.

22 Q: And do you know how many PDs there are in Georgetown
23 County?

24 A: No, I do not.

25 Q: Okay. If -- would you be surprised there'd be around 100

1 PDs in Georgetown County?

2 A: No. That would not surprise me.

3 Q: Okay. Now, each of those applications for amending a PD,
4 how -- is that treated as a process that is communicating back
5 and forth or is it an adversarial process with the applicator?

6 A: I would say the first that department, and I'm sure it
7 still to this day, tries to work with people, certainly tries
8 to enforce the ordinances, but there's a lot of back and forth
9 about, you know, asking for information, and saying, hey, this
10 what you submitted to me today is I look at it and I
11 understand why you're cutting these five oak trees over here.
12 I think you can slide your parking lot or slide your building
13 a little bit and you can save five nice oak trees. So, that's
14 the kind of thing that goes back and forth. Sometimes, yeah,
15 the applicant will get mad because for whatever reason they
16 may lose a unit or something, or you know, they may not be in
17 agreement, but we don't -- certainly don't foster an
18 adversarial environment, that's not the way Georgetown County,
19 that comes from the top. We want to be customer friendly, I
20 guess, you could say.

21 Q: Now, finally, there was some questions about County
22 Council approved the budget. With respect to County Council,
23 is Mr. Goggans -- when you were there, was he one of seven
24 councilmembers?

25 A: Yes.

1 Q: And at any time was there any type of insinuation,
2 threat, any communication by Mr. Goggans to you or anyone at
3 SGA that this project, this Version 3 must go through,
4 anything like that?

5 A: No. You're talking about -- I'm sorry, were you ---

6 Q: Hear me out. Did you feel in anyway or did you perceive
7 any pressure?

8 A: Oh, no, no.

9 Q: Okay. From Mr. Goggans?

10 A: No.

11 Q: Or his ---

12 A: No.

13 Q: Okay. Thank you very much.

14 THE COURT: Any redirect, Mr. Bloom?

15 MR. BLOOM: No redirect, Your Honor.

16 THE COURT: All right. I think now is an appropriate
17 time for a break. We will -- we'll be back at 11 o'clock.
18 We'll be in recess till 11:00.

19 MS. GOLDING: Your Honor, Mr. Goggans -- I'm sorry. Mr.
20 Johnson is subject to a subpoena by Plaintiff. Can he be
21 released from the subpoena?

22 MR. BLOOM: I'm not prepared to release him, but at this
23 point I don't think I need him again, but if I release him,
24 he's gone.

25 THE COURT: Well, can't we do this? Can't we allow him

1 to -- I assume, Ms. Golding, you have good contact information
2 with Mr. Johnson?

3 MS. GOLDING: I do, Your Honor.

4 THE COURT: Can we release him from the requirement of
5 being inside this building?

6 Mr. Johnson, do you understand that what I'm saying is
7 you are still under subpoena. There is a small chance that
8 you could possibly be recalled, but I'm not gonna require you
9 to stay in the courthouse. You can go about your business,
10 just don't leave the county. If you -- if Ms. Golding calls
11 you and requests that you come back to court, you are still
12 subject to that subpoena.

13 MR. JOHNSON: Yes, sir; I understand.

14 THE COURT: All right.

15 MS. GOLDING: I appreciate it, Your Honor.

16 THE COURT: Yes, ma'am.

17 All right. We'll be in recess until 11:00.

18 **RECESS - 10:43 A.M.**

19 *****OFF THE RECORD*****

20 **ON THE RECORD - 10:56 A.M.**

21 THE COURT: Mr. Bloom?

22 MR. BLOOM: Your Honor, the plaintiffs call Jim Moring.

23 JAMES MORING, HAVING BEEN DULY SWORN,

24 TESTIFIED AS FOLLOWS:

25 THE CLERK: Thank you. Please be seated. State and

1 spell your first and last name.

2 MR. MORING: My name is James Moring.

3 DIRECT EXAMINATION JAMES MORING BY MS. PEARSON:

4 Q: Good morning, Mr. Moring. Could you please tell the
5 Court who you are and what you do?

6 A: I'm a restaurant broker, and I am the president of
7 Commonwealth Company and RestaurantBrokers.info.

8 Q: And what is your educational background?

9 A: I have a degree in business administration and marketing
10 and have held a broker's license in the state of South
11 Carolina for forty years.

12 Q: And what year did you get your broker's license?

13 A: 1981.

14 Q: Okay. And where was your degree from?

15 A: The College of Charleston and Sophia University in Tokyo
16 Japan.

17 Q: Okay. And have you had to take courses to maintain your
18 real estate brokerage since 1982?

19 A: Every two years. And also, was a real estate appraiser
20 with Charleston County Assessor's Office for four years.

21 Q: Okay. So, you were certified as an appraiser, as well?

22 A: Yes.

23 Q: Okay. And you're currently a licensed real estate broker
24 in the state of South Carolina?

25 A: Yes.

1 Q: All right. Tell me a little bit about your experience as
2 a real estate broker. I know you mentioned the Commonwealth
3 Company.

4 A: We're a full-fledged commercial real estate firm selling
5 commercial properties, but a number of years back I opened up
6 a company called Restaurant Brokers, which we specifically
7 only market and sell restaurants.

8 Q: Okay. And when did you start Commonwealth Company?

9 A: I think it was 1996 or '97.

10 Q: Okay. Around when did you start RestaurantBrokers.info?

11 A: It was a couple of years after that.

12 Q: Okay. And how many -- through course of your career, how
13 many restaurants have you marketed or sold?

14 A: It's getting close to 400; I think it's 380, I believe.

15 Q: Okay. And is RestaurantBrokers.info the company that
16 primarily sells the restaurants?

17 A: Yes.

18 Q: Okay. And how many restaurants per month do you average
19 Restaurant Brokers sell?

20 A: It's usually two or three months.

21 Q: And is there a geographic area that the company primarily
22 focuses on?

23 A: It's mostly the low country area. We have sold outside,
24 in a couple of other states, but mostly Charleston.

25 Q: Okay. And what is your role at Commonwealth Company?

1 A: I'm the president and the broker in charge, so I'm in
2 charge of our agents, but I am an active broker, so I usually
3 sell as much as anybody else.

4 Q: Okay. And is your role the same for
5 RestaurantBrokers.info?

6 A: Yes.

7 Q: And do you also own restaurants or have you in the past?

8 A: I have owned four restaurants, and currently I am a
9 partner in one restaurant, Amen Street Fish & Raw Bar in
10 Charleston, South Carolina.

11 Q: Okay. And have you ever been an expert in a case before?

12 A: Yes. It was a case involving a restaurant off of Kiawah
13 Island a few years back.

14 Q: Okay. And were you qualified in that case to testify?

15 A: I was, by Judge Mendelsohn, Joe Mendelsohn.

16 Q: Okay. And do you handle other types of commercial real
17 estate other than restaurants or is your primary ---

18 A: We do occasionally. I mean, we're not gonna turn down a
19 sale of an office building or an apartment complex, but I've
20 sold a couple of hotels in the last few years. Mostly
21 restaurants, though, is 95 percent.

22 Q: All right. And how many restaurants per year do you
23 estimate your company sells?

24 A: Between 35 and 40. You know, I have four agents that
25 work with me, also.

1 Q: All right. And what type of clients does your company
2 typically have?

3 A: Usually, it's a chef or a restaurant investment group
4 that contacts us, or maybe it's a restaurant group that has a
5 recent sale that they own eight or 10 restaurants and they
6 want to expand.

7 COURT REPORTER: Sir, can I get you to slide a little bit
8 so I can see you.

9 A: Okay. All right.

10 COURT REPORTER: Thank you so much.

11 BY MS. PEARSON:

12 Q: All right. And one of your jobs as a broker is to
13 evaluate the marketability of a restaurant when you're trying
14 to sell it; is that correct?

15 A: That's correct.

16 Q: And is parking one of the top factors you evaluate when
17 looking into the marketability of a restaurant?

18 A: Absolutely. If you don't have parking, you don't have
19 customers.

20 Q: Okay.

21 MS. PEARSON: I would move to qualify Mr. Moring as an
22 expert in the field of commercial real estate brokerage.

23 MS. GOLDING: He is a commercial real estate broker;
24 there's no doubt about that. Whether or not, you know, his
25 testimony is going to be an expert because, in South Carolina

1 we don't have any licenses or certificates for the sale of
2 restaurants with marketing of restaurants. So, I don't
3 believe that his expertise or testimony with respect to that
4 as a real estate broker would be expert -- would be sufficient
5 to be an expert. He testified that he was at one time an
6 appraiser, but he is not here today in a role as appraiser.
7 So, I don't believe that his testimony would be sufficient to
8 the expert witness testimony, Your Honor.

9 MS. PEARSON: And just to clarify, we are not offering
10 him today as an appraisal expert; we're offering him as a
11 commercial real estate broker.

12 THE COURT: All right. I'm gonna qualify him based on
13 his education, training, and experience as an expert in
14 commercial real estate.

15 Ms. Golding, if you feel like any opinion he offers is
16 outside the scope of that area of expertise, just object and
17 we'll deal with it as they come.

18 MS. GOLDING: Thank you, Your Honor.

19 THE COURT: All right.

20 BY MR. PEARSON:

21 Q: Mr. Moring, can you tell us a little bit about what your
22 assignment in this case was?

23 A: To review the property and the parking and to determine
24 that there was adequate parking on the facility property now,
25 and if another restaurant or business was using that parking

1 would it be a taxing on the businesses.

2 Q: Okay. So, when you say the restaurant, you're talking
3 about Gulfstream, correct?

4 A: Gulfstream, yes.

5 Q: And you mentioned, if there was another restaurant, we
6 are talking about -- we've been calling it Version 3.0.

7 A: Yes.

8 Q: So, the new restaurant, I'm gonna refer to it as 3.0 so
9 you understand that's what I'm talking about.

10 A: Yes.

11 Q: And that's the restaurant you were referring to ---

12 A: That's the restaurant that I was looking at.

13 Q: Okay. All right. What materials did you review in
14 connection with your assignment in this case? I looked at
15 aerial photos, and then an on-site visit, plus, the plans for
16 the proposed 3.0.

17 Okay. So, you went and actually visited the Gulfstream
18 Restaurant? I did.

19 A: I did.

20 Q: And so you viewed the Gulfstream Restaurant's parking
21 lot, and the parking lot in the Marlin Quay Marina area?

22 A: I did.

23 Q: All right. And if you could tell us a little bit about
24 that parking lot and what you observed when you were there?

25 MS. GOLDING: Your Honor, I will make an objection, and

1 he -- I do not believe that is within the scope of his
2 expertise. He testified his scope was to determine if
3 adequate parking exists. That certainly is not within the
4 scope of functions of a commercial real estate broker. So, I
5 do not believe that would be appropriate. He has to have some
6 type of background. He has to be -- would've been schooled in
7 zoning and planning, and none of that he's qualified to speak
8 as to adequate parking.

9 Thank you, Your Honor.

10 THE COURT: Maybe if you could ask him some more
11 questions about how the parking factors into his
12 determinations as a broker. If that's where you're going with
13 this?

14 MS. PEARSON: Sure.

15 THE COURT: I think you'll likely be able to get there.
16 I think we'll need a little bit more foundation, maybe.

17 BY MS. PEARSON:

18 Q: Okay. So, Mr. Moring, in your experience as a commercial
19 real estate broker, selling restaurants, is parking one of the
20 top factors that you look at in evaluating the marketability
21 of a restaurant?

22 A: It is. It's one of the first.

23 Q: Okay. So, when you're looking at a property in terms of
24 listing it for sale and what you might want to list that
25 property for, parking is one of the things that you look at to

1 determine price?

2 A: Right, yes; that's correct.

3 Q: Okay.

4 MS. PEARSON: Is that sufficient, Your Honor?

5 THE COURT: I don't know what he's gonna say, but I think
6 -- I think you've laid an appropriate foundation for the fact
7 that he will factor parking in in determining marketability.
8 Whether -- I don't know that he's got the expertise to tie the
9 amount of parking in this particular parking lot to any zoning
10 ordinance or -- so, if I'm predicting where you're going, I
11 think you've gotten there, but I -- you know, I don't know
12 what he's gonna say.

13 MS. PEARSON: Sure. Okay.

14 BY MS. PEARSON:

15 Q: In terms of your assignment here included evaluating
16 Gulfstream's parking lot and the impact of the potential
17 building on that parking lot for determining the marketability
18 of Gulfstream; is that correct?

19 A: That's correct.

20 Q: So, in doing that evaluation you first -- you did go to
21 Gulfstream and view a current parking lot, correct?

22 A: That's correct.

23 Q: Okay. If you could tell us a little bit about what you
24 observed about Gulfstream's current parking lot, the current
25 parking situation.

1 A: I visited the restaurant on two occasions and once at
2 lunch and once at dinner, and the parking was pretty taxed at
3 that time, mostly full. And I also wanted to add that on my
4 business card it says restaurant broker; it doesn't say real
5 estate broker. I've had cards that say restaurant broker for
6 20 years. So, I am a real estate broker, but anybody -- if
7 you ask anybody in the area that knows me, they would call me
8 the restaurant broker, not the real estate broker. So, there
9 is a slight difference.

10 Q: Fair enough. And when you went to Gulfstream's parking
11 lot, did you actually -- I'm sorry -- let's call it the Marlin
12 Quay parking lot.

13 A: Right.

14 Q: Did you count the number of parking spaces or ---

15 A: I did. I did. And for the number of seats in the
16 restaurant, it was barely adequate.

17 Q: Okay. And did you do any investigation of other parking
18 options in the area when evaluating the parking needs?

19 A: I did. When you come out of the parking lot and take a
20 right, you can drive for about a mile before you get to the
21 gates of a, apparently, a condominium resort. It has security
22 gates. There's no parking for that mile that the restaurant
23 patrons could use. And if you were to -- that would be going
24 south. If you came out of the parking lot and went -- turned
25 left going north, it's about a mile and a half until there is

1 other restaurants and retail that, I guess, someone could
2 sneak in and park there and walk for a mile and a half back to
3 the restaurant, which I don't see how that could be done. And
4 also, all of the roadways in either direction have no parking
5 signs along the roadway, so you can't park on off-street
6 parking or on-street parking off the side of the road. And
7 so, I don't really see that there is other alternatives.

8 Q: Okay. So, there was no street parking that you observed?

9 A: No.

10 Q: All right. And in terms of what is being proposed for
11 Version 3.0, what did you do to familiarize yourself with the
12 proposed building 3.0?

13 A: I looked at the plans of what -- what the restaurant part
14 would look like when it was finished. And it appears to be
15 quite a large place that's gonna be built.

16 Q: And are you aware that the Version 3.0 has been approved
17 to go in next-door to Gulfstream?

18 A: I had heard that it was in the process of being approved;
19 I wasn't aware that it's been approved.

20 Q: Okay. And if Version 3.0 were to be built next-door, did
21 you come to any conclusions regarding the impact on the
22 marketability of Gulfstream if that happened?

23 A: I think it'd be devastating on the parking because there
24 would be two restaurants, bars, next-door to each other that
25 would be competing for the same parking spaces. So, I see

1 where you're gonna have customers that come to Gulfstream,
2 can't find a parking place, and there are other places to go
3 eat, and they're gonna leave.

4 Q: Okay. And why would that fact be important for you when
5 you're trying to sell the property?

6 A: Well, someone looking at the property to buy would see
7 that the parking was not adequate. And so, I doubt that we'd
8 be able market the property.

9 Q: So, is someone -- is a potential buyer going to recognize
10 with what's going to be going in next-door Version 3.0 that
11 there wasn't going to be adequate parking on the site?

12 A: I don't see how they would not, because what's there now
13 is just barely adequate.

14 Q: Okay. And we talked a little bit about -- we asked you
15 if parking was a factor that you evaluated when looking at the
16 marketability. How would you qualify that? Is that an
17 important factor when looking at the marketability of a
18 restaurant?

19 A: It's the most important. If you don't have parking, you
20 don't have customers, I mean.

21 Q: And is a buyer of a potential restaurant gonna care if
22 they have customers coming to the restaurant or not?

23 A: If they want to make a living, they will.

24 Q: So, if you were trying to sell Gulfstream, once Version
25 3.0 is built next-door, do you think you would have a willing

1 buyer for the restaurant?

2 A: I'm not sure I'd be able to find a buyer for that
3 restaurant.

4 Q: Due to the lack of parking in the parking lot?

5 A: Because the parking is already taxed. And with a new
6 restaurant, it would be inadequate. They're probably gonna
7 lose customers over it.

8 Q: So, in your opinion, there would be no market for the
9 Gulfstream Restaurant once Version 3.0 is constructed; is that
10 correct?

11 A: That's correct.

12 MS. PEARSON: I don't have any more questions, Your
13 Honor.

14 THE COURT: Ms. Golding?

15 MS. GOLDING: May it please the Court. Thank you, Your
16 Honor.

17 CROSS-EXAMINATION OF JAMES MORING BY MS. GOLDING:

18 Q: Mr. Moring, when did you attend the College of
19 Charleston?

20 A: In the '70s.

21 Q: When in the '70s? I attended the College of Charleston.

22 A: Did you? I graduated in '77.

23 Q: Okay. Good. We overlapped a little bit.

24 A: Okay.

25 Q: Mr. Moring, with respect to this assignment, I believe

1 you were hired in November of 2020; is that correct?

2 A: That's correct.

3 Q: And you visited the site, I think you said, in January
4 2021?

5 A: Right.

6 Q: And that was the first time you were ever at this site?

7 A: Yes.

8 Q: Okay. So previously before January 2021, you had never
9 been at this site where to be Marlin Quay store and
10 restaurant, and where Gulfstream Café; is that correct?

11 A: That's correct.

12 Q: Okay. So, you never saw the old building, the old Marlin
13 Quay building and consisting of the marina store and
14 restaurant, have you?

15 A: No.

16 Q: Okay. And you never saw the menu that existed for the
17 Marlin Quay Restaurant?

18 A: No, I -- I did not.

19 Q: And you don't know how long that Marlin Quay Restaurant
20 operated before it was demolished in November 2016, do you?

21 A: I know some people that visited that restaurant and
22 actually a boat captain kept his boat there, so I asked him
23 about it, but I did not go there myself.

24 Q: Okay. So, you wouldn't be surprised to know that that
25 Marlin Quay Restaurant existed some 30 years or maybe at least

1 20 years before November 2016?

2 A: I had heard it was something like that.

3 Q: Okay. And you can't dispute that this Marlin Quay
4 Restaurant, in fact was a full-service restaurant selling
5 alcohol, wine, and beer, and hard liquor, can you?

6 A: No.

7 Q: And with respect to those 20-30 years at Marlin Quay
8 Restaurant existed, Marlin Quay Restaurant utilized or had the
9 opportunity to utilize some of the parking space in that
10 shared parking lot; is that correct?

11 A: That's correct.

12 Q: At the same time, Gulfstream Restaurant had a non-
13 exclusive easement to use some of those parking spaces; is
14 that correct?

15 A: That's what I understand.

16 Q: And those 62 parking spaces, Gulfstream didn't have --
17 has never had an absolute right to use every parking space,
18 every hour of the day, does it?

19 A: I'm not familiar with the lease, but that may be the
20 case.

21 Q: Okay. And with respect to Gulfstream, I think you
22 earlier said you counted the spaces?

23 A: Right.

24 Q: And what was the count you came up with the spaces?

25 A: I believe it was around 65.

1 Q: Sixty-five spaces?

2 A: Yeah.

3 Q: That Gulfstream Café could use?

4 A: That -- well, that's in the parking lot.

5 Q: Okay. And how many spaces did you say were available for

6 Gulfstream Café?

7 A: I guess they could park in any of them.

8 Q: Okay. So, the 65 is what you were saying were available

9 to Gulfstream Café?

10 A: Right.

11 Q: Is that correct?

12 A: I guess so.

13 Q: Okay. And I understood you to say on direct examination

14 that was minimally adequate; is that correct?

15 A: That's correct.

16 Q: Okay. And at no time did Gulfstream Café tell you it had

17 17 additional spaces, its own 17 spaces, did they?

18 A: Where are they? I don't ---

19 Q: Have you -- in fact, Gulfstream Café has never told you

20 it had 17 parking spaces it owns?

21 A: Off of this facility, no; they didn't mention that.

22 Q: And it never told you it had six parking spaces under its

23 building that it uses?

24 A: Yeah. I saw those.

25 Q: Okay. So, if you add 17 and six, so Marlin Quay --

1 excuse me, Marlin Quay -- Gulfstream Café had at least 23
2 parking spaces in addition to the 60-some in the parking lot,
3 is that correct?

4 A: I will take you ---

5 Q: You don't know about that?

6 A: I don't know. I'm being told this, so I'm agreeing with
7 something that you are telling me.

8 Q: Well, understand that you -- you said parking and you're
9 giving an opinion as to marketability based on parking,
10 wouldn't it be important to know how much parking was
11 available to determine marketability?

12 A: You just -- you just added how many spaces?

13 Q: Twenty-three.

14 A: Twenty-three, right.

15 Q: But isn't it important to know how many spaces are
16 available to determine marketability?

17 A: Yes.

18 Q: Okay.

19 A: Now, in determining the marketability, it's important to
20 look at finances of a restaurant; is that correct?

21 A: Yes.

22 Q: And you were not provided any tax returns of Gulfstream
23 Restaurant, were you?

24 A: No.

25 Q: Okay. You were not provided any balance sheet for

1 Gulfstream Restaurant, were you?

2 A: No; I was not.

3 Q: You are not provided any profit or loss statement for
4 Gulfstream Restaurant, were you?

5 A: No.

6 Q: Okay. You were not provided yearly gross receipts for
7 the restaurant, were you?

8 A: No; I was not.

9 Q: You were not provided year-to-date grocery receipts to
10 the last of the month, were you?

11 A: That was not within my scope.

12 Q: But in your website, RestaurantBrokers.info, you have a
13 checklist of the most important things needed to determine
14 marketability.

15 A: Right.

16 Q: And I just read out those, corporate tax returns; isn't
17 that what's on your website?

18 A: Yes.

19 Q: Okay. Balance sheet, that's on -- that's Number 2.

20 A: Yeah, right.

21 Q: So, all these items that have on your website that's
22 important and needed for marketability, none of that was
23 provided to you by Gulfstream, was it?

24 A: That wasn't.

25 Q: If a restaurant year after year shows losses in its tax

1 returns, that certainly is a negative for marketability, is it
2 not?

3 A: It depends on how good of an accountant they have.

4 Q: Well, if you have losses for 10 years that you report on
5 your tax returns, that's not a positive, is it?

6 A: I would have to review the P&Ls.

7 Q: Well, it's certainly a lot better if the tax returns show
8 some income, would it not be?

9 A: Many restaurants ---

10 Q: Please answer my question. Isn't it a lot better if the
11 tax returns year after year reported income?

12 A: It depends.

13 Q: Okay. You're just not going to give on that one, are
14 you?

15 A: Well, I mean, I sell a lot of restaurants that do not
16 have positive tax returns that are profitable.

17 Q: Mr. Moring, you drove the area when you went to see the
18 parking lot, the two times that you went to the Marlin Quay
19 PD; is that correct?

20 A: Yes.

21 Q: Okay. And both those times, did you see the six or seven
22 condominium projects around Gulfstream Restaurant, around that
23 area?

24 A: I didn't observe condominiums.

25 Q: Okay. You didn't count the number of units that were

1 around the Gulfstream Restaurant, did you?

2 A: I did not.

3 Q: Okay. And Mr. Kirk testified, I believe it was
4 yesterday, that there could easily be 4 to 500 units that are
5 around Gulfstream Restaurant in which the unit owners or unit
6 occupants can easily walk to Gulfstream Restaurant; is that
7 correct?

8 A: They probably could, yes.

9 Q: And there's also a house across -- right across the
10 street from Gulfstream Restaurant that has -- that sleeps 33.
11 So, there is a significant number of facilities around
12 Gulfstream Restaurant in which there is -- can be walk-in
13 traffic; is that correct?

14 A: Probably.

15 Q: And this walk-in traffic from all these units is
16 significant as far as income of restaurant serving food, is it
17 not?

18 A: It should be.

19 Q: And Gulfstream Restaurant didn't tell you that many of
20 its patrons are walk-ins, did they?

21 A: I assume there would be, but we didn't talk about it.

22 Q: And Gulfstream didn't tell you that the walk-in patrons
23 do not use the parking lot, did they?

24 A: I think a reasonable person could assume that.

25 Q: And you also saw the marina area, did you not?

1 A: Yes.

2 Q: Okay. And the marina area has boat slips, correct?

3 A: Yes; it does.

4 Q: And there are people that also walk from the boat slips?

5 A: I would imagine they would have to drive to get to their
6 boat.

7 Q: Okay. So, if I get this clearly, Gulfstream, the only
8 thing it told you is that we can't use this parking lot.

9 We'll have 100 percent loss of the parking when this building
10 open; is that what they told you?

11 A: No.

12 Q: No?

13 A: No; they didn't tell me that.

14 Q: Well, they told you -- or you testified that this would
15 be the loss of the parking. If you don't have parking ---

16 A: Well, I should've added adequate parking.

17 Q: But you didn't go and take measurements as to -- you
18 didn't obtain information as to the percentage of parking
19 spaces that were for Gulfstream, percentage for Marlin Quay
20 Restaurant that was there 20 or 30 years before, did you?

21 A: I have not seen the lease, so I don't know if it's
22 divided up like that.

23 Q: Okay. Well, you don't have any information as to the use
24 of the parking lot by Gulfstream Café and the Marlin Quay
25 Restaurant?

1 A: I don't -- I have not seen the lease.

2 Q: Okay. Thank you. No further questions.

3 THE COURT: Any redirect?

4 MS. PEARSON: Yes, sir, Your Honor.

5 REDIRECT EXAMINATION JAMES MORING BY MS. PEARSON:

6 Q: Okay. Ms. Golding asked you some questions about tax
7 returns. Regardless of the taxable income on a tax return for
8 a restaurant, if you don't have parking will you be able to
9 sell a restaurant?

10 A: You would not.

11 Q: Okay. And you have seen the parking situation at
12 Gulfstream with your own eyes, correct?

13 A: Yes.

14 Q: Okay. And do you understand the impact of adding a
15 13,000 square-foot restaurant on that parking situation and
16 the impact on Gulfstream?

17 A: I think it would be devastating.

18 Q: As you previously testified to?

19 A: Yes.

20 Q: Would you buy the Gulfstream Restaurant?

21 A: I wouldn't.

22 MS. PEARSON: No further questions, Your Honor.

23 MS. GOLDING: Just one follow-up.

24 RE-CROSS-EXAMINATION OF JAMES MORING BY MS. GOLDING:

25 Q: Just one follow-up. Isn't it a fact that the Gulfstream

1 Restaurant is not for sale?

2 A: Not that I know of.

3 Q: Thank you.

4 THE COURT: All right. Thank you, sir. You can step
5 down. Thank you.

6 COURT REPORTER: Can you spell your last name, please?

7 MR. MORING: M-O-R-I-N-G.

8 COURT REPORTER: Thank you.

9 MR. BLOOM: Plaintiffs call Steve Goggans.

10 STEVE GOGGANS, HAVING BEEN DULY SWORN,

11 TESTIFIED AS FOLLOWS:

12 THE CLERK: Thank you. Please be seated. State and
13 spell your first and last name.

14 MR. GOGGANS: First name Steven, S-T-E-V-E-N, Goggans, G-
15 O-G-G-A-N-S.

16 DIRECT EXAMINATION STEVEN GOGGANS BY MR. BLOOM:

17 Q: Mr. Goggans, my name is Simon Bloom. I represent the
18 plaintiff in this case.

19 As I understand it, you were sworn in as a county
20 councilman for Georgetown County in 2014?

21 A: Correct; yes, sir.

22 Q: And as a county councilman you now have voting
23 authorities and input into the budget for the Planning
24 Department, do you not?

25 A: We approve or ratify the budget that the administrator

1 gives us.

2 Q: You mean the County Administrator?

3 A: County Administrator. She prepares the budget.

4 Q: And that budget includes the Planning Department's
5 budget, does it not?

6 A: Yes; it does.

7 Q: And before 2014, did you have any other official role
8 with Georgetown County?

9 A: I've served on various non-paying boards and commissions
10 over the years.

11 Q: For the County?

12 A: I was a county appointee for their Appearance Board, and
13 in the past the Historic Commission.

14 Q: So, those were units or subdivisions of the County;
15 they're like volunteer boards?

16 A: Volunteer boards, yes, sir.

17 Q: And then at some point after that service -- and for how
18 many years did you do things like that before you were a
19 councilman?

20 A: I've done them for the County and other community
21 entities my whole career.

22 Q: And oftentimes, when you get ready to run for councilman
23 or commissioner, it's nice to have some other -- it's nice to
24 have -- be able to show the voters that you've already
25 participated in some of those volunteer boards for that

1 county, correct?

2 A: I'm sure it doesn't hurt.

3 Q: And at some point after doing that volunteer work for the
4 County, you ran for councilman, correct?

5 A: Yes, yes.

6 Q: And you won. Did you run opposed or unopposed?

7 A: I was opposed.

8 Q: And you were installed in 2014. During the time that you
9 were both a volunteer for Georgetown County on those
10 commissions you've described, and then in your capacity as a
11 councilman starting in 2014, I take it to you would run into
12 Boyd Johnson in the hallway or being around the ---

13 A: Sure.

14 Q: And from time to time, you might talk zoning things with
15 Mr. Johnson as you were walking around the County building,
16 correct?

17 A: Yes, although that was pretty infrequent.

18 Q: For example, there was once an issue regarding a text
19 amendment dealing with penthouses on staircases; does that
20 sound familiar? Stairwells?

21 A: Yes, it does.

22 Q: There was a discussion amongst the County folks that
23 height restrictions should or shouldn't exclude penthouses
24 that sit on the top of a stairwell when you're doing the
25 height limitations. Do you remember that continue -- not

1 controversy but issue?

2 A: I do, relative to ADA and other considerations.

3 Q: And we don't -- I don't want to get too far down that
4 rabbit hole, but I use that as an example of something that
5 you might on more than one occasion have talked to Mr. Johnson
6 about just informally on a -- on those occasions where you
7 might've run into him.

8 A: If we perceive a problem in the community, yeah,
9 occasionally -- not often but occasionally mention it, sure.

10 Q: And that was one example of the things that you might've
11 mentioned to Mr. Johnson?

12 A: Yes.

13 Q: And I -- I'm not sure she picked up your answer.

14 A: Yes.

15 Q: And the distinction I'm trying to make, so that my
16 question is clear, is that you had official interactions with
17 Mr. Johnson such as when he was presenting as a planning
18 director to a council meeting, that would be what I consider
19 an official interaction with him.

20 A: Correct.

21 Q: When you're sitting up in the bench and he's sitting --
22 standing like I am, and then you just have informal
23 interactions with him because you both go to the same office,
24 right?

25 A: Yes.

1 Q: And did you have an office or a chambers or a place where
2 you could hang your hat when you came to the County building?

3 A: No.

4 Q: They didn't have a place for the councilmembers to hang
5 out while you were there?

6 A: No, not that I'm aware of anyway.

7 Q: Well, you'd know. We've got to put that in the next
8 budget. Johnson had an office though, clearly, at the County
9 building?

10 A: Yes. He had full-time staff.

11 Q: And it just so happened that when you ran into Mr.
12 Johnson to talk about this elevator shaft interaction with the
13 height restrictions and the zoning code, that you had at least
14 one client that was interested in the result of that text
15 amendment dealing with that height limitation issue, correct?

16 A: I'm uncertain.

17 Q: Well, isn't it true that at the time you were talking to
18 Mr. Johnson about whether to count penthouses on the top of
19 elevator shafts that that issue directly applied or impacted
20 Palmetto's redevelopment of Marlin Quay?

21 A: I knew Palmetto had an elevator, and I knew they had an
22 elevator shaft and penthouse, but so did several in the past
23 residential clients that I had, and other architects had
24 contacted me about the issue.

25 Q: So, the answer is yes?

1 A: Yes.

2 Q: At the same time you were talking to Mr. Johnson about
3 this one example of an elevator shaft, penthouse with the
4 height restrictions, you, at that same time, represented Mr.
5 Lawhon and Palmetto in his efforts to get his building
6 approved with respect to that building for height limitation,
7 right?

8 A: I wasn't focused on the building at the time. I had no
9 involvement in MQ2 or 3.

10 Q: I understand that your testimony. I'm just asking if
11 they happened at the same time. You were having conversations
12 with Johnson about height restrictions and its application to
13 elevator shafts, while at the same time at least your firm was
14 processing applications for Palmetto to build it's building
15 with an elevator shaft with a penthouse on the top of it.

16 A: It's possible in the context of me not being personally
17 involved in the building design.

18 Q: Let's talk about some of the things that county
19 councilmen have authority to do. How many appointees do you
20 get to the board of zoning appeals?

21 A: One.

22 Q: And how many appointees do you get to the Planning
23 Commission?

24 A: One.

25 Q: And so, during the time when you testified to the Board

1 of Zoning Appeals on this particular case, was your appointee
2 sitting on that BZA?

3 A: He was.

4 Q: You can appreciate the discomfort that that might cause,
5 or at least the appearance of impropriety?

6 A: I made a mistake.

7 Q: And furthermore, you have -- what was the name of your
8 BZA appointee?

9 A: I don't know.

10 Q: Well, how many of you appointed over the last eight
11 years?

12 A: One.

13 Q: And what was his name?

14 A: I don't know.

15 Q: How did you -- you don't remember his name or do you not
16 know him?

17 A: He was a -- I've never met the man. He was a rollover
18 candidate from my prior ---

19 Q: Predecessor?

20 A: Predecessor. And we have a hard time filling
21 appointments within the County. So, if somebody hasn't
22 misbehaved or they haven't done something errant, when they
23 come up for appointment, we're happy to roll over the
24 appointment.

25 Q: That's what you mean by rolling them over. He stayed on?

1 A: That's correct.

2 Q: I got it. And ---

3 A: And I do want to make one correction, I have appointed
4 somebody fairly recently to succeed that gentleman.

5 Q: And who was that person?

6 A: Cathy Bessie (spelled phonetically).

7 Q: So, you know Cathy?

8 A: I do know Cathy.

9 Q: And do remember the Planning Commissioner that you
10 appointed back -- that would've been in place between 2016 and
11 2018?

12 A: Yes, Johnny Weaver.

13 Q: Say it again.

14 A: Johnny Weaver.

15 Q: And so, when Mr. Weaver sat on the Planning Commission in
16 2017, when the Planning Commission reviewed 2.0, that was your
17 appointee, wasn't it?

18 A: Correct.

19 Q: And Mr. Weaver knows that you own SGA Architects, doesn't
20 he?

21 A: Correct.

22 Q: Does he work at SGA?

23 A: No. Works for the Litchfield company?

24 Q: Was that a client of SGAs?

25 A: No. They have been in the past, but not a current

1 client.

2 Q: And that's a fair distinction. So, a former client of
3 SGAs you appointed to the Planning Commission. And when 2.0
4 comes to the Planning Commission, your appointee that knows
5 you and knows SGA is reviewing the plans that are all stamped
6 with SGA on them, correct.

7 A: I presume so; yes, sir.

8 Q: There's no doubt that Johnny knew when he voted for 2.0
9 and 3.0, that those were your company's plans.

10 MS. GOLDING: Your Honor, this is improper questioning.
11 He can't ask the witness what another person knew.

12 Q: The plans that were provided to the Planning Commission
13 include on the right a stamp that ---

14 THE COURT: Rephrase your question. I think you can get
15 there.

16 MR. BLOOM: I think you understand the point.

17 THE COURT: I do.

18 MR. BLOOM: I'm not gonna belabor it.

19 THE COURT: I do.

20 BY MR. BLOOM:

21 Q: All right. So ---

22 A: Probably would've received a report actually and not the
23 plans.

24 Q: Well, 35 is -- don't go too far outside of the lines, Mr.
25 Goggans. 35, in fact, is the report and attaches the plans.

1 I can show it to you if you'd like.

2 A: Fair enough. Fair enough. I accept your point.

3 Q: The report attaches all of your floor plans, your
4 building calculations. All of that is attached to the
5 recommendation that is provided to the Planning Commission; is
6 that consistent with your understanding?

7 A: It's a little unusual for a zoning consideration, but
8 yeah, I'll accept your point.

9 Q: Okay. And in this instance, with Johnny Weaver on the
10 Planning Commission for 2.0 and 3.0, he did not recuse himself
11 from voting, did he?

12 A: I don't -- to the best of my knowledge, he didn't.
13 Although, I didn't -- I don't know how he did vote.

14 Q: Okay. I think we've already addressed this, but did I
15 guess right? Does SGA stand for Steve Goggans Associates or
16 Architects?

17 A: Associates.

18 Q: And in January of 2016, Dr. Mark Lawhon hired you to be
19 his architect for the redevelopment of Marlin Quay, correct?

20 A: Yes, sir.

21 Q: And you were intimately involved in what we've been
22 calling 1.0, correct?

23 A: Yes, sir.

24 Q: And you've been here all week?

25 A: Yes, sir. Except for the first day. Go ahead.

1 Q: You were what you have called the design architect for
2 1.0, correct?

3 A: Yes, sir.

4 Q: And you were heavily involved in the development of the
5 plans, correct?

6 A: Yes, sir.

7 Q: And heavily involved with the interfacing with the
8 County, correct?

9 A: Yes, sir.

10 Q: And you -- the Judge has heard all the testimony about
11 meetings with Boyd and with Holly and with you and your team.

12 A: Yes, sir.

13 Q: You had multiple interactions in that regard?

14 A: Yes, sir.

15 Q: In-person meetings, phone calls, email correspondence,
16 and written correspondence, correct?

17 A: Mostly email and phone calls, a couple of face-to-face
18 meetings.

19 Q: Do you remember writing a letter to Boyd and Holly
20 advocating for their treatment of the application in 1.0 to be
21 a minor amendment?

22 A: I remember discussions surrounding that. I'm not -- I'd
23 have to have my memory refreshed as to the exact letter or
24 email.

25 Q: Okay. We'll get to it. So, if we just talk about this

1 1.0 timeframe, this was the 2016 timeframe. You started in
2 January of 2016, and one of the topics that you were
3 discussing with the Planning Department was whether it would
4 be a minor or major, correct?

5 A: Yes, sir.

6 Q: And you're -- at least you were advocating on behalf of
7 the owner the preference for a minor, correct?

8 A: Yes, sir.

9 Q: During that same discussion or discussions, let's call it
10 the spring of 2016, you were negotiating, interacting with the
11 County Planning Department around parking requirements,
12 correct?

13 A: Yes, sir. That would've been part of the considerations.

14 Q: Part of the County's consideration for approval of 1.0
15 would have been parking requirements?

16 A: They would've looked at that amongst other issues.

17 Q: By the time 2.0 and 3.0 were before the County for
18 rezoning -- a minute ago you said you didn't have -- I don't
19 know if it was much or anything to do with 2.0 and 3.0
20 personally, but by the time they were before the County for
21 rezoning, a lot of the groundwork for the parameters for the
22 design had been established, so there was not likely much SGA
23 interface with the Zoning Department; is that right?

24 A: Well, again, not being very involved in 2.0 or 3.0, I
25 can't say for sure, but a lot of the parameters were

1 definitely established in 1.0.

2 Q: Do you remember when your deposition was taken in this
3 case as a 30(b)(6) representative and in your individual
4 capacity on September 29th, 2021?

5 A: Repeat the question, sir.

6 Q: Do you remember being deposed in this case?

7 A: Yes.

8 Q: Do you mind if I just slide around?

9 A: No.

10 Q: I'm gonna read to you the question, Who at SGA was tasked
11 with staffing the project with planning staff in Georgetown
12 County? Would you please read your answer?

13 A: Versions 2 and 3, a lot of the groundwork or parameters
14 for the design had been established. So, I don't know that
15 there was that much interface with the building department or
16 the Zoning Department for the ordinance -- it's an incomplete
17 sentence, but reading from the text.

18 Q: Yes. Thank you. That's all. Thank you.

19 We asked what you meant by parameters and one of the
20 things that you think when you talk about parameters are
21 parking formulas, correct?

22 A: That would be part of it presumably; yes, sir.

23 Q: So, when you say that most of the parameters have been
24 established in the negotiation of 1.0 and carried on in 2.0
25 and 3.0, one of the things that you're talking about is the

1 establishment of the parking formulas, correct?

2 A: That, square footage of the building, those kinds of
3 things, certainly.

4 Q: But the answer to my question is yes?

5 A: Yes.

6 Q: You wanted to establish early on things like parking
7 formulas, so that you didn't have to revisit them in 2 or 3,
8 right?

9 A: Well, I didn't know early on that there would be a 2 and
10 3, but at the time ---

11 Q: That's a fair point.

12 A: Okay.

13 Q: But you're -- that's a fair point.

14 The parking formulas for Georgetown County can be found
15 in Article XI of the zoning code, correct?

16 A: Correct.

17 Q: Now, when you were negotiating with Holly and Boyd, you
18 arrived at an agreement that the way the planning staff would
19 interpret the parking requirements on 1.0, would be based only
20 on heated square footage, correct?

21 A: And seating.

22 Q: Excuse me?

23 A: And seating.

24 Q: Okay. And you wouldn't count interior unheated space
25 when calculating parking with 1.0?

1 A: Correct.

2 Q: Thank you.

3 You would not count decks, or porches, or outside bars,
4 or other eating areas, correct?

5 A: Well, bar and any additional seating would've required
6 extra parking. And I remember an email exchange with Holly
7 where she stipulated that. So, if we added seating beyond the
8 110 outside of the heated square feet, we had to take that
9 into account with the added parking.

10 Q: And when you were negotiating, you were also able to
11 convince the staff, Holly and Boyd, that there was no need to
12 calculate the parking loads required by the other uses of the
13 vehicle, correct?

14 A: I think -- I don't think there was convincing. I think
15 they informed me.

16 Q: You certainly viewed that as a positive for your project?

17 A: Well, certainly.

18 Q: Because we can all agree that if you stack the parking
19 loads of the other uses in that PD, there's no way there's
20 enough parking, correct?

21 A: I'm not willing to stipulate that, actually.

22 Q: You're not going to stipulate to that?

23 A: No.

24 Q: Even if you apply Article XI?

25 A: This is a PD, and there's shared parking here. I don't

1 think you stack the parking requirements per the uses one-by-
2 one-by-one, because they are overlaps. They're different
3 uses, they're used different times of the day. Boaters come
4 and go, there's a lot of walk-up traffic potentially, et
5 cetera.

6 Q: All right. You never conducted what's called a shared
7 parking analysis pursuant to Article XI at any time during the
8 course of this project, from 2016 till today?

9 A: Not a formal calculation, no, sir.

10 Q: In April 2016, you updated Mr. Lawhon and said that you
11 had received guidance from Holly that the unseated -- unheated
12 space would not count towards parking requirements, correct?

13 A: Correct.

14 Q: And you said that Holly does say that if we count porches
15 that we need more parking, correct?

16 A: Seating on the porches, yes.

17 Q: She didn't say anything about seating. She just said if
18 you add porches.

19 A: Well, that was the implication that I interpreted anyway.

20 Q: Didn't Dr. Lawhon tell you how happy he was to hear about
21 that, because he wanted to add more porch space?

22 A: I can't recall his response, but I'm sure he was pleased.

23 Q: You knew at the time that you were working on this
24 project for him that he wanted to have really big decks for
25 this new restaurant, correct?

1 A: Well, some decks were required for circulation, egress,
2 ingress, you know, which was -- if we'd have had to have
3 incorporated that into the heated space, it would've been
4 problematic. So, some of it was necessary for the functioning
5 of the building.

6 Q: I understand, but that's not what I'm asking about. I'm
7 asking about decks where people would stand or sit with drinks
8 or food in their hands outside on the deck.

9 A: I'm sure Dr. Lawhon would like more deck rather than
10 less; yes, sir.

11 Q: And that's because you can move more people in there and
12 sell more drinks and more pieces of fish and make more money,
13 correct?

14 A: I would have to speculate, but presumably, yes, sir.

15 Q: And over the course of your interaction with him, he told
16 you that he wanted to have more deck space and was hoping that
17 that would not require additional parking spaces, correct?

18 MS. GOLDING: Your Honor, that solicitation is hearsay.
19 I believe that that would be improper.

20 MR. BLOOM: It goes towards this witness's state of mind
21 as to what his efforts were towards securing an agreement with
22 the County that they would only count heated space when they
23 were measuring for parking requirements.

24 THE COURT: Overruled. Go ahead.

25 A: I don't recall him being overly concerned about parking

1 or linking it to the parking. I do remember in Version 1
2 having some seating on one of the porches, and we were -- we
3 made an effort to find additional parking for that seating.
4 That's why we grew the parking by three or four spaces over
5 what was originally there.

6 Q: I understand that regardless of what Dr. -- or Mr. Lawhon
7 wanted or didn't want with respect to parking, you as a very
8 good architect having done this for very long time knew
9 exactly how important it was to ensure that you had sufficient
10 parking per the code in order to be able to build this new
11 building. It was front and center on your mind, correct?

12 A: Well, to the extent we were adding additional seating on
13 decks, yes.

14 Q: In fact, one -- you considered it to be somewhat of
15 victory when Holly confirmed that they would only count heated
16 square footage in the new building when calculating the
17 parking requirements.

18 A: I was pleased we were being given definition.

19 Q: All right. And if you could turn your attention to
20 Exhibit 6, please.

21 A: Okay. Is that in the white book or the black book?

22 Q: It'll come up on the screen.

23 A: Oh, okay. Got it. Got it.

24 Q: Do you see it?

25 A: Not yet.

1 Q: All right. Exhibit 6 is the bottom half of it is an
2 email from you to your clients Mark and Chris Lawhon, May 4th,
3 2016, at 4:18 p.m., it appears to be kind of an update email
4 to your clients. Would you agree with that?

5 A: Yes.

6 Q: And you write referencing some questions that you would
7 ask Boyd and Holly in a recent meeting and a prior email, and
8 you -- starting with some of your consultant asked questions
9 -- I guess Lawhon had a consultant before you. Is that what
10 you're referring to there?

11 A: Where are you -- let's see -- some of the questions are
12 the same your prior consultant asked. Yeah, that would've
13 been David Victoria.

14 Q: And then you say such as how allowable or square feet can
15 we have? Do you see that?

16 A: Yes

17 Q: You said Boyd and Holly are friends by the way, and they
18 are usually helpful in my efforts. So, in this instance, you
19 are basically touting your relationship with the Planning
20 Department to your client, are you not?

21 A: Holly and Boyd I'd, first of all, known on a long time.
22 And we've done -- I've had a lot of projects in for their
23 review. But what I am actually implying or meaning is that
24 they respond professionally, they're always helpful, and
25 they're one of the better planning boards we -- or staffs we

1 work with when compared to other communities and other
2 entities.

3 Q: So, then you said, so I think we've got a good
4 interpretation here with one exception. Holly is saying that
5 the restaurant must be the size of the original restaurant.
6 Do you see where I'm reading?

7 A: I do.

8 Q: You then say, in our latest sketch, the restaurant and
9 kitchen are about 1,000 square feet larger than the original.
10 I talked with Boyd today, and he and Holly are gonna see if
11 they can find a way to, quote/unquote, help. Do you see where
12 you wrote that?

13 A: Yes.

14 Q: In the meantime, Boyd suggested I do a parking analysis
15 based on the current sketch. Is that what Boyd did, told you
16 to do a parking analysis?

17 A: Apparently.

18 Q: And that was in May of 2016. And where would you go to
19 conduct such a parking analysis? What would guide you in
20 conducting such a parking analysis?

21 A: That's a good question, and I'm not sure I know the
22 answer. We might refer to the ordinance, but as I mentioned
23 earlier, we never did a shared parking analysis.

24 Q: I understand. I'm not asking about shared parking at
25 this point. I'm asking about parking required for just the

1 subject building, and I can provide you with the answer
2 because if you'll turn to Exhibit 7, you'll see what your guy
3 Patrick Williams did in terms of conducting a parking
4 analysis.

5 A: Okay. And Exhibit 7 would be in one of the books or on
6 the screen?

7 Q: The bottom email was a May 12th, which was just a few
8 days later. It's a week later.

9 A: Right.

10 Q: Where Patrick is sending you basically the results of
11 this parking study.

12 A: Right.

13 Q: It says Marlin Quay parking study in the subject line,
14 correct?

15 A: Right.

16 Q: And Patrick, who I guess was working for you at the time?

17 A: Yes.

18 Q: Apparently, went to Article XI to conduct his parking
19 study based upon the proposed square footage of the restaurant
20 and retail space, correct?

21 A: Correct.

22 Q: And in fact, Patrick looked at the proposed
23 kitchen/dining of 30 -- of 3,060 feet, and he says it does not
24 include the outdoor deck and bar. He calculates 1 per 100
25 square feet, which is exactly the requirement in Article

1 1102.1, correct?

2 A: Correct.

3 Q: And he calculates that that would require or result in 31
4 parking spaces. You did not say to Patrick, woah, woah, wait
5 a minute, Patrick, there's gonna be seating out on the decks.
6 You need to calculate the number of parking spaces that the
7 outdoor seating would require, did you?

8 A: No.

9 Q: He didn't include that in this parking study, did he?

10 A: No. There was -- as I recall in Version 1, there was
11 very little seating on the exterior decks.

12 Q: Be that as it may, I don't know what very little means,
13 but it was nowhere mentioned even after Holly told you that if
14 there was gonna be outdoor seating on the decks, you need to
15 accommodate it with additional parking, correct?

16 A: Which is why we did -- added the additional spaces a
17 little bit later in the process.

18 Q: But as far as this parking study is concerned ---

19 MS. GOLDING: Your Honor, he's been cutting off the
20 witness in ---

21 BY MR. BLOOM:

22 Q: Did you have anything else to say, be I don't think I cut
23 you off at all.

24 THE COURT: Hold on. Let's not talk over each other.

25 That's making her job harder than it needs to be. So, if --

1 answer the question he asked and then you can ask ---

2 A: The question one more time, please.

3 THE COURT: Yes, sir.

4 BY MR. BLOOM:

5 Q: I don't remember it. You answered it. I'm happy with
6 your answer.

7 MR. BLOOM: Judge, you have anything else for follow-up
8 on that question.

9 THE COURT: I do not.

10 MR. BLOOM: Okay. I don't either.

11 MS. GOLDING: I just -- Your Honor, I think it's
12 important that Mr. Bloom does not cut the witness off.

13 MR. BLOOM: Judge, I'm not gonna be lectured to by
14 counsel about cutting off.

15 THE COURT: Well, well ---

16 MR. BLOOM: We're having a very pleasant discourse here.
17 I haven't intended to cut off the witness.

18 THE COURT: I'm -- like I said, I'm more concerned about
19 two people talking at once and that has occurred. And that's
20 -- it happens in every case that's tried. So, we're gonna try
21 and minimize that. So, if the witness is answering, let him
22 complete his answer before you ask your next question. And
23 that's to maintain an accurate record.

24 MR. BLOOM: Yes, sir.

25 BY MR. BLOOM:

1 Q: After Patrick provided you with his Marlin Quay parking
2 study applying Article XI to restaurant and to the marina
3 store, you forwarded that to Holly and Boyd. Do you see that
4 in the top half of the email?

5 A: Yes.

6 Q: And you told them, it appears we have ample parking for
7 the restaurant as currently designed plus the store. We did
8 not include the decks in this analysis, which may require an
9 additional two or three spaces. You didn't do an analysis of
10 the outdoor seating at this point, so you don't know how many
11 additional spaces are required, correct?

12 A: Well, we were still studying the decks at that point, I
13 think, as best I can recall.

14 Q: And while you were studying it, you and Patrick, Holly
15 and Boyd all referred to Article XI in the calculations and
16 the formula set forth in Article XI, correct?

17 A: In this instance, we did.

18 Q: Yes?

19 A: Yes.

20 Q: Would you be kind enough, please, to turn to Exhibit 8?
21 Exhibit 8 is a letter from you to your client several months
22 later. And at this point, it appears that you have solved the
23 heated square footage in the parking requirement issue, and
24 you are writing to your client, it looks like, additions to
25 scope, which sometimes happens. Architects, contractors, will

1 start with the initial scope, it's gonna cost X, and the scope
2 expands, and you say, hey, wait a minute; is gonna cost Y.
3 Item Number 6, you talked a minute ago about not knowing how
4 much the outdoor space was. But Item Number 6 here, you talk
5 about an Extensive Porch, capital E and capital P, that's your
6 -- those are your words. That's more than just a little bit
7 of porch, isn't it?

8 A: Extensive is more than a little, yes.

9 Q: Okay. The next is -- the next section of this letter is
10 that you are -- well, I'm gonna just read it. Apart from the
11 design changes listed above, I personally engaged in numerous
12 negotiations with local regulatory authorities resulting in
13 favorable outcomes for a variety of issues. The regulatory
14 authority here is the Planning Department, correct?

15 A: Right, right.

16 Q: That's Holly and Boyd?

17 A: That was part of it. There were building officials and
18 others.

19 Q: The first item that you pointed out to Mr. Lawhon was
20 that you got the approval for the -- strike that. The
21 approval for the porch did not count against the 4600 square
22 feet that was previously negotiated. Do you see where it says
23 that?

24 A: Yes.

25 Q: So, above Item 6, you said it was an extensive porch that

1 was gonna be added. And on Item 1 below that you got an
2 approval of the porch did not count against the 4600 square
3 feet. And the importance of the 4600 square feet is that's
4 what was driving the parking count, correct?

5 A: Right, the heated square footage, the 4600 feet was
6 driving the parking.

7 Q: Driving the parking. Have you ever heard the term
8 parking load? Am I the only one that knows what parking load
9 is?

10 A: I've probably heard it, yes.

11 Q: Okay. I might've dreamed it up. So, then it says this
12 item had to be negotiated in consideration of local parking
13 requirements. Do you see where you wrote that?

14 A: Yes.

15 Q: And the local parking requirements that you're referring
16 to go back to the emails we just looked at, which is Article
17 XI, correct?

18 A: We used Article XI as a reference, apparently.

19 Q: Now, if you'll turn the page to Item Number 2, you see
20 where you've written to him that you also got approval for
21 confirming that the existing parking, which is substandard,
22 would comply with the zoning requirements in terms of size of
23 stalls, driveways, and green space. Again, zoning
24 requirements there, you're referring to Article XI, correct?

25 A: And other standards.

1 Q: So, the answer is yes, and other standards?

2 A: Yes.

3 Q: And when you talk about the parking lot being
4 substandard, it's -- part of the reason that it is substandard
5 is because you got a 7,000 square-foot Gulfstream Restaurant,
6 60 marina slips, and now you're getting ready to add a 13,000
7 square-foot new building. Isn't that how it makes it
8 substandard, one of the reasons?

9 A: Well, I think I'm actually referring here to the
10 geometric qualities of the parking lot, that's the stall
11 widths, depths, the driveway space, amount of green space are
12 substandard from what we would've done today.

13 Q: Let's look at Item Number 3. You're talking about, to
14 your client, that you've got the approval to do a full second
15 story unconditioned and designed for future expansion. So,
16 what I understand that to mean is you got the Planning -- you
17 got the Planning Department to agree to allow you to build a
18 whole additional floor that's unheated, that doesn't count
19 against the 4600 original building, right?

20 A: Yes.

21 Q: So, you could say like Mr. -- you heard Mr. Johnson say,
22 you heard Ms. Richardson say it, the apples-to-apples thing we
23 kept talking about. Oh, no, we're not increasing the heated
24 square footage in our new building. We may be adding an extra
25 9,000 square feet, but we're not increasing any heated square

1 footage, and that is the second story that you're talking
2 about here in 1.0, is it?

3 A: It was actually an attic. The building was long and
4 linear, and when we put an A-frame roof over it or a gabled
5 roof, we had a fairly substantial attic space. So, the
6 question became can it -- does that have to count or not?

7 Q: I think he wanted to use that for maybe as an inn or
8 something down the road. Didn't he want to have some
9 residential use up there?

10 A: We absolutely did a number of studies with -- that showed
11 observation towers, and inns, or rooms, et cetera. But all
12 those were in the context of just understanding what could've
13 been done. He understood all of the regulatory implications
14 and major changes, and more property might have to be -- he
15 was actually thinking about acquiring property across the
16 street to add to this PD. So, yeah, we did a lot of different
17 hypotheticals.

18 Q: Okay. When you get to the end of your letter, you are
19 asking basically for a few modifications in the amount of the
20 additional 72 grand.

21 A: Correct.

22 Q: Is that right?

23 A: Yes, sir.

24 Q: And that's what you felt like you had done some good
25 things that were beyond the scope, you had gone above and

1 beyond, and you wanted more money, right?

2 A: We had definitely gone way beyond the original scope that
3 was agreed to.

4 Q: But not just did you go beyond the scope, you had some
5 victories. I read this letter as 1 through 8 are going beyond
6 the scope, you know, we call for a 2,000 foot building and
7 you're asking me to design a 4,000 foot building. And Items 1
8 through 6 is kind of regulatory victories you get with that.

9 A: Every amount that we build was documented with -- by time
10 and timesheets, and it was for professional work accomplished.
11 We did innumerable studies, we had considerable foundation
12 requirements and issues. In the original agreement that I
13 prepared for Mark Lawhon was continuing David Victoria's work
14 which turned out to not be -- we trashed that after a while.
15 So, this was -- we had to start over, and we had to do a lot
16 of other stuff in addition.

17 MR. BLOOM: Tender 8, Your Honor.

18 MS. GOLDING: That is with respect to Version 1, Your
19 Honor, and that would be my soul objection.

20 THE COURT: All right. I'm gonna admit Plaintiff's 8
21 over Defendants' objection.

22 PLAINTIFF'S EXHIBIT NUMBER 8

23 ADMITTED INTO EVIDENCE

24 MR. BLOOM: Tender 6.

25 MS. GOLDING: The same objection, Your Honor.

1 THE COURT: All right. 6 is admitted.

2 PLAINTIFF'S EXHIBIT NUMBER 6

3 ADMITTED INTO EVIDENCE

4 BY MR. BLOOM:

5 Q: How many hundreds of thousands of dollars has Palmetto
6 gave to SGA over the course of this project?

7 A: I honestly don't know.

8 Q: Is it more than 200,000?

9 A: It's possibly more than 200,000.

10 Q: Is it as much as 500,000?

11 A: I doubt it's that much.

12 Q: So, maybe somewhere between 2 and 5?

13 A: I would think closer to 2, but I'm guessing. I didn't
14 check our billing.

15 Q: I'm gonna move forward a little bit in the timeline to
16 when you learned that there was a piece of litigation in this
17 courtroom regarding the easement between Palmetto and
18 Gulfstream, you came to learn about that?

19 A: Yes, sir.

20 Q: And you learned of the judge and jury decision with
21 respect to that case in 2018?

22 A: Yeah, mainly through my client, but yes, sir.

23 Q: Yeah. And that's all I'm asking. At some point you had
24 to go back to the drawing board is the point.

25 A: Correct, correct.

1 Q: And you had to come up with 3.0, correct?

2 A: Correct.

3 Q: And you had to change the building plans in order to fit
4 the footprint and other things in order to reapply for 3.0,
5 correct?

6 A: Yes, the firm did; uh-huh, (affirmative response).

7 Q: So, your team did that, and I think, in fact, you said
8 the firm did, but you redefined the parameters within which
9 you had to design the building, correct? You personally?

10 A: Well, again, some of the parameters were established in
11 Version 1, but I did nothing regarding Version 2.

12 Q: I'm asking between 2 and 3.

13 A: I don't recall being involved between 2 and 3 either.

14 Q: I want to get to that in one second, but I want to make
15 sure I understand when you say that some of the parameters
16 have been established from Version 1, that included the
17 parking formula, correct?

18 A: Parking square footage, those things.

19 Q: That was all set from your perspective, correct?

20 A: Correct.

21 Q: And from the Planning Department's perspective?

22 A: Correct.

23 Q: I'm directing your attention to Page 35, Line 11. Do you
24 see where I asked about the court order on Line 11. We asked,
25 Did you communicate with other employees at SGA regarding the

1 court order and the impact on the design of another iteration
2 of the Marlin Quay project? Answer?

3 A: I would have likely been given or was the one that gave
4 direction regarding the Court order and made the project
5 assignments and redefined the parameters within which we had
6 to design the building.

7 Q: So, does that help to refresh your recollection that, in
8 fact, after the 2.0 after the order came in from this Court
9 that you in fact did redesign the parameters for the building?

10 A: Well, there had to be some transition. And once -- but
11 the goal was to delegate it and that was probably the process
12 of delegating, but again had no subsequent involvement in
13 Versions 2 or 3.

14 Q: Now I appreciate your earlier testimony about how you
15 made a mistake and none of these next questions are intended
16 to rub your nose in it. But I do need to ask you a few
17 questions.

18 MR. BLOOM: Something funny about this?

19 THE COURT: I didn't hear anybody laugh.

20 MR. BLOOM: I thought I heard somebody ---

21 THE COURT: I think it was sigh.

22 MR. BLOOM: There's something going on behind me.

23 THE COURT: Just that Ms. Golding stood up.

24 MR. BLOOM: Is there an objection that we should be
25 dealing with?

1 MS. GOLDING: Yes, I -- yes, Your Honor. You know, we
2 have in our motion in limine, we requested that any malice
3 with regard to the grievance filed by Gulfstream, the Ethics
4 Commission, that all that be inadmissible. And if Mr. Bloom
5 is going down that road at that time -- at this time, I would
6 request -- renew our objection as to that course of
7 examination, Your Honor.

8 MR. BLOOM: The motion in limine was moved, Your Honor
9 ruled on it and did not preclude me from exploring this. I
10 just couldn't -- I think you said I couldn't take an order and
11 relitigate this issue.

12 THE COURT: Well, and I think it's certain -- that issue
13 is certainly admissible to show any bias or motive on Mr.
14 Goggans's part. So, Mr. Bloom, you know, I think it's
15 admissible for those -- on those grounds, so I would limit
16 your testimony to highlighting -- and it kind of dovetails as
17 to what you've been doing here this morning, you know, the
18 interest in him delegating. So, I think it is admissible,
19 just we don't need to get into the guts or how it happened,
20 that it did happen, and I do think it's relevant for those two
21 reasons.

22 BY MR. BLOOM:

23 Q: Over the course of your time as a councilman, starting in
24 2014, would you receive, or did you receive briefings for
25 advice regarding the code of ethics and how they dealt with

1 counsel people?

2 A: No. We -- I did go to one seminar when first elected
3 with the Association of Counties and meeting, and that was the
4 extent of it. And unfortunately, it didn't speak to conflicts
5 of interest before appearing before the boards or commissions.
6 Arguably, should've known that but I didn't.

7 Q: And before, so there was a complaint filed, we've already
8 talked about it -- there was a complaint filed was an
9 investigation and the State Code of Ethics determined that
10 there was probable cause to warrant an evidentiary hearing?

11 A: Yes.

12 Q: And that evidentiary hearing was scheduled. But before
13 that hearing took place, you and your attorney entered into an
14 agreement with the State; is that right?

15 A: I was investigated, interviewed by the Ethics Commission,
16 and then entered into consent order with them.

17 Q: And that consent order, which is Exhibit 57, the
18 Commission found you in violation of one count of Section 8-
19 13-740(a)?

20 A: Correct.

21 Q: And then you were sanctioned with a fine and you were
22 also given a written warning, correct?

23 A: \$1,000 fine and a warning for attending the BZA meeting
24 where I'd made an appointment.

25 Q: And you now understand that you don't -- you said you

1 made a mistake, but you understand the impropriety of
2 representing a particular owner, visa vie, a department, like
3 the Planning Department that you not direct but ultimate
4 control over?

5 A: I've acknowledged it's a mistake, and yes, I do
6 understand.

7 Q: And you will never do it again?

8 A: No, of course not.

9 MR. BLOOM: Those are my questions, Your Honor.

10 THE COURT: All right. Ms. Golding?

11 MS. GOLDING: Would you like to take a lunch break now?

12 THE COURT: I'm good to go until around 1:00 or shortly
13 thereafter.

14 MS. GOLDING: Okay. Thank you, Your Honor.

15 THE COURT: If you think we can finish in that allotted
16 time.

17 MS. GOLDING: Oh, I know we can. Can I go -- I left my
18 outline in the anteroom. I apologize.

19 THE COURT: Yes, ma'am. No problem.

20 CROSS-EXAMINATION STEVEN GOGGANS BY MS. GOLDING:

21 Q: Mr. Goggans, would you please provide the court with your
22 educational background?

23 A: Yes, ma'am. I have an undergraduate degree in
24 architecture from Clemson University; a Master of science
25 degree in community and regional planning from the University

1 of Alaska Anchorage.

2 Q: Are you a licensed architect?

3 A: I am.

4 Q: And how long have you been a licensed architect?

5 A: Since 1982.

6 Q: And with respect to your practice in Georgetown County,
7 how long have you been practicing in Georgetown County?

8 A: Since 1985.

9 Q: And did you do then at some point in time form an
10 architectural firm?

11 A: Yes, ma'am, at 1987.

12 Q: And what firm did you form?

13 A: Steve Goggans & Associates.

14 Q: And with respect to your firm of Steve Goggans &
15 Associates, has the company grown, your firm grown over the
16 years?

17 A: Yes, ma'am; it has, considerably.

18 Q: And currently, is there an office in Pawleys Island?

19 A: That's where the office began and that's where -- yeah,
20 that's where I work out of still.

21 Q: And with respect to your office in Pawleys Island, how
22 many architects are in there at this time?

23 A: At this time probably -- the total staff is probably
24 eight, six. We split that office recently and moved about
25 half of it to Myrtle Beach.

1 Q: Earlier you were asked, or I believe the name come up of
2 David Victoria. Can you tell the Court, is he an architect?
3 Generally, what is he?

4 A: David is a licensed architect, but he is primarily -- I
5 think his business revolves around construction. He is a
6 contractor and is known more as a contractor than as an
7 architect.

8 Q: With respect to Mr. Victoria's involvement, did you
9 participate with Mr. Victoria in that involvement?

10 A: No, ma'am.

11 Q: So, with respect to the email that Mr. Victoria had
12 provided that contained measurements of the old building and
13 all, that -- you didn't participate in those measurements that
14 were provided, that were done?

15 A: I did not.

16 Q: Okay. With respect to the old building, when you were
17 hired as an architect in 2016, was the old building still in
18 existence?

19 A: It was.

20 Q: And tell the Court the condition of that old building.

21 A: Well, I only went there once, and it was after we had
22 actually begun the design of the project. Mark Lawhon wanted
23 to show me -- and his son wanted to show me their operations
24 and their existing kitchen, but it was not a very good shape.
25 It was cement -- we call it CMU, but a cement block building,

1 a lot of cracks and very substandard construction.

2 Q: Okay. That's what I was gonna ask you. And did it sit
3 flat on the ground?

4 A: It did.

5 Q: And at that time, did that building comply with any type
6 of flood regulations?

7 A: It would not have complied at all with the FEMA regs.

8 Q: Okay. In your opinion, was that building remodeled --
9 could it be repaired and fixed to be -- comply with the flood
10 regulations?

11 A: No.

12 Q: With respect to demolition of the building, do you recall
13 when the demolition occurred?

14 A: The demolition, I'm guessing, occurred sometime in '16.

15 Q: Okay. Would November 2016 have been about right?

16 A: Correct.

17 Q: And with respect to the demolition, was a permit needed
18 for the demolition?

19 A: Yes.

20 Q: And with respect to the demolition, was the demolition
21 done in order to commence construction of a new building?

22 A: Yes.

23 Q: Okay. And with the components of the new building, did
24 that consist of a marina store and restaurant?

25 A: Yes, ma'am.

1 Q: Okay. And to your knowledge, the marina store and
2 restaurant was for the purpose of providing what services had
3 previously been provided in that area; is that correct?

4 A: Correct, correct.

5 Q: Earlier, there were some questions about friendship with
6 Holly Richardson and Boyd with respect to friendship. How
7 would you classify your relationship with Holly Richardson and
8 boy Johnson?

9 A: We are very professional. I've -- we don't socialize,
10 but we have had a lot of professional interaction over the
11 years.

12 Q: So, when you say you don't socialize, you haven't been to
13 their home and they haven't been to your home?

14 A: Correct.

15 Q: Okay. There was also some discussion with respect to
16 contacts and communication as to Version 2 and Version 3. Did
17 you at any time have any communication with any councilmembers
18 of Georgetown County Council with respect to Version 2?

19 A: I did not.

20 Q: Okay. Did any councilmembers have any discussions with
21 you with respect to Version 2?

22 A: No ma'am.

23 Q: With respect to Version 2, what was your participation in
24 the voting to the passage of Version 2?

25 A: I recused myself.

1 Q: Same questions with regard to Version 3. Did you ever
2 have any communications with any County Council members with
3 respect to Version 3?

4 A: I did not.

5 Q: Did any County Council members have any communications
6 with you with respect to Version 3?

7 A: No, ma'am.

8 Q: What was your participation in the passage of the
9 ordinance for Version 3?

10 A: Recused myself in all the readings.

11 MS. GOLDING: Okay. No more questions, Your Honor.

12 THE COURT: All right. Mr. Goggans, thank you. You can
13 step down.

14 MR. GOGGANS: Thank you.

15 THE COURT: Folks, would now be an appropriate time to
16 break for lunch?

17 MR. BLOOM: Whatever Your Honor's pleasure is. We can
18 keep cooking or we can take a break. I guess we'll need a
19 break at some point, now is as good a time as any.

20 THE COURT: Yeah. Unless the next witness is gonna be up
21 and down including cross by one o'clock, we may as well.

22 MR. BLOOM: That's fine with us.

23 THE COURT: All right. We will be in recess until 2
24 o'clock.

25 MR. BLOOM: 2 o'clock?

1 THE COURT: That's an hour and a half, right?

2 Yeah.

3 MR. BLOOM: More time that we need, but it's up to Your
4 Honor.

5 Q: Well, I don't want to -- since I've got to go out to eat,
6 I would hate to be late, so I'm gonna give myself a little bit
7 more -- I don't know how we'll be able to get -- how fast
8 we'll be able to in and out of places, so.

9 If I'm -- we'll just say two o'clock.

10 MR. BLOOM: That's fine.

11 THE COURT: I feel like we've picked up speed today. So,
12 we can take a little bit longer for lunch. 2 o'clock.

13 **RECESS - 12:28 P.M.**

14 *****OFF THE RECORD*****

15 **ON THE RECORD - 2:03 P.M.**

16 ROBERT CASTLES, HAVING BEEN DULY SWORN,
17 TESTIFIED AS FOLLOWS:

18 THE CLERK: Thank you. Please be seated. State and
19 spell your first and last name.

20 MR. CASTLES: Robert Castles.

21 DIRECT EXAMINATION OF ROBERT CASTLES BY MS. PEARSON:

22 Q: All right. Mr. Castles, if you would please tell the
23 Court who are and what you do.

24 A: I am a civil engineer, been practicing civil engineering
25 in Myrtle Beach since 1984. And I have Castles Consulting and

1 Forensics Engineering Company.

2 COURT REPORTER: Can you spell your last name for me,
3 please?

4 A: C-A-S-T-L-E-S.

5 COURT REPORTER: Thank you.

6 BY MS. PEARSON:

7 Q: All right. Mr. Castles, what is your educational
8 background?

9 A: I got a Bachelor of Science from Clemson University, and
10 I did one year at the University of South Carolina in
11 hydrology and hydraulics, but never finished it to get my
12 Masters.

13 Q: Okay. And your BS, what was your BS in?

14 A: Civil engineering.

15 Q: Okay. And do you hold any professional licenses?

16 A: I do. I'm a professional engineer in the state of South
17 Carolina, and I have actually passed and been certified as a
18 contractor unlimited division.

19 Q: Okay. So, how long have you been a practicing civil
20 engineer?

21 A: Since 1980.

22 Q: So, approximately 42 years?

23 A: Forty-two years.

24 Q: All right. And you mentioned Castles Engineering, will
25 you kind of just give us a general description of your

1 employment history?

2 A: Yeah. I started Castles Engineering in '84, basically
3 doing general civil engineering and land surveying, and
4 progressed up to there until about 2019, which I had decided
5 then that I wanted to kind of reduce my hours and not work as
6 hard as I was working. So, I stopped and closed Castles
7 Engineering, which I had two partners in, and they went off
8 and started their own company. So, I kind of relaxed and
9 started doing more expert witness testimony instead of the
10 actual engineering.

11 Q: Okay. But you are still -- your expert testimony relates
12 to your experience of civil engineering, correct?

13 A: Yes.

14 Q: Okay. And tell me a little bit about what Castles
15 Engineering and what -- what kind of work did that typically
16 involve and does that typically involve as a civil engineer?

17 A: We typically do everything five feet outside the building
18 and below. So, we do water, sewer, roads, and drainage, but
19 we also do the land surveying side of it, which you do a land
20 surveying and if a client comes to you and he wants to put a
21 particular product on there, will take and go to the codes and
22 see what the uses are that he is doing and see if they fit
23 with the zoning code whether we have to rezone it or not. We
24 look at any regulations, parking regulations to determine the
25 amount of parking that might be needed for his particular

1 uses.

2 Q: Okay. So, you very often review municipalities or county
3 zoning regulations in the context of your work as a civil
4 engineer?

5 A: I do.

6 Q: Okay. And what types of projects have you worked on
7 throughout your career?

8 A: Oh, gosh. The big ones would probably be the parking at
9 the International Airport in Myrtle Beach; parking and all the
10 utilities and roads at Coastal Grand Mall; Broadway at the
11 beach, the roads and parking for Broadway at the Beach. I've
12 probably done 50 or more hotels, some other shopping centers,
13 probably 60 or more restaurants, multifamily housing, single-
14 family housing developments. So, a multitude of civil
15 engineering projects.

16 Q: Okay. And in this multitude of civil engineering
17 projects, does that often include review of municipality's
18 parking regulations?

19 A: Yes, it does.

20 Q: Okay. And what kind of -- in what context do you
21 typically review parking regulations or parking requirements?

22 A: Here again, we get the use of the property. So, once we
23 get the use and most of your regulations have -- where they
24 have a calculation that you've got to do to determine the
25 amount of parking that goes with the particular use of what he

1 wants to put on the property. And from that, we get from the
2 regulations, and then we do the calculations comes up with the
3 total amount of parking to which we then land plan so as to
4 try to get that number of parking onto the site.

5 Q: Okay. And do different jurisdictions, I guess, measure
6 parking differently or set parking requirements differently,
7 depending on what their code says?

8 A: Yes, they do.

9 Q: Okay. And so do you have professional experience
10 interpreting different requirements and zoning codes related
11 to parking?

12 A: Yes.

13 Q: Okay.

14 MS. PEARSON: I'm going to move to introduce Mr. Castles
15 as an expert in the field of civil engineering.

16 MS. GOLDING: No objection.

17 THE COURT: All right. He will be admitted as an expert
18 in the field of civil engineering.

19 BY MS. PEARSON:

20 Q: All right. Can you tell me a little bit about what your
21 assignment was in this matter?

22 A: I was asked to look at the three uses that are currently
23 on the marina site, which would be the marina itself, the
24 Gulfstream Café, and the Marlin Quay new restaurant, which we
25 call Version 3, which is the one that's being built. And to

1 see if the uses matched up with the parking regulations of
2 Georgetown County.

3 Q: So, you were looking at whether or not the parking was
4 compliant with the Georgetown County zoning ordinance; is that
5 correct?

6 A: That's correct.

7 Q: And did you evaluate whether the parking lot contains
8 sufficient parking for each of those uses under Georgetown
9 County zoning code?

10 A: It does not.

11 Q: But that's what you looked at?

12 A: That's what I looked at, yes.

13 Q: And what documents did you review and preparing your
14 opinion in this matter?

15 A: I looked at the plans that were submitted to the building
16 permit department for the Version 3 of the Marlin Quay Marina
17 store or restaurant. I looked at plans of the Gulfstream
18 Restaurant. I looked at a plat of the marina dock storage. I
19 looked at the parking regulations of Georgetown County. I
20 also -- from there it took me kind of to the building code
21 which Georgetown County uses the 2018 IBC code, the
22 International Building Code, for structures such as these. I
23 looked at some aerial photographs off of Google maps. And I
24 believe that was pretty much it.

25 Q: Okay. And did you actually do a site visit? Did you go

1 visit the parking lot in the marina?

2 A: Yeah. I've been down several times.

3 Q: All right. And what's your understanding regarding
4 Gulfstream's right to use the parking lot?

5 A: What I have seen was an easement document that gives
6 Gulfstream a -- it's a perpetual easement, but it's a
7 nonexclusive perpetual easement to basically use the parking
8 lot of the Marlin Quay Restaurant.

9 Q: Okay. And did you evaluate how many parking spaces are
10 located in that parking lot?

11 A: Yes. There are 62 spaces located in that parking lot.

12 Q: And in that -- do you know that -- did you go out and
13 physically count those spaces?

14 A: Yes.

15 Q: All right. And I think you have said this already, but
16 what uses share the parking lot with Version 3.0?

17 A: I'm sorry. Would you repeat ---

18 Q: What other uses share the parking lot with Version 3.0?

19 A: The marina is actually, I think, a dockminium whether
20 actually sold the slips out there. And so, you have a parking
21 count for those particular slips. And so, people that own
22 boats out there would have the right to use the parking lot.

23 Q: Okay. And also, what's the other -- Gulfstream can also
24 use the parking lot; is that correct?

25 A: And then Gulfstream would use the parking lot.

1 Gulfstream in the easement it says that basically Marlin Quay
2 would use the parking lot during the day, and Gulfstream would
3 use the parking lot during the evening.

4 Q: Okay. And did you evaluate how many parking spaces are
5 required for Version 3.0 under Georgetown County Zoning
6 Ordinance?

7 A: Yes, I did. Under my expert opinion, it needs 76 spaces.

8 Q: Okay. And let's like break that down a little bit.
9 Turning to the code, what's the applicable section of the code
10 to review the parking requirements?

11 A: It's Chapter XI of the zoning code.

12 Q: Okay. So, if you could turn to Chapter XI, I believe it
13 should be on the screen for you. If we could turn to, of
14 course, Page 11-1.

15 A: All right.

16 Q: Okay. And just to kind of start off, is it your
17 understanding that the Article XI requires each Gulfstream,
18 the marina, and Version 3.0 to have its own dedicated parking
19 spaces in order to meet the zoning code requirements?

20 A: Yes.

21 Q: Okay. And turning to -- with respect to Version 3.0, are
22 there multiple uses for codes within that building?

23 A: Yeah. There are basically two different uses. One would
24 be a mercantile use on the first floor, that would basically
25 be a marina store to service the marina itself as well as have

1 souvenirs, T-shirts, hats, things like that. And then the
2 other part would basically be a restaurant, bar, lounge area.

3 Q: Okay. In turning to 1102.1, there's a table there. And
4 does that set forth the parking requirements for each of the
5 different uses of this property under Georgetown County Zoning
6 Code?

7 A: Yes, it does.

8 Q: Okay. And if you could, point me to where in the code
9 the requirements for the general -- or the marina store would
10 be found?

11 A: Under retail trade, you would have the restaurant, which
12 would be a standard restaurant. And so, you would have one
13 space, parking space, for 100 square foot of gross floor area
14 plus one space per 150 foot, square-foot, of outdoor seating
15 area.

16 Q: Okay. And with respect to the one space -- or 100 foot
17 of gross floor area, what is your understanding of what the
18 gross floor area means?

19 A: Do you mind if I read it out of the what the regulation
20 actually says?

21 Q: That's fine.

22 A: What I did was I went originally to the zoning code, and
23 the zoning code only has definition for total floor area and
24 not gross floor area. Now, it says for at least total floor
25 area, the area of all floors that we're building, including

1 finish the attic finished basement cover the porches. But it
2 really doesn't say gross floor area. So, I went to the
3 building code in the building code Georgetown County refers me
4 to the 2018 International Building Code, IBC, for
5 modifications for all structures, commercial, multifamily, et
6 cetera, located within the incorporated areas of Georgetown
7 County.

8 Q: Okay.

9 A: And so, when I went to the building code, and it's the
10 2018 building code, it does have floor area gross, and it
11 defines floor area with the inside perimeter of the exterior
12 walls of the building under consideration, exclusive of vent
13 shafts and cords. Without deduction for car doors, stairways
14 ramps, closets, the thickness of interior walls, columns and
15 other features, the floor area of the building or portion
16 thereof not provided with surrounding exterior walls shall be
17 the usable area under the horizontal projection of the roof or
18 floor above.

19 Q: All right. So, did that kind of in layman's terms mean
20 the square footage within the four walls of the restaurant?

21 A: Yes.

22 Q: All right. And then, looking what we talked about with
23 restaurant standards, so that's one of these is within Version
24 3. The other uses in Version 3 is the mercantile store,
25 right? And so in that the standard for parking with the

1 municipal are also set forth by Page 11-3?

2 A: For the marina itself, it's -- they base it on slip
3 numbers. So, it's one space per three slips. Plus one space
4 for an employee based on the largest shift.

5 Q: Okay. And that's actually on 11.2, correct?

6 A: So, looking at the marina, it's one space -- one space per
7 three slips. And then so their final use to consider for
8 Version 3.0 itself also has a retail store in it. So, what's
9 the applicable standard for the retail store?

10 A: I'm looking for it now. It's -- they've got one for
11 mercantile in here, and so we went back and looked at
12 mercantile.

13 Q: There's retail trade, general retail. It should be on
14 the screen.

15 A: Yeah. Under general retail use, it's less than 5,000
16 square feet, you have one space per 200 feet of gross floor
17 area.

18 Q: And so, in respect to the details of Version 3's plans,
19 how many square feet did the plans provide for the mercantile?

20 A: For the mercantile area, it was shown on the plans to be
21 1966 square feet.

22 Q: Okay. Then, with respect to the restaurant, how many
23 square feet were within the four walls of the restaurant on
24 the second and third floors?

25 A: You had three different numbers, and it was 2169 square

1 feet on the second floor, and then on the third floor you had
2 a restroom at 461 square feet, and then storage at 1791 square
3 feet.

4 Q: Okay. And then there was also some outdoor seating,
5 square footage for Version 3, correct?

6 A: That's correct.

7 Q: And what was the square footage for that outdoor seating
8 area?

9 A: The second-floor outdoor seating area was 1197 square
10 feet. And on the third floor, it was 1575 square feet.

11 Q: Okay. So, in terms of the standards that you just looked
12 at and the numbers that you just gave me, let's walk through.
13 For the mercantile, the 1966 square feet for the marina store,
14 how many parking spaces did you come up with that were
15 required for that use and how did you do that?

16 A: You divide that number by 200 square feet per space and
17 you come up with 10 spaces.

18 Q: Okay. So, the 1966 divided by 200?

19 A: Correct.

20 Q: Okay.

21 A: And you round up or round down, whichever...

22 Q: Okay. And then for the square footage within the four
23 walls of the restaurant, what was the calculation you came up
24 with for the required parking spaces, and how did you come up
25 with those numbers?

1 A: I added the three uses together, the second floor, the
2 third-floor restroom, the storage area, and came up with 4421
3 square feet, which is 44 spaces.

4 Q: Okay. And so, you got a total of 4421 of the square
5 footage inside the four walls of the restaurant, right?

6 A: Yes.

7 Q: And then you divided that by what number?

8 A: 100.

9 Q: And that's the number from the restaurant standard for
10 gross floor area, right?

11 A: That is correct.

12 Q: Okay. And you got 44 spaces?

13 A: Forty-four spaces.

14 Q: Okay. And then for the outdoor seating area for Version
15 3.0, what was your calculation for parking required for that?

16 A: I did the second floor at 1197 divided by 150, which gave
17 me eight spaces. And then I did the third floor, which was
18 1575 square feet divided by 150, it gave me 10 spaces. So,
19 that gave me 18 spaces total for the outside.

20 Q: Okay. So, if we add up the mercantile -- the parking
21 spots for the mercantile, the parking spots for the square
22 footage inside the four walls of the building, and then the
23 outdoor heated area, what was the total number of parking
24 spaces you came up that were required for Version 3.0?

25 A: Seventy-two.

1 Q: Okay. And did you also calculate how many parking spaces
2 were required by Gulfstream under Georgetown County's parking
3 requirements?

4 A: I did.

5 Q: Okay. And how did you do that?

6 A: I took the building plans, and I used them to measure the
7 areas of the building, and then I went out actually on Monday
8 and checked the building against the plans, and there were
9 some differences. So, I marked up the plans to equal what's
10 actually out there as constructed, and then went back and
11 recalculated my numbers.

12 Q: Okay. And so, with respect to Georgetown County's zoning
13 code, what provision of the parking requirements applies to
14 Gulfstream in terms of the use in the parking numbers?

15 A: They're just a restaurant/lounge only.

16 Q: So, they are at restaurant standard?

17 A: Restaurant standard, right.

18 Q: Okay. So, that same 100 square feet equals one space,
19 and then 150 square feet for the outdoor seating is -- it's
20 that same that we walked through with Version 3.0, right?

21 A: That's correct.

22 Q: Okay. All right. And how many square feet does
23 Gulfstream have for its -- that's inside the four walls of the
24 restaurant?

25 A: 5150 feet for the indoor total, first and second floor.

1 Q: Okay. And what about does Gulfstream also has some
2 outdoor seating square footage?

3 A: It does. It has 3742 square feet of outdoor usage.

4 Q: Did you calculate how many parking spaces were required
5 for Gulfstream based on those numbers? And how did you do
6 that?

7 A: Yeah. I used the 5150 indoor and 100 square feet per
8 parking space and got 51 spaces. And then I used the outside
9 usable area, which was 3742 square feet divided by 150 square
10 feet per parking space, that gave 25 spaces. So, 25 and the
11 51 is 76 spaces total.

12 Q: Okay. So, under Georgetown County parking requirements,
13 Gulfstream requires 76 parking spaces?

14 A: Correct.

15 Q: Okay. Did you evaluate how many parking spaces are
16 required by the marina under the parking requirements?

17 A: Yeah. Under the parking requirements, there's one space
18 for every three slips. And that came out for 67 slips would
19 be 22 parking spaces. And I did not count the number of
20 employees on the larger ships; I didn't know what that number
21 was but that number would probably be in the neighborhood of
22 three or four.

23 Q: So, the marina is actually required more than 22 parking
24 spaces, right?

25 A: Yeah. It actually requires a few more.

1 Q: Okay. So, adding up the numbers of spaces required for
2 Version 3.0, Gulfstream, and the marina, how many parking
3 spaces are required in the parking lot under Georgetown County
4 Zoning Ordinance?

5 A: I calculated 170.

6 Q: Okay. And then how many parking spaces are actually in
7 the parking lot?

8 A: Sixty-two.

9 Q: So, how many more parking spaces are required under the
10 zoning ordinance that are actually provided in the parking
11 lot?

12 A: A hundred and eight.

13 Q: Do you think that Version 3.0 will be open in the
14 evening?

15 A: I believe so.

16 Q: And why is that?

17 A: In looking at the plans and based on what I see there,
18 the size of the kitchen, the way it's laid out, the way the
19 tables and the numbers of spaces you've got in there, and the
20 quality of the way the building is built, it's just not
21 something that's gonna be open just for lunch. It's gonna be
22 open basically full-time.

23 Q: In reviewing Georgetown County zoning code and the
24 parking requirements specifically in Article XI, did you see
25 any exception to the parking requirement in the zoning

1 ordinance?

2 A: No, I did not.

3 Q: So, you read the parking requirements to apply to all the
4 new districts within the County, correct?

5 A: That's correct.

6 Q: And in your experience as a civil engineer, do you think
7 that parking is necessary for the public health, safety, and
8 welfare?

9 A: I believe so.

10 Q: Why is that?

11 A: Well, if you have an overcrowded parking lot, then you've
12 got a lot of cars maneuvering around, whether they're backing
13 up or jockeying trying to get the last space or get into the
14 spaces. And then here, we don't have sidewalks, so you've got
15 pedestrians having to walk behind cars to get to the
16 mercantile, or the restaurant. And that just causes a bad
17 situation for pedestrians and for cars for the public.

18 Q: Do you believe there is a substantial shortage of parking
19 in this parking lot?

20 A: I'm sorry?

21 Q: Do you believe that there is a substantial shortage of
22 parking in this parking lot?

23 A: Yes, I do.

24 Q: Is there any other available parking within a one-mile
25 radius of the Marlin Quay PD area?

1 A: The parking regulation says that you can use parking
2 within a one-mile radius if you have a valet service, and it
3 has to be on commercial property. So, I did not see anything
4 within a mile radius.

5 Q: Okay. And so, do the parking regulations actually
6 prohibit parking within residentially zoned areas or those to
7 be used for a valet lot, for example?

8 A: Yes, it does.

9 Q: Okay. Is there street parking allowed on Waccamaw Drive?

10 A: It has no-parking signs up there.

11 Q: So, no?

12 A: No.

13 Q: Regardless of the parking regulations, do you think that
14 Version 3.0 will overburden this parking lot?

15 A: I think it's gonna overburden the parking lot.

16 Q: And does the approval of Version 3.0 meet Georgetown
17 County Zoning Ordinance requirements for parking?

18 A: No, it does not.

19 MS. PEARSON: Those are my questions, Your Honor.

20 THE COURT: All right. Thank you very much.

21 Ms. Golding?

22 MS. GOLDING: Thank you, Your Honor.

23 CROSS-EXAMINATION OF ROBERT CASTLES BY MS. GOLDING:

24 Q: Mr. Castles, you just testified with respect to the
25 Gulfstream under the parking ordinance, the -- does the

1 Gulfstream Café comply with the Georgetown County parking
2 ordinance currently?

3 A: In ---

4 Q: The current existing.

5 A: The existing property itself?

6 Q: Yes.

7 A: No; it does not.

8 Q: Okay. And in fact, the parking ordinance that you
9 referred to wasn't in existence when the Gulfstream Café was
10 built; isn't that correct?

11 A: I am not sure of the dates. I have seen it around 2008.
12 I have not gone back any further to see if it was the parking
13 regulations in -- of the date of Gulfstream's construction.

14 Q: So, if Gulfstream was built back in 1980s, you wouldn't
15 be surprised to know that there was no parking ordinance as
16 you referred to in Georgetown County at that time? You
17 wouldn't be surprised to know that, would you?

18 A: It would not surprise me.

19 Q: Okay. And with respect to the Marlin Quay Store and
20 Marina, I believe that you obtained this assignment in
21 assisting Gulfstream after it was torn down; is that correct?

22 A: Yes.

23 Q: Okay. So, by the time you became involved, the initial
24 building, the old building that was there, the initial
25 building did not exist anymore; is that correct?

1 A: That's correct.

2 Q: Okay. And you also have been informed and researched
3 that since the -- since 1982, Gulfstream, the Marlin Quay, the
4 initial building and the marina, they were all in a PUD or a
5 planned unit development; is that correct?

6 A: I agree.

7 Q: Okay. And in fact, Gulfstream has been in this PD since
8 1982 in fact?

9 A: Correct.

10 Q: And you did see the PD conceptual plan, did you not?

11 A: Yes.

12 Q: Have you seen the PD ---

13 A: Yes.

14 Q: Okay. And in that PD conceptual plan, it provided for
15 parking for that PD; is that correct?

16 A: Yes, it did.

17 Q: Okay. And up to today, there's been no amendment to that
18 parking in that PD, has there?

19 A: But to my knowledge, there hasn't been a change to it
20 either, a change to the PD, so there hasn't been a change to
21 the parking.

22 Q: So, as of today, in that PD, the parking requirement is
23 the same as it has been since the PD was formed?

24 A: Yes, but you've had a change in the building, the usage.

25 Q: You're saying the initial building you're referring to

1 being torn down?

2 A: Yeah, and a new building being built that is bigger than
3 the other one.

4 Q: Now, previously, I believe when you testified -- you
5 testified in the case against -- that Gulfstream brought
6 against Palmetto Industrial, did you not?

7 A: I did.

8 Q: Okay. And you were -- your deposition was taken then as
9 well; is that correct?

10 A: It was.

11 Q: Do you recall testifying that it was your belief that
12 there were over 60 seats in this initial building, this old
13 construction?

14 A: I would probably say there were close to 60 seats, not
15 110.

16 Q: Okay. And you based that upon looking at the
17 photographs; is that correct?

18 A: That is correct.

19 Q: Okay. And those photographs didn't give you the entire
20 view of all the tables that were in the restaurant with the
21 initial building, did it?

22 A: It was pretty close. It was within one table of seeing
23 them all.

24 Q: Well, didn't you testify in your deposition that you
25 couldn't see them all in the photographs?

1 A: I said I couldn't see them all, but that doesn't mean --
2 one is not all. I mean, one I didn't see.

3 Q: Didn't you testify that you didn't know the number of
4 seats outside the photographs? You want to see your
5 deposition to remind yourself?

6 MS. PEARSON: Objection. Improper impeachment, Your
7 Honor.

8 A: I don't believe I need to.

9 Q: You don't think you need to?

10 A: I don't believe I need to.

11 THE COURT: Hold one minute. The objection, let me --
12 just for the record, the objection is overruled. Let's --
13 impeachment is proper.

14 A: The only thing I saw in the photographs was rocking
15 chairs on the front porch.

16 Q: Now, going back to this discussion about a PD. A PD,
17 planned development or a PUD, those have been in existence for
18 a good number of years, that concept, has it not?

19 A: Yes, it has.

20 Q: Okay. And -- but PDs came into existence to provide for
21 flexibility.

22 A: That's correct.

23 Q: And for instance like this PD, I mean, there are no
24 setbacks in this PD, are there?

25 A: That's correct.

1 Q: And whereas the zoning ordinance itself in Georgetown has
2 setbacks; is that correct?

3 A: That's correct.

4 Q: Okay. And sometimes these PDs are described as the
5 zoning ordinance PD is described as a zoning ordinance within
6 a zoning ordinance; is that correct?

7 A: Yeah. You basically have the underlying zoning that was
8 there previously, and now you've put zoning on top of it.

9 Q: Okay. And most of the time when you've got a planned
10 development, a PD, it's the requirements within that PD that
11 apply, not the other parts of the zoning ordinance that are
12 not in that PD; isn't that correct?

13 A: Not necessarily.

14 Q: But it can be, can it not?

15 A: Yeah, but in this particular PD it did not say that all
16 regulations would be frozen for the length of the PD. So --
17 and it doesn't talk about parking within the PD, so ---

18 Q: Okay. Mr. Castles, this 1982 PD, that sort of was one of
19 the earliest PDs; is that correct?

20 A: Yes, it was.

21 Q: Okay. And you will agree that the PDs, the new ones that
22 come up today, are a lot more sophisticated than they were in
23 1982; won't you agree with that?

24 A: I would agree with that.

25 Q: Okay. And when you get a PD, if you want to add

1 requirements to a PD, what you have to do is do a zoning
2 amendment to that PD; is that correct?

3 A: That's correct.

4 Q: Okay. You testified also that you've been involved in
5 submitting plans seeking amendments for zoning; is that
6 correct?

7 A: That's correct.

8 Q: And in seeking amendments for zoning, you have to work
9 with the Planning Department.

10 A: That's correct. Or the Zoning Department.

11 Q: I'm sorry?

12 A: Or the Zoning Department; they can be separate.

13 Q: Okay. The Planning and Zoning Department. And in
14 working with the Planning and Zoning Department, you've been
15 doing it with Horry County and other governmental entities,
16 have you not?

17 A: I have.

18 Q: Okay. And in working with the -- and making these
19 submittals to the Zoning or Planning Department, you try to
20 cooperate and communicate with the Zoning and Planning
21 Department, do you not?

22 A: Sure, I do.

23 Q: Okay. And the same is with the planning and zoning.
24 They -- the staff members, they communicate with you with
25 regard to your submittals; is that correct?

1 A: They do.

2 Q: Okay. And a lot of times or sometimes they ask you for
3 more information when you've made an application; is that
4 correct?

5 A: That's correct.

6 Q: Okay. And so, you provide more information after you
7 submitted an application, have you not?

8 A: I have.

9 Q: Okay. And you would want, as an individual that works
10 with areas involved in construction, you would want your
11 planning and building department to be cooperative with you
12 and to be friendly with you, would you not?

13 A: I would want them to but they're not always. I mean,
14 they'll flat come down and tell you if you're not meeting the
15 regulations.

16 Q: Yeah. And but ---

17 A: And they won't let you do that. And so will the Zoning
18 Appeals Board.

19 Q: And that's their role, is it not?

20 A: It is.

21 Q: Their role is to work with you within the zoning and
22 planning ordinance; is that correct?

23 A: Within what the planning and zoning ordinance states.

24 Q: Yeah. And ---

25 A: They don't have the authority to move off of that.

1 Q: Okay. And but, also, you rely on their interpretation of
2 the zoning ordinance, do you not?

3 A: Sometimes we'll have a difference of opinion of the
4 zoning ordinance to which we have to work through.

5 Q: Right. And that is if a staff member in a zoning
6 department has an interpretation of zoning ordinance, that's
7 what you basically have to go by; is that not correct?

8 A: I would agree with that.

9 Q: Now, I know you say you did not see this initial
10 building, the old building, but seeing photographs ---

11 A: I did. I've taken many a drink in there at a fishing
12 tournament, so I have seen the building.

13 Q: Oh, I'm sorry. So, over the years, you were there during
14 the Governor's Cup, during the Marlin -- all of those events?

15 A: I was there, yes.

16 Q: Okay. Thank you.

17 While you were there, this old building, this initial
18 building was flat on the ground, was it not?

19 A: The first floor was, yes; it was not raised.

20 Q: Yeah. And so now, the new building being built in 2019
21 and 2020 has to comply with FEMA, does it not, and the flood
22 regulations?

23 A: It does.

24 Q: Okay. So, that means it's got to go up at least 14 feet;
25 is that correct?

1 A: Whatever the number is there; I don't know if 14 is
2 exactly right but close.

3 Q: Since you were in the old building, that was in pretty
4 bad shape, was it not? Do you remember that?

5 A: Yeah. I mean, there wasn't much to it. I mean, there
6 wasn't much to the grill area. They could hotdogs and some
7 hamburgers.

8 Q: Yeah. And it was in pretty bad shape, was it not?

9 A: Yeah.

10 Q: Construction-wise?

11 A: Yes.

12 Q: And since it had to go up at least 14 feet, that of
13 course would mean there had to be more space involved, more
14 floorage involved in the building; is that not correct?

15 A: You wouldn't necessarily have to make more floorage
16 because we haven't counted the bottom floor under the garage
17 as any space for parking or anything else.

18 Q: Well, don't you know there are three additional spaces
19 under there?

20 A: I do know that, and it's included in the 62.

21 Q: And -- well, let's -- like the elevator, the original
22 building didn't have an elevator, did it?

23 A: No.

24 Q: Okay. There's an elevator now and that's required; is it
25 not?

1 A: It is.

2 Q: Okay. And that takes more square footage, does it not?

3 A: Sure.

4 Q: Okay. And the Americans with Disabilities Act, that
5 means complying that act, the walkways, the alleyways, the
6 hallways have to be much wider; do they not?

7 A: Yes.

8 Q: Okay. And then you've got your restrooms, and because
9 you have to go 14 feet up and two more floors you have to have
10 more restrooms, do you not?

11 A: Yeah, well, the restrooms, I think, are dependent on the
12 number of people that you're gonna be serving in there, but
13 ---

14 Q: The restrooms have to comply ADA, do they not?

15 A: They do.

16 Q: Okay. Handicapped restrooms, so they have to be larger,
17 do they not?

18 A: Sure, but so does the parking have to comply with ADA,
19 which means it has to be larger.

20 Q: But you've already told this Court that the parking --
21 that the parking in the PD at Marlin Quay has not been
22 amended, has it?

23 A: I am telling you if you build a commercial building that
24 you have to ---

25 Q: Please answer my question.

1 MS. GOLDING: Your Honor ---

2 THE COURT: You can answer her question, then you can
3 explain it if necessary.

4 BY MS. GOLDING:

5 Q: Mr. Castles, is it not a fact that there has been no
6 amendment to the parking requirement in the Marlin Quay PD?

7 A: Yes. But, Your Honor, I'd like to explain.

8 Q: You may go ahead.

9 THE COURT: You can explain your answer.

10 A: Under federal law, Department of Justice, if you change
11 any building or build it, you must comply with the ADA law
12 regardless of any other laws out there. It's under the United
13 States federal law that it complies.

14 Q: Okay. Now, with regard to the business of Gulfstream,
15 you know that there are many condominiums around the
16 Gulfstream Café, that there's five or six?

17 A: Yes.

18 Q: And lots of units around the Gulfstream Café because of
19 these condominiums, right?

20 A: Sure.

21 Q: And there's a lot of walk-in traffic because of all these
22 condominiums and the rental houses around there; is that
23 correct?

24 A: There's walk-in traffic. I don't know how much, but,
25 yes, there's walk-in traffic.

1 Q: And so, people that walk there don't need a parking
2 place, do they?

3 A: No, they don't.

4 Q: Okay. And also, there's Uber and Lyft, and that's
5 becoming quite common nowadays; is it not?

6 A: Probably more to go home than to go to it.

7 Q: Point excepted. So, but Uber and Lyft normally don't
8 need parking spaces, do they?

9 A: No, but they do need unloading zones, which we have
10 failed to have those in the parking lot.

11 Q: And Gulfstream didn't tell you about all the buses that
12 they have throughout the whole season, throughout each year?

13 A: No, they didn't.

14 Q: They didn't tell you about all the buses, the -- I forgot
15 what you call them now; I'm sorry -- the buses loaded with
16 people that come and eat?

17 A: I understand what you're saying. No, they didn't.

18 Q: Okay. And so, when the bus drops off a load of 50 or 60
19 people, the bus can go somewhere else, and usually the bus
20 driver does go somewhere else. Is that not correct?

21 A: Yeah. There's nowhere for him to park; he's got to go
22 somewhere else.

23 Q: And usually the bus driver will go somewhere else to eat,
24 maybe two or three miles down the road. Is that correct?

25 A: Yeah.

1 MS. GOLDING: One moment, please, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. GOLDING: I have no more questions. Thank you, Your
4 Honor.

5 THE COURT: Any redirect?

6 MS. PEARSON: No questions, Your Honor.

7 THE COURT: All right. Thank you, sir. You can step
8 down.

9 MR. BLOOM: The Plaintiff calls Jake Knight.

10 MS. GOLDING: May I take up a point with the Court, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 MS. GOLDING: Mr. Knight apparently was sitting in here,
14 Your Honor, during the examination of Mr. Castles, and I
15 understood that sequestration of all the witnesses.

16 MR. BLOOM: Number one, he's an expert, so sequestration
17 does not necessarily apply to an expert witness. Number two,
18 the content of his testimony is gonna have nothing to do with
19 what Mr. Castles just testified about.

20 THE COURT: Okay. What is -- what is the basis of --
21 what is the being offered as an expert in?

22 MR. BLOOM: Appraisal. He has conducted the appraisal on
23 the diminution of value as a result of the zoning and
24 construction of 3.0 for the inverse condemnation, the takings
25 claim.

1 THE COURT: All right. Ms. Golding, I understand the
2 nature of your objection. I don't think his testimony should
3 be impacted by anything he may've heard Mr. Castles say. If
4 you believe any of his testimony is impacted by what is
5 already heard, based upon the answers that he gives, just
6 object and will take that up, but ---

7 MS. GOLDING: Thank you, Your Honor.

8 THE COURT: I think we are all right in terms of the
9 nature of his testimony.

10 MS. GOLDING: Thank you, Your Honor.

11 THE COURT: All right. Come on up, sir.

12 GEORGE "JAKE" KNIGHT, HAVING BEEN DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: Thank you. Please be seated. State and
15 spell your first and last name.

16 MR. KNIGHT: My name is George Knight, G-E-O-R-G-E, K-N-
17 I-G-H-T, and I do go by Jake.

18 DIRECT EXAMINATION OF GEORGE "JAKE" KNIGHT BY MR. FOERSTER:

19 Q: Thank you for being here today, Mr. Knight. Let me ask
20 you this first. Any of the testimony of Mr. Castles that you
21 just heard impact your opinions or conclusions in this case?

22 A: I don't think so.

23 Q: Thank you. Please state your occupation and who you work
24 for.

25 A: I am a real estate appraiser. My company is Real Estate

1 Appraisers & Consultants.

2 Q: Do you own that company?

3 A: I do.

4 Q: How long have you been a real estate appraiser?

5 A: For about 31 years.

6 Q: Can you please state your formal education and any
7 degrees you have?

8 A: Bachelor of Science from the University of South Carolina
9 and real estate and finance.

10 Q: Do you have any professional licenses?

11 A: I do. I've got a real estate appraisers license in South
12 Carolina and a South Carolina broker's license.

13 Q: Do you hold any professional designations?

14 A: I do. I hold the MAI designation from the Appraisal
15 Institute.

16 Q: What is an MAI designation?

17 A: It's a general designation conferred for general
18 appraisal practice.

19 Q: What are the requirements for obtaining the MAI
20 designation?

21 A: The requirements over and above the state requirements is
22 -- there's five classroom, additional 40-hour classrooms
23 offerings that you have to take. You have to write a
24 demonstration appraisal report and take a comprehensive exam.

25 Q: Do you have to take annual continuing education courses

1 for your profession?

2 A: I do.

3 Q: Have you ever given any lectures concerning real estate
4 appraisal before?

5 A: Yes, I have.

6 Q: Have you ever been a member of any professional
7 association related to appraisal?

8 A: I am.

9 Q: Which ones?

10 A: I'm a member of the Appraisal Institute, and then I'm
11 also a member of the International Right of Way Association.

12 Q: Have you ever held any positions in either of those
13 organizations?

14 A: I have.

15 Q: What kind of positions?

16 A: I worked with the presidency of the Appraisal Institute
17 of South Carolina Chapter and did work with the Internal
18 Review -- the Evaluation Committee with the International
19 Right of Way.

20 Q: And can you just recount your work history as a real
21 estate appraiser for us?

22 A: I do a lot of eminent domain work, and do commercial
23 property, some residential, primarily commercial, vacant land.

24 Q: Do you primarily do appraisal work in South Carolina?

25 A: Yes, I do.

1 Q: All right. Do you do appraisal work anywhere else
2 besides South Carolina?

3 A: Not currently.

4 Q: How many appraisals -- and you can just ballpark it --
5 how many appraisals have you done for real estate within South
6 Carolina?

7 A: I mean, it's over a thousand, thousands.

8 Q: Have you ever appraised a restaurant before?

9 A: I have.

10 Q: Roughly, how many times would you estimate?

11 A: I've probably done about 30 restaurants.

12 Q: How many appraisals would you estimate you have done for
13 purposes of valuing a condemnation?

14 A: I've probably done a thousand of those.

15 Q: Do you have experience in valuing partial takings,
16 partial condemnations?

17 A: That's -- yeah, that's the most common.

18 Q: Who would you typically provide a condemnation appraisal
19 for? The landowner or the condemning authority?

20 A: I do more work for condemning authorities. I do some
21 work for landowners.

22 Q: Have you ever been qualified by a Court of Law in South
23 Carolina as an expert in the field of real estate appraisal?

24 A: Yes, I have.

25 Q: Roughly, how many times would you estimate?

1 A: I think 30.

2 Q: And in any of those cases in which you were qualified as
3 an expert in the field of real estate appraisal did it involve
4 valuing a property for purposes of determining a loss of value
5 due to a condemnation?

6 A: Yes.

7 Q: Roughly, how many times would you estimate?

8 A: Probably 25 of those.

9 MR. FOERSTER: Your Honor, at this time I would move to
10 qualify Mr. Knight as an expert in the field of real estate
11 appraisal.

12 MS. GOLDING: No objection, Your Honor.

13 THE COURT: All right. He will be qualified as an expert
14 in the field of real estate appraisal.

15 BY MR. FOERSTER:

16 Q: Mr. Knight, did you personally appraise the Gulfstream
17 Café property with this lawsuit?

18 A: Yes, I did.

19 Q: Did you do all the research and analysis that went into
20 your appraisal by yourself or did somebody help you?

21 A: My assistant, Cathy Welch, did some -- help me do some
22 background research.

23 Q: Are you being compensated by anyone for your work today?

24 A: Yes, I am.

25 Q: Who?

1 A: Gulfstream Café, ultimately.

2 Q: Are you charging Gulfstream a special fee for this case
3 or are you charging this standard fee that you would charge
4 any customer for this type of service?

5 A: Just my standard hourly rate.

6 Q: What was the scope of your appraisal assignment in this
7 case?

8 A: Basically, what I was looking at was the impact the
9 property was gonna have from a potential impact to the
10 parking. It's located in the easement which had been
11 calculated to be 62 spaces.

12 Q: Were you tasked with valuing this property with and
13 without sufficient parking?

14 A: That's how I approached it.

15 Q: As of what date did you value the property?

16 A: I was looking at January 23rd, 2019.

17 Q: And what is the significance of January 23rd of 2019.

18 A: January 23rd, 2019 was the 15 days after the last reading
19 of the zoning ordinance change, Section 1702.4.

20 Q: Did you put your opinions and conclusions in connection
21 with your appraisal assignment into a written report?

22 A: Yes, I did.

23 Q: Okay. Mr. Knight, in that -- I believe in that black
24 book there was an Exhibit P47. Would you please look at that
25 for me. And just let me know when you're there, Mr. Knight.

1 A: Okay.

2 Q: Do you recognize that document that's that P47?

3 A: Yeah. This looks like my May 24th, 2021 appraisal.

4 MS. GOLDING: May I ask is -- there were three different
5 ones. What date is this one?

6 MR. FOERSTER: He just testified to that.

7 MS. GOLDING: No. As of the date, but when the date --
8 when it was done. There were three different appraisals.

9 A: Yeah. This is May 24th, 2021.

10 MS. GOLDING: Thank you.

11 BY MR. FOERSTER:

12 Q: And on the first page of P47, it says as of what date?

13 A: The effective date is January 23rd, 2019.

14 Q: Thank you. Just want to make sure were talking about the
15 same appraisal.

16 Does P47 appear to be a true and accurate copy of your
17 appraisal report for this assignment in this case?

18 A: Yes. It looks like this is it.

19 Q: Now, is the type of facts and data that you relied upon
20 for the opinions in this report, are those the same type of
21 facts and data that other real estate appraisers would rely on
22 for a similar assignment?

23 A: Yes.

24 Q: Now, what is your opinion in this case as to the fair
25 market value of the property with sufficient parking in place?

1 A: I've estimated that value basically in its existing
2 condition with the easement in place, with the parking that
3 they are using, to be \$1,850,000.

4 Q: \$1,850,000?

5 A: Yes.

6 Q: Now, do you have an opinion as to the fair market value
7 of this property if it did not have sufficient parking in
8 place?

9 A: Yes. I've calculated that value to be \$89,900.

10 Q: And, in your expert opinion, what is the total amount in
11 the loss of value that this property would experience if it
12 had insufficient parking?

13 A: It's \$1,760,100.

14 Q: Now, let's back up and talk about how you arrived at
15 these conclusions. Are there any rules or industry standards
16 that govern and control appraisal -- appraisers in their
17 appraisal assignments?

18 A: We have USPAP, U-S-P-A-P.

19 Q: And what is the USPAP?

20 A: It's Uniform Standards of Professional Appraisal
21 Practice.

22 Q: Did you comply with USPAP in conducting this appraisal
23 assignment?

24 A: Yes. I believe I did.

25 Q: What assumptions did you have to make in reaching your

1 conclusions in this case?

2 A: I did make an assumption, several assumptions. The
3 primary assumption I was looking at was the date of value was
4 prior to my inspection. And also, I was looking at the
5 assumption that the 62 spaces, basically, would be effectively
6 eliminated by the new building that was gonna be approved and
7 constructed. So, I made the assumption that those spaces
8 would effectively be gone.

9 Q: Did you inspect the property yourself as part of this
10 assignment?

11 A: I did.

12 Q: When did you conduct that inspection?

13 A: I was out there in November of -- 25th, 2019.

14 MR. FOERSTER: Your Honor, I would request permission to
15 freely approach Mr. Knight.

16 THE COURT: You have it.

17 BY MR. FOERSTER:

18 Q: Mr. Knight, I'm going to be showing you what's been
19 marked as Plaintiff's Exhibit Number 47(a), and let the record
20 reflect that I am handing a copy to Defendants' counsel for
21 her review.

22 MS. GOLDING: Your Honor, my understanding, these are not
23 in evidence and there's been no attempt to put this report in
24 evidence, because that was a motion in limine we addressed
25 earlier.

1 THE COURT: Right.

2 MS. GOLDING: I would, of course, object to any of these
3 documentation, the report or any portions of the report being
4 in evidence. However, I have no problem with him saying
5 47(a), 47(b), that type of thing. Does that make sense?

6 THE COURT: So, you're saying you would -- you have no
7 objection to him marking the exhibits for identification
8 purposes, so the record is clear, but would object to them
9 being offered into the record as exhibits?

10 MS. GOLDING: Yes, sir. And I have no objection to them
11 being 47(a), 47(b), instead of a complete new number. But I
12 do object to the admissibility.

13 MR. FOERSTER: Your Honor, I have not offered it yet, but
14 I do intend to offer this and several other select tables and
15 grids from this appraisal report into evidence. I believe at
16 the beginning of the week, Defendants' counsel argued that it
17 is a settled law in this state that we can -- the appraisal
18 report never comes into evidence, the appraisal report itself.
19 But then, they cited to a single court case within their
20 brief, their Memorandum of Law, that they filed on Monday.
21 That case is *Duncan v. Ford Motor Company*. Do you know what
22 that case is about, Your Honor? It's about a deceased
23 appraiser who was not available to testify at the trial. And
24 the litigants in that case were simply trying to offer a
25 report into evidence under the business records' exception of

1 hearsay. That's not this case. Further, all the Court said
2 in that case is that it was not going to admit the subjective
3 portion, the subjective opinions about the appraisal into
4 evidence if he wasn't there and they were offering it under
5 the business records' exception. That's all that says. And
6 the parties in that case did not preserve the issue for review
7 as to whether the factual portions of that report should come
8 into evidence. Further, this is an inverse condemnation case,
9 okay. The case of *Burke v. South Carolina Department of*
10 *Transportation* makes it real clear that inverse condemnation
11 cases are also governed by the *South Carolina Eminent Domain*
12 *Procedure Act* that governs direct condemnation actions.
13 Within the *South Carolina Eminent Domain Procedure Act*, Your
14 Honor, there is a special evidentiary area statute in Section
15 28-2-340. Okay? And within that statute, it says, Any
16 evidence that is relevant material and competent should be
17 admitted in a condemnation case. So, I would argue that these
18 experts -- these excerpts from the appraisal report should
19 come into evidence because this is a condemnation and we have
20 these special evidentiary rules. I have a copy of that
21 statute if I may approach.

22 THE COURT: If you would hand it up, I would appreciate
23 it. Thank you. My law clerk would absolutely appreciate it.
24 Just make sure Ms. Golding has a copy as well if she doesn't
25 already have it.

1 MR. FOERSTER: Absolutely.

2 THE COURT: All right. Let's -- just go ahead and
3 continue questioning him and we'll look at this as far as the
4 admissibility of the report after ---

5 MS. GOLDING: May also state, Your Honor ---

6 THE COURT: Yes, ma'am.

7 MS. GOLDING: --- that traditionally in the many, many
8 cases I have with experts, if you object, those reports are
9 not admissible to go to the factfinder. I just -- and most of
10 the time those issues have been in federal court, and I
11 apologize I don't know the state court. But the rationale,
12 Your Honor, is that if you let an expert's report go in to the
13 factfinder, that report doesn't contain any information of the
14 cross examination. It only sees one side you might say. And
15 so, traditionally the Courts in the cases I have tried
16 involving experts, the report doesn't come in. Now, I have
17 been in cases where the attorneys agreed that it does, but if
18 an attorney objects because of the one sidedness of the
19 report, it's only the evidence from the witness stand, Your
20 Honor, that comes in.

21 Thank you, Your Honor.

22 THE COURT: All right. Well -- and I certainly
23 understand the nature of that objection. If we had a jury
24 here, I think I would wholeheartedly agree with you subject to
25 any deviation from that general rule that 28-2-340 requires.

1 I think we're in a little bit different situation since this
2 is a case where I am sitting as the factfinder. I'm gonna
3 listen to his testimony, and we're gonna read the statute in
4 the cases that have been cited, and then I'll make a decision.
5 But I think that -- I think there's less -- a lower likelihood
6 of any sort of prejudice given the fact that I am sitting as
7 the factfinder instead of 12 jurors. So, let's continue with
8 this testimony and then I make a final decision on the
9 admissibility of the actual documents.

10 MR. FOERSTER: One more note about that statute, Your
11 Honor. It specifically admits into evidence evidence of
12 sales, comparable land sales. So, that overrides any kind of
13 hearsay, Judge, in my opinion.

14 THE COURT: All right. Thank you very much.
15 Proceed.

16 BY MR. FOERSTER:

17 Q: Mr. Knight, I am handing you what I have marked as
18 Plaintiff's Exhibit 47(a). Do you recognize that document?

19 A: Yes, sir.

20 Q: What is it?

21 A: These are photographs I took November 25th, 2019.

22 Q: Did you take these photos?

23 A: I did.

24 Q: Now, do those photos accurately depict the property as it
25 appeared to you as of the date of your site inspection?

1 A: Yes, it does.

2 MR. FOERSTER: Your Honor, at this time, I will tender
3 Exhibit 47(a) into evidence.

4 THE COURT: Okay. I'm gonna withhold ruling on that
5 until my clerk has had an opportunity to pull up these cases
6 that you cited. Just continue with your questioning and
7 before you tender the witness to Ms. Golding, we'll make the
8 final decision.

9 MR. FOERSTER: Thank you.

10 BY MR. FOERSTER:

11 Q: Are there improvements on this property, Mr. Knight?

12 A: Yes, there are.

13 Q: Can you describe them?

14 A: Yeah. It's a two-story restaurant, basically wood-sided,
15 composition shingle roof, it's built on piers on a concrete
16 foundation. I measure it to have 5161 gross square feet.
17 There is also a patio area for outside dining that's included
18 in this additional square footage.

19 Q: Mr. Knight, what is the accepted methodology when
20 determining the value of a condemnation or taking?

21 A: Typically, you look at the value of the property before
22 the taking, and you look at the value of the property after
23 the taking, and come up with the diminution or difference in
24 value from the taking.

25 Q: What are the three main approaches to appraisal?

1 A: We look at the sales comparison, the income approach, and
2 the cost approach.

3 Q: Can we briefly explain those to the Court?

4 A: In the sales comparison, you are primarily looking at
5 comparable sales, comparing those back to the subject
6 property, investigations into the market transactions.

7 The income approach, you are basically looking at the
8 income generating ability of a property. And you're looking
9 at rates, whether it be multipliers or capitalization rates to
10 convert an estimate of income into value, or you can do
11 discounted cash flow analysis in the income approach as well.

12 And the cost approach is looking at the replacement cost
13 less depreciation plus the land value of the property. It
14 could be a reproductional replacement. You typically look at
15 replacement costs and appraisal.

16 Q: Thank you. Which of those approaches to real estate
17 appraisal did you employed in this case?

18 A: I did the sales comparison and the income approach.

19 Q: Why did you select those approaches?

20 A: Those would be the two most applicable. With a building
21 this age, the cost approach is not typically considered
22 applicable. Most appraisers aren't doing the cost approach on
23 a building this old due to depreciation.

24 Q: Now, what was the very first step you took in trying to
25 determine what the fair market value of this property was with

1 sufficient parking in place?

2 A: I just did of -- I went into a date of service -- I have,
3 CoStar -- and started to look for improved restaurant sales to
4 compare to the property with a focus on trying to find
5 waterfront if possible. And, also, undertook to investigate
6 market rentals as well for the income approach. And, also,
7 undertook an estimate of the land value, which was gonna be
8 necessary in the after value.

9 Q: Did you research the zoning for this property?

10 A: I did.

11 Q: And what did your research tell you about the zoning?

12 A: Let me flip to my notes on that. Basically, that it is
13 owned PD, planned development, by Georgetown County.

14 Q: What uses were permitted in that PD?

15 A: There were multiple uses that would be allowed on the
16 property. The one use that I was looking at was to determine
17 if the restaurant was gonna be a legally allowable use, which
18 it was.

19 Q: What was the next step in your analysis of the fair
20 market value of this property if it had sufficient parking in
21 place?

22 A: I undertook to look at the comparable sales that I was
23 referencing. And I took the time to go through and look at
24 the comparables and break them down to see which ones I
25 thought were going to be applicable for the subject property.

1 Then, I did an analysis, double checked with that, of the
2 actual comparables back to the subject property, it may be a
3 little closer.

4 Q: Do real estate appraisers have to determine what the
5 highest and best use of the property is as part of their
6 assignment?

7 A: Yes.

8 Q: Did you do that in this case?

9 A: Yes. Before this analysis that I undertook for the
10 comparable sales, I did a highest and best use analysis of the
11 restaurant.

12 Q: How did you do that analysis?

13 A: Went through the test of physical possible, legally
14 permissible, financial feasibility, and maximum productivity
15 to determine if the restaurant was, in fact, was the highest
16 and best use to see if there was an alternative use. So, for
17 the land as it's vacant under the PD, I determined that it
18 could be -- it was not clear if a restaurant would be able to
19 be constructed on the site because of the size of it. I did
20 conclude restaurant use ultimately for the vacant site. And
21 then for the improved site, I concluded the highest and best
22 use to be as a restaurant as it presently exists.

23 Q: And that's as of January 23rd, 2019?

24 A: That's correct.

25 Q: How did you find the comparable land sales that you

1 relied upon for your sales comparison analysis?

2 A: I investigated those in CoStar.

3 Q: All right. Did you verify the sales?

4 A: I talked to brokers.

5 Q: That's how you verified them?

6 A: Yes.

7 Q: How does an appraiser account for differences in the
8 sales, differences from the subject property?

9 A: If necessary, we will make adjustments for the
10 differences in the sales compared to the subject.

11 Q: I'm gonna hand you what's marked as Plaintiff's Exhibit
12 47(b), and I'm handing a copy to Defendants' counsel.

13 Mr. Knight, do you recognize that document?

14 A: Yes, sir. These are my improved sales -- summary of my
15 improved sales.

16 Q: Does it appear to be a true and accurate copy of your
17 table?

18 A: It does; yes, sir.

19 Q: And you prepared this table yourself?

20 A: I did.

21 Q: And just tell us real briefly, what is this improved
22 sales summary table telling us?

23 A: Basically, gives us the address of the property, grantor,
24 grantee, price, date of sale, size of the building, and then
25 the -- in this chart I've got the price per square foot for

1 the building, and the year built and the construction.

2 Q: And does this contain all of the land sales that you
3 ultimately selected and then relied upon for your opinion on
4 value in this case?

5 A: This is the improved sales chart, yes.

6 Q: Okay.

7 MR. FOERSTER: At this time, Your Honor, I would tender
8 47(b) into evidence.

9 THE COURT: All right. Just keep going. I haven't read
10 what my law clerk is putting together for me yet, so just
11 remind me before you tender the witness. I'll make a ruling
12 on the admissibility of the documents at the close of his
13 testimony.

14 MR. FOERSTER: Thank you.

15 BY MR. FOERSTER:

16 Q: Mr. Knight, I'm gonna show you what's been marked as
17 Exhibit 47(c), and I'm handing a copy of Defendants' counsel.

18 Do you recognize this document?

19 A: Yes, sir. That's my land sales chart for the sales
20 comparison approach -- I mean my improved sales chart.

21 Q: What is this chart telling us?

22 A: This breaks down the comparables that I considered, and
23 then breaks down the factors I compared it to for location,
24 size, year built, condition, site size, land to building
25 ratio. I looked at current uses, if they're waterfront. I

1 have parking and a parking ratio analysis.

2 Q: So, this is the table of adjustments that you made to
3 account for those differences that we talked about, correct?

4 A: Yes, sir.

5 MR. FOERSTER: Your Honor, at this time I would tender
6 Plaintiff's 47(c).

7 THE COURT: All right. Again, I will make a final
8 decision at the close of his direct examination.

9 BY MR. FOERSTER:

10 Q: Mr. Knight, after you adjusted each of these comparable
11 land sales, what conclusion did you reach under the sales
12 comparison analysis as to the value of the Gulfstream Café's
13 property with sufficient parking in place?

14 A: After I adjusted the comparables and looked at the range
15 of the comps, the range was 338.06 to 403.97, the median was
16 \$371 a foot, and the average was 371.01 a square foot. And I
17 concluded a \$370 a square foot for the 5161 square foot
18 building.

19 Q: Thank you. Did you also do an income approach in this
20 case?

21 A: Yes, sir.

22 Q: And why did you also do an income approach after doing
23 the sales comparison analysis?

24 A: When I look at the -- based on the marketability for a
25 restaurant, what the market rents would be if the property was

1 rented to a tenant as opposed to an owner/user having the
2 property, which it does currently have. And so, I undertook a
3 rental study.

4 Q: And your report because it's a direct capitalization
5 method. What is that? Can you explain that?

6 A: It's just the process of converting net operating income
7 into value by dividing by a capitalization rate.

8 Q: And what variables are needed for that method?

9 A: You've got to estimate the income stream in the form of
10 potential gross income, look at vacancy. We look at expenses
11 that would be applicable to arrive at a net operating income,
12 and then we capitalize that by appropriate rate and convert
13 that into value.

14 Q: In doing this type of analysis under the income approach,
15 does an appraiser have to consider the actual financial
16 condition of an existing business that's located on that real
17 estate?

18 A: We're looking at the market -- what the market would pay,
19 market rent would pay if it was a vacant property for that
20 use, which is a restaurant use.

21 Q: Okay. You're just looking at market rent?

22 A: Correct.

23 Q: How did you decide what an appropriate market rent would
24 be for the Gulfstream Café's property in this case?

25 A: I pulled six rental comps that I could locate in the

1 area. And basically, I was looking at comparable restaurant
2 leases. If I could find something waterfront, I did. They
3 were not all on the waterfront. And I looked through the
4 charts -- well, there's a chart in my report. I don't think
5 we have that in evidence. It basically goes through the six
6 rentals. I look at the range of those rentals, the lease
7 terms, the rent per square foot in the lease type. So, the
8 first one I looked at on Kings Highway, 16 N. Kings Highway,
9 was the Royal Crab. That was a three-year lease at \$43.44 a
10 foot on that. The second lease was the Tilted Kilt that I
11 looked at, 1565 21st Avenue North. That was a ten-year lease
12 at 42.67 a foot. And then I had a lease at Little River Neck
13 Road that I looked at. It was a water view lease. It was a
14 five-year lease at \$36 a foot. Then I looked at one at Martin
15 Luther King Boulevard. That one is down in Savannah. It was
16 a riverfront restaurant. It was \$30 a square foot. And then
17 I had one on Strand Parkway in Myrtle Beach. Fifteen years,
18 36.50 a foot. And then I had one in Mt. Pleasant that was
19 waterfront, 508 Mill Street, Shem Creek Bar & Grill. And that
20 was at \$26 a square foot for a five-year lease. So, those
21 leases -- when I looked at all of those leases, I concluded a
22 rent per square foot of \$35 a foot net of expenses.

23 Q: Mr. Knight, now I'm going to show you what's been
24 premarked as Plaintiff's Exhibit 47(d), and I'm handing a copy
25 to Defendants' counsel.

1 Do you recognize this document?

2 A: Yeah. That's the rental chart we were just going
3 through.

4 Q: Did you prepare this chart?

5 A: I did.

6 Q: Does it appear to be a true and accurate copy of the
7 chart that you prepared?

8 A: It does.

9 MR. FOERSTER: Your Honor, at this time I would tender
10 47(d).

11 THE COURT: All right. I will make my final decision at
12 the conclusion of his direct exam.

13 BY MR. FOERSTER:

14 Q: Still discussing your analysis under the income approach,
15 describe the operating expenses that you decided you would use
16 for this analysis.

17 A: The operating expenses that I deducted were a three
18 percent management fee, two percent for effective gross
19 income, and two percent of effective gross for repairs.

20 Q: And that's what you deducted from the potential gross
21 proceeds of the property to arrive at the net operating
22 income?

23 A: That's correct.

24 Q: After that, what was the next step in the income approach
25 analysis?

1 A: After deducting the expenses -- let me back up a second.
2 After we got the gross income, I had to deduct vacancy, which
3 was I concluded a five percent vacancy and collection loss
4 based on a CoStar overview I had done of the restaurant
5 vacancy in the area. And that's taken after the effective
6 gross income is estimated, and then the expenses that we just
7 discussed coming out. The expenses -- after deduction of
8 expenses we get to the net operating income. In this case,
9 the net operating income was \$159,591.

10 Q: What does the capitalization rate tell us?

11 A: The capitalization rate looks at the debt and equity, but
12 primarily looking at unleveraged property. And it is taking
13 the income that we're taking that's available to be put to the
14 operation of the property, and then taking the capitalization
15 rate and dividing that by the net operating income.

16 Q: How did you determine in this case what an appropriate
17 capitalization rate was for the Gulfstream Café's property?

18 A: I went through four different analyses. I went through a
19 mortgage equity technique. I also went through a debt
20 coverage ratio analysis. And then I looked at two survey
21 rates as well.

22 Q: So, what was your conclusion as to the value of
23 Gulfstream Café's property under the income approach analysis
24 with sufficient parking in place?

25 A: So, after I went through the capitalization rate

1 estimates, I came up with the capitalization rates of nine
2 percent to apply to the NOI for the Gulfstream property and
3 came up with the value of 1,773,234. I rounded that to
4 1,773,000.

5 Q: Does your report contain all the data and facts on which
6 this analysis relied upon?

7 A: It's just a summary.

8 MR. FOERSTER: Your Honor, at this time I'm gonna
9 approach -- I'm sorry.

10 BY MR. FOERSTER:

11 Q: Mr. Knight, I'm gonna show you what's marked as 47(e),
12 and I'm handing a copy to Defendants' counsel.

13 Do you recognize this document, Mr. Knight?

14 A: Yes. That's Page 51 of my report, the operating income
15 statement.

16 Q: Is this a summary of the calculations that we just
17 discussed under the income approach?

18 A: Yes, it is.

19 Q: Does it appear to be true and accurate?

20 A: It does.

21 MR. FOERSTER: At this time, I would tender 47(e), Your
22 Honor.

23 THE COURT: All right. Again, I'm gonna withhold ruling
24 on that until he is finished with his direct examination.

25 BY MR. FOERSTER:

1 Q: Mr. Knight, after you reached your conclusions under both
2 the sales comparison analysis and the income approach analysis
3 as to the value of Gulfstream Café's property with sufficient
4 parking in place, what was the next step in your analysis?

5 A: Well, after I reached my reconciled value, which was
6 1,850,000, I looked at the impact that the 62 spaces within
7 the easement area would have. In my analysis, I've got an
8 assumption that the 62 spaces effectively would be reduced
9 from use as the way the easement is drawn up with the new
10 building that's gonna be in place.

11 Q: What information did you base that on?

12 A: What I was looking at was basically, after the
13 construction of the new building, that the 62 spaces would not
14 be available -- effectively would not be available for
15 parking.

16 Q: Can you please explain the process for how you went about
17 valuing the Gulfstream Café's property with insufficient
18 parking in place?

19 A: Yes. What I did there was looking at the effect of the
20 lost parking or the inability to use 62 spaces, one of the
21 things -- and I think I didn't say this, but when talking with
22 Jef Kirk, we were talking -- he's the operating partner of
23 Gulfstream. We were talking about the reliability of what
24 they do use for parking. And under the way the easement is
25 drawn, they're using that parking -- they're basically using

1 all 73 spaces -- I believe is what they have -- 62 easement
2 spaces and 16 dedicated spaces. So, what I did then was
3 looked at the property with insufficient parking as not being
4 able to operate as restaurant. I undertook an analysis of the
5 property as contributory value of land.

6 Q: Mr. Knight, now I'm going to show you what's been marked
7 as Plaintiff's 47(f), and I am handing a copy to Defendants'
8 counsel.

9 Do you recognize this document?

10 A: Yes, sir. That's Page 54 of my report. That's my land
11 sales summary chart for the property after the impact of the
12 parking on the building.

13 Q: And this contains all the land sales that you relied on
14 for your analysis of the value of the property with
15 insufficient parking?

16 A: Yes, it does.

17 Q: Did you find it necessary to make adjustments to any of
18 those sales?

19 A: I did. Let me get to that page in my report. Primarily,
20 was looking at size and the Gulfstream property and the usable
21 area of the site. There's 12,085 square feet, and all of my
22 sales were considerably larger. I did to make a size
23 adjustment to the sales of negative 25 percent. There was no
24 other adjustments that I made to the sales.

25 Q: Mr. Knight, I'm gonna hand you what's marked as

1 Plaintiff's 47(g), and I am handing a copy to Defendants'
2 counsel.

3 Mr. Knight, do you recognize 47(g)?

4 A: Yes. That's my land sales chart.

5 Q: Does it appear to be a true and accurate copy of the
6 adjustments you made to each of these land sales?

7 A: Yes, sir.

8 MR. FOERSTER: Your Honor, at this time I would tender
9 47(g).

10 THE COURT: All right. Again, I will make the final
11 decision after he has concluded his direct examination.

12 BY MR. FOERSTER:

13 Q: And, Mr. Knight, what was your conclusion under this
14 sales comparison analysis as to the value of the Gulfstream
15 Café's property with insufficient parking?

16 A: I concluded that it had a land value of \$10 a foot based
17 on the sales, and I looked at a demolition cost they would
18 have to remove the building. I estimated that from Marshall &
19 Swift, which is an estimating program service we use. I
20 estimated that demolition cost \$31,000 to come to a land value
21 of \$89,900.

22 Q: So, how did you then calculate the total damage to the
23 value of this property that would be directly caused by having
24 insufficient parking?

25 A: I simply took the difference between the before and

1 after, took away the \$89,900 remaining land value, and the
2 difference was \$1,760,100.

3 Q: \$1,760,100?

4 A: Yes, sir.

5 Q: Now, is the type of data that you relied upon for all of
6 your opinions that you have testified here to today and that
7 are in your report, is that the same type of data that other
8 appraisers would rely upon for this assignment?

9 A: Yes. That's the type of data they would look for.

10 MR. FOERSTER: I have no further questions, Your Honor.

11 THE COURT: All right. With regard to the issue of the
12 admission of the appraisal and the subparts, ordinarily the
13 report of an expert would be considered hearsay because it is
14 being offered for the truth of the matter asserted. However,
15 I think that Statute 28-2-340, and it admittedly is evidence
16 which may be admitted in trials of condemnation, this cause of
17 action is inverse condemnation, and it calls for allowing
18 certain types of evidence to be admitted including any other
19 evidence which is relevant, material, and competent. I
20 certainly think the appraisal is relevant, material, and
21 competent, and taken with that statutory provision, along with
22 the fact that this is not a trial before a jury but a trial
23 before the Court, Ms. Golding, I'm gonna allow this to be
24 admitted. I find that it would certainly assist me as the
25 trier of fact in evaluating the testimony that's been

1 presented here. So, I believe it was Plaintiff's 47 and all
2 of the subparts ---

3 MR. FOERSTER: Actually, it's just the subparts, just the
4 experts -- the excerpts of the report.

5 THE COURT: Oh, just the excerpts?

6 MS. GOLDING: Your Honor, may I?

7 THE COURT: Yes, ma'am.

8 MS. GOLDING: I think that, if that's the Court's
9 opinion, that 47 should come in and not the subparts.

10 THE COURT: I would like it all.

11 MS. GOLDING: Thank you, Your Honor.

12 THE COURT: Truth be told, I want -- I want the -- if I'm
13 gonna look at any of it, I'm gonna look at all of it. And,
14 you know, I will be able to mete out the subjective portions
15 versus the factual portions. So, if the subparts are going to
16 be offered, I would prefer that the entire documents be
17 submitted as one exhibit.

18 MR. FOERSTER: That's fair enough, Your Honor.

19 THE COURT: All right. So, 47 and all of its subparts
20 will be admitted.

21 MR. FOERSTER: Thank you.

22 PLAINTIFF'S EXHIBIT NUMBER 47

23 ADMITTED INTO EVIDENCE

24 THE COURT: Ms. Golding?

25 MS. GOLDING: Thank you, Your Honor.

1 CROSS-EXAMINATION OF GEORGE "JAKE" KNIGHT BY MS. GOLDING:

2 Q: Hello, Mr. Knight.

3 A: Hello.

4 Q: Mr. Knight, I think you were hired in September 2019; is
5 that correct?

6 A: I believe that's correct.

7 Q: Okay. And, if I'm not mistaken, you were referred to
8 Gulfstream by Mr. Sean Foerster, the attorney that just did
9 your direct examination; is that correct?

10 A: That's correct.

11 Q: And you have done a fairly significant amount of expert
12 appraisal work for Mr. Foerster's law firm; is that correct?

13 A: I've done a number of appraisals for him.

14 Q: And you were hired initially by CentraArchy Restaurant
15 Management Company, but then you were contacted by
16 Gulfstream's attorney who said, oh, no, that's not your
17 client. It's got to be Gulfstream. Is that correct?

18 A: Correct.

19 Q: And so, Gulfstream's attorney told you to remove the name
20 of CentraArchy from your report; is that correct?

21 A: I believe that's correct.

22 Q: Okay. Now, in testifying, Plaintiff's counsel used the
23 word sufficient parking, but your report is solely based on
24 complete loss of parking; is that correct?

25 A: My analysis makes the assumption that there is gonna be

1 an impact to 62 spaces; the easement parking area will be
2 impacted by the construction of the new building.

3 Q: Okay. And your analysis is that those 62 parking spaces
4 will never be used again by Gulfstream?

5 A: I've taken the analysis that 62 spaces will be impacted,
6 yes.

7 Q: Well, you use the word impacted but your report says
8 loss, loss of 62 parking spaces; is that not correct?

9 A: I believe that's how I phrase it in the report.

10 Q: Yes. And so, your opinion is based upon Gulfstream Café
11 never ever being able to use even one of those 62 parking
12 spaces; is that correct?

13 A: I've taken the assumption that the easement will be
14 impacted, the 62 spaces in the easement, yes.

15 Q: Okay. That was a yes at the end, right?

16 A: Right. Correct.

17 Q: I'm sorry. I'm having a hard time hearing you. I
18 apologize.

19 A: Correct.

20 Q: Did you say correct?

21 A: Correct.

22 Q: Okay. Thank you.

23 And I think in your report you classified the complete
24 loss of 62 parking spaces as a extraordinary assumption; is
25 that correct?

1 A: It is an extraordinary assumption.

2 Q: Okay. And you yourself did not do any independent
3 analysis to come up with any affirmation that Gulfstream Café
4 will lose permanently 24/7 62 parking spaces?

5 A: No, I -- I made the assumption that they're gonna lose 62
6 spaces.

7 Q: So, that's an assumption you made; is that correct?

8 A: Correct. Correct.

9 Q: And you classified that assumption as extraordinary.

10 A: I did.

11 Q: And so, the inability to use all of 62 parking spaces
12 24/7, 24 hours a day, seven days a week, throughout the rest
13 of the life of Gulfstream; is that correct?

14 A: Well, I think I've answered that, yeah. I've looked at
15 the impact of the 62 spaces and how they are allowed to use it
16 during the easement.

17 Q: And you say that Gulfstream uses those 62 spaces for its
18 patrons; is that correct?

19 A: Correct.

20 Q: Okay. And Gulfstream did not provide you any information
21 as to the patrons it receives from walk-ins, did it?

22 A: We don't have an analysis of that, no.

23 Q: And that analysis would certainly affect your opinion,
24 would it not?

25 A: As to what?

1 Q: The walk-ins that Gulfstream has.

2 A: I think the estimate I've made just considers that
3 they're gonna need those parking spaces for the operation of a
4 sit-down restaurant.

5 Q: But walk-in -- you will agree that walk-ins from that
6 community can be a significant factor or needed information to
7 arrive at a correct appraisal; is that correct?

8 A: I don't know that there's a number out there for walk-
9 ins.

10 Q: Right. But you're not gonna stand -- you're not gonna
11 sit here today, excuse me, and tell this Court that Gulfstream
12 Café does not have walk-ins, are you?

13 A: No.

14 Q: Okay. And, in fact, there are a significant number of
15 condominium regimes around Gulfstream Café; is that not
16 correct?

17 A: There are, yes.

18 Q: And there are significant number of condominium units
19 around Gulfstream Café; is that correct?

20 A: There are.

21 Q: Okay. And there are a significant number of individuals,
22 whether permanent residents or vacationers that walk to
23 Gulfstream Café and dine; is that not correct?

24 A: I'm sure there are some that walk over to the restaurant.

25 Q: And that factor was not at all considered in your

1 appraisal?

2 A: I'm looking at the ability to park on those 62 spaces for
3 vehicle traffic, not foot traffic.

4 Q: It's a yes or a no answer.

5 A: Correct.

6 Q: Okay. Thank you.

7 So, and with respect to the marina store and restaurant,
8 are you then, since the 62 spaces are completely gone for
9 Gulfstream, are you saying that the marina store and
10 restaurant are gonna use all of the 62 spaces?

11 A: I'm saying the new restaurant will need to use those.

12 Q: So, that's what you're saying?

13 A: Correct.

14 Q: Now, in fact, the history of this PD, isn't it a fact
15 that this marina store and restaurant has used this parking
16 lot for almost 30 years?

17 A: I believe that's correct.

18 Q: Okay. And its use of the 30 -- for over 30 years has
19 been not only for its marina operations, fuel sales, things of
20 that nature, but also for restaurants sales, food and
21 beverage; is that correct?

22 A: Correct.

23 Q: Okay. And so over 30 years, approximately, Marlin Quay
24 has served food, served beverages, and had a seating capacity
25 of 110 seats; is that correct?

1 A: The existing ---

2 Q: The previous initial construction in that PD ---

3 A: Okay.

4 Q: --- had seating capacity of 110 seats for 30 years?

5 A: I believe that's correct.

6 Q: Okay. And the PD that passed by Georgetown County --
7 excuse me, not PD -- the amendment, Number 3, provides for 110
8 seating capacity. Is that correct?

9 A: I think that's correct, yes.

10 Q: Okay. So, what we have is that for 30 years Gulfstream
11 Café has been operating its business and using the parking
12 lot. Marlin Quay Restaurant has operated its business and
13 used the parking lot. Is that not correct?

14 A: Up to now, yes.

15 Q: Okay. And during those 30 years, Gulfstream Café has not
16 lost the 62 parking spaces as you are trying to tell this
17 Court. That, historically, there has been no loss of 62
18 parking spaces.

19 A: That's before the new parking would come -- the new
20 building would come into play.

21 Q: The new building has the same seating capacity of 110
22 seats in the restaurants, you just said it does. Is that
23 correct?

24 A: I believe that's correct.

25 Q: Okay. So, historically, Marlin Quay Restaurant has had

1 110 seats for 30 years. Gulfstream Restaurant has operated
2 the same business for 30 years. And during those 30 years,
3 Gulfstream has not lost the parking spaces of 62. Isn't that
4 correct?

5 A: I don't -- I think they've been using them for the
6 existing use, yes.

7 Q: And so, you didn't take into consideration the appraisal
8 the fact that Gulfstream Café and Marlin Quay have operated
9 the same way for 30 years, and this new restaurant is also
10 going operate the same way that it had been for 30 years.

11 A: No, I ---

12 Q: That wasn't in consideration in your report, was it?

13 MR. FOERSTER: Objection, Your Honor. Can he finish his
14 answer?

15 THE COURT: I think she asked the same question in a
16 different way. But Mr. Knight, answer the question. I think
17 it was that you didn't take that into consideration.

18 MS. GOLDING: Yes.

19 THE COURT: Restate your question, Ms. Golding. I'm
20 sorry.

21 MS. GOLDING: I apologize, Your Honor. Yes, sir.

22 BY MS. GOLDING:

23 Q: The marina store and restaurant, for 30 years there's
24 been 62 parking spaces for the marina store and restaurant and
25 Gulfstream, the shared parking. Is that correct?

1 A: That's my understanding.

2 Q: Okay. For 30 years, the marina store and restaurant had
3 served meals at night. Is that correct?

4 A: I believe that's correct.

5 Q: For 30 years, the marina store and restaurant has had 110
6 seating capacity. Is that correct?

7 A: I believe so.

8 Q: Okay. And for -- as a result, those assumptions that you
9 have in your report are not at all based upon the historical
10 conduct -- the historical facts that have existed between the
11 two, Marlin Quay Restaurant and Gulfstream Restaurant?

12 A: Yeah, what -- and again, I think the 110, when they put
13 in the new building, we're gonna have -- the uses there are
14 going to impact.

15 Q: But the impact is not gonna be any different because
16 Number 3 has got 110 seating capacity in the previous initial
17 building for 30 years had 110 seating capacity. So, there's
18 no impact, is there?

19 A: That's not what I found.

20 Q: Okay. Now, you mentioned something about the -- you did
21 an income approach; is that correct?

22 A: Yes, ma'am.

23 Q: Okay. Now, on the income approach, you did not receive
24 any tax returns of Gulfstream Café, did you?

25 A: I did not.

1 Q: Okay. You did not receive any P&L profit and loss
2 statements of any kind from Gulfstream, did you?

3 A: I don't think so.

4 Q: Okay. You did not receive, in fact, any financial data
5 as to the operation of Gulfstream Restaurant, did you?

6 A: No.

7 Q: Okay. In your report you referenced expenses in this
8 income approach. Is that correct?

9 A: Correct.

10 Q: You referenced that you -- you used a three percent
11 management fee. Do you recall that?

12 A: I do.

13 Q: Okay. That never was corrected by Gulfstream, was it?
14 The Gulfstream attorneys never corrected you and said, oh, no,
15 Mr. Knight, don't use three percent because our management fee
16 is seven percent. That incorrect you on that, did they?

17 A: I'm not aware of that, no.

18 Q: Okay. So, you were never told that the management fee
19 that CentraArchy charges to Gulfstream Café is seven percent
20 and not three percent that you have in your report, were you?

21 A: I don't have that information.

22 Q: So, you weren't told that?

23 A: No.

24 Q: Now, you could've easily used Gulfstream's numbers to
25 produce an appraisal of property -- Gulfstream's financial

1 information could've been used by you, could it not?

2 A: I could've looked at it.

3 Q: Yeah. But Gulfstream didn't give it to you to assist in
4 your appraisal report, did it?

5 A: I did not look at it. I looked at it being primarily
6 from an owner-occupied standpoint.

7 Q: Now, you also said that the use of Gulfstream was for
8 restaurant; is that correct?

9 A: Restaurant, yes.

10 Q: Okay. And that's in the current PD, the property of
11 Gulfstream is used as the best and highest use is restaurant
12 use.

13 A: Yes.

14 Q: Okay. And that use, that PD, Gulfstream could make --
15 could apply for an amendment to use that building for other
16 activities, could it not?

17 A: I believe that's correct.

18 Q: Okay. It could've made an amendment of the PD to change
19 it from restaurant to office, could it not?

20 A: It would require a change.

21 Q: Yes. But it would require the process of applying and
22 obtaining approval from Georgetown County.

23 A: It would require a change, yes.

24 Q: Okay. And if that change was made your appraisal
25 evaluation would not be correct, would it?

1 A: If they made a change in use, you'd have to analyze that
2 use.

3 Q: Okay. Now, that's -- the Gulfstream Café property,
4 you've been on it, you've seen that view of the marsh, have
5 you not, of the inlet going out into the ocean?

6 A: Yes.

7 Q: Is a beautiful view, isn't it?

8 A: It is.

9 Q: Okay. And are you trying to tell this Court today that
10 that piece of property today is only valued \$89,000?

11 A: Yes, ma'am.

12 Q: Okay. And if the use was changed to residential,
13 wouldn't you believe that that property would probably sell
14 for close to \$2,000,000 with that view? Wouldn't that be
15 fair?

16 A: I didn't do that analysis.

17 Q: Yes, but you can argue with it that that has a real
18 value, that property, does it not?

19 A: It would require a change in use.

20 Q: Yes, sir. And if it required to change it use, that
21 would really -- that property would have a real big value,
22 would it not?

23 A: I didn't do an analysis with change in use.

24 Q: I'm not asking you that. Based on -- you've been an
25 appraiser for how many years?

1 A: Thirty-one years.

2 Q: Thirty-one years. And you've done residential
3 appraisals?

4 A: I have done some residential.

5 Q: Okay. And you're not going to tell this Court that that
6 piece of property as a residence with its view is worth
7 \$89,000?

8 A: In a residential use, no. I didn't do that analysis.

9 Q: I know you didn't do the analysis, but we're talking
10 about a diminution in value, a loss of value to this ---

11 MR. BLOOM: Objection, Your Honor. This is getting
12 argumentative.

13 THE COURT: Overruled.

14 BY MS. GOLDING:

15 Q: Are we not talking about a did a diminution in value, a
16 loss of value to the real estate?

17 A: Yes.

18 Q: Okay. And if that real estate could be utilized for
19 residents, the value of that real estate would probably be in
20 excess of a million and a half dollars; is that not correct?

21 A: Again, making an assumption that it can be put to a
22 residential use.

23 Q: If it could be put to residential use.

24 A: I don't have any basis for that, that it could be put to
25 a residential use.

1 Q: As a real estate appraiser, you know that property in the
2 inlet, with the marsh views and the ocean, that is valuable
3 property, is it not?

4 A: It is.

5 Q: Okay.

6 MS. GOLDING: Indulgence from the Court for one minute.

7 THE COURT: Yes, ma'am.

8 MS. GOLDING: No further questions, Your Honor. Thank
9 you.

10 THE COURT: Any redirect?

11 MR. BLOOM: One second if we could, Your Honor.

12 THE COURT: Yep.

13 REDIRECT EXAMINATION OF GEORGE "JAKE" KNIGHT BY MR. FOERSTER:

14 Q: Mr. Knight, what is your understanding of the building --
15 we've been calling it Version 3.0 -- that was permitted by the
16 ordinance at issue in this case?

17 A: It's gonna be a mixed-use building, and I think it's
18 gonna have nighttime use, restaurant use, and the marina will
19 still be next-door. The marina store will be downstairs.

20 Q: Is it your understanding that it's gonna be a
21 substantially larger building?

22 A: I think 13,000 square feet.

23 Q: Were you aware that it had an occupancy of 359 people
24 occupancy allowable?

25 A: I don't believe I had that number.

1 Q: Okay. But that's a significantly larger building than
2 what was there before Version 3.0, correct?

3 A: Yes.

4 Q: So, isn't it just common sense that 62 parking spaces
5 will be impacted by a substantially larger building?

6 A: That's my analysis, yes.

7 Q: Let me ask you about your income approach analysis and
8 defense counsel's criticism of that, about why you didn't ask
9 for Gulfstream's actual finances. Okay? Was your assignment
10 to value the real estate or was your assignment to value the
11 existing business on that real estate?

12 A: I was just looking at the real estate.

13 Q: Right. It doesn't matter what the -- how the performance
14 of the business as it existed, it doesn't matter for purposes
15 of the income approach analysis, does it?

16 A: No. I was looking at market rent for the restaurant.

17 Q: Right. When is it appropriate for an appraiser to simply
18 assume the property can be rezoned?

19 A: I mean, you -- you can make -- it becomes a hypothetical.
20 You're just making an assumpt -- again, it's an assumption that
21 -- something that's not true.

22 Q: Do you have to do any research of the likelihood of a
23 rezoning change?

24 A: You absolutely do.

25 Q: Do you have to determine that has to be reasonably

1 probable that a zoning change will be permitted by the local
2 authority?

3 A: You do.

4 Q: And you can't just assume it. You have to do a lot of
5 homework and know that it's reasonably likely that the
6 property will be rezoned in the near future?

7 A: Yes, in the near term.

8 Q: Thank you.

9 RECROSS-EXAMINATION OF GEORGE "JAKE" FOERSTER BY MS. GOLDING:

10 Q: You can't assume a change in use will be approved, just
11 like you can't assume this extraordinary assumption that all
12 of 62 parking spaces will be lost, can you?

13 A: I need some research to assume the use will change.

14 MS. GOLDING: Thank you, Your Honor.

15 BY THE COURT:

16 THE COURT: All right. Thank you, sir. You can step
17 down.

18 MR. BLOOM: Your Honor, subject to conferring that our
19 exhibit tracker is consistent with what the court reporter has
20 into evidence, the plaintiff has no further witnesses and
21 would rest.

22 THE COURT: All right. Do you want to take time now to
23 make sure that your -- that the exhibits you believe you have
24 offered have been admitted before you formally rest?

25 MR. BLOOM: That is correct.

1 THE COURT: All right. Well, we're gonna take -- we're
2 gonna take a brief recess. If you could have one of the
3 bailiffs let me know when y'all are ready for me to come back
4 out.

5 MR. BLOOM: Yes, sir.

6 THE COURT: All right?

7 **RECESS - 3:52 P.M.**

8 *****OFF THE RECORD*****

9 **ON THE RECORD - 4:04 P.M.**

10 THE COURT: All right. Mr. Bloom, you've conferred with
11 Madame Court Reporter with regard to the plaintiff's exhibits?

12 MR. BLOOM: Yes, sir.

13 THE COURT: Is everything squared away?

14 MR. BLOOM: Yes, it is, Judge.

15 THE COURT: All right.

16 Ms. Golding?

17 MS. GOLDING: Thank you, Your Honor.

18 MOTIONS:

19 MS. GOLDING: Your Honor, at this time, on behalf of
20 Defendants, I would like to move for a judgment as a matter of
21 law as to the cause of action asserted by the plaintiff.

22 Your Honor, I'd like to divide it up into the significant
23 -- to procedural due process, substantive due process, and
24 then the inverse condemnation, and then Mr. Goggans's status
25 in the lawsuit. I think that's -- because the constitutional

1 analysis under state and federal are very similar with respect
2 to the procedural and the substantive of constitutionality of
3 Version 3.0.

4 And first of all, Your Honor, I would like to make sure
5 this Court notes the complaint contests the constitutionality
6 of Version 3.0. And the first thing it says that -- well, not
7 the first thing it says, but it states that procedurally the
8 process by which the County went through to amend Version 3.0
9 was defective. The first thing they tried to say was that the
10 application, Palmetto's application for Version 3.0
11 represented the second application by Palmetto for the same
12 parcel of property during a 12-month period. That is
13 inaccurate, Your Honor. Under Article XVII of the zoning
14 ordinance, the zoning ordinance is Exhibit Number 1,
15 Plaintiff's Exhibit Number 1, but the particular portions of
16 Plaintiff's Exhibit Number 1 are under Plaintiff's Exhibit 4,
17 excerpts are there. And with respect to the 12-month period,
18 the statute reads clearly that an action shall not be
19 initiated for a zoning amendment affecting the same parcel or
20 parcels of property or any part thereof, and requesting the
21 same change in district classification by a property owner.

22 As Ms. Richardson testified, the application did not seek
23 a change in district classification by the property owner.
24 Therefore, this 12-month window that is referenced in 1702.1
25 simply doesn't apply. And the only evidence, Your Honor, is

1 that it doesn't apply is from the testimony of Ms. Richardson.
2 Furthermore, the application itself shows there is no change
3 being sought in the district classification. And I have to
4 clarify -- I said the only evidence. When I say -- I meant to
5 say there's only one expert that testified about the zoning
6 interpretation of Georgetown. Mr. Bloom called her an expert,
7 and that was Ms. Richardson. Plaintiff has no one --
8 presented no one to contradict that had any qualifications as
9 Ms. Richardson had. That's the first item that is not
10 applicable.

11 Secondly, Plaintiff says Palmetto failed to submit its
12 application in proper form 45 days prior to the application
13 being considered. Ms. Richardson testified the proper form
14 was used. That is a form that was developed by her department
15 for amending PDs. It was completed properly. A complete
16 application was submitted. There was nothing left out of that
17 application that was -- made it incomplete. And therefore,
18 that provision, that basis that they are asserting is not
19 applicable. It says completed forms under 1702.2 together
20 with an application fee to cover administrative costs shall be
21 filed with the Planning Commission within 45 days. August 27,
22 and the Planning Commission was October 18, 2018. Clearly, it
23 was filed before 45 days.

24 The next states is that Plaintiff contends that Palmetto
25 failed to provide notice to all property owners within 400

1 feet of the impacted property. Actual notice was provided to
2 everyone, Your Honor. And I'd like to -- for the Court to
3 note in -- there is a state statute as well as a provision in
4 the zoning ordinance that states that substantial compliance
5 is sufficient in that the state statute specifically states
6 that as well as the zoning ordinance. There was substantial
7 compliance, Your Honor, with respect to notification.

8 Furthermore, the law specifically states that -- the
9 plaintiff doesn't even have standing to assert that someone
10 else didn't get notice. While we do not have a case directly
11 on point in the state of South Carolina, and we do have one
12 case that states -- that was done by Justice Toal with respect
13 to standing that provides that you cannot complain about
14 something that does not affect you. Plaintiff had notes,
15 there are two Georgia cases, *Oasis Goodtime Emporium, Inc. v.*
16 *City of Doraville* which stands for the proposition that you
17 cannot complain that someone else did not get notice. That is
18 297 Ga. 513, 773 S.C.2d 728. That's a 2015 case, Your Honor.
19 A second -- excuse me -- the second case is from Ohio. That's
20 the Court of Appeals of Ohio, Third District. It's in regard
21 *Single County Ditch*. The cite is 50 Ohio App. 2nd 114, 361
22 N.E.2d 1353. The same fact that an individual was attempting
23 to complain that someone else did not receive notice. An
24 applicant landowner has no standing to complain of lack of
25 notice to other landowners of a final hearing.

1 Next, of course, Palmetto states that we failed to submit
2 letters to nearby property owners notifying them. Again,
3 there is no standing on the part of the plaintiff to say that
4 other property owners did not receive communications or the
5 letters.

6 In the zoning ordinance, under Section 1702.208, it
7 states -- excuse me, I can't read too well, I'm sorry -- it
8 refers to the mailing to be in writing to the Planning
9 Commission to be certified by County Council. Then it states,
10 Failure to strictly comply with the notification criteria
11 established above as a result of circumstances beyond the
12 control of the Planning Commission or County Council shall not
13 render the rezoning of the property invalid.

14 There is also a state statute that states that
15 substantial compliance with respect to notice is -- will be
16 sufficient.

17 I believe those are the basis for the plaintiff's
18 allegation of procedural due process.

19 As to substantive due process, Your Honor, the
20 substantive due process is premised upon a property interest.
21 And Plaintiff's property interest is this nonexclusive
22 easement of parking which it shares. The testimony of Holly
23 Richardson and Boyd Johnson states -- they testified there's a
24 legitimate interest in conducting -- in constructing a safe
25 building that actually meets FEMA, ABA, and other building

1 codes, and allowing development and revitalization to occur.
2 The passage of the ordinance was rationally related to the
3 legitimate government interest. There was testimony that
4 public health, safety, and welfare were all considered.
5 Parking was also considered in the Planning Department, as the
6 evidence will show. But what's most important, Your Honor, is
7 with respect to the parking. The parking ordinance, Article
8 XI, specifically states it is not applicable to construction
9 that is not the initial construction nor a change in use.
10 Your Honor, this was not initial construction. This was
11 building another building, and there was no change in use.
12 So, the parking criteria in Article XI is simply not
13 applicable. The testimony from our Georgetown County Planning
14 and Zoning is clear that there was parking in the initial PD,
15 no changes to that parking were made, and that they followed
16 the parking requirements. The consideration of Article XI was
17 for guidance, and it was not mandatory as the plaintiff
18 attempts to assert.

19 Your Honor, the interpretation of the planning and zoning
20 must be given weight in this case. It is their interpretation
21 that Article XI that parking does not apply. That
22 interpretation is based upon the reasonable language of
23 Article XI, as well as the existence of a PD. We heard Mr.
24 Castles testify that you rely on the interpretation of the
25 Zoning Department. That is reasonable to do.

1 They're saying -- Plaintiff is saying that the actions of
2 the Zoning Department or arbitrary and capricious, and that
3 the County's adoption was arbitrary and capricious and shocks
4 the judicial conscience. The ordinance is valid at the very
5 least by examining the fairly debatable test. Plaintiff wants
6 to apply Article XI, but we have presented the evidence that
7 Article XI is a guidance in this situation since a PD exists.
8 It is -- a PD is for flexibility. So, certainly it is fairly
9 debatable. Therefore, there is nothing arbitrary and
10 capricious with respect to the County's adoption of this
11 ordinance.

12 The caselaw, for instance, like *Dunes West Golf Club*,
13 which has been mentioned a number of times. 737 S.E.2d 601,
14 stated it is not the function of the courts to pass upon the
15 wisdom or folly of the municipal ordinance or regulation. It
16 is clear that significant time and consideration went into the
17 passage not only of Version 3 but also Version 2, and there
18 can be no basis to state that substantive due process was
19 violated. There is no basis to say the actions were arbitrary
20 and capricious for the interpretation of the Zoning Department
21 clearly establishes that Article XI does not apply. It is the
22 propriety of the Council's decision is even fairly debatable.
23 If it's fairly debatable, this Court cannot inject its
24 judgment into the review of this decision but must leave that
25 decision undisturbed. That's in *Bear Enterprises v. City of*

1 *Greenville*, 319 S.C. 137, Court of Appeals 1995.

2 The law also states that the power to declare an
3 ordinance invalid because it is so unreasonable as to impair
4 or deny constitutional rights is one which must be exercised
5 very carefully and cautiously. And that is in *Rush v. City of*
6 *Greenville*, 264 S.C. 268 [sic].

7 Finally, with regard to the presumption of the validity
8 of this ordinance, it is clear that this Court must presume
9 that the ordinance is constitutional, because it is a
10 legislative enactment, and all legislative enactments are
11 presumed to be constitutional. With respect, Your Honor, to
12 the constitutionality of this ordinance, Plaintiff must show
13 by clear and convincing evidence it is unconstitutional. They
14 cannot -- they didn't even get close to preponderance of the
15 evidence, Your Honor, because Ms. Richardson, Mr. Johnson, and
16 Mr. Goggans all testified that there exists a valid basis in
17 the ordinance for the passage of this ordinance, parking,
18 Section XI does not apply, and that this ordinance is based on
19 the general welfare.

20 Your Honor, we solicited evidence with regard to there
21 was this -- excuse me -- the marina and restaurant -- marina
22 store and restaurant had been existing there for a long time.
23 There's no evidence that it had not. This restaurant had
24 seating capacity of 110. They are saying it didn't, but it's
25 the fact that it did. That was a fairly debatable issue.

1 Over three miles, for over at least three-and-a-half miles,
2 this PD had the only two restaurants, and the marina store,
3 and fuel facility. That's all. This PD had these two
4 restaurants operating, sharing the same parking place for over
5 30 years. Now, that Gulfstream, when Marlin Quay Restaurant
6 was demolished, it became the only restaurant. So, that is
7 the premise of this case. The general welfare and the good of
8 the community is being served by the existence of the two
9 restaurants on this PD along with the marina store.

10 Your Honor, there is also the issue of the failure to
11 appeal the passage of Version 2.0. Section 6-29-70 states
12 that you must challenge the ordinance within 60 days. It
13 specifically states no challenge to the adequacy of notice or
14 challenge to the validity of a regulational map or amendment
15 to it, whether enacted before or after the effective date of
16 this section may be made 60 days after the decision of the
17 governing party, if there has been substantial compliance with
18 the notice requirements of this section and establish
19 procedures. We have shown that Version 2, Your Honor, had the
20 heated square footage, the seating occupancy, the 62 parking
21 places, and the 110 persons. Your Honor, Version 2 contained
22 everything that was -- that became Version 3.

23 So, as of February 2018, the law in Georgetown County,
24 the law was that this PD, the new structure, heated square
25 feet would not exceed 4,598. That was a year and several

1 months before this lawsuit started. The law was that the
2 seating capacity would be 110 people. The law was that there
3 were 62 parking spaces in this PD plus three compact spaces.
4 That was law a year and two months before this lawsuit
5 started. It should've been incumbent upon the plaintiff to
6 have appealed from the passage of Version 2 since Version 2
7 contained the exact provisions that they are complaining about
8 today. So, under Section 6-29-760, the failure of Plaintiff
9 to timely bring the lawsuit is a complete bar to its claims.

10 The next basis, Your Honor, is with respect to the taking
11 provision, the taking claim. The takings clause under the
12 Fifth Amendment of the U.S. Constitution states that the
13 government shall not take private property for public use
14 without just compensation. There is nothing in this lawsuit
15 that any property of Gulfstream was taken for public use.
16 There is no evidence, not even an argument that Plaintiff has
17 made that Version 3 results in a taking for public use. The
18 property at issue is a nonexclusive right to use the parking
19 lot with others. The ordinance does not prevent Plaintiff
20 from using the parking lot.

21 In the *Lupus* decision, there will be a taking if a
22 regulation of the use does not merely diminish property value
23 but leaves no economically viable use. So, that's the second
24 element. There has to be no economically viable use. There
25 has been no evidence that all use has been deprived. In fact,

1 all of the plaintiff's experts testified that they did not
2 receive financial information in preparing their reports. The
3 property is not for sale. And they all testified that this is
4 valuable property. And it's completely unimaginable that Mr.
5 Knight's testimony that this property is worth now \$89,000
6 because of the passage of ordinance Version 3. That's
7 incomprehensible, Your Honor. And that's premised upon a
8 complete loss of all parking.

9 Now, the regulatory taking under the *Penn Central* test is
10 the economic impact of the regulation, the interference with
11 investment by expectation, and the character of the government
12 action. The economic impact of the regulation, Plaintiff is
13 telling you that they have lost all parking, but we have
14 clearly established that there are many patrons that
15 Gulfstream Café has that are walk-ons or walk-ins, that they
16 have Uber'd, that they have busses delivered. So, even if
17 assuming that this Court believes that Gulfstream has no
18 parking of any kind ever again, seven days a week 24 hours a
19 day forever and ever, even assuming that, it still has a
20 viable economic existence. It still has patrons that have all
21 walk-ins. But, Your Honor, we all know that there is no way
22 that Gulfstream is gonna lose all parking 24 hours a day,
23 seven days a week.

24 The item next under *Penn* is interference with investment-
25 backed expectation. Plaintiff has presented no evidence

1 assuming all the parking has always been this much of an
2 issue. This cuts against the investment-backed expectation.
3 We have established that Gulfstream has not presented any of
4 its financial information. Gulfstream cannot present any
5 evidence of its expected financial-backed expectation, because
6 it presented none.

7 And then the character of the government action. The
8 government action is very clear in this case. There was an
9 existing initial building existing there 20-30 years providing
10 services to the public, services such as marina store, fuel,
11 and a bar and restaurant. All the government did was permit
12 that initial construction to be there again, a new building.
13 Didn't create anything new. It's the same use and the same
14 occupancy of 110 seating. I submit to you, Your Honor, that
15 Gulfstream, if it believes that there are more people sitting
16 in the Marlin Quay Restaurant than 110 seats, it will quickly
17 notify the Building and Zoning Department. Georgetown County
18 will be quickly notified if there is any excess of 110 seating
19 capacity. Therefore, Gulfstream can take that action, can
20 enforce it, can abide by it, and require Marlin Quay to abide
21 by it.

22 With the inverse condemnation claim, that's an inverse
23 condemnation occurs when a governmental agency commits a
24 taking of private property without exercising its formal
25 powers of eminent domain. There must be an affirmative

1 positive aggressive act on the part of the governmental
2 agency. There must be a taking. There must be a taking for
3 public use. Here again, nothing to that effect.

4 Your Honor, the final item, the final issue is with
5 Defendant, Steve Goggans. The Plaintiff's case is that
6 because he appeared before the Planning Board of Appeals in
7 February 2017, that is something that permeated everything and
8 permeated the Version 2 and Version 3 votes. There's
9 absolutely no evidence, Your Honor, that because Mr. Goggans
10 was a councilmember he in anyway influenced the votes of
11 Version 2 and Version 3. The existence of his company
12 becoming and continuing to be the architects is permissible.
13 It is permissible under the ethics code, and it permits
14 elected officials, employees, staff to appear before public
15 bodies, and that is set forth -- as set forth in Section --
16 Code Section 8-13-740. There is also, Your Honor, a -- an
17 ethics commission opinion that was issued with regard to a
18 County Councilmember's staff member. And this was with regard
19 -- it looks like with regard to Horry County, Your Honor. And
20 this was an ethics decision issued in January 17, 2007. In
21 that it said Horry County planners and plan reviewers reviewed
22 and approved sketches and plats, communicate with developers
23 and their engineering firms, make recommendations to Planning
24 Commission on major developments and projects. The Planning
25 Department staff and Planning Commission administer and

1 interpret the land development regulations and zoning
2 ordinance on a daily basis. In reviewing a major development
3 plan, the Planning Department staff regularly seek additional
4 information and clarification from engineering firm as they
5 shepherd the plan from submission to final approval. The
6 conclusion is that the information gathering and the request
7 for information by the County Planning Department is a
8 ministerial act and they are permitted to have communications
9 and contacts with councilmembers' businesses with their
10 employees. That is not an unethical act in any way. And the
11 continuance -- apparently, I believe the plaintiff is trying
12 to say because the SGA continued -- the firm continued to be
13 involved then that was in permissible. It was not. That is
14 permitted by the South Carolina Ethics Commission. And in
15 order to establish any type of improper conduct on Mr.
16 Goggans's part, there needs to be some evidence, and there is
17 none. It's suppositions. As I said in the opening, it's like
18 res ipsa loquitur, because it happened -- because something
19 passed, he must've influenced it improperly. That's not the
20 law. The Plaintiff has to prove that Mr. Goggans acted
21 improperly, improperly influenced the passage of Version 2 and
22 Version 3, and the record has no evidence to that effect.

23 I believe I've covered everything, Your Honor.

24 Thank you very much.

25 THE COURT: All right. Thank you, ma'am.

1 Mr. Bloom.

2 MR. BLOOM: Yes, Your Honor.

3 Well, Judge, I thought I heard that this was a motion for
4 judgment as a matter of law, but then I heard a half hour of
5 disputed evidence being argued and debated, which as we all
6 know does not a judgment for a matter of law make. The
7 standard, which I didn't hear offered, and I don't think Your
8 Honor needs to be reminded of it, but for the record the
9 standard on ruling on a judgment as a matter of law is if
10 there was no evidence. There needs -- we need only show a
11 mere scintilla of evidence in order to establish the defeat of
12 a judgment as a matter of law. And, Judge, I will spend the
13 next hour bringing you closing argument if you'd like, or I
14 can direct my attention at anything you think there is an
15 absence of evidence supporting one of the elements of one of
16 the causes of action in our case. I will do whatever the
17 Court thinks is necessary, but without any further direction,
18 I'll just go ahead and deal with all of the arguments that Ms.
19 Golding made despite the fact that 92 percent of them do not
20 allege a legal defect, nor do they establish an absence of
21 evidence offered during the plaintiff's affirmative case in
22 chief, not a single argument.

23 I know Your Honor suggested at the beginning of the case
24 that you were gonna take this under advisement. If you're
25 still inclined to do that, I won't waste our time for the next

1 hour. But, if you're not, I will, because I don't have a
2 choice but to address all of these points.

3 THE COURT: And Mr. Bloom, I certainly think you could
4 make a very good argument to rebut the positions that Ms.
5 Golding has made, but I think you're right. Rule 50 requires
6 the existence of evidence. I'm not to weigh the evidence in
7 making the determination.

8 And, Ms. Golding, respectfully, your arguments were
9 outstanding, but I think a lot of these or all of the
10 arguments on your motions for a directed verdict blend law and
11 fact and would require findings of fact by me.

12 So, rather than go through a line-by-line rebuttal from
13 Mr. Bloom, I do think, based upon what I've heard that a
14 factual analysis would be required by me to make any of these
15 findings that have been suggested by Ms. Golding in her motion
16 for a directed verdict, certainly, I'm not in a position to
17 weigh the evidence as of yet. I haven't heard the whole case.

18 So, respectfully, Ms. Golding, I'm gonna deny your
19 motions for directed verdict as to all causes of action.

20 And, I'm still of the opinion, Mr. Bloom, based on the
21 last three days that I am, regardless of what the defense
22 presents, I am likely to take this matter under advisement.
23 And it's certainly a lot to digest. And so...

24 MR. BLOOM: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 MS. GOLDING: Thank you, Your Honor.

2 Would you like me to call my first witness, Your Honor?

3 THE COURT: Assuming that witness can -- I don't want to
4 -- I will be -- I'm certainly willing to work past 5:00,
5 probably up till about 6:00.

6 MS. GOLDING: It will be a short witness.

7 THE COURT: Good deal.

8 MS. GOLDING: Thank you, Your Honor.

9 Judy Blankenship.

10 JUDY BLANKENSHIP, HAVING BEEN DULY SWORN,

11 TESTIFIED AS FOLLOWS:

12 THE CLERK: Thank you. Please be seated. State and
13 spell your first name.

14 MS. BLANKENSHIP: My name is Judy Blankenship, J-U-D-Y,
15 B-L-A-N-K-E-N-S-H-I-P.

16 DIRECT EXAMINATION OF JUDY BLANKENSHIP BY MS. GOLDING:

17 Q: Good afternoon Ms. Blankenship. Can you tell us your
18 full name?

19 A: Judy E. Blankenship.

20 Q: And where do you reside, Ms. Blankenship?

21 A: 307 Sanctuary Court, Myrtle Beach, South Carolina 29588.

22 Q: And where are you currently employed?

23 A: Georgetown County Planning.

24 Q: And what is your educational background?

25 A: I have a Bachelor in business administration.

1 Q: And in working with Georgetown County, what is your
2 position?

3 A: I'm a senior planner.

4 Q: How long have you been a senior planner?

5 A: For about two and a half years now.

6 Q: And was the job of the senior planner?

7 A: I review plats; I reviewed applications for subdivisions
8 for planned developments, for rezonings, conference of plan
9 elements.

10 Q: And before you were senior planner, were you employed
11 with the County?

12 A: Yes, ma'am.

13 Q: And what was your job?

14 A: I was a planner II.

15 Q: Okay. And what does a planner II do?

16 A: Pretty much the same thing.

17 Q: Same thing as a senior planner?

18 A: Yes. I just have more responsibility with the senior
19 planner.

20 Q: Okay. Now, we're here today in this lawsuit about an
21 application to amend that was filed, submitted to the Planning
22 Department on August 27, 2018. And I believe that application
23 is -- let me point it out to you -- is Exhibit -- Plaintiff's
24 Exhibit 20. Do you see all those big books in front of you?

25 A: Yes, ma'am.

1 Q: Do you see Plaintiff's Exhibit 20? Maybe I can give you
2 this copy in my book.

3 A: It must be in the other book.

4 Q: Okay. Let me show you what's been introduced as
5 Plaintiff's Exhibit Number 20. Do you recognize that
6 document?

7 A: Yes, ma'am.

8 Q: Okay. In Plaintiff's Exhibit Number 20, what was your
9 involvement with respect to that application?

10 A: I made the maps for the -- location maps for the
11 property, adjacent property notices, and I sent the
12 advertisement to the papers.

13 Q: Okay. And when you say you created the advertisement,
14 what was the advertisement that you created?

15 A: It was an advertisement of notice to the ad to pretty
16 much to say what the applicant was applying for, the case
17 number, and the location.

18 Q: And is that customary standard in your department?

19 A: Yes.

20 Q: Okay. I'm gonna give you several exhibits. The first
21 exhibit will be Defendants' Exhibit Number 12. And this is an
22 email from you dated September 24, 2018. Can you identify
23 that email, please?

24 A: Yes. It's an ad to the papers with -- actually, an
25 attachment was attached to the actual ad was attached.

1 Q: And does this advertise -- this email that you sent out
2 relate to the notice of the public that was sent out for the
3 Planning Commission on October 18, 2018?

4 A: Yes, it is.

5 Q: And is this your email that you sent to Georgetown Times
6 and Coastal Observer?

7 A: Yes, it is.

8 Q: Okay.

9 MS. GOLDING: Your Honor, we would offer Defendants'
10 Exhibit 12 into evidence.

11 MR. BLOOM: No objection.

12 THE COURT: Defendants 12 is admitted without objection.

13 DEFENDANTS' EXHIBIT NUMBER 12

14 ADMITTED INTO EVIDENCE

15 BY MS. GOLDING:

16 Q: Okay. Next, I'm gonna ask you to look at Defendants'
17 Exhibit Number 13. I'm gonna give you this. Can you identify
18 Defendants' Exhibit 13, please?

19 A: Yes.

20 Q: And what is Exhibit 13?

21 A: It is actually the notice that was placed in the paper.

22 Q: Okay. And is that the advertisement that you caused to
23 be placed in the paper?

24 A: Yes, it is.

25 Q: Okay.

1 MS. GOLDING: Your Honor, we would offer Defendants'
2 Exhibit 13 into evidence.

3 MR. BLOOM: No objection.

4 THE COURT: Defendants 13 is admitted without objection.

5 DEFENDANTS' EXHIBIT NUMBER 13

6 ADMITTED INTO EVIDENCE

7 BY MS. GOLDING:

8 Q: Let me next hand you Defendants' Exhibit Number 14. Can
9 you identify Exhibit 14, please?

10 A: Yes. It's the ad; the same ad.

11 Q: Okay. And is that with another newspaper?

12 A: This is with the Coastal Observer.

13 Q: Okay. And for advertising the public hearing on October
14 18, 2018?

15 A: Yes, it is.

16 Q: Okay.

17 MS. GOLDING: Your Honor, we would offer Defendants'
18 Exhibit 14 into evidence.

19 MR. BLOOM: No objection.

20 THE COURT: 14 is admitted without objection.

21 DEFENDANTS' EXHIBIT NUMBER 14

22 ADMITTED INTO EVIDENCE

23 BY MS. GOLDING:

24 Q: I want to ask you to look at what is marked as
25 Defendants' Exhibit Number 18. And I'm gonna ask you to

1 identify Defendants' Exhibit Number 18. Please identify
2 Exhibit Number 18?

3 A: Yes. It looks like it is the packet to -- the actual
4 October Planning Commission packet to the paper.

5 Q: Okay. Is this Number 18, is this the October 12th, 2018
6 ticket from you for posting the October 18, 2018 Planning
7 Commission meeting on the County's website?

8 A: Yes, it is.

9 Q: Okay.

10 MS. GOLDING: Your Honor, we would offer Exhibit 18 into
11 evidence.

12 MR. BLOOM: No objection.

13 THE COURT: 18 is admitted without objection.

14 DEFENDANTS' EXHIBIT NUMBER 18

15 ADMITTED INTO EVIDENCE

16 BY MS. GOLDING:

17 Q: With respect to the advertisements that you had posted in
18 the two newspapers, were those advertisements published in
19 both newspapers at least 15 days before the Planning
20 Commission meeting?

21 A: Yes, it was.

22 Q: Okay. And did you attend the Planning Commission meeting
23 on October 18, 2018?

24 A: Yes, I did.

25 Q: Okay. With respect to the mailing of the notice, of

1 mailing of letters to property owners within 400 feet, what
2 involvement if any did you have that?

3 A: The only involvement I had was to make the location map
4 that went along with the notice.

5 Q: And how did you make the location map?

6 A: Using a GIS software called ArcGIS.

7 Q Okay. Is that based upon tax information?

8 A: Yes, ma'am. The data is directly from our GIS system.

9 Q: Okay. And that GIS map, is that part of -- that's
10 utilized in the notice that is sent to the property owners?

11 A: Yes, it is.

12 Q: Okay. And did you prepare spreadsheet showing the
13 property owners within 400 feet?

14 A: No. I did not.

15 Q: Okay. And who prepared spreadsheet?

16 A: That would've been Tiffany Coleman.

17 Q: Now, with respect to the envelopes that were delivered
18 with the application, did you see these envelopes?

19 A: I can't recall. I'm sure I did.

20 Q: Okay. Do you know if there was a list delivered with the
21 envelopes?

22 A: There -- yes, there should've been.

23 Q: Okay. If the applicant did not provide the appropriate
24 envelopes to the department, what would you normally do?

25 A: Tiffany would call the applicant and request additional

1 envelopes.

2 Q: Okay. I have no further questions.

3 Thank you, Your Honor.

4 THE COURT: All right. You can step down. Thank you.

5 And just for the record, Mr. Bloom shook his head and
6 declined any cross-examination of this witness.

7 MS. GOLDING: Your Honor, I told you the witness would be
8 short.

9 THE COURT: And I'm assuming by the way you said that
10 your next one might not be as short; is that correct?

11 MS. GOLDING: That's correct, Your Honor.

12 BY THE COURT:

13 THE COURT: All right. Well, it is a good time for us to
14 break for the evening. And so, we'll start back tomorrow
15 morning at 9:00.

16 MR. BLOOM: May I ask for Defendants' witnesses for
17 tomorrow?

18 MS. GOLDING: Tiffany Coleman, Travis Avant, Nancy
19 Gardner.

20 THE COURT: Okay.

21 MR. BLOOM: Judge, do you have a -- any thoughts yet -- I
22 won't hold you to them yet, but do you have any thoughts about
23 your preference with respect to providing oral closings and or
24 post-trial briefing?

25 THE COURT: I prefer post-trial briefing. It -- since it

1 takes -- since it's gonna take a while, you know, I won't have
2 next week to devote to -- I'll be in another courtroom holding
3 PCRs next week. It -- I find that it helps me in cases where
4 I am sitting as the finder of fact to give the attorneys an
5 appropriate amount of time to submit any post-trial
6 brief/closings. I think it's better for y'all. You have time
7 to gather your thoughts and make a clear and hopefully within
8 reason concise argument to the Court. That's what I prefer.

9 Mr. Bloom, do you have any -- I saw the way Ms. Golding
10 reacted. I think that would be her preference. What do you
11 -- what's your position?

12 MR. BLOOM: I'd suggest a hybrid. I definitely think
13 that post-trial briefings in a bench trial, particularly with
14 the issues at hand here and the amount of evidence and
15 testimony Your Honor will have to consider would be wise. In
16 addition, I would like the Court to consider allowing the
17 option to both counsel to provide no more than 30 minutes, no
18 more than 30 minutes, of closing, if you -- again, as long as
19 you are okay with that, if we stay under 30 minutes.

20 THE COURT: Yeah. I'm fine with that. My biggest thing
21 is it makes it -- it makes my job much easier if I have
22 submissions, but if you want the opportunity to close, I'm
23 certainly willing to listen to a summation and then, you know,
24 make an additional submission posttrial, that's certainly fine
25 with me.

1 MR. BLOOM: And then, Judge, with respect to the timing
2 -- since we have a few minutes, I'd like to try and cover some
3 of this because we all want to leave tomorrow afternoon, I
4 think. So, we might as well cover it now.

5 Most of the time an effective posttrial briefing requires
6 a transcript. So, this question now goes to the lady that's
7 been working so hard in front of us to tell us when she thinks
8 the transcript will be available, and that will help us inform
9 the Court as to when we think we can get posttrial briefing
10 back into Your Honor's hands.

11 MS. GOLDING: I disagree, Your Honor. We don't need a
12 transcript.

13 MR. BLOOM: We do.

14 MS. GOLDING: All we're doing is adding more expense.
15 This is not a case where we've got a rich County or rich
16 insurance company. You know, all we've been doing is adding
17 more and more expenses and a transcript is simply not
18 necessary.

19 THE COURT: I'll -- let me do this, I'll think about that
20 overnight and we can revisit -- I appreciate you bringing that
21 to my attention, Mr. Bloom, but I want the opportunity to
22 think about that. I don't know that I've ever had that
23 request made to me in any bench trial I have ever conducted.
24 So, I want to take a little bit of time to mull that over.
25 But we'll cover that before we adjourned, Mr. Bloom.

1 MR. BLOOM: And, Judge, while you're thinking about that,
2 I'd offer -- this has nothing to do with who is rich and who
3 is not rich. This has to do with in order to be able to point
4 out to Your Honor -- I'm sure that Your Honor and staff have
5 taken copious notes throughout the last three days. I don't
6 doubt that for a second. But in order to debate the evidence
7 and to debate the testimony, we need to be able to point to
8 the testimony, and the only way you will have competent --
9 other than your notes, which is not evidence, but the only way
10 you will have a competent submission of the evidence is if
11 there is a transcript. And so, that's why I asked for a
12 transcript in posttrial briefing in every land use bench trial
13 is for that exact reason. We don't have the benefit of being
14 able to do that with the jury, but I know Your Honor wants to
15 get it right. And the best way to get it right is to have
16 access to the transcript. Not that I expect you to read it
17 from cover to cover, but my job is to point out to you the
18 important parts of that transcript so as to support our
19 position, and I don't think that is a remarkable request.

20 THE COURT: Understood.

21 Ms. Golding, I know you listed the witnesses you expect
22 to call, what would those be the witness -- all the witnesses
23 you intend to call?

24 MS. GOLDING: I may call one more. I have not made a
25 final decision on that, Your Honor.

1 THE COURT: Okay.

2 MS. GOLDING: Sorry.

3 THE COURT: No. I'm not trying to pressure you for an
4 absolute answer, I'm just trying to figure out the plan
5 tomorrow. And again, like I said before, I would like to
6 adjourn tomorrow afternoon, but if were not finished, were not
7 finished, and we will resume Friday morning. All right?

8 MR. BLOOM: Judge, I'd like to know who this potential
9 mystery witness is. We are not holding her to having to call
10 the witness, but I'd like to know who it is.

11 MS. GOLDING: I prefer, Your Honor, at this time, I have
12 not made a decision; I don't know.

13 MR. BLOOM: Judge, either there is an existing person in
14 the world that is being considered as a witness or there
15 isn't. The disclosure of the name does not require her to
16 call the witness, but it does -- we've had an agreement since
17 Monday morning to disclose potential witnesses for the next
18 day. And what I hear is an attempt to back away from that
19 agreement.

20 MS. GOLDING: I don't back away from agreements, Your
21 Honor.

22 MR. BLOOM: Well, the record will reflect otherwise.

23 MS. GOLDING: I'll let Mr. Bloom know.

24 THE COURT: Well, just ---

25 MR. BLOOM: The long record will reflect otherwise.

1 THE COURT: Just ---

2 MS. GOLDING: I don't need -- I don't need personal
3 attacks from Mr. Bloom.

4 THE COURT: No, I'm not interested in that. But if you
5 know the name of the person that you may or may not call, I
6 think you should share it with Mr. Bloom.

7 MS. GOLDING: Certainly. I'm gonna call the CEO.
8 There's a possibility the CEO will be called as a witness.

9 THE COURT: Mr. Van Brunt; is that right?

10 MR. BLOOM: No problem.

11 THE COURT: All right.

12 Anything else before we break for the evening?

13 MS. GOLDING: That'll be it, Your Honor.

14 MR. BLOOM: The CEO.

15 THE COURT: All right. We'll be back.

16 MS. GOLDING: See, there again, Your Honor, he's again
17 mocking. I just don't understand why he's mocking ---

18 THE COURT: Let's keep it professional, folks.

19 We will be in recess until 9:00 a.m. tomorrow.

20 MS. GOLDING: Thank you, Your Honor.

21 THE COURT: All right.

22 **RECESS - 4:57 P.M. - END OF DAY THREE**

23 *****OFF THE RECORD*****

24 **SEPTEMBER 1, 2022 - DAY FOUR**

25 **ON THE RECORD - 9:07 A.M.**

1 THE COURT: Ms. Golding, you ready to call your next
2 witness?

3 MS. GOLDING: Yes, sir, Your Honor.

4 First of all, I would like to know if the Court would
5 take judicial notice of Defendants' Exhibits Number 24, which
6 is Plaintiff's motion to alter and amend the judgment that was
7 filed in Civil Action 2016-CP-22-961.

8 MR. BLOOM: I think that's the motion that succeeds the
9 jury verdict and judge injunction in the Palmetto injunction
10 case. And if Your Honor is not going to admit or take
11 judicial notice of that verdict and that following order, then
12 why would the motion to amend and/or ruling on that be at all
13 relevant. And I would submit that if you're gonna take that
14 in, then you ought to also take in the rest. But Your Honor
15 has already observed that you didn't think that that was
16 terribly probative of what happens in this case.

17 MS. GOLDING: The only reason, Your Honor, is that one
18 ground that the plaintiff had -- and this is post Judge John
19 granting the injunction, and then he amended the injunction.
20 This is the basis for the amendment of the injunction. One of
21 the grounds that they sought and sought throughout the whole
22 case was to prohibit the defendant, Palmetto Industrial
23 Development, from operating a restaurant that serves dinner in
24 the evening. That was not granted and, therefore, we have a
25 defense, not res judicata but collateral estoppel, preclusion

1 of issues, and it just goes to that ground, Your Honor.

2 THE COURT: All right. So, Mr. Bloom, your argument is
3 if I take judicial notice of that, you want me to take
4 judicial notice of the underlying jury verdict? Is that ---

5 MR. BLOOM: Yes.

6 THE COURT: It's been a while; we've covered a lot of
7 ground since then.

8 MR. BLOOM: We have. The answer is yes, and this order
9 is not relevant to this case at all. This order regarding
10 what Judge John enjoined or didn't enjoin after the jury
11 verdict with respect to the rights under easement have nothing
12 to do with zoning.

13 THE COURT: I understand, but -- I'll take them both
14 under -- or take judicial notice of both the jury verdict and
15 the document that Ms. Golding just referenced.

16 MS. GOLDING: Thank you, Your Honor.

17 THE COURT: That was Defendants' ---

18 MS. GOLDING: That's Defendants' Exhibit Number 24, Your
19 Honor.

20 THE COURT: All right. Thank you, ma'am.

21 MS. GOLDING: I'm gonna hand this to the court reporter.
22 I took it out of the packet.

23 COURT REPORTER: So, do we mark this for identification
24 or ---

25 THE COURT: That'll be in. I'm taking judicial notice of

1 it, so that is admitted.

2 DEFENDANTS' EXHIBIT NUMBER 24

3 ADMITTED INTO EVIDENCE

4 MS. GOLDING: Then, Your Honor, and that is Defendants'
5 case. We rest now.

6 THE COURT: All right. Let's talk -- we had briefly
7 discussed the fact that we all thought it would be a good idea
8 to have post-hearing briefs done. I am certainly willing to
9 entertain closing arguments today in addition to the post-
10 trial briefs, but I would assume, Mr. Bloom, that you're
11 caught at least a little by surprise by the defense resting at
12 this point. Are you ready to go forward into summation or do
13 y'all need a few minutes?

14 MR. BLOOM: No, sir. I'm ready. It seems like you don't
15 have to leave until 4:00, so I've got like six hours.

16 THE COURT: Well, I usually don't cut lawyers off in
17 closing, but if we're -- if we're still here at 4 o'clock and
18 I'm listening to closings, I'm probably gonna try to cut you
19 off at least once by then.

20 MR. BLOOM: Not a problem, Your Honor.

21 THE COURT: All right.

22 MR. BLOOM: Judge, will you allow me to close and then
23 reply?

24 THE COURT: Yes. I think I had this issue come up two
25 weeks ago in a civil case. I think there's a footnote in

1 *State v. Beatty*, which is a criminal case obviously but I
2 believe that footnote establishes the procedure in civil court
3 is still the plaintiff closes, defense, and then the plaintiff
4 has an opportunity to reply regardless of who puts -- the
5 reason it came up is I had a defense case that -- a case where
6 the defense didn't put up any evidence and we had to argue
7 about it a little while, but so I think you get to go twice.

8 MR. BLOOM: Thank you, Judge. And don't interpret that
9 as me wanting to take up more time.

10 THE COURT: No. I -- take all the time you need.

11 MR. BLOOM: Thank you, Your Honor.

12 May it please the Court?

13 THE COURT: Yes, sir.

14 CLOSING BY MR. BLOOM:

15 MR. BLOOM: My name is Simon Bloom, and I am reminded of
16 probably the most formative year of my professional career was
17 serving as a law clerk for a federal judge in Anniston,
18 Alabama. His name was Robert Propst. He was a senior judge
19 at the time. He was from a small town called Ohatchee,
20 Alabama, which was nothing more than a post office and a
21 really good catfish diner. And Judge Propst had -- if you
22 could see -- rest in peace, but if you could see Judge Propst
23 you can imagine a guy who was probably 6'5", and he kind of
24 looked like the uncle in the Munsters. He was quiet, and he
25 was probably one of the most brilliant legal minds I have ever

1 encountered. And with the brilliance that he brought to the
2 bench was not vocal. He was very quiet. He didn't say a lot.
3 He didn't ask a lot of questions. But what he -- he graduated
4 first in his class at the University of Alabama undergrad,
5 first in his class at Alabama Law, first in his class in the
6 Army, and he was on the bench for 40 years. And I -- for the
7 first -- I'm embarrassed to say, but for the first three
8 months of my clerkship, he called me Solomon. Not because he
9 thought I was Solomonic, but because he couldn't remember my
10 first name. And his secretary at the time, Linda, finally got
11 up the courage to tell him, no, Judge, his name is Simon. And
12 the Judge, of course, said, well that's what I've been calling
13 him the entire time. Well, the thing that I made -- we had
14 the kind of relationship where I could joke with him, and I
15 nicknamed him Crap Man. And that's -- doesn't sound like a
16 very flattering name, but I got him shirt with a big C on it
17 like a superman shirt. And the reason that I called him that
18 is because this guy could sit on the bench with the top
19 lawyers from around the country, flying into the Northern
20 District of Alabama, litigating antitrust cases, the most
21 complex RICO cases, the most complex business cases with
22 thousands and thousands of pages, and days and weeks of
23 testimony, and he could cut through all of the crap and get to
24 the core. Now, I would watch, I'd sit right there, I'd watch
25 all full courtroom of 20 lawyers on both sides, and all the

1 paper and technology, and he wouldn't say a word, except for
2 when he was ruling. And then, he would ask one question in
3 the course of that case that would let everybody know that he
4 had cut through everything and got the gravamen of the case
5 with one question.

6 And I submit to this Court that you're gonna be able to
7 do that if you haven't already, because when you cut through
8 all of the histrionics and the drama and the passion and the
9 volume, you will come to one core conclusion. And that is the
10 bottom line is that the people that were on the ground in 2016
11 found a way to allow Palmetto to build what they wanted to
12 build by ignoring their own code and by ignoring their own
13 rules. And I submit that it goes all the way back to the
14 initial meetings between Mr. Goggans and his team and Mr. Boyd
15 Johnson and his team, where they arrived at this critical,
16 quote/unquote, interpretation. You remember the exhibits that
17 we went through where Mr. Goggans is bragging about getting a
18 good interpretation. And that critical interpretation was
19 that they were going to count only the heated square footage
20 of the new building when comparing it to the old. My apples-
21 to-oranges and apples-to-apples subplot throughout this entire
22 case. Think about that. It's so easy if you accept that
23 premise to defend retrospectively what was done, which is what
24 they've had to do. Make no mistake, I don't think anybody got
25 paid off, I don't think there's any evidence of coercion, I

1 don't think Steve Goggans walked in there pounding his chest
2 saying you better do this or I'm not gonna give you a raise; I
3 don't think that happened. I don't think anyone did anything
4 with that kind of strident approach, but I do think that
5 implicit in the entire negotiations in 2016 between Mr.
6 Goggans and his employees at the County, because they were,
7 they resulted in a complete distortion and ignoring and in
8 disregard of their own code. That should be clear as day by
9 now in this case. That in and of itself, Your Honor, is
10 arbitrary and capricious. By definition, when you have a code
11 that says A, B, C, and you do X, Y, Z, you have acted in an
12 arbitrary and capricious way. And a piece of legislation like
13 this ordinance that gets passed on the premise of that
14 fundamental misnomer is by definition arbitrary and
15 capricious. The logic or lack of logic becomes apparent as we
16 look back at this. The reason that they had to use this
17 apples-to-oranges comparison was because if they truly
18 compared apples to apples, like their code required --
19 remember GFA, gross floor area, and outdoor seating. If they
20 compared that in the before to that in the after, everybody
21 would see, as we see now, that these are two completely
22 different buildings. One -- pull up the elevations, please --
23 one building -- I know you seen all this before. There's a
24 one-and-a-half square foot -- I'm sorry -- one and a half
25 story, 4600 square feet of total square footage building. The

1 other as you saw in the elevations of 3.0, and that should be
2 coming up on your screen now -- is it up, Judge?

3 THE COURT: It's working on it. It had a connection.

4 MR. BLOOM: You know what it looks like. The other is a
5 hulking 13,000 square-foot building, a building that contained
6 over 7,000 square feet of heated and unheated, and over 5,000
7 square feet of deck space used for outdoor seating. The only
8 way they could say with a straight face that we weren't
9 increasing the size of the building is to say we weren't
10 increasing the heated square footage of the building. And you
11 remember the testimony, we went over it over and over again.
12 There's nothing in their code that distinguishes between
13 heated and unheated when calculating parking. There are two
14 things you look at, gross floor area, which everybody agrees
15 is the space inside the walls, and outdoor seating, which
16 everybody agrees is the square footage of the outdoor seating
17 area, not the number of seats.

18 Getting that interpretation from the very beginning, that
19 Goggans got from the planning staff, is what infected the
20 entire process that led to the passage of 3.0. They never
21 revisited it, which still to this day is shocking to me,
22 because the building between 1.0 and 2.0 changed quite a bit.
23 And so, I never understood why they didn't revisit the
24 calculations when they went from 1.0 to 2.0, let alone when
25 they went from 2.0 to 3.0, but they never did. They just --

1 you saw in Exhibit 35, their staff report, they just stuck
2 with this idea -- they stuck with this idea that there was
3 4600 square feet in the before, the old building; and the new
4 building only had 45-something square feet of heated space.
5 That is the kind of cognitive dissonance akin to putting your
6 head in the sand or hands over your ears and saying I know my
7 code says I need to compare apples to apples, but I'm gonna
8 tell you I'm comparing apples to apples when I'm really not,
9 and the planning council is not gonna know any better, and the
10 County Council is not gonna know any better because they rely
11 on the professionals in the Planning Department to tell them
12 the truth.

13 And whether you believe that they believed it was the
14 truth, it's really not even important, Judge. You don't have
15 to find that Richardson and Johnson intended to deceive the
16 Council to find that the decision by the Council was arbitrary
17 and capricious. You need only find that it was wrong.

18 And let me add another thing, even if you find -- even if
19 you find for some reason that they were permitted to compare
20 apples to apples, while ignoring the obvious truth that it was
21 one-and-a-half and 4500 feet versus four stories and 13,000
22 feet. Even if you think they can technically somehow stick
23 that round peg into the square hole, or vice versa, you get to
24 apply common sense. The doctrine of arbitrary and capricious
25 review and substantive due process caselaw allows you to look

1 at a decision by a legislative body to determine whether it
2 was rational. You basically get to look at the facts on the
3 ground and assess the decision in the ordinance to determine
4 whether it was rational.

5 And I would submit to this Court -- well, I'll get to it
6 in a second. I will submit to this Court even if there is
7 some way they can say it was justified in interpreting the
8 code the way they did, you can -- you are empowered with the
9 most important tool of law is the trier of fact, and that is
10 your common sense. Is it -- you can't possibly think that
11 adding a 13,000 square-foot building with double the
12 restaurant space -- and actually, it was more like three or
13 four times the restaurant space, because if you remember,
14 Judge, there was testimony from that early 2015 email where
15 Victoria is telling Holly that the restaurant in the before
16 was only 1957 feet, and the evidence in 3.0 is that the
17 restaurant in the after is closer to 7,000 or 8,000 square
18 feet. But even if for some reason you say, ah, they got a
19 good enough reason to distort the code and come up with the
20 ordinance, you are allowed to look at it with common sense and
21 see, wait a minute, your code says that you've got to have a
22 space for every hundred square foot of restaurant whether it's
23 heated or unheated, and you've got to have the space for every
24 150 square-foot of outdoor seating area, which is necessarily
25 unheated, and that's a lot more seats than you needed in the

1 before. But they found a way to basically skirt those rules.

2 Judge, let me be really clear about something, Gulfstream
3 doesn't care if there's a restaurant on that space. Well,
4 they care because their parking stinks already; so, they care.
5 And I would not probably be here if they were truly building a
6 4600 square-foot building. We'd have a really soft case if
7 that were the case. I think it would still be a case, but it
8 wouldn't be the case that we have now. If it were a true
9 apples-to-apples comparison, we'd have problems with our case.
10 But that's not what happened here. They didn't replace, as
11 they tried to say to Your Honor, they didn't replace the old
12 building with a like building. They replaced the old building
13 with a building two to three times the size with seven to
14 eight times the capacity. They want to hide from the fire
15 marshal's capacity code. But here again, you get to use your
16 common sense. All the planning professionals know and knew at
17 the time in 2016 all the way through 2019 that the capacity
18 for this building was going to be 350-plus people. You can't
19 simply put your head in the sand and ignore that fact that
20 whether there's enough seats, whether there is 110 seats, or
21 50 seats, or no seats, if you're allowed to have 350 people in
22 the building by all code, the zoning code, and the fire code,
23 and the building code, you're allowed to have that many
24 people, some of them are gonna drive. I don't know if all of
25 them are gonna drive, or 10 of them are gonna drive, but you

1 can apply your common sense to see that it was not a good idea
2 to allow this building to be built at the size and the scope
3 and the composition that was being approved in 3.0. Plain and
4 simple, on their own ordinance that required too many parking
5 spaces they didn't have, and on their own ordinance that
6 allowed too many people to be there where they did not have
7 sufficient parking.

8 So, once you start with that premise in 2016, -- excuse
9 me -- that were not gonna count anything in the new building
10 other than heated square footage, the patient is dead. The
11 patient is dead on arrival and remains dead for the next four
12 years, and that's why we're here. There code required -- you
13 saw that mandatory language throughout the code in Article XI,
14 1100, 1101, 1102. Over and over and over again, their parking
15 code required that you do these counts. This was not a gray
16 area like Ms. Richardson testified. You might remember that,
17 that little debate. There's nothing gray about it; it's math.
18 The one thing in life that is not gray is math. And I'm no
19 math genius but I can multiply and divide, barely. But when
20 we do the math, you see, Judge, that their parking ordinance
21 required 170 spaces by her count, 140 or 50 by Castles' count.
22 It wasn't gray. It is the epitome of arbitrary and capricious
23 to ignore your own code. It is the epitome of arbitrary and
24 capricious to make up terms that don't exist in your code,
25 like heated versus unheated. And so, while it's true that the

1 4600 -- a 4600 square-foot building if it was built or
2 approved at the Marlin Quay site might've required 30 or 35
3 spaces. That's not what they built, and that's not what they
4 had approved.

5 So, once those interpretations, as Mr. Goggans called
6 them were solidified -- and there's actually an email,
7 interestingly, where Goggans says I want to get Holly to
8 reduce this into writing. We've had verbal discussions about
9 this interpretation, but I want it in writing, which makes
10 sense, so that you can go and do your plans based upon that
11 written interpretation. I would submit it also makes sense
12 because you just had a major, major victory. You just hit a
13 grand slam homerun. You got your client a 13,000 square foot
14 building when the code would only permit at best a 4600 square
15 foot building. And it was clear to everybody, including Mr.
16 Goggans, that that's what Mr. Lawhon wanted. He wanted as big
17 a building as he could put there for as much space as he could
18 put there, as much deck space, as many seats as he could get
19 for obvious reasons. He wanted to maximize -- he wanted to
20 maximize his return. There's nothing remarkable about that.
21 That major victory that Goggans got for his client, we know
22 was a major victory. Why? Because he asked for more money
23 after he got it. Exhibit 8. He has these victories in his
24 negotiations with his friends in the Planning Department. He
25 brags -- ah, that's maybe too strong a term -- he highlights

1 the fact that he secured these victories from his friends in
2 the Planning Department, and then goes back to his client and
3 says I think I'm entitled to 72 grand more money. He wasn't
4 shy about it back then. He was shy about it on the stand, but
5 he certainly wasn't shy about it back then. And again, this
6 is not making Mr. Goggans a bad man; that is not what we're
7 here to say. But it confirms what I am telling this Court
8 which is securing the interpretation of ignoring unheated
9 square footage and ignoring outdoor seating area was a major
10 victory because it got the County to ignore its own code. And
11 for some reason again, he admitted and confirmed -- Mr.
12 Goggans did, on the stand that once that -- remember he used
13 the word parameter of the project was established, it was
14 never revisited. So, that parameter or apples to oranges,
15 that they called apples to apples of 4600 feet of total space
16 for the before versus 4600 feet of heated space in 3.0, never
17 got revisited, never changed. And you see it in Exhibit 35,
18 where the planning staff report talks about it. That's -- we
19 wrangled about that information, Judge. If you remember
20 Judge, in .2 and .3 of that staff report, they say in the
21 staff report it was 4600 total feet in the before, and in the
22 after, it's gonna be actually less than 4600 total heated
23 square feet.

24 Please pay close attention to those details when you're
25 reviewing this, Judge. I know we've beat that horse over and

1 over again, but I submit it's probably the most important part
2 of this case. And understanding their explanation now drives
3 my point home, because their explanations now are just silly.
4 They are not grounded in land-use, they are not grounded in
5 their own code, and they defy common sense.

6 And listen, Judge, I sympathize, I sympathize with Holly
7 Richardson and Boyd Johnson, who is retired and hopefully
8 fishing and playing golf. I sympathize with him having to
9 deal with this. These are decisions that they were encouraged
10 to make six years ago, and they have to huddle up with lawyers
11 and now come up with a way to defend those decisions.

12 So, let's look at how they defended their distortion and
13 ignoring of the code. Number one, you will recall the
14 testimony from Ms. Richardson where she said Article XI was a
15 guide. Article XI was of -- I think Johnson said it was a
16 tool or a consideration. Judge, that is just, according to
17 this technical term, poppycock. There was nothing in the code
18 that says that Article XI is optional. There is -- and they
19 admitted that. There's nothing in the code that says Article
20 XI is a guide or tool. Article XI contains the parking
21 requirements and the design to benefit the public health,
22 safety, and welfare. That is what the code and the law of the
23 land requires. It requires 100 -- it requires one space for
24 every 100 in the restaurant, and one space for every 150 of
25 outdoor seating area. It requires it. It doesn't suggest it.

1 And for them to say now that it was a guide is belied by
2 everything that they wrote and said and did in 2016. And I
3 implore Your Honor to go back to those emails. Don't listen
4 to what we say they meant. Look at what they said, and did,
5 and meant. They said that these are parking requirements.
6 Johnson said do a parking study. Patrick Williams did a
7 parking study in Exhibit 7 where he said and used Article XI,
8 150 for one, and 100 for one, 200 for one. They all treated
9 the parking code in Article 11 as the gospel. Then is the
10 best indication of what they thought the rules were. Now the
11 lawyers can say whatever they want, and people can say
12 whatever they want. Look at what they said and did then. The
13 planning staff, remember when Holly said it can't be any
14 bigger than 4600 feet; and don't forget, if you include
15 outdoor decking or outdoor seating, you're gonna need more
16 parking. So, in 2016, she made that position known, and
17 somehow, somehow she got overruled, because after that email
18 you never saw it again, never.

19 Goggans treated the parking code in Article XI as the
20 gospel; Patrick Williams, who worked for him, he treated it as
21 the gospel; Holly and Boyd treated it as the gospel. They
22 just got around it. They just got the County to ignore it.
23 That's just the fact. You don't need to hear me argue about
24 it; that's the evidence. They said, no, no -- the second
25 thing they said retroactive -- that's retrospectively -- you

1 look to the PD for the parking requirements. And remember
2 what I asked, where in the PD are the parking requirements.
3 Ms. Richardson said, oh, they're not -- there are none. I
4 said, where are the parking requirements? You say you just
5 look to the PD as to customized zoning, flexible this,
6 flexible that. Okay. Where in the PD are the parking
7 requirements? Have you seen them, Judge? Because I haven't,
8 and I've been sitting here all week. But nobody has put in
9 front of you the actual parking requirements for the PD
10 because there are none. It was passed in 1984 or '82, before
11 Article XI probably was in effect, but we don't know. But
12 you've never seen another document that shows parking
13 requirements for this Marlin Quay PD because it doesn't exist.
14 The only place in the world on this planet where there are
15 parking requirements for this piece of property in this county
16 is in Article XI. That's it. It's not a figment of
17 imagination, it's not a unicorn, that is the only place that
18 you look for parking requirements.

19 The next thing that you heard them argue is this thing
20 about initial construction. Well, 1101 only talks about if
21 it's initial construction. Judge, just -- there's a euphemism
22 that comes to mind, but in mixed company I'm not gonna use it.
23 You know better than that. The initial construction in that
24 code section certainly means a replacement building. It is
25 designed to make sure that if you tear down the old and build

1 up a new one that the new one complies with the new and
2 existing code. Think about that. They talked a lot about it.
3 This new building had to comply with the building code. This
4 new building had to comply with FEMA. This new building had
5 to comply with the ADA. This new building had to comply with
6 all kinds of other codes, but then they say but it didn't have
7 to comply with the parking code, because that's just a guide.
8 It just defies logic and common sense, and it's just
9 retrospective lawyering to find a way to explain what you did
10 in 2016.

11 The next point that they make -- and, Judge, this is
12 maybe the most -- this is a pretty important one. Remember
13 this doctrine or motion of stacking parking. You can't double
14 count existing parking spaces to accommodate parking loads, my
15 term, from the other uses. That was a huge win -- and I
16 probably should've started with this -- but that's a huge win
17 for Goggans when he was able to convince the Planning
18 Department that you did not need to reevaluate the parking
19 loads caused by Gulfstream, the parking loads caused by the
20 marina, and add those to the parking loads required by 3.0.
21 That was an enormous victory, an enormous victory for them,
22 because remember what this tells us, once you do that analysis
23 and I drew -- for everybody's benefit a drew a nicer picture.
24 Voilà. Once you do this analysis, and two people on the stand
25 did it, remember, Gulfstream, the marina, 3.0, 62 spaces.

1 Holly Richardson, we went through the math -- do you have the
2 paper -- we went through the math. I gave her a calculator.
3 Oh, I better get that calculator are among get in trouble. I
4 could donate it to the County but I'll get in trouble. We
5 went through the math, Holly Richardson did. We did the
6 retail 3219 feet requires 16 spaces. We did the restaurant,
7 the deck, with the decks on the second and third floor, that's
8 outdoor seating, 246 -- 2468, outdoor seating square footage,
9 16 spaces. Then we went to gross floor area, 7160 -- her
10 calculations, not mine -- that requires 71 spaces. For a
11 total of 103 spaces required in 3.0. Her math; not mine.
12 Okay. Take away the stairwells. Take away the circulation
13 decks. Maybe it's 6500 square feet. And that leaves you with
14 65 spaces required, then the number comes down to 90. Okay.
15 We can quibble about that. But look at the parking load
16 created by 3.0. With the County's own math applying Article
17 XI. Judge, that's why they didn't want to apply Article XI is
18 because they knew they were building a 13,000 square foot
19 building with these uses and these parking requirements with
20 103 parking spaces required. And that's why you didn't see
21 them do that in their staff report. They didn't do it in
22 2016, 2017, 2018, and only when I required them to do it do
23 you get the truth about what happens when you apply Article XI
24 to 3.0. And when you do that, again, with basic math, you
25 know there ain't enough parking spaces for 3.0 by itself.

1 When you add the other uses, it becomes silly. But remember
2 what Robert Castles, our -- that's our -- Castles calculated
3 3.0 and he was a lot more conservative than she and I were.
4 He said, well, I did the math on 3.0 and it required 72
5 spaces. There ain't 72 spaces in that lot either. So, when
6 you do the stacking, nobody did the shared parking analysis to
7 see, you know, the marina uses it probably during the day, but
8 we know that both these restaurants are gonna use it at night,
9 that's what they're there for. So, when you do the stacking,
10 Holly had 20 spaces for the marina, 70 spaces for Gulfstream,
11 and 103 spaces for 3.0, which added up to 193 spaces. Judge,
12 that's why they didn't do the stacking analysis. And that was
13 why it was such a huge victory for Goggans to get them to
14 avoid this analysis. And they all admitted, no, no, we never
15 did that. Johnson, no, we never did it. Holly, no, we never
16 did it. Because they didn't -- because it's obvious. And so
17 sometimes I get frustrated and I apologize for that because I
18 feel like I'm just in -- like Alice in Wonderland sometimes
19 because it seemed so obvious that, if you do just the math,
20 there's no way that this parking lot can accommodate one or
21 two or all three of these uses. It just doesn't.

22 And the number one rule for a government is to act in the
23 best interest of the public health, safety, and welfare. And
24 so, forget about all the codes in the technicalities, Judge,
25 but do you think when you think about this case when you're

1 driving back home, do you think that approving 3.0, approving
2 a parking load of anywhere between 72 and 103 more parking
3 spaces is really gonna make the county healthier or safer?
4 Adding all those cars, that doesn't even talk about 350 people
5 that can be in there. Do you think that's gonna make the
6 county safer? Is that rational? No, it's not rational, and
7 is not safe. It's arbitrary, it's capricious, it's cooked,
8 it's baked, and it was cooked and baked in 2016 through
9 Goggans's efforts and his successes with his friends at the
10 County.

11 And I want to talk a minute more about that, but, Judge,
12 just to finish up these numbers, so Holly had 193, Castles had
13 170. When you do the total space calculation, that's where
14 you get that range. So, my math isn't that good, but if it's
15 two to three times the number of spaces that are available,
16 two to three times. Not just a few more spaces. If that
17 doesn't shock the conscience, if that's not clear and
18 convincing evidence that this decision was arbitrary and
19 capricious, frankly, I just don't know what is.

20 I talked about Mr. Goggans. And I have to respectfully
21 disagree with Your Honors rationale for allowing his
22 testimony. I'm glad -- the ethics stuff, I'm glad you let it
23 in, but I want to make an observation about that for the
24 record. When Your Honor initially ruled about the ethics
25 violations coming in, I think the justification -- you allowed

1 in and the justification had something to do with character --
2 not character but bias as one of the justifications for
3 letting it in. And I will submit, A, thank you. But, B, it
4 comes in as relevant, probative, non-prejudicial evidence now
5 that you've heard all the testimony. Because he told you what
6 he did, starting in January 2016, all the way through and up
7 to the BZA hearing. Now, let me be really clear about this.
8 Yes, testifying at the BZA hearing was a violation of the code
9 of ethics. Yes, it violated the code. Yes, it violated the
10 sections that we talked about. Yes, he was punished et
11 cetera, yes. But what I am asking Your Honor to take into
12 consideration is not the BZA testimony, it's all of the stuff
13 he did before. And I'm gonna walk you through that very, very
14 quickly.

15 In Exhibit 57, which is the consent order, it has the
16 code sections from the State Code of Ethics. It's the second
17 page. 8-13-740(a)(4) provides: A public official of a county
18 may not knowingly represent a person before an agency, unit,
19 or subunit of that County for which the public official has
20 official responsibility, except as required by law or before
21 the Court under the united -- unified judicial system. A
22 public official of a county may not represent a person before
23 an agency, unit, or subunit of that County for which the
24 public official has official responsibility. That is exactly
25 what Mr. Goggans did throughout his efforts in negotiating the

1 parameters of this project with an agency, unit, or subunit of
2 that County. An agency, unit, or subunit includes the
3 Planning Department. And so, just -- and he said he
4 represented the owner, and he said, and Holly said, and Boyd
5 said he was representing the owner and he was negotiating a
6 meeting with us regarding the parameters of this project and
7 the interpretations of the code, and setting those things in
8 2016 that then left on until this 3.0 was passed. And so,
9 that conduct was unethical before his testimony at the BZA.
10 It violated this section from the first minute he walked in
11 and said I'm representing Palmetto with this application.
12 That is why whether the consent order is admissible, I want to
13 highlight for Your Honor just how important it is for Your
14 Honor to look at that conduct through the lens of the code of
15 ethics. Why? Because if he was acting unethically in
16 violation of the code of ethics, it's almost like negligence
17 per se. If you're breaking the law in an effort to get a
18 project approved, you are necessarily violating my
19 constitutional rights and through 1983 you're acting under the
20 color of state law and the result is violating my
21 constitutional rights. And your illegal conduct is resulting
22 in the arbitrary and capricious passage of 3.0. Do I think
23 that he talked to councilmembers, do I think that he lobbied
24 for the approval of this project; I don't know, maybe/maybe
25 not. I don't know. It doesn't matter because his testimony

1 was unequivocal. What I accomplished in 2016 was clearly
2 establishing the parameters of this project, i.e., what the
3 rules of the road were for purposes of parking, and then I
4 didn't need to do anything else, and I didn't do anything
5 else. It -- like I said in my opening, it infected the
6 passage of 3.0. How did it do that? Because it got the
7 Planning Department to take a position about parking in the
8 parking requirements that they never revisited and never
9 changed. It was born in 2016, and it pervaded, and it
10 persisted through the consideration of 2.0, and it consisted
11 and it persisted through 3.0. That's why Goggans's conduct,
12 unethical conduct, is relevant, and it is almost dispositive
13 of the fact that he is liable under 1983 and that the decision
14 made by the County Planning Department was arbitrary and
15 capricious.

16 So, I ask Your Honor -- and Your Honor, we can get you a
17 copy of that code of ethics section or look in the code of
18 ethics -- the consent order. The analysis of how it applies
19 is pretty simple.

20 So, let me give you, again, just a -- the quick legal
21 roadmap of how to get from A to Z, and then I will sit down.
22 Number one, remember the two major inquiries. Inquiry number
23 one, is there a violation of substantive due process in the
24 passage of 3.0? Is it a violation? Was it passed in
25 violation of the procedural due process rights of Gulfstream,

1 and/or was it illegal based upon their own code? You may find
2 either through our declaratory judgment action or through our
3 substantive due process counts, or through our work procedural
4 due process counts, all of that is in the first bucket, that
5 this ordinance is invalid. It is void, and it is -- that it
6 is -- you should invalidate it nunc pro tunc. From the
7 beginning, it was illegal when passed.

8 The second bucket is if you find, however, that that
9 ordinance passed in 2019 is valid, is legal, and is
10 constitutional, then you get into the inverse condemnation
11 analysis. We submit, as I just pointed out, all of the
12 reasons and all of the ways in which 3.0 violates our
13 substantive due process Ps. Rest in P, PD P (spelled
14 phonetically), their own code, and therefore should be
15 declared invalid.

16 If not, and I guess you -- if not, and you get to inverse
17 condemnation, you just need to read *Dunes*, it sets out exactly
18 how this works, but I'll give you the shorthand again. I wish
19 we had in some of these other states that we do this as clear
20 a seminal case. Appellate Courts don't always get this right;
21 it's complicated. But *Dunes* is right. If you get to inverse
22 condemnation and you determine based upon the *Boyd* (spelled
23 phonetically) test whether there was positive government
24 action. That's easy; of course, there was. And B, whether
25 there was a taking.

1 Then you have to determine whether there was a taking,
2 and there are two types of takings. One, is a *Lucas* taking,
3 which is the complete diminution of loss of value, a complete
4 and total taking of the value as a result of the regulation.
5 We submit that that happens here, and it happened here. There
6 is no evidence that this property could be sold for a house.
7 There is no evidence the property could be sold for a condo.
8 That analysis has not been done by anyone in the evidence is
9 not before Your Honor. Supposition and argument by counsel
10 does not constitute evidence, and I know you know that.

11 Your own common sense is not good enough on that one, and
12 I'll tell you why. Because in order to determine what other
13 possible uses that footprint of Gulfstream could be made, you
14 have to do a whole new zoning analysis, building code
15 analysis, fire code analysis, wetlands, floodplains study,
16 FEMA study. You would have to do a complete and new review of
17 the property to see what else it could legally be used for,
18 not just the zoning, assuming you can get it zoned, but you'd
19 have to go through all these other steps. Nobody has done it.
20 That evidence isn't in front of you. It's just pure
21 speculation and conjecture about what else it could be used
22 for, period.

23 What we have before the Court, however, is evidence that
24 the diminution of value is 1.7 million dollars. Now, if you
25 do not find that that is a complete and total diminution of

1 loss of value under *Lucas*, then you go to the *Penn Central*
2 test, which is the test for a regulatory taking. And you
3 evaluate whether, in fact, there was a governmental action
4 that causes diminution of value of the property, and that
5 should be obvious. In the before, they were making it with
6 the parking lot. It stunk, but they were making it. You
7 heard Kirk's testimony. Sometimes he's out there, you know,
8 telling people where to go and running people back and forth,
9 but they were making it. But there is no question that as a
10 result of 3.0 passage allowing 13,000 feet and 103 or 72 more
11 parking load added to that lot, that they can't make it, and
12 that they won't be able to make it. Which is why Knight
13 assumed a loss of their parking. The appraiser, when he did
14 his analysis, looked at it and said I don't know if it's gonna
15 be losing one space or 61 spaces, because how can you predict
16 that. He can't predict whether all the marina people are
17 gonna be there late and whether the employees, when they get
18 to 3.0, are gonna take up the spaces. It's impossible to
19 predict. But what he can tell you is that, if we don't have
20 insufficient parking, we will die, period. And there is no
21 dispute, you've not heard any evidence to the contrary. We're
22 making it barely now from a parking standpoint. There is no
23 more parking around this property. The evidence is
24 uncontroverted and undisputed that there is no commercial
25 parking available, nobody is letting us park in their front

1 yards, we're not allowed to park our cars on the street
2 because there no-parking signs. And if you load this space
3 with 350 more people and their cars, people will die. It does
4 not take a massive inferential leap to conclude that. That is
5 what will happen, and that's no joke. And that's what --
6 that's the dice that they roll when they passed 3.0. And so,
7 this is not just about technical interpretation of this or
8 guide or Article XI or no Article XI, this is about approving
9 a building where there's no solution for parking, none.
10 They're not building a parking deck. There's no property to
11 put commercial parking lots on. It's done. And we will be
12 back here; that I can promise you because people will be
13 injured. It does not take an expert or a rocket scientist to
14 derive at that conclusion. And I would hate to be the person
15 that approved or recommended approval of this project with
16 that potential in the future. But I'll be able to sleep at
17 night because I've done my best to show just how arbitrary and
18 capricious approving this building is given that scenario and
19 the confines and the parameters of that piece of property.

20 But if, Judge, if you don't find it to be invalid and
21 it's allowed to be built and allowed to be operated, then
22 there's no question that our property has been rendered
23 virtually worthless. We will not be able to run a restaurant
24 there. That property will not be able to be used for anything
25 else. You heard Moring say nobody is going to buy it for a

1 restaurant. You haven't heard any contrary evidence to that.
2 You haven't gotten from any other witness that that property
3 can be used as a restaurant despite this parking load
4 addition, that it can be used as a residence or anything else.
5 So, the only evidence before Your Honor is that the thing is
6 losing \$1.7 million worth of value. And if you get there,
7 Judge, that will be at a minimum what would be required to be
8 compensation, just and adequate compensation for that taking.

9 Judge, I haven't spent much time on the procedural
10 defects. I don't mean to beat the horse too much. But you're
11 gonna have to interpret the 12-month rule, the penalty box
12 rule, and see whether you think it applies here and what --
13 because it's clear that they applied for two rezonings within
14 12 months. That's for sure.

15 You heard the testimony about whether the application was
16 completed or wasn't complete and why that was important. You
17 saw the letters from one homeowner. That's the only evidence
18 that you have. There's no evidence that they followed their
19 own code with respect to notice in sending out the letters.
20 Those are kind of also-rans with respect to this case. I put
21 them out there; they're important but they're not nearly as
22 important as what I've told you with respect to the danger,
23 the danger to life and limb that is being caused by the
24 passage, the approval of this building at that location. It's
25 not just about real estate. It's not just about restaurants

1 competing. It's not just about money. It's not just about
2 code, not code, planning staff, architect, ethics. This is
3 about public safety, public health, life and limb where the
4 County has grossly, grossly erred in allowing this building to
5 be constructed. And I would ask Your Honor respectfully to
6 stop it.

7 Thank you.

8 MS. GOLDING: Thank you, Your Honor.

9 Defendants waive closing.

10 THE COURT: All right. Thank you, ma'am.

11 BY THE COURT:

12 THE COURT: I guess that brings us to the issue of
13 posttrial briefs. Okay.

14 Mr. Bloom had requested us waiting on the production of
15 the transcript. I'm gonna rely on my notes. I've got almost
16 a full legal pad of notes. It was -- so, in making the
17 findings of fact, I think I've got everything I'm gonna need
18 in front of me to make those determinations. I will certainly
19 -- I don't want to put too tight a time limit on it. I'm open
20 to suggestions for when y'all reasonably believe you can have
21 the posttrial briefs done and submitted to my office. You
22 know, it's -- I'm not -- I know this is -- and I'm not saying
23 this to make light of anything or make this case -- or make
24 anybody think I don't believe this case is important. I know
25 it needs to be decided as soon as possible, but I don't want

1 to put too tight a timeframe on the lawyers. I want you to be
2 able to be as detailed and submit everything to me that you
3 think is required. So, I'm open for timeframe suggestions
4 from either side.

5 MR. BLOOM: Fourteen days is fine with us.

6 MS. GOLDING: Your Honor, I think that's perfect since we
7 all have it in our mind now.

8 THE COURT: Yeah. It's probably a better idea to go
9 ahead get started on it, but I didn't want to say I want them,
10 you know, middle of next week or something.

11 So, 14 days is fine. Those can be -- do y'all want those
12 briefs a part of the record?

13 MS. GOLDING: Not necessarily, Your Honor.

14 MR. BLOOM: Which record?

15 THE COURT: Well, I was just thinking of filing just in
16 the Court's record. Do you want to file them or -- I mean, I
17 don't think it ---

18 MR. BLOOM: I think we probably need to do both. I mean,
19 we can email them to Your Honor and but also file them. Then
20 I wonder about if there's an appeal, how those would be
21 handled.

22 THE COURT: Well, that was my thought process, too. I,
23 you know, I hope there's not an appeal but in cases like this,
24 I would expect there likely will be. So, if you'd just file
25 those and then submit them directly to me via email. And if

1 you could submit them to me in pdf and in Microsoft Word, I
2 would certainly appreciate it.

3 MR. BLOOM: Yes, sir.

4 MS. GOLDING: Yes, sir, will do.

5 THE COURT: All right. And what I need to do is get a
6 copy of -- and I can get this from the court reporter of --
7 I've been keeping track of the exhibits as we've gone along,
8 but I want a copy of her official, just her sheet, so I can --
9 I've got everything up here so we can make -- we can pull
10 those out and have a certain -- a true copy of what actually
11 was admitted. Like I said, I'd rather rely on her notes than
12 mine. So, we can -- we will do that.

13 Is there anything else we need to take up before we
14 adjourned?

15 MR. BLOOM: Would it be helpful -- would it be helpful at
16 all for Your Honor to have the admitted exhibits
17 electronically -- I don't -- I don't care, but if you ---

18 THE COURT: If that can be -- that would certainly help.

19 MR. BLOOM: Then we'll do it.

20 THE COURT: And I will get a copy of her list as well
21 just as a backstop to make absolutely certain that I don't
22 consider anything that was not admitted, because I would
23 imagine there is a couple of thousand pieces of paper sitting
24 in front of me.

25 MS. GOLDING: Yes, sir. May I -- with respect to the

1 court reporter, I'm sure she can't answer my question now, but
2 I would like to also obtain a copy of what the court reporter
3 has shown as being admitted, Your Honor.

4 THE COURT: Yeah, I don't -- I don't see any problem with
5 that. We can make copies for me and for both sides.

6 MS. GOLDING: Thank you, Your Honor.

7 THE COURT: All right. Anything else before we adjourn?

8 MR. BLOOM: Not from the plaintiff.

9 MS. GOLDING: Nothing from Defendant.

10 And thank you, Your Honor, for your time.

11 THE COURT: All right. And along the same lines of not
12 wanting to rush y'all in your preparation of your posttrial
13 submissions, I'm gonna do my best to get a decision made as
14 soon as I can. With that being said, I'm not gonna rush it
15 either. So, I don't want to let this -- I don't want to let
16 it sit but, as you all know, I'll be in another courtroom
17 doing something else starting next week. So, I hope to have
18 this done -- well, I'm not -- I'm not gonna put a limit on
19 myself because that might be setting me up for failure. So
20 anyway, it will be done certainly in a reasonable amount of
21 time because I don't like to let things sit and gather dust.
22 So, if -- if an amount of time passes and you feel like, well,
23 gosh, the Judge should've made a decision by now, I won't take
24 offense to a gentle reminder. All right?

25 MR. BLOOM: Yes, sir.

1 THE COURT: All right. Thank y'all very much.

2 MS. GOLDING: Thank you, Judge.

3 THE COURT: I appreciate the way this case was presented,
4 and it's been a pleasure being here for this unusual case.

5 All right? Thank y'all very much.

6 MR. BLOOM: Thank you, Your Honor.

7 MS. PEARSON: Thank you.

8 **ADJOURNED - 10:06 A.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Gulfstream Cafe v. Georgetown County, held in the Court of General Sessions for Georgetown County, et al., Georgetown County Courthouse, Georgetown, South Carolina, on August 28 to September 1, 2022.

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

Kay H. Richardson
Official Court Reporter

April 6, 2023.

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Kay H. Richardson
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April 6, 2023.