

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. 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.

**CORRECTED RECORD ON APPEAL
(VOLUME VI)**

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1 original snack bar that's demolished and even of the
2 version one, two, or three buildings that SGA worked
3 on?

4 A. I have not.

5 Q. The amount of decking is relevant to
6 the parking regulation ordinance, correct?

7 MS. GOLDING: Object to the form of the
8 question.

9 A. Not necessarily. It depends upon how
10 that deck is used.

11 Q. Tell me what you mean by that.

12 A. If it is used for seating, then you
13 would have to either revert back to the ordinance or
14 get a decision from the -- somebody in planning about
15 how to calculate parking to allow for -- you know,
16 allow for the decking.

17 It would probably again relate back to the
18 seating. If the decking were used for merely
19 circulation, it might not be the initial parking at
20 all, for the extent it's used for seating, and then
21 there might be a parking implication.

22 Q. But if it's used for customers to take
23 it out on the bar and stand out on the deck?

24 A. I can't speculate on that. The -- all
25 of the ordinances, I've read refer to seats, but to

1 the extent there are seats or there would be seats
2 versus people just standing, you know, I -- I -- I
3 don't know.

4 Q. You would agree that a larger outdoor
5 deck can hold more people regardless of whether there
6 are seats present on the deck?

7 A. Of course.

8 Q. And the more people you have at a
9 particular restaurant or business, the more the demand
10 there is for parking?

11 MS. GOLDING: Object to the form of the
12 question.

13 A. In most instances.

14 Q. Have you visited the -- the site where
15 version three is being constructed?

16 A. I was there about a month and a half
17 ago actually dining at the Gulfstream.

18 Q. How many times have you visited the
19 site where version three has being constructed since?

20 A. Twice.

21 Q. Okay. And I was going to say before
22 you entered into this construction as that building
23 began?

24 A. Yeah. I've been onsite twice, not to
25 inspect the building but to patronize the Gulfstream.

1 Q. Have you gone to inspect the building
2 at any point?

3 A. No.

4 Q. Has anyone from SGA gone to the site
5 to?

6 A. Mike Rolison is our construction
7 administrator. He's been there a few times.

8 Q. Any reason why you haven't been back to
9 the site since construction began?

10 A. No. Only that we've -- we've got lots
11 of projects going, 400 projects on a varying scale and
12 multiple offices, so I have to -- I -- I just can't go
13 see everything we design or build.

14 Q. Do you make site visits to other
15 projects that are under construction?

16 A. Not very often.

17 Q. I'm going to show you what we'll mark
18 as Exhibit 76.

19 (PLF. EXH. 76, Email 7/23/2020, marked for
20 identification)

21 Q. Do you see an email on your screen from
22 Mike Rolison from July 2020?

23 A. Yes.

24 Q. This was sent from Mike Rolison to you
25 as well as several others at SGA, correct?

1 A. Correct.

2 Q. And you wrote, "FYI." If we scan down,
3 this is an Architect Steel Report. Do you see that?

4 A. Yes.

5 Q. And do you have any understanding of
6 what an Architect Steel Report is?

7 A. Yes, I do. Certainly.

8 Q. Say that again.

9 A. Certainly, yes.

10 Q. Tell me what an Architect Steel Report
11 is.

12 A. Typically, the architect is making a
13 site visit and he's -- he's assessing additions. He
14 offers observations regarding the weather, the time
15 and the status of the construction, notes any -- notes
16 the progress of the construction and notes any
17 irregularities in the construction.

18 Q. In looking at this field report, I
19 don't believe I see any reference to any
20 irregularities in the construction. Where would those
21 show up in the report?

22 A. And they would just be entertained if
23 there were. In this case, there may not have been
24 any.

25 Q. And is this one of the site visits that

1 you testified Mr. Rolison made?

2 A. Yes.

3 Q. Do you agree that this building is a
4 substantially larger structure than the old snack bar
5 that was demolished?

6 A. It's hard to make exact comparisons
7 without seeing measurements and plans, but I would --
8 I would concede it -- it's -- on land, it appears to
9 be a larger structure.

10 Q. Mr. Goggans, we're going to show you
11 what we'll mark as Exhibit 73.

12 (PLF. EXH. 73, Email 6/9/2019, marked for
13 identification)

14 Q. Do you see an email on your screen from
15 you to Mike Rolison in June of 2019?

16 A. I do.

17 Q. And if we look down, the first email on
18 the document was sent from Mark Lawhon to you and Mr.
19 Rolison and Ms. Novak with the subject line, "Urgent,
20 Urgent, Urgent." Do you see that?

21 A. Right.

22 Q. And he goes on write that, "With all of
23 this rain in the ground next to the Marlin Quay condos
24 is becoming unstable. A portion of their fence and a
25 column have collapsed." Do you see that?

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1 A. (Technical Interruption)

2 Q. Do you have any understanding of what
3 occurred that's represented in this email?

4 A. I have some recollection, but I haven't
5 visited the detail of this at all, but we had a number
6 of problems with the foundation itself and -- and, you
7 know, as the memo says there, they had to excavate out
8 for the pilings and there was a grade differential and
9 that was -- the neighbor's property was beginning to
10 slough off or cave in.

11 Also, one of the pilings had to be relocated
12 because it was hitting one of the -- or was the
13 approximate location of a guy wire of the -- of a
14 bulkhead, so getting it out of the ground was rather
15 tricky. When I saw, "Urgent, Urgent, Urgent,"
16 naturally, I wanted my staff to respond quickly and be
17 alert to issues and --

18 Q. And then --

19 A. -- (technical interruption) as quickly
20 as possible.

21 Q. You said that a piling was relocated.
22 Can you be a little more specific about what happened
23 there?

24 A. Well, the piling that's shown would
25 have been in -- would have conflicted with the

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1 bulkhead, so the piling had to be relocated. So there
2 was a lot of interaction between Mike, our structural
3 engineer, our geotechnical engineer and so on, and
4 then we had to have that piling reflagged and be
5 inserted in a less -- in a location that conflicted
6 yes.

7 Q. "And it included the bulkhead," what do
8 you mean?

9 A. It was going to hit one of the guys or
10 stays from the bulkhead or was in -- or was in danger
11 of doing so.

12 Q. And were you personally involved in
13 correcting that issue?

14 A. No, only monitoring and making sure my
15 staff were focused.

16 Q. In this email in Exhibit 76, you
17 forwarded Dr. Lawhon's email to Mr. Rolison and wrote,
18 "Mike, it might be prudent that you do a site visit.
19 Also, react as quickly as possible." Do you see that?

20 A. (No audible response.)

21 Q. And what do you mean by, "react as
22 quickly as possible"?

23 A. Respond and don't let the problem sit.

24 Q. You then go on to say, "Let me know if
25 I need to rattle any cages." Do you see that?

1 A. Yes.

2 Q. What did you mean by that?

3 A. We have a lot of different people
4 involved in the decision-making here, structural
5 engineers, geotechnical engineers. We had a piling
6 consultant. We had the contractor and his
7 subcontractor. So it was a -- if anybody was
8 responding slowly, I was offering to intervene.

9 Q. And what would you mean by
10 "intervening"?

11 A. Get on the phone and talk to whomever I
12 needed to talk to get a reaction.

13 Q. Is that something that you did as a
14 general rule in connection with -- with this project?

15 A. No, and very rarely. With any project
16 we do, if there is a major issue, sometimes CEO to CEO
17 calls are necessary or I -- I do what I need to do to
18 try to get -- get a quick response.

19 Q. As the CEO of SGA, do you get a quicker
20 response than -- than someone lower down in the
21 hierarchy reaches out to try to discuss a problem?

22 A. I can sometimes.

23 Q. And on a project such as this one, what
24 other projects that you've worked on do you sometimes
25 will have to rattle somebody's cage to get something

1 done?

2 A. It's not often. It's rare that we have
3 projects that have structural or building or design
4 issues that -- that require an intervention, but it
5 occasionally does happen.

6 Q. But rattling someone's cages and
7 getting a response is something that -- that you can
8 do if it's necessary to do, correct?

9 A. I can't always ensure a response on the
10 other end, but I can -- I can certainly make the
11 effort. I can certainly endeavor to get somebody's
12 attention.

13 Q. Here, you offered to rattle some cages.
14 Did you, ultimately, end up doing that with respect to
15 those particular problems within the (indiscernible)
16 of SGA?

17 A. No, because I think -- I think Mike and
18 others dealt with the issue and worked through it.

19 Q. Now, how -- how long until you told
20 them it was resolved?

21 A. It was just a function of relocating
22 the piling and getting our structural engineer to tell
23 us what we needed to do to move it a couple of feet
24 further away and what would -- how we'd have to adapt
25 the footings.

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1 Probably -- he probably provided a couple of
2 sketches, field sketches, then I had to get a surveyor
3 out there to get it repinned, communicate all of that
4 back to the contractor, the pile driver, the
5 subcontractor and service, etcetera, so -- but I don't
6 recall being -- having to get involved, and so it was
7 probably dealt with by Mike Rolison.

8 **Q. What was the issue that's referenced**
9 **here in Dr. Lawhon's email said, "A portion of their**
10 **fence and a column has collapsed." Do you see that?**

11 A. I don't know what he means by "a
12 column", in all candor, but there was a grade
13 differential between the Marlin Quay building site and
14 the condo property, but the building is built right on
15 the property line.

16 The footings had to be -- after the piling
17 were driven, the footings had to be dug, so I would --
18 there's a trench for the footing exposed, there would
19 have been a grade differential, and I think with rain
20 and the soft -- soft material, the ground was
21 sloughing a little bit on our neighbor's property, and
22 we were concerned that was going to create other
23 issues.

24 **Q. And do you know what resolution was**
25 **reached regarding this issue with the fence**

1 (simultaneous crosstalk)?

2 A. I think -- I -- I think the piling were
3 adjusted, the footings poured and, at that point, he
4 could back-fill in the problem.

5 Q. Were you involved personally in
6 resolving that issue?

7 A. No. Just other than monitoring and
8 hearing the -- hearing the conversation and the
9 proposed action that would be taken.

10 Q. Mr. Goggans, I'm going to show you what
11 we will mark as Exhibit 64.

12 (PLF. EXH. 64, Email 2/3/21 (retained by
13 counsel), was marked for identification).

14 Q. Do you see an email on your screen and
15 at the top of it, it says from Dan Stacy in February
16 of 2021.

17 A. I do.

18 Q. And that portions of the email was
19 forwarded in 2021, I'll represent to you this was
20 produced by Mr. Stacy in connection with this lawsuit,
21 and I wanted to scroll down to the beginning here in
22 the first email exchange, which is on page three. I
23 think should be on your screen currently. It's dated
24 October 1, 2018. Do you see that?

25 A. Yes.

1 Q. It says -- and Luda Sobchuk wrote,
2 "Dan, thanks for the call and further update on "the
3 project's legal issues". Do you see that?

4 A. I do.

5 Q. Were you involved in a phone call with
6 Mr. Stacy and Ms. Sobchuk about the legal issue with
7 the project?

8 A. No, not to the best of my knowledge.

9 Q. Do you have any understanding of what
10 legal issues Mr. Stacy and Ms. Sobchuk discussed?

11 A. I can't recall.

12 Q. And Ms. Sobchuk goes on to write,
13 "While my associate is putting together a little
14 package showing the Building Code requirement for that
15 wall, I am coming up with something here, too. I am
16 going to "steal" a bit of square footage from the
17 enclosed space, though." Do you see that?

18 A. Yes.

19 Q. Do you understand what Ms. Sobchuk was
20 referencing when she said she was "steal" square
21 footage?

22 A. I don't.

23 Q. Did you have any discussions with her
24 or anybody at SGA about the idea of stealing or
25 reallocating square footage in the version three

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1 building?

2 A. It's possible, but I don't -- I don't
3 recall.

4 Q. She also wrote in reference to the
5 package showing a building code requirement for a
6 wall. Do you have any understanding of what that
7 means?

8 A. I'm relatively certain that is the wall
9 -- all -- all of this, in fact, pertains to the wall
10 on the north side of the building that is on --
11 virtually on the property line separating the Marlin
12 Quay condo property from the Marlin Quay building.

13 That wall project is sitting on a property
14 line by build -- virtue of the building code has
15 certain requirements. It has to be a fire-rated
16 wall, and it can only have limited openings in it. It
17 had to extend past the building for some distance, and
18 so all of this I think's in reference to -- to that
19 issue and the -- and affecting the design that would
20 both meet the code but -- that would meet the code and
21 maintain the functionality of the building.

22 Q. And were you in the loop on designing
23 the wall that Ms. Sobchuk referenced in her email?

24 A. I was not.

25 Q. If we look at this email, the next

1 email up is from Christy Lawhon, which I think may
2 actually be Mark Lawhon. Does that sound correct to
3 you?

4 A. It's possible his wife, as I mentioned,
5 is in the -- family is in the construction business,
6 so I -- I don't know if this is Mark talking from
7 that address or whether it's from somebody else, but
8 Christy Lawhon is his wife.

9 Q. And whether it's Mrs. Lawhon or Dr.
10 Lawhon, they emailed and copied you and Dan Stacy on
11 this issue, correct?

12 A. Correct.

13 Q. And did Dr. Lawhon or his wife
14 typically reach out directly to you with any concerns
15 or issue on the version three building?

16 A. Not that I recall. The pilings, again,
17 were problematic not only with respect to the
18 retaining wall, but some of the endcaps were
19 improperly installed. So there were a lot of
20 additional foundation issues and -- and so I think
21 early, early on, I participated in a conversation or
22 two about -- about the foundation but beyond that, I
23 don't recall any -- any other technical conversations
24 or regulatory, etcetera.

25 Q. This particular email exchange is from

1 **October 1 of 2018, correct?**

2 A. Yes. From the date, yes.

3 Q. And now, I'll represent to you that
4 **version 3.0 was approved by county council in January**
5 **of 2019. Does that sound correct to you?**

6 A. Yes.

7 Q. But these emails were before the
8 **approval actually occurred, correct?**

9 A. Presumably, yes.

10 Q. Was the -- these issues regarding the
11 **design of the wall, is this part of the design of the**
12 **building or is that more of a building code issue**
13 **that's referenced in these emails?**

14 A. That's all building code issues, as
15 best I can tell.

16 Q. And it's difficult to deal with this
17 **building code issues before the amendment that you're**
18 **applying for had been approved?**

19 A. Well, in this case, it -- it's not
20 necessarily typically but, in this case, we already
21 had one precedent and, you know, instead of regulatory
22 and legal constraints, so trying to get problems
23 solved ahead of submittal, in my mind, makes sense.

24 Q. You and your team at SGA were confident
25 **that version three would be approved based on the**

1 prior approvals that had happened, prior versions?

2 A. Well, reasonably confident. It's --
3 it's similar to any other building we design, we can -
4 - if we know what the planning and zoning requirements
5 are, if we know what the building code requirements
6 are based on research, we design a building that --
7 that conforms and unless we overlook something or miss
8 something or misinterpreted something, then we're
9 reasonably confident that it -- it -- it will work and
10 be approved.

11 Q. You said if something overlooked or
12 misinterpreted that might change whether -- whether
13 you could get your -- your next iteration approved;
14 is that right?

15 A. That's right. It's not often but, you
16 know, occasionally, you know we have hiccups. You
17 know, we submit something and a building official or
18 -- will say, no, I'm looking at this this way, so we
19 adjust.

20 Q. Did anything like that come up during
21 the -- the version three application process?

22 A. The only thing that I can vaguely
23 recall was the issue relating to the building type.

24 Q. The building type?

25 A. Yeah, type of construction: Type 1, 2,

1 3, 4, or 5.

2 Q. Did -- during the process of getting
3 the major amendment for version three approved, did
4 anything come up about the proper interpretation of
5 the parking requirements for that area?

6 A. Not to the best of my knowledge.

7 Q. Mr. Goggans, I'm going to show you what
8 we'll mark as Exhibit 74.

9 (PLF. EXH. 74, 12/2019, Email, marked for
10 identification)

11 Q. Do you have an email on your screen Mr.
12 Goggans that was from you to Brian Turner and others,
13 in December of 2019; do you see that?

14 A. Yes.

15 Q. And this is from December 2019, so
16 we're looking at several months after the planned
17 development amendment for version three had been
18 approved. Does that sound right?

19 A. Yes.

20 Q. And you wrote this email, and I'm happy
21 for you to look at it, and do you recall sending an
22 email to Brian Turner and others in this December of
23 2019 timeframe?

24 A. I don't remember sending an email, but
25 I think -- I think it's evident that I did.

1 Q. In this email you write, "Brian, the
2 owner approached us about a month ago in terms of
3 adapting the structure to allow the elevator to travel
4 to the third floor." Do you see that?

5 A. I do.

6 Q. And was the request after the building
7 -- after construction started for there to be a -- a
8 change to the elevator in the building?

9 A. Yes.

10 Q. My question to you is, does that --
11 does that sound correct?

12 A. It does. The county had been -- to the
13 best of my knowledge, been discussing relative to
14 residential projects, in fact, changing -- amending
15 the ordinance to allow elevator penthouse -- they were
16 already allowing them in some instances. They just
17 weren't going to do the tax change.

18 Q. I'm sorry. Could you repeat that
19 answer? I don't think I heard what you said.

20 A. I said the county -- we were involved
21 in residential projects and there were other projects
22 throughout the county which there was discussion about
23 amending the ordinance to allow for elevator
24 penthouses, classifying them the same way as they --
25 you would chimneys, balustrades, etcetera, and so we

1 were -- we were tagging onto those conversations.

2 Q. In this particular instance, was this a
3 change to the -- in the building from what had been
4 approved by the county in January 2019?

5 A. The penthouse that was added to the
6 elevator would have been a change. We -- but yes.

7 Q. And if we look down, scrolling down to
8 some of the earlier emails in this stream, there's an
9 email from Beth Novak with a diagram in it. I'll put
10 that on your screen. You see the diagram?

11 A. Right.

12 Q. And in particular, I'm interested in
13 this Letter B, Letter A; do you see those?

14 A. Yes.

15 Q. In between there's what looks like
16 (indiscernible] for an elevator.

17 A. Yes.

18 Q. Tell me what -- what that means, what's
19 an elevator penthouse?

20 A. Well, the hoist -- the cab is going to
21 rise up almost to the level of the roof. To have a
22 place for the hoist in the motor we need a little
23 doghouse. It's called a penthouse, but you need a
24 little doghouse on top of the elevator shaft so that
25 you've got sufficient room for your equipment.

1 Q. And this doghouse or penthouse sticks
2 up above the -- the bracket?

3 A. Yes.

4 Q. In here, the writing next to the -- the
5 image of the penthouse says four feet, three and a
6 half inches above it. You see that? Is that a yes?

7 A. Yes.

8 Q. And so with the idea here that by
9 adding an elevator penthouse, it would be necessary to
10 increase the height limit on the verge of rebuilding
11 by a little bit over four feet?

12 A. Well, unless -- originally the elevator
13 is going to -- was not going to that top floor. And
14 there is also discussion, as I recall, using an
15 hydraulic elevator where you don't have a penthouse.

16 But with the changes in the ordinance, I
17 think having the ability to do the penthouse and not
18 having it counted within the height restrictions, I
19 think the architectural teams to put in an electric
20 elevator with an overhead was --

21 Q. [Indiscernible] the initial plans for
22 the building, the ones that were approved for -- the
23 building was approved in January 2019, that did not
24 have the elevator going up, correct?

25 A. We had it designed both ways, but the

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1 ultimate design that was permitted was did not have it
2 -- have the elevator going into that top floor,
3 correct. The -- you could accomplish the same with an
4 hydraulic elevator and that version of that was done
5 at one point. But hydraulic elevators don't work so
6 well because of the high water table.

7 Q. And this image we're looking at from
8 Exhibit 74, it actually showed there's this dark
9 diagonal beam. You see that?

10 A. Correct.

11 Q. Is that a beam that would need to be
12 removed if it were to allow the elevator to go to the
13 top floor of the version three building?

14 A. I'm not sure, but depending on the
15 where that -- that [indiscernible] is relative to the
16 elevator door. It could be blocking the door

17 Q. If we look up at Ms. Novak's email, we
18 just look at the image that was contained in the
19 email, you write to Mr. Turner, and say, "I do not
20 know exactly what's the issue stated. The owner does
21 want to the ability to take the elevator up. You see
22 that?

23 A. Yep. I do.

24 Q. She goes down later and says, "However,
25 there is a break that will have to be addressed."

1 Does that refresh your recollection regarding what's
2 depicted in that image that we're looking at, that
3 dark-colored diagonal?

4 A. Not my recollection, but in looking at
5 the sketch or the image. The shaded brace is -- is
6 probably the one she's referring to.

7 Q. That's one issue, but that's separate
8 from the question of whether it's possible to put this
9 penthouse on top of the roof of the building, correct?

10 A. That's an area of interpretation.

11 Q. When you say area of interpretation,
12 what do you mean?

13 A. By the planning and zoning department.

14 Q. Planning and zoning department would
15 have to interpret whether it was permissible to allow
16 an elevator in-house to go above the roof of the
17 version three building?

18 A. Yeah. And I do remember some
19 discussion about that or whether a text change in the
20 ordinance needed to occur. One interpretation was
21 it's like -- it's like a lot of other elements that
22 are on the roof: air conditioning units, chimneys,
23 balustrades. Another one was -- in essence,
24 specifically, the ordinance specifically has to
25 reference penthouses, so I vaguely remember some of

1 that conversation.

2 Q. You said in the back of your -- your
3 email that you sent to Mr. Turner, you stated, second
4 sentence, we believe, based on the conversation with
5 the county, that they are amenable to changing the
6 ordinance regulating height to [indiscernible]
7 elevator penthouse. Did you see that?

8 A. Yep.

9 Q. And what conversations did you have
10 with the county about that particular issue?

11 A. I don't recall having any. I just knew
12 that with various elevators, like a poly silo [ph] for
13 residential, there was a move to allow penthouses
14 because it'd been an issue over and over and over
15 again with various projects around the county.

16 Q. So when you write here, we believe
17 based on conversations, were there actually
18 conversations that you participated in?

19 A. None that I recall, other than when I
20 would occasionally run into Boyd I would ask him if
21 the county is going to -- is going to move forward
22 with their plans to change -- change the ordinance.

23 Q. And to change that ordinance you're
24 referencing would amend what portion of the zoning
25 ordinance?

1 A. It would allow -- I'm not sure which
2 section of the ordinance it even is, but it would
3 allow in the section that governed height, or that
4 chapter. It would exempt elements -- like elements
5 like I've already mentioned; chimneys, balustrades,
6 you know, and there's some steeples, spires; some
7 other elements that the higher ordinance exempts.

8 **Q. Does that ordinance apply in a sane**
9 **development like the Marlin Quay CD?**

10 A. I don't know. There's been a debate on
11 that within the county, whether the overall height
12 ordinance established by the county supersedes the PD
13 ordinance or whether the reverse is true, which --
14 which is -- and I think that's still being debated.

15 **Q. Has there been an amendment -- an**
16 **amendment to the height ordinance for the language of**
17 **the zoning ordinance regarding height?**

18 A. Not that I'm aware. There's been some
19 legal interpretations. Again, I know from residential
20 projects regarding -- and that'll (technical
21 interruption) -- regarding whether a height stipulated
22 in the PD has precedence over an overall and general
23 height provision within the ordinance, or the reverse.

24 **Q. The discussion you referenced that you**
25 **had with Boyd Johnson about was the ordinance would be**

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1 changed to exempt these elevator penthouses from
2 height requirements. Would that change the actual
3 language of the Georgetown County ordinance, in your
4 opinion?

5 A. It would have been a text change. And
6 what would have occurred is that they simply would
7 have added penthouses -- elevator penthouses, spires,
8 steeples, balustrades, chimneys, and all that to the
9 text.

10 Q. Tell me what you mean by text change.

11 A. The ordinance is primarily narrative.
12 It's primarily text. So you would have put that into
13 the -- you know, just amended the ordinance. That's
14 done probably every three or four months, we amend the
15 language of the ordinance in the house-- -- we call it
16 housekeeping, add or take out or modify some of the
17 language so there's more clarity.

18 Q. That text change is something that
19 doesn't need to be approved by County Council?

20 A. Yes, ultimately.

21 Q. And the text change regarding elevator
22 penthouses, has it been presented to County Council?

23 A. I believe it has, yes.

24 Q. And did you participate in the
25 consideration of that text change?

1 A. I honestly can't remember.

2 Q. Do you know if the County Council
3 approved the text change to allow elevator penthouses
4 to be used in the latter part [ph]?

5 A. I think so. Yes.

6 Q. When approximately did that change
7 happen?

8 A. I can't recall exactly. It's been many
9 months ago, probably a year.

10 Q. Has the plan for version three been
11 revised to include the elevator penthouse?

12 A. It has.

13 Q. And that's currently being constructed?

14 A. I would assume so. I haven't -- I
15 haven't seen it or laid eyes on it.

16 Q. In Exhibit 74, you say we may -- we
17 believe based on conversations with the county that
18 they are amenable to changing the ordinance regulating
19 height of the elevator penthouse. You with me?

20 A. Yes.

21 Q. When you say "the county", that
22 actually is you and your fellow councilmembers, right?

23 A. Well, in this case, I was probably
24 referring to planning and zoning staff because this
25 had been an item of conversation for many months, if

1 not years.

2 Q. But the ultimate decision maker is you
3 and your -- your council, right.

4 A. That's correct. Has to go before the
5 planning commission. Staff has to recommend; planning
6 commission has to approve; and then it goes before
7 County Council.

8 Q. We reviewed discussions with Boyd
9 Johnson, whether the ordinance should be amended to
10 exempt elevator penthouse from the height limit. Did
11 you tell him what your position was on whether that
12 should happen?

13 MS. GOLDING: I'm going to object and
14 instruct the witness not to answer that question.
15 Legislative privilege.

16 EXAMINATION CONTINUING

17 BY MR. NUGENT:

18 Q. Mr. Goggans, you had discussions with
19 Mr. Johnson about the height limitation for elevator
20 penthouses, correct?

21 A. I've had conversations with Mr. Johnson
22 over the years numerous times about elevator
23 penthouses.

24 Q. Did you tell Mr. Johnson that you got a
25 client who was building a project and looking to add

1 an elevator penthouse above the -- the top of the roof
2 of the building?

3 A. It's possible I did. About the same
4 time, there was a residential project that had -- had
5 the same issue. It had been cross-referencing every
6 [indiscernible].

7 Q. That residential project, that was
8 another one that your firm was working on?

9 A. Yes.

10 Q. Where did that project located?

11 A. It would have been [indiscernible]. We
12 ultimately did a workaround on that one with a
13 hydraulic elevator.

14 Q. Would that approximately required a
15 zoning amendment?

16 A. No, because we didn't -- we didn't do -
17 - we ultimately didn't go that way. We did an
18 hydraulic elevator, as I mentioned.

19 Q. But in the case of the version three
20 project in Marlin Quay, the decision was made to add
21 the elevator penthouse following the amendment to the
22 zoning ordinance?

23 A. At some point, apparently. Yes.

24 Q. Going to show you what's marked as
25 Exhibit 78.

1 (PLF. EXH. 78, 11/20/2019 email, was
2 referenced.)

3 Mr. Goggans, the Exhibit 78 email in front
4 of you, it's from Mark Lawhon on November 2020. See
5 that?

6 A. I do.

7 Q. November 2020, this is about 11 months
8 after Exhibit 74 we looked at, which was December
9 2019, is that correct?

10 A. Correct.

11 Q. At this point in time, had the county
12 already approved the text amendment [sic] -- or text
13 change to allow elevator penthouses?

14 A. I can't recall what --

15 Q. Mark Lawhon emailed -- Mr. Rollison
16 also copies you, had several questions. Says, can you
17 email to the county the modification, says, it has to
18 be signed off by zoning and planning and then go to
19 the building department for review.

20 And then, Steve, what is the best option for
21 [indiscernible] submittal? Do you see that?

22 A. I do.

23 Q. Did you respond to Dr. Lawhon with
24 answers to these questions?

25 A. I don't recall.

1 Q. At this point in time, is the elevator
2 -- modification for the elevator penthouse have to be
3 signed off on by zoning and planning?

4 A. I am not sure about planning and
5 zoning. It would had to have gone back to the
6 building department because there were structural
7 modifications involved based on sketches you showed
8 earlier; and the fact that the elevator was going to
9 be extending to the third floor.

10 Q. Were you personally involved in any of
11 those modifications?

12 A. No.

13 (simultaneous crosstalk)

14 A. Let me briefly -- when -- Mike's mother
15 passed away -- when he saw that e-mail to the
16 structural engineer, and in his absence, to make sure
17 that the project just didn't stop, sent that email
18 out, but otherwise was not involved.

19 And jumping into a highly complex project at
20 that point in the game at a detail level was -- is not
21 very easy to do or well-advised.

22 Q. In his email, Dr. Lawhon specifically
23 asked you for guidance on the easiest path to getting
24 approval of this change, right?

25 A. I'm not sure what its intent is, but

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1 yeah, he's -- he's asking for how do we do this.

2 **Q. Did you tell him at that point that you**
3 **weren't sufficiently involved to provide guidance?**

4 MS. GOLDING: Objection to form of the
5 question. The witness has already testified he does
6 not believe he responded.

7 MR. NUGENT: You can answer.

8 THE WITNESS: I don't recall ever
9 responding. I think Mike probably just kept the
10 project moving.

11 EXAMINATION CONTINUING

12 BY MR. NUGENT:

13 **Q. Did you have any discussions with Mike**
14 **about how to respond to Dr. Lawhon related to his**
15 **modifications to the project?**

16 A. No, not that I recall. It's
17 perfunctory. I mean, there's -- there's not multiple
18 ways to do this use of the building or --

19 **Q. Who else did SGA involved in the**
20 **modifications of the elevator penthouse other than Mr.**
21 **Rollison and you?**

22 A. Don't recall anybody else being
23 involved; possibly -- possibly Laura Helminski, but
24 that would have been it, as far as [indiscernible]

25 **Q. Mr. Goggans, I'm going to show you**

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1 what's previously been marked as Exhibit 21.

2 (PLF. EXH. 21, 12/2019, Interrogatories, was
3 referenced.)

4 On your screen should be a document titled
5 "Defendant Steve Goggans answers to Plaintiff's First
6 Interrogatories." Do you see that? Do you recognize
7 this document?

8 A. Not really. I'll tell you I haven't
9 seen it before, but I just don't --

10 Q. I'm sorry, did you say something?

11 A. -- well, I don't recall it. Not saying
12 I haven't seen it before; I just not -- need to
13 refresh my memory.

14 Q. I'm happy to scroll through it here.
15 Let me know what you want me to scroll to the next
16 page.

17 A. Okay. Keep going.

18 I haven't reviewed this -- this document,
19 but I am getting the gist of what it is, with
20 references.

21 Q. You get the gist of the document, and
22 as you sit here today, you don't know [indiscernible]
23 your testimony?

24 A. I don't recall seeing it. Right.

25 Q. And if we scroll down --

1 A. It says, "Interrogatory of the county
2 council."

3 Q. Right. It's an interrogatory response
4 that was sent -- it said it was sent by you, but you
5 don't know if you reviewed it before it was actually
6 sent out, correct? It was served November 4th, 2019,
7 see that?

8 A. Right.

9 Q. I want to ask you about some of these
10 responses. Do you understand that these
11 interrogatories are a series of questions sent by the
12 plaintiff's counsel regarding facts and issues in the
13 case?

14 A. Yes.

15 Q. And that these responses are made on
16 your behalf?

17 A. (No audible response.)

18 Q. I want to ask you about your response
19 to interrogatory number five; should be on your
20 screen. Now, I won't read the entire interrogatory,
21 but it references identifying correspondence and
22 communication, do you see that?

23 A. I do.

24 Q. And it references corresponding
25 communication among you and any council members,

1 employees, representatives, official named or agents
2 Georgetown County regarding Marlin Quay,
3 [indiscernible area of proposed development. You with
4 me?

5 A. I am.

6 Q. It says, Defendant Goggans as an agent
7 of SGA, [indiscernible] recalls that he may have had
8 some discussions several years ago with the county.
9 They would be --

10 A. Discussions about?

11 Q. Well, this is your response. I'm
12 trying to see what the basis for that statement is.

13 MS. GOLDING: What's the question asked?

14 MR. NUGENT: I -- I asked if -- if that's
15 the correct statement and what discussions he had.

16 THE WITNESS: I am struggling -- identified
17 correspondents are all reading item number five.
18 Okay.

19 Well, my response is early on I had --
20 version one, I had discussions with employees of
21 Georgetown County. And I've had one or two
22 conversations, possibly with Boyd Johnson since, but I
23 have not conversed with any council or planning
24 commission or other elected officials.

25 Q. And it's referenced in the answer to

1 discussions several years ago with the county, is that
2 in connection with version one?

3 A. Yes, and yes.

4 Q. And then you just set aside the fact of
5 additional conversation with Boyd Johnson? Are there
6 some of the heights that we've looked at
7 [indiscernible] we looked at [indiscernible]?

8 A. Yeah. And I've forgotten even at
9 those, but yeah. That's referencing is referencing
10 version one.

11 Q. We're going to go now to interrogatory
12 number eight. Basically identify all applications
13 submitted by Palmetto and Georgetown Counties for any
14 amendments to the Marlin Quay CUP, and then for each
15 application, what will you or [indiscernible]
16 application [indiscernible] work done by SGA on the
17 project. Do you see that?

18 A. I do.

19 Q. And you stated in the second sentence,
20 neither Defendant Goggans nor SGA participated in any
21 preparation of any aggregation submitted by Palmetto.
22 Is that an accurate statement?

23 A. Yep. I believe it to be. I think Dan
24 Stacy submitted the original application and
25 subsequent applications in the preparation.

1 Q. And was anybody at SGA involved in
2 helping Mr. Stacy prepare the material to be included
3 in the application?

4 A. He would have used some of our
5 exhibits, possibly.

6 Q. And did you communicate with Mr. Stacy
7 to assist him in compiling documents to include in the
8 application?

9 A. Not that I recall.

10 Q. Do you at SGA work with Mr. Stacy to
11 compile material to include in the applications?

12 MS. GOLDING: Object to the question. He
13 never testified that anybody submitted --
14 (simultaneous crosstalk)

15 MS. GOLDING: -- please don't interrupt me.
16 I need to complete my objection. So stop interrupting
17 me. (simultaneous crosstalk) I'm objecting to the
18 question. This witness has never testified that
19 anybody assisted Dan Stacy in preparing the
20 application.

21 MR. NUGENT: Henri, the direct will reflect
22 what the testimony is and he can answer any questions
23 [indiscernible] your objections .

24 MS. GOLDING: But let me just finish my
25 objection before you interrupt me. This is, what, the

1 third time I've asked you to do that?

2 MR. NUGENT: You can answer the question,
3 Mr. Goggans?

4 THE WITNESS: To the best, I don't -- I
5 don't think it is possible that one of my staff
6 provided sketches or drawings. He may have attached -
7 - you always have to do that with the planning now.
8 Or maybe they didn't. The people that would have been
9 potentially involved would have been people prior
10 mentioned who worked on this project: Heather Caher,
11 Pat Williams, Laura Helminski.

12 EXAMINATION CONTINUING

13 BY MR. NUGENT:

14 Q. Looking at interrogatory number nine,
15 the next one down, it asks you to state whether or not
16 the application submitted by Palmetto in August of
17 2018 represented a second zoning application by
18 Palmetto to the same parcel of property during the
19 period. Do you see that?

20 A. Yes.

21 Q. And then you provide a response to your
22 referencing Section 17-02.1, Georgetown
23 [indiscernible] me?

24 A. Yes.

25 Q. Do you personally have any knowledge of

1 **what that section of zoning ordinance does?**

2 A. I would be guessing as to that section
3 of it and what it specifically references, but it --

4 MS. GOLDING: Steve, if you -- don't guess.
5 If you know, fine. If you don't, don't.

6 A. I don't.

7 EXAMINATION CONTINUING

8 BY MR. NUGENT:

9 **Q. Is this the answer -- this response**
10 **here, this is some information that you provided to**
11 **your attorneys --**

12 MS. GOLDING: Objection. The question is
13 [indiscernible] information subject to attorney-client
14 privilege. The witness is instructed not to answer.

15 EXAMINATION CONTINUING

16 BY MR. NUGENT:

17 **Q. Let me ask you a different way. Mr.**
18 **Goggans, where did you come up with this answer to**
19 **interrogatory number nine?**

20 MS. GOLDING: Objection. You're asking the
21 same question. You're just trying to go to the back
22 door. These responses were provided in accordance
23 with the local rules and is subject to attorney-client
24 privilege. The answer -- and the witness is not
25 instructed to -- is instructed not to answer.

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1 THE WITNESS: I have been instructed not to
2 reveal privileged communication. [indiscernible]
3 testify the source of this communication is his
4 attorney. If that's the case, then yes, the rest of
5 is privileged [indiscernible].

6 MS. GOLDING: I won't tell you it came from
7 his attorney. (simultaneous crosstalk)

8 MR. NUGENT: I don't need you to testify
9 [indiscernible] --

10 MS. GOLDING: -- questions. No, sur. You
11 are asking to information subject to attorney-client
12 privilege.

13 MR. NUGENT: I'm not.

14 MS. GOLDING: Do not answer that question.

15 MR. NUGENT: [indiscernible].

16 MS. GOLDING: Do not interrupt me, Adam.
17 You are asking questions that is vague, attorney-
18 client privilege.

19 EXAMINATION CONTINUING

20 BY MR. NUGENT:

21 Q. Other than communication with your
22 attorneys, what basis do you have for the answers to
23 interrogatory number nine?

24 A. I don't have a response to that. I
25 don't recall.

1 Q. Mr. Goggans, I'm going to show you what
2 we'll mark as Exhibit number 72, a number that exhibit
3 issue.

4 MS. GOLDING: What's the number of that
5 exhibit?

6 MR. NUGENT: Seventy-two.

7 (PLF. EXH. 72, 3/2019, Email, was marked for
8 identification.)

9 Mr. Goggans, on your screen you see an email
10 from you to Mark Lawhon in March 2019 and attached are
11 several invoices. I'm happy to scroll through if
12 you'd like me to.

13 A. Okay.

14 Q. Attached invoices I believe are SGA to
15 Mark Lawhon.

16 MS. GOLDING: You need to scroll a little
17 slower, please.

18 MR. NUGENT: [indiscernible]
19 (simultaneous crosstalk)

20 MS. GOLDING: I need to look at the
21 document as well. Scroll slower, or I'm not going to
22 let this witness answer any questions on this exhibit.
23 Adam, you need to cooperate. You don't need to be so
24 disruptive to my -- my objections and interfere with
25 requests I've made.

1 THE WITNESS: Thank you.

2 MR. NUGENT: Okay. Henri, are you good?

3 MS. GOLDING: Yeah. Is that the last of
4 it?

5 MR. NUGENT: Here's the last one.

6 MS. GOLDING: Okay.

7 MR. NUGENT: I apologize. There's one
8 last page.

9 MS. GOLDING: Go up the one page before. I
10 think that went too fast. Thank you.

11 EXAMINATION CONTINUING

12 BY MR. NUGENT:

13 Q. Okay. Mr. Goggans, do you recognize
14 what's shown in Exhibit 72?

15 A. Yes. It appears to be our invoicing or
16 billing for the project.

17 Q. And these invoices, they say, Marlin
18 Quay [indiscernible] on that. Do you see that?

19 A. I do.

20 Q. Top, I think, of each page. These
21 invoices pertain only to work done on the third
22 iteration of the Marlin Quay project?

23 A. Presented. Yes.

24 Q. And if we look at the first invoice --
25 and just to clarify, these are invoices. This email

1 is dated March of 2019, so these are just invoice
2 generated prior to that point in time, correct?

3 A. Correct.

4 Q. SGA's done additional work for the
5 project in the last two and a half years.

6 A. Correct.

7 Q. Okay. And looking at the -- the first
8 invoice, this is one from December 2018. You with me?

9 A. Okay.

10 Q. It's got different categories to your
11 architectural services; 55,700, structural; 18,400
12 MPE; 13,400 -- you with me?

13 A. Okay.

14 Q. So what was it covered by the
15 structural category?

16 A. I'm not sure I understand the nature of
17 the question, but on most of our buildings, we do
18 employ a structural engineer and he will actually
19 design and detail the foundations, the frame of the
20 building, and the skeleton of a building, if you will.

21 Q. Is that the structural line-item
22 references?

23 A. Yes. Yes.

24 Q. That structural engineer employed by
25 SGA or is that an outside contractor?

1 A. He's employed by SGA.

2 Q. Who was the structural engineer on this
3 particular project?

4 A. Rick Peterson & Associates.

5 Q. So Rick Peterson & Associates is a
6 structural engineering firm that SGA did hire to do
7 work on this project, is that correct?

8 A. That's correct.

9 Q. And then SGA billed the client here,
10 Dr. Lawhon, for the work done by Rick Peterson?

11 A. Correct.

12 Q. And then what is the MPE line item on
13 this invoice?

14 A. Mechanical plumbing and electrical
15 consulting.

16 Q. What's involved in that type of
17 consulting?

18 A. Well, the mechanical, just taking that
19 one discipline, you'd size the heating and air
20 equipment; duct sizes; the size of the registers based
21 upon, you know, based upon the -- the climatic
22 conditions and everything.

23 Plumbing is the -- is exactly what it says
24 it is. You've got the -- you've typically got a riser
25 and a plumbing tree and he figures out all the

1 distribution. Electrical, same thing. The service
2 entrance, the distribution, and power and lighting.

3 Q. Looking at this, it's basic
4 professional services. Is that a contract amount --
5 was there actually a written contract between SGA and
6 Dr. Lawhon or one of his entities before they started
7 this?

8 A. There should have been. Yes.

9 Q. Below that, there are additional
10 services -- power, you see that?

11 A. Yes.

12 Q. Is that additional work was done above
13 and beyond the items that were contracted for?

14 A. Yes.

15 Q. If we look down, this is that first
16 invoice [indiscernible] dated December 2018. If we
17 scroll down, the next invoice is January 2019. It's
18 got that contract amount reference, you see that?

19 A. Yes.

20 Q. And then going down to an aging
21 summary, we see just how much is outstanding, is that
22 right?

23 A. Correct.

24 Q. And the other invoices we looked at,
25 these are all from that late 2018, early 2019

1 timeframe.

2 A. Right.

3 Q. There's additional services added here
4 on top of that contracted amount for architectural
5 services, structural service, MPE -- or MEP, right?

6 A. (No audible response.)

7 Q. And looking, for example, at this
8 invoice number [indiscernible] from March of 2019,
9 under additional services it has "architect one denied
10 principal, project architect two -- [indiscernible]"
11 see that?

12 A. What [sic]?

13 Q. What are the identities -- who -- who
14 were each of the people?

15 A. Design -- the architect one would have
16 been somebody like Pat Williams, Heather Caherdtd. The
17 design principal would have been Luda Sobchuk. I
18 think architect three would have either been Brett
19 Hominick or Mike Rollison.

20 Q. And if you had time on an invoice, what
21 would it show up as [indiscernible] line item?

22 A. Probably just principal.

23 Q. And looking at this final page, this is
24 from March of 2019, it has the outstanding amount, one
25 -- or \$2,592. Do you see that?

1 A. (No audible response.)

2 Q. And was that the amount that Dr. Lawhon
3 or [indiscernible] owed SGA as of March of 2019?

4 A. Going from the invoice, I would say
5 yes.

6 Q. Do you know that amount was paid by Dr.
7 Lawhon?

8 A. I haven't seen him on our accounts
9 receivables list so I understood he has paid it.

10 Q. And you said that SGA has done work
11 since March of 2019. Was that part of a separate
12 contract or was that how, really, deals work?

13 A. It would have been billed hourly. Our
14 work during the bidding and negotiations phase and
15 during the construction phase would have all been time
16 and expense or hourly.

17 Q. And approximately how much has SGA
18 billed Dr. Lawhon since March 2019?

19 A. I don't recall. Not as much as usual,
20 because our services have been a little more
21 abbreviated in those phases than usual.

22 Q. And why is that?

23 A. Mark is supervising the construction
24 himself, and we're -- under most circumstances on a
25 commercial building we administer the contract for

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1 construction.

2 We're not administering the contract for
3 construction in this case. We're merely responding as
4 needed to issues and doing threshold-level
5 observation, or we were in the early stages.

6 Q. Some of the items we looked at it
7 earlier regarding the black fence or the addition of
8 the elevator and how -- those are all things that SGA
9 would fill just hourly for that, is that correct?

10 A. Correct.

11 Q. And did SGA submit to Dr. Lawhon
12 invoices each month after it did additional work?

13 A. Typically, we would have always, almost
14 always have billed monthly. If we didn't do any work
15 in a given month it's possible that a month was
16 skipped or he didn't have -- didn't get a statement or
17 a bill from us.

18 Q. I'm going to show you what we'll mark
19 as Exhibit 75.

20 (PLF. EXH. 74, 4/25/2020, Email, marked for
21 identification)

22 Mr. Goggans, there should be an email on your
23 screen from April 2020 [indiscernible] take a look
24 that. Do you see that?

25 A. Yes.

1 Q. And in reference to the subject line in
2 Marlin Quay -- and I'm happy to start at the beginning
3 and scroll up, there's a couple of pages here -- start
4 beginning of this last page, excuse me -- this last
5 page is just a signature block.

6 That's a first email, early email exchanges
7 from you to Ms. Hasco April 2020. And you write,
8 "Please let me know and see when the [indiscernible]
9 can experience issues, a positive [indiscernible]. I
10 plan to take action and get the balance of our money.
11 So do you see that?

12 A. Yes.

13 Q. Did an issue arise in the April 2020
14 timeframe regarding amounts owed by Dr. Lawhon and his
15 companies to SGA?

16 A. Over our multi-year period, I've
17 occasionally had to -- going back to version one,
18 occasionally had to call him or remind him that
19 payment was due.

20 He uses a payments -- most recently used as
21 a payments service when we had an issue. And actually
22 the payment service sent -- sent the check, but it
23 went with (technical interruption) actually hand-
24 delivered a check, left it at our front door. But his
25 payment, you're always paying but his payment process

1 was sometimes a little erratic.

2 Q. If we go up, this is on the first page
3 of the exhibit, scrolling down a little bit. And Ms.
4 Hasco wrote to you and said, Steve, I checked the base
5 account this morning; it deposited on April 13, 2020,
6 three days ago. I do not see where it
7 [indiscernible]. Did I read that correctly?

8 A. Yes.

9 Q. Did you have concern in this April 2020
10 timeframe that Dr. Lawhon was going to stop payment or
11 -- a check to [indiscernible]?

12 A. No, I never really worried about that
13 with him. It was just -- just getting the check in
14 the first place. Once we had a check, we never had
15 experience, to the best of my knowledge, of one
16 bouncing or a stop payment of any kind.

17 I think -- I think that was an ad by my
18 office manager that was -- you know, she didn't know
19 the nature of my concern. And all she knew was that
20 the -- or what was going on behind the scenes. All
21 she knew was that we were slow getting paid.

22 Q. You responded you -- if you look up one
23 email, you responded to Ms. Hasco and wrote, "So no
24 way you can stop payment if I [indiscernible]. Do you
25 see that?

1 A. Yes.

2 Q. So you weren't concerned that he might
3 stop payment here, right?

4 MS. GOLDING: Back to the form of the
5 question.

6 MR. NUGENT: [indiscernible].

7 THE WITNESS: It's possible. I -- again,
8 my main concern was the timeliness of the payment
9 rather than anything else. His payment would
10 occasionally -- he went to fund it through a bank. I
11 think he, as I recall -- and so 60, 90 days would
12 sometimes go by before we were paid. More concerned
13 about the timing.

14 Q. Your response here indicates that you
15 could go aggressive. What did you mean by that?

16 A. File a lien if worst -- the worst-case
17 scenario.

18 Q. And did SGA ever file a lien?

19 A. No.

20 Q. Did you ever communicate with Dr.
21 Lawhon that SGA was considering or planning to file a
22 lien?

23 A. I don't recall ever threatening. I did
24 say that, you know, we -- we needed to get paid fairly
25 assertively and that we didn't want this to go

1 sideways or go in another direction. So we had this
2 kind of conversations, yes.

3 Q. And at the top of the email, you wrote,
4 "Ms. Hasco, thanks. Now I will be going forward more
5 aggressively." Right?

6 A. Right.

7 Q. And that aggressive strategy included
8 discussing with Dr. Lawhon about potentially filing a
9 lien?

10 A. Yeah, we never consulted our attorney;
11 never filed a lien. But we did -- I did have some --
12 a couple of terse conversations with Dr. Lawhon along
13 the way.

14 Q. But the amounts that were outstanding
15 in April 2020, have those been paid as we sit here in
16 September 2021?

17 A. Yes.

18 Q. And do you know what the amount -- the
19 whole amount Dr. Lawhon paid for the version three
20 project?

21 A. Not without checking our records. I
22 don't have that information at my fingertips.

23 Q. Those payments are in addition to what
24 you paid in connection with the prior iteration of
25 this project, right?

1 A. Yes, he's paid for three different
2 building designs.

3 **Q. Did he paid in full for version one and**
4 **version two.**

5 A. Yes.

6 MR. NUGENT: Why don't we take a quick
7 break? I may be wrapping up soon here, just want to
8 take a look at my notes.

9 MS. GOLDING: Is that what you want?

10 MR. NUGENT: Say that again, Henri?

11 MS. GOLDING: You want five minutes?

12 MR. NUGENT: Yeah, five or ten minutes is
13 fine.

14 MS. GOLDING: Okay, thank you.
15 Court reporter?

16 THE REPORTER: Yes, ma'am?

17 MS. GOLDING: The -- the questions that I
18 instructed the witness not to answer, would you please
19 give those to me? We have to file a protective motion
20 within a number of days after.

21 THE REPORTER: Okay, I got you.

22 MS. GOLDING: If you -- I'm sorry. You
23 said you can?

24 THE REPORTER: Yes. Yes, Ma'am.

25 MS. GOLDING: I sure appreciate. Thank

1 you.

2 THE REPORTER: Thank you, too.

3 MS. GOLDING: Hey, how you doing?

4 [indiscernible] deposition [indiscernible] go on back.

5 COURT REPORTER: Okay, I'm ready.

6 MR. NUGENT: All right. I don't have any
7 further questions.

8 MS. GOLDING: Okay. No questions for me.
9 [indiscernible] court reporter, the witness will read and
10 sign inside the deposition, so please send it to me.

11 COURT REPORTER: Okay, thank you. Do you
12 want just a PDF version to your email.

13 MS. GOLDING: Yes, ma'am.

14 THE REPORTER: Yeah, that's right. Thank
15 you.

16 MS. GOLDING: Okay.

17 THE REPORTER: Anyone else?

18 MR. NUGENT: I want a PDF version as well.

19 COURT REPORTER: So you want -- you want
20 original and your PDF copy?

21 MR. NUGENT: Yes, ma'am.

22 COURT REPORTER: Okay. Mr. Forster? (No
23 audible response.) Can't hear you. Give me a thumbs
24 up or -- you do not want a copy.

25 MR. FORSTER: No, that's okay.

1 THE REPORTER: Okay, thank you. Mr. Sperry?
2 Can he hear me? Mr. Sperry, that is his name, isn't
3 it?

4 MS. GOLDING: Yes, it is.

5 COURT REPORTER: Okay. Well, Ms. Watson,
6 do you need a copy?

7 MS. WATSON: PDF will be fine. Thank you.

8 MS. GOLDING: Court reporter, Brooke and I
9 are together, so send it to me.

10 COURT REPORTER: Okay. Okay. Thank you.
11 And I don't -- Mister -- he's showing up as
12 Charleston, but I guess that's Mr. Sperry. I don't
13 think he can hear me, apparently.

14 MS. GOLDING: No.

15 THE REPORTER: I guess I'll have to call him
16 and see. I don't -- maybe he missed the. He might
17 have left. Okay. No copy. Cool beans. I gotcha.
18 Thank you so much. We had to improvise there. So we
19 got -- we got -- okay, so we only have two copies.
20 Good. Thank you all very much. I appreciate it.
21 Okay, bye bye.

22 MS. GOLDING: And don't forget the excerpts
23 of the questions --

24 THE REPORTER: I got you.

25 (The deposition concluded at 3:04 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, Ann C. Makris, Court Reporter and Notary
3 Public for the State of South Carolina at Large, do
4 hereby certify that the foregoing transcript is a
5 true, accurate, and complete record.

6 I further certify that I am neither related
7 to nor counsel for any party to the cause pending or
8 interested in the events thereof.

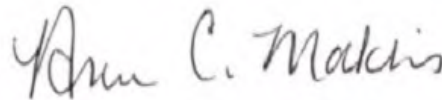
9 Witness my hand, I have hereunto affixed my
10 official seal this 22nd day of October 2021 at
11 Florence, Florence County, South Carolina.

12

13

14

15



16

Ann C. Makris, Court Reporter

17

Notary Public for South Carolina

18

My Commission Expires:

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October 1, 2028

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25

I, Chris Naaden, a transcriber, hereby
declare under penalty of perjury that to the best of
my ability the above 180 pages contain a full, true
and correct transcription of the tape-recording that I
received regarding the event listed on the caption on
page 1.

I further declare that I have no interest in
the event of the action.

November 26, 2021

Chris Naaden



(Gulfstream Café v. Georgetown County, et al.,
Deposition of Steve Goggans, 9-27-21)

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: Steve Goggans, 09/29/2021

3 PAGE LINE CHANGE REASON

4 _____

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19 _____

20 I, Steve Goggans, have read the foregoing
21 transcript and hereby affix my signature that same is
22 true and correct, except as noted above.

23

24

25

Steve Goggans

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Steve Goggans on 09/29/2021

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STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS IN THE COUNTY OF GEORGETOWN

The Gulfstream Café, Inc., Plaintiff

v.

SUBPOENA DUCES TECUM IN A CIVIL CASE

Georgetown County, et al., Defendants

Case Number: 2019-cp-22-00199

Pending in Georgetown County

TO: SGA NarmourWright Design, PA
c/o Steve Goggans, Registered Agent
8263 Oceans Highway
Pawleys Island, SC 29585

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

Courtroom 3-C on the 3rd floor of the Georgetown County Judicial Center, 401 Cleland Street
Georgetown, SC 29440

September 22, 2021 at 9:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See Exhibit "A".

PLACE:

DATE AND TIME:

Courtroom 3-C on the 3rd floor of the Georgetown County Judicial Center, 401 Cleland Street
Georgetown, SC 29440

September 22, 2021 at 9:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

August 23, 2021

Sean M. Foerster

Attorney for Plaintiff

Date

Print Name

Attorney's Address and Telephone Number :

Sean M. Foerster, Rogers Townsend LLC, Post Office Box 100200, Columbia, SC 29202-3200 (803) 771-7900

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

EXHIBIT 62

GoggansS 9/29/21

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT "A"

Any of the below documents, which have not already been produced to Plaintiff in this litigation:

- All documents regarding the Application to Amend a Planned Development (PD) submitted by Palmetto Industrial Development, LLC in August 2018, AMPD-9-18-21424 (the "Application"), including but not limited to:
 - All documents regarding off-street parking requirements and analysis for the Application.
 - All documents regarding all plans, sketches, data, and any other material submitted in support of the Application.
 - All documents regarding the proposed use of the redevelopment subject to the Application, including but not limited to the type of use, details related to the size, height, occupancy, etc. of the proposed building, and hours of operation.
- Any and all oral or written communications, including but not limited to, emails, text messages, faces, or telephone calls between Councilmembers, employees, representatives, agents, officials or staff of Georgetown County and any representative, agent, or owner SGA Architecture, including but not limited to Steve Goggans or Luda Sobchuk, regarding the Application.

Rule 30(b)(6) Deposition Topics

1. All information regarding the Application to Amend a Planned Development (PD) submitted by Palmetto Industrial Development, LLC in August 2018, AMPD-9-18-21424 (the "Application"), including but not limited to:
 - a. All information, analysis, and documents regarding off-street parking requirements;
 - b. All information and documents regarding all plans, sketches, data, and any other material submitted in support of the Application; and
 - c. All information and documents regarding the proposed use of the redevelopment subject to the Application, including but not limited to the type of use, details related to the size, height, occupancy, etc. of the proposed building, and hours of operation.
2. All oral or written communications, including but not limited to, emails, text messages, faces, or telephone calls between Councilmembers, employees, representatives, agents, officials or staff of Georgetown County and any representative, agent, or owner SGA Architecture or SGA NarmourWright Design, PA including but not limited to Steve Goggans or Luda Sobchuk, regarding the Application.
3. Steve Goggans' involvement on behalf of SGA Architecture or SGANarmourWright Design, PA with the Application.

Sonya Papanikolaou

From: Dan Stacy
Sent: Wednesday, February 3, 2021 10:18 AM
To: Sonya Papanikolaou
Subject: FW: Marlin Quay

From: Lindsey M. Pascoe <Lindsey.paragon@SGAarchitecture.com>
Sent: Monday, August 20, 2018 2:56 PM
To: Luda Sobchuk <Luda@SGAarchitecture.com>
Cc: Dan Stacy <DStacy@OxnerandStacy.com>; Steve Goggans <Steve@SGAarchitecture.com>
Subject: Marlin Quay

Hi Luda,

Dan Stacy will be contacting you in regards to the work on Marlin Quay. Steve would like to be in the loop on all conversations as well.

Dan, Luda's email is within this message and her direct line is 843.619.0154

Thank you all,
Lindsey

Lindsey Pascoe
Business Manager

direct: 843.979.5153
Charleston, Greenville, and Pawleys Island, SC
sgaarchitecture.com

EXHIBIT 63

GoggansS 9/29/21

 **Huseby.com**

Sonya Papanikolaou

From: Dan Stacy
Sent: Wednesday, February 3, 2021 10:17 AM
To: Sonya Papanikolaou
Subject: FW: wall
Attachments: 17021 - MQ2_Property Line Wall.pdf; 2017-11-14_MarlinQuay-North_17021.pdf

From: Luda Sobchuk <Luda@SGAarchitecture.com>
Sent: Tuesday, October 02, 2018 11:43 AM
To: Christie Lawhon <clawhon214@gmail.com>
Cc: Dan Stacy <DStacy@OxnerandStacy.com>; Steve Goggans <Steve@SGAarchitecture.com>
Subject: RE: wall

Attached is a drawing of wall in the set of MQ-2. This set was approved and attached here too.
 Our wall is a bit different in size because our building is different.
 But, if you want to keep that wall as in MQ-2, we will adjust the pattern on our wall to reflect MQ-2.

This should conclude the discussion of this wall altogether.

Thank you,

Ludmila Sobchuk, AIA
 Partner

Mobile: 843.378.0111
 Charleston, SC
 Luda@SGAarchitecture.com

From: Christie Lawhon [mailto:clawhon214@gmail.com]
Sent: Tuesday, October 02, 2018 10:16 AM
To: Luda Sobchuk
Cc: Dan Stacy; Steve Goggans
Subject: Re: wall

Make it look like what was already approved.

Sent from my iPhone

On Oct 2, 2018, at 9:52 AM, Luda Sobchuk <Luda@SGAarchitecture.com> wrote:

Please send me Final Confirmation about "Wall on the Property Line".
 Are we keeping it as we have it - Blue Wall?

We need to move forward with this ASAP.
 Thank you.

<image002.jpg>

From: Dan Stacy [mailto:DStacy@OxnerandStacy.com]
Sent: Tuesday, October 02, 2018 9:47 AM
To: Luda Sobchuk; Christie Lawhon
Cc: Steve Goggans
Subject: RE: wall

She gone.

From: Luda Sobchuk [mailto:Luda@SGAarchitecture.com]
Sent: Tuesday, October 02, 2018 9:20 AM
To: Christie Lawhon <clawhon214@gmail.com>
Cc: Dan Stacy <DStacy@OxnerandStacy.com>; Steve Goggans <Steve@SGAarchitecture.com>
Subject: RE: wall
Importance: High

Dr. Lawhon,

Quick question -
 is existing building already demolished or it is still there?

<image003.jpg>

From: Christie Lawhon [mailto:clawhon214@gmail.com]
Sent: Tuesday, October 02, 2018 8:38 AM
To: Luda Sobchuk
Cc: Dan Stacy; Steve Goggans
Subject: Re: wall

The wall was approved before and it can stay the way it is. I am not doing any steps and losing square footage or increasing the cost of the building with all kind of steps or recesses.

Mark

Sent from my iPhone

On Oct 1, 2018, at 5:30 PM, Luda Sobchuk <Luda@SGAarchitecture.com> wrote:

Yes, but it will not be sizable. Like I said, we will try to find a "compensation" within the plan.

Dan is concerned about "large" as well as all of us. I am trying to "break the size with some interruptions and recesses"

<image003.jpg>

From: Christie Lawhon [mailto:clawhon214@gmail.com]
Sent: Monday, October 01, 2018 5:22 PM
To: Luda Sobchuk
Cc: Dan Stacy; Steve Goggans
Subject: Re: wall

Square footage

Sent from my iPhone

On Oct 1, 2018, at 4:13 PM, Luda Sobchuk <Luda@DSGAarchitecture.com> wrote:

Dan,

Thanks for call and further update on the "project's legal issues".

While my associate is putting together a little package showing the Building Code requirement for that wall.... I am coming up with something here, too. I am going to "steal" a bit of square footage from the enclosed space, though. Maybe find where we can compensate it.... We should have it to you by end of today or the latest tomorrow morning.

<image003.jpg>

From: "Steve Goggans" </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=STEVEG>

To: "Beth Novak" <Beth@SGAarchitecture.com>

Subject: RE: Marlin Quay 3 - Georgetown County Follow

Date: Fri, 09 Nov 2018 19:56:40 -0000

Importance: Normal

Inline-Images: image001.jpg

Thanks, Beth.

From: Beth Novak <Beth@SGAarchitecture.com>

Sent: Friday, November 09, 2018 1:01 PM

To: Steve Goggans <Steve@SGAarchitecture.com>

Cc: Luda Sobchuk <Luda@SGAarchitecture.com>

Subject: Marlin Quay 3 - Georgetown County Follow

Hi Steve,

I just copied you on my email to Murray in the Georgetown County code office, attached. Will you please follow up if I do not get a response early next week? We have asked for the consultants to send their permit documents to us by next Friday so we can submit to Georgetown County early the week of the 18th.

Have a good weekend.

Thanks,
Beth



Beth Haas Novak, AIA

direct: 843.723.2494
Charleston, Greenville, and Pawleys Island, SC
sgaarchitecture.com

Architecture | Interior Design | Land Planning | Landscape Architecture

EXHIBIT 65

GoggansS 9/29/21

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Laura Burnett

From: Beth Novak
Sent: Friday, November 9, 2018 12:50 PM
To: mpresley@gtcounty.org
Cc: Steven Elliott; Steve Goggans; Luda Sobchuk
Subject: Marlin Quay Restaurant and Store - Follow up to Code Related Questions
Attachments: MarlinQuay_Survey.pdf; MarlinQuay_LS101.pdf

Good afternoon Murray,

I wanted to follow up on our phone conversation last week regarding Marlin Quay Marina Restaurant and Store. We do not overhead clearance for an elevator to go to the top floor and be under the height limit. According to IBC 2015 Section 1009.2.1, the top floor of this facility is the third story above the level of discharge and an elevator is not required for an accessible means of egress. In addition, Sections 1104.4 and 1108.2.9 exempt the third story from being on an accessible route. The area of the third story is less than 3,000 SF.

With regards to the other items we discussed, SGA will ensure that the enclosed area below flood is less than 299 SF. Also, the showers will be designated Men and Women.

Have you had a chance to look more into this question that I sent to Steven Elliott on 10/29:

1. Does the fire separation distance from a property line need to be followed or if there is an exception on the plan north side of the building that is adjacent to the marina? We would like to be able to maximize the windows on this façade to capture the views of the marina.

Attached is the survey of the site and our life safety plans which show the wall fire ratings per IBC 2015 Table 602. We want to know if this is considered and open side to the building because of the marina or if we need to follow the Fire Separation Distance requirements because of the property line.

We are planning on submitting for permit review by the end of November. Please let me know if you need additional information at this time.

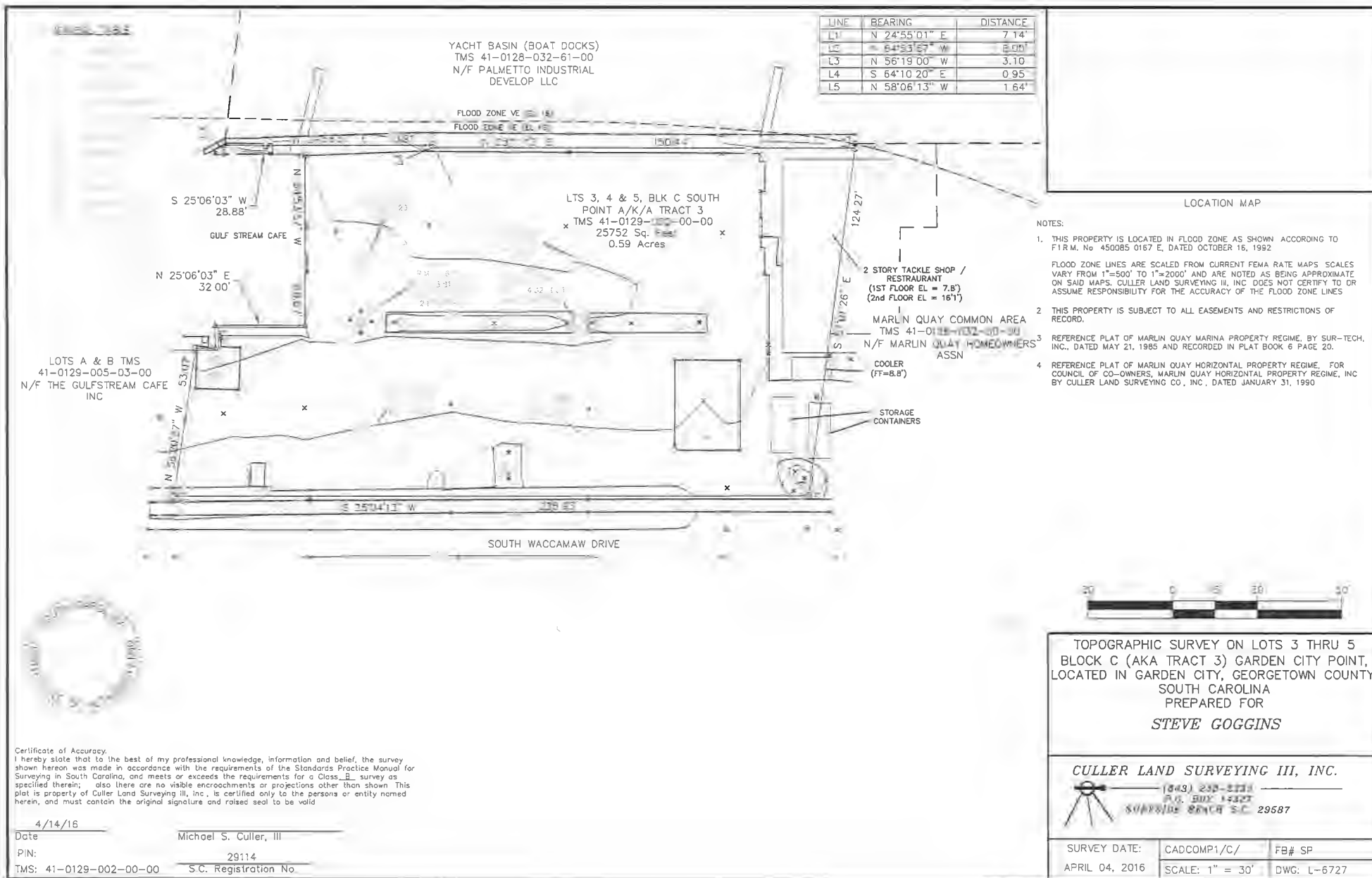
Thank you,
 Beth



Beth Haas Novak, AIA

direct: 843.723.2494
 Charleston, Greenville, and Pawleys Island, SC
sgaarchitecture.com

Architecture | Interior Design | Land Planning | Landscape Architecture



Laura Burnett

From: Beth Novak
Sent: Wednesday, January 23, 2019 12:30 PM
To: Steve Goggans
Cc: Luda Sobchuk; Laura Helminski
Subject: Re: Marlin Quay Plans

I need interpretation. Table 504.4 says that you can't have 4 stories of A-2 occupancy, not that A-2 can't be on the 4th story, correct?

I got muddy at the Aquatic Center site and am home changing. I will be back in the office within the hour

Beth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Steve Goggans <SGoggans@sganwdesign.com>
Date: 1/23/19 11:37 AM (GMT-05:00)
To: Beth Novak <BNovak@sganwdesign.com>
Subject: Fwd: Marlin Quay Plans

FYI. Please respond
 Sent from my iPhone

Begin forwarded message

From: Steven Elliott <sellott@gtcounty.org>
Date: January 23, 2019 at 10:25:02 AM EST
To: "derrickblantonconstruction@sccoast.net" <derrickblantonconstruction@sccoast.net>
Cc: "steve@sgaarchitecture.com" <steve@sgaarchitecture.com>, Boyd Johnson <bjohnson@gtcounty.org>, Murray Presley <mpresley@gtcounty.org>
Subject: Marlin Quay Plans

Derrick,
 Wanted to make you aware that changes are needed to reduce the square footage to what was approved by County Council and the type of construction stated on the plans does not comply with the code. The construction type on the plan is (II B) with an (A-2) occupancy on the fourth floor. That doesn't work based on Table 504.4 of the 2015 IBC. We are actively reviewing the plans and will relay our findings, but I felt these issues needed immediate attention.

Thanks,
 Steven Elliott
 Building Official
 Georgetown County Department of
 Planning and Development
 Building Division

EXHIBIT 66

GoggansS 9/29/21

 Huseby.com

Email: selliott@gtcounty.org
Office: 843-545-3120

Elisha Irving

From: Luda Sobchuk
Sent: Thursday, January 24, 2019 10:07 AM
To: Mark Lawhon
Cc: Steve Goggans; Beth Novak; Laura Helminski
Subject: RE: Marlin Quay Plans

Meeting is tomorrow at Georgetown County Department of Planning and Development at 1:30pm.
 Meeting will be with Steven Elliott, Boyd Johnson, and Fire Marshal (I do not have his full name).

As far as previous approvals – probably depends who reviewed those submittals at the time....

We will know all of it tomorrow.

Lyudmila Sobchuk, AIA | Principal



804 Meeting Street, Suite 103
 Charleston, SC 29403

Office 843.853.4506
 Direct 843.619.0154
 Mobile 843.478.3411

www.sganwdesign.com

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From: Mark Lawhon [mailto:marklawhon@gmail.com]
Sent: Thursday, January 24, 2019 9:38 AM
To: Luda Sobchuk
Cc: Steve Goggans; Beth Novak; Laura Helminski
Subject: Re: Marlin Quay Plans

When and where is this meeting? With whom is it with?

Mark

Sent from my iPhone

On Jan 24, 2019, at 9:31 AM, Mark Lawhon <marklawhon@gmail.com> wrote:

So the fire marshall is holding us up? Is this unusual? How did it get approved the two times before?

Mark



Sent from my iPhone

On Jan 24, 2019, at 8:59 AM, Luda Sobchuk <LSobchuk@sganwdesign.com> wrote:

Dr. Lawhon,

The square footage has been resolved. I will call you to describe it more in details.

The Code issue surprised us. I have scheduled a meeting with all officials in Building Fire Department who are involved with reviewing this project. Meeting is tomorrow at 1:30pm.

We have all supporting Code and FEMA material to explain how we arrived to chosen Construction Type.

So, tomorrow afternoon we will have a conclusion.

Thank you,

Lyudmila Sobchuk, AIA | Principal

<image001.jpg>

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Charleston, SC 29403

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Direct 843.619.0154
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From: Mark Lawhon [<mailto:marklawhon@gmail.com>]

Sent: Thursday, January 24, 2019 8:21 AM

To: Beth Novak; Steve Goggans; Luda Sobchuk; Laura Helminski

Subject: Fwd: Marlin Quay Plans

Why are we getting this response from the building department? I thought this issue was settle.

This is holding the permit up from being issued so can someone tell me EXACTLY what's going on please.

Mark

Sent from my iPhone

Begin forwarded message:

From: "Derrick Blanton Construction"
<derrickblantonconstruction@sccoast.net>

Date: January 23, 2019 at 7:48:12 PM EST
To: "Mark Lawhon" <marklawhon@gmail.com>
Subject: FW: Marlin Quay Plans

Derrick Blanton, President
Derrick Blanton Construction
843-450-4000
www.DerrickBlantonConstruction.com

From: Steven Elliott <selliott@gtcounty.org>
Sent: Wednesday, January 23, 2019 10:25 AM
To: derrickblantonconstruction@sccoast.net
Cc: steve@sgaarchitecture.com; Boyd Johnson
<bjohnson@gtcounty.org>; Murray Presley <mpresley@gtcounty.org>
Subject: Marlin Quay Plans

Derrick,

Wanted to make you aware that changes are needed to reduce the square footage to what was approved by County Council and the type of construction stated on the plans does not comply with the code. The construction type on the plan is (II B) with an (A-2) occupancy on the fourth floor. That doesn't work based on Table 504.4 of the 2015 IBC. We are actively reviewing the plans and will relay our findings, but I felt these issues needed immediate attention.

Thanks,

Steven Elliott
Building Official
Georgetown County Department of
Planning and Development
Building Division
Email: selliott@gtcounty.org
Office: 843-545-3120

From: "Steve Goggans" <SGoggans@sganwdesign.com>

To: "Mark Lawhon" <marklawhon@gmail.com>

Subject: RE: Marlin Quay Plans

Date: Thu, 24 Jan 2019 16:54:48 -0000

Importance: Normal

Mark,

Call this afternoon, and I will discuss. I have to speak at Rotary, and I am getting ready to leave. Call any time after 2:00. Hopefully this is minor sh....t

Steve

From: Mark Lawhon <marklawhon@gmail.com>

Sent: Thursday, January 24, 2019 8:21 AM

To: Beth Novak <BNovak@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Laura Helminski <LHelminski@sganwdesign.com>

Subject: Fwd: Marlin Quay Plans

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Mark

Sent from my iPhone

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From: "Derrick Blanton Construction" <derrickblantonconstruction@sccoast.net>

Date: January 23, 2019 at 7:48:12 PM EST

To: "Mark Lawhon" <marklawhon@gmail.com>

Subject: FW: Marlin Quay Plans

Derrick Blanton, President

Derrick Blanton Construction

843-450-4000

www.DerrickBlantonConstruction.com

From: Steven Elliott <selliott@gtcounty.org>

Sent: Wednesday, January 23, 2019 10:25 AM

To: derrickblantonconstruction@sccoast.net

Cc: steve@sgaarchitecture.com; Boyd Johnson <bjohnson@gtcounty.org>; Murray Presley <mpresley@gtcounty.org>

Subject: Marlin Quay Plans

Derrick,

EXHIBIT 68

GoggansS 9/29/21

 Huseby.com

Wanted to make you aware that changes are needed to reduce the square footage to what was approved by County Council and the type of construction stated on the plans does not comply with the code. The construction type on the plan is (II B) with an (A-2) occupancy on the fourth floor. That doesn't work based on Table 504.4 of the 2015 IBC. We are actively reviewing the plans and will relay our findings, but I felt these issues needed immediate attention.

Thanks,

Steven Elliott
Building Official
Georgetown County Department of
Planning and Development
Building Division
Email: selliott@gtcounty.org
Office: 843-545-3120

Laura Burnett

From: Steve Goggans
Sent: Friday, January 25, 2019 12:19 PM
To: bjohnson@GeorgetownCountySC.org
Subject: FW: Marlin Quay Plans
Attachments: Marlin Quay _SGA Code Analysis.pdf

fyi

From: Beth Novak <BNovak@sganwdesign.com>
Sent: Friday, January 25, 2019 11:07 AM
To: Steven Elliott <sellott@gtcounty.org>
Cc: Laura Helminski <LHelminski@sganwdesign.com>; Boyd Johnson <bjohnson@gtcounty.org>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>
Subject: RE: Marlin Quay Plans

Mr. Elliott,

Please see the attached letter in preparation for our meeting today at 1:30. Please distribute to whomever else will be attending the meeting.

Thank you,
 Beth

Beth Novak, AIA | Associate



804 Meeting Street, Suite 103
 Charleston, SC 29403

Direct 843.723.2494
 Mobile 843.991.6644
www.sganwdesign.com

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January 25, 2018

Mr. Steven Elliott
Building Official
Georgetown County Department of Planning and Development
Building Division

RE: Marlin Quay Restaurant & Store
1508 S. Waccamaw Drive, Murrells Inlet

Dear Mr. Elliott,

The concern that the design of the above referenced project may exceed the height limitations for an A-2 occupancy in a building of type IIB construction has been brought to SGA | NarmourWright Design's attention. I would like to address the factors that were used during design to determine the compliance with the height limitations for this construction type and occupancy category.

According to IBC 2015 table 504.4, in buildings equipped throughout with a sprinkler system, Type IIB construction can be used in an A-2 occupancy up to a maximum of 3 stories above grade plane. The lowest floor level (1st Story elevation) has been determined by the requirements for structures that are located in coastal high hazard (VE) zones. IBC 2015 Section 110.3.3 Lowest Floor Elevation states, "In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevations certification required in Section 1612.5 shall be submitted to the building official." FEMA, which dictates flood hazard zones, defines the lowest floor as "the lowest floor of the lowest enclosed area, except for unfinished or flood-resistant enclosures used solely for parking of vehicles, building access, or storage." The grade level of the building is used solely for parking of vehicles and building access and therefore is not the lowest floor per FEMA guidelines.

In addition, Marlin Quay Restaurant & Store is a separated mixed-use facility. The A-2 occupancies are located on the second floor and the roof top of the second floor. IBC 2015 defines Story as "That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. (see "Basement," "Building height," "Grade plane" and "Mezzanine"). A story is measured as the vertical distance from top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists, or where there is not a ceiling, to the top of the roof rafters." Based on this definition, the A-2

occupancy is on an occupied roof and not within the third story. The third story occupancy is Storage (S-2).

We understand Georgetown County is the authority having jurisdiction over this project. We hope you take our determinations under consideration. We look forward to meeting with you this afternoon to discuss this project.

Sincerely,



Beth Novak, AIA, Associate
Project Architect
SGA | NarmourWright Design

Laura Burnett

From: Steve Goggans
Sent: Friday, January 25, 2019 12:19 PM
To: bjohnson@GeorgetownCountySC.org
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Attachments: Marlin Quay _SGA Code Analysis.pdf

fyi

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Sent: Friday, January 25, 2019 11:07 AM
To: Steven Elliott <sellott@gtcounty.org>
Cc: Laura Helminski <LHelminski@sganwdesign.com>; Boyd Johnson <bjohnson@gtcounty.org>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>
Subject: RE: Marlin Quay Plans

Mr. Elliott,

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Thank you,
 Beth

Beth Novak, AIA | Associate

SGA | NarmourWright
 DESIGN

804 Meeting Street, Suite 103
 Charleston, SC 29403

Direct 843.723.2494
 Mobile 843.991.6644
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Georgetown County Department of Planning and Development
Building Division

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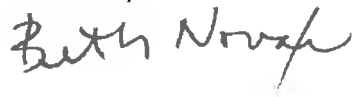
According to IBC 2015 table 504.4, in buildings equipped throughout with a sprinkler system, Type IIB construction can be used in an A-2 occupancy up to a maximum of 3 stories above grade plane. The lowest floor level (1st Story elevation) has been determined by the requirements for structures that are located in coastal high hazard (VE) zones. IBC 2015 Section 110.3.3 Lowest Floor Elevation states, "In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevations certification required in Section 1612.5 shall be submitted to the building official." FEMA, which dictates flood hazard zones, defines the lowest floor as "the lowest floor of the lowest enclosed area, except for unfinished or flood-resistant enclosures used solely for parking of vehicles, building access, or storage." The grade level of the building is used solely for parking of vehicles and building access and therefore is not the lowest floor per FEMA guidelines.

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Sincerely,



Beth Novak, AIA, Associate
Project Architect
SGA | NarmourWright Design

From: "Steve Goggans" <SGoggans@sganwdesign.com>

To: "Mark Lawhon" <marklawhon@gmail.com>

Subject: FW: Marlin Quay

Date: Wed, 27 Mar 2019 18:15:46 -0000

Importance: Normal

Attachments: Invoice_18118-1_Project_Marlin_Quay_3.pdf;
Palmetto_Industrial_SGA18118_Marlin_Quay_3_31894_01-16-2019.pdf;
SGA18118_Marlin_Quay_3_31964_02-07-2019.pdf; Marlin_Quay_Inv31993.pdf

Inline-Images: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg

Mark,

Here are the outstanding invoices you had asked about. Please advise if you have any questions,

Steve

From: Lindsey Pascoe <LPascoe@sganwdesign.com>

Sent: Wednesday, March 27, 2019 2:12 PM

To: Steve Goggans <SGoggans@sganwdesign.com>

Subject: Marlin Quay

Hi Steve,

Please find all outstanding invoices attached.

Thank you sir,
Lindsey

Lindsey Pascoe | Comptroller

SGA | NarmourWright
DESIGN

8263 Ocean Highway
Pawleys Island, SC 29585

Office 843.237.3421
Direct 843.979.5453
www.sganwdesign.com



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SGA Architecture

P.O. Box 1859
Pawleys Island, SC 29585
Lindsey Pascoe

Dr. Mark Lawhon - Palmetto Industrial Developement

Marlin Quay Marina Bar and Grill LLC
611 West Palmetto Street
Florence, SC 29501

INVOICE

No. 18118-1
12/10/2018

Marlin Quay 3

18118

For Services Rendered Through 11/30/2018

Basic Professional Services

	Contract Amount	Previously Billed	% Complete	Invoice Amount
Architectural Services	\$55,700.00	\$0.00	90.00	\$50,130.00
Structural	\$18,400.00	\$0.00	90.00	\$16,560.00
MPE	\$13,400.00	\$0.00	90.00	\$12,060.00
Total Basic Professional Services	\$87,500.00	\$0.00		\$78,750.00

Additional Services Hourly

	Date	Hours	Rate	Amount
80 Additional Services				
Williams, Patrick	10/18/2018	3.00	120.00	\$360.00
<i>Planning Commission Meeting prep & attendance</i>				
Total for 80 Additional Services		3.00		\$360.00
Total Additional Services Hourly		3.00		\$360.00

Outside Services

	Invoice	Unit Rate	Qty	Markup	Amount
Terracon	TB24468	5,500.00	1.00	1.00	\$5,500.00
<i>Geotechnical Engineering Services</i>					
Total Outside Services					\$5,500.00

Reimbursable

	Date	Unit Rate	Qty	Markup	Amount
Miles					
Sobchuk, Lyudmila	7/29/2018	54	20.00	1.25	\$13.38
<i>work at office on weekend</i>					
Sobchuk, Lyudmila	8/14/2018	54	10.00	1.25	\$6.69
<i>Mtg at Charleston Engineering at their office - MPE design issues review</i>					
Williams, Patrick	10/18/2018	54	18.40	1.25	\$12.31
<i>Travel to G.C. Courthouse for Planning Commission meeting</i>					
Total for Miles					\$32.38
Total Reimbursable					\$32.38
INVOICE AMOUNT					\$84,642.38

Prior Billing Information

Invoice		Billed	Received	Balance	Days Old
Aug 2018 CREDIT	8/14/2018	\$1,360.58	-\$1,360.58	\$0.00	118
Total Prior Billing		\$1,360.58	-\$1,360.58	\$0.00	

PO Box 1859
Pawley's Island, SC 29585
843.237.3421

Palmetto Industrial Development
611 West Palmetto Street
Florence, SC 19501

Invoice number 31894
Date 01/16/2019

Project SGA18118 MARLIN QUAY 3

Professional services through 12/31/2018

Description	Contract Amount	Percent Complete	Prior Billed	Total Billed	Current Billed
Architectural Services	55,700.00	90.00	50,130.00	50,130.00	0.00
Structural Services	18,400.00	90.00	16,560.00	16,560.00	0.00
MEP	13,400.00	90.00	12,060.00	12,060.00	0.00
Total	87,500.00	90.00	78,750.00	78,750.00	0.00

Consultant

	Units	Rate	Billed Amount
Other Consultant			
ETS			1,255.00
Invoice total			1,255.00

Aging Summary

Invoice Number	Invoice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
18118-1	12/10/2018	84,642.38		84,642.38			
31894	01/16/2019	1,255.00	1,255.00				
Total		85,897.38	1,255.00	84,642.38	0.00	0.00	0.00

Thank you

Lyudmila Sobchuk
Design Principal

PO Box 1859
Pawley's Island, SC 29585
843.237.3421

Palmetto Industrial Development
611 West Palmetto Street
Florence, SC 29501
Mark Lawhon

Invoice number 31964
Date 02/07/2019
Project SGA18118 MARLIN QUAY 3

Professional services through 01/31/2019

Description	Contract Amount	Percent Complete	Prior Billed	Total Billed	Current Billed
Architectural Services	55,700.00	95.00	50,130.00	52,915.00	2,785.00
Structural Services	18,400.00	95.00	16,560.00	17,480.00	920.00
MEP	13,400.00	95.00	12,060.00	12,730.00	670.00
Total	87,500.00	95.00	78,750.00	83,125.00	4,375.00

Additional Services

Bidding & Negotiations

	Hours	Rate	Billed Amount
Architect I	1.25	130.00	162.50
Design Principal	6.50	175.00	1,137.50
Additional Services subtotal	7.75		1,300.00

Invoice total **5,675.00**

Aging Summary

Invoice Number	Invoice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
18118-1	12/10/2018	84,642.38		84,642.38			
31894	01/16/2019	1,255.00	1,255.00				
31964	02/07/2019	5,675.00	5,675.00				
Total		91,572.38	6,930.00	84,642.38	0.00	0.00	0.00

Thank you

Steven Goggans
Senior Principal

PO Box 1859
Pawley's Island, SC 29585
843.237.3421

Palmetto Industrial Development
611 West Palmetto Street
Florence, SC 29501
Mark Lawhon

Invoice number 31993
Date 03/06/2019
Project SGA18118 MARLIN QUAY 3

Professional services through 02/28/2019

Description	Contract Amount	Percent Complete	Prior Billed	Total Billed	Current Billed
Architectural Services	55,700.00	95.00	52,915.00	52,915.00	0.00
Structural Services	18,400.00	95.00	17,480.00	17,480.00	0.00
MEP	13,400.00	95.00	12,730.00	12,730.00	0.00
Total	87,500.00	95.00	83,125.00	83,125.00	0.00

Additional Services

Bidding & Negotiations

	Hours	Rate	Billed Amount
Architect I	35.50	130.00	4,615.00
Design Principal	0.75	175.00	131.25
Project Architect III	26.50	160.00	4,240.00
Additional Services subtotal	62.75		8,986.25

Reimbursable Expenses

	Billed Amount
Plots and Copies	
Duncan Parnell	539.18

Consultant

	Units	Rate	Billed Amount
Other Consultant			
ETS			1,485.00

Invoice total **11,010.43**

Aging Summary

Invoice Number	Invoice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
18118-1	12/10/2018	84,642.38			84,642.38		
31894	01/16/2019	1,255.00		1,255.00			
31964	02/07/2019	5,675.00	5,675.00				

Palmetto Industrial Development
Project SGA18118 MARLIN QUAY 3

Invoice number 31993
Date 03/06/2019

Aging Summary

Invoice Number	Invoice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
31993	03/06/2019	11,010.43	11,010.43				
	Total	102,582.81	16,685.43	1,255.00	84,642.38	0.00	0.00

Thank you

Steven Goggans
Senior Principal

From: "Steve Goggans" <SGoggans@sganwdesign.com>

To: "Mike Rolison" <MRolison@sganwdesign.com>

Subject: FW: Urgent, Urgent, Urgent

Date: Sun, 09 Jun 2019 23:38:33 -0000

Importance: Normal

Mike it might be prudent to do a site visit. Also, react as quickly as possible. Let me know if I need to rattle any cages.

Thanks,

Steve

-----Original Message-----

From: Mark Lawhon <marklawhon@gmail.com>

Sent: Sunday, June 09, 2019 9:46 AM

To: Mike Rolison <MRolison@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>; Beth Novak <BNovak@sganwdesign.com>

Subject: Urgent, Urgent, Urgent

Mike, with all this rain the ground next to the marlin quay condos is becoming unstable. A portion of the their fence and a column has collapsed. We are waiting on the engineer for this grout issue. We cannot wait any longer. I need an answer Monday morning by 9am. There can be no more delay. This foundation as to be poured Tuesday.

Mark

Sent from my iPhone



From: "Steve Goggans" <SGoggans@sganwdesign.com>

To: "Brian Turner" <bturner@BrittPeters.com>, "Beth Novak" <BNovak@sganwdesign.com>

Cc: "Mike Rolison" <MRolison@sganwdesign.com>, "Luda Sobchuk" <LSobchuk@sganwdesign.com>

Subject: RE: Marlin Quay - elevator front beam question from owner??

Date: Fri, 13 Dec 2019 18:55:34 -0000

Importance: Normal

Inline-Images: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg; image006.png

Brian,

The Owner approached us about a month ago in terms of adapting the structure to allow the elevator to travel to the 3rd floor. We believe based on conversations with the County that they are amenable to changing the ordinance regulating height to exempt elevator pent houses.

The Owner subsequently asked us to look at the feasibility and to adjust the design if possible.

Mike is out this week as his mother passed away, so we will regroup on Monday and see if we can make this happen or not.

Steve

From: Brian Turner <bturner@BrittPeters.com>

Sent: Friday, December 13, 2019 10:54 AM

To: Beth Novak <BNovak@sganwdesign.com>

Cc: Mike Rolison <MRolison@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>

Subject: RE: Marlin Quay - elevator front beam question from owner??

Thanks for sharing that email. Removing that cross brace is a bit scary. Please keep us posted on the outcome of the discussions with the owner and elevator supplier.

Brian Turner, PE

Britt, Peters & Associates, Inc.

c: 704.607.2271

From: Beth Novak <BNovak@sganwdesign.com>

Sent: Friday, December 13, 2019 10:45 AM

To: Brian Turner <bturner@BrittPeters.com>

Cc: Mike Rolison <MRolison@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>

Subject: RE: Marlin Quay - elevator front beam question from owner??

All,

Attached is the last email I received on the subject of the redesign of the cross member. Mike/Steve may be able to add more regarding if anything was discussed with the elevator contractor.

Thanks,



Beth

Beth Novak AIA | Associate



804 Meeting Street, Suite 103
Charleston, SC 29403

Direct 843.723.2494
Mobile 843.991.6644
www.sganwdesign.com



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From: Brian Turner [<mailto:bturner@BrittPeters.com>]
Sent: Friday, December 13, 2019 10:31 AM
To: Beth Novak
Cc: Mike Rolison; Luda Sobchuk; Steve Goggans
Subject: RE: Marlin Quay - elevator front beam question from owner??

Beth,
That brace is part of the lateral system and part of the system to support the large cantilevers. Removing it will require additional design and analysis and will likely impact the steel that is being erected. (We are still awaiting final steel shop drawings, the last returned submittal was marked "Resubmit")

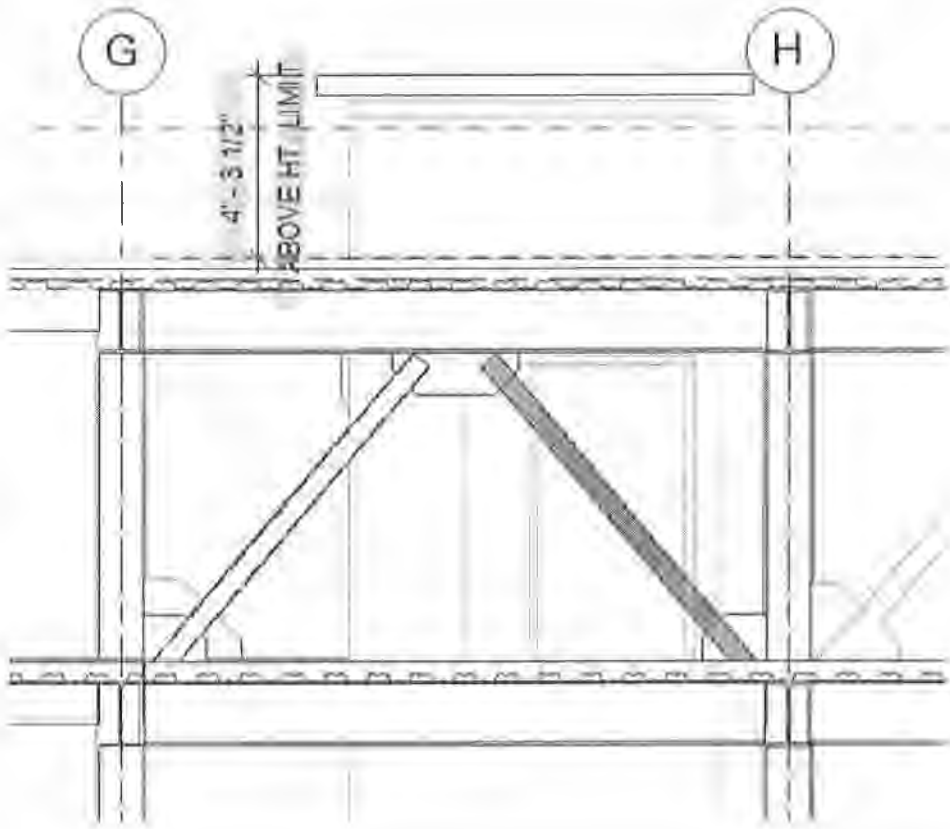
Does this change need to be made? If so, we will send over an add service proposal. We will not be able to begin the design or analysis of this until January.

Thanks,
Brian Turner, PE
Britt, Peters & Associates, Inc.,
c: 704.607.2271

From: Beth Novak <BNovak@sganwdesign.com>
Sent: Friday, December 13, 2019 10:25 AM
To: Brian Turner <bturner@BrittPeters.com>; Mike Rolison <MRolison@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>
Subject: RE: Marlin Quay - elevator front beam question from owner??

Brian,

Mike is out of the office this week. I do not know exactly where the issue stands, but the owner does want the availability to take the elevator to the top level. I looked at the model for Mike back in October and I did not see beams that needed to be changed, other than extending the shaft height. However, there is a brace that will have to be addressed.



Beth Novak AIA | Associate

SGA | NarmourWright
DESIGN

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From: Brian Turner [<mailto:bturner@BrittPeters.com>]
Sent: Friday, December 13, 2019 10:06 AM
To: Mike Rollison; Luda Sobchuk; Beth Novak; Steve Goggans
Subject: Marlin Quay - elevator front beam question from owner??

SGA Team,

This is the first I have heard of this request. It's a bit late to be removing beams. Do you have any more insight into this request from the owner?

Brian Turner, PE
Britt, Peters & Associates, Inc.
c: 704.607.2271

From: Mark Lawhon <marklawhon@gmail.com>

Sent: Friday, December 13, 2019 9:42 AM

To: Brian Turner <bturner@BrittPeters.com>

Cc: Tom Gerrets <tomgerrets@elviswelding.com>; Beth Novak <BNovak@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Mike Rolison <mrolison@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>; Martinez & Associates <martengl@sccoast.net>

Subject: Re: STAGING ANALYSIS SUBMITTAL

No. Imagine if the elevator opened on the 3 rd floor. I want to be able to access if I need to in the future to work on elevator

Sent from my iPhone

On Dec 13, 2019, at 7:49 AM, Brian Turner <bturner@brittpeters.com> wrote:

Mark,

Is the beam highlighted in the image below the one in question? This beam occurs in the same place on all levels and is a critical beam to support the cantilevers so removing it would be a challenge. It is also part of the lateral brace.

<image001.jpg>

Brian Turner, PE

Britt, Peters & Associates, Inc.
c: 704.607.2271

From: Mark Lawhon <marklawhon@gmail.com>

Sent: Thursday, December 12, 2019 10:33 PM

To: Martinez & Associates <martengl@sccoast.net>

Cc: Brian Turner <bturner@BrittPeters.com>; Tom Gerrets <tomgerrets@elviswelding.com>; Beth Novak <BNovak@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Mike Rolison <mrolison@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>

Subject: Re: STAGING ANALYSIS SUBMITTAL

I have asked this question a couple of times now. I want to make sure there is NO beam on the south side face of the elevator shaft from the ground floor to the top of the roof structure.

Mark

Sent from my iPhone

On Dec 12, 2019, at 10:23 AM, Martinez & Associates <martengl@sccoast.net> wrote:

Brian,

Thanks and Will do. Please see attached letter below.

Saul J. Martinez, PE

<MARLIN QUAY STAGING #1.pdf>

<LOGO.png>

Martinez & Associates
Structural Engineers, PA
1107 48th Avenue North, 310C
Myrtle Beach, SC 29577
O: 843.839 1620 • F: 843.839 1623
www.structuralstrength.org

On Dec 12, 2019, at 9:09 AM, Brian Turner <bturner@BrittPeters.com> wrote:

Saul,

We do not see issues with the kickers as long as they are not part of the final constructed case. You will need to review this with the steel erector to ensure they can install & remove them as you design.

Thanks,

Brian Turner, PE
Britt, Peters & Associates, Inc.
c: 704.607.2271

From: Saul J. Martinez <sauljm@sccoast.net>

Sent: Wednesday, December 11, 2019 6:18 PM

To: Brian Turner <bturner@BrittPeters.com>

Cc: Tom Gerrets <tomgerrets@elyiswelding.com>; Beth Novak <BNovak@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Mark Lawhon <marklawhon@gmail.com>; Mike Rolison <MRolison@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>; Martinez & Associates, PA <martengl@sccoast.net>

Subject: Re: STAGING ANALYSIS SUBMITTAL

Brian,

I have completed the model update for Final Construction State. Both results from the Construction Sequence Model and the Final State Model are attached below. The critical joints for displacement are along J/1a and J/2. Here are the displacement results which can be cross-referenced in the Table for the Final Frame Deck:

J/1a (joint label 20)

Level 1: -0.41"
Level 2: -0.41"
Level 3: -0.41"
Level 4: -0.41"

J/2 (joint label 36)

Level 1: -0.31"
Level 2: -0.31"
Level 3: -0.31"

Level 4: -0.31"

Here are the displacement results (**following placement of 8 x 8 x 1/2" tube steel kickers from H3 - reference screenshots**) which can be cross-reference in the Table for Construction Sequence along with percentage of Final State:

J/1a (joint label 20)

Stage 2: -0.06" (15%)

Stage 3: -0.08" (20%)

Stage 4: -0.04" (10%)

Stage 5: -0.034" (8%)

J/2 (joint label 36)

Stage 2: -.04" (13%)

Stage 3: -.05" (16%)

Stage 4: -.03" (10%)

Stage 5: -.02" (7%)

If you are agreeable with the placement of the "temporary" bracket supports, the previous results appear to be in line with the construction document requirement and I will issue the letter you requested.

Saul J. Martinez, PE

Caution: This email was sent from someone outside of Britt, Peters & Associates, Inc. Do not open attachments or click on links if you do not recognize the sender.

<image001.png>

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1107 48th Avenue North . 310C
Myrtle Beach, SC 29577
O: 843.839.1620 • F: 843.839.1623
www.structuralstrength.org

On Dec 10, 2019, at 9:01 AM, Brian Turner <bturner@brittpeters.com> wrote:

Saul,

The final state structural model is the model that does not account for construction sequencing. This would be something you need to generate to compare your staging results too. The model we have analyzes the building for the loads prescribed in the building code.

Thanks,

Brian Turner, PE

Britt, Peters & Associates, Inc
c: 704.607.2271

From: Tom Gerrets <tomgerrets@elviswelding.com>

Sent: Tuesday, December 10, 2019 6:21 AM

To: Saul J. Martinez <saulm@sccoast.net>

Cc: Beth Novak <BNovak@sganwdesign.com>; Brian Turner <bturner@BrittPeters.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Mark Lawhon <marklawhon@gmail.com>; Mike Rolison <MRolison@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>

Subject: Re: STAGING ANALYSIS SUBMITTAL

Brian have you had a chance to review Saul's question or inquiry about Final Displacements ? (See Below)
I know your a busy man but I would really like to get this wrapped up so we can move forward with production. Thanks in advance.

On Mon, Dec 9, 2019 at 9:42 AM Saul J. Martinez <saulm@sccoast.net> wrote:

Brian,

I have a preliminary letter ready to go that requires some clarification prior to release. Are you requesting that we analyze the finished model including deck/slab loading (in addition to staging analysis) in order to determine the final displacements? Or do you have this data already so we can compare the two? Please advise

Saul J. Martinez, PE

<image001.png>

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1107 48th Avenue North . 310C
Myrtle Beach, SC 29577
O: 843.839.1620 • F: 843.839.1623
www.structuralstrength.org

On Dec 5, 2019, at 7:35 PM, Brian Turner <bturner@BrittPeters.com> wrote

Saul,

Thanks for the detailed explanation. We are primarily concerned that your staging analysis aligns with the planned sequence of erection. Can you please provide a summary letter with your Etabs report that the staging analysis meets the specified requirements in the construction documents?

Thanks,

Brian Turner, PE

Britt, Peters & Associates, Inc.
c: 704.607.2271

From: Saul J. Martinez <saulm@sccoast.net>

Sent: Thursday, December 5, 2019 6:00 PM

To: Brian Turner <bturner@BrittPeters.com>

Cc: Tom Gerrets <tomgerrets@elviswelding.com>; Beth Novak <BNovak@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>; Mark Lawhon <marklawhon@gmail.com>; Mike Rolison <MRolison@sganwdesign.com>

Subject: Re: STAGING ANALYSIS SUBMITTAL

Brian,

With ETABS you can generate report TABLES in excess of 74 documents. This exercise included the following steps:

- Importing of Revit database of all structural members consisting of various steel grades. Grade 992 was used predominantly.
- Created measured column grid and frame levels in order to lay out columns, beams, cross-bracing etc.
- Cross-checked orientation of bracing components and skewed columns.
- Designated base connection conditions as FIXED.
- Designated specific Construction Sequence Load Case for analysis which considers frame dead weight only. No live loads, equipment loads or deck loading was considered in the Construction Sequence.
- Analyzed maximum joint displacements at Stage/Level 1 (first elevated), Stage/Level 2, Stage/Level 3 and Roof Top stage. A Table depicting all joint displacements at all stages was generated, exported to Excel and attached to the PDF Report document. The Table consists of 23 pages. As you should see from the renderings, the displacement Uz at that corner following the first stage was approximately -0.33" followed by a displacement maximum of -0.66" at the top level and termination of steel erection.
- Generated Renderings of each Stage showing stage of frame following each level of construction. Each rendering provides the sample maximum joint displacement at J-1 or the hanging corner of the vierendeel truss system.

Glad to supply more Views or cross sections showing joint numbers so you can cross-reference the table. Just let me know which frames (along column lines) you're most interested in seeing. There are quite a few possibilities.

Saul J. Martinez, PE

<image001.png>

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1107 48th Avenue North, 310C
Myrtle Beach, SC 29577
O: 843.839.1620 • F: 843.839.1623
www.structuralstrength.org

On Dec 5, 2019, at 5:39 PM, Brian Turner <bturner@BrittPeters.com> wrote:

Saul,

Not sure a member by member sequence is needed. A summary description of the process would be helpful though.

Brian Turner, PE

Britt, Peters & Associates, Inc.
c: 704.607.2271

From: Saul J. Martinez <saulm@sccoast.net>

Sent: Thursday, December 5, 2019 5:29 PM

To: Brian Turner <bturner@BrittPeters.com>

Cc: Tom Gerrets <tomgerrets@elviswelding.com>; Beth Novak <BNovak@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>; Mark Lawhon <marklawhon@gmail.com>; Mike Rolison <MRolison@sganwdesign.com>

Subject: Re: STAGING ANALYSIS SUBMITTAL

Brian,

According to CSI Technical Support in CA, the sequence is not calculated member by member but by floor level. I had the same inquiry. The link to the process is attached below. The load case considered is "Nonlinear Staged Construction" with 5 separate stages considered. ETABS does not provide a "member-by-member" construction sequence.

FYI, in order to perform a successful analysis, the base conditions were modified to Fixed in lieu of Pinned.

Saul J. Martinez, PE

ETABS Construction Sequence Analysis

https://youtu.be/of2rdht_pZY

<image001.png>

Martinez & Associates

Structural Engineers, PA

1107 48th Avenue North, 310C

Myrtle Beach, SC 29577

O: 843.839.1620 • F: 843.839.1623

www.structuralstrength.org

On Dec 5, 2019, at 5:11 PM, Brian Turner <bturner@BrittPeters.com> wrote:

Tom,

Will you please have the engineer provide a description of the erection sequence that was used for this staging analysis?

Thanks,

Brian Turner, PE

Britt, Peters & Associates, Inc.

c: 704.607.2271

From: Mike Rolison <MRolison@sganwdesign.com>

Sent: Thursday, December 5, 2019 1:47 PM

To: Tom Gerrets <tomgerrets@elviswelding.com>; Mark Lawhon <marklawhon@gmail.com>; Brian Turner <bturner@BrittPeters.com>

Cc: Martinez & Associates <saulm@sccoast.net>; Beth Novak <BNovak@sganwdesign.com>; Luda Sobchuk <LSobchuk@sganwdesign.com>; Steve Goggans <SGoggans@sganwdesign.com>

Subject: RE: STAGING ANALYSIS SUBMITTAL

Tom. Thanks for the effort

We will do our best.

<image001.jpg>

8243 Ocean Highway
Pawleys Island, SC 29585

Office 843.237.3421
Cell: 843.543.5390
Direct 843.979.5250
www.sganwdesign.com

<image002.jpg><image003.jpg><image004.jpg><image005.jpg>

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From: Tom Gerrets [<mailto:tomgerrets@elviswelding.com>]
Sent: Thursday, December 05, 2019 1:14 PM
To: Mark Lawhon; Mike Rolison; Brian Turner
Cc: Martinez & Associates
Subject: Fwd: STAGING ANALYSIS SUBMITTAL

Goodmorning everyone,

i sure would appreciate a fast turn around on this review so we can start handing steel

Mark

On Thu, Dec 5, 2019 at 10:20 AM Tom Gerrets <tomgerrets@elviswelding.com> wrote:

----- Forwarded message -----

From: Saul J. Martinez <saulm@secoast.net>
Date: Thu, Dec 5, 2019 at 10:17 AM
Subject: STAGING ANALYSIS SUBMITTAL
To: Tom Gerrets <tomgerrets@elviswelding.com>
CC: Mike Rolison <MRolison@sganwdesign.com>

Tom,

Please see attached analysis summary which includes:

- Model Summary
- Joint Displacement Tables per Stage
- Model Renderings of Max Joint Displacement per Stage

Let me know if further information is required.

Saul J. Martinez, PE

Martinez & Associates
Structural Engineers, PA
1107 48th Avenue North, 310C
Myrtle Beach, SC 29577
O: 843.839.1620 • F: 843.839.1623
www.structuralstrength.org

--

Thanks Tom Gerrets
General Manager, Elvis Welding Service, Inc
843-251-1860 cell
843-236-6118 office
843-236-6119 fax

--

Thanks Tom Gerrets
General Manager, Elvis Welding Service, Inc
843-251-1860 cell
843-236-6118 office
843-236-6119 fax

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Adam Nugent

From: Mike Rolison
Sent: Thursday, July 23, 2020 5:02 PM
To: Beth Novak; Steve Goggans; Luda Sobchuk; Laura Helminski
Subject: MQ3 photos 072320
Attachments: Site Visit Date 072320.pdf

FYI

Mike Rolison AIA NCARB | Associate
SC 6802 IL 0110119

SGA | NarmourWright
DESIGN

8263 Ocean Highway
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Architect's Field Report

Site Visit Date:	July 23, 2020	Report No.	072320
Time:	3:00 pm	Site Conditions:	90° - sunny
Issue Date:			
Project Name:	MQ3		
Project No.	18118		

Attendees:

Distribution: (if different from above)

Writer: Mike Rolison



Field Report
July 23, 2020
Page 2 of 2



Elisha Irving

From: Mark Lawhon <marklawhon@gmail.com>
Sent: Wednesday, November 11, 2020 10:40 AM
To: Mike Rolison
Cc: claw5828@yahoo.com; Steve Goggans; Beth Novak
Subject: Re: MQ3 elevator revision drawings
Attachments: 18118_MarlinQuay-3_ELEVATOR_11.08.2020.pdf

Can we email it to the county as a modification? Does this have to be signed off by zoning and planning then go to building department review?

Steve, what the best option for an easy submittal?

Mark

Sent from my iPhone

On Nov 11, 2020, at 8:57 AM, Mike Rolison <mrolison@sganwdesign.com> wrote:

Mark,
 Attached is the drawing set for the elevator revisions.
 Ready to submit to County and your subcontractors/suppliers.

Let us know what you may need.

Thank you,

From: Beth Novak <BNovak@sganwdesign.com>
Sent: Monday, November 9, 2020 9:31 AM
To: Mike Rolison <MRolison@sganwdesign.com>
Subject: RE: MQ3 elevator

Mike Rolison AIA NCARB | Associate
 SC 6802 IL 0110119



8263 Ocean Highway
 Pawleys Island, SC 29585

Office 843.237.3421
 Cell; 843.543.5390
 Direct 843.979.5250
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SGA | NarmourWright Design remains operational with the people and technology in place to continue supporting your projects during the COVID-19 pandemic, and we will continue to manage projects, maintain client communication and honor all client obligations. Throughout this crisis, our commitment remains to enhance the quality of life in our communities through sustainable design solutions that embrace and respect the natural environment.

EXHIBIT 33

THE GULFSTREAM CAFÉ vs GEORGETOWN COUNTY, ET AL.

30(b)(6)

Holly Hembree Richardson on 03/03/2021

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF GEORGETOWN
3
4 The Gulfstream Café,
5 Plaintiff(s),
6 vs. CIVIL ACTION NO.
2019-CP-22-00212
7 Georgetown County, Georgetown
8 County Council, John Thomas,
9 Ron Charlton, Lillie Johnson,
10 Austin Beard, Steve Goggans,
11 and Louis Morant, individually
12 and in their official capacity
13 as Georgetown County Councilmembers,
14 Defendant(s).

12 VIRTUAL 30(b)(6)
13 DEPOSITION OF: HOLLY HEMBREE RICHARDSON
14 DATE: Wednesday, March 3, 2021
15 TIME: 9:05 a.m. through 3:53 p.m.
16 DEPONENT 716 Front Street
17 LOCATION: Georgetown, South Carolina
18 TAKEN BY: Attorneys for the Plaintiff(s)
19 COURT REPORTER: MADONNA M. FARRELL
20 Registered Professional Reporter
21 CaseViewNet Realtime Reporter
22 (Reported Remotely from Georgetown County, SC)

1 VIRTUAL APPEARANCES OF COUNSEL

2 REPRESENTING THE PLAINTIFF:

3 ROGERS TOWNSEND LLC
4 BY: SEAN M. FOERSTER, ESQUIRE
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
5 Columbia, SC 29202
Office: 803.771.7900
6 Fax: 803.343.7013
Email: Sean.foerster@rogerstownsend.com

7
8 -and-

9 BLOOM PARHAM, LLP
BY: ANDREA J. PEARSON, ESQUIRE
977 Ponce de Leon Avenue NE
10 Atlanta, GA 30306
Office: 404.577.7710
11 Fax: 404.577.7715
Email: Apearson@bloom-law.com

12 REPRESENTING THE DEFENDANTS:

13 BURR & FORMAN
14 BY: HENRIETTA U. GOLDING, ESQUIRE
AND: BROOKE WATSON, ESQUIRE
15 Founders Centre
2411 Oak Street, Suite 206
16 Myrtle Beach, SC 29577
Office: 843.444.1107
17 Fax: 843.444.4729
Email: Hgolding@burr.com

18
19
20 ALSO PRESENT: Reese Hamilton

21

22

23

24

25

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25		dealing with		
		off-street parking		
		requirements		

1	PLAINTIFF(S) EXHIBITS			
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3	Exh.	Description	Page	Line
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19	EXHIBIT 11	Letter from Adam	151	14
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21	EXHIBIT 13	Meeting Minutes	155	2
22	EXHIBIT 39	Email	159	24
23	(Note: Exhibits late-filed)			
24				
25				

30(b)(6)

1 STIPULATION: It is stipulated by and
2 among Counsel that this deposition is being
3 taken in accordance with the South Carolina
4 Rules of Civil Procedure; and that the
5 deponent did not reserve the right of
6 reading and signing of this deposition.

7 * * * * * * * * * * * * * * * *

8 HOLLY HEMBREE RICHARDSON, being first
9 duly sworn, testified as follows:

10 MS. PEARSON: This will be the
11 deposition of Holly Richardson in the
12 30(b)(6) deposition of Georgetown County in
13 the case caption The Gulfstream Café
14 Incorporated versus Georgetown County,
15 et al. Case number 2019-CP-22-00212 in the
16 Court of Common Pleas, 15th Judicial
17 Circuit, Georgetown County, South Carolina.
18 This deposition is being taken pursuant to
19 the South Carolina Rules of Civil Procedure
20 and may be used for all proper purposes
21 thereunder.

22 EXAMINATION

23 BY MS. PEARSON:

24 Q. So, Ms. Richardson, you've already stated
25 your name for the record. If you could please

1 provide me with your address.

2 A. 1190 Hagley Drive, Pawleys Island, South
3 Carolina 29585.

4 Q. Do you mind, what was that street?

5 A. Hagley, H-a-g-l-e-y.

6 Q. And what is your date of birth?

7 A. December 21, 1974.

8 Q. Have you ever been deposed before?

9 A. Yes.

10 Q. How many times?

11 A. Twice.

12 Q. Twice? Other than this case?

13 A. Yes.

14 Q. Okay. Is there anything impairing your
15 ability to testify today?

16 A. No.

17 Q. Okay. And I'm going to go over a few rules
18 of the deposition, so if you'll just bear with me.

19 If you'll please answer out loud to my
20 question with an affirmative "yes" or "no" or an
21 answer, not an "uh-huh" or an "unh-unh." That's
22 particularly important since we are on Zoom so that
23 the court reporter can understand your answer.

24 If you'll please not interrupt or talk over
25 me as I'm asking you a question; and I will do the

1 same for you as you're providing your answer.

2 If you don't understand my question or
3 didn't hear me, if you will please ask me to repeat
4 or rephrase, and please direct any questions to me
5 and not your attorney regarding clarification of my
6 question.

7 If you need a break, that's totally fine.
8 Just let me know. But if I have a question pending
9 on the table, if you will please answer the
10 question and then ask for the break.

11 And then also, your attorney may object to
12 one of my questions, but you have to answer the
13 question unless you're instructed by your attorney
14 not to.

15 Do you have any questions about those
16 instructions?

17 A. Nope.

18 Q. Okay. Is Ms. Golding representing you
19 today?

20 A. Yes.

21 Q. Okay. And what did you do to prepare for
22 your deposition today?

23 A. Nothing beyond meeting with the attorney.

24 Q. Ms. Golding?

25 A. Yes.

1 Q. Did you review any documents in preparation
2 for your deposition?

3 A. No, nothing beyond exhibits and things and
4 discussion with her.

5 Q. Exhibits, were those exhibits that were
6 provided by our firm in advance of the deposition?

7 A. Yes, the ones I had time to be able to look
8 at.

9 Q. Have you ever been asked to gather any
10 documents in connection with this case?

11 A. Yes.

12 MS. GOLDING: If you're seeking
13 information subject to attorney-client
14 privilege, I'm going to object.

15 Can you clarify that question, please,
16 Andrea?

17 BY MS. PEARSON:

18 Q. Yes. So I'm asking you whether or not you
19 were asked to collect or gather documents to
20 produce in this case.

21 MS. GOLDING: Again, if you're seeking
22 information subject to attorney-client
23 privilege, I object, and I'm instructing the
24 witness not to answer.

25 MS. PEARSON: Okay. So you're

1 instructing her to not answer the question?

2 MS. GOLDING: Yes, because your
3 question is violating the attorney-client
4 privilege rule.

5 BY MS. PEARSON:

6 Q. All right. Other than your attorneys, have
7 you spoken with anyone in preparation for this
8 deposition?

9 A. No.

10 Q. Other than your attorneys, have you had any
11 email correspondence with anyone regarding your
12 deposition?

13 A. No.

14 Q. Did you, you know, prepare any of your own
15 notes or memos related to -- or in preparation for
16 your deposition?

17 A. I don't think so, not that I can recall.

18 Q. All right. Okay. Can you see what --
19 there's a document I've put up on the screen, which
20 is Plaintiff's Exhibit 24. Can you see that
21 document?

22 A. Yes.

23 Q. Okay. So I'm going to scroll through this
24 document so that you can see it. So let me know if
25 I'm going too fast or too slow for you.

1 A. Okay.

2 Q. All right.

3 A. Okay.

4 Q. [Scrolling]

5 A. Okay.

6 Q. [Scrolling]

7 A. Okay.

8 Q. [Scrolling]

9 A. Okay.

10 Q. [Scrolling]

11 A. Okay.

12 Q. [Scrolling]

13 A. Okay.

14 Q. [Scrolling]

15 A. Okay.

16 Q. All right. So have you seen this document
17 before?

18 A. I believe I have.

19 Q. Did you review it in preparation for your
20 deposition?

21 A. No.

22 Q. Okay. Looking at the topics in this
23 30(b)(6) deposition notice, are you prepared to
24 testify as the representative for Georgetown County
25 regarding any of the topics contained in this

1 notice?

2 MS. GOLDING: She's prepared to testify
3 as to all -- with respect to the questions
4 relating to the topics which Georgetown
5 County has knowledge of.

6 MS. PEARSON: Okay. So she is prepared
7 to testify as Georgetown County's
8 representative to the topics in the Notice
9 for which Georgetown County has knowledge.

10 Is that what you just said?

11 MS. GOLDING: Yes, Andrea, that's what
12 I said.

13 Also, you will note that Holly's
14 deposition was noticed individually, as well
15 as in a corporate capacity today at 9:00.

16 MS. PEARSON: Yes, that is correct.

17 MS. GOLDING: Okay, thank you.

18 MS. PEARSON: Yes. So just to be
19 clear, we are running this deposition -- I
20 guess I'll direct this to you,
21 Ms. Richardson.

22 BY MS. PEARSON:

23 Q. You know, we're running the Georgetown
24 County 30(b)(6) deposition concurrently with your
25 deposition in your personal capacity. So when I

1 ask you a question, I'm going to be asking you
2 questions both as the Georgetown County
3 representative and as you personally. So when you
4 answer a question, I'm going to understand that you
5 were answering it in both capacities, as a
6 representative and personally.

7 So if your answer would be different, you
8 know, in your personal capacity as compared to you
9 as the representative for Georgetown, if will you
10 please let me know. You know, otherwise I will
11 understand that your answer is the same in -- you
12 know, for both purposes.

13 MS. GOLDING: Andrea, I don't believe
14 that's very fair for the witness, for her to
15 be required to do that. I think that if
16 there is some question as to the capacity in
17 which she's answering the question, you need
18 to ask that. It will be difficult on the
19 part of the witness to do what you are
20 requesting.

21 Thank you.

22 MS. PEARSON: All right. Well, I mean,
23 that's -- all right.

24 BY MS. PEARSON:

25 Q. Okay. Well, generally in your capacity as a

1 rep in Georgetown County, we -- all right -- you
2 have been prepared to discuss these topics in the
3 notice. All right. So I will get started with my
4 next questions which are related to you personally.

5 So what is your occupation?

6 A. I am Director of Planning and Code
7 Enforcement for Georgetown County.

8 Q. Okay. And where did you go to college? Or
9 did you go to college?

10 A. Yes, I went to Wofford College for
11 undergrad, and the University of South Carolina for
12 graduate school.

13 Q. And when did you graduate from Wofford?

14 A. 1997.

15 Q. All right. And what was your degree?

16 A. Government and French.

17 Q. Okay. And then you graduated for -- what
18 was your -- what was your degree from USC?

19 A. Master's in public administration.

20 Q. All right. Do you have any education beyond
21 your master's in public administration?

22 A. No.

23 Q. Do you have any professional certifications?

24 A. I have an AICP.

25 Q. And what does that stand for?

1 A. It's the American Institute of Certified
2 Planners.

3 Q. And when did you receive that certification?

4 A. I think 2008. I'm not certain of the exact
5 year.

6 Q. Okay. And when did you start working for
7 Georgetown County?

8 A. December of 2005.

9 Q. And what was your job when you began your
10 working with Georgetown County?

11 A. Planner II.

12 Q. What does that job entail?

13 A. Reviewing site plans, reviewing plans for
14 rezoning, plats for subdivisions, attending zoning
15 board of appeals meeting, preparing staff reports.

16 Q. So you said reviewing site plans, reviewing
17 rezoning applications, attending these BA meetings.
18 Did you say writing staff reports?

19 A. Yes.

20 Q. Okay. And then did I miss one thing you
21 said in there?

22 A. I don't think so.

23 Q. And how long did you hold that position?

24 A. I can't be certain. I believe my title
25 changed in October of the next year.

1 Q. So December of 2005 to October of 2006?

2 A. Perhaps. I'm not sure of the exact date of
3 my promotion.

4 Q. Okay. And what was your promotion to?

5 A. Chief Planner.

6 Q. And how were your responsibilities as Chief
7 Planner different?

8 A. The only difference was there was some
9 supervisory role over the other planner and the
10 zoning staff.

11 Q. Okay. And who, other than -- so there was
12 one other planner other than you, I guess is what
13 you said; you had supervisory role over one other
14 planner?

15 A. At that time, there were three other
16 planners.

17 Q. Okay. And then what other zoning staff,
18 other than planners, did you supervise?

19 A. Zoning administrator and a code enforcement
20 officer.

21 Q. Okay. So after -- how long were you Chief
22 Planner -- or I guess, as Chief Planner, did you
23 have your supervisory role in addition to the
24 responsibilities that we talked about when you were
25 a Planner II? Or did you just supervise employees

1 as your primary responsibility?

2 A. In addition to.

3 Q. Okay. So after you were Chief Planner, what
4 was your job? Did you get promoted again?

5 A. Yes, Director of Planning and Code
6 Enforcement.

7 Q. And that's your current job?

8 A. Yes.

9 Q. And when were you promoted to Director of
10 Planning and Code Enforcement?

11 A. Last November.

12 Q. So November 2020?

13 A. Yes.

14 Q. Okay. And what were your responsibilities,
15 or what are your responsibilities as director?

16 A. I oversee the planning and the zoning and
17 the building departments. We serve as staff to the
18 planning commission, the board of zoning appeals,
19 prepare reports for county council, and make
20 presentations, as necessary. We oversee the zoning
21 ordinance and the comprehensive plan, as well as
22 the land development regulations.

23 Q. Okay. So you said you oversee the
24 comprehensive plan. I think you said something
25 before that. What was that?

1 A. Enforcement of the zoning ordinance and land
2 development regulations.

3 Q. Okay. So when you say "oversee," can you
4 give me a general description of what you mean by
5 that?

6 A. Those departments are ultimately responsible
7 for being sure that those ordinances are followed.

8 Q. All right. And you said that you think you
9 got your AICP certification in 2008. So that would
10 have been while you were Chief Planner; is that
11 correct? Does that sound right?

12 A. Yes, I think that's correct.

13 Q. Okay. And did that -- was that like an
14 online course? Like, what kind of coursework does
15 that involve or entail?

16 A. I took a class to prepare for an exam, and
17 then you take the exam. If you pass the exam, then
18 you have certification.

19 Q. Okay. And what is the purpose of a
20 certification, being a certified planner?

21 A. It's just a higher level of attainment in
22 the field. It means you've done extra research and
23 prepared and achieved a certain level in the
24 planning field. It also requires continuing
25 education on a yearly basis to maintain the status.

1 Q. Okay. So it included additional coursework.
2 Did it include any sort of, like, internship or
3 anything like that, fieldwork?

4 A. No.

5 Q. Okay. So now I'm going to ask you some
6 questions related to the process of submitting an
7 application to amend a plan development in
8 Georgetown County. So these questions are going to
9 be related to your capacity as Georgetown County's
10 representative.

11 So like I said, I'm going to discuss the
12 process for reviewing and deciding applications for
13 major changes to a planned district under
14 Georgetown County's zoning ordinance.

15 Does a major change require a public hearing
16 and -- so that it's treated as an amendment to the
17 zoning ordinance?

18 A. Yes.

19 Q. Okay. So a major change to a planned
20 district is the same as a rezoning in terms of the
21 process that must be followed?

22 A. In terms of the public notice process, yes.

23 Q. Okay. Are there any differences in the
24 process between a major change for a planned
25 district and a rezoning?

1 A. There's differences in terms of the type of
2 application, the type of information that's
3 presented. But the overall process is the same.

4 Q. Okay. So you're saying the contents of the
5 application itself might be different, but the
6 process it has to get -- and major change and/or
7 rezoning have to go through are the same?

8 A. Yes.

9 Q. Who -- what -- what departments or groups
10 are involved with an application for a major change
11 -- for a major change to a planned district?

12 A. The planning department.

13 Q. Okay. Who at the planning department?

14 A. I'm sorry, could you repeat your question?

15 Q. Who at the planning department?

16 A. And your question is, who is involved?

17 Q. Yeah. So you said the planning department
18 is involved. So I'm asking, is there anyone
19 specific in the planning department that -- who's
20 involved?

21 A. It could involve everyone in the planning
22 department.

23 Q. Okay. So those folks would be -- who -- I
24 guess can you give me the title of everyone who is
25 in the planning department?

1 A. Sure. We have an Associate Planner, we have
2 a Senior Planner, and the Director of Planning and
3 Code Enforcement. That's who we have currently.

4 Q. Okay. Were those the same people that were
5 involved in 2019?

6 A. Well, we would have had me as the Chief
7 Planner at that time and another director of
8 planning.

9 Q. So you don't currently have a Chief Planner,
10 but you had a Chief Planner in 2019?

11 A. Correct.

12 Q. All right. So I guess -- yeah, let's -- all
13 right.

14 And what about in 2018, who was involved in
15 2018?

16 A. Would have been the same as 2019: Associate
17 Planner at that time, a Planner II, a Chief Planner
18 and a director of planning.

19 Q. Okay. All right. So I guess I'll clarify
20 that, you know, the application at issue in this
21 lawsuit was submitted in 2018. So my questions
22 about the process will relate to, you know, 2018
23 and early 2019 when it was actually approved. So
24 just to clarify that, so that's what I'm asking
25 about, not like today. So does that make sense?

1 A. Yes.

2 Q. Okay. So other than the planning
3 department, is there anyone else at Georgetown
4 County that's involved with an application for a
5 major change to a planned district?

6 A. The zoning department.

7 Q. Who in the zoning department?

8 A. The zone administrator, potentially, or the
9 code enforcement officer.

10 Q. All right. And what is the zoning
11 department's role in reviewing -- or with the
12 process of an application for a major change?

13 A. Their only role, they put out the public
14 notice sign for us on the property.

15 Q. But they're not typically involved,
16 otherwise?

17 A. No.

18 Q. Okay. And is anyone else involved in an
19 application for a major change?

20 A. I guess I'm asking what you mean by
21 "involved."

22 Q. So, like, at the planning commission. I'm
23 just talking about big buckets of groups right now.
24 So we've got the planning department, the zoning
25 department, the planning commission, you asked

1 their -- involved in the process for reviewing an
2 application for a major change?

3 A. So when you say "process," you mean from
4 start to finish?

5 Q. Yes.

6 A. Yes, the planning staff, the planning
7 commission, and then county council.

8 Q. Okay. Anybody, any other group involved?

9 A. I don't think so. Not that I can think of
10 right now.

11 Q. All right. So I guess for the groups we
12 just talked about, can you just generally describe
13 the flow of the application, the review of an
14 application for a major change? Like who receives
15 it first, what do they do, and then what happens?

16 A. The planning department receives the
17 application. It's public noticed. Planning staff
18 reviews the application, prepares a report. That
19 report is presented to the planning commission.
20 The planning commission holds a public hearing and
21 then makes a recommendation to county council.
22 County council then holds three readings on the
23 application.

24 Q. Okay. I guess that in -- you know, this is
25 a question for you personally.

1 In 2018, where in that process would you
2 typically get involved?

3 A. The staff review of the application and also
4 potentially the preparation of the report.

5 Q. Okay. Did you sometimes prepare the report
6 but not all the time?

7 A. Correct.

8 Q. Okay. And when you say -- I guess this is a
9 question with respect to both the answers you've
10 given as a county rep and personally; you said the
11 planning staff reviews the application. What do
12 you mean by that?

13 A. We read the application, we look at relevant
14 location maps, zoning maps, perhaps visit the site,
15 research the planned development, if it's exiting,
16 and then formulate the report for the case.

17 Q. Okay. So that's your understanding of
18 planning staff review of an application, both as
19 Georgetown County's representative and you
20 personally, your involvement, right?

21 A. Yes.

22 Q. Okay. So when planning staff -- and this is
23 in your capacity as Georgetown County's
24 representative -- when planning staff reviews the
25 application, what are they typically looking for?

1 A. That really depends on the case.

2 Q. Okay. So when you say "depends on the
3 case," you're saying it depends on what sort of
4 change is being sought?

5 A. Right. Or what the existing PD contains,
6 what they're asking for.

7 Q. So does planning staff review to make sure
8 that an application for a major change includes all
9 the information required under Georgetown County's
10 zoning ordinances?

11 A. Yes. The sections that would apply,
12 depending on that case.

13 Q. Okay. So you said that sometimes -- so I'm
14 going to ask -- the next questions, until I tell
15 you otherwise, are in your capacity as Georgetown
16 County's representative, okay?

17 A. Yes.

18 Q. All right. So you said sometimes planning
19 staff does a site visit. And what kind of -- what
20 circumstances is the site visit done?

21 A. Anytime we might not be very familiar with
22 the property or need to see what's on the ground.

23 Q. Okay. Can you think of an instance -- okay.
24 So I get where you might be not familiar. But when
25 you say you need to see what's on the ground, what

1 do you mean by that?

2 A. Just what the site looks like.

3 Q. Okay. Okay. And when you said that
4 planning staff researches the PD, do you go and
5 pull what the existing PD allows for, or research
6 what the existing PD allows for?

7 A. Yes, among other things.

8 Q. Okay. What other things?

9 A. When the PD was created, previous staff
10 reports having to do with the PD.

11 Q. Okay. So you go look up the history of the
12 PD, basically?

13 A. Every case would be different. It's hard to
14 apply one set of specific rules to every situation.

15 Q. Okay. But that's sometimes what -- that's
16 -- you're saying sometimes that's done. And I'm
17 just trying to figure out, when that's done, what
18 do you guys do?

19 So I understand that may not be in every
20 instance, but sometimes you research the PD. So I
21 was just trying to figure out what you mean by
22 that.

23 Do members of the planning staff ever meet
24 with anyone when reviewing an application for a
25 major change?

1 A. Do we ever meet with anyone?

2 Q. Well, I guess -- so other than, you know,
3 internal meetings about the application.

4 A. Yes.

5 Q. And who would that be?

6 A. We would typically have conversations with
7 the applicant throughout the process. Or their
8 representatives.

9 Q. Okay. So is that about different
10 information that's contained in the application or
11 questions that planning staff might have?

12 A. Yes.

13 Q. Does planning staff ever talk with, you
14 know, citizens or concerned citizens or neighbors
15 to --

16 A. Yes.

17 Q. -- the property that's subject --

18 Okay. Does planning staff ever have
19 conversations with county council about an
20 application outside the context of a public
21 meeting?

22 A. No. No, not typically.

23 Q. Okay. All right. Bear with me.

24 Okay. So I am putting up on the screen what
25 has been marked as Plaintiff's Exhibit 2. Can you

1 see that? Let me see if I can -- well...

2 (EXHIBIT 2, Site Plan Drawing, was
3 marked for identification.)

4 BY MS. PEARSON:

5 Q. All right. Can you see that document?

6 A. Yes.

7 Q. And this is -- do you know what this
8 document is?

9 A. This looks to be a site plan drawing for the
10 original PUD for Marlin Quay.

11 Q. Okay. So did planning staff for Georgetown
12 County look at this document in reviewing the
13 application that's subject to this case?

14 A. I can't say for certain every piece of paper
15 that we looked at, but this does look like
16 something that would have been in our file that we
17 likely would have seen.

18 Q. All right. So looking at these different --
19 and I'm just kind of using this to give us a layout
20 of Marlin Quay.

21 So over here is a public restaurant, which
22 you understand that is the Gulfstream Café's
23 location, the Plaintiff in this case?

24 A. Yes.

25 Q. Okay. And based on this PUD, this -- this

1 piece of property can only be used as a restaurant;
2 is that correct?

3 A. Correct.

4 Q. Okay. And then we have in the middle here,
5 or right here this, I guess, sort of shading of
6 this. I can't -- it's not really -- I don't know.
7 I guess it's kind of a tan color. Says Public
8 Parking. And then we have a little gray box
9 labelled Marina Store.

10 And are you -- I guess is it your
11 understanding that Palmetto Industrial Development
12 owns this property that's labelled with the Public
13 Parking and Marina Store?

14 A. I don't know exactly where their property
15 boundaries lie currently. That was my
16 understanding, that they owned the store and the
17 parking lot.

18 Q. Okay. And, you know, I guess this question,
19 both you personally and as a rep for Georgetown
20 County, are aware that Gulfstream, or the
21 Plaintiff, has an easement to use the parking lot
22 labelled in this tan PUD document I'm looking at?

23 A. We were informed of that, yes.

24 Q. Okay. So when -- I'm going to talk about
25 the parking lot today and ask you some questions

1 about it. So you understand that I'm talking about
2 this tan parcel here (indicating), okay? Is that
3 under -- does that make sense?

4 A. Yes.

5 Q. Okay. So can you see this document that's
6 up on the screen? It's been marked Plaintiff's
7 Exhibit 3.

8 THE DEPONENT: Yes.

9 (EXHIBIT 3, Application to Amend a
10 Planned Development, was marked for
11 identification.)

12 BY MS. PEARSON:

13 Q. So I'm going to scroll through -- or have
14 you looked at this recently enough? Would you like
15 to look through this document before we start
16 talking about it? Would that help you?

17 A. Yes.

18 Q. Okay. So just let me know when you want me
19 to scroll.

20 A. You can scroll.

21 Q. [Scrolling]

22 A. You can scroll.

23 Q. [Scrolling]

24 A. Okay.

25 Q. [Scrolling]

1 A. Okay.

2 Q. [Scrolling]

3 A. Okay.

4 Q. [Scrolling]

5 A. Okay.

6 Q. [Scrolling]

7 A. Okay.

8 Q. All right.

9 Okay. So Plaintiff's Exhibit 3, excuse me,
10 yeah, this is the -- or do you understand this to
11 be the Application to Amend a Planned Development
12 submitted for Marlin Quay that's subject to this
13 current lawsuit?

14 A. Yes.

15 Q. Okay. So when I refer to that -- generally
16 to the application today, this is the document I'm
17 referring to. Does that make sense?

18 A. Yes.

19 Q. Okay. So looking at the property
20 information, this has a TMS number
21 41-0128-032-61-00, (apportioned), and
22 41-0129-02-00-00 (apportioned), includes all
23 affected parcels; is that correct?

24 A. That's what the application says, yes.

25 Q. And do you know what -- what is the TMS

1 number?

2 A. Essentially tax map number. I'm not sure
3 what the "S" means. "System" maybe.

4 Q. Okay. And for the next set of questions,
5 unless I otherwise inform you, I'm asking you in
6 your capacity as the county's representative, okay?

7 A. Okay.

8 Q. And then the street address for this is
9 1508 South Waccamaw Drive?

10 A. Yes.

11 Q. Okay. And if we look here, that -- let me
12 see -- Property Owner of Record Name: Palmetto
13 Industrial Development LLC; and Contact
14 Information: Dr. Mark Lawhon. Is that correct?

15 A. That's what the application says.

16 Q. Okay. Is this the first application by
17 Palmetto to amend the Marlin Quay PD?

18 A. No.

19 Q. Okay. And was the other -- was another
20 application filed by Palmetto for a major change to
21 the Marlin Quay PD?

22 A. Yes.

23 Q. Okay. All right. So looking back at this,
24 the application, it says that this is -- regulation
25 to which you are requesting an amendment, site

1 plan, complete Section D site plan amendment,
2 correct?

3 A. Yes.

4 Q. And then Other is also checked, which is
5 change of building configuration, correct?

6 A. Yes, that's what it says.

7 Q. Okay. And generally what is the purpose of
8 a site plan amendment?

9 A. Something on the site plan has changed, a
10 layout has changed.

11 Q. Okay. So a layout has changed from the
12 original planned development that had previously
13 been approved by the county?

14 A. Typically, yes.

15 Q. Okay. And what about Other Change of
16 Building Configuration; what is that looking for?

17 A. Change of Building Configuration is
18 something the applicant typed in there, so I'm not
19 sure I can speak to what they meant by that.

20 Q. Do you understand what the county under- --
21 I guess understood that to mean when they were
22 reviewing this application?

23 A. I think we considered it as part of the site
24 plan amendment, a different layout for the site
25 plan.

1 Q. All right. I'm going to to ask you a series
2 of questions in your personal capacity, okay?

3 A. Okay.

4 Q. Do you know Dr. Lawhon?

5 A. No, not really.

6 Q. Have you ever communicated with Dr. Lawhon?

7 A. I think I may have sat in on one initial
8 meeting with Dr. Lawhon.

9 Q. When was that meeting?

10 A. That would have been when they were -- first
11 started to talk about the process, maybe 2016,
12 somewhere in that time frame, early on.

13 Q. So when you said they first started to talk
14 about the process, what do you mean?

15 A. When they first broached the idea of tearing
16 down and building a new building there.

17 Q. Okay. So when you say when they first
18 started to talk about the process, you don't mean
19 when they first started to talk about the process
20 and filing this specific application; you're
21 talking about the initial beginning of trying to
22 get a new building built on Palmetto property?

23 A. Correct.

24 Q. Who else was at the initial meeting that
25 you're talking about?

1 A. I'm not sure I can remember the attendees
2 from a meeting that long ago. I'm going to say me,
3 Dr. Lawhon, maybe an engineer, and I'm not sure who
4 else with our staff. I just can't recall
5 specifically who was at that meeting.

6 Q. Okay. So you don't recall whether or not
7 you were the only person from Georgetown County at
8 the meeting or not?

9 A. No, I do not recall that.

10 Q. Do you remember who the engineer was?

11 A. No, I don't.

12 Q. Okay. Other than that initial meeting with
13 Dr. Lawhon, have you ever talked to him on the
14 phone or had email correspondence with him?

15 A. I don't think so, not that I can recall.

16 Q. Okay. What about any family members of
17 Dr. Lawhon; have you ever had meetings or other
18 communications or correspondence with any family
19 member of Dr. Lawhon?

20 A. I don't think so. His son may have been at
21 that first meeting, but I can't recall anything
22 beyond that.

23 Q. So here we've got -- looking at the
24 application, Agent of Owner: Daniel W. Stacy. Was
25 he the attorney for Palmetto with respect to this

1 application?

2 A. Yes.

3 Q. And do you know Mr. Stacy?

4 A. Yes.

5 Q. How do you know Mr. Stacy?

6 A. He's an attorney in our area who regularly
7 acts as agent for applicants in rezoning and PD
8 amendments and other things.

9 Q. So do you interact pretty regularly with
10 Mr. Stacy?

11 A. I would say, yes.

12 Q. And did you communicate with Mr. Stacy with
13 respect to this particular application?

14 A. Yes.

15 Q. You say Mr. Stacy regularly acted as an
16 agent for applications. Do you have any idea,
17 like, how often he submits applications to the
18 planning department?

19 A. No, but I think "regularly" is a pretty good
20 word.

21 Q. Like, do you have any sort of estimate how
22 many a year? Like, ten a year or five a year?
23 Like, any sort of number estimate?

24 A. He certainly doesn't have one every month.
25 I would say maybe six or seven. But that is --

1 Q. Yeah, I understand it's an estimate.

2 A. Yes.

3 Q. Okay. And you said you have communicated
4 with Mr. Stacy about this particular application.
5 How have you communicated with him?

6 A. We talked about the application submittal.
7 We talked about items we needed to prepare our
8 report, a typical conversation we would have
9 between an applicant's agent during the process.

10 Q. Okay. Were these conversations normally via
11 phone or email, or did it kind of vary?

12 A. Probably both. Maybe mostly the phone.

13 Q. Okay. So you didn't -- I just want to make
14 sure. You didn't talk to Mark Lawhon about this
15 particular application?

16 A. Not that I can remember.

17 Q. And did you talk to his son with respect to
18 this particular application?

19 A. No, not that I can remember at all.

20 Q. Is his son's name Chris, just to clarify for
21 the record; is that right?

22 A. I believe so.

23 Q. Okay. Other than Dr. Lawhon or Chris
24 Lawhon, did you talk to anyone else associated with
25 Palmetto about the application?

1 MS. GOLDING: Object to the form of the
2 question. She did not testify that she
3 talked to Dr. Lawhon and Chris Lawhon with
4 respect to the application.

5 MS. PEARSON: Yes, sorry. I understand
6 she said she did not.

7 BY MS. PEARSON:

8 Q. I was just saying other than the amendment
9 I've asked you about, which you said you did not
10 talk to, was there anyone else you talked to who
11 was associated with Palmetto with respect to this
12 particular application?

13 A. When you say "associated with Palmetto," you
14 mean as part of that company?

15 Q. Yes.

16 A. No, I did not speak with anyone else, that
17 I'm aware of, that was part of Palmetto Industrial.

18 Q. Other than Mr. Stacy, did you -- I guess did
19 you talk to anyone who was helping Palmetto
20 Development with submission of the application?

21 A. Yes.

22 Q. And who would that be?

23 A. That would be the representatives from the
24 architectural firm.

25 Q. And what was the architectural firm?

1 A. SGA.

2 Q. Okay. Who at SGA did you talk to?

3 A. This application, I believe my main contact
4 was Luda.

5 COURT REPORTER: Luda?

6 THE DEPONENT: Luda. And I do not know
7 how to say or spell her last.

8 BY MS. PEARSON:

9 Q. We have some some emails out there with her
10 last name, so we can get those.

11 Anybody other than Luda that you talked to
12 that you can remember?

13 A. Not that I recall.

14 Q. Did you ever talk to Mr. Goggans from SGA
15 with respect to the application?

16 A. No.

17 Q. Okay. I'm about to start asking a couple
18 more specific questions about the application.

19 Does anybody, or Ms. Richardson, do you need a
20 break? Or is this a good time for a five-minute
21 break for anybody? No?

22 A. I'm good.

23 Q. I just wanted to make sure. It's morning
24 and wanted to make sure nobody needed a restroom
25 break.

1 All right. So you talked about planning
2 staff sometimes doing a site visit. And I'm asking
3 some questions with respect to you and in your
4 capacity as a representative for Georgetown County.

5 Did anyone do a site visit with respect to
6 this application?

7 A. I'm not sure if someone did or not with
8 respect to this particular application.

9 Q. Do you know if anybody did a site visit with
10 respect to any of the applications that Mark Lawhon
11 or Palmetto submitted with respect to his property
12 subject to this application?

13 A. Yes.

14 Q. And do you know who did a site visit?

15 A. I believe that Boyd Johnson and I've been to
16 the site together. That may have been for a prior
17 application. I know that the two of us have
18 visited the site. I'm just not sure at what time
19 frame that happened.

20 Q. Okay. And who is -- you said Boyd. Is that
21 Boyd Johnson?

22 A. Yes.

23 Q. Okay. And what -- who is he?

24 A. He was the Director of Planning and Code
25 Enforcement. He's now retired.

1 Q. Okay. Was he Director of Planning and Code
2 Enforcement at the time that the application was
3 filed?

4 A. Yes.

5 Q. So you said you and Mr. Boyd had -- or,
6 excuse me, you and Mr. Johnson have been to the
7 site; you just don't remember when exactly?

8 A. Yes.

9 Q. Okay. Did anybody accompany you and
10 Mr. Johnson on your site visit?

11 A. I don't think so.

12 Q. And when you went on your site visit, what
13 was -- I guess what did you see at the site? What
14 was the status of the site at the time?

15 A. That's difficult to remember. It may have
16 been when there was a temporary building on the
17 site potentially. But it's hard for me to remember
18 that specific site visit.

19 Q. Okay. Have you done any other site visits?

20 A. I don't think so.

21 Q. Okay. All right. I'm going to show you
22 what's been marked Plaintiff's Exhibit 4.

23 (EXHIBIT 4, Photographs, was marked for
24 identification.)

25 BY MS. PEARSON:

1 Q. Have you ever, either in your capacity as
2 county representative or when you were doing your
3 site visit for the county, or personally, have you
4 ever been to the site when this building was
5 located there?

6 A. Yes.

7 Q. Okay. So you understand this was the photos
8 of the old building that used to be located on the
9 property that's subject to the application?

10 A. Yes.

11 Q. And that has since been torn down by
12 Palmetto?

13 A. Yes.

14 Q. So when I -- I guess throughout, if I ever
15 say "the snack bar," that's what I'm referring to
16 as this building when it was located on the
17 property before it was torn down. Does that make
18 sense?

19 MS. GOLDING: I'm going to object to
20 the question. While you may refer to it as
21 a snack bar, it is a restaurant.

22 MS. PEARSON: Okay.

23 BY MS. PEARSON:

24 Q. So the former restaurant and snack bar. So
25 if I say "the former restaurant and snack bar,"

1 that's what's I'm referring to.

2 Does that make sense?

3 A. Yes.

4 Q. All right. So now I'm looking back at the
5 application. And I'm asking you some questions in
6 your capacity as the county representative.

7 When I go down to Page 3 -- all right. So
8 it says in this Section 2, "A list of all persons
9 and related tax map numbers to whom employees" --
10 excuse me -- "to whom envelopes were addressed to
11 must also accompany the application."

12 That list was not included with this
13 application, was it?

14 MS. GOLDING: Object to the form of the
15 question.

16 You can answer.

17 THE DEPONENT: I didn't see it when you
18 scrolled through.

19 BY MS. PEARSON:

20 Q. Do you have any awareness of the listing
21 being submitted other than what's included in this
22 Exhibit 3?

23 A. I don't know if that was something that was
24 submitted at a later date or not.

25 Q. Okay. So here it says, "A list of all

1 persons to whom envelopes were addressed must
2 accompany the application."

3 So does that mean that it's supposed to
4 accompany the application as originally submitted?

5 A. Well, in this case, they did submit the
6 envelopes with the names of the persons on them
7 with the application.

8 Q. And how do you know that?

9 A. Because that would have had to have been
10 submitted with the application. That's what is
11 required to be sent out from our office to the
12 adjacent property owners.

13 Q. And do you know if that actually occurred
14 here?

15 A. Yes, the notices went out.

16 Q. Do you know to who the notices went out?

17 A. Notices went out to people within 400 feet
18 of the property, as is required in our ordinance.
19 And that's generated from the tax map that pulls up
20 the listing of property owners within 400 feet from
21 our GIS system.

22 Q. And how do you know that notices went out to
23 property owners within 400 feet if a list is not
24 included of what envelopes were actually submitted
25 with the application?

1 A. Well, typically our staff will run a list
2 from the GIS, so we will print our own list.

3 Q. So even if a property owner doesn't submit a
4 list, the county itself runs a list?

5 A. Yes.

6 Q. And does the county check the list against
7 the envelopes that have been submitted?

8 A. That is not my role, but, yes, that is what
9 should happen as part of the review process.

10 Q. Okay. So your -- I guess just to make sure
11 I understand -- your understanding is that
12 envelopes were submitted by the applicant?

13 A. Correct.

14 Q. But no list of who was -- the envelopes were
15 addressed to was included with the application?

16 A. I don't see the list here in what you've
17 scrolled through.

18 Q. Okay. But it's your understanding also that
19 the county itself creates a list of property owners
20 based on its tax map listing?

21 A. Yes, based on -- from our GIS computer
22 system.

23 Q. Okay. And who is it at the county who
24 generates that list?

25 A. Most likely, it would have been Judy

1 Blankenship. Potentially, it also could have
2 Tiffany Pullman.

3 Q. Okay. How does the -- how does the list --
4 or how do you make sure when the list is being
5 generated that you're capturing all property owners
6 within 400 feet of the subject property?

7 A. The best we can do is rely on the
8 information we have available to us, which is
9 through the GIS system. So we run that list of 400
10 feet. If the applicant hasn't sent us the
11 appropriate envelopes, then we would request them
12 from them.

13 Q. All right. So we're looking at Section D,
14 Site Plan Amendment. And it looks like -- and I'll
15 let you scroll back through but, like, that's the
16 applicable section to be filled out with respect to
17 this application, right? So the other Section B
18 and C were left blank. Is that how that process
19 works?

20 A. Correct.

21 Q. So Section D, Site Plan Amendment, it says,
22 "Per separate litigation, the Court has ordered
23 that the site plan approved by the planning
24 commission and county council cannot be built and
25 the applicant has to rebuild wholly within the

1 footprint of the building that existed prior on the
2 site. This change is to bring the site into
3 compliance with the said Court Order."

4 So this new application was required to be
5 submitted by Palmetto because the Court found that
6 the prior plan submitted by Palmetto could not be
7 built; is that correct?

8 A. That's my understanding, yes.

9 Q. Okay. And that prior application by
10 Palmetto, had that been approved by the county?

11 A. Yes.

12 Q. Okay. So this new application was for a new
13 site plan and a change of building configuration
14 that was different from the prior application by
15 Palmetto?

16 A. Yes.

17 Q. Okay. And so the building that's been
18 proposed by this application had to be a different
19 building configuration because the prior proposed
20 building was found by the Court to be unlawful?

21 MS. GOLDING: Object to the form of the
22 question. You're seeking a legal
23 conclusion.

24 THE DEPONENT: Do you want me to
25 answer?

1 MS. GOLDING: If you can. You're not a
2 lawyer.

3 THE DEPONENT: I can't speak to that.

4 BY MS. PEARSON:

5 Q. Is that -- was that the county's
6 understanding of why the new application had to be
7 filed?

8 A. Our understanding is based on what's
9 provided there in the application.

10 Q. All right. So looking at the submittal
11 requirements, it says Revised Calculations -- I'm
12 sorry, Reason for Amendment Request: Site plans
13 attached to application; revised calculation to
14 follow under separate cover.

15 So the calculations were not included with
16 the application at the time of its original
17 submittal; is that correct?

18 A. They did submit further calculations.

19 Q. But not at the time of the original
20 submittal; is that correct?

21 A. Right. I'm not exactly sure at what stage.
22 I do know there were revised calculations that came
23 after the initial submittal.

24 Q. Okay. So you say you're not sure what
25 stage, but you're sure they were after the original

1 submittal?

2 A. Further information, yes.

3 Q. Okay. So when it says -- here it says
4 "Revised Calculations: Calculations may include
5 density, parking requirements, open space, pervious
6 impervious ratio, et cetera."

7 So these parking requirements, those
8 calculations were not included at the time of the
9 original application submittal?

10 A. I don't recall that.

11 Q. Did you see them when we looked over the
12 application in this exhibit?

13 A. I don't remember if those site plans showed
14 parking or not.

15 Q. We can scroll back through them.

16 A. Okay.

17 Q. [Scrolling]

18 A. Okay. So it looks like they're not showing
19 me parking numbers as we're scrolling through the
20 document here.

21 Q. Okay. And we just looked through the
22 application. Were there any drawings provided
23 regarding the building configuration?

24 A. Yes, I think those earlier drawings show you
25 the footprint of the building.

1 Q. These drawings right here (indicating)?

2 A. Yes.

3 Q. Okay. So you're saying that -- all right.

4 I'll have to -- okay.

5 So your understanding is that -- which part

6 of this drawing is showing the proposed building?

7 Is it proposed building configuration or proposed

8 site plan that you're saying this drawing includes?

9 I'm looking at -- this is -- sorry, this is really
10 hard to do -- DEFS000008.

11 A. Can you scroll up to the top? It's hard to
12 read, but I think that says Proposed Building
13 Footprint.

14 Q. Where? Like -- just -- are you seeing it on
15 this, like, label part? Or where?

16 A. Do you see where they have the little lines
17 coming out from the hatch-marked areas that are
18 talking about each section? I think that bottom
19 one says Proposed Building Footprint.

20 Q. Okay. So you're saying this -- is it the
21 red, like these little red dashes?

22 A. Sorry for turning my head.

23 Q. Yeah, I know. I'm kind of -- maybe I can
24 flip it. Hold on. I don't know if that will help
25 or not.

1 A. I have not looked at these plans recently,
2 but it looks like it's pointing to the hatched
3 area.

4 Q. When you say "hatched" there, this -- like,
5 when you say "hatched," does that mean, like, these
6 diagonal lines?

7 A. Yes.

8 Q. So you're saying you think that this is the
9 proposed footprint for the new -- the new building?

10 A. Yes, that's what I think looking at it right
11 now.

12 Q. Okay. So based on this document, can you
13 tell what changes are being requested from the
14 original site plan?

15 A. By "original site plan," you mean the plan
16 that was submitted just prior to this?

17 Q. No. I'm saying -- so this is an application
18 to amend the PD through a site plan amendment. So
19 I'm asking, can you tell what actual change is
20 being requested from the previously approved site
21 plan for the Marlin Quay PD, not the comparison to
22 Mr. Lawhon's prior proposed building?

23 A. Yes. So the -- the note just above the one
24 we were just talking about says "that line of
25 existing footprint to be removed." So I think

1 that's what they're showing us, is the change
2 between the old and the new.

3 Q. Okay. So is it your understanding that the
4 documents -- or excuse me, in Exhibit 3, the pages
5 we looked at is the entire application that was
6 submitted by Palmetto?

7 And, again, these questions have been in
8 your capacity as a representative for Georgetown?

9 A. Well, like I said earlier, there was further
10 information that came subsequent to the --

11 Q. So I'm --

12 (Indiscernible crosstalk.)

13 BY MS. PEARSON:

14 Q. I'm just asking as originally submitted; not
15 asking about anything that was sent later.

16 I'm saying, are you aware -- as a county
17 representative, are you aware of any other
18 materials submitted at the time of the original
19 application?

20 A. Certainly the envelopes would have come
21 along with this.

22 Q. Other than the envelopes.

23 A. I'm not aware of any. I can't remember
24 exactly what that application looked like when it
25 came in the door, but it seems that that's what's

1 represented here on the screen.

2 And the fee.

3 Q. The fee? Yeah. So the check, you guys made
4 sure the check was with it.

5 Okay. So with respect to the envelopes,
6 does the county document in any way what envelopes
7 were submitted by the applicants, generally or
8 here?

9 A. We document it when we run our list and see
10 if there are any missing. That's the documentation
11 process.

12 Q. Okay. So it's not like you don't scan in
13 envelopes to create any sort of record of what
14 envelopes were provided, or have any other sort of
15 documentation of what envelopes were provided?

16 A. No. We do write on the inside of the file
17 the number that were sent out.

18 Q. Where is that written?

19 A. On the inside of the actual file folder.

20 Q. Okay. So there's an actual, like -- so
21 you're saying the printed-out file for the
22 application, there's, like, a manilla folder for
23 each application or something?

24 A. Yes.

25 Q. And on the inside of the application, you

1 guys write out how many, a number of envelopes?

2 A. How many are sent out. And that number ends
3 up on our staff report.

4 Q. Okay. So if we look at the staff report for
5 this application, we should be able to find the
6 number of envelopes that were sent out?

7 A. Yes, you should.

8 Q. All right. So I am going to -- well, sorry.

9 MS. PEARSON: Ms. Farrell, do I have to
10 stop sharing, then go to the document, and
11 then start sharing again before the exhibit
12 shows up, or can I just try to get the next
13 exhibit to show on the screen; do you know?

14 COURT REPORTER: I think you can just
15 get the next exhibit. You can try.

16 MS. PEARSON: Okay.

17 COURT REPORTER: I'm not sure because
18 I haven't shared, so I don't know.

19 MS. PEARSON: Okay. We'll try.

20 BY MS. PEARSON:

21 Q. Okay. Can you see, Ms. Richardson, the new
22 exhibit, which is Plaintiff's Exhibit 28, on the
23 screen?

24 A. Yes.

25 Q. It's an email. You can see it?

1 A. Uh-huh.

2 (EXHIBIT 28, Email, was marked for
3 identification.)

4 BY MS. PEARSON:

5 Q. So I'm showing you Exhibit 28. And I'm
6 going to give you a minute to look it over. And so
7 just let me know when you're done or when --

8 A. Okay.

9 Q. [Scrolling]

10 COURT REPORTER: Were these previously
11 marked, or are these being marked in this
12 transcript?

13 MS. GOLDING: Madonna, they have not
14 been marked.

15 COURT REPORTER: Okay, thank you.

16 THE DEPONENT: You can move up.

17 BY MS. PEARSON:

18 Q. [Scrolling]

19 A. Okay.

20 Q. All right. And then we've got some plans
21 attached here. Okay.

22 Q. All right. So I'm going to ask you a couple
23 questions personally about this exhibit.

24 Or who is Beth Novak?

25 A. I do not know. I'm going to assume she was

1 working with Luda on these drawings.

2 Q. All right. So who is Luda?

3 A. Luda was the architect at SGA --

4 Q. Okay.

5 A. -- that I was in contact with.

6 Q. Got it. So who you were referencing earlier
7 who you had correspondence with about the
8 application?

9 A. Yes.

10 Q. All right. So she says in her email on
11 Wednesday, October 10, 2018, she asks you -- or she
12 says, "Dear Holly, good morning. As per our
13 conversation yesterday and your request, please see
14 attached drawings with clarifying information."

15 What was your conversation with Luda on
16 October 9th?

17 A. I do not recall that specific conversation.

18 Q. Do you recall what your request was to her
19 to provide clarifying information?

20 A. I know that we had a good bit conversation
21 back and forth about the square footage numbers
22 that we were trying to get straight, so it could
23 have been about that. And it sounds like we wanted
24 to make sure all the corrections were right and in
25 one place, just to be clear for everyone.

1 Q. Okay. So you said you had some
2 conversations about square footage numbers. Do you
3 recall what those conversations were about?

4 A. Yes. Some of the numbers, when I tried to
5 put them in, weren't adding up exactly. So there
6 was some back and forth with Luda about correcting
7 some numbers.

8 Q. And the square footage numbers, are you
9 talking about the comparison between, you know --
10 so she says "showing square footage of the previous
11 design MQ-2." Is that the reference or kind of the
12 name you guys had for the prior building by
13 Palmetto that was approved by the county but then
14 found by the Court could not be built?

15 A. Yes.

16 Q. Okay. And was the building subject to the
17 new application referred to by you guys as MQ-3?

18 A. Yes.

19 Q. So we can use kind of the same names if you
20 want in the deposition.

21 So when you say some of the square footage
22 numbers weren't matching up, were those square
23 footage comparisons between MG-2 and MQ-3?

24 A. I think so. I think we had a chart. It may
25 have had MQ-1 there. I'm not sure.

1 Q. Okay. All right. This is a question in
2 your capacity as a county person.

3 Why did it matter to the county the
4 comparison between MQ-2 and MQ-3 for the purposes
5 of evaluating the application?

6 A. Because we want to present the best
7 information we can to the planning commission and
8 county council. The last time they saw this it was
9 MQ-2, so -- and in our mind, they're inclination is
10 going to be, Well, what's different? What's
11 changed from the last time we saw it? So we were
12 trying to create an accurate representation of what
13 had changed since the last time this issue came
14 before them.

15 Q. All right. So I am showing you what we are
16 marking Plaintiff's Exhibit 26.

17 (EXHIBIT 26, Email chain, was marked
18 for identification.)

19 MS. GOLDING: What was this number
20 again?

21 MS. PEARSON: 26.

22 MS. GOLDING: Thank you.

23 MS. PEARSON: And we premarked -- I
24 guess in our own, premarked these, so
25 they're going out of order, I understand.

1 If you need clarification, just ask me.

2 BY MS. PEARSON:

3 Q. All right. So I will scroll through this to
4 let you review it.

5 A. Okay.

6 Q. [Scrolling]

7 A. Okay.

8 Q. [Scrolling]

9 A. Okay.

10 Q. [Scrolling]

11 A. Okay.

12 Q. [Scrolling]

13 A. Okay.

14 Q. [Scrolling]

15 A. Okay.

16 Q. [Scrolling]

17 A. Okay.

18 Q. [Scrolling]

19 A. Okay.

20 Q. [Scrolling]

21 And I apologize, some of the pages, I think
22 they were produced to us in blank, so...

23 [Scrolling]

24 A. Okay.

25 Q. [Scrolling]

1 A. Okay.

2 Q. [Scrolling]

3 A. Okay.

4 Q. [Scrolling]

5 A. Okay.

6 Q. [Scrolling]

7 A. Okay.

8 Q. [Scrolling]

9 A. Okay.

10 Q. [Scrolling]

11 A. Okay.

12 Q. [Scrolling]

13 A. Okay.

14 Q. [Scrolling]

15 A. Okay.

16 Q. [Scrolling]

17 A. Okay.

18 Q. [Scrolling]

19 A. Okay.

20 Q. [Scrolling]

21 A. Okay.

22 Q. [Scrolling]

23 A. Can you scroll back up?

24 Q. [Scrolling]

25 A. Okay. Okay. You can keep going.

1 Q. [Scrolling]

2 A. All right.

3 Q. [Scrolling]

4 A. Okay.

5 Q. [Scrolling]

6 A. Okay.

7 Q. All right. So I'm going to go back to the
8 start of the email.

9 So okay. This first email to Luda and Dan
10 Stacy is from you on October 11th. So it says
11 you're checking on the status of revised plans and
12 application amendments, that you need to write the
13 report today so it will ready to go out tomorrow.

14 So were you personally writing the staff
15 report for the application that's subject to this
16 lawsuit?

17 A. Yes.

18 Q. Okay. So as of October 11th, the county
19 didn't have revised -- or final plans from the
20 applicant for the building?

21 A. I don't recall that we didn't have any
22 revised plan. It seems like it was more of we
23 looked at them and saw some holes, and we sent back
24 to them comments that they were finalizing. I'm
25 not certain, but that's how I seem to remember

1 that. There was back and forth going on, as there
2 often is.

3 Q. Okay. So you may have seen some plans, but
4 they were not the final set of plans -- or the
5 county had seen some plans, but not the final plans
6 because there have been some, I guess, commentary
7 back and forth between the planning staff and the
8 applicant on --

9 A. Yes.

10 Q. -- October 11th, or as of October 11th?

11 A. Sorry.

12 Yes. As I remember it, we got plans, and
13 when we started filling out those numbers, there
14 were some holes there. So we wanted to be sure
15 that got clarified with a clean, revised set of
16 plans before we finish our report and sent it back
17 to the planning commission, so we didn't have
18 errors in numbers.

19 Q. Okay. So she says -- Luda says in response
20 that she's sorry it takes time to reconcile all
21 those numbers in the two designs.

22 Does she mean the numbers between MQ-2 and
23 MQ-3?

24 A. I can't be certain as to what Luda meant in
25 her email, but I would assume that's what she means

1 by "two designs."

2 Q. All right. So you responded, "Okay. I have
3 written the report and am just waiting to fill in
4 the blanks."

5 So how were you able to write the report
6 without the revised plans?

7 A. Well, as we stated, this was the second time
8 this application had come before the planning
9 commission. So we had the basis of that
10 application; the background, the history was the
11 same. So this was basically an updating of that
12 application.

13 And the chart that we -- if I'm remembering
14 correctly -- and the chart that we provided them,
15 we're updating the chart. So the format of the
16 report was there. And some information we did
17 have. We did have the site plan.

18 So based on the background information we
19 had, the things we had written for the report
20 before, any information that was presented to us,
21 we were able to piece all that together. We
22 certainly wouldn't wait until the last day, Friday,
23 to start preparing all that information. There
24 were just some additional numbers we needed from
25 her to fill in some holes in that report.

1 Q. Okay. And is that answer your
2 understanding? Is it both the county
3 representative and you personally?

4 A. I think so. I'm not sure how to
5 differentiate in that case since it was me writing
6 the report.

7 Q. Do you know if, at this time, your report
8 included your recommendation to the planning
9 commission on whether or not the application should
10 be approved?

11 A. I do not recall that. And that report would
12 have had to have been signed by Mr. Johnson as
13 well.

14 Q. And is that because he was the director at
15 the time?

16 A. Yes.

17 Q. Okay. You said -- I think you were talking
18 about earlier either there were some holes or
19 errors you were trying to clean up.

20 Looking at this email from you to Luda on
21 October 11th, you're saying "just go over the
22 numbers. I think the total unheated for MQ-3 may
23 be incorrect."

24 Is that maybe what you were remembering when
25 you were talking about -- earlier?

1 A. I think so.

2 Q. So you say, "See attached spreadsheet. When
3 I add the 215 unheated total for the restaurant,
4 the 1024 total for the marina, and the 1791 total
5 for the other storage, I come to 5326, instead of
6 4991.

7 "Also, the total heated for MQ-3 4,596 and
8 the total unheated for MQ-3 4,991 don't add up to
9 the 9,922 as shown.

10 "4,596 and 5,326, however, do come up to
11 this 9,922 total. So I just think it's the total
12 unheated number that is incorrect."

13 So basically your understanding was that --
14 or your calculation, you came up with this larger
15 number of total unheated square footage of 5,326
16 for MQ-3?

17 A. Yes.

18 Q. Okay. So that -- you also thought that that
19 would then -- would that increase the total number
20 of square footage above -- higher than the 9,922
21 number that Luda had come up with?

22 A. I think that's correct.

23 Q. Okay. Okay. So then Luda basically said
24 she found an answer, and then she attached an
25 updated table.

1 So we looked at some charts attached to this
2 email. So you think her updated table is included
3 in this email?

4 A. Yes.

5 Q. In looking at these, why -- why does it
6 matter how much of the building was heated versus
7 unheated square footage for the county's purposes
8 of evaluating this application?

9 A. Because this building was being constructed
10 to replace an existing building. So we wanted to
11 be sure that the amount of heated area for the
12 restaurant and the marina was not larger than what
13 it was in the previous building. So we needed to
14 go beyond the total square footage number.

15 Q. Okay. So the MQ-3 was to replace the marina
16 restaurant and snack bar. Is that what you mean
17 when it was to replace the former building?

18 A. Yes.

19 Q. And so you wanted to look at heated and --
20 heated to make sure it wasn't larger than what was
21 there before, is that what you said?

22 A. Yes.

23 Q. So why did you only look at heated to
24 determine whether the building was -- I guess I'm
25 asking why did the county only look at heated when

1 trying to decide if the MQ-3 was larger than the
2 marina restaurant and snack bar?

3 A. Well, we're trying to get to capacity, the
4 capacity of the replacement building, the same as
5 the one prior to.

6 Q. The marina restaurant and snack bar?

7 A. Yes.

8 Q. So how does heated square footage determine
9 capacity?

10 A. Well, that, along with the outside seating,
11 which you saw parking calculations, parking numbers
12 and seating were shown there, too. It just -- all
13 of it just creates the overall picture of the
14 capacity of the building.

15 Q. All right. So when you're comparing
16 unheated versus heated for MQ-3 to MQ-2, how does
17 the comparison to the marina restaurant and snack
18 bar come in?

19 A. I think the heated is compared to the
20 original. But the numbers are shown there for MQ-2
21 and MQ-3, like I said earlier, to paint a picture
22 for planning commission and county council about
23 what's different, what's changed since they came
24 back here. So that's the point of that number.

25 And also, we just wanted to be sure they

1 were correct. We noted there were some
2 discrepancies, and it's important that the
3 information that goes out is correct.

4 Q. So when I asked you about why the unheated
5 versus heated comparison for MQ-3 -- why unheated
6 versus heated mattered for MQ-3 and MQ-2, and then
7 you talked about replacement of the old building --
8 was your answer about replacement of the old
9 building really not in reference -- answering my
10 question about why unheated versus heated mattered
11 for the MQ-2 and MQ-3 comparison?

12 A. Right. The reference to the MQ-2 and MQ-3,
13 why that's important is more about showing the
14 planning commission and county council what had
15 changed since the last application.

16 Q. So then there's an email from Luda, I guess,
17 to you at the very end of this on October 12th.
18 She says, "Good luck. And let me know, please, if
19 there's anything else that comes up that you need
20 for this project."

21 Do you know why Luda wished you good luck?

22 A. No.

23 Q. Were the plans that were attached to this
24 email the plans that were, I guess, ultimately
25 forwarded to the planning commission?

1 A. I can't say for certain, but I would make
2 that assumption based on the back-and-forth emails
3 that we've read here.

4 MS. PEARSON: All right. I probably
5 need to take a short break here, if that's
6 okay with everybody.

7 MS. GOLDING: Sure.

8 (A recess transpired from 11:12 a.m.
9 through 11:27 a.m.)

10 BY MS. PEARSON:

11 Q. So looking at Plaintiff's Exhibit 26, I'm
12 going to scroll down to the chart that was attached
13 for the comparisons of MQ-2 and MQ-3. If I can
14 find it.

15 Okay. So I'm looking at Page DEFS0050 and
16 DEFS0052.

17 All right. So there are kind of a number of
18 different characteristics being compared in this
19 chart. And most of these are based on the
20 different square footages of the two designs; is
21 that correct?

22 A. Yes.

23 Q. Okay. And why did the county choose those
24 characteristics to compare what had changed between
25 MQ-2 and MQ-3?

1 A. What do you mean by "characteristics"? The
2 bulleted items?

3 Q. Yeah.

4 A. I think it probably came from the way they
5 were laid out in the plans, if I'm remembering
6 correctly.

7 Q. What do you mean by that?

8 A. I'm trying to remember, but I think there
9 was a summary, a square footage in the summary of
10 the plans maybe that showed the numbers broken out
11 that way to get to the heated and unheated.

12 Q. So I guess my question is a little bit --
13 and, again, these questions are going to be in your
14 capacity as county representative.

15 So in terms of looking at the differences to
16 MQ-2 and MQ-3, why did the county just look at, you
17 know, the different unheated versus heated square
18 footage for the different areas for the two
19 buildings?

20 A. So we could see what had changed from MQ-2
21 and MQ-3. Did the heated go up? Did the heated go
22 down? Did the overall go up? Go down?

23 Q. Was there any comparison done of the MQ-2 or
24 MQ-3 flotations on the property?

25 A. Not beyond where it was shown on the plan.

1 Q. Was there any comparison done of, you know,
2 different building materials used for the two
3 buildings?

4 A. No.

5 Q. Was there any different -- was there any
6 comparison done of the different -- of the building
7 designs between the two buildings?

8 A. I don't think so, beyond talking about the
9 fact that this one had to be wholly on the
10 applicant's property, and that was the reason for
11 the change.

12 Q. Okay. Was there anything else, I guess,
13 beyond these bullets listed in this chart that the
14 county looked at to compare MQ-2 versus MQ-3?

15 A. Is there anything else beyond what's on this
16 chart?

17 Q. Yes.

18 A. I have to look at our staff report as a
19 whole. Certainly the staff report contained more
20 than this chart. It contained background
21 information and other things.

22 Q. Okay. So this chart right here shows the
23 unheated square footage of 5,326. And we've looked
24 at the exhibit discussing the discrepancy in the
25 numbers. Does this page DEFS0050 have what you

1 believe to be the corrected numbers?

2 A. I don't know. I know there were two as you
3 scrolled through, so I'm not sure which is which.

4 Q. Okay. So we've got 5,326 for total unheated
5 on DEFS0050, and then we've got for total unheated
6 on DEFS0054, 4,991 square feet.

7 And if we go back up to your email, you say
8 that you came to 5,326, instead of 4991.

9 Does that refresh your recollection of --

10 A. Yes, I think the one with the 5326, based on
11 that, would be correct.

12 Q. Okay.

13 (EXHIBIT 5, Letter, was marked for
14 identification.)

15 BY MS. PEARSON:

16 Q. So I'm showing you what is being marked
17 Plaintiff's Exhibit 5. Can you see that?

18 A. Yes.

19 Q. Okay. And I'm going to scroll through or
20 let you look at this.

21 A. Okay.

22 Q. [Scrolling]

23 A. Okay.

24 Q. [Scrolling]

25 A. Okay.

1 Q. [Scrolling]

2 A. Okay.

3 Q. [Scrolling]

4 A. Okay.

5 Q. [Scrolling]

6 A. Okay.

7 Q. [Scrolling]

8 A. Okay.

9 Q. All right. So this letter from Mr. Stacy is
10 addressed to you, but I'm going to ask you some
11 questions about it in your capacity as the county
12 representative.

13 So in this letter, he acknowledges that the
14 final plans for the building had not been completed
15 when the application was submitted; is that
16 correct?

17 A. He says here, "The final plans have not yet
18 been completed when we made our application."

19 Q. And that was consistent with what you
20 understand the county received at the time of the
21 original application, correct?

22 A. Yes. We did receive plans later beyond what
23 was submitted with the original application.

24 Q. Okay. And the date of his letter is October
25 12, 2018, right?

1 A. Yes.

2 Q. Okay. And he states that the application
3 was originally submitted on August 27, 2018; is
4 that correct?

5 A. Yes, that's what his letter states.

6 Q. Okay. And I don't believe -- the
7 application itself wasn't dated. So are you aware
8 of any information on behalf of the county that the
9 application was submitted on any date other than
10 August 27, 2018?

11 A. No, I'm not aware of any other information.

12 Q. Okay. And are the plans that were attached
13 to this letter the plans that were, I guess, the
14 plans that were submitted to the planning
15 commission for review?

16 A. I can't say that for certain without
17 matching up the -- what went in their packet, but I
18 would imagine so, especially since this came
19 October 12th.

20 Q. Okay. Do you know how -- what's in -- what
21 is typically in the planning commission's packet?

22 A. For this particular case?

23 Q. Yes.

24 A. They would receive the application -- well,
25 I'm sorry, let me back up.

1 They would receive our staff report, the
2 application, any relevant attachments. They would
3 receive any correspondence we received on the
4 application up to that particular time that the
5 packets go out. They would get a copy of the
6 notice that we send out to adjoining property
7 owners. I think that's all.

8 Q. Okay. And did you -- this is a personal
9 question. Did you review these plans in your
10 preparation of the staff report for the planning
11 commission?

12 A. Yes, I would have reviewed anything that was
13 submitted to me.

14 Q. Okay. All right. So the next questions are
15 back again as county representative.

16 So this DEFS0015 is a parking or site plan,
17 dash, parking, correct?

18 A. I think that's what it says.

19 Q. All right. And this parking site plan was
20 not provided with the application as originally
21 submitted, correct?

22 A. I think we determined that when we looked at
23 your exhibit earlier.

24 Q. That it was not submitted?

25 A. Right. I think when we went through this,

1 there wasn't one showing the parking in the earlier
2 exhibit.

3 Q. Okay. This letter from Mr. Stacy also
4 attaches, you know, some ground floor plans. Or
5 essentially all of the plans attached to
6 Mr. Stacy's letter are revised -- or different from
7 the plans that were submitted with the original
8 application; is that correct?

9 A. I don't know if they're different from, but
10 they're certainly in addition to.

11 Q. Okay. So I guess if we look at these --
12 let's go through. I've got some specific questions
13 on these particular...

14 For this parking site plan, is this the
15 parking lot that is shared with the Plaintiff, the
16 Gulfstream Café?

17 A. Yes. To my understanding, yes.

18 Q. And Gulfstream has an easement to use this
19 parking lot as well as the proposed building?

20 A. That's what we've been informed, yes.

21 Q. Okay. So looking at this next, DEFS0016,
22 these show the ground and first floor plans for the
23 proposed building. And it shows a marina store.

24 Is that a separate use from the proposed
25 restaurant that was proposed for the building

1 that's subject to the application?

2 A. Repeat your question?

3 Q. Yeah. So did you -- I guess let me just
4 ask. What -- were there different -- did you
5 understand that the proposed building would, both,
6 include a restaurant and a marina store in this
7 DEFS0016?

8 A. Yes.

9 Q. Do you consider those -- or does the county
10 consider the store and the restaurant as different
11 uses, land uses?

12 A. Yes.

13 Q. Okay. Looking at this next, DEFS0017, we've
14 got -- I guess this is looking at the second, or
15 excuse me, third floor site plan.

16 Is this part of the site plan for the
17 restaurant? Is that the county's understanding of
18 this part of the plan?

19 A. Can you scroll down just a little bit?

20 Q. Yeah.

21 [Scrolling]

22 I can scroll out if that's helpful. I'm
23 just trying to -- they're kind of small.

24 A. I was trying to see what the label of A101
25 said, second and third floor plans. So it does

1 look like it's outdoor seating for the restaurant.
2 I don't know where the unheated storage -- what use
3 that's related to.

4 Q. Okay. But -- so you mentioned -- so the
5 outdoor seating on this second floor, that would be
6 seating for customers in the unheated square
7 footage of the second floor; is that correct?

8 A. I don't know. It just says outdoor seating.

9 Q. When you read outdoor seating, what did you
10 understand that to mean?

11 A. I understand -- I would assume that means
12 outdoor seating in connection to the restaurant.

13 Q. Okay. And it also says a bar here, so --

14 COURT REPORTER: Says what?

15 MS. PEARSON: So here it says -- it
16 also says there's a bar. There's a -- kind
17 of looks like a little bit of an angle
18 drawing of a bar.

19 And again, when the county was looking
20 at these plans, did it understand that
21 customers -- this outdoor seating would be
22 used for customers sitting outside in the
23 unheated square footage?

24 THE DEPONENT: Yes, we understood it to
25 be outdoor seating for the restaurant.

1 BY MS. PEARSON:

2 Q. Okay. And then we're looking at the --
3 sorry, that -- I -- just to clarify. We were
4 looking at the third floor photo, just asking that
5 a moment ago.

6 Now looking at the second floor layout -- I
7 guess not photo, layout. So there is a dining, bar
8 area here. So would it be the county's
9 understanding this would be dining and seating for
10 customers inside the heated square footage?

11 A. I would assume based on the fact it says
12 dining area, but that's what would be taking place
13 in that area.

14 Q. Okay. And then again there's some
15 additional -- there's some outdoor seating shown on
16 this layout, so that would be used by customers to
17 sit outside in the unheated square footage?

18 A. That's what it would appear to be.

19 Q. So in the bar areas in both the third and
20 second floor, could those be used by customers who
21 were standing around the bar and not necessarily
22 being seated at the restaurant?

23 A. I don't know. That wouldn't be something
24 the county would regulate.

25 Q. So the county didn't -- does the county

1 regulate how many people are -- the number of
2 people that can be -- the capacity for people in a
3 building that is -- in a particular building that's
4 being proposed?

5 A. In terms of a fire, the fire code would
6 regulate that.

7 Q. Okay. So under the fire code, there is
8 evaluation of the number of people that can be in a
9 building at any particular time?

10 A. I believe so, yes.

11 Q. Okay. And now you've got some -- I guess
12 starting on Page DEFS0018, we've got some -- it
13 looks like some elevations. And I'm going to
14 scroll through some of these.

15 Were these included as part of the original
16 application?

17 A. They were not included as a part of that
18 previous exhibit we looked at attached to the
19 application.

20 Q. Okay. So looking at DEFS00022, it shows, I
21 guess, maybe a rendering of some of the outdoor
22 seating that we already looked at in terms of --
23 does it look like there's some outdoor seating and
24 then there's some -- there's decking on these
25 buildings as well, correct?

1 A. There is decking, yes.

2 Q. Is there space on these decks for people to
3 -- customers to stand in addition to the outdoor
4 seating area?

5 A. It certainly looks like a person could
6 potentially stand in the deck areas.

7 Q. Okay. So I'm going to go back to Exhibit
8 26, if it will let me.

9 All right. All right. So looking at -- can
10 you see this? I know it's, like, really small.
11 Looking at the bottom, it says G001, Life Safety.
12 What does that mean?

13 A. I don't see what you're talking about.

14 Q. Sorry, over -- can you see my cursor or not?

15 A. It might be that the Zoom stuff is in the
16 way.

17 Q. Oh, yeah. I don't know if I can move it any
18 further.

19 A. Okay. Point to it again.

20 Q. Over here (indicating). Like the label on
21 the -- says G001?

22 A. Uh-huh.

23 Q. Can you see that, Life Safety?

24 A. Yes.

25 Q. Do you know what that means?

1 A. I don't know what that means.

2 Q. All right. So this is the part of the email
3 that Luda submitted. And again, this are questions
4 in your capacity as county representative.

5 Did the county review this document when
6 evaluating the application?

7 A. Can you scroll down a little bit?

8 Q. Yeah.

9 [Scrolling]

10 A. I don't know if this is where our unheated
11 and heated square footage numbers came from or not.
12 It doesn't look like they directly line up with
13 those categories, from what I'm able to decipher.

14 Q. But Luda submitted them to you, right, in
15 her email? Would you have looked at them when you
16 were evaluating the application, or would you have
17 looked at this page that was submitted as part of
18 their plan, in the applicant's plans?

19 A. I certainly would have looked at it in
20 regards to the items that I was reviewing and how
21 it applied to them. I don't remember this
22 particular table at this time. It looks like there
23 is some heated and unheated numbers there.

24 MS. GOLDING: Andrea, unfortunately,
25 the way we see it, it's very blurry.

1 MS. PEARSON: Yeah. I don't know
2 exactly how to make it -- it's just produced
3 -- you know, honestly, I've had a hard time
4 even printing it and seeing it. It's just
5 not produced very clearly. I think it is
6 probably a scanned page.

7 BY MS. PEARSON:

8 Q. All right. So you don't know if you or
9 anyone else at the county did anything to verify
10 these numbers or look at these numbers?

11 A. I don't think it would have been my role in
12 reviewing this for the planning commission to
13 verify a lot of those numbers. A lot of these look
14 like building code and fire code issues.

15 I'm assuming that this is a summary that
16 they have to provide to meet building code and fire
17 code. So that would have been reviewed, of course,
18 by the building department in issuance of a
19 building permit. But a lot of of things in this
20 table, I think, wouldn't apply for the planning
21 department review.

22 Q. Would they apply -- you said for planning
23 department review. But would they apply for
24 purposes of review of the application to decide
25 whether or not to amend the PD to allow the change

1 in the site plan?

2 A. I don't think a lot of things in this code
3 would, no. And it's talking about occupant load,
4 and those more type of specific building code
5 issues that aren't part of a planned development
6 review process.

7 Q. Okay. All right. Hold on. Just give me a
8 second.

9 All right. So I am showing you what is
10 being marked Plaintiff's Exhibit 6.

11 (EXHIBIT 6, Staff Report, was marked
12 for identification.)

13 BY MS. PEARSON:

14 Q. Can you see that, the document, the new
15 document on the screen?

16 A. Yes.

17 Q. All right. If you want to take a minute and
18 look at it and then let me know when you're done.

19 A. You can scroll.

20 Q. [Scrolling]

21 A. Scroll.

22 Q. [Scrolling]

23 A. Okay.

24 Q. [Scrolling]

25 A. You can scroll.

1 Q. [Scrolling]

2 A. You can scroll.

3 Q. [Scrolling]

4 A. Okay.

5 Q. All right.

6 A. Okay.

7 Q. Okay. So is this the staff report that
8 you've been referencing throughout your deposition?

9 A. Yes.

10 Q. So you personally prepared this document?

11 A. Yes, in conjunction with Mr. Johnson. Like
12 I said, he would have reviewed it and signed it,
13 and we probably talked about it multiple times, but
14 I technically wrote it.

15 Q. Okay. So the date of your staff report is
16 -- I guess the -- this Exhibit 5 that we just
17 looked at for Mr. Stacy is October 12, 2018, where
18 he provided the final plans for the proposed
19 building, and then your staff report date is
20 October 18, 2018. So that was only -- that was six
21 days later you wrote the staff report; is that
22 correct?

23 A. I think October 18th is the meeting date, I
24 believe.

25 Q. Okay. So Mr. Stacy provided the final plans

1 six days before the meeting date?

2 A. He provided additional plans at that time.

3 Q. Okay.

4 A. But, again, we were reviewing and looking at
5 plans prior to that process. I think that was a
6 way to get them all in one place all at one time.

7 Q. All right. So you were working on the staff
8 report before October 18th, but the date here just
9 represents the date of the planning commission
10 meeting?

11 A. I believe that's correct. That's usually
12 the date that's --

13 Q. All right. I'll do it. Okay.

14 All right. So here, you know, it discusses
15 what the agenda item is, you know, the request from
16 Dan Stacy to amend the Marlin Quay PD. And I'm
17 summarizing.

18 And then it says Current Status, and there
19 is -- "On February 27, 2018, county council
20 approved an ordinance amending the Marlin Quay
21 planned development to allow for a redevelopment of
22 the marina store, plus restaurant, ordinance
23 2018-03."

24 Was that the county's approval of MQ-2?

25 A. Yes, that would have been the third reading

1 approval.

2 Q. Okay. And it says, "The ordinance allowed
3 for 4,598 heated square feet for the new structure,
4 52 parking spaces for the site, a 45-foot height
5 limit and a seating capacity of 110.

6 Do you know where that 4,598 footage number
7 came from?

8 A. I would assume that was the heated amount --
9 the amount of heated square footage that was shown
10 in MQ-2.

11 Q. So that was just the proposed square footage
12 of MQ-2, of heated square footage, excuse me, for
13 MQ-2?

14 A. I think so. And again, we were comparing
15 that to the original building. But this was the
16 ordinance for MQ-2 that was approved, and that
17 would have been the amount of heated square footage
18 on that application.

19 Q. Okay. So then there's also a discussion of
20 some of the, I guess, historical litigation, I
21 guess, related to this case.

22 Then it says, you know, "The project has
23 been in litigation since the council approval. The
24 Court ordered the site plan approved in February of
25 2018 by council cannot be built."

1 So we already talked about that.

2 And it says, "The purpose of this new
3 request is for the new structure, MQ-3, to bring
4 the site into compliance with the Court Order."

5 So the MQ-3 had to be different from MQ-2 in
6 that the footprint of MQ-3 had to be changed; is
7 that correct?

8 A. MQ-3 had to be different from MQ-2 because
9 MQ-3 had to be wholly located on the applicant's
10 property, on the same footprint, is our
11 understanding of the Court Order.

12 Q. Okay. Of the former -- the same location --
13 footprint of the marina store and -- marina
14 restaurant and snack bar?

15 A. Yes, but on his property.

16 Q. "His," you mean like Palmetto's?

17 A. Yes.

18 Q. Okay. So on Item Number 3, it discusses,
19 "The current request is for a building containing a
20 restaurant and a marina store. The amount of
21 heated square footage has not changed.

22 "The area for" -- so when you say the amount
23 of heated square footage has not changed, from --
24 okay, just to clarify, I'm asking these questions
25 in your capacity as county representative.

1 So it says, "The amount of heated square
2 footage has not changed." It has not changed from
3 what?

4 A. The amount of heated square footage for MQ-3
5 has not changed from the amount of heated square
6 footage for MQ-2.

7 Q. Okay. And then it says, "The area for the
8 restaurant has decreased slightly" -- okay. The
9 area for the marina has increased and the unheated
10 storage area has decreased.

11 So is that a summary of what is shown in
12 this table just below this paragraph?

13 A. Yes.

14 Q. And then it says, "The proposed heated
15 square footage is less than the original 4,603
16 square feet for the original building that was
17 demolished."

18 Is that talking about the marina restaurant
19 and snack bar?

20 A. Yes.

21 Q. And where did that 4,603 square footage
22 number come from?

23 A. That came, early on in the process, an email
24 from -- I think it came from an email from a
25 previous engineer. We asked him to certify for us

1 what was that in the existing building. And that
2 number came from that email, I believe.

3 Q. And is it your understanding that the 4,600
4 -- or is it the county's understanding that the
5 4,603 square feet number for the original building,
6 was that the total square footage or just heated
7 square footage, or do you know, or does the county
8 know?

9 MS. GOLDING: I'm sorry, Andrea, I
10 didn't understand that question. Can you
11 ask that again?

12 BY MS. PEARSON:

13 Q. So it says that -- I'm trying to figure out
14 if the -- this original 4,603 square feet number
15 for the original building, if that was total square
16 footage for the original building or only heated
17 square footage for the original building.

18 A. Without looking back at that email, I don't
19 think I can say for sure right now.

20 Q. Okay. Looking down at Number 4, it says,
21 "The parking layout for this site has not changed.
22 Like the previous claim for MQ-2, the current plan
23 shows three additional compact spaces to be located
24 underneath the proposed building. The site
25 contains a total of 62 spaces. This exceeds the

1 ordinance requirement of 51 spaces for the proposed
2 building. The parking lot is also used by the
3 Gulfstream Café and the marina."

4 The parking layout -- the first sentence,
5 "The parking layout for the site will not be
6 changed." Changed by what? Or changed from what?

7 A. Well, the previous plan for MQ-2 had a
8 parking lot, and it hasn't changed since then. And
9 I would even say, I think that the parking lot
10 itself, as it exists, would not be changed. But
11 definitely there wasn't a change in the parking lot
12 from MQ-2 to MQ-3.

13 A. Okay.

14 Q. And the site contains a total of 62 spaces.
15 Is 62 spaces the county's understanding of the
16 total number of parking spots in the parking lot?

17 A. It may include those three compact spaces;
18 I'm not sure.

19 Q. So when you say it may include the three
20 compact spaces, was that the three compact spaces
21 proposed for the new -- underneath the new
22 building?

23 A. Uh-huh, yes.

24 Q. So you don't know if it's 62 spaces existing
25 in the parking lot now or 62 spaces existing in the

1 parking lot once you added those additional three
2 spaces?

3 A. Right. As I read it now, I would assume the
4 62 would include the three, but it's hard to
5 remember writing this back in 2018.

6 Q. Okay. So then it says, "This exceeds the
7 zoning ordinance requirement of 51 spaces for the
8 proposed building."

9 Is -- the 51 spaces for the proposed
10 building is the zoning ordinance requirement for
11 the building itself, correct?

12 A. For MQ-3, yes.

13 Q. And it says the parking lot is also used by
14 Gulfstream Café and the marina, meaning those
15 businesses also share that same parking lot?

16 A. Yes.

17 Q. The report does not include any information
18 regarding how many parking spots those businesses
19 would require, does it?

20 A. No.

21 Q. Why not?

22 A. Because the site is not being newly
23 developed as a whole. This is a replacement of an
24 existing building. So the site likely did not meet
25 -- it was nonconforming into -- its said parking of

1 the site, so this building was a replacement.
2 That's why we looked at the heated square footage
3 and maintained that capacity of the previous
4 building.

5 Q. Okay. So you're saying that the original
6 marina store and snack bar was nonconforming in
7 terms of parking requirements, under the Georgetown
8 County zoning ordinance?

9 A. I can't say that for certain, but I do think
10 it's likely that, overall, the whole site was
11 nonconforming in terms of parking, based on today's
12 current standard in the zoning ordinance.

13 Again, this is a planned development, so
14 there is flexibility in terms of parking and
15 flexibility to other requirements in the zoning
16 ordinance.

17 Q. Okay. So you're saying that because -- all
18 right. Your understanding is that the whole site
19 was nonconforming based on the current parking
20 requirements -- or the parking requirements in
21 Georgetown County zoning ordinance.

22 A. I think that would be likely. Sorry.

23 Q. Okay. And because -- the county's
24 understanding was that because MQ-3 was replacing
25 the marina store and snack bar, it was okay not to,

1 I guess, evaluate the requirements of the other two
2 uses of the parking lot, "the other two uses"
3 meaning Gulfstream Café and the marina?

4 A. The site was not being redeveloped as a
5 whole. There wasn't additional capacity being
6 added by this building of MQ-3. If there was
7 additional capacity, additional seating, then they
8 would have to provide additional parking for that
9 over and above. But there isn't a mechanism to
10 reevaluate the whole development based on the
11 replacement of one building.

12 Q. Okay. And is there -- is there a particular
13 code provision that Georgetown County is relying on
14 with respect to that analysis of what parking is --
15 of the parking for the application?

16 A. Can you ask that question again?

17 Q. So I'm just saying -- you said because the
18 -- Marlin Quay was not being redeveloped as a
19 whole, it was not adding additional capacity, are
20 you -- does that basically mean that you didn't
21 think that it would need to add additional parking?

22 A. I think that's correct. It's not increasing
23 the nonconformity, in terms of overall parking on
24 the site.

25 Q. So Part 6 says, "Part of the council

1 approval from February 2018 included a condition
2 that the building for MQ-2 not exceed the seating
3 capacity of the original building, which according
4 to the applicant was 110 seats. Plans from the
5 application indicate that MQ-3 will also not exceed
6 110 seats."

7 What did the county do -- or did the county
8 do anything to evaluate the comparison between the
9 marina store and snack bar and the MQ-3, beyond
10 looking at the number of seats that would be
11 allowed in terms of capacity for the buildings?

12 A. Heated square footage.

13 Q. Okay. Anything other than the number of
14 seats and heated square footage that the county
15 looked at to compare the capacity of MQ-3 to the
16 marina store and snack bar?

17 A. I think those are the main things.

18 Q. All right. So I'm showing you what is being
19 marked, I guess, Plaintiff's Exhibit 7.

20 (EXHIBIT 7, Photos, was marked for
21 identification.)

22 BY MS. PEARSON:

23 Q. And it's actually two different photos. Can
24 you see those photos? Well, the second one I'm
25 pulling up --

1 A. Not yet.

2 Q. You can't?

3 A. No.

4 Q. Okay. Can you see the picture now?

5 A. Yes.

6 Q. And this other picture?

7 And then also going to -- all right. It's
8 not going to let me.

9 All right. Looking at Plaintiff's Exhibit
10 7, which is photos of MQ-3 during construction, I'm
11 representing to you, have you personally seen MQ-3
12 during construction?

13 A. I don't believe I have.

14 Q. Okay. So looking at these photos of MQ-3 --
15 and these are questions based on your capacity as a
16 representative of Georgetown.

17 I don't know why it won't let me do that.
18 Oh, sorry. Sorry.

19 All right. And then looking at the photos
20 of MQ -- or, excuse me, the marina store and snack
21 bar. Is the MQ-3 a much larger building than the
22 marina store and snack bar?

23 MS. GOLDING: You're not showing the
24 whole building. There's another backside
25 that extends into the condo lot.

1 THE DEPONENT: Could you ask the
2 question again?

3 BY MS. PEARSON:

4 Q. So looking at these two buildings, you know,
5 looking at these two buildings, the marina store
6 and snack bar in MQ-3, is MQ-3 a larger building
7 than the marina store and snack bar?

8 A. It's hard to tell just from looking. It's
9 certainly larger in some aspects. In height, for
10 example.

11 Q. And what other aspects?

12 A. Can you scroll down on this picture?

13 Q. I actually can't really scroll down. Can
14 you see the whole thing?

15 A. I can see the top picture but not the
16 bottom.

17 Q. Oh, yeah. So there's the bottom picture.

18 A. I can still just see the top.

19 Q. Are you saying you can't see MQ-4 -- I'm
20 sorry, not MQ-4, the marina store and snack bar?

21 A. I can see the top picture. There you go.
22 It's hard for me to judge in terms of size of
23 square footage just looking at the two pictures.

24 Q. Okay. Well, so looking the marina store and
25 snack bar, the number that was on the staff report

1 for its square footage is 4,603. Do you remember
2 that?

3 A. Yes.

4 Q. Do you see any -- so we see there's a front
5 porch and then some decking. But does it look like
6 the majority of the marina store and snack bar was
7 heated square footage?

8 A. Based on what I can see here, yes.

9 Q. Okay. And then can you see Plaintiff's
10 Exhibit 6 again, your staff report?

11 A. Yes, I can see it.

12 Q. Okay. So when we're looking at MQ-3, it had
13 4,596 square feet in heated square footage, but
14 then it has an additional 5,326 square feet of
15 unheated square footage; is that correct?

16 A. Yes.

17 Q. So based on that information, is it the --
18 and looking at the pictures of the, you know,
19 decking from the Marlin Quay marina store and snack
20 bar, was there more unheated square footage in MQ-3
21 than in the marina store and snack bar?

22 A. I don't have a number of unheated square
23 footage for the marina store, restaurant, snack
24 bar, but it does appear that there is more deck
25 space on MQ-3.

1 Q. Okay. And we looked at the plans for MQ-3.
2 And that deck space included seating for customers,
3 outdoor seating, right?

4 A. I think that was on that plan for a section
5 of it, yes.

6 Q. In evaluating these, you know, the -- this
7 information that -- the different photographs and
8 square footage numbers, how did the county arrive
9 at the conclusion that MQ-3 would not increase
10 capacity from what was there previously in the
11 marina store and snack bar?

12 A. Based on the -- maintaining the number of
13 seats.

14 Q. Anything else?

15 A. Heated square footage was also a factor, but
16 I think that's -- you have to take both of those
17 hand in hand.

18 MS. GOLDING: Andrea, I don't want to
19 break your thought process, but I'm hungry.
20 When do you plan to break for lunch?

21 MS. PEARSON: You know, I'm about to
22 start on another exhibit, and it might make
23 sense for me to regroup, so I'm fine to take
24 a break now.

25 MS. GOLDING: Great.

1 MS. PEARSON: And I have a question
2 since -- Holly may take a little longer than
3 2:00. So do we want to either -- I just
4 want to note that now that if we want to
5 push Judy to later.

6 MS. GOLDING: Do you want me to ask the
7 next witness instead of coming in at 2:30 to
8 come in at 3:30?

9 MS. PEARSON: Yeah, I think that is a
10 good idea.

11 MS. GOLDING: Okay. I'll do that. I
12 believe that's Judy Blankenship.

13 MS. PEARSON: Yeah.

14 MS. GOLDING: Good. We'll do that
15 during the lunch break.

16 COURT REPORTER: I'm going to go off
17 the record, okay?

18 MS. PEARSON: Oh, yes. Sorry.

19 (A luncheon recess transpired from
20 12:36 p.m. through 1:26 p.m.)

21 BY MS. PEARSON:

22 Q. All right. So going back to Plaintiff's
23 Exhibit 4 that we were looking at before the break.
24 So these questions are in your capacity -- or I'm
25 asking as a county representative unless I let you

1 know otherwise. So can you see Exhibit 4 again?

2 A. Yes. Can you give me one second to put my
3 glasses on?

4 Q. Okay. Sure.

5 A. Okay.

6 Q. Okay. So looking at Exhibit 4 again, is the
7 county aware that the building shown in Exhibit 4
8 has been torn down?

9 A. Yes.

10 Q. And that the MQ-3 is going to replace the
11 building shown in Exhibit 4?

12 A. Yes.

13 Q. Okay. So looking at Plaintiff's -- I'm
14 introducing Plaintiff's Exhibit 9. Can you see
15 that document?

16 A. Yes.

17 Q. And I will let you take a minute to look at
18 it.

19 A. Scroll down.

20 Q. [Scrolling]

21 A. Scroll down.

22 A. Okay.

23 Q. [Scrolling]

24 A. Okay.

25 Q. All right.

1 [Scrolling]

2 A. Okay.

3 Q. All right. And what it -- it says on the
4 top of this document Agenda Request Form. What is
5 the purpose of an Agenda Request Form?

6 A. This is a form that we fill out in order to
7 fit an item on the county council agenda.

8 Q. Okay. So when you say "we," who do you
9 mean?

10 A. Typically a planning staff member would
11 complete the form for our items.

12 Q. Okay. So what items are not completed by
13 planning staff?

14 A. I'm sorry, I just meant for planning
15 department items, then a member of planning staff
16 would complete this Agenda Request Form. County
17 council agendas have other items from other
18 departments and they --

19 (Indiscernible crosstalk.)

20 BY MS. PEARSON:

21 Q. Okay, got it.

22 Okay. So for this particular -- like, for
23 the application, this item, this report would have
24 been prepared by planning staff?

25 A. Yes.

1 Q. Okay. So we looked at the staff report.
2 This document looks similar to the staff report
3 that we looked at in -- because I think it was -- I
4 don't know off the top of my head. We just looked
5 at the staff report.

6 Is the staff report submitted to the
7 planning commission prior to the planning
8 commission meeting; is that correct?

9 A. Yes.

10 Q. Okay. So is this Agenda Request Form then
11 prepared by planning staff to submit to the county
12 council in advance of their meetings on an
13 application?

14 A. Yes, after the planning commission meeting.

15 Q. All right. So this has -- this document --
16 well, I guess in your personal capacity, did you
17 prepare this Agenda Request Form?

18 A. Yes.

19 Q. All right. And then back in your capacity
20 as the county representative, so looking back --
21 where did it go?

22 So -- okay. So it says, "According to an
23 email from the property owner's representative, the
24 building contained a total of 4,603 square feet at
25 the time."

1 So is that talking about the marina store
2 and snack bar?

3 A. Yes, the original building.

4 Q. Okay. And when this says -- according to an
5 email from the property owner's representative, do
6 you -- you mentioned a little bit about that
7 before, but do you have any additional recollection
8 of who that person was?

9 A. I think I said earlier I think it was the
10 applicant's engineer at the time.

11 Q. Okay. Did the county do anything to
12 independently verify or evaluate the number of
13 square feet in the original building, for the
14 marina restaurant and snack bar?

15 A. Not beyond the -- (audio distortion) --
16 information we would have had in the PD file.

17 Q. And the information about the square footage
18 of the marina restaurant and snack bar was from the
19 property owner's representative, right?

20 A. Yes, we asked him -- like I said earlier, we
21 asked him to verify the building totals.

22 Q. How did he verify those building totals?

23 A. I don't know.

24 Q. Okay. Is there -- was there anything else
25 in the PD file that would have -- that the county

1 looked at to determine the square footage of the
2 marina store and snack bar beyond what was provided
3 by the applicant's representative or the property
4 owner's representative?

5 A. Say that again. Was there anything in the
6 PD file that would...

7 Q. Other than what was received from the
8 property owner's representative regarding the
9 square footage of the original building?

10 A. I don't think so. There may have been
11 things in the PD file from when the building was
12 originally built, or there may have been plans for
13 that building that were never constructed,
14 information like that. But we would have wanted
15 the most current information, which is why we asked
16 the engineer for that documentation.

17 Q. So you said you're not sure if -- you listed
18 a couple of things that may have been in there, but
19 you're not sure if those things were in the PD file
20 or not, are you?

21 A. Right. It's been a while since I've looked
22 through that file, and there's a good bit of older
23 information in there.

24 Q. Okay.

25 A. So there may have been some things in there

1 that talked about a building that was going to be
2 built or changes that were going to happen that did
3 or did not happen.

4 Q. Okay. But in terms of the most recent
5 information, you said you wanted -- the county
6 would have wanted to look at, the only thing you
7 guys had related to the size of the original
8 building was from the property owner's
9 representative?

10 A. Yes.

11 Q. Is that a "yes"?

12 A. Yes.

13 Q. Okay. And then looking at Number 6, you
14 know, again, talking about the seating capacity of
15 the original building, which according to the
16 applicant was 110 seats, did the county do anything
17 to evaluate or assess how many seats the original
18 building had, itself?

19 A. No. I think that would be the same answer
20 as when we're talking about the square footage. We
21 would have looked in the PD file, but we would have
22 counted on this to be the most current information.

23 Q. So when you counted on this, the information
24 from the applicant of 110 seats?

25 A. Yes.

1 Q. Okay. And then looking at "the parking
2 layout for the site will not be changed," this is
3 very similar to the prior answer, or I guess,
4 excuse me, the staff report that we already looked
5 at.

6 And it says, you know, these two uses are
7 not included in the parking requirement of 51
8 spaces for the, I guess, MQ-3.

9 Is that basically the same reasons we talked
10 about earlier, why the county didn't look at what
11 the Gulfstream Café and marina needed in parking?

12 A. Yes. Same answer as before.

13 Q. Do you know whose notes these are in the
14 document?

15 A. Which notes are you referring to
16 specifically?

17 Q. I guess you're right. There's kind of some
18 multiple sets. The black writing at the top says
19 "Kayla" and has a phone number. Do you know what
20 that is, whose handwriting that is?

21 A. I think that's my handwriting.

22 Q. Okay. Do you know what that note is
23 referring to?

24 A. I don't recall exactly. That may have been
25 somebody in a law office we were supposed to

1 contact or send some information to about the case.
2 I don't recall specifics, but I think that's
3 someone's name.

4 Q. Okay. And then do you know whose notes
5 these are in blue?

6 A. Yes.

7 Q. Whose notes are those?

8 A. That's Boyd Johnson.

9 Q. So is this kind of you and -- or I guess
10 this was Boyd's -- it looks like his markup of the
11 Agenda Request Form?

12 A. That's right. He can speak to that better,
13 but it looks like notes he's making to himself.

14 Q. Okay. Got it.

15 And then, I guess, looking -- well, let's go
16 down here. Says "staff recommendation approved as
17 recommended by PC." So would that have been your
18 personal recommendation?

19 A. That would have been the planning
20 department's recommendation at that point. Again,
21 this was all overseen by Boyd Johnson as the
22 director at the time.

23 Q. Okay.

24 A. But at this stage here, we are planning on
25 the planning commission's recommendation from their

1 meeting.

2 Q. All right. So looking back at Plaintiff's
3 Exhibit 6, it says, you know, Staff Recommends --
4 I'm looking at DEFS00158 under the paragraph Staff
5 Recommendation. Can you see that?

6 A. Yes.

7 Q. Okay. So "Staff recommends approval for
8 this request for redevelopment of the site and
9 amended roof pitch based on the proposed
10 replacement of an existing use/structure with one
11 that complies with current flood ordinance
12 requirements and the resolution of the issue of
13 having the building being located over the property
14 line."

15 So, personally, why did you recommend
16 approval of this application?

17 A. I think the reasons are listed there: The
18 replacement of an existing use or structure with
19 one that complies with current requirements and the
20 improvement of having a building located no longer
21 straddling the property line.

22 Q. So is it your understanding -- when you say
23 -- when it complies with current flood ordinance
24 requirements, what is that talking about?

25 A. The previous building did not meet the flood

1 zone requirements.

2 Q. Do you recall why?

3 A. It needed to be elevated based on the flood
4 zone that this was located in.

5 Q. Okay. And then also, "resolution of the
6 issue of having a building located over the
7 property line," what is that referring to?

8 A. The original building was located partially
9 on the condo owners' property.

10 Q. Okay. So when you say "condo owners'
11 property," that's the condo building located
12 adjacent to the property subject to the
13 application?

14 A. Yes.

15 Q. And are your -- I guess we've talked about
16 your personal reasons for recommending the stuff,
17 recommending approval of the application. Are
18 there any -- is your answer any different as to why
19 staff recommended approval in your capacity as the
20 county representative?

21 A. No, I don't think so.

22 Q. Are there any other reasons why staff
23 recommended approval of the application other than
24 those that are listed here?

25 A. I think those reasons are given as the main

1 basis for the staff recommendation.

2 Q. Okay. Were there any -- so main basis.

3 Were there any other basis, like any --

4 A. Well, I think you could go back to other
5 things included in the staff report, the comparison
6 of the heated square footage, the seating capacity,
7 all those things kind of lead up to the staff
8 recommendation, and the staff recommendation is an
9 overall statement.

10 Q. When you -- when the county was evaluating
11 whether or not, I guess -- or comparing the
12 capacity between the original marina restaurant and
13 snack bar in MQ-3, did anyone look at photos of the
14 original marina store/snack bar?

15 A. Photographs specifically?

16 Q. Yes.

17 A. I can't recall doing that.

18 MS. GOLDING: Andrea, did anyone call
19 Judy Blankenship.

20 MS. PEARSON: Pardon? I can't hear
21 you.

22 MS. GOLDING: I just wanted to make
23 sure that Judy was called to come at 3:30,
24 and Holly just told me she did. I didn't
25 know. I apologize.

1 MS. PEARSON: That's okay.

2 BY MS. PEARSON:

3 Q. Okay. So other than you and Mr. Johnson,
4 were there any other individuals from the planning
5 staff that were involved with reviewing this
6 application?

7 A. No, not beyond intake and the other things
8 we talked about, like property owner notification.

9 Q. Okay.

10 A. The review of the application would have
11 been Mr. Johnson and myself.

12 Q. All right.

13 Okay. Hold on.

14 Okay. So I'm showing you what's been marked
15 Plaintiff's Exhibit 8.

16 (EXHIBIT 8, Meeting Minutes, was marked
17 for identification.)

18 BY MS. PEARSON:

19 Q. And I'm going to scroll down. Let me know
20 when to keep scrolling, I guess.

21 A. You can keep scrolling.

22 Q. [Scrolling]

23 A. Keep scrolling.

24 Q. [Scrolling]

25 A. Okay.

1 Q. [Scrolling]

2 A. Okay.

3 Q. [Scrolling]

4 A. Okay.

5 Q. All right. So are these the meetings from
6 the planning commission, I guess, hearing where the
7 application was heard by the planning commission?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. Okay. Did you personally attend this
12 meeting?

13 A. I just noticed that my name wasn't included.
14 But I feel pretty sure I was there.

15 Q. Okay. So looking at the DEFS0094, in item
16 -- I guess it looks like Item C, which is the
17 discussion of Dan Stacy for the amendment to the
18 Marlin Quay PD, correct?

19 A. Yes.

20 Q. And these questions are in your capacity as
21 the county representative.

22 So Mr. Boyd presented the staff report on
23 behalf of the planning staff; is that correct?

24 A. Yes.

25 Q. Okay. And was that because he was the

1 director of the planning department at the time?

2 A. Yes.

3 Q. Okay. So in this first paragraph here, is
4 he primarily comparing MQ-2 and MQ-3?

5 A. Yes.

6 Q. Okay. And why was that one of the main
7 points of his presentation to the planning
8 commission?

9 A. Because the planning commission already
10 reviewed MQ-2, recommended approval. So this is an
11 explanation for why we're here and what's different
12 this time, what's different about MQ-3 from what
13 you already saw for MQ-2.

14 Q. Okay. And so here he's talking mostly about
15 the things that have not changed between MQ-2 and
16 MQ-3. Is that...

17 A. Well, I think he's talking about the things
18 that have and have not changed.

19 Q. Is there a reason why these particular
20 characteristics were selected for comparison
21 between MQ-2 and MQ-3 for presentation to the
22 planning commission?

23 A. I think staff felt that those would be
24 important factors for this case.

25 Q. Why wasn't the primary comparison -- I guess

1 there's really not much of a discussion between --
2 or of a comparison between MQ-3 and the original
3 marina store and snack bar; is that correct?

4 A. Yes. In this paragraph, yes.

5 Q. Okay. And do you know why that was, why he
6 wasn't comparing MQ-3 with the marina restaurant
7 and snack bar?

8 A. Because the planning development was already
9 amended to MQ-2 at that point. This was a further
10 amendment to MQ-2 to MQ-3.

11 Q. Okay. So you're saying that -- or is it the
12 county's position that they had amended the Marlin
13 Quay PD to allow for MQ-2, but -- even though the
14 Court later found that MQ-2 was not permissible?

15 MS. GOLDING: Object to the form of the
16 question.

17 THE DEPONENT: Do I need to go ahead
18 and try to answer that?

19 BY MS. PEARSON:

20 Q. Yes.

21 A. Can you ask it again?

22 Q. So the county understood that -- or it's the
23 county's position that it -- it had amended the PD
24 to permit MQ-2, even though the Court later found
25 that MQ-2 could not be built?

1 A. Yes, the county amended the PD for MQ-2.
2 And this was a subsequent request to further amend
3 the PD, based on the Court Order.

4 Q. Okay. And then here you have the same --
5 essentially the same -- the reasons that we just
6 talked about, the current flood ordinance and the
7 building being located over the property line,
8 right?

9 A. Yes.

10 Q. So -- and if -- there wouldn't have been
11 anything else that Mr. Boyd would have presented to
12 the planning commission, at least orally, other
13 than what's included in these minutes; is that
14 right?

15 A. Not that I'm aware of. Certainly the
16 minutes are not a transcript, so they don't capture
17 everything that Mr. Johnson said.

18 Q. Okay. Well, personally, you said you're
19 pretty sure you remember being there. Is there
20 anything else that you remember Mr. Johnson saying
21 other than what's included on this staff report?

22 A. No.

23 Q. Or not staff report; meeting minutes, sorry.

24 A. There could be some confusion in my mind
25 between this meeting and the last one as well.

1 Q. Sorry. When you say "the last one," what do
2 you mean?

3 A. The last time they came before the planning
4 commission.

5 Q. So for MQ-2?

6 A. Yes.

7 Q. Okay. I'm showing you what's been marked
8 Plaintiff's -- I can't even see the number --
9 Exhibit 15.

10 (EXHIBIT 15, Section of the Georgetown
11 County zoning ordinance dealing with
12 off-street parking requirements, was
13 marked for identification.)

14 BY MS. PEARSON:

15 Q. Can you see that?

16 A. Yes.

17 Q. Okay. And are you -- well, I guess I'll
18 scroll through them.

19 [Scrolling]

20 Q. And if I don't -- I mean, I'll ask you
21 specific questions about these, so I don't know if
22 you need to read this in its entirety. I'm just
23 going to at least first establish that you've seen
24 these before. Is that -- is that fair? Because
25 it's pretty long.

1 A. Have I seen these before?

2 Q. Yeah.

3 A. Yes.

4 Q. Okay. And what are -- what is this

5 document?

6 A. This is a section of the Georgetown County
7 zoning ordinance dealing with off-street parking
8 requirements.

9 Q. Okay. And so in the start of this
10 paragraph, it -- or the first section, it says
11 "Intent." So it says, "It is the intent of this
12 section to establish standards for the provision of
13 off-street parking facilities throughout the
14 unincorporated area of Georgetown County. These
15 standards will assist in improving the appearance
16 and safety of required parking facilities while
17 promoting desirable development, thereby improving
18 the public health, safety and general welfare of
19 the community."

20 So these parking regulations are for
21 purposes of permitting, you know, public health and
22 safety and welfare, generally?

23 A. Yes, that's typically the purpose of zoning
24 in general.

25 Q. Okay.

1 All right. And just to start off and
2 clarify, these are questions I'm asking you in your
3 capacity as Georgetown County's representative.

4 So do these off-street parking regulations
5 apply to the Marlin Quay PD?

6 A. Planned development allows for flexibility
7 in terms of zoning requirements. So we would use
8 this section as a guide in making some
9 determinations about parking. But the letter of
10 the law does -- this does not rule the PD. The PD
11 requirements are what's in place in terms of Marlin
12 Quay PD.

13 Q. Okay. And where in the Georgetown County
14 zoning ordinance does it provide for an exception
15 for PDs to the parking requirement?

16 A. I think if you look in the planned
17 development section, it talks about flexibility and
18 the creation of a separate zoning district, with
19 its own conceptual plan.

20 Q. Okay. So does the section regarding
21 flexibility say anything specifically about
22 parking?

23 A. I do not recall.

24 Q. Do you recall what section you're talking
25 about generally?

1 A. It's in Article 6, Planned Developments.

2 Q. Okay. So basically you're saying that the
3 flexible -- the provisions relating to planned
4 development districts provide flexibility and,
5 therefore, specific -- the specific parking
6 regulations don't apply to planned districts?

7 A. I think the parking regulations are used as
8 a guide, but the planned development zoning stands
9 on its own. What's approved for that PD, it
10 becomes its own zoning district with its own
11 standards.

12 Q. Does the Marlin Quay PD provide for parking
13 standards?

14 A. The Marlin Quay PD goes back to the '80s,
15 and the approval is that original conceptual plan.

16 Q. Okay. But does that original conceptual
17 plan say how much parking has to be provided?

18 A. I don't recall.

19 Q. Did the county look at the old, the original
20 Marlin Quay PD to evaluate how many parking spots
21 or what parking was required when evaluating this
22 application?

23 A. Yes, we would have reviewed anything in the
24 old files that was there.

25 Q. So you're saying the county would have

1 reviewed the old file, but you don't know what it
2 said with respect to parking?

3 A. Yeah, I don't remember specifically what was
4 in there about parking regulations.

5 Q. So then how do you know that the original
6 Marlin Quay PD required parking regulations at all?

7 A. I don't. I'm just saying if there was
8 information in there, we would have looked at the
9 old documents and old files as part of our review.
10 But I don't remember specifically what it said
11 about parking.

12 Q. So you don't know whether or not the
13 application -- or the county doesn't know whether
14 or not the application would have met the parking
15 requirements for the original Marlin Quay PD?

16 A. I'm not sure what you mean when you say
17 "application."

18 Q. Well, when evaluating the application for
19 MQ-3.

20 A. Well, once the PD is amended and the request
21 for MQ-3 and that site plan approved, then that
22 parking layout becomes the approved conceptual plan
23 and the approved zoning for the PUD.

24 Q. Well, right. But I'm saying before that
25 actually happened, what did the county do to

1 evaluate whether or not the -- you know, the site
2 plan in the application met the parking
3 requirements for the original Marlin Quay PD?

4 A. We would have reviewed the previous layouts
5 and the previous plans. To my recollection, there
6 was just a conceptual plan that showed a parking
7 lot. And again, the -- in this case, the PD was
8 already amended for MQ-2. So if the plan that
9 we're reviewing is what was approved for MQ-2 and
10 comparing this plan to that, the parking layout did
11 not change from MQ-2 to MQ-3.

12 Q. Okay. Looking back at Plaintiff's Exhibit
13 2, are there any -- are there any parking spaces
14 shown in the parking lot on this PD, original PD?

15 A. I don't see any.

16 Q. Okay. You said the off-street parking
17 regulations are used as a guide for PDs; is that
18 correct?

19 A. Yes.

20 Q. Okay. So looking at these parking
21 requirements -- they're out of order.

22 All right. Looking down, if you were --
23 okay. Looking at Parking Space Requirements,
24 Minimum Parking Space Provisions. Does this --
25 this sets the parking requirements for different

1 types of uses under Georgetown County zoning
2 ordinance; is that correct?

3 A. Yes.

4 Q. Okay.

5 All right. So looking at this on DEFS00145,
6 restaurant, fast food, one space per 75 square feet
7 -- sorry. Restaurant standard -- I'm sorry. One
8 space per 100 square feet of gross floor area, plus
9 one space of 150 square feet of outdoor seating
10 area.

11 Is this the parking standard that would
12 govern Gulfstream and the MQ-3 building?

13 A. When I said earlier as a guide, yes, that
14 would be probably be the starting place for
15 reviewing parking.

16 Q. Okay. And then there's also marina, one
17 space for three wet slips, plus one space for five
18 dry slips, plus one slip -- space per employee
19 based on the largest shift.

20 Is that the starting point for how many
21 parking spaces the marina would need?

22 A. If we were reviewing that use, yes.

23 Q. Okay. What about the marina store itself
24 inside MQ-3? Would that be considered general
25 retail use, or how is it evaluated when there's two

1 types of uses within the same building?

2 A. Can you scroll down just a little bit?

3 Q. (Complying.)

4 A. Scroll back up.

5 Q. (Complying.)

6 A. I think that the general retail use would
7 probably be the closest.

8 Q. So would the county figure out how much --
9 how many parking spaces were needed for the marina
10 store, you know, on the first level and then figure
11 out how many spaces were needed for the restaurant
12 on the second and third levels of MQ-3?

13 A. I think that's the basic standards we would
14 use, yes.

15 Q. Okay. Shared and Mixed Uses is 1102.3. "If
16 there is more than one principal used in the same
17 building or premise, off-street parking may be
18 provided collectively in the same facility such
19 that the total number of spaces shall equal the sum
20 of the required spaces for each use calculated
21 separately. The parking spaces provided for one
22 use shall not be used to satisfy the requirements
23 -- the required number of spaces for another."

24 Isn't the Marlin Quay PD a -- or the parking
25 lot at the Marlin Quay PD a parking lot that's used

1 for more than one principal use on the same
2 premises?

3 A. Yes.

4 Q. Was any -- okay. Was any evaluation done by
5 the county of whether or not the total number of
6 spaces required for each use -- or I guess just,
7 was there any calculation done by the county under
8 this first paragraph regarding parking spaces
9 required for Gulfstream, the marina and MQ-3?

10 A. Not to my knowledge. Not that I calculated.

11 Q. Okay. And then it says cumulative parking
12 requirements for misuse occupation -- sorry.

13 When you said not that I -- that question
14 was based on your capacity as the county
15 representative. So I'm asking you, do you know as
16 the county representative whether that calculation
17 was done?

18 A. Not that I'm aware of as the county
19 representative.

20 Q. All right. And then the next is "cumulative
21 parking requirements for mixed-use occupancies may
22 be reduced or can be determined by the zoning
23 administrator that the peak requirements of several
24 occupancies occur at different times, either daily
25 or seasonally, and the parking demand can be

1 provided on the premises. The number of parking
2 spaces required is determined by totaling the
3 resulting number of each column. The column total
4 that generates the highest number of parking spaces
5 then becomes the parking requirements."

6 And then it has a lot of of -- it's got
7 Shared Parking Factors and Percentages.

8 Did the zoning administrator do any
9 calculation under this paragraph or the below table
10 with respect to the county's evaluation of the
11 application to approve MQ-3?

12 A. No.

13 Q. All right. So looking back at Plaintiff's
14 Exhibit 9, in Paragraph 4 -- and this is similar to
15 the staff plan that we looked at. It says, "The
16 site contains a total of 62 spaces. This exceeds
17 the zoning ordinance requirement of 51 spaces for
18 the proposed building."

19 So if, like you said, the parking
20 requirements didn't apply, why was this evaluation
21 done with respect to the application for the number
22 of parking spots that was required for MQ-3?

23 A. I said I think we used that restaurant
24 calculation and the marina store calculation as a
25 guide to determine the amount of spaces that would

1 be needed for MQ-3 as some sort of basis for the
2 parking.

3 Q. But then the county did no evaluation of how
4 many parking spaces were required for Gulfstream or
5 the marina store, even though they shared the
6 parking lot with MQ-3? Or, excuse me, just the
7 marina?

8 A. Correct. Because the site as a whole, in
9 terms of parking, was nonconforming. So our goal
10 here was to make sure we were maintaining the
11 capacity from the previous building.

12 Q. All right. I'm showing you what has been
13 marked Plaintiff's Exhibit 41, which is DEFS00138.

14 (EXHIBIT 41, Email chain, was marked
15 for identification.)

16 BY MS. PEARSON:

17 Q. Do you need -- I'll give you a minute to
18 look this over.

19 A. Can you scroll back up just a minute?

20 Q. Yeah.

21 A. You can scroll up.

22 Q. [Scrolling]

23 A. Go down one more time?

24 Q. [Scrolling]

25 A. Okay.

1 Q. Okay. So here it says -- all right. So
2 there's an email from Joanne Ochal to, I guess,
3 Heather Cakert, I don't know what that -- who is
4 she?

5 A. I believe Heather was previously with SGA.

6 Q. Okay. And then you and Mr. Johnson are
7 cc'd. From Ms. Ochal, has -- "Heather, here's a
8 summary from what I understood from our meeting.
9 Proposed unheated area is 4,250, can be constructed
10 as long as parking can be met. The parking
11 calculations have been confirmed. There's adequate
12 parking on the site."

13 And I understand, this is an email -- is
14 this email discussing MQ-2, do you know?

15 A. That is my best guess.

16 Q. Okay. And so it says as long as -- parking
17 is -- you know, can be constructed as long as
18 parking calculation -- parking can be met.

19 What parking had to be met? What is that
20 talking about?

21 A. It's hard for me to say what Joanne meant
22 here. I'm assuming she meant that they could
23 demonstrate onsite that there was enough parking
24 for the 4,250 square feet.

25 Q. How would someone -- or how would someone

1 demonstrate onsite?

2 A. Well, at this point, we had a plan that
3 showed the individual parking spaces on the lot,
4 presumably. So we didn't know --

5 (Indiscernible crosstalk.)

6 BY MS. PEARSON:

7 Q. All right.

8 A. -- how much parking was there.

9 Q. It says, "The parking calculations have been
10 confirmed."

11 What calculations is that referencing?

12 A. I don't know.

13 Q. Do you know the basis for her statement --
14 or okay. Why were parking calculations being done
15 if the zoning ordinance parking regulations we just
16 looked at were just a guide?

17 A. Because we needed to be able to say whether
18 or not they meet the guide. We need to be able to
19 make a statement about parking on the site in
20 general. So we used the requirements from the
21 ordinance for a restaurant as a guide to look at
22 how much parking spaces they have and how much
23 would typically be required.

24 Q. So is it used as a guide to determine how
25 much parking should be provided?

1 A. It's used as a guide to review the plan that
2 they submitted.

3 Q. To see whether or not it should be approved
4 because it did or did not provide adequate parking?

5 A. To see how what they're showing falls in
6 line with the guide of the parking ordinance.

7 Q. Do you know the basis for the statement that
8 there is adequate parking on the site?

9 A. I think that's looking at the total number
10 of spaces on the site and the amount that was
11 needed for the proposed store and restaurant, that
12 there was enough parking spaces on the site for the
13 proposed building they were talking about.

14 Q. Under the parking regulations?

15 A. Under the guide that she was using.

16 Q. Which was what?

17 A. Which I think would be the 100 -- 100 square
18 feet of floor area and 150 for outside. But that
19 is me presuming what she meant in her email.

20 Q. Okay. Were you personally in attendance at
21 the meeting that Joanne is summarizing for Heather?

22 A. I do not recall. Maybe.

23 Q. All right. I am going to show you you what
24 I'm marking Plaintiff's Exhibit 1.

25 (EXHIBIT 1, Regulations from Georgetown

1 County zoning ordinance related to
2 planned districts, was marked for
3 identification.)

4 BY MS. PEARSON:

5 Q. Can you see that?

6 A. Yes.

7 Q. And I'm actually going to scroll through to
8 later down in the document. And then I believe, is
9 this what you were referring to earlier that --
10 starting with 619 Planned Development District, the
11 regulations from Georgetown County zoning ordinance
12 related to planned districts?

13 A. Yes.

14 Q. Okay. If you'll read this for me, or just
15 read it to yourself and let me know when to scroll.

16 A. You can scroll down.

17 Q. [Scrolling]

18 A. You can scroll.

19 Q. [Scrolling]

20 A. You can scroll.

21 Q. [Scrolling]

22 A. Scroll.

23 Q. [Scrolling]

24 A. Scroll.

25 Q. [Scrolling]

1 A. You can scroll.

2 Q. [Scrolling]

3 A. You can scroll.

4 Q. [Scrolling]

5 A. Scroll.

6 Q. [Scrolling]

7 A. Scroll.

8 Q. [Scrolling]

9 A. Scroll.

10 Q. [Scrolling]

11 A. Okay. I'm good.

12 Q. Okay. Where in this -- in this regulation
13 is the provision that you're relying on to say that
14 the parking requirements didn't have to be used for
15 a PD, or didn't necessarily apply to a PD?

16 A. In the intent, it talks about "flexible and
17 diversified land development standards under
18 comprehensive plan and program, as professionally
19 prepared."

20 Q. Okay. So you read that general sentence to
21 allow the county to disregard the parking
22 regulations with respect to the application at
23 issue in this case?

24 MS. GOLDING: Object to the form of the
25 question, with the use of the word

1 "disregard."

2 THE DEPONENT: I think it gives us -- it
3 gives the applicant the flexibility to
4 propose something different. Then that gets
5 reviewed and considered whether it should be
6 approved as part of the planned development.

7 BY MS. PEARSON:

8 Q. Is there any other provision that you're
9 relying on, or the county would rely on for that
10 conclusion?

11 A. Can you scroll down a little bit?

12 Q. [Scrolling]

13 A. All right. Under 619.2, "Any requests
14 pertaining to the establishment of a planned
15 development district shall be considered an
16 amendment to the zoning ordinance."

17 So it's in addition to the zoning ordinance.
18 It becomes its own ruling document, the conceptual
19 plan that's submitted.

20 Q. Do other types of rezoning applications have
21 to follow the Georgetown County's parking
22 regulations?

23 A. Other types of rezoning applications?

24 Q. Yeah. So if somebody wants to rezone from
25 office to residential, do they have to follow the

1 parking requirements from Georgetown County zoning
2 ordinance?

3 A. Well, a request for a rezoning change that
4 didn't involve a planned development, or what we
5 call flexible design district, that would just be
6 going from a commercial zoning to a residential
7 zoning, the parking review would not be done as a
8 part of that process. It would simply be, is it
9 appropriate to have residential zoning at this
10 location? The parking would then come when they
11 submit for building permit and when they submit
12 their plan for review under that zoning approval
13 that they received.

14 Another zoning request would not have a
15 conceptual plan involved.

16 Q. Okay. Are there any other provisions that
17 you're relying on for your conclusion that the
18 parking regulations do not apply to planned
19 districts?

20 A. Not that I can think of right now.

21 Q. All right. I am showing you what's been
22 marked Plaintiff's Exhibit 43.

23 (EXHIBIT 43, Map county generated of
24 the individuals located within
25 400 feet, was marked for

1 identification.)

2 BY MS. PEARSON:

3 Q. If you can let me know when to scroll.

4 A. You can scroll.

5 Q. [Scrolling]

6 A. You can scroll.

7 Q. [Scrolling]

8 A. You can scroll.

9 Q. [Scrolling]

10 A. Okay.

11 Q. What is this listed map?

12 A. This looks like the list that usually the
13 applicant or the planning department would have
14 created of people -- of parcels within 400 feet of
15 the property in question for this application
16 request.

17 Q. Okay. So this is what you were talking
18 about earlier with respect to the -- do you think
19 this is the list that the county generated of the
20 individuals who were located within 400 feet?

21 A. I think that it is, although I cannot be
22 certain. But it is in a form that we typically
23 produce.

24 Q. So -- and again, these are questions in your
25 capacity as the Georgetown County representative.

1 Who would have created this list?

2 A. I believe it would have been Judy
3 Blankenship.

4 Q. And so these would have been the individuals
5 to whom the county mailed, I guess, the envelopes
6 that you said the applicant provided?

7 A. Yes.

8 MS. GOLDING: Andrea, what exhibit
9 number is that? I'm sorry, I didn't catch
10 that.

11 MS. PEARSON: This is 43.

12 MS. GOLDING: Okay, thank you.

13 BY MS. PEARSON:

14 Q. Okay. And this map, what is this map of?

15 A. So the -- to create the map, you select the
16 parcels that are in question for the application,
17 and it draws a circle with a 400-foot radius, and
18 all those cross-hatched parcels are what fall
19 within the 400-foot radius of the property.

20 Q. Okay. So when I'm looking at this circle,
21 it -- okay. So anything -- I guess what these
22 little -- when you say the cross-hatch, do you mean
23 the checkers or everything -- because I guess the
24 -- the checker area is bigger than the circle.

25 So --

1 A. So it's picking up anything -- any parcel
2 that touches inside the circle gets included. So
3 that area you see outside the circle just means
4 that those parcel boundaries exceed beyond the
5 400 feet, but some piece of the parcel is within
6 the 400-foot radius.

7 Q. Okay. We talked a little bit earlier about
8 the Marlin Quay condos. I guess the Marlin Quay
9 condo property that the marina restaurant and snack
10 bar used to be located partially on that property?
11 Do you remember we talked about that?

12 A. Yes.

13 Q. So would the Marlin Quay condos be within
14 400 feet of this property subject to this
15 application?

16 A. Yes.

17 Q. And individuals or owners within --
18 individuals within 400 feet of the property subject
19 to the application were supposed to receive a
20 mailed notice of the application to amend the PD
21 under the ordinance?

22 A. The owners of the parcels that are included
23 in that 400-foot radius would be on that list
24 there, and they would get a letter from our office.

25 Q. And the reason the owners -- the reason that

1 they would get the notice is based on the
2 Georgetown County ordinance requirements; is that
3 correct?

4 A. That is an ordinance requirement with the
5 400-foot radius.

6 (EXHIBIT 45, Email chain, was marked
7 for identification.)

8 BY MS. PEARSON:

9 Q. Okay. I'm showing you what's been marked
10 Plaintiff's Exhibit 45, if you want to take a
11 minute to read this over.

12 A. You can scroll up.

13 Q. [Scrolling]

14 A. Scroll up.

15 Q. [Scrolling]

16 A. Okay.

17 Q. [Scrolling]

18 A. Okay.

19 Q. All right. So it looks like Ms. Coleman --
20 and who's Ms. Coleman, Tiffany Coleman?

21 A. She's the Associate Planner in our
22 department.

23 Q. Okay. So it looks like she perhaps emailed
24 notice to Nancy G. at Surfside Realty. Do you know
25 who Nancy G. is?

1 A. I believe she is the -- I don't know if
2 "office manager" is the right word, but Surfside
3 Realty manages the POA for the condos, is my
4 understanding, or did at the time.

5 Q. What is the POA?

6 A. The property owners association. It may
7 actually be the homeowners association for the
8 residents of the condos at Marlin Quay.

9 Q. Okay. So then Nancy, I guess at the bottom,
10 Ms. Lowry is -- Ms. Lowry says to Ms. Coleman --
11 and you are cc'd and so is Ms. Gardner -- that --
12 she says that in this last paragraph, I guess, she
13 says, "I own two units within 400 feet of the
14 subject property, and I did not receive this notice
15 in the email."

16 So she is saying she is an owner of the
17 condos. And then Nancy says that -- to -- I guess
18 cc'g or responding back to the whole group, that
19 "I did send the notice you sent the association to
20 all owners whose email address the management
21 office had on record."

22 So did the condo owners receive, I guess,
23 notice from Ms. Coleman via email to the office
24 manager of the POA?

25 A. Yes.

1 Q. Okay. But those owners did not actually
2 receive letters from the county or the applicant
3 regarding the application?

4 A. I think I saw on the list of property owners
5 the HOA listed as one tax map number. So we would
6 have sent it to whoever is listed on the tax map
7 number for that parcel.

8 In this case, we also knew that Nancy
9 handled the HOA and had that contact information,
10 which we did not have on our GIS mapping system.
11 So we took the extra step of e-mailing Nancy the
12 notice letter so she would have it to distribute to
13 the individual owners in the condos.

14 Q. Okay. Let's look back at Exhibit 43. Where
15 are you saying you saw the letter to the homeowners
16 association?

17 A. Number 23 at the bottom, Marlin Quay
18 Homeowners Association.

19 Q. So is it the county's position that since
20 notice -- or a letter was sent to the homeowners
21 association, it did not have to be sent to each
22 individual condo owner?

23 A. Like I said earlier, we sent letters based
24 on the best information we have. We draw the
25 400-foot radius on the map, and all the parcel

1 names and addresses that come up get a letter from
2 our office. In this case, we did know there were
3 individual homeowners, so we did our best faith
4 effort to contact them through Nancy Gardner to be
5 sure they were notified. And it's my understanding
6 that what Tiffany sent is what went out as a
7 hardcopy letter to the others.

8 Q. Okay. But the best information -- I guess
9 -- it was sent to the -- Nancy Gardner via email,
10 right, not individual letter?

11 A. I'm not sure who would have gotten the
12 individual letter for Marlin Quay homeowners
13 association, but based on the this list, it looks
14 like we would have sent a letter to that address.
15 I don't know if that went to Nancy Gardner or who
16 it went to.

17 Q. All right. But I guess your understanding
18 is that the letter -- a letter was sent to the
19 Marlin Quay homeowners association and not to
20 individual condominium owners, right, via letter?

21 A. Via Postal Service, snail mail.

22 Q. Correct. So that's correct?

23 A. Yes.

24 Q. Isn't it the applicant's responsibility
25 under the ordinance to actually provide the list of

1 who should receive the notice?

2 A. We would not solely rely on a list provided
3 by the applicant. We would create the list to be
4 sure that everyone within 400 feet was included.

5 Q. Okay. But it is a responsibility of the
6 applicant under the ordinance to provide a list of
7 property owners to whom letters are supposed to be
8 addressed, correct?

9 A. I'd have to look at that amendment language
10 again, but I believe it says "list."

11 Q. Okay. So looking at 1702.206, it says, "A
12 list of all property owners, as reflected by the
13 tax records to whom letters are addressed, must
14 accompany the application"?

15 A. Yes, it does say that.

16 Q. And the applicant failed to do that here in
17 this -- in this application?

18 A. Again, I don't believe that was in the
19 application that we scrolled through earlier from
20 your exhibit. There was a list --

21 Q. Do you have any -- go ahead.

22 A. There was a list in the file that likely was
23 prepared by our office.

24 Q. All right. I am going to show you you
25 what's been marked Plaintiff's Exhibit 27.

1 (EXHIBIT 27, Previous application filed
2 for approval of a major change for
3 MQ-2, was marked for identification.)

4 BY MS. PEARSON:

5 Q. All right. And I'll give you a minute to
6 just generally look at this, unless you need to
7 read it in its entirety just to be familiar with
8 it. So just let me know when you feel comfortable
9 for me to scroll.

10 A. You can scroll.

11 Q. [Scrolling]

12 A. You can scroll.

13 Q. [Scrolling]

14 A. You can scroll.

15 Q. [Scrolling]

16 A. Scroll.

17 Q. [Scrolling]

18 A. You can scroll.

19 Q. [Scrolling]

20 A. You can scroll.

21 Q. [Scrolling]

22 A. Okay. Can you go back up just a little?

23 Q. Sure.

24 A. Thank you. Okay.

25 Q. [Scrolling]

1 A. Okay.

2 Q. [Scrolling]

3 A. Okay.

4 Q. [Scrolling.]

5 A. Okay.

6 Q. [Scrolling.]

7 A. Okay.

8 Q. All right. Okay. Are you okay with it?

9 A. Yes.

10 Q. Okay. So looking at Plaintiff's Exhibit 27,
11 is this the previous application filed for, I
12 guess, approval of a major change for MQ-2?

13 A. That's what it appears to be, yes.

14 Q. So looking at this, the property -- I guess
15 the type of regulation to which you were requesting
16 an amendment, it says "other change of building
17 location" and then TMS number 41-1029-002-00-00.
18 Is that -- I'm going to have to pull that back up
19 -- the same tax part -- TMS number as the current
20 application?

21 A. It looks like there's an additional one.

22 Q. So for "change of building location," are
23 these the same type of change requested for the two
24 applications?

25 A. The same type of change. I don't think it

1 is the same change.

2 Q. Okay. And they're both applications for a
3 major change, is that correct, to the PD?

4 A. Yes.

5 Q. Okay. Do you recall when the planning
6 commission heard the -- had the hearing on the
7 application in Exhibit 27?

8 A. I want to say December 21st.

9 Q. Of 2017?

10 A. I believe so, yeah, but I'm not certain.

11 Q. Okay. But you recall it was essentially
12 December of 2017?

13 A. Can you scroll up and let me see that AMPD
14 number?

15 Q. [Scrolling.]

16 A. I think that's correct.

17 Q. Okay.

18 All right. Looking back at Exhibit 1, 7201,
19 I'm looking at Eligible Applicants. About halfway
20 through, it says, "Provided, however, that action
21 shall not be initiated for zoning amendment
22 affecting the same parcel or parcels of property or
23 any part thereof and requesting the same change in
24 district classification by a property owner or
25 owners of more often than once every 12 months

1 measured from the date of the original
2 recommendation by the planning commission."

3 So if the planning commission had its
4 meeting on the application for MQ-2 in December of
5 2017 and the application for MQ-3 was submitted in
6 August of 2018, how did -- why wasn't that a
7 violation of the provision of the ordinance?

8 A. Because they were not asking for a change in
9 district classification. This was a PD in 2017,
10 and it was still a PD after their request in 2018.
11 And they were not requesting the same change. The
12 plans changed, and they were required to change per
13 the Court Order. So it was not the same plan that
14 was being reviewed, so it was not the same change
15 in district classification.

16 Q. All right. So let me unpack that a little
17 bit.

18 You said so they weren't -- your position --
19 or the county's position is that they were not --
20 the application -- that the application did not
21 request a change in district classification; is
22 that correct?

23 A. The zoning district was the same in both
24 applications.

25 Q. Okay. But for a PD, you said that PDs are

1 essentially their own zoning category, basically,
2 and that when a new PD is approved, it becomes its
3 own new zoning category.

4 So wouldn't a change from one PD to another
5 be a district change?

6 A. I wouldn't call it a change in zoning
7 district. It's a major change to the zoning
8 district, but it's not a change in the district.

9 Q. Okay. And then you said -- let me see what
10 you said.

11 And why is it that you think -- what does
12 the county think that they were not requesting the
13 same change?

14 A. Because the whole purpose behind the
15 submittal for MQ-3 was because MQ-2 could not be
16 built based on the Court Order. So they had to
17 change the plan for MQ-3 so that the plans were
18 different. It was not the same plan.

19 Q. So even though they were both requesting
20 major changes to the PD, it's the county's position
21 that they were not asking for the same change
22 because the applications were seeking approval of
23 different plans?

24 A. Yes, the request was different between MQ-2
25 and MQ-3.

1 Q. All right. So looking at 1702.201,
2 "Applications for all amendments must be submitted
3 in proper form at least 30 days prior to a planning
4 commission meeting in order for them to be heard at
5 that meeting."

6 And then it says, "Amended ordinance
7 2020-05." Did that requirement used to be 45 days,
8 or was it 45 days at the time this -- the
9 application was submitted?

10 A. Yes. It was 45 days at the time this
11 application was submitted.

12 Q. Okay. So is it the county's position that
13 even though the final plans were not included in
14 the original application, the application was still
15 submitted in proper form?

16 A. Yes.

17 Q. Why is that?

18 A. The application was complete in order to
19 begin the process, in order to start the process
20 for an amendment to the PD for a major change.

21 Q. When you say complete to start the process,
22 what do you mean?

23 A. To initiate the file, so start the
24 notification process to be placed on the agenda for
25 the next available meeting.

1 Q. So even though -- so does the county --
2 okay. So even though, for example, the list wasn't
3 included, the county thought that the application
4 was complete enough to, I guess, maybe essentially
5 -- for it to be -- the application to be in proper
6 form?

7 A. Yes. The applicant provided the envelopes
8 that are required. That is the purpose of the
9 list, is to generate the envelopes that go out to
10 notify those within 400 feet. We generate the list
11 ourselves to check those envelopes. So the whole
12 purpose is to make sure that the appropriate people
13 are included. The applicant provided the stamped
14 envelopes at that time. We created the list and
15 checked the envelopes.

16 Q. Isn't part of the purpose in making sure
17 the, I guess, relevant information is provided in
18 an application so that, you know, neighbors and
19 other concerned citizens can review the materials
20 and understand whether or not they need to
21 participate in the public process of, you know,
22 meetings and if they want to oppose the
23 application?

24 A. Well, the purpose of the notice is to make
25 neighbors aware of the meeting. There is a meeting

1 happening about a rezoning or a major change within
2 400 feet of you. That's the notice requirement,
3 and that's the notice that goes out. It gives them
4 information about when the meeting is, who to call
5 and a location map so they know exactly where it
6 is.

7 The notice doesn't include detailed maps and
8 that type of information. Now, once that
9 information is provided to us, it's public
10 information, and we are happy to share that with
11 anybody that requests it.

12 Q. And how is the county able to start the
13 process of reviewing this application when, you
14 know, the elevation plans and some of the other
15 documents that we looked at that were later
16 provided by Dan Stacy, when those were not
17 initially included?

18 A. When you say "this application," which one
19 are we referring to now?

20 Q. The application for MQ-3.

21 A. Okay. So repeat your question, please.

22 Q. So how -- you said that the application was
23 complete enough for the county to start the process
24 of, you know, initiating the file. How was it able
25 to start that process when, I guess, the majority

1 of the plans for the building change were not
2 included at the time of the original application?

3 A. Well, again, this was an amendment from MQ-2
4 to MQ-3. So we did have the site plan to see where
5 that footprint would be. The background
6 information was the same.

7 Q. I thought you said that the footprint for
8 MQ-2 and MQ-3 had to be totally different because
9 of the Court Order.

10 A. Yes. But when we went through that
11 application exhibit, they submitted a site plan
12 along -- there were plans submitted, so that was
13 enough to begin our review.

14 Q. Does the county often evaluate applications
15 that only include a partial set of plans?

16 A. It is very typical, especially in dealing
17 with planned developments and things where we have
18 more conceptual plans, for there to be a
19 back-and-forth between staff and an engineer or a
20 developer or an architect. As we review and see
21 the need for more things, as things get fleshed
22 out, we may have questions, other entities may have
23 questions. So it's very typical to get information
24 later in the process.

25 Q. So you're saying it is typical for the

1 county to get applications that have incomplete
2 sets of plans and to continue reviewing them, or to
3 start reviewing them?

4 MS. GOLDING: Object to the form of the
5 question.

6 You can go ahead and answer.

7 THE DEPONENT: I wouldn't say
8 incomplete, but it is typical that
9 additional information comes later in the
10 process.

11 BY MS. PEARSON:

12 Q. All right. I'm going to show you you what
13 I'm marking Plaintiff's Exhibit 11.

14 (EXHIBIT 11, Letter from Adam Nugent,
15 was marked for identification.)

16 BY MS. PEARSON:

17 Q. And I'll let you have a minute to look this
18 over.

19 A. Can you scroll up just a bit?

20 Q. Uh-huh. [Scrolling]

21 A. Okay.

22 Q. [Scrolling]

23 A. Okay.

24 Q. [Scrolling]

25 A. Okay.

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1 Q. [Scrolling.]

2 A. Okay.

3 Q. [Scrolling.]

4 A. Can you scroll down just a bit?

5 Q. (Complying.)

6 A. Okay.

7 Q. [Scrolling.]

8 A. Okay.

9 Q. [Scrolling.]

10 A. Okay.

11 Q. [Scrolling.]

12 A. Okay.

13 Q. All right. So this is Plaintiff's Exhibit

14 11. And it's a letter from Adam Nugent at our firm

15 to Georgetown County county council. There's

16 several notes on this document. Do you know whose

17 notes those are?

18 A. Yes.

19 Q. Whose are they?

20 A. They're mine.

21 Q. They're your notes? Okay.

22 And essentially these notes are discussing,

23 frankly, a lot of the issues we've already gone

24 over. So I just want to see if there's anything

25 specific.

1 Did the county do anything to evaluate
2 whether or not the Gulfstream Café and the MQ-3
3 would be operating the -- or opened and serving
4 customers at the same time of day, such that their
5 customers would be sharing the parking lot at the
6 same time?

7 A. No.

8 Q. What was that?

9 A. No.

10 Q. All right. So when you say -- so when we
11 are talking about the number of square feet that
12 the marina, restaurant and snack bar -- this letter
13 says it's 70 feet. So you say -- Lawhon says it
14 was 110. So your understanding is 110, was that it
15 came from Dr. Lawhon?

16 A. Best I can remember. It came from the
17 applicant in general, someone with the applicant.

18 Q. So other than what we've talked about, did
19 the county do anything to evaluate or address the
20 concerns that are raised in this letter by
21 Gulfstream?

22 A. I think our explanations are provided in the
23 letter there. You know, I think that is my review
24 of the letter, and I was sort of addressing those
25 statements as they were brought about.

1 Q. And when I hear you say in, you know --
2 sorry.

3 Here it says, "Critically, the planning
4 staff analysis ignores the other uses of the
5 parking lot."

6 You say, "The new building is a replacement
7 of what was there previously; therefore, new
8 requirements for the whole side did not kick in."

9 Is that what we were talking about earlier,
10 the nonconforming use discussion?

11 A. Yes.

12 Q. And as the county representative, are you
13 aware of -- you know, at the various meetings, the
14 Plaintiff in this case and then citizens have
15 raised concerns regarding crowding of the parking
16 lot, even as it currently is being used, before
17 MQ-3 being built?

18 A. Am I aware of that, from what source did you
19 say?

20 Q. Various citizens speaking at different
21 public meetings on the application.

22 A. I don't recall that specifically. I can't
23 say it didn't happen. But I don't recall specific
24 comments about the overcrowded parking lot.

25 Q. All right. I am showing you what's being

1 marked Plaintiff's Exhibit 13.

2 (EXHIBIT 13, Meeting Minutes, was
3 marked for identification.)

4 BY MS. PEARSON:

5 Q. If you want to take a minute to look at
6 this.

7 A. Okay. Let's see. Scroll down.

8 Q. [Scrolling.]

9 A. Okay. Scroll up.

10 Q. [Scrolling.]

11 A. Scroll up.

12 Q. [Scrolling.]

13 A. You can scroll up.

14 Q. [Scrolling.]

15 A. Scroll down just a bit.

16 Q. [Scrolling.]

17 A. Okay. You can scroll up.

18 Q. [Scrolling.]

19 A. Keep scrolling.

20 Q. [Scrolling.]

21 A. Keep scrolling.

22 Q. [Scrolling.]

23 A. Keep scrolling.

24 A. Okay.

25 Q. [Scrolling.]

1 A. You can keep scrolling.

2 I think that's the end of the Marlin Quay.

3 Q. Okay. So are these meeting minutes for the
4 December 11, 2018, I guess the second reading on
5 the application for the county council meeting?

6 A. Yes.

7 Q. Okay. And does this refresh your
8 recollection on, I guess, the -- again, these are
9 questions on behalf of the county -- that citizens
10 or, you know, people spoke during the public
11 comments expressing concern over overcrowding and
12 safety related to the parking situation for the
13 application?

14 A. I think on behalf of the county, I can say
15 based on these minutes, there were people there
16 that spoke on the parking situation.

17 Q. Okay.

18 A. I personally was not at this meeting.

19 Q. Okay. Did the county do anything to address
20 or evaluate concerns related to overcrowding or
21 safety for the parking lot with respect to the
22 application?

23 A. Not beyond the review that we've already
24 talked about.

25 Q. All right. If you don't -- I may take,

1 like, five or so minutes just to review my notes
2 and kind of see if -- I don't think there's much
3 left, and I don't think Ms. Blankenship will take
4 very long. So maybe like ten minutes and we can
5 come back and finish up with Ms. Richardson and go
6 to Ms. Blankenship?

7 MS. GOLDING: That would be fine.

8 Thank you.

9 (A recess transpired from 3:34 p.m.
10 through 3:46 p.m.)

11 BY MS. PEARSON:

12 Q. All right. And I am -- all right. Looking
13 back at Plaintiff's Exhibit 6, and this is the
14 staff report. And you said earlier that the staff
15 report would include the number of people that
16 received the notice that was on -- I believe you
17 said like hardcopy of the PD file; is that right?

18 A. Yes, but I can't see the exhibit. Am I
19 supposed to?

20 Q. Oh, I'm sorry. It's getting -- all right.
21 Now can you see it?

22 A. Yes.

23 Q. All right. Where is that number in this
24 staff report?

25 A. Scroll down all the way to the bottom.

1 Q. [Scrolling.]

2 A. On the Public Notification, it says "Number
3 Notified: 23."

4 Q. And 23, does that match up with the list
5 that we saw a few minutes ago of the people that
6 the county -- the county-generated list of people?

7 A. It should, yes. I think the last number on
8 there was 23.

9 Q. Got it, okay.

10 All right. And then also in this staff
11 report -- where did it go?

12 All right. We talked about -- all right.
13 The site -- discussing the parking requirements
14 again. It says, "The site contains a total of 61
15 spaces. This exceeds the zoning ordinance
16 requirement of 51 spaces for the proposed
17 building."

18 How was the 51 space number calculated?

19 A. I don't have that calculation in front of
20 me. So at best, I'm going to assume how I would
21 have calculated it based on the heated square
22 footage for the restaurant, the outside -- the
23 square footage for the outside, the seating of the
24 restaurant, and then the retail of the marina
25 store, the heated square footage for the marina

1 store.

2 Q. Okay. And did you make any notes or
3 anything of that calculation for this application?

4 A. Potentially. I mean, I may have scribbled
5 some numbers on a piece of paper at the time.

6 Q. I mean basically I'm asking, is there
7 somewhere where the calculation is -- any evidence
8 or document showing that calculation for the -- for
9 this application?

10 A. I can't think of a specific place right now.
11 I may be able to go back and dig back through, but
12 as of right now I can't think of a specific piece
13 of paper that would have that on it.

14 Q. Yeah, if I could ask you to do that.

15 And, Henri, if you'll let us know if any
16 additional documents are found?

17 MS. GOLDING: Sure. No problem. Will
18 do.

19 (This page contains requested
20 information.)

21 BY MS. PEARSON:

22 Q. Okay. And then I am going to show you you
23 what we're marking Plaintiff's Exhibit 39.

24 (EXHIBIT 39, Email, was marked for
25 identification.)

1 BY MS. PEARSON:

2 Q. All right. So this, can you see this email?

3 A. Uh-huh, yes.

4 Q. It's an email from Mr. Johnson to you dated
5 June 11, 2019. And it says, "Let's talk about the
6 procedural problems the Gulf S lawyer is alleging."

7 Do you know -- do you recall what
8 Mr. Johnson -- and this is in your personal
9 capacity -- what Mr. Johnson is -- or what your
10 conversation with Mr. Johnson was?

11 A. No, not specifically.

12 Q. Do you recall generally what you guys
13 discussed?

14 A. Seems like it could have been about the same
15 things we have been talking about; the 45 days, the
16 application submittal, those sort of things. He
17 probably wanted to review those with me.

18 Q. Okay. But you don't remember anything
19 specific about what you guys talked about?

20 A. No. I don't remember anything specifically
21 tied to this email.

22 Q. Do you recall discussing with Mr. Johnson
23 any concerns that y'all had about procedural
24 problems that Gulfstream was alleging at any time?

25 A. I think it would have been the same type of

1 things that were on that letter; you know, our
2 response to those things that the Gulfstream lawyer
3 was bringing up. We certainly reviewed them and
4 talked about them.

5 Q. And your responses are what we've been
6 talking about all day, basically?

7 A. Yes.

8 MS. PEARSON: All right. I think
9 that's it for me.

10 MS. GOLDING: Okay. Do you want to go
11 ahead and start now with the next
12 deposition? With Judy Blankenship?

13 MS. PEARSON: That's fine with me.

14 (The deposition concluded at 3:53 p.m.)
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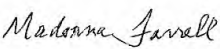
1 CERTIFICATE OF REPORTER

2 I, Madonna M. Farrell, Registered
3 Professional Reporter and Notary Public in and for
4 the State of South Carolina, do hereby certify that
5 the deponent, HOLLY HEMBREE RICHARDSON, was
6 remotely sworn by me to testify to the truth, under
7 the penalty of perjury and that the above
8 deposition, Pages 1 through 161, inclusive, was
9 recorded stenographically by me and transcribed
10 through computer-aided transcription by me to the
11 best of my ability.

12 I FURTHER CERTIFY that the foregoing
13 transcript is a true and correct transcript of the
14 testimony given remotely by the said witness at the
15 time and place specified.

16 I FURTHER CERTIFY that I am neither attorney
17 or counsel for, nor related to or employed by any
18 of the parties to the action in which this
19 deposition is taken, or financially interested in
20 this action.

21 IN WITNESS WHEREOF, I have set my hand and
22 seal this 16th of February, 2021.

23 
24 Madonna M. Farrell
25 Registered Professional Reporter
Notary Public
My commission expires
August 20, 2025

THE GULFSTREAM CAFÉ vs GEORGETOWN COUNTY, ET AL.

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Holly Hembree Richardson on 03/03/2021

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EXHIBIT 34

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.
Lester Boyd Johnson, Jr. on 03/04/2021

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF GEORGETOWN
4 THE GULFSTREAM CAFE, INC.,
5 Plaintiff,
6 vs. CASE NO. 2019-CP-22-00212
7 GEORGETOWN COUNTY, GEORGETOWN COUNTY COUNCIL,
8 JOHN THOMAS, RON CHARLTON, LILLIE JOHNSON,
9 AUSTIN BEARD, STEVE GOGGANS, AND LOUIS MORANT,
10 INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY AS
11 GEORGETOWN COUNTY COUNCIL MEMBERS,
12 Defendants.
13

11 DEPOSITION OF: LESTER BOYD JOHNSON, JR.
12 (Appearing via VTC)
13 DATE: March 4, 2021
14 TIME: 9:11 a.m.
15 LOCATION: 716 Prince Street
16 Georgetown, South Carolina
17 TAKEN BY: Counsel for the Plaintiff
18 REPORTED BY: KAREN M. ERNST, CSR
19 Court Reporter
20 (Appearing via VTC)
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

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15 GOGGANS, AND LOUIS MORANT, INDIVIDUALLY
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24 ALSO PRESENT:

25 HOLLY RICHARDSON (Appearing via VTC)

1 LESTER BOYD JOHNSON, JR.

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. NUGENT:

5 Q. Mr. Johnson, could you state your full
6 name for the record, please.

7 A. Lester Boyd Johnson, Jr.

8 Q. And what's your address, Mr. Johnson?

9 A. 158 Easy Street, E-a-s-y, Street,
10 Georgetown, South Carolina 29440.

11 Q. And what's your date of birth,
12 Mr. Johnson?

13 A. July 19th, 1955.

14 Q. And just so we get an introduction out
15 of the way -- I know we introduced ourselves before
16 we got on the record -- but my name is Adam Nugent,
17 and I represent the Gulfstream Cafe, Inc., and I'll
18 be taking your deposition today.

19 Have you ever given a deposition
20 before?

21 A. Yes, I have.

22 Q. How many times have you been deposed
23 before?

24 A. I'll say approximately four maybe.

25 Q. And what were the matters? What were

1 the type of matters you got deposed in?

2 A. They were related to zoning and
3 planning issues, is my recollection, not
4 necessarily with the county but with the city of
5 Georgetown where I used to work.

6 Q. And approximately how long ago were
7 those depositions?

8 A. Oh, several years. Yeah.

9 Q. Given that you've been deposed before,
10 you likely know the drill here, but I'm going to
11 give you a little bit of the background rules so
12 everybody is on the same page.

13 I'm going to be asking you a series of
14 questions for you to answer today. First ground
15 rule is for you to provide verbal answers to the
16 questions. We've got a court reporter here to take
17 everything down. Obviously we're doing this
18 virtually, which makes it a little bit harder for
19 everybody to communicate rather than if we were all
20 in the same room. But the court reporter can't
21 take down your answer if you're nodding or shaking
22 your head or giving nonverbal answers so please
23 provide verbal answers, yes, no, or whatever the
24 question calls for.

25 Next ground rule is for us to not talk

1 at the same time. A lot of times you're going to
2 know exactly where I'm going with my question.
3 You're going to want to go ahead and answer it to
4 move this along, but again, if we start talking at
5 the same time, the court reporter can't take it
6 down cleanly. She may interrupt us if we start to
7 do that. This isn't really a conversation so I'll
8 ask you to let me finish my question before you
9 answer and I'll attempt to extend the same courtesy
10 to you.

11 If I ask any question and you don't
12 understand what I'm asking or you think it's
13 unclear, I'm happy to repeat or rephrase. I'm
14 certainly not trying to confuse you in any way.
15 All I ask is that you request clarification for me
16 to repeat or rephrase the question.

17 And I'm going to assume if you don't
18 ask for any type of repeat or clarification, that
19 you understand the question that I'm asking; is
20 that fair?

21 A. Yes.

22 Q. From time to time, your attorney may
23 object to a question that I ask -- that's something
24 that she does to put it on the record -- but unless
25 you are specifically instructed not to answer the

1 question, you still have to answer my question
2 subject to that objection.

3 And I'm happy to take breaks at any
4 point in time. I'm not trying to make you sit here
5 and make this an endurance contest. All I ask is
6 that you answer any question that's pending on the
7 table before taking a break.

8 A. Okay.

9 Q. Any question about those ground rules?

10 A. No.

11 Q. Is there anything that would prevent
12 you from testifying truthfully and fully today?

13 A. No.

14 Q. Are you under the influence of any
15 drugs or medication that might impair your ability
16 to testify?

17 A. No.

18 Q. Since we're doing this virtually, are
19 you in the same office as Ms. Golding, or are you
20 in a different location?

21 A. We are in the same office.

22 Q. Okay. Is there anybody else present in
23 the office who's not on the camera right now?

24 A. Holly Richardson.

25 Q. Okay. Ms. Richardson.

1 Anybody other than Ms. Richardson?

2 A. No.

3 MR. NUGENT: And, Henri, do I
4 understand that Ms. Richardson is there as a
5 representative of Georgetown County?

6 MS. GOLDING: Correct.

7 MR. NUGENT: Okay.

8 BY MR. NUGENT:

9 Q. Mr. Johnson, what did you do to prepare
10 for this deposition today?

11 A. I talked to the attorney.

12 Q. Okay. And I don't want to know the
13 nature -- or I'm not entitled to know the nature of
14 those communications. Approximately how long did
15 you spend talking to your attorney?

16 A. Oh, in total not long. Less than two
17 hours over a couple of times.

18 Q. And when you say your attorney, do you
19 mean Ms. Golding?

20 A. Yes.

21 Q. Okay. Is she representing you in
22 connection with this deposition today?

23 A. Yes.

24 Q. Did you review any documents to prepare
25 for today's deposition?

1 A. I did. I scanned the... Yes, I did.

2 THE REPORTER: I'm sorry, what was
3 that?

4 THE WITNESS: Yes, I did.

5 THE REPORTER: You scanned the?

6 THE WITNESS: I think the question was
7 review any documents and I just said yes.

8 BY MR. NUGENT:

9 Q. Okay. And my follow-up question -- I
10 thought you were providing this answer. I don't
11 know if I heard it -- what documents did you
12 review?

13 A. I just looked at the staff report that
14 went to county council.

15 Q. Any other documents?

16 A. I'm trying to remember. I think I
17 scanned, for instance, the application for, and I
18 honestly can't remember if it was MQ2 or MQ3.

19 Q. Okay. And MQ3, just so we're on the
20 same page, is that the most recently approved
21 amendment to the Marlin Quay PUD?

22 A. That's correct.

23 Q. It was approved in the early 2019
24 timeframe and considered by the planning staff in
25 late 2018. Does that sound correct?

1 A. That sounds correct, yes.

2 Q. And is MQ3 your preferred way to refer
3 to that application?

4 A. That last one, correct.

5 Q. So if I use the phrase MQ3, we'll be on
6 the same page about what we're talking about?

7 A. Yes.

8 Q. And when you said the staff report,
9 were you referencing the staff report relating to
10 that MQ3 application?

11 A. Yes.

12 Q. Other than the staff report and the
13 application, can you recall any other documents
14 that you reviewed to prepare for today's
15 deposition?

16 A. No. That was the one that had -- no.
17 Excuse me.

18 Q. Other than speaking with Ms. Golding,
19 did you speak to anybody else to prepare for
20 today's deposition?

21 A. No.

22 Q. For example, did you have any
23 communications with Holly Richardson in preparation
24 for today's deposition?

25 A. My communications with Holly were

1 primarily were regarding the timing, the time to be
2 here, that type thing. I did ask her, for
3 instance, for the document that I referenced just
4 because I didn't have a copy.

5 Q. You asked Ms. Richardson for a copy of
6 which document? I'm sorry.

7 A. The staff report.

8 Q. Any other communications with
9 Ms. Richardson in advance of today's deposition?

10 A. No.

11 Q. And I understand you are not currently
12 employed by Georgetown County; is that right?

13 A. That's correct.

14 Q. Have you communicated with
15 Ms. Richardson or anybody else who works for
16 Georgetown County about this lawsuit at any point
17 since it was filed a year or two ago?

18 A. No.

19 Q. Have you been aware of this lawsuit
20 generally prior to this deposition being noticed?

21 A. Yes.

22 Q. And where did that general awareness
23 come from?

24 A. I guess Ms. Golding, our attorney.

25 Q. Okay. Other than communications with

1 Ms. Golding, did you hear about the lawsuit from
2 anybody else?

3 A. No. The county attorney at the time,
4 Wesley Bryant. I can't even remember -- he's no
5 longer here, but he may have told me. He may have
6 been the original one that said, hey, we're getting
7 sued. I can't say for sure, but that would be the
8 normal.

9 Q. And were you asked at any point in the
10 past two years to gather documents that you had in
11 your possession related to MQ3 or this litigation?

12 A. I can't say for sure in the last two
13 years, but certainly when the documents were
14 requested, whether through a Freedom of Information
15 request or, I guess, through the deposition, yes.

16 Q. And so you were asked to pull together
17 some documents?

18 A. At some point in time, yes.

19 Q. And, actually, let me clarify and I'll
20 get into your background. You no longer work for
21 Georgetown County, but at what point did you stop
22 working for Georgetown County?

23 A. This past October. October of 2020.

24 Q. October of 2020. Okay.

25 And I'll represent this lawsuit was

1 filed, I think, in March of 2019. Does that sound
2 roughly familiar to you?

3 A. That's probably correct. It sounds
4 correct.

5 Q. So for the first year and a half or so
6 that the lawsuit was pending, you were still an
7 employee of Georgetown County?

8 A. Yes.

9 Q. And during that time, you're aware that
10 the County received both a FOIA request and then
11 also a request to produce documents in the
12 litigation?

13 A. Yes.

14 Q. And did you engage in a search for
15 documents in your possession in response to that
16 FOIA request and that request for production of
17 documents?

18 A. Yes.

19 Q. And what did you search? What did you
20 do to search for the documents?

21 A. All of the documents with the exception
22 of my emails would have been available in other
23 people's possession or in the general files.
24 Somebody else would have got those. My primary
25 task was to go through my emails and any

1 correspondence or notes or anything like that that
2 I may have in my office. Primarily emails.

3 Q. And do you keep your emails? What sort
4 of system do you use to manage -- to keep your
5 emails?

6 A. Just the County's general email system.
7 There's no other system.

8 Q. Is it a Microsoft Outlook type system,
9 or do you even know?

10 A. I do not know. I have no idea.

11 Q. That's fine. I'm not asking you to be
12 an IT expert. I'm asking you generally you have
13 work emails through the county system?

14 A. That's correct.

15 Q. And how did you go about searching
16 those emails for things relevant to MQ3 or the
17 present lawsuit?

18 A. I would do, you know -- first of all,
19 I'd just do a search for like Marlin Quay PD or
20 Gulfstream, anything or any word remotely possible.
21 I would start literally start scanning scrolling
22 back through my emails and searching them that way.

23 Q. Do you have any, other than emails, any
24 written notes or paper documents related to this
25 matter, any MQ3, or for the lawsuit that we're here

1 today on?

2 A. My recollection is the only notes that
3 I would have had would have been some handwritten
4 note I may have made on a document that I would
5 assume you would have.

6 Q. And you said that other than emails or
7 some type handwritten notes, you believed all the
8 other documents related to MQ3 related to this
9 litigation would be either in the file or in
10 somebody else's possession; is that right?

11 A. Yes.

12 Q. And does the County keep a physical
13 file related to each application to amend the
14 zoning ordinance?

15 A. Yes.

16 Q. Do you know if that file was, in fact,
17 provided to or produced as part of the response
18 to --

19 A. Yes.

20 Q. -- FOIA requests or requests for
21 production?

22 A. Yes.

23 Q. Okay. Do you recall speaking with
24 someone else who worked for the county about the
25 production and collection of that information?

1 A. Yes.

2 Q. Who did you speak to?

3 A. Holly Richardson.

4 Q. Okay. And as we sit here today, do you
5 believe you produced all the documents in your
6 possession related to MQ3 related to this
7 litigation?

8 A. Yes.

9 Q. Did you ever communicate via text
10 message or something like that about these types of
11 work items?

12 A. No, I did not.

13 Q. Tell me your educational background,
14 Mr. Johnson.

15 A. I have a political science degree and a
16 master's of public administration degree from South
17 Carolina, Coastal Carolina, and College of
18 Charleston.

19 Q. And what is your current occupation?

20 A. I am retired.

21 Q. I gathered that from your talk with
22 Ms. Golding that you're going fishing this weekend.

23 A. That's true. Maybe this afternoon.

24 Q. All right. Well, it looks like
25 hopefully it's a nice day over there to go out.

1 So you retired, is that, October of
2 2020?

3 A. Yes.

4 Q. Prior to retiring in October of 2020,
5 what was your employment?

6 A. What was my what? I'm sorry.

7 Q. How were you employed prior to
8 retiring?

9 A. I was in the planning department in
10 Georgetown County. Director of planning and code
11 enforcement technically was my title.

12 Q. How long were you with Georgetown
13 County?

14 A. Since 2005.

15 Q. And prior to working for Georgetown
16 County, where did you work?

17 A. City of Georgetown.

18 Q. How long were you with the City of
19 Georgetown?

20 A. From approximately 1987 until 2005.

21 Q. What title or what type of positions
22 did you have with the City of Georgetown?

23 A. I started out as the director of
24 planning and was promoted to assistant city
25 administrator, and then I was the city

1 administrator for approximately 13 years, and then
2 left in 2005.

3 Q. And then when you came over to
4 Georgetown County from the City of Georgetown, what
5 was your position?

6 A. I believe my title was senior planner.
7 It was either senior planner or chief planner.

8 Q. And did you ultimately become the
9 director of planning? Was that promotion --

10 A. Yes.

11 Q. -- during your time at --

12 A. Yes.

13 Q. -- Georgetown County?

14 A. Yes.

15 THE REPORTER: Okay. Mr. Johnson, I
16 just need you to wait until the complete question
17 is asked before you answer.

18 THE WITNESS: Thank you.

19 THE REPORTER: Thank you.

20 BY MR. NUGENT:

21 Q. I told you she'd get on us if we did
22 that.

23 And approximately when did you become
24 director of planning for Georgetown County?

25 A. Actually, it was in 2005 the year I

1 came.

2 Q. So a fairly quick move from senior
3 planner to director of planning once you came to
4 Georgetown County in 2005?

5 A. That's correct.

6 Q. Okay. And then you spent the next 15
7 years working as the director of planning for
8 Georgetown County?

9 A. Yes.

10 Q. And I know you mentioned your
11 educational background. Do you have a degree in, a
12 master's or something, in the planning field?

13 A. No. No. Public administration.

14 Q. Okay. Public administration.
15 Okay. How did you get into the world
16 of planning?

17 A. Before I went to City of Georgetown, I
18 worked approximately seven years with the council
19 of governments here, which was the planning agency
20 for Georgetown, Horry, and Williamsburg Counties.
21 And that was sort of a natural progression.

22 Q. Have you taken any coursework, get any
23 sort of certifications in the world of planning?

24 A. I'm not certified, no.

25 Q. Okay. And on the staff at Georgetown

1 County, were there certified planners working under
2 you?

3 A. Yes. Holly Richardson.

4 Q. Any other certified planners?

5 A. No.

6 Q. Okay. Tell me what your role was, what
7 your job duties were as director of planning for
8 Georgetown County.

9 A. Primarily to oversee the planning
10 department, which obviously provided routine
11 planning activities, but, you know, serve the
12 planning commission, zoning board of appeals,
13 architectural review. That plan and title also
14 included over the building department as well so
15 the county building official worked under me as
16 well.

17 Q. And how many people did you have in
18 your staff total?

19 A. When I left, we were approximately 12.
20 That's total including building department.

21 Q. How about on the planning side?

22 A. Planning, four. Four including myself.

23 Q. And tell me the names of those four
24 just so I have -- I may be able to guess.

25 A. Holly Richardson, Judy Blankenship,

1 Tiffany Coleman.

2 Q. You said when you left, you were down
3 to a number. Was it previously a greater number of
4 people that you had under you?

5 A. Yes. We actually had double that. We
6 were approximately 24, and then when the great
7 recession hit, like many places, we had to cut
8 services. And once we cut staff from 24 to 12, we
9 never got them back.

10 Q. So you've been at 12 essentially from
11 the great recession in 2008 timeframe?

12 A. Yes.

13 Q. Until you left the city of planning?

14 A. Yes.

15 Q. And is that planning and building you
16 said?

17 A. Yeah, that was the -- yes. I'm sorry.

18 Q. In your experience, did the reduction
19 of staff by approximately 50 percent impact the
20 ability of the planning department and building
21 department to do their job effectively?

22 A. I think the biggest impact -- yes, it
23 impacted primarily in the sense of the planning
24 side, the writing of the plans and I would say not
25 in plan review, but on the planning side of it as

1 far as doing studies.

2 Q. Explain to me what you mean by doing
3 studies.

4 A. Well, for instance, we have the
5 comprehensive plan, which includes the population
6 element, the economic element, the housing element.
7 You know, there's eight or nine different elements
8 now and each element is like a chapter, for
9 instance, in a large book. And writing those
10 documents and doing those studies has been the, I
11 would say, the biggest chore. We ended up having
12 to contract some of those out.

13 Q. And that's more of a prospective
14 planning, long term type planning --

15 A. Yes.

16 Q. -- for the area?

17 A. Yeah. Yes.

18 Q. And that's different from reviewing
19 applications that are submitted by property owners
20 to change the zoning ordinance and get a variance
21 and things of that nature; is that right?

22 A. Yes.

23 Q. And when you mention plan and review,
24 what does that entail? What does that cover?

25 A. Well, exactly what you just described.

1 Somebody brings a plan in, it may be for a
2 rezoning, going over the proposal, preparing it to
3 go to the planning commission. It may be something
4 that doesn't go to the planning commission. It may
5 be kind of like a residential subdivision that we
6 have to sit down and review would be an example.
7 Or if somebody was building a particular building,
8 we may have to spend a lot of time with that
9 building contractor or homeowner or engineer,
10 whoever, you know, to see if it meets various
11 requirements.

12 Q. And it sounds like there's a number of
13 different types of applications that you would
14 describe as being plan review; is that right?

15 A. Yes.

16 Q. Okay. And is it true that the planning
17 department has some roll over types of
18 applications, not just rezoning and variances?

19 A. Yes.

20 Q. Okay. But the MQ3 we're talking about
21 today, that was an application for a major
22 amendment to a planned development, correct?

23 A. At the end, yes.

24 Q. At the end.

25 And what do you mean by at the end?

1 A. Well, when it first came in, it was
2 considered a minor change, and after a long
3 process, if you want to call it a process, it ended
4 up being a major change in going through that
5 process, yes.

6 Q. And when you say it started out as a
7 minor change, approximately what timeframe are you
8 describing?

9 A. That would have been at the very
10 beginning, '16, '17, something like that.

11 Q. And during '16 and '17, it was
12 considered a minor change. And can you explain to
13 me why it was considered a minor change during that
14 timeframe?

15 A. The planning -- I mean, the zoning
16 ordinance and the chapter that covers planned
17 developments has some criteria that are pretty
18 general that you look at to determine if it's a
19 minor change or a major change. And initially it
20 was determined by staff that it was a minor change.
21 Again, that was staff's interpretation looking at
22 the criteria in the zoning ordinance.

23 Q. And when you say staff, who
24 specifically are you referencing?

25 A. That would have been me and Holly, that

1 we would have probably been the -- and Judy, to a
2 degree, would have been the ones looking at that.

3 Q. And in that, I think you said, 2016,
4 2017 timeframe, where there were four people in the
5 planning department. You gave me names of the four
6 folks. Were those the individuals working at the
7 planning department?

8 A. I believe so. Tiffany would have been
9 the last time. I believe she was there at that
10 time.

11 Q. Okay. Because we're talking about post
12 recession. This is the staff that they cut down to
13 the smaller number that it sits at today, right?

14 A. Yes. It would have been the same
15 number when this whole project started that it is
16 today.

17 Q. And give me some brief description -- I
18 know you've explained that you were the director of
19 planning during your tenure. And specifically
20 during this -- let's go from 2016 to 2020 -- the
21 last four years or so of your time there, what were
22 the roles of the three other individuals who worked
23 the planning side of the department?

24 A. Of course Holly Richardson was the
25 chief planner, I believe was the title at that

1 time, which was the most senior person under me.
2 Judy Blankenship was a planner, and Tiffany Coleman
3 was primarily clerical. Judy, she was a planner,
4 she tended to really focus a lot on subdivisions.

5 Q. Okay. And so if an application, just
6 generally an application for a zoning amendment
7 came in during that 2016 to 2020 timeframe, who
8 were the individuals in the planning department who
9 were doing the staff report and doing the analysis
10 of that application?

11 A. Generally one would be assigned to
12 somebody. I think Holly Richardson would have
13 taken the work like this, for example, the more
14 complex planned developments.

15 Q. And were applications ever assigned
16 directly to you?

17 A. No.

18 Q. So if a less complicated application
19 came in, who might it be assigned to other than
20 Ms. Richardson?

21 A. It would have been Judy.

22 Q. Ms. Blankenship would essentially be
23 assigned a less complicated application for a
24 zoning amendment or something of that nature?

25 A. Yes. I don't want to imply that she

1 only did very simplistic projects, but something
2 like a planned development, you know, was a
3 different animal. So, yeah, that probably would
4 not have been Judy Blankenship.

5 Q. Okay. And then you, as the director of
6 planning, did you have a role in reviewing every
7 application that came in to the planning
8 department?

9 A. At the end of the day, of course, we
10 would discuss things in general in the office,
11 issues that may come up. At the end of the day,
12 before whoever prepared the actual staff report to
13 go to the planning commission with some type of
14 recommendation would come to me. I would actually
15 be the one to sign the report. I would review the
16 report. If I deemed it needed some changes,
17 whether they were substantial changes or simply
18 English verbal, writing style changes, you know, I
19 would make them. So basically staff would prepare
20 reports and I would sign off on all of the reports.

21 Q. You signed your name or approved every
22 report that went to the planning commission?

23 A. Yes.

24 Q. In your capacity as the director of
25 planning?

1 A. Yes.

2 Q. Okay. And then did you appear and
3 provide a paper presentation of that planning
4 commission on every application that needed to be
5 decided by the planning commission?

6 A. I'm sorry, repeat that.

7 Q. Absolutely. Did you personally appear
8 before planning commission and make a presentation
9 regarding each application that was to be reviewed
10 by the planning commission?

11 A. No. I was present, but I did not
12 present.

13 Q. Did you sometimes present and sometimes
14 not present?

15 A. Yes.

16 Q. Okay. And what were the circumstances
17 that might cause you to make a presentation on a
18 particular application?

19 A. Usually I did not present. The only
20 time I would have is if -- I really can't think of
21 a good example on when I did, to be honest with
22 you.

23 Q. Well, let's take the case that we're
24 here on today, the MQ3. Did you make the
25 presentation to planning commission for MQ3?

1 A. I don't remember doing that. My
2 recollection is Holly made the presentation.

3 Q. We'll look. There's some minutes we
4 can look at that may refresh your recollection. I
5 was trying to understand the circumstances that
6 might cause you to make that presentation to the
7 planning commission.

8 A. I would if it was something that I
9 thought was a highly complex issue that was going
10 to be a countywide, you know, not controversy but
11 of interest would be an example.

12 Q. Was it unusual for you to make a
13 presentation to the planning commission about a
14 particular application?

15 A. Generally -- I don't know about the
16 word unusual. Generally I did not.

17 Q. Okay. And how about you mentioned
18 Ms. Richardson would make presentations; is that
19 right?

20 A. Sometimes Judy would too. They would
21 be assigned to make the presentation.

22 Q. And that's helpful.

23 It wasn't a situation where you, as
24 director of planning, were essentially the
25 mouthpiece, the person who spoke to the planning

1 commission. That's not how it worked?

2 A. No.

3 Q. And was it the case that typically the
4 planner to whom an application was assigned would
5 also be the person making a presentation to the
6 planning commission?

7 A. Not necessarily. That was probably
8 usual but not 100 percent, I would say.

9 Q. Were there instances where nobody from
10 the planning department made a presentation
11 regarding an application in front of the planning
12 commission?

13 A. I don't remember that ever happening.

14 Q. Roughly how many zoning amendment
15 applications did your staff process or your
16 department process?

17 A. Just as an estimated number, probably
18 around 35, something like that.

19 Q. And when you say 35, I know I said
20 zoning applications and maybe I should have been a
21 little bit more general. If I said 30 applications
22 to 35, does that mean 35 applications for
23 amendments to the zoning ordinance, or were you
24 including other types of requests in there as well?

25 A. In my mind, I was including other types

1 of requests. I was just trying to think of how
2 many items were on the planning commission agenda.

3 Q. So that 35 number is any type of
4 request that would go before the planning
5 commission?

6 A. Yes.

7 Q. Okay. And in terms of the type of
8 requests that would go before the planning
9 commission, not everything that your department
10 reviewed needed to be decided or reviewed or
11 considered by the planning commission; is that
12 right?

13 A. That's right.

14 Q. So, for example, I think you mentioned
15 applications for subdivision. Is that something
16 you mentioned before as not requiring planning
17 commission review?

18 A. Any subdivision under ten lots did not
19 require planning commission review. That was done
20 at the staff level. Anything that was over ten
21 lots had to go to planning commission.

22 Q. What about a minor amendment to a
23 planning development, did that require a planning
24 commission review?

25 A. No.

1 Q. But a major amendment to a planning
2 development would require a planning commission
3 review; is that right?

4 A. Yes.

5 Q. Give me an example of the other types
6 of requests, planning amendment requests that were
7 required to be heard by the planning commission.

8 A. A lot of it was text changes in the
9 zoning ordinance. For example, we would amend the
10 tree protection ordinance. We would amend a sign
11 ordinance.

12 Q. What about variances? Is that
13 something the planning commission heard?

14 A. Normally variances go to a different
15 board, the zoning board of appeals.

16 Q. All right. And that 35 number you gave
17 me earlier, that was your estimate of just things
18 that would go in front of the planning commission,
19 not things that would go in front of the zoning
20 board of appeals or some other body?

21 A. Correct.

22 Q. Okay. Other than text changes -- and
23 we also talked about major amendments to PDs --
24 what other types of applications were generally
25 heard by the planning commission?

1 A. Subdivisions.

2 Q. Subdivisions greater than ten lots?

3 A. That's correct. And also multifamily
4 projects over a certain size.

5 Q. We talked about major amendments to a
6 planned development. Do you view that as different
7 from just an applicant seeking to amend the zoning
8 ordinance as it applies to their property?

9 A. It's the same process.

10 Q. Same process.

11 And when I talk about an applicant
12 seeking to amend a zoning ordinance, I'm talking
13 about let's say someone is zoned residential and
14 they want their property to be zoned commercial.
15 That would be a zoning amendment; is that right?

16 A. Yes.

17 Q. And the process for obtaining that kind
18 of zoning amendment required the planning
19 commission to review the application, correct?

20 A. Yes.

21 Q. And how many times roughly did
22 applicants come before or submit applications to
23 the planning department for the type zoning
24 amendment that I just described? I'm talking on a
25 yearly basis.

1 A. It would be an estimate on my part. If
2 I said 35 earlier, probably 25.

3 Q. Probably 25 of that 35 you estimated
4 earlier would be actual amendments to the zoning
5 ordinance, is that right, more or less?

6 A. More or less.

7 Q. And I know you're estimating. I'm not
8 trying to tie you to a number, I'm trying to get a
9 rough idea of how many of these types of requests
10 your department was reviewing.

11 A. Okay.

12 Q. So when an application comes in for an
13 amendment to the zoning ordinance or a major
14 amendment to a planning development, what process
15 does the planning department use to evaluate that
16 application?

17 A. I'm sorry, could you repeat that
18 question?

19 Q. Absolutely. When an application comes
20 in to the planning department either for an
21 amendment to the zoning ordinance or a major
22 amendment to a planned development, what process
23 does the planning department use to evaluate that
24 application?

25 A. We look at our existing ordinances to

1 see if there are any conflicts. We don't have any
2 sort of checklist, for example.

3 Q. You look at ordinances to see if
4 there's a conflict. Tell me what ordinances you're
5 talking about.

6 A. I perhaps used the word conflicts.
7 It's not right. A preferred example would be the
8 tree protection ordinance. If it's something
9 that's going to involve a large building going
10 somewhere and some magnificent oak tree cut down,
11 we would like to know that.

12 Q. Okay. What other ordinances does your
13 department look at when deciding or reviewing an
14 application for a zoning amendment?

15 A. It's not an ordinance. It's primarily,
16 for instance, the comp plan. You know, what's near
17 it? Is it next to commercial? Is it next to
18 residential, that type of thing. That is not an
19 ordinance.

20 Q. Okay. The comprehensive plan is what
21 you mentioned, right?

22 A. Yes, right.

23 Q. Any other ordinances or plans that your
24 department looks at when evaluating an application?

25 A. It really depends on each individual

1 application. It's not a universal...

2 Q. I'm sorry, you cut out for a second.
3 Could you repeat your answer? I missed that.

4 A. I'm sorry. I said each individual
5 application is somewhat unique so it's not a
6 universal thing -- process.

7 Q. Okay. And understanding that it's not
8 the same exact process every time, does the
9 planning staff, do they communicate with the
10 applicant about an application?

11 A. Yes.

12 Q. And what's the nature of those
13 communications typically?

14 A. Information gathering.

15 Q. Do the planning staff members typically
16 propose changes to an application based on staff
17 review of ordinances or plans that might be
18 impacted by an application?

19 A. Staff did not propose changes.

20 Q. Okay. You said they don't propose
21 changes. Do they ever suggest or otherwise discuss
22 possible changes to an application?

23 A. Yes. Like a -- yes.

24 Q. Give me some examples or explain to me
25 the nature of those types of suggestions or

1 discussions.

2 A. We would just say that this
3 application, you know, the comp plan doesn't
4 support the change, and we would convey that to the
5 applicant before the meeting.

6 Q. Just so I have that, you or the staff
7 members, planning staff, would convey to the
8 applicant that there's some aspect of an
9 application that is not consistent with, for
10 example, the comprehensive plan?

11 A. Yes.

12 Q. And does the staff suggest to the
13 applicant that maybe that element would need to be
14 altered in some way in order to receive a favorable
15 recommendation from the planning staff?

16 A. We would say that we would not support
17 the application, there was likely going to be a
18 negative recommendation.

19 Q. And at the end of the day, planning
20 staff would make a recommendation to the planning
21 commission regarding each application, correct?

22 A. Yes.

23 Q. And so if planning staff was making a
24 positive recommendation, that is you, as the
25 planning director, signing off on a recommendation

1 or a report that states that the proposed
2 application should be granted?

3 A. Yes.

4 Q. And a negative recommendation would be
5 the opposite, you signing off on a report that
6 states that a proposed application should be
7 denied, correct?

8 A. Yes.

9 Q. And how frequently did planning staff,
10 in your experience, provide a negative
11 recommendation for an application to amend the
12 zoning ordinance?

13 A. I don't know the answer to that.

14 Q. Can you give me a ballpark of how often
15 it happened?

16 A. No. I really don't --

17 Q. Did it ever happen?

18 A. Yes.

19 Q. Was there ever a situation --

20 A. Yes.

21 Q. Is it fair to say that that was out of
22 the ordinary for the planning staff to make a
23 negative recommendation on an application?

24 A. No, I don't believe so.

25 Q. So when you mentioned there were, you

1 estimated, 25 or so applications per year to amend
2 a zoning ordinance, what percentage roughly would
3 receive a negative recommendation?

4 A. I don't know.

5 Q. I mean, are we talking half the time
6 there's a negative recommendation, or is it
7 something --

8 MS. GOLDING: I'm going to make an
9 objection, Adam. He's already testified three
10 different times that he does not know.

11 MR. NUGENT: I understand. I
12 appreciate your objection, Henri. I'm going to
13 keep asking my question, all right?

14 MS. GOLDING: No, you can't keep asking
15 your question. Asked and answer. He does not
16 know.

17 MR. NUGENT: And subject to that
18 objection, he can answer the question, Henri.

19 BY MR. NUGENT:

20 Q. My question, Mr. Johnson, is of those
21 25 or so applications per year, roughly what
22 percentage of them received a negative
23 recommendation from the planning commission -- or
24 planning staff? Excuse me.

25 A. I truly don't know.

1 Q. And can you recall in the year prior to
2 you departing from your position as director of
3 planning making a negative recommendation on an
4 application to amend a zoning ordinance?

5 A. I can't remember any specific
6 application.

7 Q. Okay. I'm talking about that last
8 final year. I'm not talking about the other years
9 you worked or anything like that, just that one.

10 A. I can't remember.

11 Q. Now, that recommendation that planning
12 staff makes, just so I understand the process, it
13 then goes -- and the application and the
14 recommendation are presented to the planning
15 commission; is that right?

16 A. Yes.

17 Q. And the planning commission then, it
18 makes its own recommendation regarding whether the
19 application should be granted or denied; is that
20 right?

21 A. Yes.

22 Q. And do you have any role in appointing
23 the members of the planning commission that review
24 the applications?

25 A. No, not at all.

1 Q. Did you have any relationship or know
2 the people who were sitting on planning commission?

3 A. I mean, I knew the people simply
4 because we saw them once a month.

5 Q. Sure. And just so I understand, the
6 planning commission folks, to your knowledge, were
7 they employees of Georgetown County?

8 A. No, they were not.

9 Q. What were their -- how did they end up
10 on planning commission, if you know?

11 A. County council appoints the seven
12 members of the planning commission.

13 Q. And you or somebody in your staff would
14 appear before these planning commission members on
15 a monthly basis in a public hearing at one of
16 the forums --

17 A. Yes.

18 Q. -- in Georgetown County, right?

19 A. Yes.

20 Q. Did you typically communicate with the
21 planning commission members outside of attending or
22 presenting at the planning commission hearings?

23 A. Typically, no.

24 Q. Did planning commission members ever
25 ask you to provide additional information about an

1 application for a zoning amendment?

2 A. No.

3 Q. Okay. So in your experience, the
4 communication with planning commission members was
5 limited to presentations at the planning commission
6 hearings that occurred on a monthly basis?

7 A. That's correct.

8 Q. Okay. And the planning commission
9 would hold a vote on each zoning amendment
10 application, correct?

11 A. That's correct.

12 Q. Just to make sure I have the process
13 correct, that vote was itself a recommendation that
14 would be passed on to the county council; is that
15 right?

16 A. That's correct. They only make a
17 recommendation.

18 Q. They make a recommendation. They're
19 not binding anybody. They're just recommending
20 what they think ought to happen?

21 A. For rezonings, yes.

22 Q. Okay. For other things other than
23 rezonings, did the planning commission actually
24 have a binding vote or a vote that would bind the
25 applicant in some way?

1 A. Not for rezonings, but like for street
2 names, the planning commission, for example, is the
3 final say on the naming a street. That doesn't
4 leave the planning commission to go to county
5 council.

6 Q. Okay. So if I wanted to rename my
7 street and my neighbor didn't want to rename it,
8 you'd submit that application to the planning
9 department; is that right?

10 A. Yes. Yes.

11 Q. And your department would make a
12 recommendation that would go to a vote at planning
13 commission level, correct?

14 A. Are you asking me specifically about
15 street names?

16 Q. Yes. Just the example of street names.

17 A. What we would do is take -- the
18 applicant would provide three names. We would
19 verify with the emergency services that they're
20 doing a duplication of street names. We wouldn't
21 actually recommend a street name, but we would say
22 you may approve one of these three names and the
23 emergency services has said there will be no
24 problem. If the emergency services had said
25 otherwise, then we would say, hey, emergency

1 services said you should not name this street X
2 because there's already an X. But we didn't
3 actually recommend. We would relay the
4 information.

5 Q. Got it. And going back to zoning
6 amendments, which is what we had talked about
7 before, the planning commission made its
8 recommendation. Do you recall, generally was the
9 planning commission's recommendation the same as
10 the recommendation made by your staff in the
11 planning department?

12 A. No.

13 Q. Do you recall --

14 A. It could be but no.

15 Q. It could be but no.

16 Do you recall instances where the
17 planning commission rejected the recommendation of
18 your staff on a particular application?

19 A. I do not recall a particular
20 application, but it definitely happened.

21 Q. Just so we're on the same page. I just
22 want to make sure we're on the same page. Let's
23 say that your staff recommended approval of an
24 application, but then planning commission, at the
25 hearing, voted against approval or against

1 recommending approval. That's what I'm talking
2 about, right? Are we on the same page?

3 A. Yes. Yes.

4 Q. And how frequently would the planning
5 commission reach a different recommendation than
6 the one made by planning staff?

7 A. I really can't say how frequently, but
8 it definitely happens.

9 Q. How about during that final year where
10 you were working as director of planning, how
11 frequently did planning commission reach a
12 different conclusion than planning staff?

13 A. I don't remember any specific
14 instances.

15 Q. Do you recall whether it happened
16 generally during that final year where you were
17 working as director of planning?

18 A. I don't remember about the final year,
19 no.

20 Q. You mentioned on this MQ3, which you
21 said has, in your view, been going on for several
22 years. And your testimony was that it started out
23 as a minor change. The minor change, you said, was
24 a determination by you and Ms. Richardson that it
25 was not -- that the application did not qualify --

1 or qualified as a minor change under the zoning
2 ordinance; is that right?

3 A. No. That was not MQ3.

4 Q. Okay.

5 A. That was the --

6 Q. What was that?

7 A. I believe we just referred to it as
8 Marlin Quay.

9 Q. So can we call that MQ1? Or I just
10 want to make sure we're on the same page so we're
11 not confused about what we're talking about here.

12 A. I don't remember us ever using the term
13 MQ1. I didn't know there was going to be a 2.

14 Q. Okay. Sure. Fair point. Fair point.

15 Let's just talk about the initial
16 application. And so we're on the same page, this
17 was an application to amend the PUD for
18 construction of a new marina store at the Marlin
19 Quay Planned Development, is that correct, the
20 initial application that we're talking about?

21 A. I believe that is correct.

22 Q. Okay. And you testified that you and
23 Ms. Richardson reviewed that application when it
24 came in in the 2016 or 2017 timeframe; is that
25 right?

1 A. I'm sure we did.

2 Q. And you testified that the
3 determination you and Ms. Richardson made was that
4 that initial application qualified as a minor
5 amendment to the planned development; is that
6 right?

7 A. Yes. Yes.

8 Q. And how did you go about making that
9 determination?

10 A. We looked at the criteria in the zoning
11 ordinance and made the determination on our
12 interpretation of those criteria.

13 Q. And roughly what kind of criteria
14 applied for it to be a minor amendment versus a
15 major one?

16 A. I cannot remember the criteria.

17 Q. Okay. But ultimately it was
18 resubmitted as a major amendment; is that right?

19 A. Yes.

20 Q. And do you have any understanding of
21 why the application to build a new marina store was
22 resubmitted as a major amendment?

23 A. The opposition to the project
24 repeatedly said that they would like for it to be a
25 major amendment so they could provide their input.

1 And ultimately the applicant came in and applied as
2 a major amendment.

3 Q. And when you say the applicant, who did
4 you deal with on behalf of the applicant for these
5 Marlin Quay redevelopment applications?

6 A. At the beginning of the process?

7 Q. Sure.

8 A. I'm trying to recall. Certainly Dan
9 Stacy, Steve Goggans. I'm not sure at what point
10 he became involved, whether he was involved
11 initially. I think he was. Dan Stacy and Steve
12 Goggans I would say.

13 Q. And did you and Ms. Richardson have
14 meetings and communications with Mr. Stacy and
15 Mr. Goggans about that initial application to amend
16 the Marlin Quay PUD?

17 A. We had conversations. I can't remember
18 whether they were phone conversations or face-to-
19 face meetings.

20 Q. And do you recall Mr. Stacy and
21 Mr. Goggans advocating for the application for the
22 initial amendment to the Marlin Quay PD to be
23 considered a minor amendment?

24 A. I believe that's correct.

25 Q. The applicant, meaning Mr. Stacy and

1 Mr. Goggans, they were presenting a position that
2 this application should be considered minor versus
3 major?

4 A. I believe that's correct.

5 Q. And you ultimately agreed with their
6 position; is that right?

7 A. Yes.

8 Q. And do Mr. Stacy and Mr. Goggans, have
9 they presented other applications or been involved
10 with other applications that were reviewed by the
11 planning staff?

12 A. Yes.

13 Q. And would you say that they regularly
14 submit applications or represent applicants that
15 are submitting?

16 A. Mr. Stacy does.

17 Q. Mr. Stacy does?

18 And what is his role, in your
19 understanding?

20 A. He's a local attorney in Georgetown
21 County that seems to be -- most people seem to go
22 to him when it comes to land use issues. He's very
23 involved in that field.

24 Q. Is it common for an applicant to have
25 someone such as Mr. Stacy representing them when

1 they submit an application that is reviewed by
2 planning staff?

3 A. It's not uncommon at all.

4 Q. And you said that Mr. Stacy, in your
5 view, is something of a go to person for those
6 types of applications?

7 A. That varies from time to time, but he
8 does present a lot.

9 Q. And does he, in your experience, have a
10 track record of getting favorable results for his
11 clients?

12 A. I can't say. I don't know how to
13 answer that question.

14 Q. Can you recall a time where Mr. Stacy
15 was representing an applicant and that applicant
16 did not receive a recommendation for approval of
17 their application?

18 A. I cannot recall any specific case.

19 Q. Now, you mentioned Mr. Goggans. Was it
20 less common, in your experience, for Mr. Goggans to
21 be involved in an application for an amendment?

22 A. As an architect, he is involved in
23 various projects but not as common as, for
24 instance, Mr. Stacy.

25 Q. Just from a general standpoint, when

1 planning staff is reviewing an application, does
2 staff typically communicate directly with the
3 applicant's attorney, or is there somebody else
4 that is the point person on the applicant's side
5 for any type of communication?

6 A. The applicant's representative, whoever
7 that may be, sometimes a realtor, sometimes it's a
8 lawyer, could be an engineer architect. It's
9 whoever the property owner designates.

10 Q. Okay. You said frequently Mr. Stacy is
11 the person representing an applicant?

12 A. In the past. I don't know about today.

13 Q. Sure.

14 While you were in your role as director
15 of planning, that was your experience?

16 A. Yes.

17 Q. In your experience, it was less common
18 for Mr. Goggans to be involved in an application
19 for a zoning amendment; is that correct?

20 A. Yes, that's correct.

21 Q. Can you recall any other instances
22 where Mr. Goggans was involved in presenting or
23 communicating with the planning department about an
24 application for amendment?

25 A. I can't recall.

1 Q. Okay. Did you know Mr. Goggans prior
2 to communicating with him about the initial
3 application to amend the Marlin Quay PD?

4 A. Yes.

5 Q. And how did you know him?

6 A. When I was in city, when I worked for
7 the City of Georgetown, he would occasionally do a
8 project in the city as an architect obviously, and
9 so that, I guess, is when I first met him.

10 Q. Okay. And any other way in which you
11 knew Mr. Goggans other than projects that he worked
12 on for the City of Georgetown?

13 A. Obviously as a county council member.

14 Q. Okay. You knew he was a county council
15 member at the time that he was presenting the
16 application for the initial amendment to the Marlin
17 Quay Planned Development?

18 A. Yes.

19 Q. Okay. Did you have any sort of
20 personal relationship with Mr. Goggans outside of
21 work?

22 A. No.

23 Q. Okay. Did you consider him a personal
24 friend?

25 A. I was friendly, but I would not say a

1 friend. We never socialized.

2 Q. Okay. But he was a known quantity to
3 you at least at the time that the first Marlin Quay
4 application was reviewed by planning staff?

5 A. Yes.

6 Q. And he's part of an architectural firm,
7 correct?

8 A. Yes.

9 Q. Did his firm present or get involved
10 with other applications for amendments that your
11 department reviewed?

12 A. Zoning amendments? I can't recall any.
13 Over the years there have been, but I can't recall
14 any specifically.

15 Q. But you were familiar with his firm, I
16 think it's called, SGA Architecture?

17 A. Yes.

18 Q. Okay. That was a known quantity as
19 well to you at the time the first Marlin Quay
20 application was submitted?

21 A. Yes.

22 Q. And did your familiarity with
23 Mr. Goggans and Mr. Stacy lead you to adopt their
24 position that the first application should be a
25 minor amendment?

1 A. No.

2 Q. What caused you then to reach that
3 conclusion?

4 A. Our internal planning department
5 reviewed the project and what we thought.

6 Q. And what did your department think?

7 A. Well, we ultimately, at the beginning
8 of the project, we made the determination that it
9 was qualified as a minor change.

10 Q. I'm sorry, I might not have heard your
11 full answer to that. You said your department made
12 the determination...

13 A. That it did qualify as a minor change.

14 Q. And what was the basis of that
15 determination is what I'm asking?

16 A. Reviewing the project itself and
17 looking at the criteria in the zoning ordinance.

18 Q. And how did that project compare to the
19 old building that was at the Marlin Quay Marina?

20 A. The old building was encroaching on
21 somebody else's property, a large percent of it, so
22 that's really how that started was to remove that
23 old building and build a new building that was
24 entirely on, you know, one parcel of property, not
25 hanging over on another piece of property.

1 Q. Okay. And why was that encroachment an
2 issue?

3 A. The applicant basically applied, came
4 in and applied to remove the encroachment and build
5 it on his property. We did not direct that in any
6 way.

7 Q. Okay. So the applicant --

8 A. We didn't come up with the issue.

9 Q. Okay. That's what I wanted to confirm.
10 The applicant was the one who said I want to put
11 this building solely on my property?

12 A. Yes.

13 Q. Prior to that being brought to your
14 attention, to the planning department's attention,
15 that was not an issue that was out there that you
16 saw --

17 A. No.

18 Q. -- as needed to be addressed?

19 A. No.

20 Q. Okay. So this new building was
21 designed to not encroach on other property. What
22 other characteristics of this new building did you
23 review when evaluating that application, that first
24 application?

25 A. I don't remember the specifics, but

1 certainly size.

2 Q. And what did your department do to go
3 about evaluating the size of that initial
4 application?

5 A. Essentially we tried to determine the
6 size of the existing building.

7 Q. And how did your department go about
8 determining the size of the existing building?

9 A. I don't recall the specifics. I do
10 know there's an architect involved saying this is
11 how much the building was. My recollection is at
12 the beginning, that may not have been SGA. I don't
13 know who that was, but information was received
14 regarding the size of the building.

15 Q. And did anybody go down -- did anybody
16 from your department go down to the Marlin Quay
17 area to evaluate the size of the building for
18 themselves?

19 A. Primarily we were looking at plans,
20 what was drawn on a piece of paper. I certainly
21 rode by and looked at it, never, you know, got out
22 with a tape measure.

23 Q. Okay. And do you know if anybody else
24 with your staff went out and measured it?

25 A. No, I don't believe so.

1 Q. And what was the reason that your
2 department was reviewing the size of the initial
3 application to amend the Marlin Quay PUD?

4 A. This being an extremely old PD that
5 without a lot of guidance in the PD, we did not
6 want the whole PD to, I guess you'd say, increase
7 in size. That would include the condominium
8 property, you know, everything in that PD.

9 Q. And why did you not want the PD to
10 increase in size?

11 A. Well, it's not that we didn't want to,
12 it's just we said they couldn't do that. If they
13 did that, that would certainly be a major change.

14 Q. Sure.

15 So in order for it to be a minor
16 change, your department's view was that the size of
17 the building, the Marlin Quay store, had to be the
18 same as what was previously built?

19 A. Our PD, minor and major, what gets into
20 that as far as the change, the size of the
21 building.

22 Q. Right. I'm just confirming that in
23 order for the initial application to build a new
24 marina store at Marlin Quay, in order for that
25 application to be considered a minor amendment,

1 your staff's position was the new building needed
2 to be the same size as the old building, correct?

3 A. There were other complicating factors
4 like, for instance -- and I don't remember in any
5 great detail -- but the condominium property, for
6 example, they gave up their rights to build
7 anything, certain things in the future so that he
8 could build this building. And so my recollection
9 there was like a swap, not a swap, but a
10 recognition of the condominium's property because
11 they obviously supported him removing the building
12 from their property, that they would understand
13 they couldn't build anything back. So it wasn't
14 just a matter of looking at the size of the
15 building.

16 Q. Right. And I understand there was --
17 you said that there was this encroachment issue
18 that was brought to your attention by the applicant
19 and this new building was designed to resolve that
20 by placing the building exclusively on the
21 applicant's property, right?

22 A. Yes.

23 Q. But in terms of size -- I'm just trying
24 to understand this evaluation of size. If the
25 building, the new building that was presented as

1 part of the initial application, had been bigger
2 than the old building, how would that have impacted
3 the Marlin Quay PD from a planning standpoint?

4 A. That the heated square feet would be
5 bigger. And, again, factor in whatever the condos
6 gave up, then that would have been a major change.

7 Q. And just more from a practical
8 standpoint, not focusing on whether it was major
9 versus minor, what type of impact does a larger
10 building have just generally from a planning
11 standpoint?

12 A. Generally, you would have setback
13 issues, which is not the case here because this PD
14 didn't have that. But normally you look at
15 setbacks. Like I said earlier, trees, impervious
16 pervious coverage, you know, stormwater issues,
17 drainage. Those are just some examples.

18 Q. What about traffic? If you had a
19 bigger building, is that possibly going to generate
20 more traffic than the old building?

21 A. Depending on the use.

22 Q. But is it possible a larger building
23 would generate more traffic than a smaller
24 building?

25 A. Again, depending on the use.

1 Q. Well, let's say the use is the same.
2 Let's say you had a 4,000 square foot store and
3 you're rebuilding it as a 9,000 square store. This
4 is just hypothetically. Would you agree that that
5 increase in size would likely generate more
6 traffic?

7 A. It certainly -- it could.

8 Q. Okay. And what about demand for
9 parking? Would a larger building create a higher
10 demand for parking than a smaller building?

11 A. Again, that gets into use as well as
12 building size, so not necessarily.

13 Q. Okay. But let's do the same --

14 A. I guess under the heated square feet --
15 the heated square feet would be too.

16 Q. Okay. And let me just dive into that
17 with the same hypothetical. If you had a 4,000
18 square foot store and then you're building a 9,000
19 square foot store, in your experience, would that
20 larger store potentially create higher demand for
21 parking?

22 A. If it's heated square feet, I would say
23 yes.

24 Q. Okay. So heated square feet. Explain
25 to me what you mean by heated square feet.

1 A. You know, a lot of times people may
2 have a shed or a storage facility, you know, one
3 end of the building is strictly storage, for
4 example, you know, you wouldn't expect that to have
5 the impact than, for instance, a seating area or a
6 retail shopping area or a doctor's, you know,
7 actual area where he's treating patients.

8 Q. Sure. You mentioned seating area.
9 You're talking like for a restaurant?

10 A. That would be an example, yes.

11 Q. So if a restaurant had more area on
12 which to put seats, that could increase the demand
13 for parking in a particular area?

14 A. Yes.

15 Q. And you talked about heated square
16 feet. But you would agree that seating area for a
17 restaurant doesn't necessarily have to be inside,
18 right?

19 A. You mean do people have -- I'm sorry,
20 ask that again.

21 Q. Sure. You talked about heated square
22 footage, but if you're looking at a seating area
23 for a restaurant, that doesn't necessarily have to
24 be inside a heated area, does it?

25 A. Some restaurants have outdoor seating,

1 yes.

2 Q. Sure. And over in the Marlin Quay
3 area, are you familiar with there being outdoor
4 seating at, for example, the Gulfstream restaurant?

5 A. Actually, no, I didn't. I'm not
6 familiar with that.

7 Q. Okay. Have you ever visited the
8 Gulfstream Cafe before?

9 A. I have, but it was 25 years ago.

10 Q. Okay. But in terms of -- and we can go
11 a little bit broader -- you're aware of the
12 Murrells Inlet area that's got several restaurants
13 on the other side of the inlet from Marlin Quay
14 planning development?

15 A. Yes. Yes.

16 Q. And do those restaurants have outdoor
17 seating, to your understanding?

18 A. Some do, yes.

19 Q. And you understand that outdoor seating
20 is not unusual for restaurants in that part of
21 Georgetown County, correct?

22 A. Yes, that's correct.

23 Q. And if you're looking at seating area
24 for restaurants, you would agree that that could
25 include unheated open deck space in addition to

1 heated square footage?

2 A. If there is seating on the deck, yes.

3 Q. Sure. And so if you're looking at the
4 amount of space that a restaurant might have to
5 place seats, you should look at both the heated
6 square footage of that restaurant and the open deck
7 space of the restaurant; is that a fair statement?

8 A. Only if the deck is going to have
9 seating. And we ask that question and require a
10 plan to show the tables, for instance, on the open
11 decks in general.

12 Q. Right. You're going to look at the
13 open decks and what kind of tables are on the
14 plans, correct?

15 A. Yes.

16 Q. But once that plan is approved and your
17 building is built, you, in planning department, you
18 don't go out and actually police how many tables
19 he's put on a deck, do you?

20 A. The zoning administrator should do
21 that.

22 Q. But in terms of your department, it
23 does not --

24 A. The zoning --

25 MS. GOLDING: Adam, Adam, let him

1 finish his answer.

2 MR. NUGENT: Fair enough.

3 BY MR. NUGENT:

4 Q. I apologize, Mr. Johnson.

5 A. The zoning administrator came under me
6 as well. They were in our department. There's two
7 people in zoning. They would check on that
8 periodically. There's no set schedule.

9 Q. Okay. But in terms of your department
10 or planning staff, when they're looking at plans,
11 you're looking at, okay, there's 3,000 square feet
12 of decks, but you've only got five seats or tables
13 on there and as long as the number of tables is
14 acceptable to you, is that the end of the inquiry?

15 A. Yes.

16 Q. Okay. But just so we're on the same
17 page, it is possible to use that unheated square
18 footage in the form of decks for placing seating at
19 a restaurant or a bar or that type of business?

20 A. Restaurants do that, yes.

21 Q. Yes. And so if you went from a
22 restaurant that had 4,000 square feet and no deck
23 space -- I'm sorry, 4,000 square feet of heated
24 area and no deck space to a restaurant of 4,000
25 square feet of heated area and 3,000 square feet of

1 decks, you would agree that could potentially
2 result in more traffic or more of a demand for
3 parking?

4 MS. GOLDING: Object to the form of the
5 question. It's speculative and it's not based on
6 the facts in this case.

7 BY MR. NUGENT:

8 Q. You can answer.

9 A. It depends on the case. I mean, every
10 restaurant is different. We would again ask how
11 many tables there are. If they say there's two
12 tables, that's how we would calculate it.

13 Q. Okay. Would the planning department do
14 anything to confirm whether the number of tables or
15 seats that the applicant presented was accurate?

16 A. Initially, yes. Later on, the zoning
17 administrator is responsible for that.

18 Q. But from an initial standpoint of
19 reviewing an application, making a recommendation,
20 the planning department would rely solely on the
21 information provided by the applicant regarding the
22 number of seats or tables --

23 A. Yes.

24 Q. -- they were going to have in a
25 restaurant?

1 A. Yes.

2 Q. And in the case of this initial
3 application to approve the Marlin Quay, the
4 amendment in the construction of the new building
5 of Marlin Quay, did the applicant provide
6 information about the number of seats or tables
7 that existed previously?

8 A. I don't know what the information was,
9 but there was certainly a discussion at the
10 meetings at the planning commission meetings, for
11 instance, about how many seats there were existing
12 in the old building.

13 Q. And who was providing that information
14 about what existed at the old building?

15 A. Certainly the applicant.

16 Q. Did anybody in the planning
17 department --

18 A. My recollection is there was also
19 somebody in the public. It may have very well have
20 been your client provided a number, but I don't
21 know what that was or any specifics. I remember
22 there was a disagreement between various parties on
23 that.

24 Q. And the planning department was aware
25 of a disagreement about the number of seats that

1 existed at the old Marlin Quay building, correct?

2 A. We were aware that, yes, that the
3 parties did not agree.

4 Q. Did the planning department do anything
5 to determine or to resolve that disagreement and
6 figure out what the correct number of seats at the
7 prior building was?

8 A. I don't remember what we did. We
9 obviously addressed it, but I don't remember how or
10 the specifics of that.

11 Q. When you say that you addressed it, can
12 you be a little more specific about what you mean?

13 MS. GOLDING: He testified he didn't
14 remember.

15 MR. NUGENT: Well, I'm asking him for
16 clarification. He can answer subject to any
17 objection you have.

18 THE WITNESS: I believe it was just
19 part of the plan that was submitted to us.

20 BY MR. NUGENT:

21 Q. The number of seats was in the plan
22 that the applicant submitted to the planning
23 department; is that right?

24 A. At some stage.

25 Q. Okay. And is it correct that the

1 planning department did not -- sorry, it's correct
2 that the planning department was aware that there
3 was the dispute -- that other parties disputed the
4 number of seats as stated in that application; is
5 that correct?

6 A. It is correct that at the public
7 hearing, somebody objected to that information.

8 Q. And following that objection, what did
9 the planning department do to determine whether
10 there was an issue or a discrepancy regarding the
11 number of seats at the old Marlin Quay building?

12 A. I do not remember how we addressed
13 that.

14 Q. Would there be emails or other
15 documents reflecting the planning department's
16 efforts to address any dispute about the number of
17 seats that existed at the old Marlin Quay building?

18 A. If there is any, you would have them.
19 There's nothing I would have regarding that.

20 Q. That's what I'm trying to understand.
21 So if there's no documents out there in our
22 possession regarding an effort to address this
23 dispute about the number of seats, then that would
24 mean there are no documents that exist?

25 A. You have everything. To my knowledge,

1 I don't have anything.

2 Q. Okay. But you don't know if an actual
3 document exists regarding an effort by the planning
4 department to evaluate the number of seats at that
5 Marlin Quay --

6 A. I don't remember any specific document
7 to that.

8 Q. Okay. Okay.

9 MR. NUGENT: Why don't we take a
10 five-minute break, Henri?

11 MS. GOLDING: Okay. That's fine.

12 (A recess transpired.)

13 (EXHIBIT 1, Zoning Ordinance Excerpts
14 for Georgetown County, was marked for
15 identification.)

16 BY MR. NUGENT:

17 Q. Mr. Johnson, I'm going to put up on the
18 screen what's been marked as Plaintiff's Exhibit
19 No. 1. Let me know once it's up there. Give me
20 just a second here.

21 A. Okay.

22 Q. All right. Do you see the document,
23 the Zoning Ordinance of Georgetown County on your
24 screen?

25 A. Yes.

1 Q. And I'm happy to scroll through this
2 entire thing. It's only 12 pages of excerpts from
3 the zoning ordinance. But are you familiar with
4 the Zoning Ordinance of Georgetown County?

5 A. I was. Yes, I am.

6 Q. During your time as director of
7 planning for the county, you became familiar with
8 the zoning ordinance; is that right?

9 A. Yes.

10 Q. Is it fair to say that this is a
11 document that you reviewed regularly during your
12 tenure as planning director for Georgetown County?

13 A. Yes.

14 Q. And what is your understanding from
15 that experience of the purpose of the zoning
16 ordinance?

17 A. Primarily to regulate the use of land
18 in a safe, efficient manner.

19 Q. If we look at what's on the screen,
20 this Article I -- and you can read that to yourself
21 if you'd like -- but it references the purpose of
22 promoting health, safety, morals, general welfare
23 of the County, lessening congestion in the
24 streets -- I'm skipping ahead -- preventing
25 overcrowding of land, avoiding undue concentration

1 of population, facilitating adequate provision of
2 transportation.

3 Do you see that in this paragraph?

4 A. Yes, I do.

5 Q. And do you agree that those are among
6 the purposes of the Georgetown County Zoning
7 Ordinance to promote those types of goals?

8 A. Yes.

9 Q. And when the planning department
10 reviews an application for a zoning amendment, does
11 it evaluate that application with an eye towards
12 the goals that are stated in this Article I of the
13 zoning ordinance?

14 A. Generally.

15 Q. Okay. Are there examples where the
16 planning department does not consider the goals
17 stated in Article I of the zoning ordinance in the
18 context of an application for a zoning amendment?

19 A. We would look at the actual regulatory
20 sections to the zoning ordinance where it says this
21 is what you have to do, X, Y, or Z, that type of
22 thing. Those should have been or have been written
23 with these things in mind.

24 Q. And just so we're all on the same page,
25 your take is that if an application meets the

1 technical criteria contained in the zoning
2 ordinance, your view is it should also satisfy the
3 goals stated in Article I of the ordinance?

4 A. Yes. If applicable, yes.

5 Q. I'm going to skip to the next page, and
6 this is all the way up to Article XVII, which
7 states Amendments. Are you familiar with this
8 particular article through the zoning ordinance?

9 A. Yes.

10 Q. And is this an article that you and
11 your staff reviewed in connection with zoning
12 applications that were presented to the planning
13 department?

14 A. Yes.

15 Q. If an applicant sought to amend the
16 zoning ordinance, is this Article XVII the section
17 that governed that application?

18 A. Yes. As far as how they would amend
19 their --

20 Q. And is this --

21 A. -- property, yes.

22 Q. I'm sorry, I didn't mean to interrupt
23 you.

24 A. Yes, as far as how they would process
25 the amendment or submit the amendment.

1 Q. Right. This Article XVII contains the
2 technical requirements that have to be met in order
3 for an amendment to the zoning ordinance to occur;
4 is that a fair statement?

5 A. Yes.

6 Q. And I don't want to say these are the
7 only requirements --

8 A. Right.

9 Q. -- but you would agree these contain --
10 this Article XVII contains at least some of the
11 requirements that must be met in order to amend the
12 zoning ordinance?

13 A. Yes.

14 Q. And I'll direct your attention to the
15 second section, 1701. Are you with me where it
16 says Requirements for Change?

17 A. Yes.

18 Q. And that section states: When the
19 public necessity, convenience, general welfare or
20 good zoning practice justifies such action and
21 after the required review and report of the
22 Planning Commission, the County Council may
23 undertake the necessary steps to amend the Zoning
24 Ordinance.

25 Did I read that correctly?

1 A. Yes.

2 Q. And are you familiar with this
3 particular section regarding the requirements for
4 change of the zoning ordinance?

5 A. Yes.

6 Q. And every application that your
7 department receives seeking a change to the zoning
8 ordinance, is it your understanding this section
9 1701 applies to that application?

10 A. Yes.

11 Q. And specific, these ideas of public
12 necessity, convenience, general welfare or good
13 zoning practice, those standards apply to all
14 applications to amend the zoning ordinance?

15 A. Yes, along with the technical
16 provisions that we would really focus on.

17 Q. Right. The technical provisions which
18 we can look at and are contained, I think you
19 stated, in this article and elsewhere in the zoning
20 ordinance. But in terms of these standards that I
21 just referenced, those are applicable too to every
22 application to amend a zoning ordinance?

23 A. Yes.

24 Q. So if there's an application and your
25 department determines that it does not promote

1 general welfare or does not constitute good zoning
2 practice, then that would make the application
3 inconsistent with the requirements to change the
4 zoning ordinance?

5 A. Yes. However, the technical
6 provisions, kind of like I said with the earlier,
7 would have addressed those when the technical
8 provisions were written.

9 Q. Right. So and just so we're on the
10 same page, there's technical provisions that have
11 to be satisfied in connection with the application.
12 But would you agree that the application should
13 also promote general welfare, create good zoning
14 practices, or otherwise satisfy the standards in
15 this Section 1701?

16 A. Yes. The zoning ordinance has been
17 written to do that.

18 Q. Right.

19 And does your department evaluate, for
20 example, whether or not an application constitutes
21 good zoning practice when reviewing that
22 application?

23 A. Yes.

24 Q. I'm going to scroll -- this is still in
25 Article XVII. There's this heading or section,

1 section 1702.2. Do you see that?

2 A. Yes.

3 Q. And there's a heading, Application
4 Procedure. Does this spell out the technical
5 requirements for an application to amend a zoning
6 ordinance?

7 A. Yes.

8 Q. And we're talking about applications --

9 A. As it -- as it --

10 Q. Go ahead.

11 A. I was going to say as it was at the
12 time of the subject application. That has been
13 amended since then.

14 Q. Right.

15 A. This is what was in place at the time
16 the subject application came in.

17 Q. Right. I understand that there have
18 been amendments and they may impose different
19 requirements from what existed at the time the
20 application for any of the Marlin Quay buildings
21 came in.

22 A. Actually, I apologize, I see this.
23 This is actually the current. It has the 30 days.
24 But, yes, this is the current.

25 Q. You said 30 days. Tell me what you

1 meant by that.

2 A. It was previously 45.

3 Q. You're talking about 1702.201, that
4 section?

5 A. Yes. Yes.

6 Q. And, right. I understand. Down at the
7 bottom of that section references there was an
8 Amended Ordinance in 2020.

9 A. Yes.

10 Q. But the Section 1702.2 existed while
11 you were director of planning. It may have just
12 had slightly different provisions than the section
13 you're looking at right now; is that correct?

14 A. Yes, that's correct.

15 Q. And you were familiar with the
16 requirements that applied during your tenure as
17 director of planning --

18 A. Yes.

19 Q. -- correct?

20 A. Yes.

21 Q. And these requirements in this section
22 1702.2, these are some of the technical
23 requirements you referenced a few minutes ago that
24 must be satisfied in order for the zoning
25 application to be granted, correct?

1 A. Actually, when I said that, I was
2 thinking more of the other provisions like the
3 technical like was the property large enough to
4 accommodate the required setbacks, for example.
5 But this would have applied. This would be
6 applicable, yes.

7 Q. Right. There's multiple types of
8 technical requirements. These ones in 1702.2 are
9 just examples of some of those requirements, but
10 there's others elsewhere in the zoning ordinance?

11 A. Yes.

12 Q. And, for example, there's the one you
13 referenced, 1702.201 that discusses the timeframe
14 for submitting an application prior to the planning
15 commission hearing, correct?

16 A. Correct.

17 Q. And who in the planning department
18 would be responsible for determining whether this
19 specific technical requirement was met?

20 A. There was no one person, I don't
21 believe. Tiffany Coleman is the clerical person.
22 You know, the applications would come to her
23 initially. This is not something that was actually
24 assigned to any particular person.

25 Q. So, for example, on the MQ3, the most

1 recent application to amend the Marlin Quay PUD,
2 the one that was decided or considered by your
3 department in late 2018, do you know who was
4 responsible for determining whether that
5 application was, in fact, submitted sufficiently in
6 advance of the planning commission hearing?

7 A. No. There was no one person that I'm
8 aware of.

9 Q. Were you aware of an issue that was
10 raised with the submission of the application or
11 whether the application was not complete at the
12 time it was submitted?

13 A. Perhaps at the planning commission
14 meeting somebody raised that issue. I can't
15 remember specifically. But somebody raised an
16 issue of the word completed, yes.

17 Q. Did anybody in the planning department
18 investigate that concern about the completeness of
19 the application for MQ3?

20 A. We were satisfied that it met our
21 requirements.

22 Q. And tell me the basis for determining
23 that it met the requirements.

24 A. Just reviewing the project as we do in
25 practice. It's normal that when you review a

1 project, that you ask for additional information or
2 you call and say, hey, this doesn't look right.
3 And there's a lot of back and forth. That's on
4 everything that comes in to, you know, to the
5 department.

6 Q. Is it common for an applicant to submit
7 an application for a zoning amendment but not
8 attach elevations or renderings of the building
9 that's being proposed as part of the application?

10 A. Initially there would be something in
11 the file. It would not be unusual for those to
12 change or additional information be provided.

13 Q. Sure. And I understand there can be
14 changes throughout the process of review, but what
15 I'm asking is, let's say I want to build an
16 apartment complex and I submit an application for a
17 zoning amendment to permit construction of that
18 apartment complex, would the planning department
19 expect there to be some type of drawing or
20 rendering of that proposed complex or building
21 until the application that was submitted?

22 A. Not a rendering or a building layout,
23 primarily a site plan.

24 Q. And what do you mean by site plan?

25 A. You know, how the building would be

1 situated on the particular parcel.

2 Q. Okay. But maybe not a rendering, how
3 about information regarding the size or dimensions
4 of the proposed building? It is common or expected
5 that that type of information would be included in
6 the initial application submitted by the applicant?

7 A. There would be some type of number that
8 would certainly be, you know, probably modified as
9 staff would review the project to get more details.

10 Q. But you testified before that the size
11 of a building is an important consideration in
12 evaluating a zoning application; is that right?

13 A. Yes. We would have that as we reviewed
14 the application.

15 Q. And you can't review the application if
16 you don't know what size the building is going to
17 be; is that a fair statement?

18 A. True.

19 Q. Okay. I'm going to scroll down to
20 section 1702.206. Do you see where I am?

21 A. Yes.

22 Q. In this section -- I'm just going to
23 paraphrase it -- it references the process of an
24 applicant providing notice to property owners
25 located within 400 feet of the subject property.

1 Are you familiar with that section?

2 A. Yes.

3 Q. And is there anybody in your department
4 who is tasked with reviewing the notice, whether an
5 applicant has, in fact, provided notice to
6 surrounding property owners?

7 A. Tiffany Coleman, I would believe, would
8 be the primary person that would have done that.

9 Q. In the context of the MQ3 application,
10 was Ms. Coleman the person who reviewed the notice
11 the efforts of the applicant to provide notice to
12 the surrounding property owners?

13 A. I don't remember that specifically.

14 Q. Do you recall an issue being raised
15 about the sufficiency of the notice provided to
16 surrounding property owners for the MQ3
17 application?

18 A. At some point in the process. I don't
19 remember exactly when that came up, but at some
20 point in the process.

21 Q. So it's fair to say the planning
22 department was aware of a possible issue with the
23 sufficiency of the notice by the applicant?

24 A. We were aware that that was stated by
25 someone, yes, at some point. I don't know when.

1 Q. Did the planning department do anything
2 to address or investigate the concerns about the
3 sufficiency of notice to surrounding property
4 owners?

5 A. The only thing I can specifically
6 remember is a conversation that staff had with, I
7 believe, the POA or the management company or
8 both -- it may be the same person -- to see if they
9 sent -- to be sure that they sent some letters to
10 everybody that, you know, was a member of the POA.
11 I'm talking primarily of the condominiums.

12 Q. You're talking about the POAs, the
13 owners association for the condominiums that are in
14 the Marlin Quay area?

15 A. That's correct.

16 Q. And it's your recollection that
17 somebody on your staff spoke with somebody
18 affiliated with that POA about the POA providing
19 notice to the condominium owners?

20 A. Yes.

21 Q. But in terms of whether the applicant
22 provided notice to the condominium owners, do you
23 know whether that occurred?

24 A. The applicant would have provided us
25 with a list and we would have -- I believe we

1 mailed the like, for instance, the letters. I
2 don't recall specifically what was provided.

3 Q. So just so I'm on the same page, the
4 applicant provides a list to planning department,
5 planning department then takes that list and sends
6 out letters to the affected property owners?

7 A. That's the practice.

8 Q. And in terms of this -- just so I
9 understand it, it's actually the planning
10 department's job to physically send out the
11 letters?

12 A. That's what we do, yes, or did.

13 Q. Okay. So it's the planning
14 department's job to make sure that all the affected
15 property owners receive notice of the zoning
16 application?

17 A. Yes.

18 Q. And in this case, did the planning
19 department send out letters to all of the owners of
20 condominiums in the Marlin Quay area?

21 A. I don't remember specifically who got a
22 letter. I do know we depended a lot on the POA and
23 the management company to send that information out
24 because we did not necessarily know the specific,
25 you know, condo owner.

1 Q. But the planning department could get
2 information regarding those addresses, right?

3 A. We didn't really have the means to do
4 that.

5 Q. Couldn't the POA provide that
6 information to the planning department?

7 A. I don't know. They basically said they
8 would handle that. They would send out the letters
9 for us.

10 Q. I'm sorry, who said that?

11 A. They said they had sent the letters to
12 their membership which should have included all the
13 owners.

14 Q. Who specifically said that they would
15 send out --

16 A. I don't recall any person's name. I do
17 know it was somebody -- a lady, I believe. She was
18 either over the POA or I think they may have had a
19 management company that did handle stuff for them.
20 She may have been over that. I don't know who it
21 was.

22 Q. I'm going to skip ahead in this
23 exhibit. We're moving to -- here's an excerpt from
24 Chapter 6 of the zoning ordinance. You'll see this
25 referenced at section 619, Planned Development

1 District. Do you see that?

2 A. Yes.

3 Q. And is this the section that applies to
4 the Marlin Quay PD?

5 A. Yes.

6 Q. And does this section cover the process
7 for modifying a planned development?

8 A. Yes.

9 Q. And, for example, I've got on the
10 screen Chapter 619.3, Changes and Modifications.
11 Do you see that?

12 A. Yes.

13 Q. And is this the section that covers the
14 major or minor amendments that we were talking
15 about previously?

16 A. Yes, uh-huh.

17 Q. And so in determining whether something
18 is a minor change, is it correct that the planning
19 department would look at this 619.301 with a
20 reference to minor changes?

21 A. Yes.

22 Q. And that initial Marlin Quay Amendment
23 Application, you stated the planning department
24 ultimately adopted the position of the applicant's
25 attorney and architects to determine that there was

1 a minor amendment proposed for the Marlin Quay PD?

2 A. Yes.

3 Q. But the Marlin Quay 3, MQ3 application
4 that was reviewed by your department in late 2018,
5 that was a major change and, therefore, governed by
6 619.302, correct?

7 A. Yes, that is correct.

8 Q. This section states that the major
9 changes in a PD shall require another public
10 hearing and shall be treated as an amendment to the
11 ordinance. Do you see that?

12 A. Yes, uh-huh.

13 Q. And so ultimately that major change had
14 to follow the same requirements as any other zoning
15 amendment that is evaluated by the planning
16 department?

17 A. Yes.

18 Q. And did the planning department
19 consider the factors set forth in this section
20 619.302 in reviewing the application for approval
21 of MQ3?

22 A. Yes. I'm sure we did.

23 Q. Let me ask you about this 619.3023. It
24 says, Changes in intensity of land use. Do you see
25 that?

1 A. Yes.

2 Q. And it goes on to define intensity as
3 including the degree of negative impact on the
4 environment and neighboring land uses. Would you
5 agree that is a factor that must be considered in
6 whether to approve a major amendment to land
7 development?

8 A. This section is basically establishing
9 whether it is major or minor.

10 Q. Right. So if it possibly changes the
11 intensity of land use, then it qualifies as a major
12 amendment?

13 A. Yes. Yes. Yes.

14 Q. Did the planning department consider
15 whether the MQ3 application would increase the
16 intensity of land use in the Marlin Quay planned
17 development?

18 A. We did process it as a major change. I
19 don't remember any specific discussion regarding
20 that, but it was deemed to be a major.

21 Q. I'm going to put on your screen what's
22 been marked as Plaintiff's Exhibit No. 2. And I
23 just want to briefly go over it with you. Give me
24 just a second here.

25 (EXHIBIT 2, P.U.D. Program Documents,

1 was marked for identification.)

2 BY MR. NUGENT:

3 Q. Mr. Johnson, I've got on your screen
4 Plaintiff's Exhibit No. 2. Do you see that image?

5 A. Yes.

6 Q. And do you recognize this document?

7 A. No, not really.

8 Q. I'll represent to you this is an image
9 of the Marlin Quay PUD. In fact, if I rotate it
10 for you, you may be able to see it a little better.

11 MS. GOLDING: Not the current PUD.

12 That was back --

13 MR. NUGENT: The original Marlin Quay
14 PUD.

15 BY MR. NUGENT:

16 Q. Are you familiar with this document?

17 A. I don't remember this document, no.

18 Q. I'm going to just point to a couple of
19 things briefly. Are you roughly familiar with the
20 Gulfstream restaurant that I'm circling in blue?
21 Do you see that?

22 A. Generally, yes.

23 Q. And then are you also familiar with the
24 Marlin Quay Marina Store that I'm circling right
25 here?

1 A. Yes.

2 Q. And you're aware that there is parking
3 in between the Marlin Quay Marina Store and the
4 Gulfstream restaurant?

5 A. Yes.

6 Q. Are you aware of any other parking in
7 the area of the Marlin Quay PUD other than this
8 parking lot that I just circled?

9 A. Specific to the -- excluding the
10 condominium parking you mean?

11 Q. Publicly available parking, public
12 parking.

13 A. No, I'm not aware of any.

14 Q. And if we look over here, in fact, it
15 says public parking right next to this. And that's
16 a little bit small. I'll zoom in for you.

17 A. Yeah, I see that.

18 Q. If you saw that, I apologize.

19 A. Yeah.

20 Q. So you're not aware of any other public
21 parking in the Marlin Quay PUD area other than the
22 lot that I circled in between the Gulfstream Cafe
23 and the Marlin Quay Marina Store?

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

25 Q. And let me ask you this. Does the PUD,

1 does it define what kind of use each piece of
2 property can have? Is that your understanding of
3 how a planned development works?

4 A. Generally, yes.

5 Q. So, for example, in this planned
6 development, it states that the area that I circled
7 as Gulfstream Cafe is identified as a public
8 restaurant, correct?

9 A. Yes.

10 Q. And that it would be necessary to amend
11 the planned development in order to change the use
12 of that particular piece of property; is that
13 right?

14 A. Yes.

15 Q. And the same down here for this what I
16 circled, the Marlin Quay Marina Store, it says
17 marina store, right?

18 A. Yes.

19 Q. And, again, it would be necessary to
20 amend the planned development in order to change
21 the use of this piece of property from marina store
22 to something else?

23 A. Yes.

24 Q. And each time each of those changes
25 would be something that would be evaluated as a

1 major amendment to the planned development?

2 A. Changing the use?

3 Q. Changing the use.

4 A. Yes.

5 (EXHIBIT 3, Application to Amend a
6 Planned Development, was marked for
7 identification.)

8 BY MR. NUGENT:

9 Q. Okay. I'm going to put in front of you
10 what has been previously marked as Plaintiff's
11 Exhibit 3. Mr. Johnson, do you see Plaintiff's
12 Exhibit 3 in front of you?

13 A. Where it has A with a circle on the top
14 right corner?

15 Q. Yes.

16 A. Yes.

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What is this document to your
20 understanding?

21 A. As the title says, it's the application
22 somebody would fill out to amend the planned
23 development.

24 Q. And is this the amendment for the
25 Marlin Quay Planned Development that your office

1 reviewed in late 2018?

2 A. I assume it is. It says name of
3 development, Marlin Quay.

4 Q. Yes. And you see it's got -- do you
5 know what this number AMPD up at the top in red,
6 what that is?

7 A. Not specifically. I believe it's just
8 a file number or something like that.

9 Q. Okay. And if we look about halfway
10 down this first page, there's a couple Xs, one by
11 Site Plan and one by Other. Do you see that?

12 A. Yes.

13 Q. And what does that mean that they've
14 got a check or an X by Site Plan?

15 A. This is basically saying in very
16 general terms what they're asking. For instance,
17 they're not asking for a setback. They're not
18 asking for signage change. They're asking for a
19 site plan change or other, in this case, change of
20 building configuration.

21 Q. Okay. And so if we look -- it says
22 Site Plan Amendment, then we should look at this
23 Section D of the application document, right?

24 A. Yes.

25 Q. And if it says Other, what does that

1 mean in terms of type of information that's
2 supposed to be provided?

3 A. It's something that's a catchall if it
4 doesn't fall under the three headings above it.

5 Q. And here why was there a catchall in
6 your understanding? Why did that apply to this MQ3
7 application?

8 A. My recollection is because they were
9 moving the building portion that was hanging over
10 on the condominium property.

11 Q. So this is the Marlin Quay 3, the final
12 application. Do you have a recollection of why
13 there was this other change of building
14 configuration section marked?

15 A. Not specifically.

16 Q. Once that section gets marked, the
17 change of building configuration as other, does
18 that trigger additional materials that should be
19 provided by the applicant?

20 A. No.

21 Q. But this site plan piece, you need to
22 see -- the department needs to see information
23 that's referenced in Section D of this application
24 document, correct?

25 A. Yes.

1 Q. I'll scroll down to Section D. Are you
2 with me?

3 A. I am.

4 Q. And it gives out the proposed amendment
5 request. Are you with me?

6 A. Yes.

7 Q. And it then goes on to state reason for
8 amendment request: Site plan attached to
9 application, revised calculation to follow under
10 separate cover.

11 Do you see that?

12 A. Yes.

13 Q. And when it says revised calculation,
14 what's your understanding of what that means?

15 A. There could have been something
16 specifically that they were trying to determine
17 they were maybe having a problem with and they felt
18 like they were going to give us some additional
19 information. That's just an example.

20 Q. Do you know whether those calculations
21 referred to the size and dimensions and
22 characteristics of the proposed building?

23 A. I don't know.

24 Q. If we look through the rest of this
25 document, can you tell me whether you see any

1 information regarding the size or dimensions of the
2 proposed MQ3 building? I'm at the end of this
3 exhibit. Mr. Johnson, did you see any documents
4 showing the size or square footage or dimensions of
5 the proposed Marlin Quay 3 building?

6 A. Just quickly looking at it, I did not
7 see a number. Obviously you could scale the
8 building, but I didn't see a number.

9 Q. You said you could see the scale of the
10 building?

11 A. I'm talking about if there was an
12 existing building there.

13 Q. If there was an existing building.
14 We're talking --

15 A. Right. I'm sorry.

16 Q. In terms of the size and dimensions of
17 that new building, at the time this application was
18 submitted, that information was not provided to
19 planning staff, correct?

20 A. I do not know. I don't remember.

21 Q. In order for planning staff to
22 determine whether something is an appropriate
23 amendment or major change, that information about
24 size and dimensions is critically important. Would
25 you agree with that statement?

1 A. Every case is different.

2 Q. In the case of the Marlin Quay
3 application. You've been through a couple
4 applications. You knew that the size of the
5 building was an important factor in your review of
6 the application, correct?

7 A. I'm not sure how to answer that. Was
8 the size of the building important?

9 Q. Let's go back to -- and I'm not trying
10 to -- I'm just trying to make sure we're on the
11 same page. When you were testifying about the
12 initial application to approve the first Marlin
13 Quay building in 2016 and 2017, you testified that
14 you wanted to make sure that the square footage was
15 the same as the old Marlin Quay Marina Store,
16 correct?

17 A. Yes. We're talking about heated square
18 footage?

19 Q. Heated square footage.

20 A. Yes.

21 Q. You would agree that once the Marlin
22 Quay 3 project came around, the issue of heated
23 square footage was still an important consideration
24 for the planning department's review of that
25 application.

1 A. Yes.

2 Q. And heated square footage I know you've
3 talked about, but you testified that unheated
4 square footage as in deck space could potentially
5 be relevant to a building such as a restaurant,
6 correct?

7 A. Depending on the specific restaurant
8 and their seating plans, yes.

9 Q. But you would want to see what that
10 restaurant's deck square footage and seating plan
11 looked like in order to review the application for
12 that particular piece of property, right?

13 A. Yes. The seating would be more
14 important for the deck if there was seating.

15 Q. And the application we're looking at in
16 Plaintiff's Exhibit 3 didn't contain that type of
17 information, did it?

18 A. I don't recall if it did.

19 Q. Do you know at what point the planning
20 department received information regarding items
21 such as heated square footage, deck square footage,
22 and seating for the proposed MQ3 building?

23 A. I don't recall any exact time.
24 Obviously it was before we wrote our staff report
25 to send out to the planning commission as the

1 project was being analyzed. But as far as a date
2 and time, I don't remember.

3 Q. Do you know if the information I just
4 referenced about square footage and seating was
5 provided to your department within 45 days of the
6 planning commission hearing on the application?

7 A. You mean beyond 45 days?

8 Q. Or, I'm sorry, yes, at least 45 days
9 before the hearing?

10 A. The application was submitted before
11 that. There may have been additional information
12 that we requested or that was provided at a later
13 date.

14 Q. Now, I believe if we look on this
15 application -- well, it doesn't look like it's
16 actually got a date on here. It looks like they
17 didn't bother to fill out the date -- do you see
18 where it's got Mr. Stacy's name?

19 A. Yes.

20 Q. I'll represent to you that this
21 application was submitted in, I believe,
22 approximately 45 days prior to the hearing. But as
23 you sit here today, you don't know whether the
24 information about square footage both inside and
25 outside and seating was included with any

1 submittals made at least --

2 A. I do not --

3 Q. -- 45 days prior --

4 A. I don't --

5 Q. -- to the commission hearing?

6 A. I do not know.

7 (EXHIBIT 6, Staff Report to the
8 Georgetown County Planning Commission dated
9 October 18, 2018, was marked for identification.)

10 BY MR. NUGENT:

11 Q. I'm going to put on your screen what
12 has been marked as Plaintiff's Exhibit 6. Do you
13 recognize this document, Mr. Johnson?

14 A. It is a staff report to the planning
15 commission.

16 Q. And this staff report references the
17 request from Dan Stacy for an amendment to the
18 Marlin Quay Planned Development. And this is
19 October of 2018, right?

20 A. Yes.

21 Q. You agree this is the MQ3 -- the staff
22 report for the MQ3 application?

23 A. I believe it is, yes.

24 Q. And did you prepare this report?

25 A. Not actually wrote -- no, not actually

1 wrote the report.

2 Q. You didn't prepare it but you
3 ultimately signed off on it in your capacity as
4 the --

5 A. That is correct.

6 Q. And that means you reviewed it and
7 confirmed that you were in agreement with what is
8 stated in the ultimate recommendation that was made
9 in it, correct?

10 A. Yes.

11 Q. And so I just want to talk through a
12 couple of items that are stated in here and make
13 sure we're on the same page. Under this Current
14 Status heading, second paragraph -- well, the first
15 paragraph references an approval of the county
16 council in February 2018 of the amendment to the
17 Marlin Quay Planned Development. Do you see that?

18 A. Yes.

19 Q. And do you know, is that MQ2? Do you
20 know if that's MQ2?

21 A. I do not know.

22 Q. Okay. But if we look at the second
23 paragraph under Current Status, there's this
24 reference in parentheses to MQ3, new structure. Do
25 you see that?

1 A. Yes.

2 Q. Okay. So MQ3 was what was being
3 evaluated by planning staff in this report that
4 we're looking at?

5 A. Yes.

6 Q. And that MQ3 was a major change to have
7 to follow and meet the requirements of an amendment
8 to the zoning ordinance in order to be approved?

9 A. A planned development is basically its
10 own zoning ordinance. That's the reason you have a
11 planned development. So, no, a planned development
12 does not have to meet every provision in the zoning
13 ordinance. That's why they apply for a planned
14 development, to give them flexibility that applies
15 to that specific site. As far as process, that is
16 correct.

17 Q. Okay. The process is it still has to
18 be evaluated as an amendment?

19 A. Yes.

20 Q. And the concepts underpinning the
21 zoning ordinance that we looked at a few minutes
22 ago about public necessity and good zoning
23 practice, those concepts apply to major amendments
24 to planned developments, right?

25 A. Yes.

1 Q. It still has to be good zoning practice
2 even though you're in a planned development?

3 A. Yes.

4 Q. Okay. And this MQ3 application had to
5 meet those requirements about being good zoning
6 practice and promoting public necessities and
7 general welfare in order to be approved?

8 A. Yes.

9 Q. Okay. And if we look down, there's
10 this Points to Consider section that starts on
11 page 1. There's several different points. I'm
12 going to jump to No. 3, which is on the second
13 page. Do you see that on your screen?

14 A. Yes.

15 Q. And it states in here the amount of
16 heated square footage has not changed. Do you see
17 that?

18 A. Yes.

19 Q. And it goes on to state, The proposed
20 heated square footage is less than the original
21 4,603 square feet for the original building that
22 was demolished. Are you with me?

23 A. Yes.

24 Q. And how did planning staff reach that
25 determination?

1 A. The number for the original building
2 was provided to us, and I do not recall how that
3 number -- I believe it was a different architect
4 initially that gave us that number. I do not
5 remember who it was.

6 Q. And why is that number relevant to the
7 planning staff's analysis of the MQ3 application?

8 A. Well, basically we just wanted to know
9 what was on the site to start with.

10 Q. Right. But in terms of whether the new
11 building was bigger or smaller than the old
12 building, why would the planning staff need to
13 evaluate that?

14 A. Well, initially because that would
15 impact whether it was major or minor.

16 Q. Okay. But this is a major event,
17 right, what we're looking at --

18 A. That's right.

19 Q. -- in Exhibit 6. So tell me in the
20 context of deciding this major amendment why the
21 size of the building was a relevant factor.

22 A. Massive buildings on a site is
23 important. You know, we talked about impervious
24 pervious surfaces. In Georgetown County, it's very
25 important from a flooding perspective, things like

1 that.

2 Q. And in the MQ3, it's all impervious
3 surfaces, right?

4 A. It's mostly impervious. There might
5 be, for instance, on the condominium property. But
6 the property we're talking about, yes.

7 Q. Okay. All impervious surface.

8 A. Right.

9 Q. Would the size of the building also
10 impact considerations such as parking or traffic?

11 A. As far as parking. And depending on
12 the use of the building and the heated square foot,
13 yeah, that's why we were looking at the heated
14 square footage.

15 Q. But just so I'm on the same page as you
16 are, the square footage here that you're
17 referencing, you said one of the ways in which a
18 change in square footage is relevant is impervious
19 surface or massing of buildings, right?

20 A. That's an example, yes.

21 Q. But I want to go through a couple other
22 examples. Do you believe that a change in square
23 footage could also be relevant to the amount of
24 required parking?

25 A. That and seating requirements, yes.

1 Q. That and seating.

2 And, in fact, there's a separate
3 section of the zoning ordinance that spells out the
4 requirements for parking, correct?

5 A. Yes, but it doesn't apply in the PD.
6 There is a parking section on the zoning ordinance,
7 yes.

8 Q. And the parking section in the zoning
9 ordinance, it defines the number of required
10 parking spaces based upon the square footage of the
11 building, at least for -- sorry. I'll condition
12 that because I know you know this far better than I
13 do. But for commercial uses such as restaurants or
14 retail stores, the amount of required parking under
15 the zoning ordinance is a function of the square
16 footage of the building; is that a fair statement?

17 A. I believe that is correct.

18 Q. Okay. And, in fact, for a use as a
19 restaurant, the parking requirements in the zoning
20 ordinance provide a different number of parking
21 spots for indoor square footage and outdoor square
22 footage of that particular type of use, right?

23 A. Yeah. Yes.

24 Q. So from a parking regulation
25 standpoint, it's relevant not just the size of the

1 heated square footage but also the outdoor deck
2 space if we're talking about a restaurant?

3 A. Yeah. Can I interrupt one second? My
4 computer just got a -- it says the battery is
5 running low. It says you may want to plug in your
6 PC, which I think it is plugged in, so I'll check
7 that.

8 Q. Okay. Let me know when you've got that
9 resolved.

10 A. I don't know why it would. It's
11 plugged in.

12 Okay. I'm sorry. You asked me a
13 question. I don't remember what it was.

14 Q. Sure. I was asking you about the
15 requirements in the parking regulations that are
16 contained in the zoning ordinance. And
17 specifically when a building is used as a
18 restaurant, the parking requirements provide for a
19 certain number of parking spaces based on the
20 heated square foot of the restaurant and a certain
21 number of parking spaces based on the outdoor deck
22 seating of the restaurant; is that correct?

23 A. Yes.

24 Q. So when a building is going to be used
25 as a restaurant, the parking regulations -- I'm

1 sorry. When a building is going to be used as a
2 restaurant, it's relevant to know both the heated
3 and unheated square footage of that proposed
4 building, correct?

5 A. Generally, yes.

6 Q. Okay. And the reference you have in
7 this No. 3 about the heated square footage, it only
8 references heated square footage, not outdoor deck
9 space, correct?

10 A. The verbiage in No. 3 does not, I don't
11 believe, mention decks. The table below does. It
12 shows unheated. I don't think it says deck.

13 Q. Okay. But unheated, in your
14 understanding, is that potentially including deck
15 space?

16 A. Yes.

17 Q. And you went on or the report that you
18 approved goes on in paragraph 4 to reference the
19 parking layout for the site. Do you see that?

20 A. Yes.

21 Q. And it goes on to reference the site
22 contains a total of 62 spaces and this exceeds the
23 zoning ordinance requirement of 51 spaces for the
24 proposed building. Are you with me?

25 A. Yes.

1 Q. So there you're referencing the zoning
2 requirements. Is that the parking regulations that
3 we were just talking about a minute ago?

4 A. Yes. We use that as just something to
5 look at, yes.

6 Q. So in this report that was submitted to
7 the planning commission, your staff took the
8 position that it was necessary to evaluate the
9 parking requirements contained in the zoning
10 ordinance?

11 A. We looked at that as a guide. It was
12 not a requirement. But, yes, that's what we looked
13 at as a guide.

14 Q. Okay. So you looked at the section of
15 the zoning ordinance regarding parking regulations,
16 and those 51 spaces that you stated, that was
17 calculated using the provisions contained in the
18 parking regulations?

19 MS. GOLDING: You have failed to
20 accurately reflect what he testified. He said he
21 used it as a guide, so don't try to --

22 MR. NUGENT: I'm trying to ask him the
23 question.

24 MS. GOLDING: You need to repeat it
25 accurately, not try to trip him up.

1 MR. NUGENT: Henri, I don't need a
2 speaking objection. I get that you have an
3 objection here. I'll ask a question that is not
4 repeating his prior testimony and we can move on.
5 BY MR. NUGENT:

6 Q. Mr. Johnson, where this report states
7 that the application or that the building exceeds
8 the zoning ordinance requirements of 51 spaces, did
9 the planning department calculate that number 51
10 using the provisions contained in the parking
11 requirements of the zoning ordinance?

12 A. As a guide, yes, we did.

13 Q. Okay. Now, nowhere in this report does
14 it state that the parking requirements do not apply
15 to the Marlin Quay Planned Development, correct?

16 A. I don't remember that. I have no
17 reason to doubt that, but...

18 Q. If that really were the case, wouldn't
19 that be important to put in this submitted to the
20 planning commission?

21 A. No, because it's a PD. A PD you
22 establish your own parking.

23 Q. Is there a section in the zoning
24 ordinance that states that PDs are exempt from
25 parking requirements?

1 A. It doesn't say that. It doesn't have
2 that language.

3 Q. Okay. So what's the basis for your
4 position that PDs are exempt from the parking
5 requirement?

6 A. Because that's what a PD is. It's a
7 flexible district that creates its own regulations,
8 whether it's unique to that particular property.
9 There are some things in the ordinance that says
10 what cannot be excluded, for instance, if you're on
11 Highway 17, you have to meet architectural
12 requirements. It says the PD can't exempt those so
13 it's kind of the reverse.

14 Q. But here the zoning ordinance is silent
15 about whether the PD is or is not exempt from the
16 parking regulations, correct?

17 A. I think that the zoning ordinance in
18 the staff's meeting is clear that it does not
19 apply.

20 Q. I understand that's the opinion of
21 staff. I'm just trying to find out whether there's
22 language in the zoning ordinance that says PDs are
23 exempt from parking requirements.

24 A. I don't remember any language that has
25 the word parking in it.

1 Q. And are you aware of anything in that
2 section -- Section XVII that we looked at a few
3 minutes ago, that's the section that deals with
4 planned developments, right -- I'm sorry, section 6
5 is planned developments, correct?

6 A. The previous section. I don't remember
7 the number but, yeah, what we looked at.

8 Q. Okay. And if there were some exemption
9 from the parking requirement spelled out in the
10 zoning ordinance, would you expect it to be in that
11 section 6 about planned developments?

12 A. Not necessarily. It could be in a
13 different section of the zoning ordinance.

14 Q. You're not aware of any type of section
15 that spells out that exemption that you just
16 described?

17 A. Specific to parking?

18 Q. Yeah.

19 A. Yes. No, there are not.

20 Q. There are not.

21 Now, tell me, you said that it's
22 staff's opinion that the parking requirements of
23 the zoning ordinance don't apply in a planned
24 development. Is it good zoning practice to ignore
25 parking requirements when establishing or modifying

1 planned development?

2 A. Like I said, a planned development is
3 for a specific property. Modern planning theory,
4 as a matter of fact, is going in the opposite
5 direction. Many communities are actually requiring
6 you not have too many parking spaces because it
7 creates environmental problems.

8 Q. Sure.

9 A. It could be very beneficial to have
10 less parking, not this project, I'm just talking in
11 general.

12 Q. Let's talk about the idea of reducing
13 parking. Are you familiar with the Marlin Quay
14 area?

15 A. Yes.

16 Q. And in your understanding, do people
17 typically drive to the businesses that are located
18 in the Marlin Quay area?

19 A. The existing businesses?

20 Q. Yes.

21 A. I don't know. But given that nature
22 with all the beach houses, I'm sure there is a lot
23 of walk up traffic. I don't know.

24 Q. Have you received or heard information
25 about the demand for parking or ever studied the

1 demand for parking in the Marlin Quay area?

2 A. No.

3 Q. Wouldn't it be necessary from a zoning
4 standpoint to study the demand for parking before
5 making a determination regarding whether the
6 parking in a given area is sufficient?

7 A. It depends on the definition of study.
8 Certainly it was discussed, I'm sure. I don't
9 remember it, but I know it had to be discussed when
10 we talked about the particular ramifications. We
11 would not go out and hire a consultant to come in
12 and do an independent parking analysis.

13 Q. Right. You wouldn't hire somebody, but
14 somebody in house would evaluate whether there's
15 sufficient parking on the site of a subject
16 property that's part of the application being
17 reviewed.

18 A. We would talk about parking, yes.

19 Q. And what conversations did the planning
20 staff have about parking for this MQ3 application?

21 A. I don't remember anything specific
22 except for what we just talked about and how many
23 were there today, how many would be there at the
24 end of the project.

25 Q. And the Exhibit 6 we're looking at,

1 this No. 4, the last sentence states, The parking
2 lot is also used by the Gulfstream Cafe and the
3 marina, correct?

4 A. Yes.

5 Q. And so the planning staff knew that the
6 Gulfstream Cafe and the marina were users of the
7 parking lot at the time this report was made.

8 A. Yes.

9 Q. Did the planning staff make any effort
10 to determine what number of spots the Gulfstream
11 Cafe or the marina required in this parking lot?

12 A. No.

13 MS. GOLDING: Object to the form of the
14 question. It's a nonexclusive --

15 MR. NUGENT: I got your objection,
16 Henri. I think he already answered.

17 BY MR. NUGENT:

18 Q. Was your answer no, Mr. Johnson?

19 A. We didn't study that aspect of it.

20 Q. Okay. And why not?

21 A. Because it was an existing PD and so we
22 sort of had to live with what we had. It wasn't
23 like somebody was coming in with a brand new PD and
24 create something.

25 Q. Did the existing PD have any specific

1 provisions about the number of required parking
2 spaces?

3 A. I don't remember. This was an
4 extremely old PD that existed before any of the
5 current staff's existence as employees. I can't
6 recall what it said. It didn't say that was a
7 very -- that PD did not have a lot of guidance.

8 Q. It didn't have a lot of guidance?

9 A. Yes.

10 Q. Would planning staff have been able to
11 do the same calculation about required parking
12 spaces for Gulfstream Cafe and the marina that it
13 did for the proposed MQ3 building?

14 A. I'm sorry, can you repeat that?

15 Q. Yes. Could planning staff have done
16 the same calculation regarding required spaces for
17 Gulfstream Cafe and the marina as it did for the
18 proposed MQ3 building?

19 A. The only thing we could have done is
20 looked at, for instance, the Gulfstream Cafe, if
21 it's set over in a general commercial area in
22 Murrells Inlet, you know, how many parking spaces
23 it would require in that setting.

24 Q. The same way that --

25 A. I don't know the square footage or the

1 seating of the Gulfstream Cafe, for example.

2 Q. Okay. So the planning department never
3 evaluated the square footage or seating of
4 Gulfstream in determining what kind of parking
5 situation existed in the Marlin Quay PD?

6 A. No.

7 Q. And same for the marina. Did the
8 planning department consider the size of the marina
9 in determining what kind of parking demand existed
10 in the Marlin Quay PD?

11 A. No, because there was no changes being
12 made so we didn't examine that. We knew aware of
13 the existence, but we didn't do a specific
14 analysis.

15 Q. Now, were you familiar with the
16 existence of an easement in favor of the Gulfstream
17 Cafe related to parking in Marlin Quay?

18 A. I was not originally. As this project
19 developed, yes, I was made aware of it. I don't
20 know the specifics of it, I just know it's an
21 easement for Gulfstream to park on that property, I
22 guess.

23 Q. Were you aware of the existence of an
24 easement for the marina to park in the parking lot
25 at the Marlin Quay PD?

1 A. No, I've never read the easement. I
2 don't know what the easement entails.

3 Q. But the report states the parking lot
4 is used by the marina, correct?

5 A. Yes. I know they park there in the
6 parking lot.

7 Q. Right.

8 You didn't know, or did you know at the
9 time this report was done about the existence of an
10 easement in favor of the marina related to the
11 issue of parking?

12 A. I don't know when we became aware of
13 that easement. Probably we were aware of it.
14 Yeah, because it's MQ3, so we were aware.

15 Q. Okay. So you knew that there were two
16 other users of the parking lot who held easement
17 rights in some description for the purpose of --

18 MS. GOLDING: Object to the form of the
19 question.

20 MR. NUGENT: You can answer.

21 THE WITNESS: I wasn't aware of
22 anything about who had access to the easement, I
23 just knew there was a parking easement.

24 BY MR. NUGENT:

25 Q. You knew it was a parking easement and

1 you knew that Gulfstream and the marina were users
2 of the parking lot at Marlin Quay, right?

3 A. Yes, I did know they used the actual
4 parking.

5 Q. And planning staff didn't do anything
6 to determine how many spaces those particular users
7 required?

8 A. No, we did not include that in our
9 analysis.

10 Q. Okay. And did planning staff evaluate
11 whether it was possible under the parking
12 regulations for the various businesses at Marlin
13 Quay to share the parking lot?

14 MS. GOLDING: Object to the form of the
15 question.

16 BY MR. NUGENT:

17 Q. You can answer.

18 A. Sir, could you repeat the question?

19 Q. Sure. Did planning staff do an
20 analysis about whether under the parking
21 requirements of the zoning ordinance if it was
22 possible for the users of the Marlin Quay parking
23 lot to share use of the parking lot?

24 A. We knew as part of the planned
25 development that that parking lot was there for the

1 PD, yes.

2 Q. Okay. And if a zoning amendment or a
3 major change to a PD will result in a use that
4 overtaxes a parking lot, that's a problem from a
5 zoning standpoint, isn't it, from a planning
6 standpoint?

7 MS. GOLDING: Object to the form of the
8 question.

9 THE WITNESS: Not necessarily.

10 BY MR. NUGENT:

11 Q. Okay. Why not?

12 A. Well, there's other means for parking.
13 Like I said, many communities are reducing parking
14 now. They could valet park. They could come in
15 and build a parking deck with another amendment to
16 the PD. The market itself regulates a lot of the
17 parking demand, actually more so than our
18 ordinances. It could; it could not. There's just
19 a lot of factors.

20 Q. I'm just asking from your experience as
21 a person in the planning world, is it good planning
22 practice to approve a zoning amendment or PD
23 amendment that will create more demand for parking
24 than there is supply?

25 MS. GOLDING: Object to the form of the

1 question.

2 BY MR. NUGENT:

3 Q. You can answer.

4 A. Are you asking specific PDs?

5 Q. I'm asking for just from a planning
6 standpoint. We'll talk about PDs only. You've got
7 a PD and you're looking at the amendment to the PD,
8 right?

9 A. Yes.

10 Q. And the amendment is to build a bigger
11 building at the PD, right?

12 A. Hypothetically?

13 Q. Hypothetically. Are you with me?

14 A. Yes.

15 Q. If that bigger building is going to
16 overtax the capacity of the existing parking, you
17 agree it's not good planning practice to approve
18 that proposed amendment?

19 MS. GOLDING: Object to the form of the
20 question.

21 THE WITNESS: Do I answer?

22 MS. GOLDING: Yeah, you can answer.
23 Sure.

24 THE WITNESS: Generally that is true.
25 Again, particularly if it was a PD, we would expect

1 the parties would be sharing the parking and
2 working those things out, like I say, with valet
3 parking or something like that.

4 BY MR. NUGENT:

5 Q. And if you received information that a
6 proposed amendment to a PD could overtax the
7 existing parking, you agree that it would be
8 appropriate for planning staff to review the
9 existing supply of parking and the existing demands
10 on that parking, correct?

11 A. We consider parking in general, yes.

12 Q. But in terms of considering the demand
13 for parking at Marlin Quay, that wasn't considered,
14 right?

15 A. We did not look at every use on site
16 like Gulfstream and the marina, for example.

17 Q. And information was made available to
18 you that other users were concerned that the
19 proposed MQ3 building would overtax the parking
20 lot, right?

21 A. That was stated to us, yes.

22 Q. Okay.

23 A. Not in those terms, but they complained
24 about parking. I don't know that they specifically
25 said that but, yes, they expressed parking --

1 Q. And what were the nature of those
2 complaints, just so we're all on the same page?

3 A. Basically what you said. They said it
4 would be overtaxed.

5 Q. Okay. So you and the planning staff
6 knew that there were concerns that the approval of
7 MQ3 might overtax the parking?

8 A. We knew that that was stated. We
9 didn't know if that was factual.

10 Q. What did the planning staff do to
11 evaluate whether the MQ3 building, if approved,
12 would overtax the parking?

13 A. My recollection is that's when we got
14 into the seating, the heated square feet of the
15 building. You know, they limited the seating to, I
16 think it's, 110; whereas, the actual capacity on a
17 traditional building from fire inspection was like
18 over 300. They agreed to limit it to 110. That
19 was an example.

20 Q. So your testimony is that the
21 resolution or the effort to resolve concerns about
22 parking was to place a seating limit on the
23 building, the proposed building?

24 A. That's how it ended up, yes.

25 Q. Did your planning department do

1 anything to evaluate what kind of parking demands
2 existed outside of this reference to a seating
3 limit?

4 A. I do not believe so.

5 Q. And why not?

6 A. Well, I will say this, like the deck,
7 for instance. And we talked earlier about whether
8 there was seating on the deck or not. So, yeah, we
9 did in that regard for this building.

10 Q. Now, if you've got a bar -- and did you
11 understand that there would likely expect to be a
12 bar in this MQ3 building?

13 A. Somewhere in the building, yes. Yes.
14 I don't remember the layout, but I do know there
15 was a bar.

16 Q. It's possible to patronize a bar
17 without having an actual place to sit, isn't it?

18 A. Yes.

19 Q. And you've stated that this MQ3
20 building would have an occupancy limit of 350
21 something people; is that right?

22 A. That's what would have been allowed
23 under the fire code. Again, we would limit the
24 seating to 110 --

25 Q. Right. But that's just --

1 MS. GOLDING: Adam --

2 MR. NUGENT: I'm sorry. I didn't mean
3 to interrupt.

4 MS. GOLDING: -- you are continuing to
5 interrupt. Let the witness...

6 THE WITNESS: I was just saying that
7 was an additional requirement.

8 BY MR. NUGENT:

9 Q. Right. So the ordinance put a seating
10 limit on the Marlin Quay 3 proposal, correct?

11 A. Ultimately, yes.

12 Q. The ordinance did not put an occupancy
13 limit on the Marlin Quay 3 proposal, right?

14 A. From my recollection, it was just
15 seating.

16 Q. And you agree that if a bar is being
17 operated in the Marlin Quay 3 building, it is
18 possible for patrons to go to that establishment
19 without having a place to sit?

20 A. In a bar, yes.

21 Q. And here the occupancy limit is
22 approximately, let's just call it, 200 people
23 greater than the seating limit, right?

24 A. I don't remember the exact number.
25 You're talking about the fire code occupancy, I

1 assume?

2 Q. I think that you referenced that
3 number. I'm sorry.

4 A. Yeah, it was a bigger number. Yes.

5 Q. And you testified, I believe it was
6 something like 350 people?

7 A. Yeah. Something in that area as far as
8 the fire capacity, yes.

9 Q. So it would be possible for there to be
10 an additional 200 patrons in the Marlin Quay 3
11 building who did not have a seat to sit in but were
12 still drinking or dining at that establishment?

13 A. That would be possible as far as them
14 meeting the fire provisions, yes.

15 Q. And do you agree that if there were 350
16 people in the Marlin Quay 3 building drinking
17 and/or dining, that that would overtax the parking
18 available in the Marlin Quay area?

19 A. No, not necessarily.

20 Q. And why not?

21 A. I think because of the nature of that
22 location, first off, people are not going to come
23 there if they can't park. Secondly, I think a
24 tremendous number of people going to that bar, for
25 instance, would be walk ups, would be people