

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 VII)**

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1 walking from their beach houses going down there to
2 Marlin Quay. I don't think anybody from Georgetown
3 is going to get in their car and drive all the way
4 to come to Marlin Quay to stand up and not be able
5 to park and stand up at a bar. I just don't think
6 that's practical.

7 Q. Well, what actual study -- I understand
8 you've got some opinions about what you think might
9 be practical, but did the planning staff study the
10 possible impacts of there being 350 patrons at one
11 time at the Marlin Quay MQ3 building?

12 A. No, we did not. We focused on the 110.

13 Q. Okay. And the 110, that was designed
14 to prevent the parking lot from being overtaxed in
15 your view, correct?

16 A. It was really going back to what was
17 originally in the building.

18 Q. Okay. Well, I just want to make
19 sure --

20 A. I'm sure that would be a factor, but
21 that's where the number came from, I believe.

22 Q. But I --

23 A. It's exactly what had always been
24 there.

25 Q. I just want to make sure I understand

1 your testimony, Mr. Johnson. You previously
2 testified that the 110 person seating limit was
3 added to address concerns about the MQ3 building
4 overtaxing parking; is that right?

5 MS. GOLDING: No. You again are trying
6 to change his testimony.

7 MR. NUGENT: Henri, I'm not trying to
8 change his testimony. I'm trying to make sure I
9 understand his testimony. I just asked him to help
10 me understand --

11 MS. GOLDING: Well, then why don't you
12 ask him a question that is less restrictive.
13 You're trying to change his testimony. The way you
14 do it, you're trying to pin him down.

15 MR. NUGENT: Ms. Henri, I'm going to
16 ask the questions. I don't need any advice on how
17 to ask them. I'm simply trying to understand
18 Mr. Johnson's testimony. And if it will help, I
19 will ask the question again so we can move on.

20 MS. GOLDING: Okay. Just don't mislead
21 the witness.

22 BY MR. NUGENT:

23 Q. Mr. Johnson, I asked you before about
24 what steps were taken to address the concerns that
25 community members expressed about the MQ3 building

1 overtaxing parking. Do you recall me asking you
2 about that?

3 A. I believe so.

4 Q. And what was your testimony about --
5 your answer about what steps were taken to address
6 the community concerns about the MQ3 building
7 overtaxing parking?

8 A. I truly don't even remember what I
9 said, but certainly I probably did say the 110
10 seating limit that was placed on and the PD would
11 address that issue.

12 Q. Okay. And so your belief is that that
13 110 seat limit was designed to address concerns
14 about MQ3 overtaxing parking?

15 MS. GOLDING: Object to the form of the
16 question.

17 BY MR. NUGENT:

18 Q. You can answer, Mr. Johnson.

19 A. That number was provided to us and
20 agreed to basically, I think, at the planning
21 commission meeting. What their thought process was
22 when they said that, I don't know.

23 Q. Okay. So you don't know the reason why
24 the 110 person seating limit was placed in the
25 ordinance?

1 A. It came up at the planning commission.
2 You know, as far as why they said that, you know,
3 whether it was in relation to parking or somebody
4 just said it's a bigger building, you know, it came
5 up in the planning commission.

6 Q. If somebody said it was a bigger
7 building -- sorry.

8 A. I don't recall. I'm saying that it
9 could have come up in that context. But, yes, it
10 came up as a way to address that issue of the size
11 of the building, the capacity in the building.

12 Q. Now, would an occupancy limit of
13 something close to 110 also been a way to address
14 the concerns about the MQ3 building overtaxing
15 parking?

16 A. I've never known Georgetown County to
17 do that. Whether it's good or bad, we've never
18 done that as far as occupancy limit. We've always
19 depended on the fire department. There maybe
20 another building out there that would have done
21 this too. I don't remember if there is.

22 Q. As a person who's on the planning
23 staff, you're charged with identifying and coming
24 up with solutions to possible issues, planning
25 related issues that are presented by an

1 application, right?

2 MS. GOLDING: Object to the form of the
3 question. He's not on the planning staff. You
4 know that, Adam.

5 BY MR. NUGENT:

6 Q. You can answer, Mr. Johnson.

7 A. Well, it's not planning staff's job to
8 come up with a solution to the problem. We review
9 what's submitted and would have reviewed what was
10 submitted and said this is good, bad, or
11 indifferent. It may be that we said, you know,
12 have you guys ever thought about this? I don't
13 think -- that was not the case here. Again, that's
14 usually why an applicant would hire some type of
15 design professional, you know, to address those
16 kinds of issues and we would review it.

17 Q. And you would agree that -- you talked
18 about things that were good, bad, or indifferent.
19 You would agree it's a bad thing to not have
20 sufficient parking for a commercial business,
21 right?

22 MS. GOLDING: Object to the form of the
23 question.

24 BY MR. NUGENT:

25 Q. You can answer.

1 A. Yes. But again, there's other ways to
2 provide parking that we would expect would occur.

3 Q. Sure.

4 A. I used an example of valet parking.

5 Q. Sure.

6 A. It's not restricted to how many parking
7 spaces there are.

8 Q. We can be a little broader. From a
9 planning standpoint, it is a bad thing if there is
10 insufficient parking for a commercial business,
11 taking into account all the possible sources of
12 parking in the area, correct?

13 A. Depending on who -- yes, if the
14 people -- depending on who's actually coming to the
15 property. If too many people come to the property
16 and there's too many cars, yes.

17 Q. But when planning staff reviews an
18 application, it learns that there may be an issue
19 with the application creating a situation where
20 there is insufficient parking, that is something
21 that you believe should be raised in the review
22 process, correct?

23 MS. GOLDING: Object to the form of the
24 question.

25 THE WITNESS: We would identify that as

1 an issue that has been raised, yes.

2 BY MR. NUGENT:

3 Q. Okay. And in the context of the Marlin
4 Quay 3 application, the community members did raise
5 a concern about the MQ3 building creating
6 insufficient parking in the area?

7 A. Somebody stated that at the public
8 hearings, yes. I can't remember exactly who but,
9 yes, it was stated.

10 Q. And members of the planning staff were
11 aware of that concern at the time they were
12 reviewing the MQ3 application?

13 A. At some point, yes, as far as the
14 public raising that issue, yes, at some point. I
15 don't remember exactly when the people stated that
16 to us.

17 Q. Okay. You mentioned that your position
18 as the -- Georgetown County's zoning ordinance
19 parking regulations don't apply in a planned
20 development, right?

21 A. Correct.

22 Q. But you agree that even if those zoning
23 ordinances don't apply in a planned development, it
24 still is bad planning to approve an amendment to a
25 PD that would overtax the parking available at that

1 PD?

2 A. I don't agree at all if you're using
3 the parking reg section as the guide to make that
4 determination.

5 Q. I understand. You're saying you don't
6 have to follow the parking regulations to the
7 letter. That's your position, right?

8 A. Yes. Not only not to follow them, but
9 also that they don't apply, yes, that's true.

10 Q. But you still, from a planning
11 standpoint, have to consider the availability and
12 demand for parking when evaluating an application
13 to amend the PD?

14 A. Yes. We talk about parking.

15 Q. It would be inconsistent with good
16 planning practice to ignore the demand and supply
17 of parking in a PD when reviewing an application to
18 amend the PD, right?

19 A. Yeah. We don't ignore an issue.

20 Q. Right. You don't ignore an issue.

21 And so that obligation to consider
22 parking applies, even if the zoning ordinance
23 parking regulations are inapplicable, in planned
24 developments in Georgetown County?

25 A. We do consider parking, yes.

1 (EXHIBIT 8, Minutes of Georgetown
2 County's Planning Commission Meeting, dated
3 October 18, 2018, was marked for identification.)

4 BY MR. NUGENT:

5 Q. Mr. Johnson, I'm going to put on your
6 screen what's previously been marked as Plaintiff's
7 Exhibit No. 8.

8 MS. GOLDING: What number was that
9 again?

10 MR. NUGENT: 8.

11 THE WITNESS: I see it.

12 BY MR. NUGENT:

13 Q. Mr. Johnson, do you see this? It's the
14 minutes from the October 18th Georgetown County's
15 Planning Commission Meeting. Have you seen this
16 document before?

17 A. I'm sure I saw it when I was at the
18 planning commission, you know, when they adopted
19 the minutes like they do every month.

20 Q. I'm happy to scroll through this if it
21 would be helpful to you.

22 A. Okay. Rarely do I would read the
23 minutes, though.

24 Q. Sure. You may not have read these
25 minutes, but you recall being present at the

1 planning commission meeting on October 18, 2018?

2 A. If there was a meeting, a planning
3 commission meeting, and this was the subject, I was
4 there.

5 Q. And I'll represent to you that this is
6 the planning commission meeting for the MQ3
7 application that was reviewed in late 2018.

8 A. Okay.

9 Q. I'm on page 2 of this exhibit and
10 you'll see there's a heading C. It starts with A
11 request from Dan Stacy. Are you with me?

12 A. Yes.

13 Q. And then it goes down and the next
14 paragraph states, Boyd Johnson presented the staff
15 report. Do you see that?

16 A. I do see that.

17 Q. And does that refresh your recollection
18 about whether you presented -- you already
19 testified you presented this application or
20 recorded this application?

21 A. I think I earlier said I signed it and
22 Holly presented it, but I don't doubt that these
23 minutes are accurate. I don't remember actually
24 being the one to do it. That's what it says.

25 Q. Let's look through a couple statements

1 here and make sure that they're accurate. In here
2 you state, the sentence on the second line says,
3 The amount of heated square footage has not
4 changed. Do you see that?

5 A. That's what the minutes say, yes.

6 Q. The minutes say.

7 And we looked back at the planning
8 staff report and that had a reference to heated
9 square footage not changing, correct?

10 A. I believe so.

11 Q. And your understanding is the heated
12 square footage was with reference to the original
13 Marlin Quay Marina Store that was demolished
14 several years ago?

15 A. Just looking at these minutes, that's
16 logical, but I don't know.

17 Q. Well, and do you recall from the review
18 of the various Marlin Quay projects over the years,
19 has the heated square footage changed at any point
20 during those projects?

21 A. The reason I say what I did is, I'm not
22 sure if this is referring back to the original or
23 back to MQ2. I believe this is MQ3. And my
24 recollection of that table we had looked at
25 earlier, there may have been some minor changes, I

1 think going down actually.

2 Q. So the heated square footage for MQ3,
3 in your recollection, is less than what the
4 applicant told you the heated square footage of the
5 original building was?

6 A. I'm just basing it on that table we
7 looked at earlier, then that would be -- I can't
8 recall what was actually said originally.

9 Q. At any point do you recall there being
10 a change, an increase in the amount of heated
11 square footage between the original building and
12 the Marlin Quay 3 building?

13 A. No, I don't.

14 Q. And do you know if there was a change
15 in the unheated square footage between the original
16 building and the Marlin Quay 3 building?

17 A. Yes, there was.

18 Q. And how much of a change was there?

19 A. I believe my recollection of that table
20 we looked at a little bit earlier had a substantial
21 amount of deck. I think it went up like about
22 5,000 square feet of deck.

23 Q. So 5,000 square foot of deck greater in
24 MQ3 than the original building?

25 A. I don't know how much deck the original

1 building had. It had some deck too. I don't know
2 that number, but I feel like it did have some deck.

3 Q. Okay.

4 A. But I can't compare deck to deck.

5 (EXHIBIT 4, Photograph of two-story
6 Marlin Quay building, was marked for
7 identification.)

8 BY MR. NUGENT:

9 Q. Okay. Well, why don't we look at
10 what's been marked as Plaintiff's Exhibit No. 4.
11 Do you see that on your screen, or do I need to
12 reshare it?

13 A. I see it. It's a picture.

14 Q. And what's that a picture of?

15 A. I couldn't have told you except I know
16 we're looking at this project. I assume that's the
17 old building.

18 MS. GOLDING: That's the new building.

19 THE WITNESS: I'm sorry. No.

20 BY MR. NUGENT:

21 Q. I'll represent to you this is the old
22 Marlin Quay building.

23 Are you familiar with the condos in the
24 background here?

25 A. Yes.

1 Q. And you've seen these pictures or
2 similar pictures at some point in the past few
3 years?

4 A. No, I've never seen these pictures.

5 Q. Have you seen any pictures in the past
6 several years while reviewing applications related
7 to MQ3 or any MQ project depicting the old building
8 at Marlin Quay Marina?

9 A. I do not remember seeing any pictures.

10 Q. Okay. So this picture I'm showing you
11 today is, you believe, possibly the first time you
12 have seen a picture of the old Marlin Quay building
13 since the planning staff began reviewing the
14 various proposals to develop a new building at the
15 Marlin Quay PUD?

16 A. I don't remember seeing this picture.

17 Q. Okay. This picture --

18 A. Or any pictures --

19 Q. -- but I'm asking you do you recall any
20 picture taken of the building that looked like
21 this?

22 A. I don't remember seeing any.

23 Q. Don't you think a picture of the old
24 building might be relevant to evaluating how it
25 compared to a new building?

1 MS. GOLDING: Adam, he just testified
2 he doesn't remember.

3 MR. NUGENT: I'm asking a different
4 question, Henri, and he can answer subject to any
5 objection you have.

6 THE WITNESS: I don't really see where
7 a picture is that big a deal so I never would see
8 them.

9 BY MR. NUGENT:

10 Q. But you see in this picture, the old
11 building was approximately a one and a half story
12 building? Does that look right?

13 A. Yeah, I'm looking at the picture of
14 where your cursor is, yes.

15 Q. So you would agree that's a one and a
16 half story building?

17 A. I guess that's how you would describe
18 that.

19 Q. And there's a little bit of outdoor
20 deck space that you can see at the top of this
21 picture, right?

22 A. Yes.

23 Q. But you don't have any idea as you sit
24 here today how much space that building had for
25 outdoor decking?

1 A. No.

2 Q. Do you know whether anybody on staff in
3 the planning department reviewed pictures of the
4 old Marlin Quay Marina Store building during the
5 past four years of evaluating proposals to amend
6 the Marlin Quay PUD?

7 A. I don't remember any staff talking
8 about any pictures.

9 Q. And do you know if any staff ever
10 visited the Marlin Quay area to see the old
11 building in person before it was demolished?

12 A. I'm not sure. I don't know
13 specifically if that occurred or not. I did not go
14 there and look at it.

15 Q. And from looking at these pictures, can
16 you tell me whether this building appears to have
17 4,600 or give or take heated square feet?

18 A. Obviously, I don't know for sure, but
19 it could depending on how big like the one story
20 portion is and the two story, I just don't know.

21 (EXHIBIT 7, Photograph of Marlin Quay
22 construction project, was marked for
23 identification.)

24 BY MR. NUGENT:

25 Q. Okay. I'm now going to show you what

1 has been marked as Plaintiff's Exhibit No. 7. And
2 do you have that image on your screen?

3 A. I'm still looking at a picture of the
4 building. What I'm looking at shows a picture of
5 mostly the one story portion of the building.

6 Q. Let me reshare. Hold on just a second.

7 A. Okay.

8 Q. Do you have a different image on your
9 screen now?

10 A. Yes.

11 Q. And do you recognize what's depicted in
12 this image?

13 A. I haven't been there at the site to
14 look at it. I assume that's the new building.

15 MS. GOLDING: If you don't know, you
16 don't know.

17 THE WITNESS: I don't know. I haven't
18 been there.

19 BY MR. NUGENT:

20 Q. Looking at the background of this
21 picture, do you see the Marlin Quay condos in that
22 back left area?

23 A. I see a building back there, yes.

24 Q. Okay. And I'll represent to you that
25 this is a picture from about a month ago of the

1 building that is currently being constructed as a
2 result of the approval of the MQ3 PD application.

3 You saw renderings of the proposed MQ3
4 building, right?

5 A. Yes.

6 Q. And does this building look to be more
7 or less consistent with what those renderings
8 showed?

9 A. I'm not sure about the term rendering,
10 what that is honestly.

11 Q. How about a drawing or some type of
12 elevation. Is that a better term to use?

13 A. Yes.

14 Q. You saw drawings and elevations of this
15 proposed MQ3 building, right?

16 A. Yes.

17 Q. And does this image, Exhibit 7, appear
18 similar to those elevations or drawings that you
19 saw?

20 A. Similar.

21 Q. Similar. Is that what you said?

22 A. Yes.

23 Q. Okay. And looking at this, is it your
24 testimony that this building is similar in size to
25 the one that we looked at it Plaintiff's Exhibit 4?

1 A. Again, I don't know what we've looked
2 at. I don't know how many square feet was in that
3 original building. This building is going up to
4 meet the new flood requirements, so I don't know.

5 Q. Okay. But is it your testimony that
6 you believe that this building in Exhibit 7 might
7 be the same number of heated square feet as the
8 building we looked at in Plaintiff's Exhibit 4?

9 A. Yes.

10 Q. Okay. How about unheated decking?
11 Does this building appear to have more, less, or
12 the same amount of outdoor deck as the building we
13 looked at in Plaintiff's Exhibit 4? And I'm happy
14 to go back to it if you need to look at it.

15 A. No. It's more decking.

16 Q. Okay. Do you agree a lot more decking?

17 A. Yes.

18 Q. And do you have any understanding of
19 why an applicant would spend money on building a
20 lot more decking for a particular building?

21 MS. GOLDING: Object to the form of the
22 question.

23 BY MR. NUGENT:

24 Q. You can answer.

25 A. It's hard for me to answer without

1 assuming since I don't know what he was thinking,
2 and I can't --

3 Q. Well, I'm not asking you --

4 A. I don't know.

5 Q. I'm not asking you to assume anything.
6 I'm asking you to draw on your experience with 30
7 plus years in the world of planning. Are you with
8 me?

9 A. Yes.

10 Q. And then would you agree that when
11 property owners seek to build buildings, they
12 typically want to use as much of that space as they
13 can to generate revenue?

14 A. Yes.

15 Q. And you agree that the decking in this
16 building we're looking at in Exhibit 7 could be
17 used for bar patrons or restaurant patrons?

18 A. I think either could walk out on the
19 deck to view the inlet, which is why I would put a
20 deck there because I would try to take advantage of
21 the specifics of the site to have access, the view
22 access to the inlet.

23 Q. And you agree this is a lot more deck
24 than what existed previously?

25 A. Yes.

1 Q. So let's go back to what was marked as
2 Plaintiff's Exhibit 8. Do you have that on your
3 screen?

4 A. No, not yet.

5 Q. All right. Let me do that again.

6 A. I was looking at -- there was a list of
7 filings.

8 Q. How about now?

9 A. Yeah. Planning commission minutes.

10 Q. Yeah, we were just looking at this
11 Plaintiff's Exhibit 8 and on the second page you
12 referenced some comments you made. Are you with
13 me?

14 A. Yes. I'm looking.

15 Q. And this is where you stated to the
16 planning commission that the amount of heated
17 square footage had not changed, correct?

18 A. Yes.

19 Q. You did not state to the planning
20 commission that the amount of outdoor decking on
21 the building was significantly larger than the old
22 Marlin Quay Marina Store, right?

23 A. I'm scanning that paragraph as we
24 speak. I don't see that addressed.

25 Q. And why not inform the planning

1 commission of that fact?

2 A. I don't remember whether they were
3 informed of that fact or not.

4 Q. But you, where you provided this
5 presentation, did not inform the planning
6 commission about the substantial amount of outdoor
7 decking that was being added through the MQ3
8 building, correct?

9 A. Now, I don't remember if I did or not.

10 Q. Well, you don't have any independent
11 recollection of what you stated to the planning
12 commission beyond what's in these minutes, right?

13 A. Well, the staff report would be
14 something else.

15 Q. The staff reports what we looked at
16 previously. I believe it was Exhibit No. 6, right?

17 A. Yeah. I don't remember if that report
18 had any decking in it or not.

19 Q. And do you agree it would be relevant
20 for the planning commission to be informed that the
21 MQ3 building would contain a substantial amount of
22 decking beyond what was present in the old Marlin
23 Quay Marina Store building?

24 MS. GOLDING: Object to the form of the
25 question.

1 BY MR. NUGENT:

2 Q. You can answer.

3 A. I would expect we would tell the
4 planning commission that there was decking because
5 they would have the plans in front of them so they
6 should be able to see the decking anyway.

7 Q. And do you believe the amount of
8 outdoor deck space at the MQ3 building was a
9 relevant factor for the planning commission to
10 consider in evaluating the application to amend the
11 PD?

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

14 BY MR. NUGENT:

15 Q. You can answer.

16 A. Because of the lack of seating on the
17 deck, no, we didn't consider it.

18 Q. Okay. So because there were no seats
19 on the deck, it was not necessary to inform the
20 planning commission that several thousand feet of
21 deck space was being added in the MQ3 building?

22 A. I don't know if we -- I'm just saying I
23 don't remember whether we informed them or not.
24 I'm not saying or agreeing that we did or did not
25 inform them.

1 Q. Now, I'm looking at that picture of the
2 under construction MQ3 building. You agree people
3 are likely going to go out and use the decks on
4 that building?

5 MS. GOLDING: Object to the form of the
6 question.

7 BY MR. NUGENT:

8 Q. You can answer.

9 A. Yeah, people will go out on that deck.

10 Q. And do you agree people will go out on
11 that deck even though there's no seats out there?

12 A. Yes.

13 Q. It's a nice place to -- the deck in
14 that area is a nice place to view the sunset, isn't
15 it?

16 A. For you to what? I'm sorry.

17 Q. To view the sunset.

18 A. Yes.

19 Q. And you agree that with three different
20 decks, there are going to be people who are viewing
21 the sunset regardless of whether seats are present?

22 A. There will be people -- certainly.
23 People will walk out there to view the marsh
24 regardless of the seating.

25 Q. And so the limit of 110 seats, that's

1 not going to change how many people go stand on the
2 deck to view the sunset or to look out on the
3 marsh, right?

4 A. That's not related.

5 Q. But that number of people who are using
6 the deck to view the marsh and the sunset, that is
7 going to impact how much demand there is for
8 parking, right?

9 A. Well, they won't come. If they can't
10 park, they're not going to go out on that deck.

11 Q. Okay. So if they can't park, they
12 won't go out on the deck. Is that what your
13 testimony is?

14 A. That's true. Yeah. Well, I know --
15 let me refine that. I think there's going to be a
16 substantial amount of walk ups to that deck where
17 there won't be cars involved.

18 Q. And what's your basis for believing
19 there will be a substantial amount of walk ups to
20 the deck?

21 A. Because of the location of this. You
22 know, most commercial type operations are, again,
23 out on Highway 17, along with other commercial
24 developments, this is, you know, a block. This is
25 across the road from the beach surrounded by

1 condominiums, surrounded by residential houses. If
2 I was renting a beach house, I would certainly walk
3 down there and have a beer and look at the sunset.

4 Q. Did you talk to anybody who actually
5 owns a business in the Marlin Quay area about the
6 amount of walk-up traffic that exists?

7 A. No, I did not.

8 Q. And are you aware of whether there are
9 sidewalks on Waccamaw Drive in the Marlin Quay
10 area?

11 A. I am not aware if there are. I do not
12 believe there are, but I don't know.

13 Q. And did the planning staff do any sort
14 of analysis of the amount of walk-up traffic in
15 connection with any of its evaluations of the
16 various Marlin Quay building projects in the past
17 four years?

18 A. No, we did not do any detailed analysis
19 or any analysis.

20 Q. So your opinion about the amount of
21 walk-up traffic, is that just based on your
22 personal beliefs?

23 A. Yes.

24 MR. NUGENT: Okay. Henri, do you want
25 to take a short break for lunch?

1 MS. GOLDING: Sure. What time? Do you
2 want to say, 1:15?

3 MR. NUGENT: Well, my only concern is
4 since we've got Ms. Coleman set for 2:30, we either
5 push her back a little bit or we can take a shorter
6 lunch break.

7 MS. GOLDING: Do you want me to tell
8 her to come here at 3:30?

9 MR. NUGENT: Yeah. Why don't you do
10 that?

11 MS. GOLDING: Okay. That sounds good.

12 MR. NUGENT: All right. We can come
13 back at 1:15.

14 MS. GOLDING: Thank you.

15 (A luncheon recess transpired.)

16 BY MR. NUGENT:

17 Q. All right. Mr. Johnson, I wanted to
18 follow up with you on a couple questions from some
19 of your earlier testimony. You were testifying
20 previously about the process that the planning
21 staff uses to review an application. As I
22 understand it, the planning staff makes a
23 recommendation and then you or somebody else from
24 staff presents it to the planning commission, which
25 then issues a recommendation for an application; is

1 that correct?

2 A. Yes.

3 Q. And then assuming or regardless of what
4 recommendation the planning commission makes, am I
5 correct that a zoning application or a major
6 amendment to a PD, that next goes on to county
7 council for a vote; is that correct?

8 A. Yes, that's correct.

9 Q. And what role does planning staff have
10 once the application has moved on to the county
11 council level?

12 A. Planning staff, generally the director,
13 attends the county council meetings and we, whoever
14 the planning person may be, takes the planning
15 commission recommendation to the county council.
16 We write an agenda report that looks very much like
17 the planning commission document, not exactly the
18 same but similar, give that to the county council.
19 And then again at that stage representing not
20 staff's opinion or recommendation, we're just
21 taking the message from the planning commission to
22 county council.

23 Q. And you said usually the director is
24 the person at planning staff who does that?

25 A. Yes. Yes. Also pretty much always.

1 Q. And that would be you during the tenure
2 you had as director of planning?

3 A. Yes.

4 Q. Okay. And then you, as director, would
5 attend county council meetings. Would you give a
6 presentation regarding the application?

7 A. Yes.

8 Q. And did you, as director, communicate
9 with any of the members of county council about the
10 pending application?

11 A. Before the meeting you mean?

12 Q. Yes. Outside of the meetings.

13 A. No. No.

14 Q. You never had communication outside of
15 meetings with county council members regarding
16 pending applications?

17 A. I'm sure at some point somebody may
18 have asked me a question.

19 Q. But as a general rule, you do not --

20 A. No. No. No.

21 Q. And did you as director of the planning
22 department communicate with the county attorney
23 regarding pending applications?

24 A. Yes.

25 Q. And what were the nature of those

1 communications generally?

2 A. When staff writes the --

3 MS. GOLDING: I'm going to make an
4 objection. If you're seeking information subject
5 to attorney-client privilege, I'm going to tell
6 this witness not to answer.

7 MR. NUGENT: And I'm happy to try to
8 clarify this. I'm not asking for the substance of
9 any specific conversations, but just generally what
10 type of conversations occurred and what the
11 interaction was between Mr. Johnson and the county
12 attorney.

13 MS. GOLDING: I do think that's subject
14 to attorney-client privilege so I'm going to
15 instruct this witness not to answer.

16 MR. NUGENT: Okay.

17 BY MR. NUGENT:

18 Q. But just so we're on the same page, did
19 you communicate with the county attorney on a
20 regular basis in terms of dealing with pending
21 zoning applications?

22 A. Everything that we send to county
23 council, every report, when we'd do the agenda
24 request, we enter it in the computer. Before it
25 goes on the county council agenda, the county

1 attorney signs off on the report more form, not
2 substance.

3 Q. Form not substance, is that what you
4 just said?

5 A. Yes. In the proper form.

6 Q. Got it. Okay. So that usually
7 happens?

8 A. That always happens.

9 Q. Always happens.

10 And do you, as the director of planning
11 staff, have any other communications with the
12 county attorney other than related to the form of
13 the agenda report?

14 MS. GOLDING: I'm going to instruct the
15 witness not to answer. That's subject to
16 attorney-client privilege.

17 MR. NUGENT: And again, I'm just
18 clarifying. I'm not asking about the content of
19 those discussions, but whether there are
20 discussions that go on other than what he just
21 testified to about the agenda report. But subject
22 to that clarification, if you're still instructing
23 him not to answer, then that's fine.

24 MS. GOLDING: Okay.

25 MR. NUGENT: Okay.

1 BY MR. NUGENT:

2 Q. Mr. Johnson, are you involved in the
3 drafting of any ordinances that come out of a
4 zoning application or a major amendment to a PD
5 application?

6 A. The planning director is, yes.

7 Q. And is that always the case that it's
8 the planning director who --

9 A. Yes.

10 Q. -- is involved in the drafting of the
11 ordinance?

12 A. Yes.

13 Q. Who else is involved in the drafting of
14 the ordinance?

15 A. Really no one.

16 Q. So the ordinance that ultimately gets
17 signed by the county council is drafted by a
18 planning director exclusively?

19 A. The planning director always is the
20 person or a staff person. The planning department
21 writes the ordinance and sends it through the
22 process to county council, which is reviewed for
23 being in the correct form.

24 Q. And in your experience as the director
25 of planning, you were the one delivering the

1 recommendation of the planning commission to county
2 council, right?

3 A. Yes.

4 Q. In your experience, did county council
5 typically follow and adopt whatever recommendation
6 was made by planning commission for an application
7 for a zoning amendment?

8 A. No. Not necessarily, no.

9 Q. How frequently would the county council
10 reject or reach a vote that was the opposite of the
11 recommendation made by the planning commission?

12 A. I don't have a number or quantity of
13 that.

14 Q. And in your final years serving as
15 planning director, do you recall any instances
16 where the county council voted contrary to the
17 recommendation made by the planning commission on a
18 zoning ordinance request?

19 A. I can't remember any specific
20 application or project, no.

21 Q. Do you have a general recollection of
22 there being a time in your final year as director
23 of the planning department where there was a vote
24 by county council that was contrary to the planning
25 commission's recommendation?

1 A. No. Not in that time period, no.
2 (EXHIBIT 9, Agenda Request Form,
3 Georgetown County Council, dated December 11, 2018,
4 was marked for identification.)

5 BY MR. NUGENT:

6 Q. I'm going to put on your screen what
7 has been previously marked as Plaintiff's
8 Exhibit 9. Do you see that on your screen,
9 Mr. Johnson?

10 A. Yes.

11 Q. And at the top it states Agenda Request
12 Form, Georgetown County Council. Are you with me?

13 A. Yes.

14 Q. Do you recognize this specific
15 document?

16 A. Yes.

17 Q. And have you seen this document before?

18 A. Yes.

19 Q. What amendment request does this
20 correspond to?

21 A. The Marlin Quay Planned Development
22 Amendment. This would be MQ3.

23 Q. Okay. And is this the agenda request
24 form that you just testified was prepared by
25 planning staff following the planning commission?

1 A. Yes.

2 Q. And do you know whose handwritten notes
3 are on this document? Is that your handwriting?

4 A. Yes, it is.

5 Q. Okay. The highlighting, do you know if
6 this is highlighting that you put on the document?

7 A. Yes.

8 Q. And what was the purpose of this
9 highlighting and handwritten notes put on this
10 document by you?

11 A. Anytime I -- and I guess people do it
12 different -- but anytime I present something to
13 county council or anybody, that's my way of doing
14 it. I use a highlighter -- I don't sit there and
15 read a report. I find that kind of insulting. So
16 I use a highlighter to kind of go over the points
17 that I want to focus on during my presentation.
18 They remind me of things regarding the project.
19 Same thing with the handwritten note.

20 Q. This was your notes that you prepared
21 in order to present the MQ3 application for the
22 planning department's review of that application to
23 the county council, correct?

24 A. Yes.

25 Q. And from a procedural standpoint, am I

1 right that there are three readings of each
2 application to amend the zoning ordinance or to
3 amend the PUD?

4 A. In Georgetown County, that's correct.

5 Q. And this Agenda Request Form at the top
6 states Second Reading of Ordinances and has a date
7 of December 11, 2018. Do you see that?

8 A. Yes.

9 Q. And am I correct that the second
10 reading is the only reading where there's typically
11 substantive presentation from the planning
12 department about an application?

13 A. That's where most of it is. It's not
14 unusual for also a third reading to have, you know,
15 information for certainly not a first reading.

16 Q. And do you have any understanding of
17 why it's done that way, or has it always been that
18 way?

19 A. County council's policy is all
20 ordinances -- it doesn't matter what it is -- all
21 ordinances are -- the first reading is they use the
22 term is by title only, and then they're presented
23 at second reading. So, yes, that's the way they do
24 it.

25 Q. And this particular presentation, do

1 you recall making it in this December 2018
2 timeframe?

3 A. No, I don't actually remember doing it.

4 Q. But these are definitely your notes and
5 highlighting on the Agenda Request Form?

6 A. Yes.

7 Q. And looking down to point No. 3 under
8 Points to Consider --

9 MS. GOLDING: Adam, do you like want
10 to -- it's pretty small. Either scroll -- there
11 you go.

12 BY MR. NUGENT:

13 Q. Can you see that now, Mr. Johnson?

14 A. I can see it now, yes.

15 MS. GOLDING: Okay. You might want to
16 scroll. There you go. Thank you.

17 BY MR. NUGENT:

18 Q. I'm on point No. 3 under Points to
19 Consider. Are you with me, Mr. Johnson?

20 A. Yes.

21 Q. And there's a highlighted sentence that
22 states, The proposed heated square footage is less
23 than the original 4,603 square feet for the
24 original building that was demolished. Do you see
25 that?

1 A. Yes.

2 Q. Did you provide any information to
3 county council about the unheated or deck square
4 footage and how MQ3's deck square footage was
5 greater than the original building that was
6 demolished?

7 A. As is shown in the table below that, it
8 doesn't say deck, but it talks about unheated, so
9 it was in that context.

10 Q. Well, and this table we're looking at
11 below, this has MQ2 and MQ3, right?

12 A. Yes.

13 Q. It does not list what the unheated deck
14 square footage was for the original building that
15 was demolished in late 2016, does it?

16 A. Not in that table, no.

17 Q. And you testified previously that you
18 agree there's a substantial amount of additional
19 deck area on the MQ3 building that was approved and
20 is currently under construction, correct?

21 A. Yes.

22 Q. But you did not notify in your
23 presentation to county council that the MQ3
24 building would contain a substantial amount of deck
25 space over what was previously built at the Marlin

1 Quay Marina?

2 A. During my presentation, when I was
3 going over this, I may well have said most of this
4 unheated is open deck. I don't remember if I did
5 or not.

6 Q. And whether or not the unheated is open
7 deck, my question is actually a little bit
8 different, which is that the amount of unheated
9 deck space is larger or substantially larger than
10 what was present in the old building, the marina
11 store that was demolished, correct?

12 A. Yes.

13 Q. You didn't provide that information to
14 county council at any point, did you?

15 A. I don't remember. Yeah, I do not
16 remember talking about the deck in the original
17 building.

18 Q. And why not inform county council about
19 the substantial addition of open deck space for
20 this MQ3 building?

21 A. Since they were already represented as
22 MQ2, which they had already approved, that's what
23 we were comparing it to, I suppose, at that stage.
24 And also remember they had the building plans in
25 front of them, the site plan in front of them as

1 part of this package.

2 Q. Well, if we look at MQ2, the amount of
3 unheated space it has is actually supposed to be a
4 little bit larger than MQ3, right, if we're looking
5 at that table.

6 A. Yes.

7 Q. And you agree that both MQ2 and MQ3 had
8 substantially more open deck space than the
9 original building that was demolished?

10 A. Yes.

11 Q. And nothing in this agenda report
12 notified the county council that there would be a
13 substantial addition of unheated deck space with
14 the approval of MQ3 in comparison to the building
15 previously existing at the Marlin Quay Marina?

16 A. I don't remember any discussion
17 regarding that specifically.

18 Q. And if we look back at this point
19 No. 3, you highlighted the proposed square footage
20 is less than the original building, right?

21 A. Yes.

22 Q. So you certainly thought it was
23 important for the county council to know about the
24 heated square footage not being changed from the
25 original building?

1 A. Yes.

2 Q. But you did not see fit to notify the
3 county council that the unheated deck space was
4 actually changing between the original building and
5 the MQ3?

6 MS. GOLDING: Object to the form of the
7 question. He's already testified he doesn't
8 recall.

9 MR. NUGENT: He can answer the
10 question. He can answer the question.

11 MS. GOLDING: You keep asking the
12 question.

13 MR. NUGENT: I know --

14 MS. GOLDING: He's answered. And just
15 because you don't like his answers, that doesn't
16 mean you can go back and back and back.

17 MR. NUGENT: Your objection is noted.

18 BY MR. NUGENT:

19 Q. Mr. Johnson, you can answer the
20 question.

21 A. I don't remember discussing that with
22 county council.

23 Q. This question, you've got this written
24 comparison highlighted comparing heated square
25 footage between the original building and MQ3, why

1 don't you have a written statement in highlighting
2 comparing the open deck spacing between the
3 original building and the MQ3?

4 A. Because we felt the heated was more
5 important to discuss.

6 Q. And why was heated more important to
7 discuss than deck space?

8 A. Because you mentioned parking earlier,
9 that's where we would get the 110 number in the
10 parking, not the deck.

11 Q. But the deck space, you testified
12 previously, you agree can and may likely be used by
13 patrons of the MQ3 building, right?

14 MS. GOLDING: Object to the form of the
15 question.

16 BY MR. NUGENT:

17 Q. You can answer.

18 A. Yes. I'll expect them to walk on the
19 deck.

20 Q. Okay. And you agree that the number of
21 patrons who go to the building impacts the amount
22 of the demand for parking, correct?

23 A. We don't regulate decks in regards to
24 parking at all unless it relates to the tables or
25 the seats, so there's no regulation to look at.

1 Q. Okay. I'm just trying to understand
2 why you did not include any reference in this
3 agenda report regarding the amount of open space
4 and decking. Any other reason besides what you've
5 already testified to?

6 A. I can't -- no, I don't know of another
7 reason.

8 Q. If we go down to point No. 4, there's a
9 reference to the parking layout, right?

10 A. Yes.

11 Q. And at the last sentence, you state --
12 first, the second to last sentence, you state, The
13 parking lot is also used by the Gulfstream Cafe and
14 the marina, correct?

15 A. Yes.

16 Q. You then go on to say that these two
17 uses are not included in the parking requirement of
18 51 spaces. Do you see that?

19 A. Yes.

20 Q. And why did you notify the council that
21 you were not evaluating the parking requirements
22 for Gulfstream Cafe and the marina?

23 A. I believe it was because simply to say
24 where the 51 came from or the 62 and the 51.

25 Q. Do you agree that if you did the

1 parking requirement calculation for Gulfstream and
2 the marina, there would be great than 51 spaces
3 required?

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

6 BY MR. NUGENT:

7 Q. You can answer.

8 A. Yes.

9 Q. And do you know if you did that
10 calculation of the parking requirement for
11 Gulfstream Cafe and the marina, whether the total,
12 when added with the 51 for MQ3, would be greater or
13 less than 62?

14 MS. GOLDING: Object to the form of the
15 question.

16 BY MR. NUGENT:

17 Q. You can answer.

18 A. If you included the area of those two
19 other uses, would it be greater?

20 Q. Than 62.

21 A. Yes.

22 Q. Okay. And did you ever notify county
23 council that if the Gulfstream Cafe and the
24 marina's use of the parking lot was included with
25 the MQ3 51 spaces, that that total number would

1 exceed the 62 spaces in the parking lot?

2 MS. GOLDING: Object to the form of the
3 question.

4 THE WITNESS: Not beyond what's written
5 there where it says these two uses are not included
6 in the parking lot requirement of 51.

7 BY MR. NUGENT:

8 Q. Let's look at this section No. 10. You
9 reference some statements that were made at the
10 October 2018 planning commission meeting, correct?

11 A. That was a summary, yes.

12 Q. And you reference a statement made
13 about an incomplete application. Do you see that?

14 A. Yes.

15 Q. And did you explain to the county
16 council planning that position about whether the
17 application was incomplete?

18 A. I do not remember talking specifically
19 about that issue except in writing here to the
20 county council.

21 Q. And what was planning staff's
22 determination about whether there was or wasn't an
23 incomplete application?

24 A. We deemed that it was a complete
25 application.

1 Q. And what was the basis for making that
2 determination?

3 A. It had all the information we required
4 to develop a staff report, get it to the planning
5 commission, and have it available to the public.

6 Q. And do you know, as you sit here today,
7 how many days prior to that October 2018 meeting
8 that planning staff actually received the details
9 regarding the size and the dimensions of the MQ3
10 building?

11 A. No.

12 Q. Okay. The next item listed on this
13 point 10 references a 45-day deadline. Do you see
14 that?

15 A. Yes.

16 Q. And what did you tell the county
17 council about the 45-day deadline as you've got
18 them written right here?

19 A. Only what's in writing right there.

20 Q. And what determination did planning
21 staff make about a 45-day deadline for this MQ3
22 application?

23 A. It met the requirements of the
24 ordinance.

25 Q. And what was the basis for making that

1 determination?

2 A. Just reviewing the project itself.

3 Q. Reviewing the project itself. Can you
4 explain what you mean by that?

5 A. Well, what was submitted to the
6 planning department. If it had not been, we would
7 still been at the planning commission level and
8 kicked it back.

9 Q. You're saying that -- I'm not sure I
10 follow. Are you saying that the project itself was
11 submitted to planning staff 45 days prior to the
12 planning commission hearing?

13 A. The application to amend the PD was.

14 Q. Right. There was an application
15 submitted, but you agree did not contain all of the
16 information that was relevant to the planning
17 department's review, correct?

18 A. We deemed it to be a complete
19 application.

20 Q. Okay. So the position of the planning
21 department was that the application submitted, the
22 initial one we looked at -- I believe it's
23 Plaintiff's Exhibit 3 -- that that was a complete
24 application?

25 A. Yes.

1 Q. And you, planning department staff,
2 determined it was a complete application even
3 though it did not contain information about the
4 size and dimensions of the proposed MQ3 building?

5 A. Yeah. I don't remember what was
6 submitted when, whether the information came in,
7 you know, after the form that was signed was
8 brought to us. I don't remember the data itself.

9 Q. The next item referenced here states,
10 Multiple applications within a 12-month period. Do
11 you see that?

12 A. Yes.

13 Q. And what did you tell the county
14 council about this issue regarding multiple
15 applications within the 12-month period?

16 A. People were misreading that provision
17 of the zoning ordinance. I believe it says that if
18 a project that is denied, they can't come back
19 within 12 months. That's to keep somebody from
20 coming back and forth, back and forth. A different
21 project can come back earlier than 12 months.

22 Q. And that's just your interpretation of
23 what the language of the ordinance says, correct?

24 A. I think it's pretty clear.

25 Q. No, no. Look, you're certainly

1 entitled to read it and tell me what you think it
2 says. I'm just trying to understand --

3 MS. GOLDING: Adam, please don't argue
4 with the witness. Just you don't need to argue
5 with the witness.

6 MR. NUGENT: I'm just asking --

7 MS. GOLDING: He's trying his best to
8 answer your questions, so please don't argue with
9 the witness.

10 MR. NUGENT: I'm just asking him
11 questions, Henri.

12 MS. GOLDING: No, that wasn't a
13 question. You were arguing with him.

14 BY MR. NUGENT:

15 Q. My question for you, Mr. Johnson, is is
16 there anything other than your reading of the
17 language in the ordinance that provides the basis
18 for the testimony you just gave about how the 12-
19 month period restriction works?

20 A. Just what's in the ordinance.

21 Q. Okay. And then there's this last item
22 in this sentence references parking issues for the
23 site. Do you see that?

24 A. Yes.

25 Q. What did you tell the county council

1 about parking issues for the site beyond what's
2 written right here?

3 A. Basically what was written in this
4 document above this. This particular section
5 No. 10 was what the public brought up. So
6 basically whatever is addressed above this in the
7 table we all previously looked at, the 51, 52 --
8 62, that's what was reviewed.

9 Q. Right. And just so we're on the same
10 page, parking issues for the site is something that
11 was raised by Gulfstream or its representatives at
12 the planning commission hearing when we were
13 looking at No. 10.

14 A. Some did. Some members of the public.
15 I don't remember who, but some members of the
16 public, yes.

17 Q. And the planning staff's analysis of
18 the parking issue is captured in this Item No. 4
19 that we looked at a couple minutes ago, correct?

20 A. As it relates to county council, yes.

21 Q. Okay. In terms of what information was
22 provided to county council about parking, Item
23 No. 4 on this page covers everything that was
24 provided, right?

25 A. Well, the plans for the site --

1 remember, this is a document of what the planning
2 commission looked at and is telling the county
3 council. I'm relaying the information from the
4 planning commission to --

5 Q. Right. I'm sorry. I didn't mean to
6 interrupt you?

7 A. That's correct.

8 Q. Is there any other information that you
9 relayed to county council about parking beyond
10 what's covered in this Item No. 4 in the Agenda
11 Request Form that we're looking at right now?

12 A. I don't remember anything else.

13 Q. And then if we go to the last sentence
14 of Item No. 10, it references some comments from a
15 resident of the adjacent Marlin Quay Condos. Do
16 you see that?

17 A. Yes.

18 Q. And that resident expressed concerns
19 about increased noise, traffic, and the proposed
20 firewall. Do you see that?

21 A. Yes.

22 Q. What information did you provide county
23 council about the noise and traffic concerns that
24 were raised by this resident of the Marlin Quay
25 Condos?

1 A. Nothing other except what's in the
2 packet.

3 Q. Nothing beyond what's in the packet, is
4 that what you said?

5 A. Yes.

6 Q. And did planning staff do anything to
7 evaluate the traffic concerns that are expressed
8 here on this Agenda Request Form?

9 A. No, we did not do a traffic analysis.

10 Q. Does planning staff ever do traffic
11 analysis in connection with applications for zoning
12 amendments?

13 A. We have a provision, and my
14 recollection is if something is 500 trips a day. A
15 new development was coming in, for instance, a
16 subdivision that was creating over 500 trips per
17 day, then we would require a traffic analysis. If
18 it's under, we generally would not.

19 Q. So there is a provision that allows the
20 planning staff to conduct a traffic study, correct?

21 A. We have done traffic studies. We have
22 not done traffic studies. The developer would have
23 to go hire an engineer or traffic expert to do that
24 and submit it to the planning commission. We would
25 not do a traffic study.

1 Q. Right. The planning staff would
2 require the applicant to have a traffic study
3 conducted and then submit the results, correct?

4 A. Correct.

5 Q. That was not required in connection
6 with any of the MQ2 or 3 or any of the proposals
7 for the new building at Marlin Quay, correct?

8 A. Correct.

9 Q. And why did planning staff decline to
10 require a traffic study for the MQ3 building?

11 A. We deemed that this was replacing an
12 existing building, and since it was an existing PD,
13 we didn't do it necessarily.

14 Q. And when you say replacing existing
15 building, you mean the old store that was
16 demolished?

17 A. Yes.

18 Q. And this was a new building being built
19 following demolition of the old building?

20 A. Yes.

21 Q. And you had some members of the
22 community expressing concern that the new building
23 would increase traffic in the area, right?

24 A. That was stated at a public hearing.

25 Q. And you also had information to believe

1 that at least the deck space at the new building
2 would be substantially larger than what the old
3 building had, correct?

4 A. Yes.

5 Q. Okay. Now, you have some handwritten
6 notes at the bottom of Exhibit No. 9. And are
7 these notes that you wrote as you were preparing to
8 present at the county council meeting?

9 A. Yes.

10 Q. And what was the purpose of these
11 notes?

12 A. Just to jog my memory so I wouldn't --
13 not that I necessarily would even use these notes,
14 but I would use them to jog my memory in case
15 somebody asked a question or if it's something I
16 wanted to remember to say.

17 Q. But in terms of who came up with these
18 particular notes, is that something you did on your
19 own?

20 A. Yes. I always did that.

21 (EXHIBIT 25, Ordinance No. 2018-40, was
22 marked for identification.)

23 BY MR. NUGENT:

24 Q. Okay. I am going to put up on the
25 screen what's previously been marked as Plaintiff's

1 Exhibit No. 25. Do you see that document,
2 Mr. Johnson?

3 A. Yes.

4 Q. Do you recognize this as the ordinance
5 that was signed adopted by county council for the
6 MQ3 project?

7 A. Can you scroll to the bottom? I
8 can't -- yes. Yes. I see the signatures. I was
9 looking for the signatures.

10 Q. Okay. And did you draft this document?

11 A. Either I did or Holly did. One of the
12 two of us.

13 Q. And if we look at these dash lines
14 underneath the part in all caps -- well, when it
15 says the following elaborations and it has several
16 items. Do you see that?

17 A. Yes.

18 Q. Reference to the heated square feet,
19 reference to 62 parking spaces, reference to 47
20 foot height limit, reference to seating capacity.
21 Do you see those things?

22 A. Yes.

23 Q. Are those identical to the handwritten
24 notes you had on that Exhibit 9?

25 A. I don't know. I can't re- --

1 Q. Here real quick. Can you see No. 9 in
2 front of you now?

3 A. Okay.

4 Q. Is No. 9 in front of you?

5 A. Yes. I see my handwritten notes. I
6 believe they're the same points.

7 Q. So who made the determination about
8 which elaboration is put on that Exhibit No. 25?

9 A. Planning staff when we wrote the
10 ordinance.

11 Q. And the elaborations match up with your
12 handwritten notes from the agenda that you
13 presented to council, right?

14 A. Yes.

15 Q. Now, in those elaborations, you or
16 planning staff could have added a limitation on
17 occupancy, right?

18 A. I assume we could. I don't know.
19 We've never done that. I never did that.

20 Q. And then do you recall whether there
21 were any revisions or comments to this proposed
22 ordinance after you drafted it and submitted it to
23 county council?

24 A. I don't recall.

25 Q. And you've testified previously that

1 planning staff always drafts the ordinance that
2 gets signed by county council, correct?

3 A. For planning matters, yes.

4 Q. For planning matters, right.

5 The ordinance for a zoning application.

6 A. Right.

7 Q. Planning staff always drafts that
8 ordinance. And can you recall whether county
9 council ever revises or otherwise modifies the
10 draft ordinance that the planning staff creates?

11 A. Yes, they do.

12 Q. And how frequently does county council
13 revise or modify a draft ordinance?

14 A. Again, I don't have a measurement of
15 that. I don't have any clue as far as percentage
16 or frequency.

17 Q. Can you think of any time during your
18 final year as director of planning that the county
19 council modified or revised a draft or ordinance
20 that planning staff created in connection with a
21 zoning amendment?

22 A. Not during -- no.

23 Q. And did you have any discussions with
24 any members of county council about this ordinance
25 that we're looking at in Exhibit No. 25?

1 A. No.

2 Q. You drafted this ordinance and then
3 county council went ahead and it was adopted with
4 the signature of Mr. John Thomas, correct?

5 A. Yes.

6 (EXHIBIT 15, Article XI, Off-Street
7 Parking Regulations, was marked for
8 identification.)

9 BY MR. NUGENT:

10 Q. I'm going to put on your screen what's
11 previously been marked as Plaintiff's Exhibit
12 No. 15. Mr. Johnson, do you see this exhibit on
13 your screen?

14 A. It's Article XI.

15 Q. Yes. This is Article XI of the zoning
16 ordinance. Do you recognize this document?

17 A. Yes.

18 Q. These are the off-street parking
19 regulations, correct?

20 A. Yes.

21 Q. And in your capacity as director of the
22 planning department, did you routinely review and
23 apply these regulations to various requests for
24 zoning amendments or other types of zoning matters
25 that appeared before the planning department?

1 A. The planning department did, yes.

2 Q. And are you familiar with what the
3 requirements in this ordinance are?

4 A. Not specifically. I know what it is.
5 I know it addresses different uses but, yes.

6 Q. And if we look at this first section,
7 1100 where it states the intent, do you see that?

8 A. Yes.

9 Q. And it talks about the intent of this
10 section is to establish standards for off-street
11 parking throughout Unincorporated Georgetown
12 County. Do you see that?

13 A. Yes.

14 Q. And then it goes on to state that 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. Are you with me?

20 A. Yes.

21 Q. And do you agree that that is the
22 intent and purpose of the parking regulations
23 contained in the Georgetown County Zoning
24 Ordinance?

25 A. Yes, that is the intent section.

1 Q. And do you agree that the ordinance, in
2 your experience, does, in fact, allow for these
3 types of factors, improving public health, safety,
4 and welfare of the community?

5 A. Yes. Those would be considered down
6 below and in the various provisions or when those
7 provisions were created.

8 Q. And you've previously testified that
9 this Article XI does not apply to property that's
10 located in a planned development, correct?

11 A. Yes. It could depending on how the
12 planned development is written.

13 Q. Explain to me what you mean by that.

14 A. Well, if I wanted to create a planned
15 development today and I said, hey, I like the way
16 that county's use of Article XI is written, you
17 could put in my PD that I would follow the
18 requirements in Article XI. If I didn't, I could
19 put something different.

20 Q. But are you aware of other planned
21 developments in Georgetown County that are not
22 required to follow this Article XI, Off-Street
23 Parking Regulations?

24 A. I cannot name one, but I know there
25 are.

1 Q. And do those planned developments
2 predate the enactment of this Article XI?

3 A. No.

4 Q. Your testimony is that there are
5 planned developments that were created after the
6 enactment of this Article XI that are not required
7 to follow the parking requirements contained in
8 this article?

9 A. Yes, I believe that to be the case.

10 Q. And can you give me any examples at
11 all?

12 A. I can't name an example.

13 Q. Do you agree with the purpose, that
14 providing sufficient off-street parking will be
15 beneficial to the public health, safety, and
16 welfare?

17 A. It depends on the particular property
18 and situation.

19 Q. In the case of the Marlin Quay Marina
20 area, do you believe it was valuable to provide
21 sufficient off-street parking for that planned
22 development?

23 A. I don't know how to answer that.

24 Q. Well, I'm asking you as an experienced
25 planner with quite a bit of experience evaluating

1 applications connected to the Marlin Quay Planned
2 Development. Are you with me?

3 A. Yes.

4 Q. Based on that experience and based on
5 your familiarity with that Marlin Quay area, do you
6 believe it is beneficial to the public health,
7 safety, and welfare of that area to provide
8 sufficient off-street parking?

9 A. Obviously they have off-street parking.
10 There was to be a lot of walk ups, we believe,
11 people walking to that site. So, again, there's
12 different ways for customers to get to the
13 property.

14 Q. I'm going to ask the question. I don't
15 want to have to argue with you. This is a yes or
16 no question. With your experience as a planner and
17 your familiarity with the Marlin Quay area, do you
18 believe it to be beneficial to the public health,
19 safety, and welfare for there to be sufficient off-
20 street parking in the Marlin Quay area?

21 A. You used the word sufficient. You
22 know, we believe what was approved was sufficient.

23 Q. You believe that the parking -- you
24 said what was approved. What do you mean by what
25 was approved?

1 A. The plans, the final ordinance, the
2 plans that were approved.

3 Q. You believe that the plans approved for
4 MQ3 provided sufficient parking?

5 A. Yes.

6 Q. And just explain what the basis of that
7 conclusion was.

8 A. Again, like we've earlier said, I
9 believe there was going to be a lot of walk-up
10 customers. There's other ways to provide parking
11 that a business person would address if you needed
12 parking, like valet parking, for example, would be
13 one. That would have to be factored in by the
14 businessman, you know, as well as the actual
15 physical parking space.

16 Q. Okay. Other than walk-up parking or a
17 business owner obtaining valet parking, what other
18 basis do you have for claiming that --

19 A. That's it.

20 Q. That's it.

21 A. Yes.

22 Q. Have you done the calculations or
23 anybody in your department done the calculations
24 set forth in Article XI for the Marlin Quay PUD
25 taking into account the use of the area by the

1 Gulfstream Cafe, the marina, and the proposed MQ3
2 building?

3 A. No, I don't believe so.

4 Q. And as you sit here today, do you know
5 whether if Article XI applies to the Marlin Quay
6 MQ3 PUD, do you know whether the parking that
7 exists satisfies or would satisfy the requirements
8 of Article XI taking into account the three uses I
9 just identified?

10 A. I don't know.

11 (EXHIBIT 38, Email chain dated
12 October 22, 2018, was marked for identification.)

13 BY MR. NUGENT:

14 Q. Mr. Johnson, I'm going to put up on
15 your screen what's been marked as Plaintiff's
16 Exhibit No. 38. Do you see that document on your
17 screen, Mr. Johnson?

18 A. Yes.

19 Q. And do you recognize this document?

20 MS. GOLDING: Can he look at the whole
21 document?

22 MR. NUGENT: Absolutely.

23 BY MR. NUGENT:

24 Q. That's all there is, these two pages.

25 A. Okay. Go back up. Stop right there.

1 Stop. I don't know what this is talking about.

2 Q. Do you see up here at the top left it's
3 got your name in bold. It says Boyd Johnson?

4 A. Uh-huh, yes.

5 Q. Do you recognize this as one of the
6 emails that you collected in response to either the
7 FOIA request or the request for production
8 submitted in this lawsuit?

9 A. I don't remember collecting the
10 document.

11 Q. But you do see that it's got your name
12 up here?

13 A. Yes, I do.

14 Q. Do you have any reason to dispute this
15 was printed or sent from your email account?

16 MS. GOLDING: He's testified he does
17 not know.

18 MR. NUGENT: I'm simply asking a
19 follow-up question, Henri, and I'm entitled to do
20 that.

21 MS. GOLDING: You're always trying to
22 get him to change his answer.

23 MR. NUGENT: He can answer his
24 question. He can answer the question.

25 BY MR. NUGENT:

1 Q. Do you have any reason to dispute that
2 this document was printed or otherwise sent from
3 the email account that you, Mr. Johnson, used
4 during your time with the Georgetown County
5 Planning Department?

6 A. I don't know.

7 Q. And looking at the front line, it says
8 from Boyd Johnson at the top here.

9 A. Uh-huh, yes, it does.

10 Q. And it's October 22nd, 2018. Do you
11 have any reason to dispute that you sent this email
12 or that you were part of this email chain?

13 A. I don't remember the email. I don't
14 remember anything about this.

15 Q. Okay. So let's look down the second
16 line. This is an email from Wesley Bryant who was
17 the county attorney at the time, correct?

18 A. Yes.

19 Q. And he emailed you, Boyd Johnson,
20 right?

21 A. Yes.

22 Q. Holly Richardson and then Dan Stacy.
23 Do you see that?

24 A. Yes.

25 Q. And it says questioning application for

1 MQ3?

2 A. Yes.

3 Q. Mr. Bryant went on to state, Came in
4 mail today. Technicalities are never viewed in
5 favor of the jurisdiction, exclamation point. Do
6 you see that?

7 A. Yes.

8 Q. Do you understand what Mr. Bryant was
9 talking about came in the mail today?

10 A. No. That's why I said what I said. I
11 don't know what the technicalities were what he's
12 referencing here.

13 Q. But he told you about some issue with
14 technicalities in this October 22nd, 2018,
15 timeframe, correct?

16 A. I do not remember that at all.

17 Q. You don't remember him sending you this
18 email?

19 A. No, I do not.

20 Q. And you see that Dan Stacy was copied
21 on the email, correct?

22 A. Yes.

23 Q. Is it typical for the applicant's
24 attorney to be copied by the county attorney on an
25 email regarding issues of an application?

1 A. I don't know. I don't get involved
2 with attorneys talking to attorneys.

3 Q. Well, you're part of this email chain
4 so you're involved on this one so I'm just trying
5 to ask based on your experience with the planning
6 department do you recall having Mr. Bryant or
7 another county attorney email you and the
8 applicant's attorney regarding possible technical
9 issues with an application other than this
10 instance?

11 A. In other projects?

12 Q. Correct.

13 A. Yes, I've had the attorney ask me a
14 question about a project.

15 Q. When you say you had the attorney, do
16 you mean the county attorney?

17 A. Yes.

18 Q. And how frequently would the county
19 attorney get involved and ask questions about a
20 project?

21 A. It wasn't unusual. Usually someone
22 would call him and ask a question and he would call
23 me or Holly or whoever and say, hey, tell me about
24 this.

25 Q. What about an email about

1 technicalities or technical defects with an
2 application? Do you recall receiving any other
3 emails on a project similar to this one?

4 A. No, I do not.

5 Q. And do you recall anytime that the
6 county attorney contacted you about an application
7 in which the applicant's attorney was also
8 included?

9 A. I do not remember anything specific
10 like that.

11 Q. And you went ahead and responded to
12 Mr. Stacy's -- I'm sorry, Mr. Bryant's email and
13 stated, Let me know when you want to get together
14 and then provided some dates. Do you see that?

15 A. I see that.

16 Q. Did you ultimately communicate with
17 Mr. Bryant about the issues raised in his email?

18 A. I don't remember specifically doing
19 that, no.

20 Q. Do you recall any meetings involving
21 Mr. Bryant and Mr. Stacy in connection with the MQ3
22 project?

23 A. Say that again. I'm sorry.

24 Q. Do you recall having any meetings with
25 Mr. Bryant and Mr. Stacy regarding the MQ3 project?

1 A. I recall meeting with the county
2 attorney specifically because he -- I'm sorry.

3 MS. GOLDING: You cannot discuss
4 meetings that you've had with the county attorney.

5 THE WITNESS: Okay. Yes.

6 BY MR. NUGENT:

7 Q. I'm simply asking -- I'm asking -- it's
8 a very specific question, Mr. Johnson, meetings
9 that you had -- you said you had a meeting -- how
10 about this, you had a meeting with Mr. Bryant. Do
11 you recall whether Mr. Stacy was present in the
12 meeting?

13 A. No, I do not recall that.

14 Q. Do you recall whether anybody other
15 than county employees were present at that meeting?

16 A. No, I do not recall that.

17 Q. And this is in the context of MQ3. Do
18 you recall any meetings with Mr. Bryant and
19 Mr. Stacy in connection with any of the Marlin Quay
20 redevelopment plans that the planning department
21 has reviewed in the last four or so years?

22 A. No, I do not.

23 Q. In terms of the technicalities that are
24 referenced in Mr. Bryant's email, can you tell me
25 if you have any understanding of what that

1 references?

2 A. I do not know what that's talking
3 about.

4 (EXHIBIT 39, Email from Boyd Johnson to
5 Holly Richardson regarding MQ dated June 11, 2019,
6 was marked for identification.)

7 BY MR. NUGENT:

8 Q. I am going to put on your screen what's
9 been marked as Plaintiff's Exhibit No. 39. Do you
10 see that document, Mr. Johnson?

11 A. Yes.

12 Q. And this is an email, again, it appears
13 to be from you to Holly Richardson circa June of
14 2019. Are you with me?

15 A. Yes.

16 Q. Do you have any reason to dispute that
17 you sent this email to Ms. Richardson in June of
18 2019?

19 A. No.

20 Q. Now, do you recall when the ordinance
21 was approved by county council for the MQ3
22 building?

23 A. No, I do not.

24 Q. Well, I'll put back up on your screen
25 Exhibit No. 25. I apologize. Let me see if I can

1 do this quickly. Do you see the ordinance on your
2 screen?

3 A. No, not yet.

4 Q. Okay. Not yet. Hold on. How about
5 now?

6 A. Yes, I see the ordinance.

7 Q. If we look down here, it's got a date
8 of January 8th, 2019, correct?

9 A. Correct.

10 Q. Does that refresh your recollection as
11 to when the ordinance was adopted by the county
12 council?

13 A. Yes.

14 Q. And if we go back over to Exhibit 39,
15 do you see that in front of you now?

16 A. Yes.

17 Q. Do you have any understanding of why
18 several months later in June 2019, you sent an
19 email to Ms. Richardson in which you stated, Let's
20 talk about the procedural problems the Gulf S
21 lawyer is alleging?

22 A. Restate that. Do I remember what?

23 Q. Do you remember sending this email
24 that's Exhibit 39?

25 A. No, I don't remember sending the email.

1 Q. In the email, you stated to
2 Ms. Richardson, Let's talk about the procedural
3 problems the Gulf S lawyer is alleging. Do see
4 that?

5 A. Yes.

6 Q. What procedural problems were you
7 referring to in that email?

8 A. I don't know.

9 Q. Now, this email was sent approximately
10 five months after the ordinance was passed
11 approving the MQ3.0 building, correct?

12 A. Yes.

13 Q. Do you have any understanding of why
14 you were just five months after the ordinance was
15 passed discussing procedural issues with
16 Ms. Richardson?

17 A. No.

18 Q. You would agree that if there were
19 procedural issues with the MQ3.0 application, it
20 would be appropriate to discuss them prior to
21 submitting a recommendation on that application,
22 correct?

23 MS. GOLDING: I don't know what kind of
24 game you're playing with him, but the lawsuit you
25 filed, I believe, was served just a couple months

1 before that email.

2 MR. NUGENT: Henri, I don't need you in
3 there trying to educate the witness on what's going
4 on --

5 MS. GOLDING: Well, I just don't accept
6 your trying to mislead this witness --

7 MR. NUGENT: You know, I'm just trying
8 to ask my questions.

9 MS. GOLDING: You know, the lawsuit was
10 just filed --

11 MR. NUGENT: What's your objection?
12 State your objection, please.

13 MS. GOLDING: I just did. I said
14 you're trying to trap the witness.

15 MR. NUGENT: I'm certainly not trapping
16 the witness. I'm asking him questions. You're
17 just trying to coach him. It's inappropriate and
18 you know that.

19 MS. GOLDING: Oh, come on. Come on.

20 MR. NUGENT: If you've got an
21 objection, state your objection; otherwise, let me
22 ask my questions.

23 MS. GOLDING: No. I just told you stop
24 trapping the witness. I mean, the man doesn't
25 remember. He's already said he doesn't remember.

1 BY MR. NUGENT:

2 Q. Mr. Johnson, do you agree that if there
3 were some procedural problems with the MQ3
4 application, that it would be appropriate for
5 planning staff to discuss and evaluate those prior
6 to making a recommendation on the application?

7 A. We would.

8 Q. And do you have any understanding why
9 you were discussing these procedural problems with
10 Ms. Richardson five months after the application
11 was already approved by the Georgetown County
12 Council?

13 A. No, I do not know why.

14 Q. Do you know whether you discussed the
15 procedural problems that you referenced in this
16 email with Ms. Richardson prior to the application
17 being reviewed and evaluated by the planning staff?

18 A. I'm sorry, repeat the question.

19 Q. Do you know if you discussed the
20 procedural problems referenced in Exhibit 39 with
21 Ms. Richardson prior to planning staff reviewing
22 and evaluating the MQ3 application?

23 A. I don't remember discussing that
24 specifically.

25 Q. Do you remember having a discussion

1 following this June 2019 email with Ms. Richardson
2 about the subject matter of the email?

3 A. No.

4 (EXHIBIT 40, Email chain dated
5 October 24 and 25, 2018, was marked for
6 identification.)

7 BY MR. NUGENT:

8 Q. Mr. Johnson, I'm going to put on your
9 screen what's been marked as Plaintiff's Exhibit
10 No. 40. This is a one-page email. I think I've
11 got the entirety on your screen. I'll be happy for
12 you to take a minute to review it.

13 A. Okay.

14 Q. And the email at the top -- and for
15 some reason I can't get it to scroll up -- but at
16 the top, it says Boyd Johnson. Do you see that?

17 A. Yes.

18 Q. Do you recall receiving and possibly
19 printing this email as part of a response to a FOIA
20 request or the request for production served in
21 this case?

22 A. No, I don't recall doing that.

23 Q. Do you have any reason to dispute that
24 you received an email from Steven Elliott
25 October 25th, 2018, as depicted on your screen?

1 A. No.

2 Q. And who is Steven Elliott?

3 A. He's our building official.

4 Q. Sorry, could you repeat that? I missed
5 that.

6 A. He's our building official.

7 Q. Building official.

8 Is he somebody who worked in the
9 planning department?

10 A. No. No. Totally different. He worked
11 in the building department, which I was over, but
12 it had nothing to do -- this has nothing to do with
13 the rezoning or the approval that went to the
14 request for county council.

15 Q. This email relates to the change in the
16 type of structure and code reviews, is that right,
17 for the MQ3 building?

18 A. Yes.

19 Q. And did you have any understanding of
20 why there was a change from a wood frame structure
21 to a steel framed structure?

22 A. I do not know why they did that.

23 Q. Well, Mr. Elliott reached out to you
24 and asked you for any thoughts on the email below.
25 Did you discuss this email with Mr. Elliott?

1 A. Yes. We had discussions with
2 Mr. Elliott. He knew this application was in so,
3 therefore, he was just keeping us informed on what
4 was going on at their end with the building.

5 Q. And you stated that the building
6 department was under your purview when you were the
7 director of planning.

8 A. Yes.

9 Q. Did you personally have any involvement
10 in the building code issues that Mr. Elliott is a
11 part of in this email chain?

12 A. No. He would keep me informed, but
13 that was it.

14 Q. Was the applicant for the MQ3 project
15 simultaneously seeking a building permit while the
16 application to amend the Marlin Quay PD was
17 pending?

18 A. No, not simultaneously.

19 Q. Well, this email is from October 24th,
20 2018. Do you see that?

21 A. Yes.

22 Q. And you agree that's before the MQ3 PD
23 application was approved, right?

24 A. Yes.

25 Q. And there's a reference here to seeking

1 a code review because of the new building type.

2 Are you with me?

3 A. Yes.

4 Q. Is it typical for an applicant who is
5 still seeking a zoning amendment to have the
6 building department review the codes of their
7 proposed building?

8 A. The highlights, yes.

9 Q. What do you mean by the highlights?

10 A. A lot of people will ask based on what
11 we're providing -- I'm talking about the building
12 department -- based on we're providing, you know,
13 will a sprinkler system be required, do you think,
14 for example? You know, that's information they
15 like to know at the front end because obviously it
16 impacts the cost of the project tremendously.

17 Q. And so will an applicant who's still
18 got a zoning application pending reach out to the
19 building department for that type of high level
20 review?

21 A. It would not be unusual.

22 Q. And what's your understanding of the
23 type of review that the MQ3 applicant was seeking
24 in this October 24th, 2018, email?

25 A. Well, like you said earlier, I think

1 the big issue was going from the wood to the steel.

2 Q. And as stated in this email, the
3 applicant's, I believe this is an architect,
4 Ms. Haas Novak -- Ms. Novak stated that they
5 changed building types. Do you see that?

6 A. Yes.

7 Q. And what's your understanding of what
8 that phrase means?

9 A. They had previously planned to build a
10 wood frame structure and then it was later deemed
11 by them that they needed to build a steel framed
12 structure instead of a wood frame structure, which
13 would change the building code requirements.

14 Q. And so from a building code standpoint,
15 the steel frame structure has a different set of
16 codes --

17 A. Yes.

18 Q. -- than a wood frame structure?

19 A. Yes.

20 Q. And then there's a reference here to a
21 permit review package. Do you see that?

22 A. No, I do not. Is that --

23 Q. I'll try to highlight that. It's in
24 the second paragraph.

25 A. Yeah, I see that.

1 Q. Do you see that Ms. Novak is
2 requesting --

3 A. Yes.

4 Q. -- that issues be reviewed prior to
5 submitting a new permit review package. What is a
6 permit review package?

7 A. That's actually when you bring a final
8 set of plans in and say I want a building permit.
9 Are these construction plans good? Give me my
10 permit so I can start work. It's customary that a
11 lot of people will have a preliminary review so
12 they can identify any glaring issues from a
13 building code perspective. None of this has
14 anything to do with planning and zoning.

15 Q. My question is this request to do this
16 review and this reference to a permit package, do
17 applicants who still have a pending zoning
18 amendment application outstanding, do they
19 typically present the building permit review
20 package while that zoning application is
21 outstanding?

22 A. Not the actual request, the permit
23 package, no, they wouldn't do that.

24 Q. And why is that?

25 A. Money. It costs a lot of money. You

1 wouldn't want to do 100 pages of architectural
2 drawings and then have to start from scratch.

3 Q. So you're saying from the applicant's
4 standpoint, your understanding is it's cost
5 prohibitive to go ahead and create the full set of
6 permit ready plans while there's still the
7 uncertainty of having the zoning amendment
8 approved?

9 A. They could do that. There's nothing
10 that says they can't do that, but it would not be
11 practical.

12 Q. That's what I'm asking. Is there a
13 rule saying they can't do it, but in your
14 experience, that's not how it typically is done?

15 A. Yes, that's correct.

16 Q. And do you know how far along the
17 applicant for the MQ3 property was in the building
18 permit drawing phase while the PD application was
19 outstanding?

20 A. No, I do not.

21 Q. And did you have any communications
22 with Mr. Elliott or anybody in the building
23 department about the status of the building permit
24 request for MQ3 during this late 2018 timeframe?

25 A. No, not as far as the status of any

1 permit request.

2 Q. When an applicant presents their
3 package to request a building permit, is that
4 something that you, as director of planning, will
5 receive notice of?

6 A. No. It goes straight to the building
7 official. If he deemed it -- yes. No, I would not
8 receive it.

9 Q. And here the applicant is the
10 architect, Ms. Novak, who's reaching out. Did you
11 know who the applicant was for the MQ3 proposal?

12 A. Did I know who the applicant was for --

13 Q. Yes.

14 A. Yes.

15 Q. And who was that applicant?

16 A. Well, I knew at the time. I can't
17 remember if it was Dan Stacy was still the agent or
18 not.

19 Q. Well, setting aside the issue of who
20 the agent was, I'm talking about the owner of the
21 property who's the actual one seeking to have the
22 zoning amendment for the PUD amendment made.

23 A. Did I know who that was?

24 Q. Yes.

25 A. Yes.

1 Q. And who was that?

2 A. Dr. Lawhon, I believe, was the property
3 owner, to my knowledge.

4 Q. Did you communicate with Dr. Lawhon
5 about the MQ3 proposal?

6 A. No. I mean, he was present at
7 meetings.

8 Q. What kind of meetings was he present
9 at?

10 A. Planning commission meetings. He as at
11 the planning commission --

12 Q. Public meetings. Public meetings.

13 A. Yes.

14 Q. Okay. Were there any private meetings
15 that you attended that he was also present at?

16 A. I believe early on before -- way early
17 on, him -- he came to our offices at the conference
18 room and just introduced himself, and that was
19 pretty much the extent of it.

20 Q. When you say early on, are you talking
21 about the MQ3 application or a different
22 application?

23 A. No. Originally.

24 Q. So one of the first applications to
25 build the new building, the new marina store

1 building?

2 A. He wasn't submitting an application, he
3 just came and said I own this property now. I'm
4 planning on doing something with it.

5 Q. Had you met Dr. Lawhon prior to him
6 coming in and introducing himself?

7 A. No.

8 Q. And did you communicate with him any
9 other times directly besides that --

10 A. No.

11 Q. -- time that he came in and introduced
12 himself?

13 A. No.

14 Q. Do you know if any other members of the
15 planning staff communicated directly with
16 Dr. Lawhon --

17 A. I do not know.

18 Q. -- about any of the --

19 A. I do not know.

20 Q. -- various proposals? Sorry. Let me
21 finish my question.

22 A. No, I don't know.

23 Q. And did you ever meet any other members
24 of Dr. Lawhon's family during the process of
25 reviewing any of the various applications for new

1 buildings at the Marlin Quay Marina area?

2 A. Not during the review process, no.

3 Q. How about at some other point in time?

4 A. His son attended the meetings, the
5 planning commission meeting and I believe
6 introduced himself.

7 Q. His son, Dr. Lawhon's son, introduced
8 himself at a planning commission meeting or in a
9 different context?

10 A. Yes, at a planning commission meeting.

11 Q. Okay. Any other communications with
12 members of Dr. Lawhon's family related to these
13 MQ --

14 A. No.

15 Q. -- proposals?

16 A. No.

17 (EXHIBIT 41, Email chain dated August
18 25, 2017 and September 6, 2017, was marked for
19 identification.)

20 BY MR. NUGENT:

21 Q. Mr. Johnson, I'm going to put in front
22 of you what we'll mark or what's been marked as
23 Plaintiff's Exhibit No. 41. Do you see that email
24 in front of you?

25 A. Yes.

1 Q. And it's a one-page email. I'll zoom
2 out a little bit. Well, if I can.

3 So this email you see is from Heather
4 Kakert dated September 6, 2017, to a Joanne Ochal
5 and then you're copied on it. Do you see that?

6 A. Yes.

7 Q. Who is Joanne Ochal?

8 A. At that time she was the zoning
9 administrator. She's retired now.

10 Q. I mean, what was her role as zoning
11 administrator?

12 A. To review plans and enforce the zoning
13 ordinance.

14 Q. But she's someone who was within the
15 planning department that you described to me?

16 A. We actually consider the zoning
17 department separate. She was in our division, but
18 a separate department.

19 Q. And is there somebody else who's doing
20 that zoning administrator job currently, to your
21 knowledge?

22 A. Yes. Crystal Emfinger.

23 Q. And do you recall if Ms. Ochal retired
24 before or after the final MQ3 proposal was reviewed
25 and decided on?

1 A. I don't remember the sequence there.

2 Q. Do you recall the meeting and summary
3 that's referenced in this Exhibit 41?

4 A. No, I do not.

5 Q. Do you agree this is a reference to the
6 proposed -- one of the proposed MQ buildings?

7 A. You're asking me --

8 MS. GOLDING: If you know.

9 THE WITNESS: I don't know.

10 BY MR. NUGENT:

11 Q. I mean, it's up here. It's sent from
12 Heather Kakert at SGA Architecture, right? Do you
13 see that?

14 A. Yes.

15 Q. And she was employed by the firm that
16 represented the applicant for the MQ projects,
17 correct?

18 A. Yes.

19 Q. And there's a reference here in
20 Ms. Kakert's email that talked about the current
21 heated square footage as stated on submitted
22 drawings and is under 4600 square feet. Do you see
23 that?

24 A. Yes.

25 Q. Does that refresh your recollection

1 about whether this is discussing one of the Marlin
2 Quay plans?

3 A. Obviously the document is talking about
4 it. I just don't remember the document.

5 Q. Okay. So it's definitely about the
6 Marlin Quay project. The question I had is this
7 reference to the heated square footage, how
8 frequently did the planning department review
9 heated square footage for a proposed building and
10 just generally in connection with zoning
11 applications -- rezoning applications?

12 A. I would say anytime a building project
13 involved a building, you know, we would want to
14 know the heated square footage.

15 Q. And when those projects involved a
16 building, you wanted to know heated square footage.
17 Did you also seek to find out the unheated square
18 footage associated with the building?

19 A. The planning department?

20 Q. Yes.

21 A. No.

22 Q. Okay. Why not?

23 A. Well, again, it depend on the
24 situation.

25 Q. What do you mean by that? Could you

1 explain that?

2 A. Well, if it did not apply to anything
3 that we were looking at like whatever parking, for
4 instance, then we would know the answer to that
5 question because we would have the plans in front
6 of us. So, yeah, I mean, I guess the answer is
7 yeah, we would know that information.

8 Q. If we go down to the second email on
9 this page -- and I'm happy to zoom in a little bit
10 if that makes it easier to see -- the one from
11 Ms. Ochal, she states, Heather, here's a summary of
12 what I understood from our meeting. Do you see
13 that?

14 A. Yes.

15 Q. In your copy, do you have any reason to
16 dispute that you were in the meeting that's being
17 summarized in this email?

18 MS. GOLDING: If you know.

19 THE WITNESS: I don't remember that
20 meeting.

21 BY MR. NUGENT:

22 Q. Okay. The first bullet point states,
23 Heated square footage of proposed building is
24 4,598, need to make sure that it's not any larger
25 than the building that was torn down. Do you see

1 that?

2 A. I do.

3 Q. And do you agree with that statement
4 that the building that was being proposed here
5 needed to be the same size in terms of heated
6 square footage as the prior, the old marina store
7 that was torn down?

8 A. Yes. That's what we were looking at.

9 Q. Right. And you testified before that
10 you didn't do any independent measurements of that
11 heated square footage.

12 A. Right.

13 Q. Okay. The second bullet point states,
14 Proposed unheated area is 4,250, can be constructed
15 as long as parking can be met. The parking
16 calculations have been confirmed. There is
17 adequate parking on site. Do you see that?

18 A. Yes, I do.

19 Q. Now, is it your understanding from that
20 bullet point that parking requirements that apply
21 here were those contained in the zoning ordinance?

22 A. No, that's not my understanding.

23 Q. Okay. What is your understanding of
24 why there's a reference to the need to meet parking
25 in this email?

1 A. The zoning administrator, Joanne, would
2 have pulled a file, a PD file, to see if there was
3 anything in that PD, how it would address such a
4 thing.

5 Q. And did you discuss with Ms. Ochal
6 about whether there were parking requirements
7 contained in the PD?

8 A. I don't remember that.

9 Q. And do you have any conversations with
10 Ms. Ochal about whether the parking requirements
11 contained in Article XI of the zoning ordinance
12 apply to this Marlin Quay Redevelopment Proposal?

13 A. No, I don't remember any such
14 discussion.

15 Q. But here she is stating that there is a
16 need to meet parking and that there's parking
17 calculations for the proposed building, correct?

18 MS. GOLDING: It is what it is. It's
19 the document --

20 MR. NUGENT: I'm asking the question,
21 Ms. Henri.

22 MS. GOLDING: He doesn't know anything
23 about the document. Move on.

24 MR. NUGENT: You can object. You can
25 object.

1 MS. GOLDING: I am. He doesn't know
2 the document.

3 BY MR. NUGENT:

4 Q. All right. Mr. Johnson, can you answer
5 my question briefly quickly?

6 A. She is telling Heather Kakert that.

7 Q. Did you chime in and tell Ms. Ochal and
8 Ms. Kakert that the parking regulations in the
9 zoning ordinance don't apply because this is a PD?

10 A. I do not remember discussing that with
11 them.

12 Q. There's no email here from you saying
13 hold on, you don't need to worry about parking
14 because we're in a PD, is there?

15 A. I don't remember such a thing.

16 Q. We go down to the final bullet point
17 and it references unheated square footage, and then
18 it says at the end, Parking calculations will be
19 based on the larger number for unheated square
20 feet. Do you see that?

21 A. Yes.

22 Q. Again, this references the parking
23 calculations. Do you know what type of parking
24 calculations were occurring for this particular
25 application?

1 A. I don't know what Joanne was doing.

2 Q. But you agree that the zoning
3 administrator was reviewing parking requirements
4 for one of these Marlin Quay proposals, right?

5 A. I don't know what she was doing.

6 Q. And do you recall any conversations at
7 all with Ms. Ochal about what type of parking
8 requirements applied to any of the Marlin Quay
9 Redevelopment Proposals?

10 A. No, I do not.

11 MS. GOLDING: For the fifth time.

12 MR. NUGENT: Why don't we take a quick
13 break.

14 (A recess transpired.)

15 (EXHIBIT 42, Email chains dated
16 April 28, 2016, and May 3, 2016, was marked for
17 identification.)

18 BY MR. NUGENT:

19 Q. Mr. Johnson, I'm going to put up on the
20 screen what's been marked as Plaintiff's Exhibit
21 No. 42. Do you see an email on your screen with
22 Holly Richardson's name at the top?

23 A. Yes, I do.

24 Q. And this is an email chain that's four
25 pages long. And I'm happy to scroll through and

1 let you read as much of it as you'd like. I can
2 start at the bottom and go up since it's in reverse
3 chronological order, whatever you prefer.

4 A. Okay. I see what's there.

5 Q. The next page actually is blank so that
6 makes it a little bit easier.

7 A. Okay.

8 Q. And page 3.

9 A. Okay.

10 Q. And then the last page.

11 A. Okay.

12 Q. Okay. Mr. Johnson, you'll see this is
13 an email chain that you are copied on. It's from
14 April 2016, so quite a while -- fairly early on in
15 this process. And do you have any independent
16 recollection of the discussions that are referenced
17 in this email?

18 A. Nothing beyond what is in the email.

19 Q. Let's go through it briefly. The first
20 email, which is the one on the bottom here on your
21 screen, is from Steve Goggans to you and
22 Ms. Richardson in April of 2016. Do you see that?

23 A. Yes.

24 Q. And it states, One further question we
25 have is the restaurant space interchangeable with

1 the marina store space? Do you see that?

2 A. Yes.

3 Q. And do you recall meeting with
4 Mr. Goggans about a possible new building at Marlin
5 Quay in that April 2016 timeframe?

6 A. I don't remember the exact date, but
7 early on, yes.

8 Q. Okay. And what did you discuss with
9 Mr. Goggans at that meeting?

10 A. I should say I do not recall if it was
11 a meeting or a phone -- or a conference call, but
12 in some capacity we discussed it.

13 Q. And what did y'all discuss?

14 A. Basically I think what this says, the
15 requirements of how they could remove that old
16 building and build a -- that was, again, hanging
17 over the property line and build a newer and more
18 modern building in its place.

19 Q. And if we look at the next email up
20 from Ms. Richardson, she writes Mr. Goggans and
21 states, I have these three main questions down for
22 Boyd and I go to go over and get back to you. Do
23 you see that?

24 A. Yes.

25 Q. And she goes on to state that she's

1 going to review her information for Boyd, that
2 would be you, right?

3 A. Yes.

4 Q. And then we will get together and
5 formulate a response for you ASAP. Do you see
6 that?

7 A. Yes.

8 Q. And so do you recall meeting with
9 Ms. Richardson and coming up with responses to the
10 three questions that are listed on this page of
11 Exhibit 42?

12 A. I recall a meeting. But regarding the
13 issues, I don't recall the details of what was
14 determined, but I remember meeting and discussing
15 it.

16 Q. And if we scroll up to the page above,
17 at the very bottom Mr. Goggans writes back and
18 says, Thanks, Holly, those are the questions. Do
19 you see that part?

20 A. Yes.

21 Q. And then a few days later,
22 Ms. Richardson writes to Mr. Goggans, copies you,
23 and she states, Steve, Boyd and I met together and
24 went over these questions after looking at some of
25 our previous correspondence with Dan Stacy on this

1 issue and the PD documents, correct?

2 A. Yes.

3 Q. And it then goes on to repeat the
4 question that Ms. Richardson had put in the prior
5 email and then provide a narrative response below.
6 Are you with me?

7 A. Yes, I am.

8 Q. And do you agree that these were the
9 answers that you and Ms. Richardson came up with to
10 those questions that Mr. Goggans asked early on in
11 the process?

12 A. Those three questions?

13 Q. Yes.

14 A. Let me read them -- scan them real
15 quick. Yes.

16 Q. Under the response to No. 1, she
17 states -- and this is about the square footage of
18 the building. Do you see that?

19 A. Yes.

20 Q. That's question No. 1. And it
21 references total square footage --

22 A. Uh-huh.

23 Q. -- in the question. Are you with me?

24 A. Yes.

25 Q. Do you understand total square footage

1 to be different than heated square footage?

2 A. It depends on how a particular PD was
3 written. Traditionally, I would say, you know, it
4 really more relates to heated square footage.

5 Q. I'm sorry, you're saying that in your
6 experience, the phrase total square footage
7 actually means only heated square footage?

8 A. I think that would be the common
9 understanding, yes.

10 Q. Okay. It's not your understanding that
11 total square footage means heated and unheated
12 square footage combined together?

13 A. It would not include any decks.

14 Q. Okay. But you can separate out decks.
15 But I'm just trying to make sure I understand what
16 you believe total square footage means based on
17 your experience.

18 A. Total square footage would be within
19 the building. No porches, decks, or anything like
20 that.

21 Q. Would it include unheated storage
22 space?

23 A. We would break it down heated and
24 unheated.

25 Q. Say that again.

1 A. Yeah, we would break it down heated and
2 unheated.

3 Q. And just so I've got that understood,
4 total square footage is enclosed square footage
5 inside a building, whether it's heated or unheated?

6 A. That would generally be the answer,
7 yes.

8 Q. So here Mr. Goggans is asking about
9 keeping the total square footage the same between
10 buildings, correct?

11 A. My recollection at this stage is we
12 were talking about the square footage within the
13 PD. That's why the condominiums needed to give up
14 some square footage so the current applicant could
15 build their square footage. Like it says, they
16 were transferring the square footage. So my
17 recollection is at this stage, we were talking
18 about the square footage in the PD. That's why the
19 condominium was having to give up some of their
20 square footage, which they agreed to do.

21 Q. And Ms. Richardson's response to
22 Mr. Goggans's question is, Since this is a
23 transfer, we will need to keep the square footages
24 the same. Do you see that?

25 A. Yes.

1 Q. And she goes on to say, An increase in
2 intensity of land use is considered a major change
3 to the PD and would require a PD amendment.

4 A. I see that.

5 Q. And do you agree with that statement?

6 A. Yes.

7 Q. And do you believe that the initial
8 Marlin Quay Development Plan would result in an
9 increase in the intensity of land use?

10 A. No, we did not agree to that.

11 Q. But if it had resulted in increase in
12 intensity of land use, then it would make a major
13 change appropriate, correct?

14 A. Yes. Yes.

15 Q. And if we're looking at the MQ3
16 proposal, do you agree that that increased the
17 intensity of land use over the original marina
18 store that was demolished in 2016?

19 A. My recollection is we determined it did
20 not.

21 Q. What I'm talking about is that MQ3.
22 You're saying MQ3 --

23 A. Oh, MQ3?

24 Q. Yes.

25 A. Or 2?

1 Q. MQ3. MQ3. Do you believe that it
2 resulted in an increase in the intensity of land
3 use compared to the old marina store?

4 A. We did treat it as a planned
5 development -- I mean as a major change.

6 Q. Okay. I'm just making sure. Is that a
7 yes? Are you answering my question yes, that it
8 increased the intensity of land use?

9 A. I don't remember how we -- you know,
10 how we -- each point how we addressed that. I know
11 we ended up saying it was a major change.

12 Q. And my question is a little bit
13 different. The applicant submitted the application
14 for a major amendment for MQ3, correct?

15 A. That's correct.

16 Q. And so that is what dictated the
17 process that the application went through, right?

18 A. That's correct.

19 Q. And back in 2016, this email we're
20 looking at, the applicant was seeking to avoid a
21 major amendment, correct?

22 A. Yes.

23 Q. And do you have any understanding of
24 why the applicant wanted to avoid a major amendment
25 back in 2016?

1 A. No, I don't.

2 Q. Did you have any discussions with
3 Mr. Goggans about the desire by the applicant to
4 avoid a major amendment back in 2016?

5 A. No, I don't remember specifically
6 talking about that.

7 Q. And as you sit here today, based on
8 your familiarity with what's being built currently,
9 the MQ3 building versus the old snack bar marina
10 store that was demolished, do you agree that that
11 new building represents an increase in the
12 intensity of land use?

13 A. No. I haven't made that determination.

14 Q. Okay. What would you need to look at
15 to make that determination?

16 A. I really need to get into the site plan
17 and to all the specifics for the property --
18 project, excuse me.

19 Q. But you reviewed those documents at
20 some point, right, Mr. Johnson?

21 A. Yes. We reviewed it as a major PD so
22 there wasn't any reason to go over the criteria for
23 major and minor PD since it was already submitted
24 as a major PD. So we didn't dwell on that.

25 Q. Right. But in terms of you using your

1 experience as a planner and your familiarity with
2 the subject property, what information would you
3 need in order to determine whether the MQ3 building
4 that's under construction represents an increase in
5 the intensity of land use as compared to the former
6 marina store that was demolished?

7 A. Full site plans, that type of thing.

8 Q. Let's go down to No. 3 on this email.
9 And this is a question from Mr. Goggans asking
10 about whether decks count in the total calculation
11 for square footage. Do you see that?

12 A. Yes.

13 Q. And that relates to your previous
14 testimony about what total square footage meant,
15 right?

16 A. Yes. Yes.

17 Q. Ms. Richardson states that since the
18 decks on the existing building are open, we are
19 assuming they were not included in the total square
20 footage amount that was provided earlier. Do you
21 see that?

22 A. Yes.

23 Q. And do you know whether Ms. Johnson
24 [sic] ever was able to verify whether the decks on
25 the old building were part of that 4,603 square

1 footage total?

2 A. No, I don't.

3 Q. She then goes on to say any decking on
4 the new building would similarly not be included in
5 this maximum number.

6 A. I'm sorry, what are you reading?

7 No. 3?

8 Q. I read the next part of that sentence
9 where she goes on to state that any decking on the
10 new building would similarly not be included in
11 this maximum. Do you see where I am?

12 A. Oh, okay. Yes.

13 Q. But then Ms. Richardson goes on to
14 state, Any deck area that is to be used for outdoor
15 seating or a bar area must meet the parking
16 requirements. Are you with me?

17 A. Yes.

18 Q. So here you and Ms. Richardson took the
19 position that deck area had to be factored into
20 parking requirements, correct?

21 A. Only as it related to seating.

22 Q. But the parking requirements, you
23 testified previously, don't apply; is that right?

24 A. That's true. It didn't have to be
25 done.

1 Q. But you didn't tell Mr. Goggans in this
2 2016 email, hey, parking requirements don't apply
3 because you're in a PD, right?

4 A. I did not write that statement in this
5 email, me or Holly.

6 Q. Instead, you and Holly told Mr. Goggans
7 that they actually have to meet the parking
8 requirements, correct?

9 A. I guess what we were saying is this is
10 how we would view it, yes.

11 Q. And this email uses the word
12 requirement, correct?

13 A. Uh-huh. Yes, we did.

14 Q. It doesn't say that the parking
15 guidelines are optional or that they're a good idea
16 but not necessary to meet, correct?

17 A. We were giving them steps, idea at that
18 time of how we would be viewing it.

19 Q. And so staff's idea at this time was
20 that the parking requirements were mandatory for
21 the new building that was proposed?

22 A. As it required for seating only.

23 Q. Any area that was to be used for
24 seating or a bar; is that right?

25 A. Yes. Yes, that's what it says.

1 Q. So in 2016, the staff's opinion was
2 that if an area on a deck was to be used for
3 seating or a bar, then it had to meet parking
4 requirements?

5 A. That's what we said at this time, yes.

6 Q. And then if you look back at those
7 emails at the top of this exhibit -- it's really
8 just this one page. I apologize. I think that may
9 be a slightly different email that got appended to
10 this chain but it's, again, from that May 2016
11 timeframe and involves Mr. Goggans and then you and
12 Ms. Richardson. Are you with me?

13 A. I did. Yeah, I see it.

14 Q. And below it there's an email from a
15 Mr. Patrick Williams that attempts to break down
16 proposed parking for, I believe, the first
17 iteration of the proposal for a new building at the
18 Marlin Quay area. Are you with me?

19 A. Yes.

20 Q. And he provided a breakdown of kitchen
21 and dining and then he put in parentheses does not
22 include outdoor deck and bar, right?

23 A. Yes.

24 Q. And he spells out the one space per 100
25 square foot of gross floor area. That comes from

1 Article XI of the zoning ordinance, doesn't it?

2 A. That sounds right.

3 Q. And the same thing for his next line
4 where he breaks out marina store and what the one
5 space for 200 square foot of gross floor area.
6 That's also from Article XI of the zoning
7 ordinance.

8 A. Yes.

9 Q. And Mr. Goggans goes on in the
10 following email that he sends when he sends
11 Mr. Williams' email to you and Ms. Richardson, he
12 goes on to state, We did not include the decks in
13 this analysis, which may require an additional two
14 or three spaces. Do you see that?

15 A. Yes.

16 Q. Now, this required parking does not
17 reference the other uses of the Marlin Quay parking
18 lot, correct, this analysis we're looking at?

19 A. Correct.

20 Q. Do you have any understanding as to why
21 those other uses were not taken into account when
22 these emails were sent back and forth early on in
23 the process?

24 A. No, except the only thing being looked
25 at at that time was this building.

1 Q. And was planning staff aware back in
2 the 2016 timeframe that there were other users of
3 the parking lot at the Marlin Quay area?

4 A. We were aware that there was one
5 parking lot. We were not aware of any kind of
6 easement or anything.

7 Q. All right. I believe those are all my
8 questions.

9 MS. GOLDING: Thank you.

10 (The witness, after having been advised
11 of his right to read and sign this transcript, does
12 not waive that right.)

13 (The deposition was concluded at
14 3:06 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Karen M. Ernst, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.

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

11 Witness my hand, I have hereunto
12 affixed my official seal this 9th day of March,
13 2021, at Myrtle Beach, Horry County,
14 South Carolina.

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Karen M. Ernst
Court Reporter
My Commission expires
September 2, 2025

1 I N D E X

2

3		Page	Line
4	LESTER BOYD JOHNSON, JR.	3	1
5	EXAMINATION	3	3
6	BY MR. NUGENT		
7	CERTIFICATE OF REPORTER	235	1

8

9

10 REQUESTED INFORMATION INDEX
 11 (No Information requested)

12

13 E X H I B I T S

14

15		Page	Line
16	EXHIBIT 1, Zoning Ordinance	68	13
17	Excerpts for Georgetown County		
18	EXHIBIT 2, P.U.D. Program	87	25
19	Documents		
20	EXHIBIT 3, Application to	91	5
21	Amend a Planned Development		
22	EXHIBIT 4, Photograph of	138	5
23	two-story Marlin Quay building		
24	EXHIBIT 6, Staff Report to the	99	7
25	Georgetown County Planning		

1	Commission dated October 18,		
2	2018		
3	EXHIBIT 7, Photograph of	141	21
4	Marlin Quay construction		
5	project		
6	EXHIBIT 8, Minutes of	134	1
7	Georgetown County's Planning		
8	Commission Meeting, dated		
9	October 18, 2018		
10	EXHIBIT 9, Agenda Request	159	2
11	Form, Georgetown County		
12	Council, dated December 11,		
13	2018		
14	EXHIBIT 15, Article XI,	183	6
15	Off-Street Parking Regulations		
16	EXHIBIT 25, Ordinance No.	179	21
17	2018-40		
18	EXHIBIT 38, Email chain dated	189	11
19	October 22, 2018		
20	EXHIBIT 39, Email from Boyd	196	4
21	Johnson to Holly Richardson		
22	regarding MQ dated June 11,		
23	2019		
24	EXHIBIT 40, Email chain dated	201	4
25	October 24 and 25, 2018		

1	EXHIBIT 41, Email chain dated	211	17
2	August 25, 2017 and September		
3	6, 2017		
4	EXHIBIT 42, Email chains dated	219	15
5	April 28, 2016, and May 3,		
6	2016		
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1 CHANGES AND SIGNATURE

2 WITNESS NAME: Lester Boyd Johnson, Jr., 03/04/2021

3 PAGE LINE CHANGE REASON

4 _____

5 _____

6 _____

7 _____

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9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 I, Lester Boyd Johnson, Jr., have read the foregoing
17 transcript and hereby affix my signature that same is
18 true and correct, except as noted above.

19

20 _____

21 Lester Boyd Johnson, Jr.

22 Sworn to and Subscribed before me

23 _____, Notary Public.

24 This_____day of _____, 20_____.

25 My Commission Expires:

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: 1..200

	237:6	222:11	15 18:6
Exhibits		238:4	183:6, 12
	JohnsonB 9-OCR		
JohnsonB 1-OCR	159:2, 8		158 3:9
68:13, 18,	179:6	1	16 23:10, 11
19 236:16	180:24	1 68:13, 19	17 23:10, 11
	237:10	102:11	110:11
JohnsonB 2-OCR		223:16, 20	150:23
87:22, 25	JohnsonB 15-OCR		
88:4	183:6,	10 170:8	1701 72:15
236:18	11, 12	171:13	73:9 74:15
	237:14	175:5, 13	
JohnsonB 3-OCR		176:14	1702.2 75:1
91:5, 11, 12	JohnsonB 25-OCR		76:10, 22
97:16	179:21	100 29:8	77:8
172:23	180:1	207:1	
236:20	181:8	232:24	1702.201
	182:25		76:3 77:13
JohnsonB 4-OCR	196:25	11 159:3	
138:5, 10	237:16	161:7	1702.206
143:25		196:5	80:20
144:8, 13	JohnsonB 38-OCR		18 99:9
236:22	189:11,	110 122:16,	134:3
	16 237:18	18 123:24	135:1
JohnsonB 6-OCR		126:12, 13	
99:7, 12	JohnsonB 39-OCR	127:2	18th 134:14
103:19	196:4, 9	128:9, 13,	1955 3:13
113:25	197:14, 24	24 129:13	1987 16:20
147:16	200:20	149:25	19th 3:13
236:24	237:20	167:9	1:15 152:2,
			13
JohnsonB 7-OCR	JohnsonB 40-OCR	1100 184:7	
141:21	201:4,	12 19:19	
142:1	9, 10	20:8, 10	
143:17	237:24	69:2	2
144:6	JohnsonB 41-OCR	173:19, 21	
145:16	211:17,		2 45:13
237:3	23 213:3	12- 174:18	87:22, 25
	238:1		88:4 135:9
JohnsonB 8-OCR		12-month	226:25
134:1, 7	JohnsonB 42-OCR	173:10, 15	
146:2, 11	219:15,	13 17:1	200 124:22
	20, 21		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: 2005..41

125:10	189:12	25th	201:25	350	123:20
233:5	191:10	28	219:16		125:6, 15
2005 16:14,	192:14	29440	3:10		126:10
20 17:2, 25	201:5, 25	2:30	152:4	38	189:11,
18:4	203:20			16	
2008 20:11	204:24			39	196:4, 9
	207:24		3		197:14, 24
2016 24:3,	2018-40	3	86:3		200:20
20 25:7	179:21		91:5, 11, 12	3:06	234:14
45:24	2019 8:23		93:11 95:5	3:30	152:8
96:13	12:1		96:22		
163:15	196:5, 14,		97:16		4
219:16	18 197:8,		102:12		
220:14, 22	18 201:1		107:7, 10	4	107:18
221:5	2020 11:23,		124:10, 13,		114:1
226:18	24 16:2, 4		17 125:10,		138:5, 10
227:19, 25	24:20 25:7		16 132:4		143:25
228:4	76:8		137:12, 16		144:8, 13
231:2	22 189:12		162:7, 18		168:8
232:1, 10	22nd 191:10		165:19		175:18, 23
234:2	192:14		172:23		176:10
2017 24:4	24 20:6, 8		178:6	4,000	59:2,
45:24	201:5		219:16		17 63:22,
96:13	24th 203:19		220:8		23, 24
211:18	204:24		229:8	4,250	216:14
212:4	25 33:2, 3		230:7	4,598	215:24
2018 8:25	38:1, 21	3,000	63:11,	4,600	141:17
78:3 86:4	61:9	25	25	4,603	102:21
92:1 99:9,	179:21	30	29:21		162:23
19 100:16	180:1		75:23, 25		229:25
134:3	181:8	300	145:6	40	201:4, 10
135:1, 7	182:25	35	122:18	400	80:25
159:3	196:25		29:18,	41	211:17,
161:7	201:5		19, 22 30:3		23 213:3
162:1	211:18		31:16		
170:10			33:2, 3		
171:7					

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: 42..additional

42	219:15, 21 222:11	147:16 211:18 212:4	179:6 180:24 181:1, 4	action 72:20 activities 19:11
45	76:2 98:5, 7, 8, 22 99:3 172:11	619 84:25 619.3 85:10 619.301 85:19	9,000 59:3, 18 A	actual 26:12 33:4 60:7 68:2 70:19 118:3
45-day	171:13, 17, 21	619.302 86:6, 20	ability 6:15 20:20	122:16 123:17 126:7
4600	213:22	619.3023	Absolutely	188:14
47	180:19	86:23	27:7 33:19 189:22	206:22 208:21
	5	62 107:22 168:24	accept 199:5	Adam 3:16
5,000	137:22, 23	169:13, 20 170:1 175:8 180:19	acceptable 63:14	38:9 62:25 124:1 130:4
50	20:19		access 117:22 145:21, 22	140:1 162:9 174:3
500	177:14, 16	7	accommodate 77:4	added 127:3 147:7
51	107:23 108:16 109:8, 9 168:18, 24 169:2, 12, 25 170:6 175:7	7 141:21 142:1 143:17 144:6 145:16	account 131:11 188:25 189:8 190:15 191:3 233:21	148:21 169:12 181:16 addition 61:25 164:19 165:13
52	175:7	8 134:1, 7, 10 146:2, 11	accurate 64:15 135:23 136:1	additional 40:25 79:1, 12 93:18
	6	8th 197:8	accurately 108:20, 25	94:18 98:11 124:7
6	84:24 99:7, 12 103:19 111:4, 11 113:25	9 159:2, 8		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: address..amend

125:10	adopt 52:23	176:10	216:3
163:18	158:5	177:8	219:2
233:13	adopted	181:12	223:8
address 3:8	85:24	agent	226:5, 10,
67:16, 22	134:18	208:17, 20	16 228:10
82:2	180:5	agree 59:4	agreed 48:5
127:3, 24	183:3	60:16	122:18
128:5, 11,	197:11	61:24 64:1	128:20
13 129:10,	advance 10:9	66:3 70:5	225:20
13 130:15	78:6	72:9 74:12	agreeing
188:11	advantage	87:5 95:25	148:24
217:3	145:20	96:21	agreement
addressed	advice	99:21	100:7
54:18	127:16	120:17	ahead 5:3
66:9, 11	advised	121:7	69:24
67:12 74:7	234:10	124:16	75:10
146:24	advocating	125:15	84:22
175:6	47:21	130:17, 19	183:3
227:10	affected	132:22	194:11
addresses	83:6, 14	133:2	207:5
84:2 184:5	affiliated	140:15	alleging
adequate	82:18	144:16	197:21
70:1	afternoon	145:10, 15,	198:3
216:17	15:23	23 147:19	allowed
adjacent	agency 18:19	149:2, 10,	123:22
176:15	agenda 30:2	19 163:18	altered
administration	153:16	165:7	36:14
15:16	155:23, 25	167:12, 20	amend 14:13
18:13, 14	156:13, 21	168:25	31:9, 10
administrator	159:2, 11,	172:15	32:7, 12
16:25 17:1	23 161:5	184:21	37:11 38:1
62:20 63:5	162:5	185:1	39:4 45:17
64:17	165:11	186:13	47:15 51:3
212:9, 11,	168:3	198:18	56:3
20 217:1		200:2	71:15, 18
219:3		203:22	
		213:5	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: amended..applicant

72:11, 23	87:6, 12	102:15	answers
73:14, 22	91:1, 24	104:23	4:15, 22, 23
75:5 78:1	92:22	105:14	166:15
90:10, 20	94:4, 8	136:3	223:9
91:5, 22	95:23	137:10, 21	anytime
133:13, 18	99:17	144:12	160:11, 12
141:5	100:16	146:16, 20	194:5
148:10	101:7, 18	147:6, 21	214:12
161:2, 3	103:20	148:7	apartment
172:13	119:2, 15,	150:16, 19	79:16, 18
203:16	22, 23	151:6, 14,	apologize
amended	120:7, 10,	20 163:18,	63:4 75:22
75:13 76:8	18 121:6	24 164:8	89:18
amendment	132:24	165:2	196:25
8:21 22:22	153:6	167:21	232:8
25:6, 24	157:4	168:3	appeals
29:14	158:7	229:20	19:12
30:22	159:19, 22	AMPD 92:5	31:15, 20
31:1, 6	182:21	analysis	appearance
32:15, 18,	204:5	25:9 103:7	184:15
24 33:13,	206:18	113:12	appeared
14, 21, 22	207:7	116:14	183:25
34:14	208:22	118:9, 20	appears
41:1, 9	226:3	151:14, 18,	141:16
46:5, 14,	227:14, 21,	19 175:17	196:12
18, 22, 25	24 228:4	177:9, 11,	appended
47:2, 22, 23	amendments	17 233:13,	232:9
49:21	29:23	18	applicable
50:19, 24	31:23 32:5	analyzed	71:4 73:21
51:16	33:4 43:6	98:1	77:6
52:25	52:10, 12	and/or	applicant
56:25 65:4	71:7 75:18	125:17	32:7, 11
70:10, 18	85:14	animal 26:3	35:10
71:25 72:3	101:23	answering	36:5, 8, 13
79:7, 17	177:12	227:7	
85:22	183:24		
86:1, 10, 15	amount 62:4		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: applicant's..applications

41:25	applicants	55:4 56:3,	131:18, 19
42:18	32:22	23, 25 58:1	132:4, 12
47:1, 3, 4,	48:14	64:19 65:3	133:12, 17
25 48:24	206:17	67:4	135:7, 19,
49:15	application	70:10, 11,	20 143:2
50:11	8:17 9:3,	18, 25	148:10
54:3, 7, 10	10, 13	71:17	152:21, 25
57:18	14:13	73:6, 9, 22,	153:5, 10
64:15, 21	22:21	24 74:2,	154:6, 10
65:5, 15	25:5, 6, 10,	11, 12, 20,	157:4, 5
66:22	18, 23 26:7	22 75:3, 5,	158:6, 20
71:15 79:6	27:4, 9, 18	12, 16, 20	160:21, 22
80:6, 24	28:14	76:25	161:2, 12
81:5, 11, 23	29:4, 11	77:14	170:13, 17,
82:21, 24	32:19	78:1, 5, 10,	23, 25
83:4 93:19	33:12, 16,	11, 19	171:22
130:14	19, 24	79:7, 9, 16,	172:13, 14,
137:4	34:14, 24	21 80:6,	19, 21, 24
144:19	35:1, 5, 10,	12, 14, 15	173:2
178:2	16, 18, 22	81:9, 17	182:5
203:14	36:3, 9, 17,	83:16	191:25
204:4, 17,	21 37:2, 6,	85:23	192:25
23 207:17	11, 23	86:3, 20	193:9
208:2, 9,	39:4, 6, 13,	87:15	194:2, 6
11, 12, 15	19 41:1, 10	91:5, 21	198:19, 21
213:16	42:8	92:23	200:4, 6,
225:14	43:18, 20,	93:7, 12, 23	10, 16, 22
227:13, 20,	24 44:25	94:9 95:17	203:2, 16,
24 228:3	45:16, 17,	96:3, 6, 12,	23 204:18
applicant's	20, 23	25 97:11,	206:18, 20
50:3, 4, 6	46:4, 21	15 98:6,	207:18
57:21	47:15, 21	10, 15, 21	209:21, 22
85:24	48:2 49:1,	99:22	210:2
192:23	17, 21	102:4	218:25
193:8	50:1, 18, 24	103:7	227:13, 17
194:7	51:3, 16	109:7	applications
205:3	52:4, 20, 24	113:16, 20	21:19
207:3	54:23, 24	130:1	22:13, 18

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: applied..area

25:15	110:19	102:7	19:13 52:6
29:15, 20,	111:23	107:18	110:11
21, 22	132:19, 23	122:11	207:1
30:15	133:9	163:19	Architecture
31:24	183:23	164:22	52:16
32:22	185:9	187:22, 24,	213:12
38:1, 21	215:2	25 188:2, 3	area 21:16
39:24 47:5	216:20	196:21	55:17
48:9, 10, 14	217:12	200:11	60:5, 6, 7,
49:6 52:10	218:9	203:23	8, 11, 13,
71:12	230:23	207:8	16, 22, 24
73:14 75:8	231:2	approving	61:3, 12, 23
77:22 96:4	appointing	198:11	63:24, 25
139:6	39:22	approximately	82:14
154:16, 23	appoints	3:24 4:6	83:20
155:21	40:11	7:14 16:20	89:7, 21
173:10, 15	approval	17:1, 23	90:6
177:11	43:23, 25	18:18	112:14, 18
187:1	44:1 49:16	19:19	113:1, 6
209:24	86:20	20:6, 19	115:21
210:25	100:15	23:7 98:22	125:7, 18
214:11	122:6	124:22	131:12
applied	143:2	140:11	132:6
46:14 47:1	165:14	198:9	141:10
54:3, 4	202:13	April 219:16	142:22
76:16 77:5	approve	220:14, 22	149:14
219:8	42:22 65:3	221:5	151:5, 10
applies 32:8	87:6 96:12	architect	163:19
73:9 85:3	119:22	49:22 50:8	169:18
101:14	120:17	51:8 55:10	178:23
133:22	132:24	103:3	186:20
189:5	approved	205:3	187:5, 7,
apply 73:13	8:20, 23	208:10	17, 20
93:6	26:21	architects	188:25
101:13, 23	62:16	85:25	211:1
105:5	101:8	architectural	216:14
109:14			230:14, 15,

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: argue..back

19 231:23	16:24	5:22 7:11,	111:1, 14
232:2, 18,	association	15, 18	116:12, 19,
25 233:5	82:13	10:24 11:3	23 117:12,
234:3	assume 5:17	48:20 50:3	13, 14, 21
argue 174:3,	14:5 92:2	85:25	132:11
4, 8 187:15	125:1	154:22	151:8, 11
arguing	138:16	155:12, 19	185:20
174:13	142:14	156:1, 12	234:1, 4, 5
article	145:5	191:17	awareness
69:20	181:18	192:24	10:22
70:12, 17	assuming	193:7, 8,	
71:3, 6, 8,	145:1	13, 15, 16,	B
10, 16	153:3	19 194:6, 7	
72:1, 10	229:19	195:2, 4	back 13:22
73:19	attach 79:8	attorney-	20:9 43:5
74:25	attached	client	57:13 79:3
183:6, 14,	94:8	155:5, 14	88:12 96:9
15 185:9,	attempt 5:9	156:16	126:16
16, 18, 22	attempts	attorneys	136:7, 22,
186:2, 6, 8	232:15	193:2	23 142:22,
188:24	attend 154:5	August	23 144:14
189:5, 8	attended	211:17	146:1
217:11	209:15	availability	152:5, 13
233:1, 6	211:4	133:11	165:18
ASAP 222:5	attending	avoid	166:16
aspect 36:8	40:21	227:20, 24	172:8
114:19	attends	228:4	173:18, 20,
assigned	153:13	avoiding	21 189:25
25:11, 15,	attention	69:25	196:24
19, 23	54:14	aware 10:19	197:14
28:21 29:4	57:18	12:9 61:11	221:22
77:24	72:14	65:24 66:2	222:17
assist	attorney	67:2 78:8,	227:19, 25
184:15		9 81:22, 24	228:4
assistant		89:2, 6, 13,	232:6
		20, 24	233:22
			234:1

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: background..break

background	84:7 87:8	151:22	186:25
4:11 11:20	92:15	believed	212:2
15:13	101:9	14:7	215:9
18:11	103:8	believing	220:6
138:24	122:3	150:18	227:12
142:20	128:20	beneficial	blank 220:5
bad 129:17	175:3,6	112:9	Blankenship
130:10,18,	221:14	186:15	19:25
19 131:9	basing 137:6	187:6,18	25:2,22
132:24	basis 32:25	big 140:7	26:4
ballpark	40:15 41:6	141:19	block 150:24
37:14	53:14	205:1	blue 88:20
bar 63:19	78:22	bigger 58:1,	board 19:12
123:10,12,	110:3	5,19	31:15,20
15,16	150:18	103:11	body 31:20
124:16,20	155:20	120:10,15	bold 190:3
125:24	171:1,25	125:4	book 21:9
126:5	174:17	129:4,6	bother 98:17
145:17	188:6,18	biggest	bottom 76:7
228:9	battery	20:22	179:6
230:15	106:4	21:11	180:7
231:24	beach 112:22	bind 41:24	220:2,20
232:3,22	126:1	binding	222:17
based 35:16	150:25	41:19,24	Boyd 3:1,7
64:5	151:2	birth 3:11	135:14
105:10	beer 151:3	bit 4:11,18	190:3
106:19,21	began 139:13	29:21	191:8,19
151:21	beginning	61:11	196:4
187:4	23:10 47:6	89:16	201:16
193:5	53:7 55:12	137:20	221:22
204:10,12	behalf 47:4	140:19	222:1,23
218:19	belief	152:5	brand 114:23
224:16	128:12	164:7	break 6:7
228:7	beliefs	165:4	
basically			
26:19 54:3			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: breakdown..building

68:10	195:24	80:4, 11, 16	12, 16, 24
151:25	build 46:21	92:20	141:4, 11,
152:6	53:23 54:4	93:9, 13, 17	16 142:4,
219:13	56:23	94:22	5, 14, 23
224:23	57:6, 8, 13	95:2, 5, 8,	143:1, 4, 6,
225:1	79:15	10, 12, 13,	15, 24
232:15	119:15	17 96:5, 8,	144:3, 6, 8,
breakdown	120:10	13 97:5, 22	11, 12, 19,
232:20	145:11	102:21	20 145:16
breaks 6:3	205:9, 11	103:1, 11,	146:21
233:4	209:25	12, 21	147:8, 21,
briefly	221:16, 17	104:9, 12	23 148:8,
87:23	225:15	105:11, 16	21 149:2, 4
88:19	building	106:17, 24	151:16
218:5	19:14, 15,	107:1, 4, 24	162:24
220:19	20 20:15,	109:7	163:5, 14,
bring 206:7	20 22:7, 9	115:13, 18	19, 24
brings 22:1	34:9	120:11, 15	164:10, 17,
broader	53:19, 20,	121:19	20, 24
61:11	23 54:11,	122:11, 15,	165:9, 14,
131:8	20, 22	17, 23	20, 25
brought	55:6, 8, 11,	123:9, 12,	166:4, 25
54:13	14, 17	13, 20	167:3, 13,
57:18	56:17, 21	124:17	21 171:10
173:8	57:1, 2, 8,	125:11, 16	173:4
175:5	11, 15, 19,	126:11, 17	178:7, 10,
Bryant 11:4	20, 25	127:3, 25	12, 15, 18,
191:16	58:2, 10,	128:6	19, 22
192:3, 8	19, 20, 22,	129:4, 7,	179:1, 3
193:6	24 59:9,	11, 14, 20	189:2
194:17, 21,	10, 12, 18	132:5	196:22
25 195:10,	60:3 62:17	137:5, 11,	198:11
18	65:4, 12, 14	12, 16, 24	202:3, 6, 7,
Bryant 's	66:1, 7	138:1, 6,	11, 17
194:12	67:11, 17	17, 18, 22	203:4, 5,
	79:8, 20,	139:7, 12,	10, 15
	22, 25	14, 20, 24,	204:1, 6, 7,
		25 140:11,	11, 19

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: buildings..change

205:5, 13,	216:13, 20	calculations	29:3 49:18
14 206:8,	218:16	94:20	58:13
13, 19	business	188:22, 23	64:6, 9
207:17, 22,	63:19	216:16	65:2 83:18
23 208:3, 6	130:20	217:17	92:19
209:25	131:10	218:18, 23,	96:1, 2
210:1	151:5	24	109:18
214:9, 12,	188:11, 17	call 23:3	130:13
13, 16, 18	businesses	45:9 79:2	157:7
215:23, 25	112:17, 19	124:22	179:14
216:4	118:12	193:22	186:9, 19
217:17	businessman	221:11	201:21
221:4, 16,	188:14	called 52:16	catchall
18 223:18		calls 4:24	93:3, 5
224:19	c	camera 6:23	caused 53:2
225:5	Cafe 3:17	capacity	certifications
228:9, 11	61:8 89:22	26:24	18:23
229:3, 18,	90:7	100:3	certified
25 230:4,	114:2, 6, 11	120:16	18:24
10 231:21	115:12, 17,	122:16	19:1, 4
232:17	20 116:1,	125:8	chain 189:11
233:25	17 168:13,	129:11	191:12
buildings	22 169:11,	180:20	193:3
75:20	23 189:1	183:21	201:4
103:22	calculate	221:12	203:11
104:19	64:12	caps 180:14	211:17
145:11	109:9	captured	219:24
211:1	calculated	175:18	220:13
213:6	108:17	car 126:3	232:10
225:10	calculation	Carolina	chains
built 56:18	94:9, 13	3:10 15:17	219:15
62:17	115:11, 16	cars 131:16	change 21:20
163:25	169:1, 10	150:17	23:2, 4, 7,
178:18	229:10	case 27:23	12, 13, 19,
228:8			20 36:4
bullet			
215:22			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: changed..commission

44:23 45:1	84:24	20:13	205:13, 14
53:9, 13	85:10	51:6, 7, 8,	206:13
56:13, 16,	characteristic	12	codes 204:6
20 58:6	s 54:22	claiming	205:16
72:16	94:22	188:18	Coleman 20:1
73:4, 7	charged	clarification	25:2 77:21
74:3 79:12	129:23	5:15, 18	81:7, 10
85:18	Charleston	66:16	152:4
86:5, 13	15:18	156:22	collected
87:18	check 63:7	clarify	190:6
90:11, 20	92:14	11:19	collecting
92:18, 19	106:6	155:8	190:9
93:13, 17	checklist	clarifying	collection
95:23	34:2	156:18	14:25
101:6	chief 17:7	cleanly 5:6	College
104:18, 22	24:25	clear 110:18	15:17
119:3	chime 218:7	173:24	combined
127:6, 8, 13	chore 21:11	clerical	224:12
137:10, 14,	chronological	25:3 77:21	comments
18 150:1	220:3	client 65:20	146:12
190:22	circa 196:13	clients	176:14
202:15, 20	circle 91:13	49:11	181:21
205:13	circled	close 129:13	commercial
226:2, 13	89:8, 22	clue 182:15	32:14
227:5, 11	90:6, 16	coach 199:17	34:17
changed	circling	Coastal	105:13
102:16	88:20, 24	15:17	115:21
136:4, 19	circumstances	code 16:10	130:20
146:17	27:16 28:5	123:23	131:10
165:24	city 4:4	124:25	150:22, 23
205:5	16:17, 18,	202:16	commission
changing	22, 24, 25	203:10	19:12
91:2, 3	17:4 18:17	204:1	22:3, 4
136:9			26:13, 22
166:4			
chapter 21:8			
23:16			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: commission's..computer

27:4, 5, 8,	152:24	41:4 50:5	166:24
10, 25	153:4, 15,	154:14	167:2
28:7, 13	17, 21	communications	comparison
29:1, 6, 12	158:1, 6,	7:14 9:23,	165:14
30:2, 5, 9,	11, 17	25 10:8, 25	166:24
11, 17, 19,	159:25	35:13	complained
21, 24	170:10	47:14	121:23
31:2, 7, 13,	171:5	155:1	complaints
18, 25	172:7, 12	156:11	122:2
32:19	175:12	207:21	complete
36:21	176:2, 4	211:11	17:16
38:23	177:24	communities	78:11
39:15, 17,	209:10, 11	112:5	170:24
23 40:2, 6,	211:5, 8, 10	119:13	172:18, 23
10, 12, 14,	commission's	community	173:2
21, 22, 24	43:9	127:25	completed
41:4, 5, 8,	158:25	128:6	78:16
23 42:2, 4,	common 48:24	132:4	completeness
13 43:7,	49:20, 23	178:22	78:18
17, 24	50:17 79:6	184:19	complex
44:5, 11	80:4 224:8	185:4	25:14 28:9
65:10	communicate	comp 34:16	79:16, 18,
72:22	4:19 15:9	36:3	20
77:15	35:9 40:20	company 82:7	complicated
78:6, 13	50:2	83:23	25:18, 23
97:25 98:6	154:8, 22	84:19	complicating
99:5, 8, 15	155:19	compare	57:3
108:7	194:16	53:18	comprehensive
109:20	209:4	138:4	21:5 34:20
128:21	210:8	compared	36:10
129:1, 5	communicated	139:25	computer
134:2, 15,	10:14	227:3	106:4
18 135:1,	210:15	229:5	155:24
3, 6 146:9,	communicating	comparing	
16, 20	50:23 51:2	164:23	
147:1, 6,	communication		
12, 20			
148:4, 9, 20			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: concentration..context

concentration 69:25	condominium's 57:10	confused 45:11	constitutes 74:20
concepts 101:20, 23	condominiums 82:11, 13 83:20	congestion 69:23	constructed 143:1 216:14
concern 78:18 132:5, 11 152:3 178:22	151:1 225:13 condos 58:5 138:23 142:21 176:15, 25	connected 187:1 connection 7:22 71:11 74:11 151:15 177:11 178:5 182:20 194:21 195:19 214:10	construction 45:18 65:4 79:17 141:22 149:2 163:20 206:9 229:4
concerned 121:18	conduct 177:20		consultant 113:11
concerns 82:2 122:6, 21 127:3, 24 128:6, 13 129:14 176:18, 23 177:7	conducted 178:3 conference 209:17 221:11 configuration 92:20 93:14, 17	consideration 80:11 96:23 considerations 104:10 considered 8:24 23:2, 12, 13 30:11 47:23 48:2 56:25 78:2 87:5 121:13 185:5 226:2	contacted 194:6 contained 71:1 73:18 106:16 108:9, 17 109:10 184:23 186:7 216:21 217:7, 11
concluded 234:13	confirm 54:9 64:14 confirmed 100:7 216:16		content 156:18
condition 105:11	confirming 56:22		contest 6:5
condo 83:25	conflict 34:4		context 70:18 81:9 103:20 129:9 132:3 163:9
condominium 56:7 57:5 82:19, 22 89:10 93:10 104:5 225:19	conflicts 34:1, 6 confuse 5:14	consistent 36:9 143:7 constitute 74:1	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: continuing..council

195:17	corner	91:14	110:16	217:17
211:9	correct	7:6	111:5	223:1
continuing	8:22, 25		114:3	225:10
124:4	9:1, 4		117:4	226:13
contract	10:13		121:10	227:14, 15,
21:12	12:3, 4		124:10	18, 21
contractor	13:14 18:5		126:15	230:20
22:9	22:22		131:12, 22	231:8, 12,
contrary	31:21		132:21	16 233:18,
158:16, 24	32:3, 19		136:9	19
controversy	36:21 37:7		146:17	correctly
28:10	41:7, 10,		147:8	72:25
convenience	11, 13, 16		153:1, 5, 7,	correspond
72:19	42:13		8 157:23	159:20
73:12	45:19, 21		160:23	correspondence
conversation	47:24 48:4		161:4, 9	13:1
5:7 82:6	50:19, 20		163:20	222:25
conversations	52:7 57:2		164:11	cost 204:16
47:17, 18	61:21, 22		167:22	207:4
113:19	62:14		168:14	costs 206:25
155:9, 10	66:1, 6, 25		170:10	council 8:14
217:9	67:1, 5, 6		172:17	18:18
219:6	76:13, 14,		173:23	40:11
convey 36:4,	19, 25		175:19	41:14 42:5
7	77:15, 16		176:7	51:13, 14
copied	82:15		177:20	72:22
192:20, 24	85:18		178:3, 4, 7,	100:16
212:5	86:6, 7		8 179:3	153:7, 11,
220:13	90:8 93:24		182:2	13, 15, 18,
copies	95:19		183:4, 19	22 154:5,
222:22	96:6, 16		185:10	9, 15
copy 10:4, 5	97:6		191:17	155:23, 25
215:15	100:5, 9		192:15, 21	157:17, 22
	101:16		193:12	158:2, 4, 9,
	105:4, 17		197:8, 9	16, 24
	106:22		198:11, 22	159:3, 12
	107:4, 9		207:15	
	109:15		213:17	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: council's..criteria

160:13, 23	13, 24	175:20, 22	court 4:16,
163:3, 23	18:4, 8	176:2, 9, 22	20 5:5
164:14, 18	19:1, 8, 15	179:8	courtesy 5:9
165:12, 23	40:7, 11, 18	180:5	cover 21:24
166:3, 22	41:14 42:4	181:23	85:6 94:10
168:20	48:21	182:2, 8,	
169:23	51:13, 14	12, 18, 24	coverage
170:16, 20	61:21	183:3	58:16
171:17	68:14, 23	184:12, 23	covered
173:14	69:4, 7, 12,	185:21	176:10
174:25	23 70:6	191:4, 17	covers 23:16
175:20, 22	72:22 99:8	192:24	85:13
176:3, 9, 23	100:15	193:7, 16,	175:23
179:8	103:24	18 194:6	
180:5	129:16	195:1, 4, 15	create 59:9,
181:13, 23	133:24	196:21	20 74:13
182:2, 9,	153:6, 10,	197:11	114:24
12, 19, 24	13, 15, 18,	200:11	119:23
183:3	22 154:5,	202:14	185:14
196:21	9, 15, 22	county's	207:5
197:12	155:11, 19,	13:6	created
200:12	22, 25	132:18	182:20
202:14	156:12	134:2, 14	185:7
council's	157:17, 22	185:16	186:5
161:19	158:1, 4, 9,	countywide	creates
count 229:10	16, 24	28:10	110:7
Counties	159:3, 12	couple 7:17	112:7
18:20	160:13, 23	88:18	182:10
county 4:4	161:4, 19	92:10 96:3	creating
7:5 8:14	163:3, 23	100:12	131:19
10:12, 16	164:14, 18	104:21	132:5
11:3, 21, 22	165:12, 23	135:25	177:16
12:7, 10	166:3, 22	152:18	criteria
13:13	169:22	175:19	23:17, 22
14:12, 24	170:15, 20	198:25	46:10, 12,
16:10, 13,	171:16	coursework	13, 16
16 17:4,	173:13	18:22	
	174:25		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: critically..defects

53:17 71:1	data 173:8	December	167:2, 7,
228:22	date 3:11	159:3	10, 11, 19
critically	98:1, 13,	161:7	179:1
95:24	16, 17	162:1	230:14, 19
Crystal	161:6	decided 27:5	232:2, 22
212:22	197:7	30:10 78:2	decking
	221:6	212:25	140:25
current			144:10, 15,
15:19	dated 99:8	deciding	16, 20
75:23, 24	134:2	34:13	145:15
88:11	159:3	103:20	146:20
100:13, 23	189:11	deck 61:25	147:7, 18,
115:5	196:5	62:2, 6, 8,	22 148:4, 6
213:20	201:4	19 63:22,	168:4
225:14	211:17	24 97:4,	230:3, 9
cursor	212:4	10, 14, 21	
140:14	219:15	106:1, 21	decks 62:11,
		107:8, 12,	13 63:12,
customary	dates 194:14	14 119:15	18 64:1
206:10	day 15:25	123:6, 8	107:11
	26:9, 11	137:21, 22,	149:3, 20
customers	36:19	23, 25	167:23
187:12	177:14, 17	138:1, 2, 4	224:13, 14,
188:10		140:20	19 229:10,
cut 20:7, 8	days 75:23,	144:12	18, 24
24:12	25 98:5, 7,	145:19, 20,	233:12
34:10 35:2	8, 22 99:3	23 148:8,	decline
	171:7	17, 19, 21	178:9
	172:11	149:9, 11,	
	222:21	13 150:2,	deemed 26:16
	deadline	6, 10, 12,	87:20
Dan 47:8, 11	171:13, 17,	16, 20	170:24
99:17	21	163:3, 4, 8,	172:18
135:11		13, 19, 24	178:11
191:22	deal 47:4	164:4, 7, 9,	205:10
192:20	140:7	16, 19	208:7
208:17	dealing	165:8, 13	defects
222:25	155:20	166:3	194:1
dash 180:13	deals 111:3		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: define..deposition

define	87:2	228:10	74:19	56:16
	90:1	229:6	77:17	67:15
defines		demolition	78:3, 17	83:10, 14
	105:9	178:19	79:5, 18	96:24
definition			81:3, 22	160:22
	113:7	denied 37:7	82:1 83:4,	172:17
degree		39:19	5, 19 84:1,	depend
	15:15, 16	173:18	6 85:19, 23	214:23
	18:11 24:2	departing	86:4, 16, 18	depended
	87:3	39:2	87:14	83:22
delivering		department	93:22	129:19
	157:25	16:9	97:20 98:5	depending
demand 59:8,		19:10, 14,	109:9	58:21, 25
10, 20		20 20:20,	116:2, 8	97:7
60:12 64:2		21 22:17	122:25	104:11
112:25		24:5, 7, 23	129:19	131:13, 14
113:1, 4		25:8 26:8	141:3	141:19
116:9		29:10, 16	154:22	185:11
119:17, 23		30:9 32:23	157:20	depends
121:12		33:10, 15,	158:23	34:25 64:9
133:12, 16		20, 23	161:12	113:7
150:7		34:13, 24	172:6, 21	186:17
167:22		42:9, 11	173:1	224:2
demands		43:11	183:22, 25	depicted
		50:23	184:1	142:11
		52:11	188:23	201:25
		53:4, 6, 11	191:5	depicting
		55:2, 7, 16	193:6	139:7
demolished		56:2	195:20	deposed 3:22
		62:17, 22	202:9, 11	4:1, 9
		63:6, 9	203:6	deposition
		64:13, 20	204:6, 12,	3:18, 19
		65:17, 24	19 207:23	7:10, 22, 25
		66:4, 23	212:15, 17,	9:15, 20, 24
		67:1, 2, 9	18 214:8,	10:9, 20
		68:4 70:9,	19	
		16 71:13	department's	
		73:7, 25	54:14	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: depositions..director

11:15	53:8, 12, 15	developer	133:24
234:13	102:25	177:22	150:24
depositions	113:5	development	185:21
4:7	133:4	22:22 26:2	186:1, 5
describe	170:22	30:23 31:2	dictated
22:14	171:2, 20	32:6	227:16
140:17	172:1	33:14, 22	dimensions
describing	181:7	45:19 46:5	80:3 94:21
23:8	228:13, 15	51:17	95:1, 4, 16,
description	determine	61:14	24 171:9
24:17	23:18 55:5	84:25 85:7	173:4
117:17	66:5 67:9	87:7, 17	dining
design	85:25	90:3, 6, 11,	125:12, 17
130:15	94:16	20 91:1, 6,	232:21
designates	95:22	23, 25 92:3	direct 54:5
50:9	114:10	99:18	72:14
designed	118:6	100:17	direction
54:21	229:3	101:9, 11,	112:5
57:19	determined	14 102:2	directly
126:13	23:20	109:15	25:16 50:2
128:13	173:2	111:24	210:9, 15
desirable	222:14	112:1, 2	director
184:17	226:19	118:25	16:10, 23
desire 228:3	determines	132:20, 23	17:9, 24
detail 57:5	73:25	159:21	18:3, 7
detailed	determining	177:15	19:7 24:18
151:18	55:8 77:18	184:17	26:5, 24
details 80:9	78:4, 22	185:10, 12,	28:24
171:8	85:17	15 186:22	36:25 39:2
222:13	116:4, 9	187:2	44:10, 17
determination	develop	226:8	50:14
44:24	139:14	227:5	69:6, 12
46:3, 9, 11	171:4	developments	76:11, 17
	developed	23:17	153:12, 23
	116:19	25:14	154:2, 4, 8,
		101:24	
		111:4, 5, 11	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: disagreement..duties

21 156:10	discussion	93:24	drafted
157:6, 8,	65:9 87:19	94:25	157:17
18, 19, 24	165:16	99:13	181:22
158:15, 22	200:25	134:16	183:2
182:18	217:14	153:17	drafting
183:21	discussions	159:15, 17	157:3, 10,
203:7	36:1	160:3, 6, 10	13
208:4	156:19, 20	175:4	drafts
disagreement	182:23	176:1	182:1, 7
65:22, 25	203:1	180:1, 10	drainage
66:5	220:16	183:16	58:17
discrepancy	228:2	189:16, 19,	draw 145:6
67:10	dispute	21 190:10	drawing
discuss	67:3, 16, 23	191:2	79:19
26:10	190:14	196:10	143:11
35:21	191:1, 11	214:3, 4	207:18
167:5, 7	196:16	217:19, 23	drawings
195:3	201:23	218:2	143:14, 18
198:20	215:16	documents	207:2
200:5	disputed	7:24 8:7,	213:22
202:25	67:3	11, 15 9:13	drawn 55:20
217:5	district	11:10, 13,	drill 4:10
221:8, 13	85:1 110:7	17 12:11,	drinking
discussed	dive 59:16	15, 17, 20,	125:12, 16
113:8, 9	division	21 13:24	drive 112:17
200:14, 19	212:17	14:8 15:5	126:3
221:12	doctor's	21:10	151:9
discusses	60:6	67:15, 21,	drugs 6:15
77:13	document	24 87:25	duly 3:2
discussing	10:3, 6	95:3 223:1	duplication
166:21	14:4 68:3,	228:19	42:20
198:15	6, 22 69:11	double 20:5	duties 19:7
200:9, 23	88:6, 16, 17	doubt 109:17	
214:1	91:17, 19	135:22	
218:10	92:23	draft 180:10	
222:14		182:10, 13,	
		19	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: dwell..enactment

dwell 228:24	21:6	202:2, 23,	221:19
	educate	25 203:2,	223:5
E	199:3	10 207:22	227:19
			229:8
E-A-S-Y 3:9	educational	else's 14:10	231:2, 5, 11
	15:13	53:21	232:9, 14
earlier	18:11	email 13:6	233:10, 11
31:17		189:11	
33:2, 4	effectively	190:15	emailed
58:15 74:6	20:21	191:3, 11,	191:19
123:7	efficient	12, 13, 16	emails
135:21	69:18	192:18, 21,	12:22, 25
136:25	effort 67:22	25 193:3,	13:2, 3, 5,
137:7, 20	68:3 114:9	7, 25	13, 16, 22,
152:19	122:21	194:12, 17	23 14:6
167:8	efforts	195:24	67:14
173:21	67:16	196:4, 12,	190:6
188:8	81:11	17 197:19,	194:3
204:25		23, 25	232:7
229:20	elaboration	198:1, 7, 9	233:22
early 8:23	181:8	199:1	emergency
209:16, 20	elaborations	200:16	42:19, 23,
220:14	180:15	201:1, 2, 4,	24, 25
221:7	181:11, 15	10, 14, 19,	
223:10	element	24 202:15,	Emfinger
233:22	21:6, 8	24, 25	212:22
easement	36:13	203:11, 19	employed
116:16, 21,		204:24	10:12 16:7
24 117:1,	elements	205:2	213:15
2, 10, 13,	21:7	211:17, 23	
16, 22, 23,	elevation	212:1, 3	employee
25 234:6	143:12	213:20	12:7
		215:8, 17	employees
easier	elevations	216:25	40:7 115:5
215:10	79:8	218:12	195:15
220:6	143:14, 18	219:15, 21,	employment
Easy 3:9	Elliott	24 220:13,	16:5
economic	201:24	17, 18, 20	enactment

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: enclosed..exclusively

186:2, 6	English	38:1	151:15
enclosed	26:18	estimating	event 103:16
225:4	entail 21:24	33:7	exact 35:8
encroach	entails	evaluate	97:23
54:21	117:2	33:15, 23	124:24
encroaching	enter 155:24	55:17 68:4	221:6
53:20	entire 69:2	70:11	EXAMINATION
encroachment	entirety	74:19	3:3
54:1, 4	201:11	103:13	examine
57:17	entitled	108:8	116:12
end 22:23,	7:13 174:1	113:14	examples
24, 25	190:19	118:10	35:24
26:9, 11	environment	122:11	58:17
36:19 40:9	87:4	123:1	70:15 77:9
60:3 63:14	environmental	177:7	104:22
95:2	112:7	200:5	186:10
113:24	essentially	evaluated	exceed 170:1
203:4	20:10	86:15	exceeds
204:15	25:22	90:25	107:22
218:18	28:24 55:5	101:3, 18	109:7
ended 21:11	establish	116:3	exception
23:3	109:22	200:17	12:21
122:24	184:10	evaluating	excerpt
227:11	establishing	34:24	84:23
endurance	87:8	54:23 55:3	excerpts
6:5	111:25	80:12	68:13 69:2
enforce	establishment	133:12	exclamation
212:12	124:18	139:24	192:5
enforcement	125:12	141:5	excluded
16:11	estimate	148:10	110:10
engage 12:14	31:17 33:1	168:21	excluding
engineer	estimated	186:25	89:9
22:9 50:8	29:17 33:3	200:22	exclusively
177:23		evaluation	
		evaluations	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: excuse..facilities

57:20	183:6, 11,	229:18	explain 21:2
157:18	12 189:11,	exists 68:3	23:12
excuse 9:17	16 196:4,	151:6	35:24
38:24	9, 25	189:7	59:24
228:18	197:14, 24	expect 60:4	170:15
exempt	200:20	79:19	172:4
109:24	201:4, 9	111:10	185:13
110:4, 12,	211:17, 23	120:25	188:6
15, 23	213:3	123:11	215:1
exemption	219:15, 20	131:2	explained
111:8, 15	222:11	148:3	24:18
exhibit	232:7	167:18	expressed
68:13, 18	exist 67:24	expected	121:25
84:23	existed	80:4	127:25
87:22, 25	65:7, 14	experience	176:18
88:4 91:5,	66:1 67:17	20:18	177:7
11, 12 95:3	75:19	37:10 41:3	expressing
97:16	76:10	49:9, 20	178:22
99:7, 12	115:4	50:15, 17	extend 5:9
103:19	116:5, 9	59:19	extent
113:25	123:2	69:15	209:19
134:1, 7	145:24	119:20	extremely
135:9	existence	145:6	56:4 115:4
138:5, 10	115:5	157:24	eye 70:11
141:21	116:13, 16,	158:4	
142:1	23 117:9	185:2	
143:17, 25	existing	186:25	F
144:6, 8, 13	33:25	187:4, 16	
145:16	55:6, 8	193:5	face 47:19
146:2, 11	65:11	207:14	face-to-
147:16	95:12, 13	224:6, 17	47:18
159:2, 8	112:19	229:1	facilitating
172:23	114:21, 25	experienced	70:1
179:6, 21	120:16	186:24	facilities
180:1, 24	121:7, 9	expert 13:12	184:16
181:8	165:15	177:23	
182:25	178:12, 14		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: facility..flood

facility	fall 93:4	80:25	188:1
60:2	familiar	102:21	206:7
fact 14:16	12:2 52:15	122:14	212:24
78:5 81:5	61:3,6	137:22	218:16
88:9 89:14	69:3,7	141:17	find 110:21
105:2,18	71:7 73:2	144:2,7	160:15
112:4	76:15 81:1	148:20	214:17
147:1,3	88:16,19,	162:23	fine 13:11
185:2	23 112:13	180:18	68:11
factor 58:5	116:15	213:22	156:23
87:5 96:5	138:23	218:20	finish 5:8
103:21	184:2	felt 94:17	63:1
126:20	familiarity	167:4	210:21
148:9	52:22	field 18:12	fire 122:17
factored	187:5,17	48:23	123:23
188:13	228:8	figure 66:6	124:25
230:19	229:1	file 14:9,	125:8,14
factors 57:3	family	13,16	129:19
86:19	210:24	79:11 92:8	firewall
119:19	211:12	217:2	176:20
185:3	favor 116:16	filed 10:17	firm 52:6,
facts 64:6	117:10	12:1	9,15
factual	192:5	198:25	213:15
122:9	favorable	199:10	fishing
failed	36:14	files 12:23	15:22
108:19	49:10	filings	fit 166:2
fair 5:20	February	146:7	five-minute
37:21	100:16	fill 91:22	68:10
45:14 62:7	feel 138:2	98:17	flexibility
63:2 69:10	feet 58:4	final 39:8	101:14
72:4 80:17	59:14,15,	42:3 44:9,	flexible
81:21	22,24,25	16,18	110:7
105:16	60:16	93:11	flood 144:4
fairly 18:2	63:11,22,	158:14,22	
220:14	23,25	182:18	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: flooding..fully

flooding	footage	16, 18, 20	15, 18
103:25	60:22	229:11, 14,	framed
floor 232:25	62:1, 6	20 230:1	202:21
233:5	63:18 95:4	footages	205:11
focus 25:4	96:14, 18,	225:23	Freedom
73:16	19, 23	form 63:18	11:14
160:17	97:2, 4, 10,	64:4	frequency
focused	21 98:4, 24	114:13	182:16
126:12	102:16, 20	117:18	frequently
focusing	104:14, 16,	118:14	37:9 44:4,
58:8	18, 23	119:7, 25	7, 11 50:10
FOIA 12:10,	105:10, 16,	120:19	158:9
16 14:20	21, 22	128:15	182:12
190:7	106:1	130:2, 22	193:18
201:19	107:3, 7, 8	131:23	214:8
folks 24:6	115:25	144:21	friend 51:24
40:6	116:3	147:24	52:1
follow 86:14	136:3, 9,	148:12	friendly
94:9 101:7	12, 19	149:5	51:25
133:6, 8	137:2, 4,	156:1, 3, 5,	front 29:11
152:18	11, 15	12 157:23	31:18, 19
158:5	146:17	159:2, 12,	91:9, 12
172:10	162:22	24 161:5	148:5
185:17, 22	163:4, 14	162:5	164:25
186:7	165:19, 24	166:6	181:2, 4
follow-up	166:25	167:14	191:7
8:9 190:19	213:21	169:4, 14	197:15
foot 59:2,	214:7, 9,	170:2	204:15
18, 19	14, 16, 18	173:7	211:21, 24
104:12	215:23	176:11	215:5
106:20	216:6, 11	177:8	full 3:5
137:23	218:17	formulate	53:11
180:20	223:17, 21,	222:5	207:5
232:25	25 224:1,	forums 40:16	229:7
233:5	4, 6, 7, 11,	frame 202:20	fully 6:12
	12, 16, 18	205:10, 12,	
	225:4, 9,		
	12, 14, 15,		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: function..Golding

function	generally	69:4, 12	15, 21
105:15	10:20	70:6 99:8	48:1, 8
future 57:7	13:12	103:24	49:19, 20
	25:6, 11	126:2	50:18, 22
G	28:15, 16	129:16	51:1, 11, 20
	31:24 43:8	132:18	52:23
game 198:24	44:16	133:24	220:21
gather 11:10	58:10, 12	134:1, 14	221:4, 9, 20
	70:14	159:3, 12	222:17, 22
gathered	88:22 90:4	161:4	223:10
15:21	107:5	184:11, 23	225:8
gathering	120:24	185:21	228:3
35:14	153:12	191:4	229:9
	155:1, 9	200:11	231:1, 6
gave 24:5	177:18	give 4:11	232:11
31:16 57:6	214:10	24:17 31:5	233:9
58:6 103:4	225:6	35:24	Goggans's
174:18		37:14	225:22
general	generate	68:19	Golding 6:19
10:22	58:19, 23	87:23	7:6, 19
12:23 13:6	59:5	94:18	9:18 10:24
23:18	145:13	101:14	11:1 15:22
26:10	Georgetown	141:17	38:8, 14
29:21	3:10 4:5	153:18	62:25 64:4
49:25	7:5 10:12,	154:5	66:13
62:11	16 11:21,	186:10	68:11
69:22	22 12:7	206:9	88:11
72:19	16:10, 12,	225:13, 19	108:19, 24
73:12	15, 17, 19,	giving 4:22	114:13
74:1, 13	22 17:4,	231:17	117:18
92:16	13, 24	glaring	118:14
102:7	18:4, 8, 17,	206:12	119:7, 25
112:11	20, 25 19:8	goals 70:7,	120:19, 22
115:21	40:7, 18	12, 16 71:3	124:1, 4
121:11	48:20	Goggans	127:5, 11,
154:19	51:7, 12		20 128:15
158:21	61:21	47:9, 12,	130:2, 22
184:18	68:14, 23		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: good..harder

131:23	119:21	215:6	140:11, 16
134:8	120:17	231:9	halfway 92:9
138:18	129:17	guidance	handle 84:8,
140:1	130:10, 18	56:5	19
142:15	133:15	115:7, 8	handwriting
144:21	152:11	guide	160:3
147:24	206:9	108:11, 13,	handwritten
148:12	231:15	21 109:12	14:3, 7
149:5	governed	133:3	160:2, 9, 19
152:1, 7,	71:17 86:5	guidelines	179:5
11, 14		231:15	180:23
155:3, 13	governments	Gulf 197:20	181:5, 12
156:14, 24	18:19	198:3	hanging
162:9, 15	granted 37:2	Gulfstream	53:25 93:9
166:6, 11,	39:19	3:17 13:20	221:16
14 167:14	76:25	61:4, 8	happen 37:17
169:4, 14	great 20:6,	88:20	41:20
170:2	11 57:5	89:4, 22	happened
174:3, 7, 12	169:2	90:7	37:15
189:20	greater 20:3	114:2, 6, 10	43:20
190:16, 21	32:2	115:12, 17,	44:15
195:3	124:23	20 116:1,	happening
198:23	137:23	4, 16, 21	29:13
199:5, 9,	163:5	118:1	happy 5:13
13, 19, 23	169:12, 19	121:16	6:3 69:1
213:8	gross 232:25	168:13, 22	134:20
215:18	233:5	169:1, 11,	144:13
217:18, 22	ground 4:14,	23 175:11	155:7
218:1	25 6:9	189:1	201:11
219:11	guess 10:24	guys 130:12	215:9
234:9	11:15		219:25
good 27:21	19:24 51:9	H	hard 144:25
72:20	56:6 59:14	Haas 205:4	harder 4:18
73:12	116:22	half 12:5	
74:1, 13, 21	140:17	38:5	
101:22	160:11		
102:1, 5			
111:24			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: head..Horry

head 4:22	63:23, 25	134:21	highly 28:9
heading	96:17, 19,	Henri 7:3	Highway
74:25 75:3	22 97:2, 21	38:12, 18	110:11
100:14	102:16, 20	68:10	150:23
135:10	104:12, 13	109:1	hire
headings	106:1, 20	114:16	113:11, 13
93:4	107:2, 7, 8	127:7, 15	130:14
health 69:22	122:14	140:4	177:23
184:18	136:3, 8,	151:24	hit 20:7
185:3	11, 19	174:11	hold 41:9
186:15	137:2, 4, 10	190:19	142:6
187:6, 18	141:17	199:2	197:4
hear 11:1	144:7	217:21	218:13
heard 8:11	146:16	hey 11:6	Holly 6:24
31:7, 13, 25	162:22	42:25 79:2	9:23, 25
53:10	165:24	185:15	15:3 19:3,
112:24	166:24	193:23	25 23:25
hearing	167:4, 6	231:2	24:24
40:15	180:18	high 204:19	25:12 28:2
43:25 67:7	213:21	higher 59:9,	135:22
77:15 78:6	214:7, 9,	20	180:11
86:10	14, 16	highlight	191:22
98:6, 9, 22	215:23	205:23	193:23
99:5	216:5, 11	highlighted	196:5, 13
172:12	224:1, 4, 7,	162:21	219:22
175:12	11, 23	165:19	222:18
178:24	225:1, 5	166:24	231:5, 6
hearings	Heather	highlighter	homeowner
40:22 41:6	212:3	160:14, 16	22:9
132:8	213:12	highlighting	honest 27:21
heated 58:4	215:11	160:5, 6, 9	honestly
59:14, 15,	218:6	162:5	8:18
22, 24, 25	height	167:1	143:10
60:15, 21,	180:20	highlights	Horry 18:20
24 62:1, 5	held 117:16	204:8, 9	
	helpful		
	28:22		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: hours..independent

hours 7:17	196:6	58:15	170:5
house 113:14	201:6	103:23	194:8
151:2	211:19	104:2, 4, 7,	229:19
	219:17	18	230:4, 10
houses	identified	imply 25:25	includes
112:22	90:7 189:9	important	21:5
126:1	identify	80:11	including
151:1	131:25	95:24	19:20, 22
housing 21:6	206:12	96:5, 8, 23	29:24, 25
hypothetical	identifying	97:14	87:3
59:17	129:23	103:23, 25	107:14
hypothetically	ignore	109:19	incomplete
59:4	111:24	165:23	170:13, 17,
120:12, 13	133:16, 19,	167:5, 6	23
	20	impose 75:18	inconsistent
I		improving	74:3
idea 13:10	image 88:4, 8	184:15, 17	133:15
33:9	142:2, 8, 12	185:3	increase
112:12	143:17	inapplicable	56:6, 10
140:23	impact	133:23	59:5 60:12
231:15, 17,	20:19, 22	inappropriate	87:15
19	58:9 60:5	199:17	137:10
ideas 73:11	87:3	include 56:7	178:23
identical	103:15	61:25	226:1, 9, 11
180:23	104:10	118:8	227:2
identification	150:7	168:2	228:11
68:15 88:1	impacted	224:13, 21	229:4
91:7 99:9	20:23	232:22	increased
134:3	35:18 58:2	233:12	176:19
138:7	impacts	included	226:16
141:23	126:10	19:14 80:5	227:8
159:4	167:21	84:12	independent
179:22	204:16	98:25	113:12
183:8	impair 6:15	168:17	147:10
189:12	impervious	169:18, 24	216:10
			220:15

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: indifferent..interrupt

indifferent	161:15	inlet	61:12,	instructed
130:11, 18	163:2	13	115:22	5:25
individual	164:13		145:19, 22	instructing
34:25 35:4	171:3	input	46:25	156:22
individuals	172:16	inquiry		insufficient
24:6, 22	173:3, 6	63:14		131:10, 20
25:8	175:21	inside		132:6
indoor	176:3, 8, 22	60:17, 24		insulting
105:21	178:25	98:24		160:15
influence	204:14	225:5		intensity
6:14	215:7	inspection		86:24
inform	222:1	122:17		87:2, 11, 16
146:25	229:2	instance		226:2, 9,
147:5	informed	8:17 10:3		12, 17
148:19, 25	147:3, 20	21:4, 9		227:2, 8
164:18	148:23	34:16		228:12
information	203:3, 12	49:24 57:4		229:5
11:14	initial	60:5 62:10		intent
14:25	45:15, 20	65:11 83:1		184:7, 9,
35:14	46:4	92:16		22, 25
40:25 43:4	47:15, 22	104:5		interaction
55:13	51:2, 16	110:10		155:11
64:21	55:3 56:2,	115:20		interchangeabl
65:6, 8, 13	23 58:1	123:7		e
67:7 79:1,	64:18 65:2	125:25		220:25
12 80:3, 5	80:6 85:22	177:15		interest
83:23	96:12	193:10		28:11
84:2, 6	172:22	215:4		internal
93:1, 22	226:7	instances		53:4
94:19	initially	29:9 43:16		interpretation
95:1, 18, 23	23:19	44:14		23:21
97:17, 20	47:11	50:21		46:12
98:3, 11, 24	64:16	158:15		173:22
112:24	77:23	instruct		interrupt
121:5, 17	79:10	155:15		5:6 71:22
155:4	103:4, 14	156:14		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: introduced..June

106:3	57:17	175:18, 22	128:18
124:3, 5	67:10	176:10, 14	130:6
176:6	78:9, 14, 16	items 15:11	134:5, 13
introduced	81:14, 22	30:2 97:20	135:14
3:15	96:22	100:12	152:17
209:18	117:11	180:16	155:11
210:11	128:11	iteration	157:2
211:6, 7	129:10	232:17	159:9
introducing	131:18		162:13, 19
210:6	132:1, 14		166:19
introduction	133:19, 20	J	174:15
3:14	170:19	January	180:2
investigate	173:14	197:8	183:12
78:18 82:2	175:18	Joanne	189:14, 17
involve 34:9	192:13	212:4, 7	190:3
involved	205:1	217:1	191:3, 8, 19
47:10	208:19	219:1	195:8
48:9, 23	223:1	job 19:7	196:4, 10
49:21, 22	issues 4:3	20:21	200:2
50:18, 22	26:11	83:10, 14	201:8, 16
52:9 55:10	48:22	130:7	211:21
150:17	58:13, 16	212:20	218:4
157:2, 10,	129:24, 25	jog 179:12,	219:19
13 193:1,	130:16	14	220:12
4, 19	152:25	John 183:4	228:20
214:13, 15	174:22	Johnson 3:1,	229:23
involvement	175:1, 10	5, 7, 8, 12	Johnson's
203:9	192:25	7:9 15:14	127:18
involves	193:9	17:15	Jr 3:1, 7
232:11	194:17	38:20 63:4	Judy 19:25
involving	198:15, 19	68:17 88:3	24:1 25:2,
194:20	203:10	91:11 95:3	3, 21 26:4
issue 28:9	206:4, 12	99:13	28:20
54:2, 8, 15	222:13	109:6	July 3:13
	item 171:12	114:18	jump 102:12
	173:9	127:1, 23	June 196:5,
	174:21		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: jurisdiction..list

13,17	51:11,14	164:9	left 17:2
197:18	96:4 114:5	165:4	19:19
201:1	116:12	179:2	20:2,13
jurisdiction	117:15,23,	215:24	142:22
192:5	25 118:1,	218:19	190:2
justifies	24 122:6,8	late 8:25	lessening
72:20	203:2	78:3 86:4	69:23
	208:16	92:1 135:7	Lester 3:1,7
K	knowledge	163:15	letter 83:22
	40:6 67:25	207:24	133:7
Kakert 212:4	209:3	Lawhon	letters 82:9
213:12	212:21	209:2,4	83:1,6,11,
218:6,8		210:5,16	19 84:8,11
Kakert's	L	Lawhon's	level 30:20
213:20	lack 148:16	210:24	42:13
keeping	lady 84:17	211:7,12	153:11
203:3	land 48:22	lawsuit	172:7
225:9	69:17,25	10:16,19	204:19
kicked 172:8	86:24	11:1,25	limit
kind 22:5	87:4,6,11,	12:6	122:18,22
32:17	16 226:2,	13:17,25	123:3,20,
46:13	9,12,17	190:8	23 124:10,
62:13 74:6	227:2,8	198:24	13,21,23
90:1	228:12	199:9	127:2
110:13	229:5	lawyer 50:8	128:10,13,
116:4,9	language	197:21	24 129:12,
123:1	110:2,22,	198:3	18 149:25
160:15,16	24 173:23	layout 79:22	180:20
198:23	174:17	107:19	limitation
209:8	large 21:9	123:14	181:16
234:5	34:9 53:21	168:9	limited 41:5
kinds 130:16	77:3	lead 52:23	122:15
kitchen	larger 58:9,	learns	lines 180:13
232:20	22 59:9,20	131:18	list 82:25
knew 40:3	146:21	leave 42:4	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: listed..make

83:4, 5	46:10	187:10	mailed 83:1
146:6	55:21	188:9	main 221:21
163:13	97:11	204:10	major 22:21
listed	101:21	206:11, 25	23:4, 19
171:12	108:11, 12,	233:18	31:1, 23
222:10	14 111:2, 7	234:3, 5	32:5
literally	115:20	lots 30:18,	33:13, 21
13:21	136:7, 24	21 32:2	46:15, 18,
litigation	137:7, 20	low 106:5	22, 25 47:2
11:11	139:20	lunch 151:25	48:3
12:12 14:9	143:25	152:6	56:13, 19
15:7	144:1, 8, 13	luncheon	58:6, 8
live 114:22	147:15	152:15	85:14
local 48:20	172:22		86:5, 8, 13
located	175:7, 19		87:6, 9, 11,
80:25	176:2		18, 20 91:1
112:17	233:24	M	95:23
185:10	lot 5:1	made 14:4	101:6, 23
location	22:8 25:4	28:2 29:10	103:15, 16,
6:20	31:8 49:8	43:7, 10	20 119:3
125:22	56:5 60:1	44:6 46:3,	153:5
150:21	79:3 83:22	11 53:8, 11	157:4
logical	89:8, 22	99:1 100:8	226:2, 12
136:16	112:22	114:7	227:5, 11,
long 4:6	114:2, 7, 11	116:12, 19	14, 21, 24
7:14, 16	115:7, 8	121:17	228:4, 21,
16:12, 18	116:24	146:12	23, 24
21:14 23:2	117:3, 6, 16	158:6, 11,	make 6:4, 5
63:13	118:2, 13,	17 170:9,	26:19
216:15	23, 25	12 181:7	27:8, 17, 24
219:25	119:4, 16,	208:22	28:6, 12,
longer 11:5,	19 121:20	228:13	18, 21
20	126:14	magnificent	36:20
looked 8:13	144:16, 20	34:10	37:22 38:8
	145:23	mail 192:4,	41:12, 16,
	168:13	9	18 42:11
	169:24		43:22
	170:1, 6		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: makes..Marlin

45:10 74:2	manner 69:18	169:24	78:1 82:14
83:14	March 12:1	mark 211:22	83:20
96:10, 14	marina 45:18	marked	85:4, 22
100:12	46:21	68:14, 18	86:1, 3
114:9	53:19	87:22 88:1	87:16
126:18, 25	56:24	91:6, 10	88:9, 13, 24
127:8	88:24	93:14, 16	89:3, 7, 21,
133:3	89:3, 23	99:9, 12	23 90:16
136:1	90:16, 17,	134:3, 6	91:25 92:3
155:3	21 96:15	138:6, 10	93:11 95:5
171:21	114:3, 6, 11	141:22	96:2, 12,
215:24	115:12, 17	142:1	15, 21
224:15	116:7, 8, 24	146:1	99:18
226:12	117:4, 10	159:4, 7	100:17
228:15	118:1	179:22, 25	109:15
makes 4:18	121:16	183:7, 11	112:13, 18
39:12, 18	136:13	189:12, 15	113:1
152:22	139:8	196:6, 9	116:5, 10,
153:4	141:4	201:5, 9	17, 25
215:10	146:22	211:18, 22	118:2, 12,
220:6	147:23	219:16, 20	22 121:13
making 29:5	164:1, 10	market	124:10, 13,
36:23 39:3	165:15	119:16	17 125:10,
46:8 64:19	168:14, 22	Marlin 8:21	16, 18
113:5	169:2, 11	13:19	126:2, 4, 11
162:1	186:19	45:8, 18	132:3
171:1, 25	189:1	47:5, 16, 22	136:13, 18
200:6	209:25	51:3, 16	137:12, 16
227:6	211:1	52:3, 19	138:6, 22
man 199:24	216:6	53:19	139:8, 12,
manage 13:4	221:1	55:16	15 141:4,
management	226:17	56:3, 17, 24	6, 10, 21
82:7 83:23	227:3	58:3 61:2,	142:21
84:19	228:9	13 65:3, 5	146:22
mandatory	229:6	66:1	147:22
231:20	233:4	67:11, 17	151:5, 9, 16
marina's		68:5 75:20	159:21
			163:25

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: marsh..met

165:15	matters 3:25	231:7, 16	82:10
176:15, 24	4:1 182:3,	232:3	members
178:7	4 183:24	meeting 36:5	35:15 36:7
186:19	maximum	78:14	39:23
187:1, 5,	230:5, 11	110:18	40:12, 14,
17, 20	meaning	125:14	21, 24 41:4
188:24	47:25	128:21	127:25
189:5		134:2, 15	132:4, 10
195:19	means 84:3	135:1, 2, 3,	154:9, 15
203:16	94:14	6 154:11	175:14, 15
211:1	100:6	170:10	178:21
214:1, 6	119:12	171:7	182:24
217:12	205:8	179:8	210:14, 23
219:4, 8	224:7, 11,	195:1, 9,	211:12
221:4	16	10, 12, 15	membership
226:8	meant 76:1	211:5, 8, 10	84:12
232:18	229:14	213:2	memory
233:17	measure	215:12, 16,	179:12, 14
234:3	55:22	20 221:3,	mention
marsh 149:23		9, 11	21:23
150:3, 6	measured	222:8, 12,	107:11
massing	55:24	14	mentioned
104:19	measurement	meetings	18:10
Massive	182:14	47:14, 19	28:17
103:22	measurements	65:10	30:14, 16
master's	216:10	153:13	34:21
15:16	medication	154:5, 12,	37:25
18:12	6:15	15 194:20,	44:20
match 181:11	meet 101:7,	24 195:4,	49:19 60:8
materials	12 102:5	8, 18	132:17
93:18	110:11	209:7, 8,	167:8
matter 13:25	144:4	10, 12, 14	message
57:14	210:23	211:4	15:10
112:4	216:24	meets 22:10	153:21
161:20	217:16	70:25	met 51:9
201:2	230:15	member	
		51:13, 15	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: Microsoft..MQ3

72:2, 11	135:23	months	77:25
77:19	136:5, 6, 15	173:19, 21	78:19
78:20, 23	146:9	197:18	81:9, 16
171:23	147:12	198:10, 14,	86:3, 21
210:5	175:19	25 200:10	87:15 93:6
216:15	mislead	morals 69:22	95:2 97:22
222:23	127:20	mouthpiece	99:21, 22
Microsoft	199:6	28:25	100:24
13:8	misreading	move 5:4	101:2, 6
mind 29:25	173:16	18:2 109:4	102:4
70:23	missed 35:3	127:19	103:7
minor 23:2,	202:4	217:23	104:2
7, 12, 13,	modern 112:3	moved 153:10	113:20
19, 20	221:18	moving 84:23	115:13, 18
30:22	Modifications	93:9	117:14
44:23 45:1	85:10	MQ 139:7	121:19
46:4, 14	modified	196:5	122:7, 11
47:23 48:2	80:8	211:13	123:12, 19
52:25	182:19	213:6, 16	126:11
53:9, 13	modifies	MQ1 45:9, 13	127:3, 25
56:15, 19,	182:9	MQ2 8:18	128:6, 14
25 58:9	modify	100:19, 20	129:14
85:14, 18,	182:13	136:23	132:5, 12
20 86:1	modifying	163:11	135:6
87:9	85:7	164:22	136:23
103:15	111:25	165:2, 7	137:2, 24
136:25	money 144:19	178:6	139:7
228:23	206:25	MQ3 8:18, 19	143:2, 3, 15
minute 108:3	month 40:4	9:2, 5, 10	147:7, 21
201:12	134:19	11:11	148:8, 21
minutes 28:3	142:25	13:16, 25	149:2
76:23	174:19	14:8 15:6	159:22
101:21	monthly	22:20	160:21
111:3	40:15 41:6	27:24, 25	163:11, 19,
134:1, 14,		44:20 45:3	23 164:20
19, 23, 25			165:4, 7, 14
			166:5, 25
			167:3, 13

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: Mq3's..Nugent

169:12, 25		101:22	24 14:2, 7
171:9, 21	N		160:2, 9, 20
173:4		needed 26:16	162:4
178:10	names 19:23	27:4 30:10	179:6, 7,
180:6	24:5 42:2,	54:18 57:1	11, 13, 18
188:4	15, 16, 18,	188:11	180:24
189:1, 6	20, 22	205:11	181:5, 12
192:1	naming 42:3	216:5	
194:21, 25		225:13	notice 80:24
195:17	narrative	negative	81:4, 5, 10,
196:21	223:5	36:18	11, 15, 23
200:3, 22	natural	37:4, 10, 23	82:3, 19, 22
202:17	18:21	38:3, 6, 22	83:15
203:14, 22	nature 7:13	39:3 87:3	208:5
204:23	21:21	neighbor	noticed
207:17, 24	25:24	42:7	10:20
208:11	35:12, 25	neighboring	notified
209:5, 21	112:21	87:4	165:12
212:24	122:1		
226:15, 21,	125:21	newer 221:17	notify
22, 23	154:25	nice 15:25	163:22
227:1, 14	necessarily	149:13, 14	166:2
228:9	4:4 29:7	nodding 4:21	168:20
229:3	59:12		169:22
MQ3's 163:4	60:17, 23	noise	Novak 205:4
MQ3.0	83:24	176:19, 23	206:1
198:11, 19	111:12	nonexclusive	208:10
multifamily	119:9	114:14	Nugent 3:4,
32:3	125:19	nonverbal	16 7:3, 7, 8
multiple	158:8	4:22	8:8 17:20
77:7	178:13	normal 11:8	38:11, 17,
173:10, 14	179:13	78:25	19 63:2, 3
Murrells	necessities		64:7
61:12	102:6	note 14:4	66:15, 20
115:22	necessity	160:19	68:9, 16
	72:19	noted 166:17	88:2, 13, 15
	73:12	notes 13:1,	91:8 99:10
			108:22

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: number..Ochal

109:1, 5	23, 25	138:2	109:2, 3
114:15, 17	195:6	144:7	114:15
117:20, 24	196:7	150:5	140:5
118:16	199:2, 7,	158:12	155:4
119:10	11, 15, 20	167:9, 20	166:17
120:2	200:1	169:25	199:11, 12,
121:4	201:7	218:19	21
124:2, 8	211:20	230:5	obligation
127:7, 15,	213:10		133:21
22 128:17	215:21	0	
130:5, 24	217:20, 24		obtaining
132:2	218:3	oak 34:10	32:17
134:4, 10,	219:12, 18	object 5:23	188:17
12 138:8,	number 20:3	64:4	occasionally
20 140:3, 9	22:12	114:13	51:7
141:24	24:13, 15	117:18	occupancy
142:19	29:17 30:3	118:14	123:20
144:23	31:16 33:8	119:7, 25	124:12, 21,
148:1, 14	63:13	120:19	25 129:12,
149:7	64:14, 22	128:15	18 181:17
151:24	65:6, 20, 25	130:2, 22	occupation
152:3, 9,	66:6, 21	131:23	15:19
12, 16	67:4, 11,	144:21	
155:7, 16,	16, 23 68:4	147:24	occur 72:3
17 156:17,	80:7 92:5,	148:12	131:2
25 157:1	8 95:7, 8	149:5	occurred
159:5	103:1, 3, 4,	166:6	41:6 82:23
162:12, 17	6 105:9, 20	167:14	141:13
166:9, 13,	106:19, 21	169:4, 14	155:10
17, 18	109:9	170:2	
167:16	111:7	217:24, 25	occurring
169:6, 16	114:10		218:24
170:7	115:1	objected	
174:6, 10,	124:24	67:7	Ochal 212:4,
14 179:23	125:3, 4, 24	objection	7, 23
183:9	126:21	6:2 38:9,	215:11
189:13, 22,	128:19	12, 18	217:5, 10
23 190:18,	134:8	66:17 67:8	218:7
			219:7

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: October..ordinances

October	164:4, 6, 19	229:3	111:10, 13,
11:23, 24	165:8	ordinance	23 118:21
16:1, 4	167:2	14:14	124:9, 12
99:9, 19	168:3	21:20	128:25
134:3, 14	229:18	23:16, 22	132:18
135:1	operated	29:23	133:22
170:10	124:17	31:9, 10, 11	157:11, 14,
171:7	operations	32:8, 12	16, 21
189:12	150:22	33:5, 13, 21	158:18
191:10	opinion	34:8, 15, 19	161:2
192:14	110:20	37:12 38:2	171:24
201:5, 25	111:22	39:4 45:2	173:17, 23
203:19	151:20	46:11	174:17, 20
204:24	153:20	53:17	179:21
off- 187:19	232:1	68:13, 23	180:4
off-street	opinions	69:3, 4, 8,	181:10, 22
183:6, 18	126:8	16 70:7,	182:1, 5, 8,
184:10	opposite	13, 17, 20	10, 13, 19,
185:22	37:5 112:4	71:2, 3, 8,	24 183:2,
186:14, 21	158:10	16 72:3,	16 184:3,
187:8, 9	opposition	12, 24	24 185:1
office 6:19,	46:23	73:4, 8, 14,	188:1
21, 23 13:2	optional	20, 22	196:20
26:10	231:15	74:4, 16	197:1, 6, 11
91:25	order 36:14	75:6 76:8	198:10, 14
offices	56:15, 23,	77:10	212:13
209:17	24 72:2, 11	84:24	216:21
official	76:24	86:11	217:11
19:15	90:11, 20	101:8, 10,	218:9
202:3, 6, 7	95:21	13, 21	233:1, 7
208:7	97:11	105:3, 6, 9,	ordinances
one-page	101:8	15, 20	33:25
201:10	102:7	106:16	34:3, 4, 12,
212:1	160:21	107:23	23 35:17
open 61:25	220:3	108:10, 15	119:18
62:6, 10, 13		109:8, 11,	132:23
		24 110:9,	157:3
		14, 17, 22	161:6, 20,

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: ordinary..parking

21	Outlook 13:8	owns 151:5	park
ordinary	outstanding		116:21, 24
37:22	206:18, 21	P	117:5
	207:19		119:14
original		p.m. 234:14	125:23
11:6 88:13	overcrowding	P.U.D. 87:25	126:5
102:20, 21	69:25		150:10, 11
103:1	oversee 19:9	package	
136:12, 22		165:1	parking
137:5, 11,	overtax	205:21	59:9, 10, 21
15, 24, 25	120:16	206:5, 6,	60:13 64:3
144:3	121:6, 19	16, 20, 23	89:2, 6, 8,
162:23, 24	122:7, 12	208:3	10, 11, 12,
163:5, 14	125:17		15, 21
164:16	132:25	packet	104:10, 11,
165:9, 20,		177:2, 3	24 105:4,
25 166:4,	overtaxed	pages 69:2	6, 8, 10, 14,
25 167:3	122:4	189:24	19, 20, 24
226:17	126:14	207:1	106:15, 18,
	overtaxes	219:25	19, 21, 25
originally	119:4		107:19
116:18		paper 13:24	108:2, 9,
126:17	overtaxing	27:3 55:20	15, 18
137:8	127:4		109:10, 14,
209:23	128:1, 7, 14	paragraph	22, 25
	129:14	70:3	110:4, 16,
outdoor		100:14, 15,	23, 25
60:25	owner 50:9	23 107:18	111:9, 17,
61:3, 16, 19	83:25	135:14	22, 25
105:21	188:17	146:23	112:6, 10,
106:1, 21	208:20	205:24	13, 25
107:8	209:3		113:1, 4, 6,
140:19, 25	owners 21:19	paraphrase	12, 15, 18,
144:12	80:24	80:23	20 114:1,
146:20	81:6, 12, 16	parcel 53:24	7, 11
147:6	82:4, 13,	80:1	115:1, 11,
148:8	19, 22		22 116:4,
230:14	83:6, 15, 19	parentheses	9, 17, 24
232:22	84:13	100:24	117:3, 6,
	145:11	232:21	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: part..pending

11, 16, 23,	183:7, 18	parties	116:5, 10,
25 118:2,	184:11, 16,	65:22 66:3	25 119:1,
4, 11, 13,	22 185:23	67:3 121:1	3, 16, 22
20, 22, 23,	186:7, 14,	passed 41:14	120:7, 11,
25 119:4,	21 187:8,	198:10, 15	25 121:6
12, 13, 15,	9, 20, 23		128:10
17, 23	188:4, 10,	past 11:10,	132:25
120:16	12, 15, 16,	23 50:12	133:1, 13,
121:1, 3, 7,	17 189:6	139:2, 5	17, 18
9, 10, 11,	215:3	141:5	143:2
13, 19, 24,	216:15, 17,	151:16	148:11
25 122:7,	20, 24	patients	153:6
12, 22	217:6, 10,	60:7	157:4
123:1	16 218:8,	Patrick	172:13
125:17	13, 18, 22,	232:15	178:12
126:14	23 219:3, 7		185:17
127:4	230:15, 20,	patronize	203:16, 22
128:1, 7, 14	22 231:2,	123:16	207:18
129:3, 15	7, 14, 20	patrons	217:2, 3, 7
130:20	232:3, 16	124:18	218:9, 14
131:2, 4, 6,	233:16, 17	125:10	223:1
10, 12, 20	234:3, 5	126:10	224:2
132:6, 19,	part 14:17	145:17	225:13, 18
25 133:3,	33:1 52:6	167:13, 21	226:3
6, 12, 14,	58:1 61:20	PC 106:6	228:21, 23,
17, 22, 23,	66:19 79:9	PD 13:19	24 231:3
25 150:8	113:16	47:22 51:3	PDS 31:23
167:8, 10,	118:24	56:4, 5, 6,	109:24
22, 24	165:1	8, 9, 19	110:4, 22
168:9, 13,	180:14	58:3, 13	120:4, 6
17, 21	191:12	85:4 86:1,	pending 6:6
169:1, 10,	193:3	9 105:5	12:6
24 170:1, 6	201:19	109:21	154:10, 16,
174:22	203:11	110:6, 12,	23 155:20
175:1, 10,	222:19	15 114:21,	203:17
18, 22	229:25	23, 25	204:18
176:9	230:8	115:4, 7	206:17
180:19			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: people..plan

people 19:17	205:21	phone 47:18	123:17
20:4 24:4	206:5, 6, 8,	221:11	124:19
40:2, 3	10, 16, 19,	Photograph	149:13, 14
48:21	22 207:6,	138:5	221:18
60:1, 19	18, 23	141:21	places 20:7
63:7	208:1, 3	phrase 9:5	placing
112:16	person 25:1	205:8	57:20
123:21	28:25 29:5	224:6	63:18
124:22	49:5 50:4,	physical	Plaintiff's
125:6, 16,	11 77:20,	14:12	68:18
22, 24, 25	21, 24 78:7	188:15	87:22 88:4
131:14, 15	81:8, 10	physically	91:10, 11
132:15	82:8	83:10	97:16
149:2, 9,	119:21	picture	99:12
10, 20, 22,	127:2	138:13, 14	134:6
23 150:1, 5	128:24	139:10, 12,	138:10
160:11	129:22	16, 17, 20,	142:1
173:16	141:11	23 140:7,	143:25
187:11	153:14, 24	10, 13, 21	144:8, 13
204:10	157:20	142:3, 4,	146:2, 11
206:11	188:11	21, 25	159:7
people's	person's	149:1	172:23
12:23	84:16	pictures	179:25
percent	personal	139:1, 2, 4,	183:11
20:19 29:8	51:20, 23	5, 9, 18	189:15
53:21	151:22	141:3, 8, 15	196:9
percentage	personally	piece 53:25	201:9
38:2, 22	27:7 203:9	55:20	211:23
182:15	perspective	90:1, 12, 21	219:20
period 159:1	103:25	93:21	plan 19:13
173:10, 15	206:13	97:12	20:25
174:19	pervious	pin 127:14	21:5, 23
periodically	58:16	place 62:5	22:1, 14
63:8	103:24	75:15	34:16, 20
permit 79:17	phase 207:18	122:22	36:3, 10
203:15			62:10, 16
			66:19, 21

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: planned..planning

79:23, 24	227:4	7, 13, 18, 25	77:14, 17
92:11, 14,	planner	32:18, 23	78:6, 13, 17
19, 22	17:6, 7	33:14, 15,	79:18
93:21 94:8	18:3 24:25	20, 23	81:21 82:1
97:10	25:2, 3	35:9, 15	83:4, 5, 9,
164:25	29:4	36:7, 15,	13, 18
226:8	186:25	19, 20, 23,	84:1, 6
228:16	187:16	25 37:9, 22	85:18, 23
planned	229:1	38:23, 24	86:15, 18
22:22	planners	39:3, 11,	87:14
23:16	19:1, 4	14, 17, 23	95:19, 21
25:14 26:2	planning 4:3	40:2, 6, 10,	96:24
32:6 33:22	8:24 16:9,	12, 14, 21,	97:19, 25
45:19 46:5	10, 24	22, 24	98:6 99:8,
51:17	17:9, 24	41:4, 5, 8,	14 101:3
84:25 85:7	18:3, 7, 12,	23 42:2, 4,	102:24
87:16	16, 19, 23	8, 12 43:7,	103:7, 12
90:3, 5, 11,	19:7, 9, 11,	9, 11, 17, 24	108:7
20 91:1, 6,	12, 21, 22	44:4, 6, 10,	109:9, 20
22, 25	20:13, 15,	11, 12, 17	112:3
99:18	20, 23, 25	48:11 49:2	113:19
100:17	21:14	50:1, 15, 23	114:5, 9
101:9, 11,	22:3, 4, 16	52:4 53:4	115:10, 15
13, 24	23:15	54:14	116:2, 8
102:2	24:5, 7, 19,	58:3, 10	118:5, 10,
109:15	23 25:8	61:14	19 119:5,
111:4, 5,	26:6, 7, 13,	62:17	21 120:5,
11, 23	22, 25	63:10	17 121:8
112:1, 2	27:3, 5, 8,	64:13, 20	122:5, 10,
118:24	10, 25	65:10, 16,	25 126:9
132:19, 23	28:7, 13,	24 66:4, 22	128:20
133:23	24, 25	67:1, 2, 9,	129:1, 5,
159:21	29:6, 10, 11	15 68:3	22, 24
185:10, 12,	30:2, 4, 8,	69:7, 12	130:3, 7
14, 20	11, 16, 19,	70:9, 16	131:9, 17
186:1, 5, 21	21, 23	71:12	132:10, 24
187:1	31:1, 2, 6,	72:22	133:10, 16
205:9		76:11, 17	134:2, 15,

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: plans..possibly

18 135:1,	7, 10, 18, 20	plugged	police 62:18
2, 6 136:7	183:22, 25	106:6, 11	policy
139:13	184:1	POA 82:7,	161:19
141:3	191:5	10, 18	political
145:7	193:5	83:22	15:15
146:9, 16,	195:20	84:5, 18	population
19, 25	200:5, 17,	POAS 82:12	21:5 70:1
147:5, 11,	21 202:9	point 6:4	porches
20 148:4,	203:7	10:16	224:19
9, 20	206:14	11:9, 18, 21	portion 93:9
151:13	208:4	45:14 47:9	141:20
152:20, 22,	209:10, 11	50:4	142:5
24 153:4,	210:4, 15	81:18, 20,	position
9, 12, 14,	211:5, 8, 10	25 88:18	17:5 39:2
17, 21, 24	212:15	97:19	48:1, 6
154:2, 21	214:8, 19	132:13, 14	52:24 57:1
156:10	234:1	136:19	85:24
157:6, 8,	plans 20:24	137:9	108:8
18, 19, 20,	34:23	139:2	110:4
25 158:1,	35:17	154:17	132:17
6, 11, 15,	55:19	162:7, 18	133:7
17, 23, 24	62:14	164:14	170:16
159:25	63:10 97:8	165:18	172:20
160:22	148:5	168:8	230:19
161:11	164:24	171:13	positions
170:10, 16,	175:25	192:5	16:21
21 171:4,	188:1, 2, 3	211:3	positive
8, 20	195:20	215:22	36:24
172:6, 7,	206:8, 9	216:13, 20	possession
11, 12, 16,	207:6	218:16	11:11
20 173:1	212:12	227:10	12:15, 23
175:12, 17	214:2	228:20	14:10 15:6
176:1, 4	215:5	points	67:22
177:6, 10,	229:7	102:10, 11	possibly
20, 24	playing	160:16	
178:1, 9	198:24	162:8, 18	
181:9, 16	plug 106:5	181:6	
182:1, 3, 4,			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: post..prior

58:19	9:23	164:2	65:7 76:2
87:10			85:15
139:11	prepare 7:9,	presentations	91:10
201:18	24 9:14, 19	28:18 41:5	127:1
	26:19		134:6
post 24:11	99:24	presented	145:24
	100:2	39:14 48:9	147:16
potentially		57:25	152:20
59:20 64:1	prepared	64:15	159:7
97:4	26:12	71:12	163:17, 25
107:14	159:24	129:25	165:15
practical	160:20	135:14, 18,	167:12
58:7	preparing	19, 22	175:7
126:6, 9	22:2 179:7	161:22	179:25
207:11	present 6:22	181:13	181:25
practice	13:17	presenting	183:11
72:20	27:11, 12,	40:22 48:1	185:8
73:13	13, 14, 19	50:22	205:9
74:2, 21	49:8 52:9	51:15	230:23
78:25 83:7	134:25	presents	
101:23	147:22	152:24	primarily
102:1, 6	149:21	208:2	10:1 13:2
111:24	160:12, 21		19:9 20:23
119:22	164:10	pretty 23:17	25:3 34:15
120:17	179:8	153:25	55:19
133:16	195:11, 15	162:10	69:17
practices	206:19	173:24	79:23
74:14	209:6, 8, 15	209:19	82:11
predate	presentation	prevent 6:11	primary
186:2	27:3, 8, 17,	126:14	12:24 81:8
	25 28:2, 6,		
prefer 220:3	13, 21	preventing	printed
	29:5, 10	69:24	190:15
preferred	147:5	previous	191:2
9:2 34:7	154:6	111:6	printing
preliminary	160:17	222:25	201:19
206:11	161:11, 25	229:13	
preparation	163:23	previously	prior 10:20
		20:3 56:18	16:4, 7, 15

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: private..property

39:1 51:1	Procedure	130:15	151:16
54:13 66:7	75:4	Program	193:11
77:14	process	87:25	213:16
98:22 99:3	23:3, 5	progression	214:15
109:4	29:15, 16	18:21	promote 70:7
171:7	32:9, 10, 17	prohibitive	73:25
172:11	33:14, 22	207:5	74:13
198:20	35:6, 8	project	promoted
200:5, 16,	39:12	24:15	16:24
21 206:4	41:12 47:6	46:23 51:8	promoting
210:5	71:24	53:5, 8, 16,	69:22
216:6	79:14	18 78:24	102:6
223:4	80:23	79:1 80:9	184:17
private	81:18, 20	96:22 98:1	promotion
209:14	85:6 87:18	112:10	17:9
privilege	101:15, 17	113:24	proper 156:5
155:5, 14	128:21	116:18	property
156:16	131:22	138:16	21:19
problem	152:20	139:7	32:8, 14
42:24	157:22	141:22	50:9
94:17	210:24	158:20	53:21, 24,
119:4	211:2	160:18	25 54:5,
130:8	220:15	172:2, 3, 10	11, 21 56:8
problems	223:11	173:18, 21	57:5, 10,
112:7	227:17	180:6	12, 21
197:20	233:23	193:14, 20	71:21 77:3
198:3, 6	produce	194:3, 22,	80:24, 25
200:3, 9,	12:11	25 203:14	81:6, 12, 16
15, 20	produced	204:16	82:3 83:6,
procedural	14:17 15:5	214:6, 12	15 90:2,
160:25	production	228:18	12, 21
197:20	12:16	projects	93:10
198:2, 6,	14:21, 25	26:1 32:4	97:12
15, 19	190:7	49:23	104:5, 6
200:3, 9,	201:20	51:11	110:8
15, 20	professional	136:18, 20	112:3

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: proposal..PUD

113:16	94:4, 22	131:2	177:13, 19
116:21	95:2, 5	163:2	
131:15	97:22	164:13	provisions
145:11	102:19	176:22	73:16, 17
185:9	107:3, 24	186:20	74:6, 8, 10
186:17	115:13, 18	187:7	76:12 77:2
187:13	120:18	188:10	108:17
207:17	121:6, 19	223:5	109:10
208:21	122:23		115:1
209:2	143:3, 15	provided	125:14
210:3	162:22	14:17	185:6, 7
221:17	165:19	19:10	
228:17	173:4	64:21	public 15:16
229:2	176:19	65:20	18:13, 14
	181:21	79:12	40:15
proposal	189:1	81:5, 15	65:19 67:6
22:2	204:7	82:22, 24	72:19
124:10, 13	213:6	83:2 93:2,	73:11 86:9
208:11	214:9	19 95:18	89:11, 15,
209:5	215:23	98:5, 12	20 90:7
212:24	216:4, 14	103:2	101:22
217:12	217:17	128:19	102:6
226:16	231:21	147:4	132:7, 14
232:17	232:16	175:22, 24	171:5
		188:4	175:5, 14,
proposals		194:14	16 178:24
139:14	prospective	229:20	184:18
141:5	21:13	232:20	185:3
178:6	protection		186:15
210:20	31:10 34:8	providing	187:6, 18
211:15	provide	8:10 65:13	209:12
219:4, 9	4:15, 23	80:24	
	27:3 37:10	82:18	Publicly
propose	40:25	186:14	89:11
35:16, 19,	42:18	204:11, 12	
20	46:25 65:5	provision	PUD 8:21
proposed	81:11 84:5	70:1	45:17
37:1, 6	105:20	101:12	47:16 56:3
79:9, 20	106:18	173:16	78:1 88:9,
80:4 86:1			11, 14
			89:7, 21, 25

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: pull..question

139:15	183:10	78:1 82:14	165:15
141:6	185:17, 19	83:20	176:15, 24
161:3	189:14	85:4, 22	178:7
188:24	196:8, 24	86:1, 3	186:19
189:6	201:8	87:16	187:1, 5,
208:22	211:21	88:9, 13, 24	17, 20
pull 11:16	219:19	89:3, 7, 21,	188:24
pulled 217:2	223:4	23 90:16	189:5
purpose	232:21	91:25 92:3	195:19
69:15, 21		93:11 95:5	203:16
117:17	q	96:2, 13,	211:1
160:8	qualified	15, 22	214:2, 6
179:10	45:1 46:4	99:18	217:12
184:22	53:9	100:17	219:4, 8
186:13	qualifies	109:15	221:5
purposes	87:11	112:13, 18	226:8
70:6	qualify	113:1	232:18
purview	44:25	116:5, 10,	233:17
203:6	53:13	17, 25	234:3
push 152:5	quantity	118:2, 13,	question
put 5:24	52:2, 18	22 121:13	4:24 5:2,
54:10	158:12	124:10, 13,	8, 11, 16,
60:12	Quay 8:21	17 125:10,	19, 23 6:1,
62:19	13:19	16, 18	6, 9 8:6, 9
68:17	45:8, 19	126:2, 4, 11	17:16
87:21 91:9	47:5, 16, 22	132:4	33:18
99:11	51:3, 17	136:13, 18	38:13, 15,
109:19	52:3, 19	137:12, 16	18, 20
124:9, 12	53:19	138:6, 22	49:13 62:9
134:5	55:16	139:8, 12,	64:5
145:19	56:3, 17, 24	15 141:4,	106:13
159:6	58:3 61:2,	6, 10, 21	108:23
160:6, 9	13 65:3, 5	142:21	109:3
179:24	66:1	146:22	114:14
181:8	67:11, 17	147:23	117:19
	68:5 75:20	151:5, 9, 16	118:15, 18
		159:21	119:8
		164:1	120:1, 20

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: questioning..recall

127:12, 19	4:14, 16	re- 180:25	109:17
128:16	127:16	reach 44:5,	128:23
130:3, 23	152:18	11 53:2	136:21
131:24	174:8, 11	102:24	168:4, 7
140:4	193:19	158:10	190:14
144:22	199:8, 16,	204:18	191:1, 11
147:25	22 221:21	reached	196:16
148:13	222:10, 18,	202:23	201:15, 23
149:6	24 223:10,	reaching	215:15
154:18	12 234:8	208:10	228:22
164:7	quick 18:2	read 69:20	rebuilding
166:7, 10,	181:1	72:25	59:3
12, 20, 23	219:12	117:1	recall 9:13
167:15	223:15	134:22, 24	14:23 39:1
169:5, 15	quickly 95:6	160:15	43:8, 13,
170:3	197:1	174:1	16, 19
174:13, 15	218:5	220:1	44:15
179:15		223:14	47:8, 20
187:14, 16	R	230:8	49:14, 18
190:19, 24		234:11	50:21, 25
193:14, 22	raise 132:4	reading	52:12, 13
195:8	raised	161:6, 10,	55:9 81:14
200:18	78:10, 14,	14, 15, 21,	83:2 84:16
206:15	15 81:14	23 174:16	97:18, 23
210:21	131:21	230:6	103:2
214:6	132:1	readings	115:6
215:5	175:11	161:1	128:1
217:20	176:24	ready 207:6	129:8
218:5	194:17	real 181:1	134:25
220:24	raising	223:14	136:17
223:4, 20,	132:14	realtor 50:7	137:8, 9
23 225:22	ramifications	reason 56:1	139:19
227:7, 12	113:10	94:7	158:15
229:9	Rarely	101:10	162:1
questioning	134:22		166:8
191:25			181:20, 24
questions			182:8

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: receive..referenced

193:6	recess	68:12	recommend	217:12
194:2, 5,	152:15		42:21 43:3	219:9
20, 24	219:14		recommendation	reducing
195:1, 11,	recession		26:14	112:12
13, 14, 16,	20:7, 11		36:15, 18,	119:13
18 196:20	24:12		20, 24, 25	reduction
201:18, 22	recognition		37:4, 11, 23	20:18
212:23	57:10		38:3, 6, 23	refer 9:2
213:2			39:3, 11,	reference
219:6	recognize		14, 18	85:20
221:3, 10	88:6 91:17		41:13, 17,	100:24
222:8, 12,	99:13		18 42:12	107:6, 18,
13	142:11		43:8, 9, 10,	21 123:2
receive	159:14		17 44:5	136:8, 12
36:14 38:3	180:4		49:16	168:2, 9
49:16	183:16		64:19	170:9, 12
83:15	189:19		100:8	180:18, 19,
208:5, 8	190:5		152:23, 25	20 203:25
received	recollection		153:4, 15,	205:20
12:10	4:3 14:2		20 158:1,	206:16
38:22	28:2, 4		5, 11, 17, 25	213:5, 19
55:13	55:11 57:8		198:21	214:7
97:20	65:18		200:6	216:24
112:24	82:16		recommended	233:17
121:5	93:8, 12		43:23	referenced
171:8	122:13		recommending	10:3 73:21
201:24	124:14		41:19 44:1	76:23
receives	135:17		record 3:6,	77:13
73:7	136:24		16 5:24	84:25
receiving	137:3, 19		49:10	93:23 98:4
194:2	147:11		recorded	125:2
201:18	158:21		135:20	146:12
recent 78:1	177:14		red 92:5	173:9
recently	197:10		redevelopment	195:24
8:20	213:25		47:5	200:15, 20
	220:16		195:20	213:3
	225:11, 17			
	226:19			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: references..remember

220:16	regard	123:9	14:8, 13	172:16
references	regular		15:6	rely 64:20
69:21 76:7	155:20		116:17	remember
80:23	regularly		117:10	8:16, 18
99:16	48:13		129:25	11:4 28:1
100:15	69:11		139:6	29:13
107:8	regulate		150:4	39:5, 10
171:13	69:17		156:12	44:13, 18
174:22	167:23		211:12	45:12
176:14			230:21	46:16
196:1	regulates	relates		47:17
218:17, 22	119:16	167:24		54:25 57:4
223:21	regulation	175:20		65:21
referencing	105:24	202:15		66:8, 9, 14
9:9 23:24	167:25	224:4		67:12 68:6
104:17	regulations	229:13		78:15
108:1	106:15, 25	relating 9:9		81:13, 19
192:12	108:2, 15,	relation		82:6 83:21
referred	18 110:7,	129:3		87:19
45:7 94:21	16 118:12	relationship		88:17
referring	132:19	40:1 51:20		95:20 98:2
136:22	133:6, 23	relay 43:3		103:5
198:7	183:7, 19,	relayed		106:13
refine	23 184:22	176:9		109:16
150:15	185:23	relaying		110:24
reflect	218:8	176:3		111:6
108:20	regulatory	relevant		113:9, 21
reflecting	70:19	13:16 97:5		115:3
67:15	reject	103:6, 21		123:14
refresh 28:4	158:10	104:18, 23		124:24
135:17	rejected	105:25		128:8
197:10	43:17	107:2		129:21
213:25	related 4:2	139:24		132:8, 15
reg 133:3	11:11	147:19		135:23
	13:24	148:9		139:9, 16,
				22 140:2
				141:7

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: remind..request

147:2, 9, 17	removing	37:1, 5	representative
148:23	57:11	72:21	7:5 50:6
158:19	rename 42:6,	97:24	representative
162:3	7	99:7, 14,	s 175:11
164:4, 15,	rendering	16, 22, 24	represented
16, 24	79:20, 22	100:1	164:21
165:16	80:2 143:9	101:3	213:16
166:21	renderings	107:17	representing
170:18	79:8	108:6	7:21 48:25
173:5, 8	143:3, 7	109:6, 13	49:15
175:15	renting	114:7	50:11
176:1, 12	151:2	117:3, 9	153:19
179:16	repeat 5:13,	135:15	represents
190:9	16, 18 27:6	136:8	228:11
191:13, 14	33:17 35:3	147:13, 17	229:4
192:16, 17	108:24	153:16	request 5:15
194:9, 18	115:14	155:23	11:15
197:22, 23,	118:18	156:1, 13,	12:10, 11,
25 199:25	200:18	21 160:15	16 30:4
200:23, 25	202:4	165:11	94:5, 8
208:17	223:3	168:3	99:17
213:1	repeatedly	171:4	135:11
214:4	46:24	reporter	155:24
215:19	repeating	4:16, 20	158:18
217:8, 13	109:4	5:5 8:2, 5	159:2, 11,
218:10, 15	rephrase	17:15, 19	19, 23
221:6	5:13, 16	reports	161:5
222:14	replacing	26:20	162:5
227:9	178:11, 14	147:15	176:11
228:5	report 8:13	represent	177:8
remind	9:8, 9, 12	3:17 11:25	190:7
160:18	10:7 25:9	48:14 88:8	201:20
remotely	26:12, 15,	98:20	202:14
13:20	16, 22	135:5	206:15, 22
remove 53:22		138:21	207:24
54:4		142:24	208:1, 3
221:15			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: requested..restaurants

requested	requirement	189:7	201:19
11:14	77:19	205:13	222:5
98:12	107:23	216:20	223:5, 16
requesting	108:12	217:6, 10	225:21
206:2	110:5	219:3, 8	responses
requests	111:9	221:15	222:9
14:20	124:7	230:16, 20,	responsible
29:24	168:17	22 231:2,	64:17
30:1, 8	169:1, 10	8, 20 232:4	77:18 78:4
31:6 33:9	170:6	requiring	rest 94:24
183:23	231:12	30:16	Restate
require	requirements	112:5	197:22
30:19, 23	22:11	reshare	restaurant
31:2 62:9	72:2, 7, 11,	138:12	60:9, 11,
86:9	16 73:3	142:6	17, 23 61:4
115:23	74:3 75:5,	resident	62:4, 6, 7
177:17	19 76:16,	176:15, 18,	63:19, 22,
178:2, 10	21, 23	24	24 64:10,
226:3	77:8, 9	residential	25 88:20
233:13	78:21, 23	22:5 32:13	89:4 90:8
required	86:14	34:18	97:5, 7
31:7 32:18	101:7	151:1	105:19
72:21 77:4	102:5	resolution	106:2, 18,
104:24	104:25	122:21	20, 22, 25
105:9, 14	105:4, 19	resolve	107:2
114:11	106:15, 18	57:19 66:5	145:17
115:1, 11,	108:2, 9	122:21	220:25
16 118:7	109:8, 11,	resolved	restaurant's
169:3	14, 25	106:9	97:10
171:3	110:12, 23	responded	restaurants
178:5	111:22, 25	194:11	60:25
184:16	118:21	response	61:12, 16,
185:22	144:4	12:15	20, 24
186:6	168:21	14:17	63:20
204:13	171:23	190:6	105:13
231:22	184:3		
233:16	185:18		
	186:7		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021 Index: restricted..Richardson

restricted	21:23	52:4, 11	revise
131:6	22:6, 14	53:5 69:11	182:13
restriction	26:15	71:11	revised
174:19	30:17, 19,	80:13	94:9, 13
restrictive	24 31:3	81:10 86:4	182:19
127:12	32:19	92:1 100:6	revises
resubmitted	35:17	113:17	182:9
46:18, 22	39:23	130:9	revisions
result 64:2	54:23	135:7	181:21
119:3	72:21	141:3	rezoning
143:2	78:25	157:22	22:2, 18
226:8	79:14	175:8	202:13
resulted	80:9, 15	195:21	214:11
226:11	96:5, 24	200:17	rezonings
227:2	97:11	206:4	41:21, 23
results	121:8	212:24	42:1
49:10	130:8, 16	228:19, 21	Richardson
178:3	131:21	reviewing	6:24, 25
retail 60:6	136:17	21:18 26:6	7:1, 4 9:23
105:14	152:21	33:10	10:5, 9, 15
retired	160:22	34:13 50:1	15:3 19:3,
15:20 16:1	172:17	53:16 56:2	25 24:24
212:9, 23	183:22	64:19	25:12, 20
retiring	201:12	74:21	28:18
16:4, 8	204:1, 6,	78:24 81:4	44:24
revenue	20, 23	86:20	45:23 46:3
145:13	205:21	132:12	47:13
reverse	206:5, 6,	133:17	191:22
110:13	11, 16, 19	139:6, 13	196:5, 13,
220:2	211:2	172:2, 3	17 197:19
review 7:24	212:12	200:21	198:2, 16
8:7, 12	214:8	210:25	200:10, 16,
19:13	222:1	219:3	21 201:1
20:25	reviewed	reviews	220:22
	9:14 27:9	70:10	221:20
	30:10	131:17	222:9, 22
	45:23	202:16	
	48:10 49:1		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: Richardson's..seats

223:4, 9	183:22	63:8	search
229:17	rule 4:15,	science	12:14, 19,
230:13, 18	25 154:19	15:15	20 13:19
232:12	207:13	scratch	searching
233:11	rules 4:11	207:2	13:15, 22
Richardson's	6:9	screen	seat 125:11
219:22	running	68:18, 24	128:13
225:21	106:5	69:19	seating
rights 57:6		85:10	60:5, 8, 16,
117:17	s	87:21 88:3	22, 25
road 150:25		99:11	61:4, 17,
rode 55:21	safe 69:18	102:13	19, 23
role 19:6	safety 69:22	134:6	62:2, 9
26:6 39:22	184:16, 18	138:11	63:18
48:18	185:3	142:2, 9	97:8, 10,
50:14	186:15	146:3	13, 14, 22
153:9	187:7, 19	159:6, 8	98:4, 25
212:10	satisfied	179:25	104:25
roles 24:22	74:11	183:10, 13	105:1
roll 22:17	76:24	189:15, 17	106:22
room 4:20	78:20	196:8, 24	116:1, 3
209:18	satisfies	197:2	122:14, 15,
rotate 88:9	189:7	201:9, 11,	22 123:2,
rough 33:9	satisfy 71:2	25 219:20,	8, 24
roughly 12:2	74:14	21 220:21	124:9, 15,
29:14	189:7	scroll 69:1	23 127:2
32:21	scale 95:7, 9	74:24	128:10, 24
38:2, 21	scan 223:14	80:19 94:1	148:16
46:13	scanned 8:1,	134:20	149:24
88:19	5, 17	162:10, 16	180:20
routine	scanning	180:7	230:15, 21
19:10	13:21	201:15	231:22, 24
routinely	146:23	219:25	232:3
	schedule	222:16	seats 60:12
		scrolling	62:5 63:12
		13:21	64:15, 22
			65:6, 11, 25

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: section..signage

66:6, 21	73:7 155:4	212:4	shaking 4:21
67:4, 11,	203:15, 25	sequence	share
17, 23 68:4	204:5, 23	213:1	118:13, 23
148:18	208:21	series 4:13	sharing
149:11, 21,	227:20	serve 19:11	121:1
25 167:25	send 83:10,	served	she'd 17:21
section	19, 23	198:25	shed 60:2
71:16	84:8, 15	201:20	shopping
72:15, 18	97:25	services	60:6
73:3, 8	155:22	20:8	short 151:25
74:15, 25	sending	42:19, 23,	shorter
75:1 76:4,	192:17	24 43:1	152:5
7, 10, 12, 21	197:23, 25	serving	show 62:10
80:20, 22	sends 83:5	158:14	141:25
81:1 84:25	157:21	set 63:8	showed 143:8
85:3, 6, 13	233:10	86:19	showing 95:4
86:8, 19	senior 17:6,	115:21	139:10
87:8 92:23	7 18:2	152:4	shown 163:7
93:14, 16,	25:1	188:24	shows 107:12
23 94:1	sense 20:23	205:15	142:4
102:10	sentence	206:8	sic 229:24
105:3, 6, 8	114:1	207:5	side 19:21
108:14	136:2	setback	20:24, 25
109:23	162:21	58:12	24:23 50:4
111:2, 3, 4,	168:11, 12	92:17	61:13
6, 11, 13, 14	174:22	setbacks	sidewalks
133:3	176:13	58:15 77:4	151:9
170:8	230:8	setting	sign 26:15,
175:4	separate	115:23	20 31:10
184:6, 10,	94:10	208:19	234:11
25	105:2	SGA 52:16	signage
sections	212:17, 18	55:12	92:18
70:20	224:14	213:12	
seek 145:11	September		
214:17	211:18		
seeking			
32:7, 12			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: signature..space

signature	simultaneously	situation	162:10
183:4	203:15, 18	28:23	smaller
signatures	Sir 118:18	37:19	24:13
180:8, 9	sit 6:4	116:5	58:23
signed 26:21	15:4 22:6	131:19	59:10
100:3	98:23	186:18	103:11
135:21	123:17	214:24	snack 228:9
157:17	124:19	size 32:4	socialized
173:7	125:11	55:1, 3, 6,	52:1
180:5	140:23	8, 14, 17	solely 54:11
182:2	160:14	56:2, 7, 10,	64:20
significantly	171:6	16, 20	solution
146:21	189:4	57:2, 14,	130:8
signing	228:7	23, 24	solutions
36:25 37:5	site 79:23,	59:5, 12	129:24
signs 156:1	24 92:11,	80:3, 10, 16	son 211:4, 7
silent	14, 19, 22	94:21	sort 13:3
110:14	93:21 94:8	95:1, 4, 16,	18:21, 23
similar	101:15	24 96:4, 8	34:2 51:19
139:2	103:9, 22	103:21	114:22
143:18, 20,	107:19, 21	104:9	151:13
21, 24	113:15	105:25	sought 71:15
153:18	121:15	116:8	sound 8:25
194:3	142:13	129:10	12:1
similarly	145:21	143:24	sounds 9:1
230:4, 10	146:25	171:9	12:3 22:12
simplistic	174:23	173:4	152:11
26:1	175:1, 10,	216:5	233:2
simply 26:17	25 187:11	skip 71:5	sources
40:3	216:17	84:22	131:11
127:17	228:16	skipping	South 3:10
168:23	229:7	69:24	15:16
190:18	sits 24:13	slightly	space 61:25
195:7	sitting 40:2	76:12	
	situated	232:9	
	80:1	small 89:16	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: spaces..square

62:4, 7	167:2	93:15	sprinkler
63:23, 24		94:16	204:13
97:4 106:2	speak 9:19	106:17	square 58:4
107:9, 15	15:2	121:24	59:2, 3, 14,
140:20, 24	146:24	141:13	15, 18, 19,
145:12	speaking	165:17	22, 24, 25
148:8, 21	9:18 14:23	170:18	60:15, 21
163:25	109:2	184:4	62:1, 6
164:9, 19	specific	194:18	63:11, 17,
165:3, 8, 13	39:5 44:13	195:2	22, 23, 25
166:3	49:18	200:24	95:4
167:7, 11	66:12 68:6	228:5	96:14, 17,
168:3	73:11	specifics	19, 23
179:1	77:19	54:25 55:9	97:2, 4, 10,
188:15	83:24	65:21	21 98:4, 24
220:25	87:19 89:9	66:10	102:16, 20,
221:1	97:7	116:20	21 104:12,
224:22	101:15	145:21	14, 16, 18,
232:24	111:17	228:17	22 105:10,
233:5	112:3		15, 21
spaces	113:21	speculative	106:1, 20
105:10	114:25	64:5	107:3, 7, 8
106:19, 21	116:13	spell 75:4	115:25
107:22, 23	120:4	spelled	116:3
108:16	155:9	111:9	122:14
109:8	158:19	spells 105:3	136:3, 9,
112:6	159:14	111:15	12, 19
115:2, 12,	194:9	232:24	137:2, 4,
16, 22	195:8		11, 15, 22,
118:6	specifically	spend 7:15	23 141:17
131:7	5:25 23:24	22:8	144:2, 7
168:18	24:19	144:19	146:17
169:2, 25	42:14	spent 18:6	162:22, 23
170:1	52:14	spoke 28:25	163:3, 4, 14
180:19	78:15	82:17	165:19, 24
233:14	81:13 82:5		166:24
spacing	83:2, 21	spots 105:21	180:18
	84:14 92:7	114:10	213:21, 22

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: Stacy..started

214:7, 9,	18:25	122:5, 10	170:21
14, 16, 17	19:18	126:9	175:17
215:23	20:8, 19	129:23	231:19
216:6, 11	23:20, 23	130:3	232:1
218:17, 19	24:12 25:9	131:17	stage 66:24
223:17, 21,	26:12, 19	132:10	153:19
25 224:1,	29:15	135:14	164:23
4, 6, 7, 11,	30:20	136:8	225:11, 17
12, 16, 18	35:9, 15,	139:13	stand 126:4,
225:4, 9,	16, 19	141:2, 7, 9	5 150:1
12, 14, 15,	36:6, 7, 12,	147:13, 15	standards
16, 18, 20,	15, 20, 23	151:13	73:13, 20
23 229:11,	37:9, 22	152:21, 22,	74:14
14, 19, 25	38:24	24 153:9,	184:10, 15
232:25	39:12	12, 24	standpoint
233:5	40:13	155:2	49:25
Stacy 47:9,	43:10, 18,	156:11	58:3, 8, 11
11, 14, 20,	23 44:6, 12	157:20	64:18
25 48:8,	48:11 49:2	159:25	105:25
16, 17, 25	50:1, 2	171:4, 8, 21	113:4
49:4, 14, 24	52:4 55:24	172:11	119:5, 6
50:10	63:10	173:1	120:6
52:23	71:11 80:9	177:6, 10,	131:9
99:17	82:6, 17	20 178:1, 9	133:11
135:11	95:19, 21	181:9, 16	160:25
191:22	97:24	182:1, 7,	205:14
192:20	99:7, 14,	10, 20	207:4
194:21, 25	16, 21	200:5, 17,	start 5:4, 6
195:11, 19	101:3	21 210:15	13:21
208:17	102:24	234:1	103:9
222:25	103:12	staff's	206:10
Stacy's	108:7	23:21 57:1	207:2
98:18	110:21	103:7	220:2
194:12	113:20	110:18	started
staff 8:13,	114:5, 9	111:22	16:23 23:6
24 9:8, 9,	115:10, 15	115:5	24:15
12 10:7	118:5, 10,	130:7	
	19 121:8	153:20	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: starts..structure

44:22	213:21	status	147:23
53:22		100:14, 23	164:11
	statement	207:23, 25	178:15
starts	62:7 72:4		209:25
102:10	80:17	steel 202:21	216:6
135:10	95:25	205:1, 11,	221:1
	105:16	15	226:18
state 3:5	167:1	steps 72:23	227:3
94:7	170:12	127:24	228:10
102:19	216:3	128:5	229:6
109:14	226:5	231:17	233:4
136:2	231:4		
146:19		Steve 47:9,	stores
168:11, 12	statements	11 220:21	105:14
184:14	135:25	222:23	
192:3	170:9		stormwater
199:12, 21		Steven	58:16
221:25	states 37:1,	201:24	
230:9, 14	6 71:7	202:2	story
233:12	72:18 86:8		140:11, 16
	90:6	stop 11:21	141:19, 20
stated 67:4	102:15	189:25	142:5
70:12, 17	109:6, 24	190:1	
71:3 73:19	114:1	199:23	straight
81:24	117:3		208:6
85:23	135:14	storage	
100:8, 12	159:11	60:2, 3	street 3:9
108:16	161:6	224:21	42:1, 3, 7,
121:21	162:22		15, 16, 20,
122:8	173:9	store 45:18	21 43:1
123:19	184:7	46:21	187:20
132:7, 9, 15	215:11, 22	56:17, 24	
146:15	216:13	59:2, 3, 18,	streets
147:11	220:24	19, 20	69:24
178:24	221:21	88:24	
194:13	222:23	89:3, 23	strictly
197:19	223:17	90:16, 17,	60:3
198:1	229:17	21 96:15	structure
203:5		136:13	100:24
205:2, 4	stating	141:4	202:16, 20,
	217:15	146:22	21 205:10,
			12, 15, 18

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: studied..system

studied	49:1 71:25	137:20	213:2
112:25	79:6, 16	147:6, 21	215:11
	177:24	150:16, 19	
studies	178:3	163:18, 24	sunset
21:1, 3, 10		164:19	149:14, 17,
177:21, 22	submittals	165:13	21 150:2, 6
	99:1		151:3
study 113:4,		substantially	supply
7 114:19	submitted	164:9	119:24
126:7, 9	21:19	165:8	121:9
177:20, 25	52:20	179:2	133:16
178:2, 10	66:19, 22		
stuff 84:19	78:5, 12	substantive	support
	79:21 80:6	161:11	36:4, 16
style 26:18	95:18	sued 11:7	supported
subdivision	98:10, 21	sufficiency	57:11
22:5	108:6	81:15, 23	
30:15, 18	109:19	82:3	suppose
177:16	130:9, 10		164:23
	172:5, 11,	sufficient	supposed
subdivisions	15, 21	113:6, 15	93:2 165:3
25:4 32:1,	173:6	130:20	
2	181:22	186:14, 21	surface
subject 6:2	190:8	187:8, 19,	104:7, 19
38:17	213:21	21, 22	surfaces
66:16	227:13	188:4	103:24
75:12, 16	228:23		104:3
80:25		sufficiently	
113:15	submitting	78:5	surrounded
135:3	48:15		150:25
140:4	77:14	suggest	151:1
155:4, 13	198:21	35:21	
156:15, 21	206:5	36:12	surrounding
201:2	210:2	suggestions	81:6, 12, 16
229:2		35:25	82:3
	substance		swap 57:9
	155:8	summarized	sworn 3:2
submission	156:2, 3	215:17	
78:10			
submit 32:22	substantial	summary	system 13:4,
42:8 48:14	26:17	170:11	6, 7, 8, 13

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: table..testified

204:13	talked 7:11	208:20	154:1
	31:23 32:5	209:20	term 21:14
T	43:6	214:3	45:12
	60:15, 21	225:12, 17	143:9, 12
table 6:7	97:3	226:21	161:22
107:11	103:23	228:6	
136:24	113:10, 22	talks 163:8	terms 30:7
137:6, 19	123:7	184:9	57:23
163:7, 10,	130:17	tape 55:22	61:10
16 165:5	213:20	task 12:25	62:22 63:9
175:7	talking 5:4	tasked 81:4	73:20
tables	7:15 9:6	technical	82:21 83:8
62:10, 13,	22:20	71:1 72:2	92:16 93:1
18 63:12,	24:11	73:15, 17	95:16
13 64:11,	32:12, 24	74:5, 7, 10	103:10
12, 14, 22	34:5 38:5	75:4 76:22	121:12, 23
65:6	39:7, 8	77:3, 8, 19	155:20
167:24	44:1	193:8	175:21
takes 83:5	45:11, 20	194:1	179:17
153:14	60:9 75:8		195:23
	76:3	technicalities	216:5
taking 3:18	82:11, 12	192:4, 11,	228:25
6:7 131:11	85:14	14 194:1	testified
153:21	95:11, 14	195:23	3:2 38:9
188:25	96:17	technically	45:22 46:2
189:8	104:6	16:11	66:13
talk 4:25	106:2	telling	80:10
15:21	108:3	176:2	96:13 97:3
32:11	112:10	218:6	108:20
45:15	124:25	ten 30:18,	125:5
100:11	141:7	20 32:2	127:2
112:12	164:16	tended 25:4	135:19
113:18	170:18	tenure 24:19	140:1
120:6	190:1	69:12	156:21
133:14	192:9	76:16	159:24
151:4	193:2		163:17
197:20	196:2		166:7
198:2	204:11		167:11

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: testify..today's

168:5	218:15	18 12:9	162:2
181:25	229:7	17:11 22:8	192:15
185:8	233:3, 24	24:9, 10, 21	207:24
190:16	things 13:16	25:1 27:20	221:5
216:9	21:21	35:8 38:5	232:11
230:23	26:10	49:7, 14	234:2
testify 6:16	31:17, 19	51:15	times 3:22
testifying	41:22 57:7	52:3, 19	5:1 7:17
6:12 96:11	70:23	69:6	32:21
152:19	88:19	75:12, 15,	38:10 60:1
testimony	103:25	19 78:12	210:9
44:22	110:9	90:24	timing 10:1
109:4	121:2	95:17	title 16:11,
122:20	130:18	97:23 98:2	21 17:6
127:1, 6, 8,	160:18	114:7	19:13
9, 13, 18	180:21	117:9	24:25
128:4	thinking	126:11	91:21
143:24	77:2 145:1	132:11	161:22
144:5	Thomas 183:4	139:11	today 3:18
150:13	thought 8:10	152:1	4:14 6:12
152:19	28:9 53:5	158:22	7:10, 22
174:18	128:21	159:1	14:1 15:4
186:4	130:12	182:17	22:21
229:14	165:22	191:4, 17	24:13, 16
text 15:9	thoughts	208:16	27:24
31:8, 22	202:24	210:11	50:12
theory 112:3	thousand	211:3	98:23
thing 10:2	148:20	212:8	113:23
34:18 35:6	tie 33:8	219:11	139:11
69:2 70:22	Tiffany 20:1	231:18, 19	140:24
82:5	24:8 25:2	232:5	171:6
115:19	77:21 81:7	233:25	185:15
130:19	time 5:1, 5,	timeframe	189:4
131:9	22 6:4	8:24 20:11	192:4, 9
160:19	10:1 11:3,	23:7, 14	228:7
217:4		24:4 25:7	today's 7:25
		45:24	
		77:13	

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: told..typically

9:14, 20, 24	122:17	86:10	34:18 50:5
10:9	Traditionally	treating	58:9 63:19
told 11:5	224:3	60:7	70:21
17:21	traffic	tree 31:10	79:19
137:4	58:18, 20,	34:8, 10	80:5, 7
138:15	23 59:6	trees 58:15	93:1 97:16
192:13	64:2	tremendous	105:22
199:23	104:10	125:24	111:14
231:6	112:23	tremendously	130:14
top 91:13	151:6, 14,	204:16	143:11
92:5	21 176:19,	trigger	150:22
140:20	23 177:7,	93:18	155:10
159:11	9, 10, 17,	trip 108:25	202:16
161:5	20, 21, 22,	trips	204:1, 19,
190:2	23, 25	177:14, 16	23 218:23
191:8	178:2, 10,	true 15:23	219:7
201:14, 16	23	22:16	229:7
219:22	transcript	80:18	types 15:10
232:7	234:11	120:24	22:13, 17
torn 215:25	transfer	133:9	29:24, 25
216:7	225:23	150:14	31:5, 24
total 7:16	transferring	230:24	33:9 35:25
19:18, 20	225:16	truthfully	49:6 70:7
107:22	transpired	6:12	77:7
169:11, 25	68:12	two-story	183:24
223:21, 25	152:15	138:5	185:3
224:6, 11,	219:14	type 4:1	205:5
16, 18	transportation	5:18 10:2	typical
225:4, 9	70:2	13:8 14:7	192:23
229:10, 14,	trap 199:14	16:21	204:4
19 230:1	trapping	21:14	typically
Totally	199:15, 24	26:13	29:3
202:10	treat 227:4	30:3, 7	35:13, 15
track 49:10	treated	32:23	40:20, 23
traditional			50:2
			112:17
			145:12

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: uh-huh..verify

158:5	7:4 10:11	207:4	79:11
161:10	28:5 38:11	216:19, 22,	161:14
206:19	39:12 40:5	23 224:9,	193:21
207:14	57:12, 16,	10 227:23	204:21
	24 61:19	233:20	
	67:20		ups 125:25
U	75:17 76:6	understood	150:16, 19
	79:13 83:9	215:12	187:10
	110:20	225:3	
uh-huh 85:16	123:11	undertake	users 114:6
86:12	126:7, 25	72:23	117:16
190:4	127:9, 10,	undue 69:25	118:1, 6, 22
191:9	17 133:5		121:18
223:22	152:22	unheated	234:2
231:13	168:1	61:25	usual 29:8
ultimate	174:2	63:17 97:3	
100:8	192:8	107:3, 12,	
ultimately	223:25	13 137:15	V
17:8 46:17	224:15	144:10	
47:1 48:5	understanding	163:3, 8, 13	valet 119:14
53:7 85:24	35:7 46:20	164:4, 6, 8	121:2
86:13	48:19	165:3, 13	131:4
100:3	61:17	166:3	188:12, 17
124:11	69:14 73:8	214:17	valuable
157:16	90:2 91:20	216:14	186:20
194:16	93:6 94:14	218:17, 19	variance
uncertainty	107:14	224:11, 21,	21:20
207:7	112:16	24 225:2, 5	variances
unclear 5:13	136:11	Unincorporated	22:18
uncommon	144:18	184:11	31:12, 14
49:3	161:16	unique 35:5	varies 49:7
underneath	195:25	110:8	verbal 4:15,
180:14	197:17	universal	23 26:18
underpinning	198:13	35:1, 6	verbiage
101:20	200:8	unusual	107:10
understand	202:19	28:12, 16	verify 42:19
5:12, 19	204:22	61:20	229:24
	205:7		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: versus..wrote

versus 46:14	145:18	187:7,19	16:15 18:7
48:2 58:9	149:23	Wesley 11:4	19:1 24:6
228:9	150:16,19	191:16	44:10,17
view 32:6	151:2	Williams	121:2
44:21 49:5	167:18	232:15	works 10:15
56:16 71:2	187:10	Williams'	90:3
126:15	walk-up	233:11	174:19
145:19,21	151:6,14,	Williamsburg	world 18:15,
149:14,17,	21 188:9,	18:20	23 119:21
23 150:2,6	16	wood 202:20	145:7
231:10	walking	205:1,10,	worry 218:13
viewed 192:4	126:1	12,18	write 153:16
viewing	187:11	word 13:20	231:4
149:20	wanted 42:6	28:16 34:6	writes 155:2
231:18	54:9 96:14	78:16	157:21
virtually	103:8	110:25	221:20
4:18 6:18	152:17	187:21	222:17,22
visited 61:7	179:16	231:11	writing
141:10	185:14	work 4:5	20:24 21:9
vote 41:9,	214:16	11:20	26:18
13,24	227:24	13:13	170:19
42:12	ways 104:17	15:11	171:19
153:7	131:1	16:16	written
158:10,23	187:12	25:13	13:24
voted 43:25	188:10	51:21	70:22
158:16	weekend	206:10	74:8,17
	15:22	worked 14:24	166:23
	welfare	18:18	167:1
W	69:22	19:15	170:4
	72:19	24:22 29:1	171:18
Waccamaw	73:12	39:9 51:6,	175:2,3
151:9	74:1,13	11 202:8,	185:12,16
wait 17:16	102:7	10	224:3
waive 234:12	184:18	working	wrote 97:24
walk 112:23	185:4	11:22	99:25
125:25	186:16		

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Lester Boyd Johnson, Jr. on 03/04/2021

Index: XI..zoom

100:1	39:8 44:22	69:3, 4, 8,	157:4
179:7	52:13 61:9	15 70:6,	158:7, 18
181:9	136:14, 18	10, 13, 17,	161:2
	139:3, 6	18, 20	173:17
x	141:5	71:1, 8, 11,	177:11
	145:7	16 72:3,	182:5, 21
XI 183:6,	151:17	12, 20, 23	183:15, 24
14, 15	158:14	73:4, 7, 13,	184:23
185:9, 16,	195:21	14, 19, 22	204:5, 18
18, 22		74:1, 4, 13,	206:14, 17,
186:2, 6	z	16, 21 75:5	20 207:7
188:24		76:24	208:22
189:5, 8	zoned 32:13,	77:10	212:8, 10,
217:11	14	79:7, 17	12, 16, 20
233:1, 6	zoning 4:2	80:12	214:10
Xs 92:10	14:14	83:15	216:21
XVII 71:6,	19:12	84:24	217:1, 11
16 72:1, 10	21:20	86:14	218:9
74:25	23:15, 22	101:8, 10,	219:2
111:2	25:6, 24	12, 21, 22	233:1, 6
	29:14, 20,	102:1, 5	zoom 89:16
y	23 31:9,	105:3, 6, 8,	212:1
	15, 19	15, 19	215:9
y'all 221:13	32:7, 12,	106:16	
year 10:17	15, 18, 23	107:23	
12:5 17:25	33:4, 13, 21	108:1, 9, 15	
38:1, 21	34:14	109:8, 11,	
39:1, 8	37:12 38:2	23 110:14,	
44:9, 16, 18	39:4 41:1,	17, 22	
158:22	9 43:5	111:10, 13,	
182:18	45:1 46:10	23, 24	
yearly 32:25	50:19	113:3	
years 4:8	52:12	118:21	
11:10, 13	53:17	119:2, 5, 22	
17:1 18:7,	62:20, 24	132:18, 22	
18 24:21	63:5, 7	133:22	
	64:16	153:5	
	68:13, 23	155:21	



**ZONING ORDINANCE
GEORGETOWN COUNTY, SOUTH CAROLINA**

AN ORDINANCE OF THE COUNTY OF GEORGETOWN, SOUTH CAROLINA, REGULATING THE LOCATION AND USE OF BUILDINGS, STRUCTURES, AND LAND, THE SIZE OF BUILDINGS AND OTHER STRUCTURES, THE SIZE OF YARDS, AND THE DENSITY OF DISTRIBUTION OF POPULATION: CREATING DISTRICTS FOR SAID PURPOSES AND ESTABLISHING THE BOUNDARIES THEREOF: DEFINING CERTAIN TERMS USED HEREIN: PROVIDING FOR THE METHOD OF ADMINISTRATION AND AMENDMENT: PROVIDING FOR A BOARD OF APPEALS; AND, PROVIDING FOR THE IMPOSITION OF PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE TO BE EFFECTIVE IN THOSE UNINCORPORATED PORTIONS OF GEORGETOWN COUNTY AS DESIGNATED ON THE OFFICIAL ZONING MAPS, EXCEPT FOR CERTAIN RESTRICTIONS LISTED IN SECTIONS 620.107 AND 804 DEALING WITH PRIVATE AIRFIELDS, WHICH APPLY TO ALL THE UNINCORPORATED PORTIONS OF THE COUNTY.

ARTICLE I

AUTHORITY AND ENACTMENT CLAUSE

In pursuance of authority conferred by Title 6, Chapter 29, Article 5, Code of Laws of South Carolina, 1976, as amended and for the purpose of promoting the health, safety, morals and general welfare of the County; lessening congestion in the streets; securing safety from fire, providing adequate light and air; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, water, sewage, schools, parks, and other improvements; protecting scenic areas; and protecting areas subject to periodic flooding against development, in accordance with a comprehensive plan, the County Council of Georgetown County does ordain and enact into the law the following articles and sections:

ARTICLE II

SHORT TITLE

This Ordinance shall be known and may be cited as "The Zoning Ordinance of Georgetown County, South Carolina", and the maps herein referred to, which are identified by the title "Zoning Maps of Georgetown County, South Carolina".

ARTICLE XVII

AMENDMENTS

1700. **Authority.** This Ordinance, including the Official Zoning Map, may be amended from time to time by the County Council as herein specified, but an amendment shall not become effective unless it shall have been proposed by or shall first have been submitted to the Planning Commission for review and recommendation. The Planning Commission shall have thirty (30) days within which to submit its report. If the Planning Commission fails to submit a report within the (30) day period, it shall be deemed to have approved the proposed amendment, provided, however, that the applicant may waive this requirement and consent to an extension of said time period. *(Amended Ord 2000-58)*
1701. **~~Requirements for Change.~~** When the public necessity, convenience, general welfare or good zoning practice justifies such action and after the required review and report of the Planning Commission, the County Council may undertake the necessary steps to amend the Zoning Ordinance.
1702. **Procedure for ~~Amendment~~.** Requests to amend the Zoning Ordinance shall be processed in accordance with the following requirements:

- 1702.1 **~~Requirements for Change.~~** Parties and individuals or those assigned Powers of Attorney on behalf of qualified applicants are eligible to initiate an application for change and/or relief from requirements of this Ordinance as identified in the chart below, provided, however, that action shall not be initiated for a zoning amendment affecting the same parcel or parcels of property or any part thereof, and requesting the same change in district classification by a property owner or owners of more often than once every twelve (12) months measured from the date of the original recommendation by the Planning Commission. Parties not listed may petition the Planning Commission and/or County Council to initiate a change, but the petitioned party is not bound to act on behalf of the petitioner. *(Amended Ord 2001-38)(Amended Ord 2001-62)*

PARTIES ELIGIBLE TO APPLY FOR CHANGE AND/OR RELIEF FROM THE REQUIREMENTS OF THIS ORDINANCE

Eligible Applicants	*Map Changes (Rezoning)	*Major Change (PD)	*Text Change	** Variance	** Appeals
Property Owner(s) ***	YES	YES	NO	YES	YES
Agent of Property Owner***	YES	YES	NO	YES	YES
Option Holder	YES	NO	NO	NO	NO
Aggrieved Person or Party	NO	NO	NO	NO	YES
Officials Administering this Ordinance	NO	NO	YES	NO	YES
Planning Commission	YES	YES	YES	NO	NO
Governing Council	YES	YES	YES	NO	NO
Developer	YES	YES	NO	YES	YES

GOVERNING BODIES: *PLANNING COMMISSION **ZONING BOARD OF APPEALS

*****PROPERTY OWNERS OF DIRECTLY IMPACTED AREA**

- 1702.101 When property owners within a defined area desire to extend

ARTICLE XVII

AMENDMENTS

the or change the zoning in a area in the County, the Planning Commission may initiate an amendment to the Official Zoning Map when it is presented with a petition requesting such change and signed by at least eighty (80%) percent of property owners within the area. If the Commission agrees to initiate the Zoning map amendment, the property owners are responsible for completing the application form, submitting stamped and addressed envelopes with notices and maps enclosed and payment of the rezoning application fee. All petitions shall contain the tax map number of the property proposed for rezoning and the tax map numbers of all properties of all properties of the petitioners affected by the rezoning. This provision shall not affect in anyway the power of the Planning Commission to initiate zoning amendments on its own motion.

1702.2 Application Procedure. Application forms for amendment requests shall be obtained from the Planning Commission. Completed forms, together with an application fee to cover administrative costs plus any additional information the applicant feels to be pertinent shall be filed with the Planning Commission. Any communication purporting to be an application for an amendment shall be regarded mere notice to seek relief until it is made in the form required.

1702.201 Applications for all amendments must be submitted, in proper form, at least thirty (30) days prior to a Planning Commission meeting in order to be heard at that meeting. *(Amended Ord. 2020-05)*

1702.2011 Conceptual reviews by outside agencies must be submitted twenty-one (21) days prior to a Planning Commission meeting in order to be considered at such meeting. *(Amended Ord. 2020-05)*

1702.202 The Planning Commission, at regular meetings, shall review and prepare a report, including its recommendation for transmittal to the County Council.

1702.203 All meetings of the Planning Commission shall be open to the public. At a meeting, any party may appear in person, by agent or attorney.

1702.204 No member of the Planning Commission shall participate in a

ARTICLE XVII

AMENDMENTS

matter in which he has any pecuniary or special interest.

1702.205 Following action by the Planning Commission, all papers and data pertinent to the application shall be transmitted to the County Council for final action.

1702.206 The person or entity applying to amend the ordinance by changing the zoning classification of a particular piece of property or establishing or amending a Planned Development or Flexible Design District must submit to the Planning Commission, as part of the application, letters addressed to each property owner within four hundred (400) feet of the subject property containing information adequate to notify such owners of the intention to rezone, and when and where a public hearing will be held by the Planning Commission. A location map showing the areas to be rezoned must be included. Such letters must be placed in unsealed, stamped and addressed envelopes ready for mailing by the Planning Commission. The Planning Commission's address must appear as the return address on the envelopes. A list of all property owners, as reflected by the tax records, to whom letters are addressed must accompany the application. *(Amended Ord. 2020-05)*

If an amendment to change the zoning classification for a piece of property or a request to establish or amend a Planned Development or Flexible Design District is deferred by the Commission, new letters of notification will be required. If an amended request is submitted, the applicant must submit additional letters of notification as described above *(Amended Ord. 2020-05)*.

1702.207 The letters of notification required by 1702.206 must be mailed to the affected property owners by the Planning Commission at least 21 days prior to the public hearing. The Commission Staff shall certify the mailing date. Failure to strictly comply with the notification requirements contained in Sections 1702.206 and 1702.207 shall not render the rezoning of the property invalid.

1702.208 All changes to the Zoning Maps(s) initiated by either the Planning Commission or County Council shall be subject to

ARTICLE XVII

AMENDMENTS

the property owner's notification requirements listed above, excepting that the letters of notification shall only be mailed to owners of property(s) subject to the proposed zoning change(s). If the proposed zoning involves more than fifty (50) properties owned by more than fifty (50) owners, the County may still mail all of the affected property owner's notices of public hearing. As an alternative published notices of a public hearing shall be published in local newspapers two times each week for a period of two weeks. The fourth published notice shall be placed in local newspapers, and shall be of size equal to one-fourth of a newspaper page in size. Property owners who live outside the newspaper circulation area shall be notified by first class mail. Such mailing shall be certified in writing to the Planning Commission or County Council as appropriate. Failure to strictly comply with the notification criteria established above, as a result of circumstances beyond the control of the Planning Commission or County Council shall not render the rezoning of the property invalid. *(Amended Ord. 2020-05)*

1702.209 In rezoning cases, conspicuous notices shall be posted on the affected property that shall be visible from each public street that borders the property. The notice shall be posted at least fifteen (15) days prior to the public hearing date.

1702.3 Public Hearing. Before enacting an amendment to this Ordinance, the Planning Commission shall hold a public hearing thereon, notice of the time and place of which shall be published in a newspaper of general circulation in the County at least fifteen (15) days in advance of the scheduled public hearing date. A proposed amendment shall be deemed submitted to the Planning Commission for its review and recommendation pursuant to Section 1700 of this Ordinance at the conclusion of the public hearing.

1702.4 Change to the Zoning Map. Following final action by the County Council any necessary changes shall be made on the Official Zoning Map. A written record of the type and date of such change shall be maintained by the County Planning Commission. Until such change is made, no action by the County Council on amendments to the Zoning Ordinance shall be considered official, unless the Planning Commission fails to make the change within fifteen (15) days after formal action by the County Council. In the latter event, action by the County Council shall be considered official fifteen (15) days after the date

ARTICLE XVII

AMENDMENTS

of the action if the Planning Commission failed to make the appropriate changes.

1703. **Reversion.** To prevent land speculation at the expense of the general public and to insure the timing of projects in accordance with stated development objectives, construction shall start on all properties rezoned Planned Development within two (2) years after rezoning. If construction is not begun within two (2) years after rezoning to a Planned Development, the Planning Commission shall review the zoning of said property, and, unless presented cogent reasons to allow additional time, shall initiate proceedings to return the zoning of the property to its original classification, or to such classification as the Planning Commission deems consistent with the Comprehensive Plan. If additional time is allowed, the Planning Commission shall review the zoning of the property at the expiration of such additional time if construction has still not begun. The Planning Staff shall periodically review the status of property which has been rezoned Planned Development, and bring to the attention of the Planning Commission any property which falls within the scope of this section. *(Amended Ord 2005-37)*

619 Planned Development District (PD)

Intent. The purpose of the Planned Development District (sometimes hereinafter referred to as PD) is to provide opportunities to create more desirable environments through the application of flexible and diversified land development standards under a comprehensive plan and program that is professionally prepared. The Planned Development District is intended to be used to encourage the application of new techniques and technology to community development which will result in superior living or development arrangements with lasting values. It is further intended to achieve economics in land development, maintenance of street systems and utility networks while providing building groupings for privacy, usable attractive open space, buffer zones, safe circulation and the general well-being of the inhabitants.

619.1 ~~Minimum Acreage Requirements for Planned Development Districts.~~ The site utilized for a Planned Development District shall contain the following minimum acreage:

619.101 Industrial PD's shall have ten (10) acres. *(Amended Ord. 2006-21).*

619.102 Medical Centers, shopping centers, commercial developments, residential developments, and mixed use developments shall have (2) acres. *(Amended Ord. 2006-21).*

619.103 The Planning Commission and County Council shall determine appropriate setbacks from property lines and needed buffers except that the 90 foot setback from US Highway 17 as established in Article IV, General Provisions, Section 409, Setback from US Highway 17, shall not be reduced. *(Amended Ord 2007-11)*

619.104 To determine the density, only land which can be developed can be used to calculate the units per acre. Wetlands and water bodies shall not be included in calculating density. The Georgetown County Comprehensive plan shall be used to determine overall density limits.

619.2 ~~Amendment Procedures with regard to Planned Development Districts.~~ Any request pertaining to the establishment of a Planned Development District shall be considered an amendment to the Zoning Ordinance and shall be administered and processed in accordance with the regulations set forth in Article XIV, entitled Amendments. All data set forth in Section 619.6 pertaining to conceptual approval shall be submitted to Staff of the Planning Commission and subsequently forwarded to County Council, with recommendations from the Planning Commission. If approved by County Council, all information pertaining to the proposal shall be adopted as an amendment to the Zoning Ordinance, as the standards of development for that particular Planned Development District. Revised Conceptual Plans shall be submitted to the Zoning Administrator for review and approval provided the proposed change does not constitute a major

ARTICLE VI

REQUIREMENTS BY DISTRICT

change under section 619.302. Final plans for each phase shall be submitted to Staff for their review and approval. The Zoning Administrator may grant final approval provided that the final plans are in accordance with the approved Conceptual Plan; however, minor changes may be made as described in Subsection 619.301 (Minor Changes). If the owner or developer is not in agreement with the Zoning Administrator's findings, they may request approval from the Planning Commission and County Council.

- 619.201 A building permit shall not be issued until a final plan, as required in Subsection 619.8, for each phase of development is submitted and approved by the Zoning Administrator.
- 619.202 The initial conceptual plan review, which will change the zoning classification, shall be treated like any other amendment; however, after approval of the Conceptual Plan, the Zoning Administrator may approve revised conceptual and final plans if in accordance with the approved Conceptual Plan.
- 619.203 In any event where it is determined by the Planning Commission and the County Council that development in the Planned Development District is not in accordance with the standards adopted for the development, County Council shall be empowered to amend the Ordinance to place parts or all of the property in the Planned Development District in another zoning classification deemed by the Planning Commission and County Council to be appropriate.
- 619.204 If final approval is given prior to all necessary improvements being constructed and accepted, a performance bond or irrevocable letter of credit shall be posted for all improvements not in place or accepted.
- 619.205 For Planned Developments that contain more than ten (10) acres, the applicant may elect to develop the site in successive phases in a manner indicated on the Conceptual Plan; however, each stage shall be substantially completed before the commencement of development of the next phase. The Planning Commission may require that the development be done in phases if public facilities are not adequate to service the entire development initially.

619.3 Changes and Modifications.

- 619.301 Minor Changes. Minor changes in the PD may be approved by the Zoning Administrator provided that such changes:

619.3011 Do not increase the densities;

ARTICLE VI

REQUIREMENTS BY DISTRICT

- 619.3012 Do not change the outside exterior boundaries or height limitations, except as provided in 619.4;
- 619.3013 Do not increase the intensity of land use;
- 619.3014 Do not materially change the location or amount of land devoted to specific land uses;
- 619.3015 Do not significantly change the exterior appearance from those shown on any plans which may be submitted or presented by the developer; and,
- 619.3016 May include, but not be limited to minor shifting of buildings, proposed streets, public or private ways, utility easements, parks or other public open spaces, or other features of the plan. Minor shifting of buildings does not include encroaching into any required setback. *(Amended Ord. 2007-95)*
- 619.3017 Temporary signs within a PD which exceed the limit for temporary signs under the sign provisions may be approved by Staff provided such approval does not exceed a one year period.
- 619.302 . Major changes in a PD shall require another public hearing and shall be treated as an amendment to the Ordinance. Major changes may include, but are not limited to the following:
- 619.3021 Increase in density;
- 619.3022 Changes in exterior boundary lines and/or height limit;
- 619.3023 Changes in intensity of land use;
- Intensity is defined as: The "intensity" of land use is the degree of the negative impacts on the environment and neighboring land uses. Impacts of intensity include, but are not limited to, greater impervious surface coverage, reduced open space, increased bulk and height of buildings, increased traffic with associated noise and congestion, signs and exterior lighting visible from neighboring property.

619.3024 Changes in the location or amount of land devoted to specific land uses; and,

619.3025 Changes that significantly change the exterior appearance.

619.4 ~~31.4001~~ The height requirements of thirty-five (35) feet shall apply except in A, AE, VE, or V flood zones (as shown on the FIRM Maps). The height requirements in A, AE, VE or V zones may be varied as a minor change but shall not exceed forty-five (45) feet and provided that the fire classification rating of the district is not increased (fire insurance rates higher), and the roof is accessible for fire fighting. Any proposed building shall comply with the current version of the International Building Code as adopted by the State of South Carolina and approved by the Georgetown County Council for one and two family dwellings *(Amended 2009-22)*.

619.5 ~~31.4002~~ . In order to qualify for a Planned Development, the following must be submitted:

619.501 The area proposed shall be in one ownership or if in several ownerships, the application for amendment to the Zoning Ordinance shall be filed jointly by all of the owners of the properties in the plan; and,

619.502 A suitable conceptual plan shall be submitted by the developer for review by the Planning Commission and approval by the County Council. A Final Plan shall be submitted and approved by the Zoning Administrator prior to the issuance of any permit.

619.6 ~~31.4003~~ . The conceptual plan shall contain the following items when applicable:

619.601 Site Plan - Sheet 1
Location map; Ownership patterns; Property dimensions; Location of structures; Types of uses; Phases and timetables; Number of units per phase; Acreages (total and per phase); Ingress and egress; Yard requirements; Lot sizes; Street layout; Parking; Screening, buffers and borders; Off-street loading facilities; Building heights; Public access and recreation; Open space (active or passive); Density; Number of units per building; General layout of sidewalks or pathways; and Graphics (north arrow, scale-written and graphic, engineers signature and date of field survey).

619.602 Environmental Plan - Sheet 2
Contours; Drainage plan; Flood prone areas; Marsh areas or wetlands; and Other principal geographic features.

- 619.603 Water and Sewer Plan - Sheet 3
Shall meet the requirements of the Georgetown County Water and Sewer District extension policy.
- 619.604 Utilities Plan - Sheet 4
Layout and easements for other utilities (electric, telephone, gas, cable, etc.).
- 619.7 Approval of Conceptual Plan Upon approval of the conceptual plan by the County Council, the Zoning Map will be changed to indicate the PD classification.
- 619.8 Final Plan Requirements. Before any permits may be issued, the developer shall submit final plans for review and approval to the Zoning Administrator. The final plan shall contain the following information:
- 619.801 Site Plan - Sheet 1
Location map; Location of structures; Phases of development and timetables; Acreage (total acres and acreage per phase); Property dimensions of phase development; Ingress and egress (dimensions, acceleration, deceleration lanes and numbers of ingress and egress points); Yard requirements (distance between buildings, distance of buildings from street, distance from easements and distance from off-street parking); Lot sizes; Street layout (street names, proximity of dwelling units, relationship to street patterns, right-of-way widths, paving widths, type of streets, directional arrows, type of pavement, street jogs, location of intersections and statement on traffic speed); Size of structures (exact dimensions, height and number of units\ building); Screening buffers, etc.; Off-street loading (relationship to commercial and public facilities); Public access and recreation-open space (dimensions and locations, proximity to streets and buildings, relationship to streets and buildings and type of recreation area); Density (number of units per phase, number of units per acre and overall density); Final layout of sidewalks\ pathways (width, type of material and relationship to public street); Graphics (north arrow, name of developer, name of development, scale, adjoining property owners and uses, engineers signature, date of field survey and dimensions, bearings, angles and reference points).
- 619.802 Environmental Plan - Sheet 2
Drainage plan; Contours; Flood prone areas; Marsh areas or wetlands; Other principal geographic features; Dumpster locations; and Erosion control methods.

ARTICLE VI

REQUIREMENTS BY DISTRICT

-
619.803	Water and Sewer Plan - Sheet 3 Shall meet the requirements of Georgetown County Water and Sewer District extension policy with a sign-off on the plans.
619.804	Utilities Plan - Sheet 4 Layout and easements of other utilities (electric, telephone, gas, cable, etc.).
619.805	Exterior Appearance - Sheet 5
619.806	Soil, Trees, and Other Information Required by Staff - Sheet 6

1.38 AC.

PHASE I MULTI - FAMILY RESIDENTIAL

JULY 1982 - JULY 1983

30 UNITS 21.7 UNITS / ACRE
1825 S.F. MINIMUM LOT REQ.
1.43 P/S PER UNIT

1.22 AC.

PHASE II MULTI - FAMILY RESIDENTIAL

OCT 1982 - OCT 1983

30 UNITS 24.6 UNITS / ACRE
1825 S.F. MINIMUM LOT REQ.
1.43 P/S PER UNIT

.41 AC.

PHASE III MARINA STORE / PUBLIC ACCESS

FEB 1983 - JUN 1983

APPROX. 1200 S.F. MARINA STORE
60 PARKING SPACES

PHASE IV PUBLIC MARINA RENOVATION 2.35 AC.

MAR 1983 - JUN 1983

60 SLIP CAPACITY 1 P/S PER SLIP

.49 AC.

PHASE V RESTAURANT / LOUNGE

FEB 1983 - FEB 1984

4000 S.F. 200 SEATING CAPACITY
SHARED PARKING WITH MARINA
13 ADDITIONAL SPACES

TOTAL 3.5 AC.

PUBLIC MARINA

60 SLIP CAPACITY

MAIN CREEK

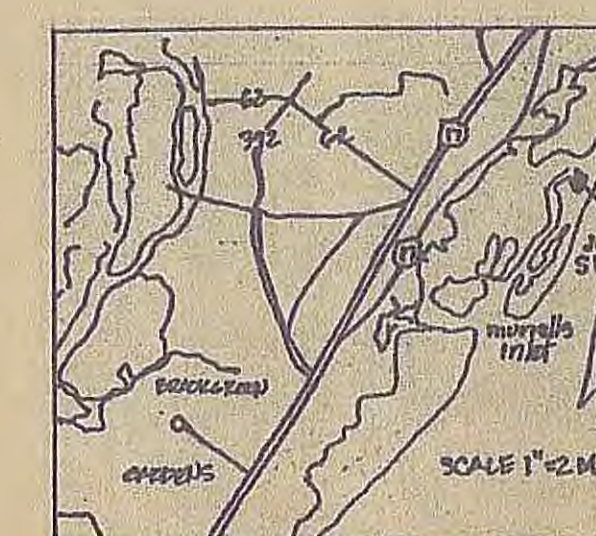
PUBLIC GAS DOCK

PRIVATE POOL

BUILDING #2

PRIVATE CLUB

1000 SF



VICINITY MAP

10

EXHIBIT

2



ORDINANCE

An Ordinance to amend the official zoning map of Georgetown County, South Carolina.

Be it ordained that the official zoning map of Georgetown County, a part and parcel of Georgetown County Zoning Ordinance be amended to reflect the following changes:

To change the present zoning from Resort Commercial and General Resort Residential to Planned Unit Development as requested by Martin, Stevens, Nichols and Nichols of property located at the site of Gulf Stream Marina in Murrells Inlet, a copy of map attached.

TYPE OF USES:	60 condominiums, 2 bedrooms 1 restaurant 1 marina, 60 slips
LAND AREA:	3.1 acres
LOCATION OF STRUCTURES:	as shown on Plat
LOCATION OF USES:	as shown on Plat
INGRESS & EGRESS:	as shown on Concept Plan
YARD REQUIREMENT:	as shown on Concept Plan
SIZE OF STRUCTURES:	as shown on Plat
LOCATION OF SCREENING, BUFFERS:	at least 6' in height
BUILDING HEIGHT:	commercial uses 35' residential 60' maximum
DENSITY:	as stated on Concept Plan

Adoption of the foregoing Ordinance moved by Kenneth W. Thornton, Jr.,

seconded by J. D. Munnerlyn, and after discussion upon call to vote thereon, the vote was as follows: Those in favor - Alfred B. Schooler, H. E. Hemingway, Kenneth W. Thornton, Jr., Glenn A. Cox and H. E. Hemingway.

Opposed - None.

H. E. Hemingway
Glenn A. Cox

J. D. Munnerlyn
Alfred B. Schooler

Kenneth W. Thornton, Jr.

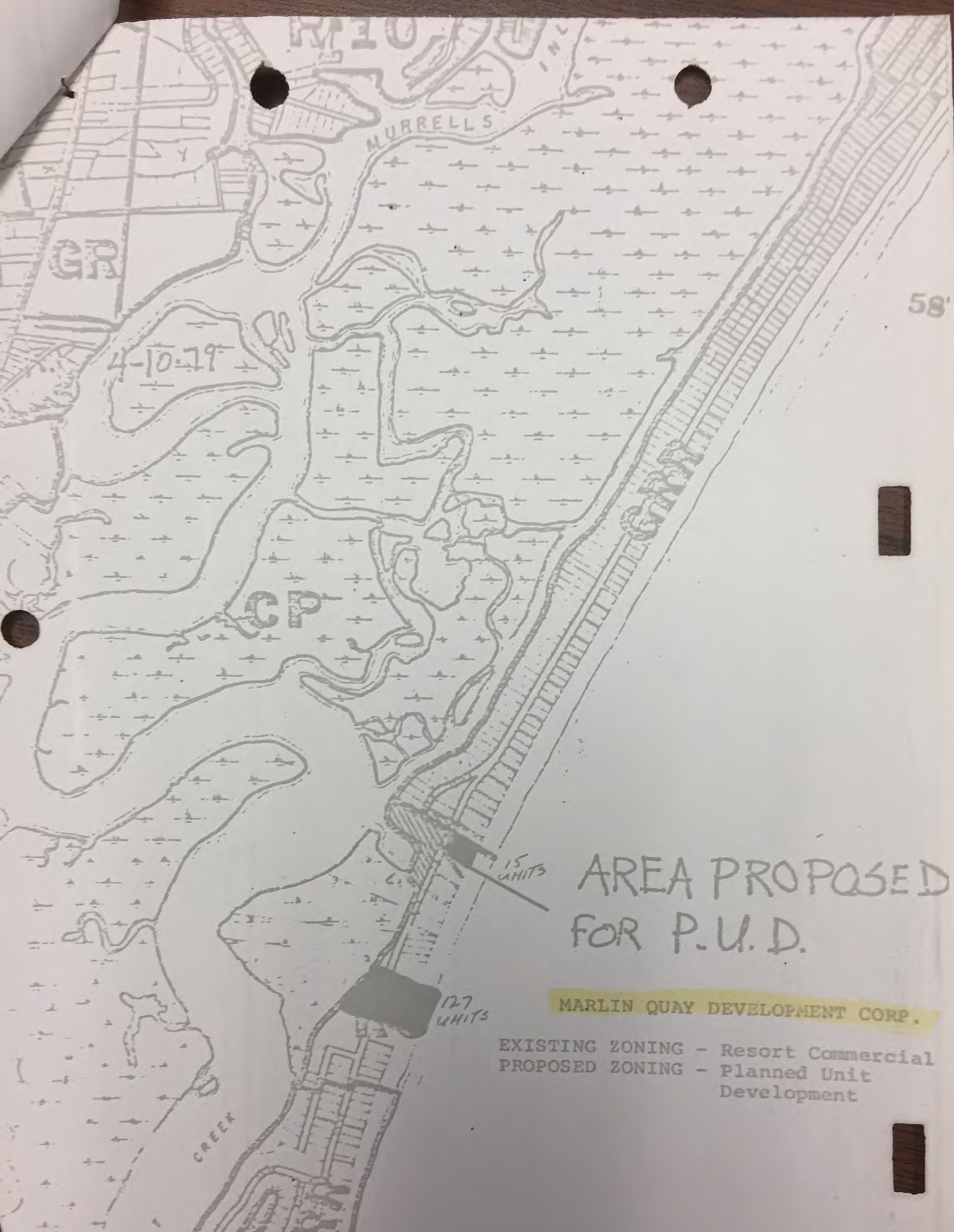
First reading: May 11, 1982
Second reading: June 10, 1982
Third reading: July 20, 1982

BOOK PAGE

GEORGETOWN COUNTY, S.C.

JUL 29 11 07 AM '82

FILED
BETTY L. WILLIAMS
CCLP/BOA



AREA PROPOSED FOR P.U.D.

MARLIN QUAY DEVELOPMENT CORP.

EXISTING ZONING - Resort Commercial
PROPOSED ZONING - Planned Unit
Development



129 Screven St. Suite 222
Post Office Drawer 421270
Georgetown, S. C. 29440
Phone: 843-545-3158
Fax: 843-545-3299

APPLICATION TO AMEND A PLANNED DEVELOPMENT (PD)

COMPLETED APPLICATIONS MUST BE SUBMITTED ALONG WITH THE
REQUIRED FEE, AT LEAST FORTY-FIVE (45) DAYS PRIOR TO A PLANNING
COMMISSION MEETING.

Please note this approval applies to this particular property only.

Name of Planned Development: Marlin Quay

Regulation to which you are requesting an amendment *(check applicable):*

- ☐ Setback – Complete SECTION B: SETBACK AMENDMENT
- ☐ Signage – Complete SECTION C: SIGNAGE AMENDMENT
- ☒ Site Plan – Complete SECTION D: SITE PLAN AMENDMENT
- ☒ Other – Change of Building Configuration

All Applicants must complete SECTION A: APPLICANT INFORMATION

SECTION A: APPLICANT INFORMATION

Property Information:

TMS Number: 41-0128-032-61-00 (a portion) and 41-0129-02-00-00 (a portion)
(Include all affected parcels)

Street Address: 1508 South Waccamaw Drive

City / State / Zip Code: Garden City Beach, South Carolina 29576



See - \$ 262.50

Lot / Block / Number: Tract 3, Marlin Quay

Existing Use: Marina Retail Store and Restaurant

Proposed Use: Marina Retail Store and Restaurant

Commercial Acreage: Less than .5 Acres

Residential Acreage: _____

Property Owner of Record:

Name: Palmetto Industrial Development, LLC

Address: 611 West Palmetto Street, Suite B

City/ State/ Zip Code: Florence, South Carolina 29501

Telephone/Fax: 843-235-6747 (Attorney for Owner)

E-Mail: marklawhon@gmail.com

Signature of Owner / Date: _____

Contact Information:

Name: Dr. Mark Lawhon

Address: 611 West Palmetto Street, Suite B, Florence South Carolina 29501

Phone / E-Mail: 843-235-6747 (Attorney for Owner) / marklawhon@gmail.com

I have appointed the individual or firm listed below as my representative in conjunction with this matter related to the Planning Commission of proposed new construction or improvements to the structures on my property.

Agent of Owner:

Name: Daniel W. Stacy, Jr., Esquire

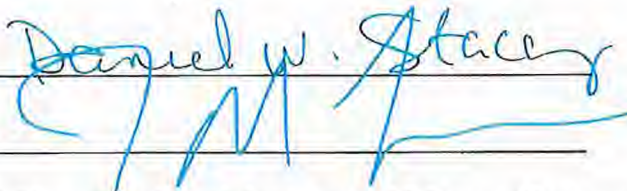
Address: 90 Wall Street / Unit B

City / State / Zip Code: Pawleys Island, South Carolina 29585

Telephone/Fax: 843-235-6747 / 843-235-6650

E-Mail: dstacy@oxnerandstacy.com

Signature of Agent/ Date:



Signature of Owner /Date:



Fee Schedule: \$250.00 plus \$10.00 per Residential acre or \$25.00 per Commercial acre.

Adjacent Property Owners Information required:

1. The person requesting the amendment to the Zoning Map or Zoning Text must submit to the Planning office, at the time of application submittal, stamped envelopes addressed with name of each resident within **Four Hundred Feet (400)** of the subject property. The following return address must appear on the envelope: **"Georgetown County Planning Commission, 129 Screven St. Suite 222, Georgetown, SC 29440."**
2. A list of all persons (and related Tax Map Numbers) to whom envelopes were addressed to must also accompany the application.

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with the applicant.

Please submit this **completed application** and appropriate **fee** to Georgetown County Planning Division at 129 Screven St. Suite 222, Georgetown, S. C. 29440. If you need any additional assistance, please call our office at 843-545-3158.

Site visits to the property, by County employees, are essential to process this application. The owner\applicant as listed above, hereby authorize County employees to visit and photograph this site as part of the application process.

A sign will to be placed on your property informing residents of an upcoming meeting concerning this particular property. This sign belongs to Georgetown County and will be picked up from your property within five (5) days of the hearing.

All information contained in this application is public record and is available to the general public.

SECTION B: SETBACK AMENDMENT

Please supply the following information regarding your request:

- List any extraordinary and exceptional conditions pertaining to your particular piece of property. _____

-
- Do these conditions exist on other properties elsewhere in the PD?
-

- Amending this portion of the text will not cause undue hardship on adjacent property owners. _____

Submittal requirements: 12 copies of 11 x 17 plans

- A scaled site plan indicating the existing conditions and proposed additions.
- Elevations of the proposal (if applicable).
- Letter of approval from homeowners association (if applicable).

SECTION C: SIGNAGE AMENDMENT

Reason for amendment request: _____

Number of signs existing currently on site _____

Square footage of existing sign(s) _____

Number of Proposed signs: _____

Square footage of the proposed sign(s) _____

Submittal requirements:

- Proposed text for signage requirements.
- 12 copies (11 x 17) of proposed sign image.
- Site plan indicating placement of the proposed sign(s).
- Elevations.
- Letter from POA or HOA (if applicable)

SECTION D: SITE PLAN AMENDMENT

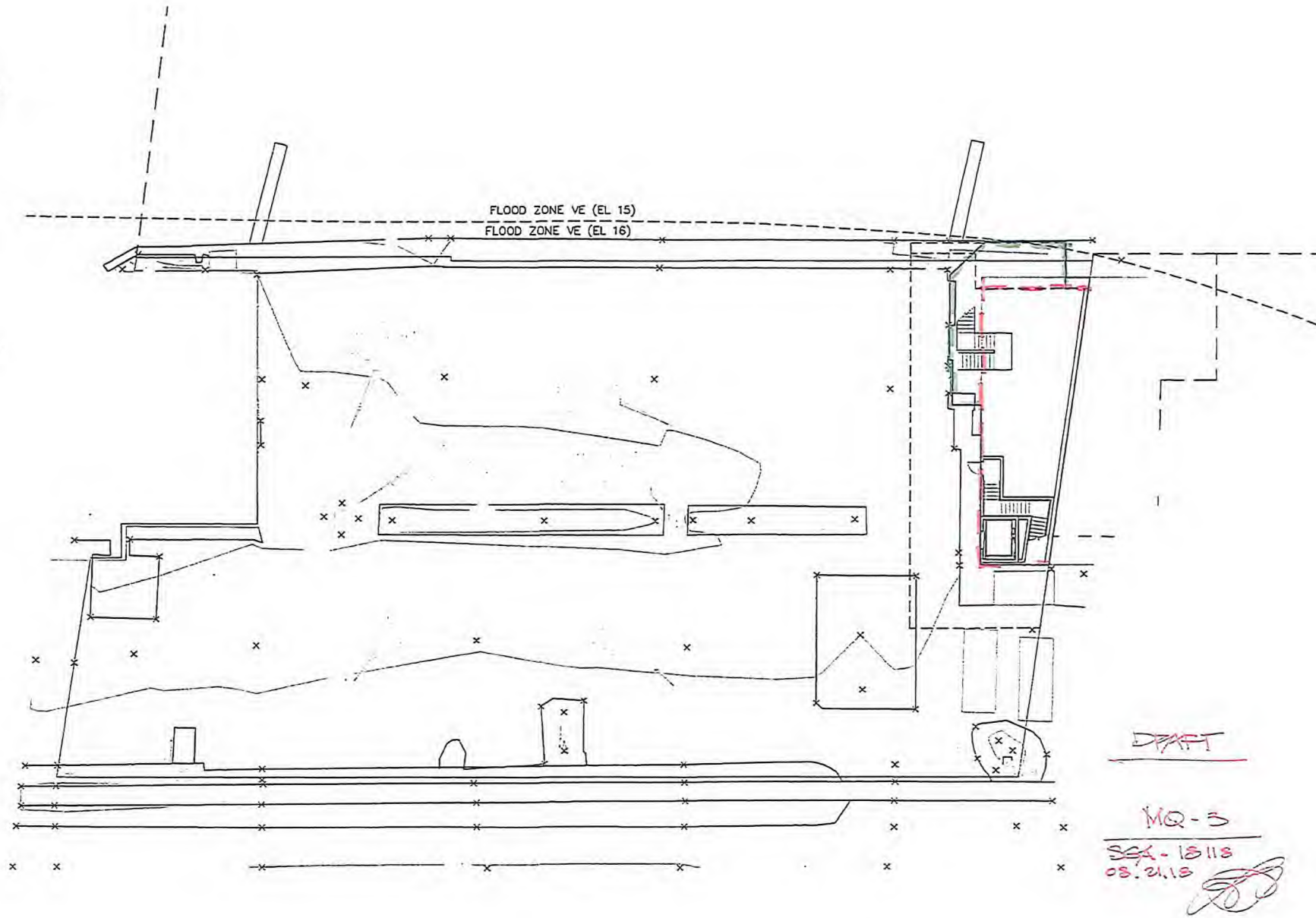
Proposed amendment request: Per Separate litigation, a court has ordered that the site plan approved by Planning Commission and County Council cannot be built, and the applicant has to rebuild wholly within the footprint of the building that existed prior on this site. This change is to bring the site into compliance with said Court Order.

Reason for amendment request: Site plans attached to application, revised calculation to follow under separate cover.

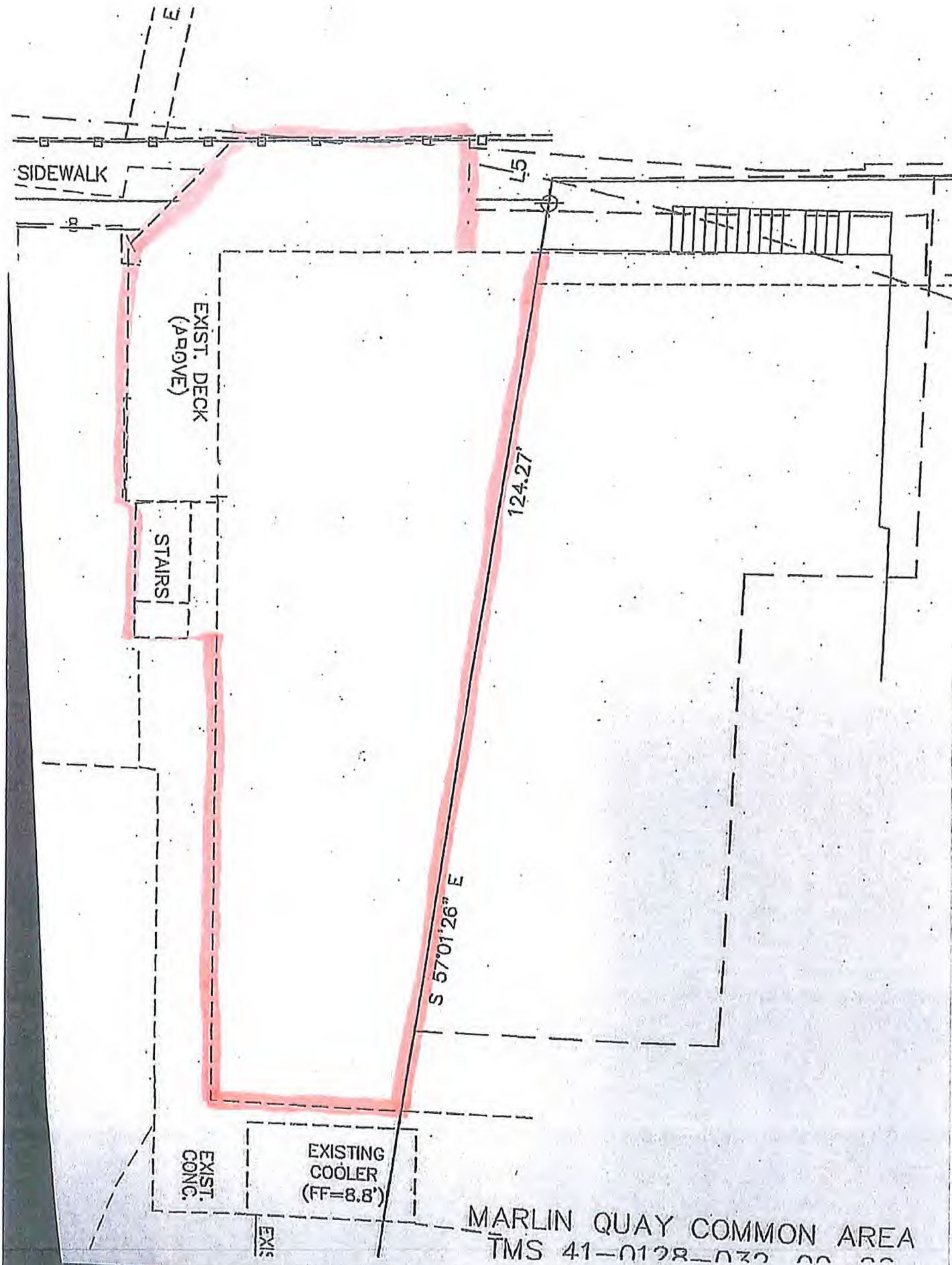
Submittal requirements:

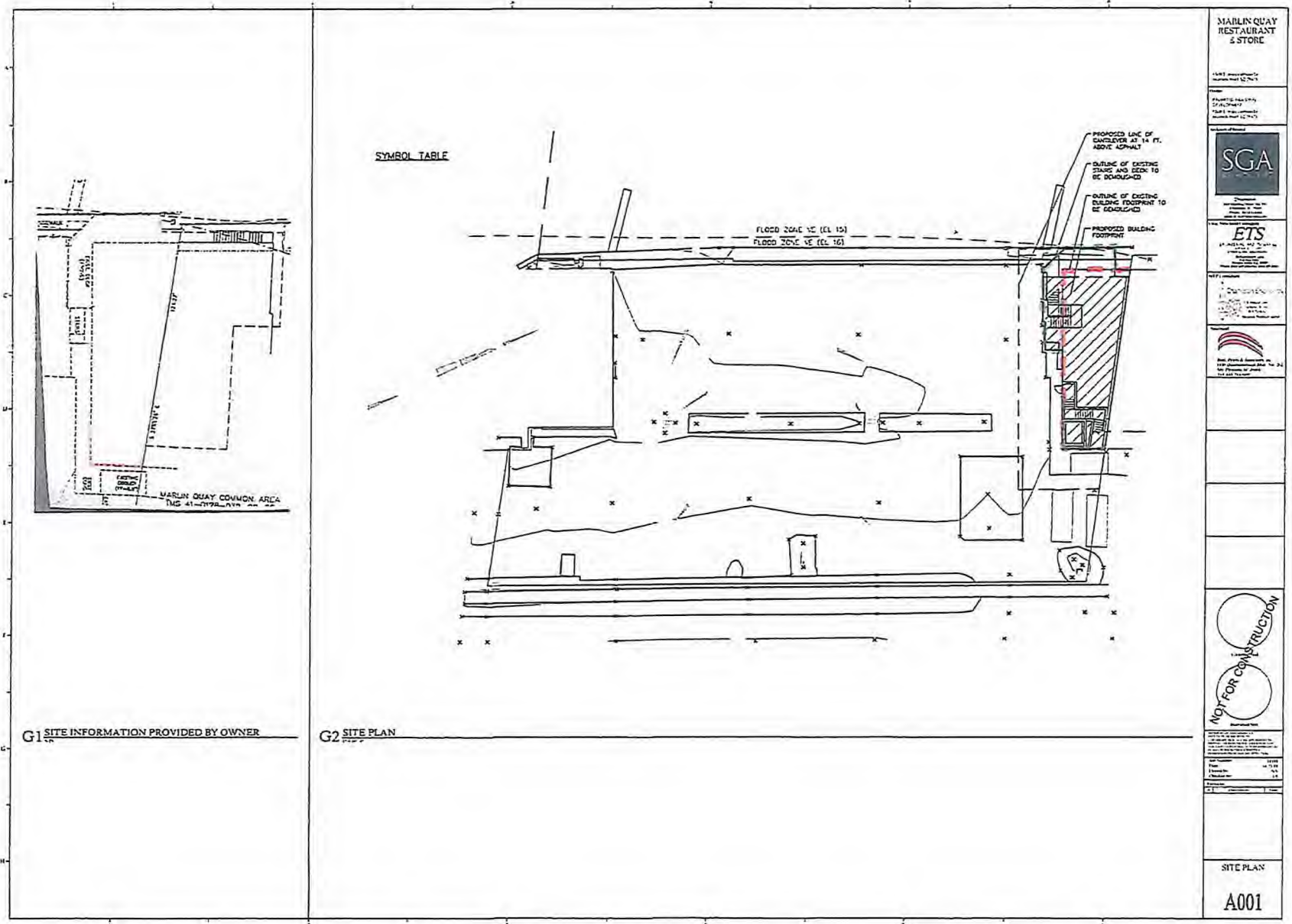
- 12 copies of existing site plan.
- 12 copies of proposed site plan.
- Revised calculations (*calculations may include density, parking requirements, open space, pervious/impervious ratio, etc.*).

SYMBOL TABLE



DEFS 00006





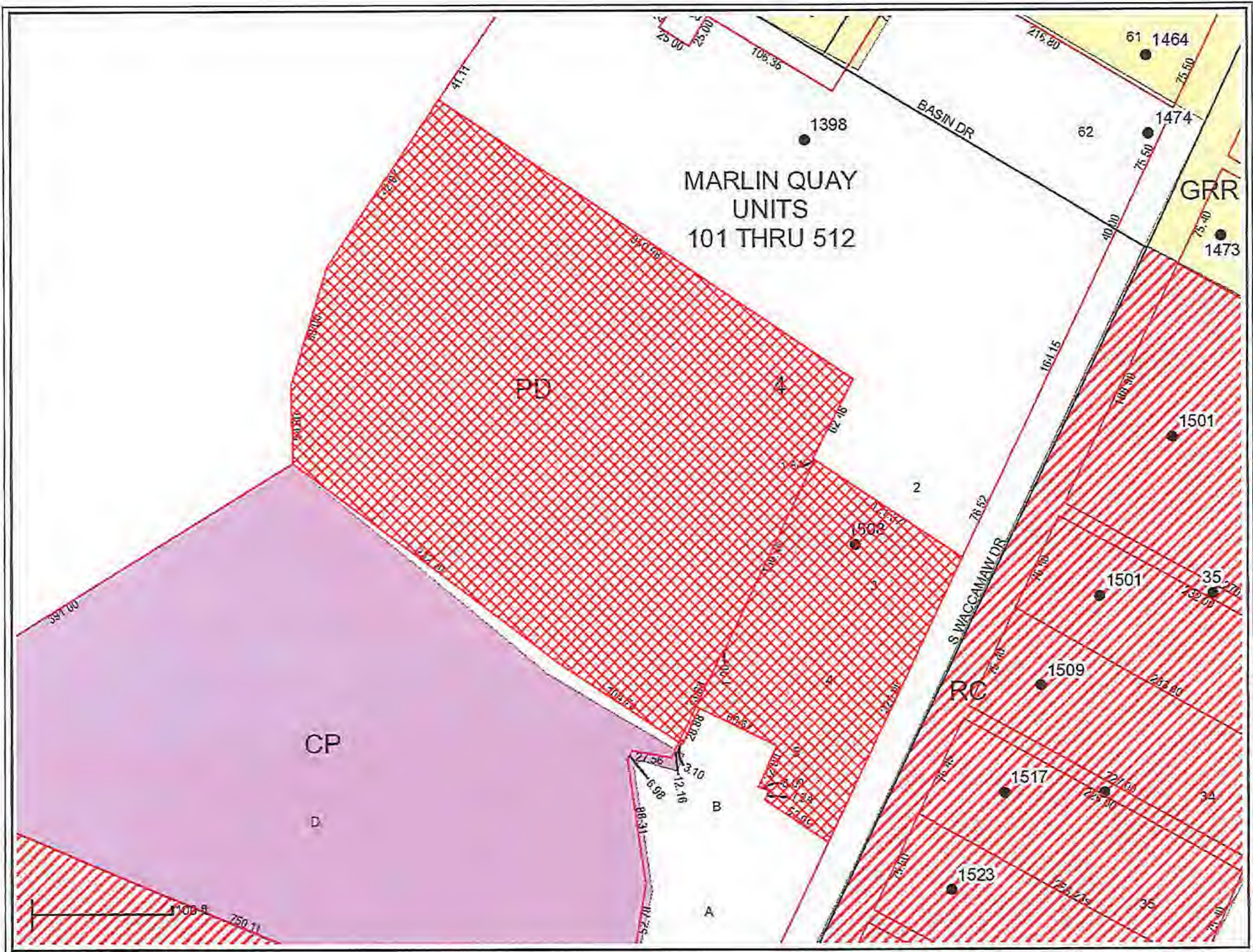
DEFS 00008

Selected Lot Lines Feature

PLAT	6-214
TMS	41-0129-002-00-00
OBJECTID	44378
editdate	
Shape.STLength()	
editdate	
GlobalID	{03273CD1-5B3F-4C58-91FC-A2774073A507}
sde.SDE.parcelpoly2017.Area	26063.26794434
created_user	
created_date	
last_edited_user	
last_edited_date	
Legal	LTS 3, 4 & 5, BLK C SOUTH POINT A/K/A TRACT 3
TMS	41-0129-002-00-00
Street Number	1508
Acreage	1
Date	2014-08-19 20:00:00
Sale	800000
Legal Ref	2421-267
Location	SOUTH WACCAMAW DR
Owner	PALMETTO INDUSTRIAL DEVELOP LLC
Owner 2	
Address1	611 WEST PALMETTO STREET
Address2	
City	FLORENCE
State	SC
Zip	29501

Selected Lot Lines Feature

PLAT	06-214
TMS	41-0128-032-61-00
OBJECTID	44377
editdate	
Shape.STLength()	
editdate	
GlobalID	{40423107-2289-4752-8A88-54A232ADFFC7}
sde.SDE.parcelpoly2017.Area	102775.00720215
created_user	
created_date	
last_edited_user	
last_edited_date	
Legal	YACHT BASIN Boat Docks
TMS	41-0128-032-61-00
Street Number	
Acreage	1
Date	2014-08-19 20:00:00
Sale	800000
Legal Ref	2421-267
Location	BASIN DR
Owner	PALMETTO INDUSTRIAL DEVELOP LLC
Owner 2	
Address1	611 WEST PALMETTO STREET
Address2	
City	FLORENCE
State	SC
Zip	29501



DEFS 00011





GEORGETOWN COUNTY PLANNING COMMISSION**DATE:** October 18, 2018**AGENDA ITEM:** A request from Dan Stacy, as agent for Dr. Mark Lawhon of Palmetto Industrial Development, LLC to amend the Marlin Quay Planned Development to allow for the redevelopment of the Marlin Quay Marina Store/Restaurant. The property is located at 1508 S. Waccamaw Drive in Murrells Inlet. TMS 41-0129-002-00-00. Case Number AMPD 9-18-21424.**CURRENT STATUS:** On February 27, 2018, County Council approved an ordinance amending the Marlin Quay Planned Development to allow for a redevelopment of the marina store/restaurant (Ordinance 2018-03). The ordinance allowed for 4,598 heated square feet for the new structure, 62 parking spaces for the site, a 45 foot height limit and a seating capacity of 110. Prior to Council action, the Zoning Board of Appeals also ruled twice on this issue after an appeal of Staff's decision to treat the issuance of a permit for the new structure as a minor change by the Gulfstream Café Inc. The ZBA ruled in favor of staff. The ZBA decision was appealed to Circuit Court and the County won the appeal.

The project has been in litigation since the Council approval. A court has ordered that the site plan approved in February 2018 by Council cannot be built. The applicant is required to build wholly within the footprint of the building that was previously located on the site. The purpose of this new request is for a new structure (MQ3) to bring the site into compliance with the court order.

ISSUE UNDER CONSIDERATION: Dan Stacy of Oxner and Stacy, as agent for Palmetto Industrial Development, LLC, applied to amend the Marlin Quay PD as a major change to allow for redevelopment of the marina store and restaurant. The submittal included a new site plan as well as a request regarding the roof pitch for the proposed building.**POINTS TO CONSIDER:**

1. The Marlin Quay PD is located on the west side of South Waccamaw Drive, south of Basin Drive in Garden City. The PD was approved in July of 1982 for condominiums, a restaurant and a marina. No setbacks were provided. The PD was amended numerous times to include additional uses and amendments to the original layout.
2. Prior to November of 2016 the Marlin Quay Marina Restaurant and Store were located on the property line between TMS 41-0129-002-00-00 which they own and TMS 41-0128-032-00-00 owned by the Marlin Quay Homeowners Association. The property owner had a long term lease for the section of their building on the condo association property. The owner inquired about demolishing the existing building in order to reconstruct a new building wholly on the owner's property. After significant negotiations with the condo HOA, their board agreed to allow the demolition. A demolition permit was issued on November 1, 2016. According to an email from the property owner's representative, the



Marlin Quay Marina PD
 New restaurant/marina store
 AMPD 9-18-21424
 Page 1 of 4

DEFS 00156

building contained a total of 4,603 square feet at that time. The current submittal (MQ3) is the third version of a plan to reconstruct this building.

3. The current request is for a building containing a restaurant and a marina store. The amount of heated square footage has not changed. The area for the restaurant has decreased slightly, the area for the marina has increased and the unheated storage area has decreased. The proposed heated square footage is less than the original 4,603 SF for the original building that was demolished. A comparison of the square footage amounts between this proposal (MQ3) and the previous proposal that was approved by Council in February 2018 (MQ2) are shown below:

	MQ2	MQ3	Change
• Total Restaurant HEATED	2641	2630	↓11 SF
• Total Restaurant UNHEATED	2994	2943	↓51 SF
• Total Marina/Retail HEATED	1955	1966	↑11 SF
• Total Marina/Retail UNHEATED	1004	1224	↑220 SF
• Total Storage UNHEATED	1794	1159	↓635 SF
Total HEATED	4,596	4,596	No change
Total UNHEATED	5,792	5,326	↓466 SF
Total HEATED & UNHEATED	10,388	9,922	↓466 SF

4. The parking layout for the site will not be changed. Like the previous plan for MQ2, the current plan shows three additional compact spaces to be located underneath the proposed building. The site contains a total of 62 spaces. This exceeds the Zoning Ordinance requirement of 51 spaces for the proposed building. The parking lot is also used by the Gulf Stream Café and the marina.
5. The amount of pervious/impervious space on the site will not be affected. The County's Stormwater Department did not require a review of the redevelopment based on the lack of increased impervious space.
6. Part of the Council approval from February 2018 included a condition that the building for MQ2 not exceed the seating capacity of the original building which according to the applicant was 110 seats. Plans from the applicant indicate that MQ3 will also not exceed 110 seats.
7. The PD was originally approved with a 60 foot height limit for condominiums and a 35 foot height limit for commercial uses. The property is located in a VE-16 flood zone.

The previous building did not meet current flood requirements. Any new structure must be elevated to meet the County's flood ordinance requirements.

Since the applicant's last submittal for MQ2, the County's requirements for maximum height in a Planned Development have changed. Previously, the ordinance limited the height in a flood zone to 45 feet. This was in conflict with the current Article VIII Exceptions which allows for differing heights in a flood zone based on the BFE (base flood elevation). The PD ordinance has since been changed to state that "the height limits established elsewhere in the ordinance shall not be exceeded" (Section 619.4, Ordinance 2017-24).

Section 806 requires that structures in the Flood Zone V are allowed a maximum height of 35 feet as measured from the BFE to the midpoint of the roof, plus an additional three feet to allow for the FEMA-required floor system. For this particular site, the total allowed height is 38 feet from the BFE or a total height of 47 feet based on the ground elevation of 7 feet. The proposed plan meets this requirement.

Section 806 also includes a statement that structures in a V zone that exceed 35 feet utilize a roof pitch not less than 4/12. The proposed building contains a flat roof in order to maximize the useable space between the BFE and the roof. The applicant has requested that this Planned Development not include the provision requiring a roof pitch of 4/12 or greater.

FINANCIAL IMPACT: Not applicable

OPTIONS:

1. Recommend approval as requested by applicant.
2. Recommend approval as amended by Planning Commission
3. Defer for 30 days pending further requested information.
4. Recommend denial of request.

STAFF RECOMMENDATION:

Staff recommends approval for this request for redevelopment of the site and an amended roof pitch based on the proposed replacement of an existing use/structure with one that complies with current flood ordinance requirements and the resolution of the issue of having a building located over a property line.

ATTACHMENTS:

1. Application and attachments
2. Proposed site and building plans

3. GIS Location map
4. GIS Zoning map
5. GIS aerial map
6. Adjacent Property Notice

Boyd Johnson
Director
Planning and Code Enforcement

Public Notification Information:

Date Advertised: 10-3-18 (Georgetown Times) 10-4-18 (Coastal Observer)
Date Property Posted/By: 10-2-18 Kristal Infinger
Date of Notification: 9-24-18 Number Notified: 23

Case Number/Staff Contact: AMPD 9-18-21424/Holly H. Richardson
Report Completion Date: 10-11-18 Revision Date:



Georgetown County Planning Commission
129 Screven Street
Georgetown, SC 29440
October 18, 2018
County Council Chambers

MEMBERS PRESENT

Johnny Weaver
Robert Davis
Zach Grate
Elizabeth Krauss
Norma Grant
Freddie Hill

OTHERS PRESENT

Boyd Johnson
Tiffany Coleman
Judy Blankenship

MEMBERS ABSENT

The Chairperson called the meeting to order at 5:33 pm.

I. ELECTION OF VICE-CHAIRMAN

Mr. Weaver made a motion to elect Mr. Freddie Hill as Vice-Chairman. The motion was seconded by Mr. Davis.

In Favor: Mr. Hill
Mr. Weaver
Ms. Grant
Mr. Davis
Mrs. Krauss

Opposed:

*Note: Mr. Grate did not vote since he arrived late to the meeting.

II. PUBLIC INPUT PERIOD

The Chairperson opened the public input period.

No one came forward to speak.

The Chairperson closed the public input period.

III. PLANNED DEVELOPMENTS

- A. A request from Perry Shelley to amend the Village Green Planned Development to add a drive thru for a new tenant. The property is located at 11405 Ocean Highway in Pawleys Island.

The applicant requested to withdraw.

Mr. Weaver made a motion to approve the withdrawal request. Mr. Hill seconded the motion.

In Favor: Mr. Hill
 Mr. Weaver
 Ms. Grant
 Mr. Davis
 Mrs. Krauss

Opposed:

**Note:* Mr. Grate did not vote since he arrived late to the meeting.

B. A request from Wes Gordon to amend the Hawks Nest Retreat Planned Development to add RV campsites and rental cabins to the single family site designation and to add RV campsites to the outdoor storage designation. The property is located east of Journeys End Road and north of Pond Road in Murrells Inlet.

The applicant requested to withdraw.

Mr. Weaver made a motion to approve the withdrawal request. Mr. Davis seconded the motion.

In Favor: Mr. Hill
 Mr. Weaver
 Ms. Grant
 Mr. Davis
 Mrs. Krauss

Opposed:

**Note:* Mr. Grate did not vote since he arrived late to the meeting.

C. A request from Dan Stacey, as agent for Dr. Mark Lawhon of Palmetto Industrial Development, LLC to amend the Marlin Quay Planned Development to allow for redevelopment of the Marlin Quay Marina Store/Restaurant. The property is located at 1508 S. Waccamaw Drive in Murrells Inlet.

Mr. Boyd Johnson presented the staff report. The current request is for a change in the proposed building containing a restaurant and a marina store. The amount of heated square footage has not changed. The area for the restaurant has decreased slightly, and the area for the marina store has slightly increased. The heated storage area has decreased. The parking layout for the site will not be changed. The amount of pervious/impervious space on the site will not be affected. The previously agreed upon 110 seats for the restaurant will remain the same. The plans indicate a flat roof for the proposed building. Since the ordinance states that a structure exceeding 35 feet utilize a roof pitch of no less than 4/12, the applicant is requesting that this PD not include the provision requiring this roof pitch.

Staff recommended approval of the request for redevelopment of the site and an amended roof pitch based on the proposed replacement of an existing use/structure with one that complies with current flood ordinance requirements and the resolution of the issue of having a building located over a property line.

The Chairperson opened the public input period.

Mr. Dan Stacy, attorney for the applicant, came forward to speak. He stated that this new plan complies with all County ordinances. The proposed structure has the same heated square footage, same restaurant seating and same parking layout as the previously approved structure. He stated that the base floor has been raised as to not interfere with traffic, including delivery trucks. The rooftop bar has been removed since many residents opposed that particular feature in the previously approved plan. He said that the flat roof of the design would not cause detriment to the area since many of the surrounding structures already

have flat roofs. He stated that the wall behind the proposed structure is a fire wall which is required by the fire department since the structure is built on the property line. He further stated that the proposed building complies with the current court order and has no difference in functionality from the previously demolished marina store and restaurant.

Mr. Adam Nugent, attorney for the Gulfstream Cafe, spoke in opposition of the request citing many concerns including: difference in the building plan, an incomplete application submitted by the applicant with no plans which did not meet the 45 day requirement, concerns over violation of the ordinance which prohibits multiple applications within 12 months. He also stated that the proposed parking lot could not support both businesses and that the Planning Commission should not move forward with the request.

Ms. Chris Sanders, a resident of the Marlin Quay condos, spoke in opposition of the request. She expressed concerns over increased noise and traffic. She also stated that the fire wall would block views from the condos. She questioned the allowable occupancy numbers and the 110 seats for the restaurant.

Mr. Greg Greenbaum, owner of the Gulfstream Café, spoke in opposition of the request. He stated that the business relationship between the two neighbors would never be friendly. He stated that his main issue is with the parking. In his opinion, the proposed parking could not support both businesses. He also stated that since previous requests from other businesses in the area for flat roofs had been denied, this request should also be denied.

Mr. Dan Stacy, attorney for the applicant, came forward to offer rebuttal. In order to address the question of maximum allowable occupancy, he introduced Mr. Patrick Williams, engineer with ETS. Mr. Williams stated that the building had a 360 person maximum allowable occupancy including staff and patrons. He said that number is determined by the International Building Code based on size of the structure. He further stated that parking is not based on that number.

The Chairperson closed the public input period.

Discussion followed regarding the proposed flat roof and the PD amendment application process.

Mr. Davis asked staff for clarification on allowable seating for the restaurant. Mr. Johnson stated that the previously approved 110 seats would still apply for this request.

Mr. Weaver made a motion to approve the request as submitted by staff including the 47 foot flat roof. Mr. Hill seconded the motion.

In Favor: Mr. Hill
Mr. Grate
Mr. Weaver
Ms. Grant
Mr. Davis
Mrs. Krauss

Opposed:

IV. OTHER BUSINESS

A. Discussion

Planning Commission initializing rezoning in particular neighborhoods in Murrells Inlet.

Mr. Boyd Johnson presented the staff report. Staff would like to study the possibility of rezoning certain areas within Murrells Inlet to better reflect what it is on the ground, address the concerns over multi-family development and conform to the Future Land Use Map. Much of the area is currently zoned General Residential which allows a minimum lot size of 6,000 square feet. However, many of the lots contain much larger square footage and already have single family dwellings. Staff believes much of the area could be rezoned to require larger single family lots without creating many nonconforming existing lots. Staff would write letters to each property owner seeking input and support if needed. Also, area group meetings would be scheduled to ascertain public position before bringing any proposal back to the Planning Commission.

The Planning Commission gave approval to proceed with exploring the possibility of rezoning parts of Murrells Inlet including meeting with certain neighborhoods.

B. Street Names

Mrs. Tiffany Coleman presented the staff report. Two street names were presented for approval: Go Away Lane in the Carvers Bay area and Aaron Lane in Hemingway.

Staff recommended approval of the street names.

Mr. Davis made a motion to approve the street name. The motion was seconded by Ms. Grant.

In Favor: Mr. Hill

Opposed:

Mr. Grate
Ms. Krauss
Mr. Weaver
Ms. Grant
Mr. Davis

C. Attendance Report

The attendance report was approved as submitted.

V. MINUTES SEPTEMBER 2018

Mr. Hill made a motion to approve the minutes. Mr. Davis seconded the motion.

In Favor: Ms. Krauss

Opposed:

Mr. Weaver
Ms. Grant
Mr. Davis
Mr. Grate
Mr. Hill

VI. STATUS REPORT

The status report was approved as submitted.

VII. LETTER OF CREDIT REPORT

The letter of credit report was approved as submitted.

VIII. ADJOURNMENT

Mr. Weaver made a motion to adjourn. The motion was seconded by Mr. Davis. The meeting adjourned at 6:20 pm.

In Favor: Mr. Hill

Mr. Davis

Ms. Krauss

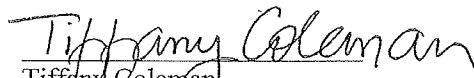
Mr. Grate

Mr. Weaver

Ms. Grant

Opposed:

Respectfully,



Tiffany Coleman

Secretary to Planning Commission

Coversheet

Kayla 843-282-5397

Page 1 of 3

Item Number: 11a
 Meeting Date: 12/11/2018
 Item Type: SECOND READING OF ORDINANCES

AGENDA REQUEST FORM GEORGETOWN COUNTY COUNCIL



DEPARTMENT: Planning / Zoning

ISSUE UNDER CONSIDERATION:

Ordinance No. 2018-40 - An amendment to the Marlin Quay Planned Development to allow for the redevelopment of the Marlin Quay Marina Store/Restaurant.

A request from Dan Stacy, as agent for Dr. Mark Lawhon of Palmello Industrial Development, LLC to amend the Marlin Quay Planned Development to allow for the redevelopment of the Marlin Quay Marina Store/Restaurant. The property is located at 1508 S. Waccamaw Drive in Murrells Inlet. TMS 41-0129-002-00-00. Case Number AMPD 9-18-21424.

Dan Stacy applied to amend the Marlin Quay PD as a major change to allow for redevelopment of the marina store and restaurant. The submittal included a new site plan as well as a request regarding the roof pitch for the proposed building.

CURRENT STATUS:

On February 27, 2018 County Council approved an ordinance amending the Marlin Quay Planned Development to allow for a redevelopment of the marina store/restaurant (Ordinance 2018-03). The ordinance allowed for 4,603 heated square feet for the new structure, 62 parking spaces for the site, a 45 foot height limit and a seating capacity of 110. Prior to Council action, the Zoning Board of Appeals also ruled twice on this issue after an appeal of Staff's decision to treat the issuance of a permit for the new structure as a minor change by the Gulfstream Café Inc. The ZBA ruled in favor of staff. The ZBA decision was appealed to Circuit Court and the County won the appeal.

The project has been in litigation since the Council approval. A court has ordered that the site plan approved in February 2018 by Council cannot be built. The applicant is required to build within the footprint of the building that was previously located on the site. The purpose of this new request is for a new structure (MQ3) to bring the site into compliance with the court order. The litigation primarily involves a parking easement located on Dr. Lawhon's property that is owned by the Gulfstream Café.

POINTS TO CONSIDER:

1. The Marlin Quay PD is located on the west side of South Waccamaw Drive, south of Basin Drive in Garden City. The PD was approved in July of 1982 for condominiums, a restaurant and a marina. No setbacks were provided. The PD was amended numerous times to include additional uses and amendments to the original layout.
2. Prior to November of 2016 the Marlin Quay Marina Restaurant and Store were located on the property line between TMS 41-0129-002-00-00 which they own and TMS 41-0128-032-00-00 owned by the Marlin Quay Homeowners Association. The property owner had a long term lease for the section of their building on the condo association property. The owner inquired about demolishing the existing building in order to reconstruct a new building wholly on the owner's property. After significant negotiations with the condo HOA, their board agreed to allow the demolition. A demolition permit was issued on November 1, 2016. According to an email from the property owner's representative, the building contained a total of 4,603 square feet at that time. The current submittal (MQ3) is the third version of a plan to reconstruct the building.
3. The current request is for a building containing a restaurant and a marina store. The amount of heated square footage has not changed. The area for the restaurant has decreased slightly, the area for the marina has increased and the unheated storage area has decreased. The proposed heated square footage is less than the original 4,603 SF for the original building that was demolished. A comparison of the square footage amounts between this proposal (MQ3) and the previous proposal that was approved by Council in February 2018 (MQ2) are shown below:

	MQ2	MQ3	Change
* Total Restaurant HEATED	2641	2630	11 SF
* Total Restaurant UNHEATED	2904	2943	151 SF
* Total Marina/Retail HEATED	1055	1066	11 SF
* Total Marina/Retail UNHEATED	1004	1224	1220 SF
* Total Storage UNHEATED	1794	1159	1035 SF
Total HEATED	4,596	4,596	No change
Total UNHEATED	5,702	5,320	1466 SF
Total HEATED & UNHEATED	10,388	9,922	1466 SF

EXHIBIT

9

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4. The parking layout for the site will not be changed. Like the previous plan for MQ2, the current plan shows three additional compact spaces to be located underneath the proposed building. The site contains a total of 62 spaces. This exceeds the Zoning Ordinance requirement of 51 spaces for the proposed building. The parking lot is also used by the Gulf Stream Café and the marina. These two uses are not included in the parking requirement of 51 spaces.

5. The amount of pervious/impervious space on the site will not be affected. The County's Stormwater Department did not require a review of the redevelopment based on the lack of increased impervious space.

6. Part of the Council approval from February 2018 included a condition that the building for MQ2 not exceed the seating capacity of the original building which according to the applicant was 110 seats. Plans from the applicant indicate that MQ3 will also not exceed 110 seats.

7. The PD was originally approved with a 60 foot height limit for condominiums and a 35 foot height limit for commercial uses. The property is located in a VE-16 flood zone. The previous building did not meet current flood requirements. Any new structure must be elevated to meet the County's flood ordinance requirements.

Since the applicant's last submittal for MQ2, the County's requirements for maximum height in a Planned Development have changed. Previously, the ordinance limited the height in a flood zone to 45 feet. This was in conflict with the current Article VIII Exceptions which allows for differing heights in a flood zone based on the BFE (base flood elevation). The PD ordinance has since been changed to state that "the height limits established elsewhere in the ordinance shall not be exceeded" (Section 619.4, Ordinance 2017-24).

Section 806 requires that structures in the Flood Zone V are allowed a maximum height of 35 feet as measured from the BFE to the midpoint of the roof, plus an additional three feet to allow for the FEMA-required floor system. For this particular site, the total allowed height is 38 feet from the BFE or a total height of 47 feet based on the ground elevation of 7 feet. The proposed plan meets this requirement.

Section 806 also includes a statement that structures in a V zone that exceed 35 feet utilize a roof pitch not less than 4/12. The proposed building contains a flat roof in order to maximize the useable space between the BFE and the roof. The applicant has requested that this Planned Development not include the provision requiring a roof pitch of 4/12 or greater.

8. Staff recommended approval for this request for redevelopment of the site and an amended roof pitch based on the proposed replacement of an existing use/structure with one that complies with current flood ordinance requirements and the resolution of the issue of having a building located over a property line.

9. Staff noted to the PC the possibility that the owner and opposition may have differing interpretations of the previous court order and that the County could not be placed in a position to interpret such order. Any interpretation would have to come from the court.

10. The Planning Commission held a public hearing on this issue at their October 18, 2018 meeting. The owner of the Gulfstream Café and his attorney both spoke in opposition to the request citing multiple concerns including an incomplete application, the 45 day deadline, multiple applications within a 12 month period and parking issues for the site. A resident of the adjacent Marlin Quay condos also spoke against the request expressing concerns over increased noise, traffic and the proposed firewall that would block views from the condos.

11. The Commission voted 6 to 0 to approve the request as submitted including the 47 foot height with a flat roof. This includes the previously approved seating limit of 110 seats. This provision will supersede any maximum seating limits established by the building and fire codes.

FINANCIAL IMPACT:

Not applicable

OPTIONS:

1. Approve as recommended by PC
2. Deny request
3. Approve an amended request
4. Defer action
5. Remand to PC for further study

STAFF RECOMMENDATIONS:

Approve as recommended by PC

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description

1

- Height goes not to exceed 47.5 ft.
 - 62 parking spaces to be provided with 3 compact spaces under building
 - Not to exceed 47' height limit with flat roof.
 - Seating capacity not to exceed 110

Coversheet

Page 3 of 3

[Ordinance No 2018-40 - An amendment to the Marlin Quay Planned Development to allow for the redevelopment of the Marlin Quay Marina Store/Restaurant](#)

Ordinance

□ [Marlin Quay attachments](#)

Backup Material

ARTICLE XI

OFF-STREET PARKING REGULATIONS

1100. **Intent.** It is the intent of this section to establish standards for the provision of off-street parking facilities throughout the unincorporated area of Georgetown County. These standards will assist in improving the appearance and safety of required parking facilities while promoting desirable development, thereby improving the public health, safety and general welfare of the community.

1101. **General Requirements.** Areas suitable for parking or storing automobiles in off-street locations shall hereafter be required in all districts at the time of initial construction or conversion in use of any principal building which produces or proposes to produce an increase in dwelling units, guest rooms, floor area, seating or bed capacity. Off-street parking facilities shall be provided and maintained in accordance with the following requirements.

1101.1 **Location.** Off-street parking facilities shall be provided on the same lot or parcel as the principal use for which they are required.

1101.2 **Maintenance.** All off-street parking facilities including, but not limited to surfacing, drainage, markings, lighting and landscaping, shall be maintained in a safe, clean and orderly condition at all times, at the expense of the owner, lessee or agent thereof.

1102. **Parking Space Requirements.**

1102.1 **Minimum Parking Space Provisions.** The minimum number of off-street parking spaces to be provided shall be calculated as follows. If the calculation of the required number of parking spaces results in a fractional or decimal number, the number may be rounded up or down to the nearest whole number. *(Amended Ord. 2008-60) (Amended Ord. 2017-05)*

Property Use		Minimum Parking Requirements
Agricultural use	Support activities for agricultural/forestry/animal production	One space per 1,000 sq. ft. of gross floor area
	Nursery farm/Greenhouse, commercial	One space per 1,000 sq. ft. of indoor sales area, plus one space per 5,000 sq. ft. of outdoor sales area, plus one space per company vehicle normally parked on the premises, plus one space per 400 square feet of office space
	Veterinary services, kennel facilities	One space per 500 sq. ft. of gross floor area
	Produce stand or shelter	Four (4) off-street parking spaces
Commercial use	Personal services	
	• Auto repair shop	Three spaces per service bay, not including the service bay itself, plus one space per 300 sq. ft. of interior sales space
	• Beauty parlor, barber shop	One space per 250 sq. ft. of gross floor area
	• Bed and breakfast	One space per guest room, including management living spaces

ARTICLE XI

OFF-STREET PARKING REGULATIONS

	• Car wash, automatic	Five spaces of off-street stacking area per wash bay, plus two spaces per 1,000 sq. ft. of gross floor area
	• Car wash, manual	Three spaces of off-street waiting area per wash bay, plus two spaces per 1,000 sq. ft. of gross floor area
	• Cemetery	Two spaces per acre, distributed evenly throughout the site
	• Coin laundry	One space per 250 sq. ft. of gross floor area
	• Dry cleaner	One space per 250 sq. ft. of gross floor area
	• Hotel, motel (<i>Amended Ord 2009-51</i>)	One and one-half space per guest unit. Plus one space per 400 sq. ft. of office space, plus 50% of the requirement for any associated uses (e.g., restaurants, meeting rooms, banquet)
	• Funeral home	One space per 75 sq. ft. of floor area in public rooms, plus one space per company vehicle normally parked on the premises
	• Repair service, consumer	One space per 500 sq. ft. of gross floor area
	• Travel agency	One space per 250 sq. ft. of gross floor area
	Professional services	
	• General office use	One space per 300 sq. ft. of gross floor area
	• Automated Teller Machine	Two spaces per machine
	• Bank	One space per 250 sq. ft. of gross floor area, plus five spaces of stacking area per drive-in lane
	• Government or public service office	One space per 250 sq. ft. of gross floor area, plus one space per company vehicle normally parked on the premises
	• Clinical or research laboratory	One space per 250 sq. ft. of gross floor area
	• Medical or dental office	One space per 250 sq. ft. of gross floor area
	• Post office	One space per 150 sq. ft. of gross floor area, plus one per post office vehicle
	Recreational use	
	• Arcades and Billiard establishment	One space per 300 sq. ft. of gross floor area
	• Boat landing	Nine spaces per boat ramp
	• Bowling alley	Five spaces per lane, plus 50% of the requirement for any associated uses (e.g., bars, restaurant, games rooms)
	• Fishing pier	One space per eight linear feet of the portion used for fishing The number of spaces required may be reduced by not more than 50% if the pier is an accessory use to a marina or similar use
	• Golf course	Five spaces per hole, plus 50% of the requirement for any associated uses (e.g., restaurants, bars, banquet)
	• Golf driving range	One and a half spaces per tee
	• Health club, fitness center, indoor recreation center	One space per 250 sq. ft. of gross floor area
	• Marina	One space per three wet slips, plus one space per five dry slips, plus one space per employee based on the largest shift
	• Miniature golf course	Two space per hole
	• Public park or garden	Two spaces per acre
	• Recreational vehicle park	One space per recreational vehicle site, plus one space per 400 sq. ft. of office area
	• Sexually-oriented business	One space per 350 sq. ft. of gross floor area
	• Skating rink, ice or roller	One space per 100 sq. ft. of gross floor area
	• Swimming pool	Two spaces per 100 sq. ft. of gross water surface area
	• Tennis, racquetball, squash or handball court	Three and one-half spaces per court

ARTICLE XI

OFF-STREET PARKING REGULATIONS

Property Use		Minimum Parking Requirements
	Theater, auditorium, stadium, indoor or outdoor	One space per 50 sq. ft. of gross floor area
	Retail trade	
	General retail use	Less than 5,000 sq. ft., one space per 200 sq. ft. of gross floor area More than 5,000 sq. ft., one space per 450 sq. ft. of gross floor area
	Auto supply store	One space per 300 sq. ft. of gross floor area
	Convenience store	One space per 200 sq. ft. of gross floor area
	Drug store, pharmacy	One space per 250 sq. ft. of gross floor area
	Equipment rental store	One space per 500 sq. ft. of gross floor area
	Furniture, carpet or appliance store	Two spaces per 1,000 sq. ft. of gross floor area
	Gas station	One space per two pumps
	Grocery store, supermarket	One space per 200 sq. ft. of gross floor area
	Hardware, lumber, building supplies store	One space per 1,000 sq. ft. of gross floor area
	Motor vehicle sales or rental dealer	One space per 2,500 sq. ft. of outside display area, one space per 250 sq. ft. of enclosed indoor sales/rental floor area, plus two spaces per service bay
	Restaurant, fast food	One space per 75 sq. ft. of gross floor area, five spaces of stacking area per drive-through window, plus one space per 150 sq. ft. of outdoor seating area
	Restaurant, standard	One space per 100 sq. ft. of gross floor area plus one space per 150 sq. ft. of outdoor seating area
	Shopping center, mall	Less than 15,000 sq. ft., one space per 200 sq. ft. of net floor area More than 15,000 sq. ft., one space per 250 sq. ft. of net floor area
	Tavern, dance hall, night club, lounge	One space per 100 sq. ft. of gross floor area
	Wholesale trade	One space per 1,000 sq. ft. of gross floor area
Industrial use	General industrial use	One space per the maximum number of employees on-site including both shifts together if shift work is performed, plus five (5) percent of this number. Additionally, one space per company vehicle parked on-site that is not taken home shall be provided. (<i>Amended Ord. 2017-05</i>)
	Junkyard	Two spaces per 5,000 sq. ft. of area devoted to storage (whether inside or outside)
	Manufacturing	One space per the maximum number of employees on-site including both shifts together if shift work is performed, plus five (5) percent of this number. Additionally, one space per company vehicle parked on-site that is not taken home shall be provided. (<i>Amended Ord. 2017-05</i>)
	Self-service storage facility or mini-warehouse	One space per 4,000 sq. ft. of gross floor area, plus three spaces at the office area(<i>Amended Ord 2019-05</i>)
	Truck terminal	Three spaces per 1,000 sq. ft. of gross floor area, plus one space per vehicle normally parked on the premises
	Warehouse	One space per 1,500 sq. ft. of gross floor area
Public and institutional use	Camp, day or youth	One space per camp site, plus one space per camp vehicle normally parked on the premises

ARTICLE XI

OFF-STREET PARKING REGULATIONS

	Church	One space per 50 sq. ft. of floor area of the sanctuary The number of spaces required may be reduced by not more than 50% if the place of worship is within 500 ft. of any public or commercial parking lot where sufficient spaces are available by permission of the owners without charge during the time of services to make up the additional spaces required
	Community or recreation center	One space per 250 sq. ft. of gross floor area
	Correctional institution	One space per 25 inmates, plus one space per 400 sq. ft. of office space
	Daycare center, nursery school	One space per six children
	Fire or police station	Four per 1,000 gross feet of floor area
	Hospital	Two and one-half spaces per patient bed
	Library, museum, art gallery	One space per 300 sq. ft. of gross floor area
	Monastery, convent	One space per five residents
Property Use		Minimum Parking Requirements
	Nursing home, convalescent home, adult residential care center	One space per three beds plus administrative offices
	Private club (fraternal, religious, etc.)	One space per 150 sq. ft. of gross floor area
	School	
	• Elementary and junior high school	Two spaces per classroom plus administrative offices
	• Senior high school	Two spaces per classroom plus administrative offices, plus one space per five students
	• College, university	One space per 110sq. ft. of classroom, plus one space per 300 sq. ft. of office/administrative space, plus one space per 3 beds in campus housing
Residential use	• Vocational, commercial or trade school	One and a half spaces per classroom and administrative offices, plus one space per three students
	Single-family detached dwelling	Two spaces per dwelling unit
	• In RR zoning district	One space per dwelling unit
	• In GRR zoning district-dwellings with more than four bedrooms	One space per bedroom
	Duplex dwelling	Two spaces per dwelling unit
	Elderly or retirement housing	0.75 spaces per 1 BR unit; 1.0 space per 2 BR unit; and 1.5 spaces per 3 BR and larger units
	Adult/child Group Home Facility	One space per two beds plus administrative offices
	Mobile home, modular home	Two spaces per dwelling unit
	Multi-family dwelling, apartment dwelling	1.25 spaces per studio dwelling unit; 1.5 spaces per 1 BR dwelling unit; 2 spaces per 2 or 3 BR dwelling unit; and 2.5 spaces per 4 BR or larger dwelling units.
	Boarding Home	One space per rental room, plus one for each employee

- 1102.2 Reduction in Spaces Allowed for Large Uses. (Amended Ord. 2008-60) The number of off-street parking spaces required for large uses (more than 7,500 square feet in size) may be reduced by not more than twenty (20%) percent on the basis of such data as shared parking, ride sharing programs, provision of public transit, or other acceptable provisions or standards, subject to review by the Planning Commission and approval by County Council, provided the following requirements are met:

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

1102.201 The applicant shall enter into a written agreement with the County to provide the additional parking spaces in the future should it be determined that the total required parking spaces are necessary to satisfy the needs of the particular use pursuant to the standards imposed by this Ordinance.

1102.202 The applicant shall be required to reserve sufficient area to ensure the provision of the additional parking spaces as may be required in the future. The reserved parking area shall not include areas that would otherwise be unsuitable for parking spaces due to the physical characteristics of the land or other requirements of this Ordinance.

1102.3 Shared and Mixed Uses. (*Amended Ord. 2008-60*) If there is more than one principal use in the same building or premises, off-street parking may be provided collectively in the same facility, such that the total number of spaces shall equal the sum of the required spaces for each use calculated separately. The parking spaces provided for one use shall not be used to satisfy the required number of spaces for another.

Cumulative parking requirements for mixed-use occupancies may be reduced where it can be determined by the Zoning Administrator that the peak requirements of the several occupancies occurs at different times (either daily or seasonally), and the parking demand can be provided on the premises. The number of parking spaces required is determined by totaling the resulting numbers in each column; the column total that generates the highest number of parking spaces then becomes the parking requirement.

SHARED PARKING FACTORS:

	Weekday Daytime: 6:00 a.m. to 6:00 p.m. (%)	Weekday Evening: 6:00 p.m. to midnight (%)	Weekend Daytime: 6:00 a.m. to 6:00 p.m. (%)	Weekend Evening: 6:00 p.m. to midnight (%)	Nighttime: Midnight to 6:00 a.m. (%)
Residential	60 %	90 %	80 %	90 %	100 %
Office/industrial	100 %	10 %	10 %	5 %	5 %
Retail	60 %	90 %	100 %	70 %	5 %
Hotel, motel, inn	75 %	100 %	75 %	100 %	75 %
Restaurant	50 %	100 %	100 %	100 %	10 %
Entertainment, theater/commercial recreational	40 %	100 %	80 %	100 %	10 %

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

establishments					
Church	10 %	30 %	100 %	30 %	5 %
School	100 %	30 %	30 %	10 %	5 %
All other uses	100 %	100 %	100 %	100 %	100 %

The minimum total required number of parking spaces for land or building shall be determined by the following procedure for shared parking:

- (1) Multiply the minimum parking requirement for each individual use as set forth in section 1102.1 by the appropriate percentage as set forth in the table above for each of the five designated time periods.
- (2) Add the resulting sums for each of the five vertical columns in the table.
- (3) The minimum parking requirement is the highest sum among the five columns resulting from the calculation in this section.

1102.4 Change or Expansion of Use. Any change in the use of an existing building or premises shall require compliance with the minimum parking requirements applicable to the new use. Any expansion of an existing use shall be required to provide additional off-street parking related to the expansion area only, and shall not be required to provide additional off-street parking related to the existing use.

1102.5 Uses Not Listed. For specific property uses not listed, the unit of measurement for the use that is deemed to be most similar to the proposed use shall be applied, as determined by the Zoning Administrator. Such determination by the Zoning Administrator shall be in writing and shall be appealable to the Zoning Board of Appeals.

1103. **Design Standards.**

1103.1 Dimensions.

1103.101 Parking Spaces. All required parking spaces shall be not less than nine (9) feet in width and eighteen (18) feet in length, exclusive of any access drives, aisles or columns and shall have a vertical clearance of not less than six (6) feet, six (6) inches, with the exception of the following:

1103.1011 Compact Spaces. Not more than twenty (20%) percent of the total number of required parking spaces may be designated as spaces for compact vehicles. Such spaces shall be not less than eight (8) feet, six (6) inches in width and sixteen (16) feet in length, and must be clearly marked as compact spaces by way of signs and/or surface markings.

1103.1012 Parallel Parking Spaces. Parallel parking spaces shall be not less than nine (9) feet in width and twenty-four (24) feet in length.

1103.102 Aisles. The width of all driving aisles between parking spaces shall be determined as follows. The angle shall be measured between the centerline of the parking space and the centerline of the aisle.

Parking Angle	Minimum Driving Aisle Width
90°	24 feet
60°	18 feet
45°	16 feet
Parallel	12 feet
Aisle without parking	20 feet

Note: Two-way drive aisles shall always require a minimum width of 24 feet
(Amended Ord. 2008-60)

1103.2 Surfacing. All required off-street parking facilities, except for those associated with single family detached dwellings, and all off-street loading areas shall be covered with an all weather surface material, such as concrete, asphalt, gravel, compacted crushed stone, compacted shell, porous paving blocks, or other material approved by the Zoning Administrator. (Amended Ord. 2008-60)

1103.201 Not less than twenty-five (25%) percent of the total parking area shall be covered with a pervious surface material, including, but not limited to, landscaped areas.

1103.202 Loose material surfaces shall be contained with a permanent edging.

1103.203 Parking facilities containing ten (10) or more parking spaces shall have surfaces marked by way of painted lines, curbs or other means to delineate individual parking spaces.

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

1103.3 Access. Entrances and exits to off-street parking areas shall be designed so as not to obstruct or hinder the free flow of traffic or pedestrians on adjacent streets or walkways. Parking facilities shall be designed such that all movement of vehicles from the parking area onto the street is in a forward motion.

1103.301 Any property with a frontage of not less than fifty (50) feet on an adjoining street or roadway shall have one point of access from the adjoining street.

1103.302 Where a property has frontage on two separate streets, one point of access may be permitted from each of the adjoining streets, provided that safe and adequate vision clearance can be maintained from each access point.

1103.3021 Where a property has frontage on two separate streets and the owner agrees to provide access from the secondary street only, the number of parking spaces required may be reduced by not more than twenty (20%) percent, subject to the provisions specified in Sections 1102.3.1 and 1102.3.2.

1103.303 Where a property has frontage of five hundred (500) feet or more, a second point of access from the adjoining street may be permitted, provided that the distance between the points of access, and between any adjacent points of access, can be established as follows. The distance shall be measured between the centerlines of the driveways.

Operating Speed of Adjoining Street	Minimum Distance Between Points of Access
30 mph or less	100 feet
35 mph	150 feet
40 mph	200 feet
45 mph	250 feet
50 mph	300 feet
55 mph or above	350 feet

1103.3031 Where a property has frontage of five hundred (500) feet or more on an arterial or collector street and also has frontage on a secondary street, the second point of access shall be provided from the secondary street only.

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

- 1103.304 Where adjoining property owners agree to provide access to their respective properties through a single mutual point of access, the number of parking spaces required for each property may be reduced by not more than twenty (20%) percent, subject to the provisions specified in Sections 1102.301 and 1102.302.
- 1103.305 Where undeveloped parcels of land are subdivided into smaller lots having frontage on an arterial or collector street, access shall be determined based on the frontage of the original lot. All lots from the original parcel shall be accessed from the same access point(s), so as to minimize the number of curb cuts required in the adjoining street.
- 1103.4 Landscaping. To mitigate the impacts of noise, glare, pollution or other nuisances generated, as well as to enhance the appearance and ecology of the site and surrounding area, in any off-street parking facilities containing ten or more parking spaces not less than ten (10%) percent of the total parking area shall be landscaped with living natural material.
- 1103.401 To screen adjoining land uses or streets from undesirable views, not less than fifty (50%) percent of any required landscaping shall be located around the outside perimeter of the parking facility, between the parking surface and the front and/or side property lines.
- 1103.402 To soften the visual impact of large paved surfaces and to define internal traffic circulation, not less than fifty (50%) percent of any required landscaping shall be located within the interior of the parking area.
- 1103.4021 Landscaped spaces within the interior of a parking facility shall be not less than 9 feet in width and 18 feet in length and shall contain not less than one tree from the protected tree list found in Appendix A of this ordinance. Trees shall be a minimum of two (2) inch caliper in size. (*Amended Ord. 2010-24*)

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

1103.4022 All landscaped spaces adjacent to parking spaces shall be protected by raised curbs with curb cuts to allow for drainage for stormwater runoff, wheel stops or equivalent barriers not less than six (6) inches in height. No plant material greater than twelve (12) feet in height shall be located within two (2) feet of the curbing or barrier. *(Amended Ord. 2010-24)*

1103.5 Lighting. All off-street parking facilities shall be adequately lit during any nighttime business hours of the principal use for which the parking facilities are required. All light sources within parking facilities shall be white or off-white in color and shall be concealed or shielded so that no light is directed toward adjacent streets or properties.

1103.6 Drainage. All off-street parking facilities shall be designed so as to ensure the adequate drainage of storm water and to minimize run off from the site. Parking facilities shall not drain into or across public sidewalks, or onto adjacent property except if into an existing natural watercourse or drainage easement.

1104. **Special Provisions.**

1104.1 Parking Spaces for Handicapped Persons. The parking standards of this Section are intended to ensure compliance with the Americans with Disabilities Act. Where off-street parking is required for any use, with the exception of residential dwellings with less than twenty (20) units, parking spaces for handicapped persons shall be included in the overall parking requirements as follows. *(Amended Ord. 2008-60)*

Total number of off-street parking spaces required	Number of parking spaces required for handicapped persons
Up to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
Over 500	2% of total number required

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

1104.101 Location. Parking spaces for handicapped persons shall be located as close as possible to ramps, walkways and entrances. The spaces shall be positioned such that a handicapped person need not wheel or walk behind parked vehicles in order to reach the ramp, walkway or entrance.

1104.102 Dimensions. Parking spaces reserved for handicapped persons, shall be a minimum of eight feet wide by 18 feet long with an adjacent parallel access aisle five feet wide. The adjacent parallel access aisle may be shared by two accessible parking spaces. One in every eight accessible spaces, but no less than one, shall have an access aisle of eight feet wide (rather than five feet) and shall be marked with a sign "van accessible". All handicapped parking spaces shall be clearly marked as such reserved spaces by way of signs and/or surface markings. *(Amended Ord. 2008-60)*

1104.2 Off-Street Loading Areas. In all zoning districts, whenever the normal operation of any building or premises that is to be occupied by any business, industry, trade, hotel, hospital, or multi-family residential use containing ten or more residential units, requiring goods, merchandise or equipment to be delivered, off-street loading areas shall be provided as follows. Off-street loading areas shall not be used to satisfy parking area requirements, nor shall any parking areas be used to satisfy loading area requirements. *(Amended Ord. 2008-60)*

Gross Floor Area of Building	Number of Loading Spaces Required
0 to 25,000 sq. ft.	1
25,001 to 50,000 sq. ft.	2
50,001 to 100,000 sq. ft.	3
100,001 to 150,000 sq. ft.	4
Over 150,000 sq. ft.	4 plus 1 for each additional 75,000 sq. ft. above 150,000 sq. ft.

1104.201 Location. Off-street loading areas shall be located on the same lot or parcel of land as the structure or use they are intended to serve shall be designed such that any vehicles using them can maneuver them safely from the adjoining street and complete all loading and unloading operations without obstructing or hindering any street, parking area or walkway. No loading area shall be located in a required front yard. *(Amended Ord. 2008-60)*

1104.202 Dimensions. All required loading spaces shall be not less than twelve (12) feet in width and forty (40) feet in length and shall have a vertical clearance of not less than fourteen (14) feet.

ARTICLE XI**OFF-STREET PARKING REGULATIONS****1105. Completion of Parking and Loading Required Prior to Issuance of Occupancy Permit (Amended Ord. 2008-60)**

- 1105.1 No permit shall be issued for the occupancy of any building hereafter erected, located, reconstructed, enlarged, converted or altered, or of any premises of which is used changed, until the parking spaces and off-street loading spaces required have been properly marked and are ready for use.

1106. Use of Off-Site Parking (Amended Ord. 2012-07)

- 1106.1 It is not the intent of this section to reduce the amount of parking a business needs. It is the intent to recognize that situations exist that present an opportunity for a business to utilize off-site parking in a manner that creates no problems for the surrounding area. In these situations, the parking function works just as well as if it was on-site and environmental enhancements can be achieved by reducing impervious surfaces and sharing any excess capacities a neighbor may have.
- 1106.2 A business in a commercially zoned district, including planned developments, may utilize off-site parking to meet the minimum required by the Zoning Ordinance with either or both of the following means:
- 1106.201 Off-site parking that is used by customers or employees, and is to count toward the minimum required by the County, as self-park must be located no further than five hundred (500) feet from the entrance to the commercial building. This measurement is taken by use of a straight line from the building entrance to the edge of the off-site parking.
- 1106.202 Off-site parking located further than five hundred (500) feet may be utilized if valet service or a shuttle service is provided.

ARTICLE XI**OFF-STREET PARKING REGULATIONS**

- 1106.3 For both scenarios above, if the off-site land to be used for parking is not owned by the new business, a binding contract or other legal means obligating the land for parking must be executed and presented to the Planning Department of approval. The County Planning Department along with the County legal staff shall review these contracts every January. In the event the off-site parking is no longer under contract or available to the new business for any reason, the business must agree to reduce its operations to the extent allowed by on-site parking. The business shall notify the County Planning Department within seven (7) days if there is a change in the availability of the off-site parking.
- 1106.4 If valet parking service is provided by a separate company, insurance must be obtained that protects the customer vehicles while in the control of the company. This includes driving by valet employees and while parked at the off-site facility.
- 1106.5 Land used for off-site parking shall be located in a commercial zoning district or in a commercial area of a planned development. Commercial off-site parking shall not be located in a residentially zoned area.
- 1106.6 The use of a parcel of land for off-site parking shall not reduce the minimum parking required for any business located on the same parcel as the off-site parking. An exception to this requirement is if the off-site parking is provided after business hours of the business located on the off-site parcel.
- 1106.7 Off-site parking spaces on a parcel cannot be provided to more than one business. Spaces cannot be allocated so they are available to more than one entity at any given time.
- 1106.8 If any portion of a parcel of land used for off-site parking as permitted by this Section is located in the Waccamaw Neck Commercial Corridor Overlay Zone, then the parcel containing the building or buildings utilizing the off-site parking is automatically considered to be within the boundaries of the Waccamaw Neck Commercial Corridor Overlay Zone and shall comply with the requirements of Article XX Requirements By Overlay Zone, Section 2000 and Article XXI Designated Overlay Zones, Section 2100. *(Amended Ord. 2013-34)*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

ORDINANCE NO. 2018-40

AN ORDINANCE TO AMEND THE MARLIN QUAY PLANNED DEVELOPMENT (PD) TO ALLOW FOR REDEVELOPMENT OF THE MARLIN QUAY/MARINA STORE/RESTAURANT

BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED THAT THE MARLIN QUAY PLANNED DEVELOPMENT (PD) BE AMENDED TO ALLOW FOR REDEVELOPMENT OF THE MARLIN QUAY/MARINA STORE/RESTAURANT AS SHOWN ON THE ATTACHED SITE PLAN NUMBERED "AS101" DATED 10/12/18 WITH THE FOLLOWING ELABORATIONS:

- Heated square feet for the new structure will not exceed 4,596 SF.
- 62 parking spaces will be provided including three compact spaces to be located underneath the new structure.
- The structure will not exceed a 47 foot height limit. The building may utilize a flat roof.
- The total seating capacity shall not exceed 110 persons.
- This ordinance supersedes and replaces Ordinance number 2018-03 regarding a previous amendment to Marlin Quay and the site plan it references.

DONE, RATIFIED AND ADOPTED THIS 8th DAY OF JANUARY, 2019.

 (SEAL)
 John Thomas
 Chairman, Georgetown County Council

ATTEST:

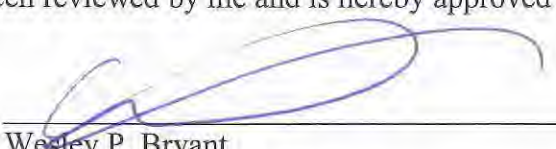

 Theresa E. Floyd
 Clerk to Council

EXHIBIT

25

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This Ordinance, No. 2018-40, has been reviewed by me and is hereby approved as to form and legality.

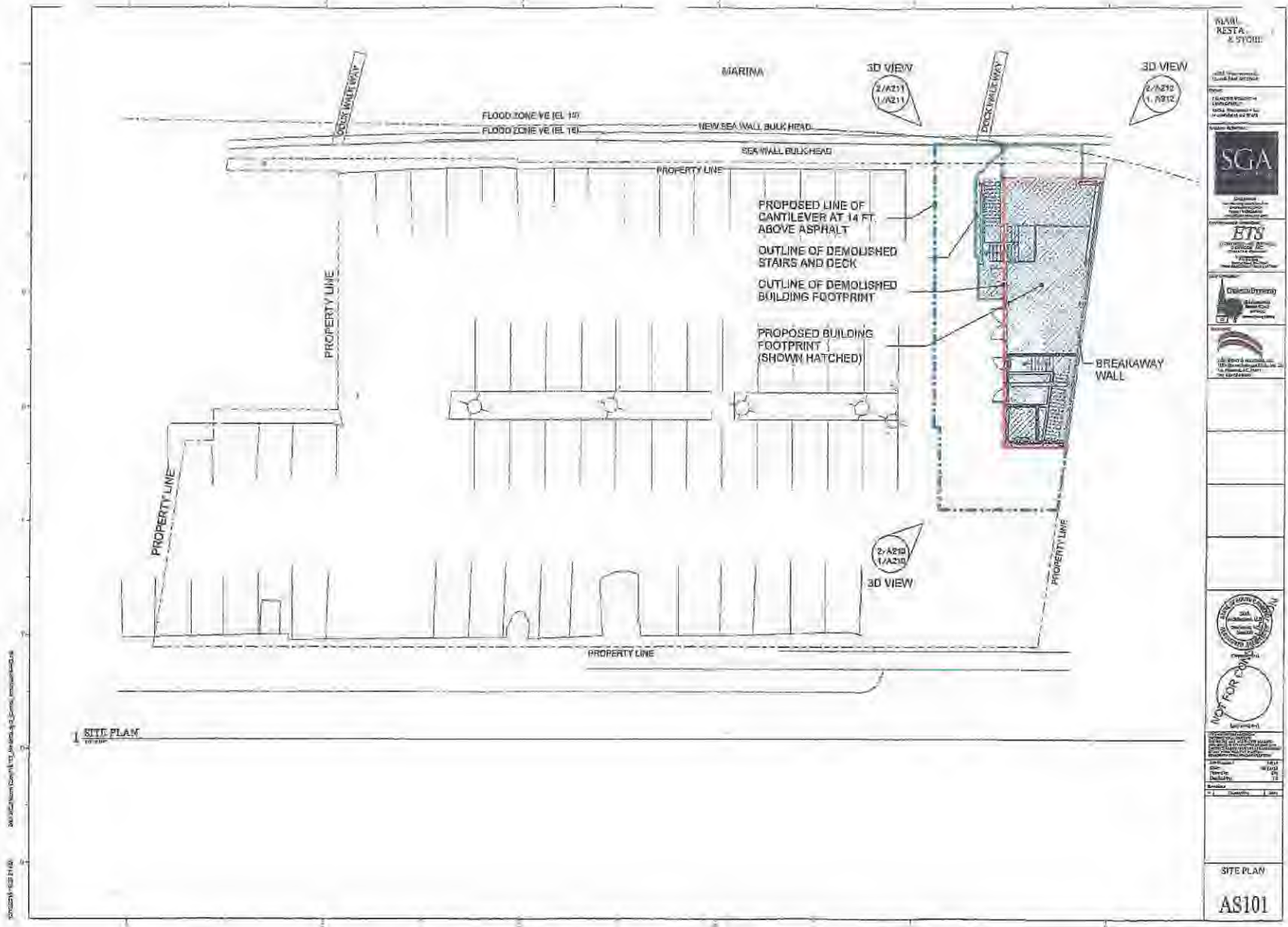


Wesley P. Bryant
Georgetown County Attorney

First Reading: November 13, 2018

Second Reading: December 11, 2018

Third Reading: January 8, 2019



Boyd Johnson

From: Boyd Johnson
Sent: Monday, October 22, 2018 4:04 PM
To: Wesley Bryant
Cc: Holly Richardson
Subject: RE: questioning application for MQ3

Let me know when you want to get together. Tomorrow is good with me. Holly will be back tomorrow. Wednesday is good after Directors meeting until 3:00. Late Thursday is good.

Boyd Johnson
 Director, Planning and Code Enforcement
 129 Screven Street
 Georgetown SC, 29440
 (843) 545-3162
 bjohnson@gtcounty.org

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

From: Wesley Bryant
Sent: Monday, October 22, 2018 2:43 PM
To: Boyd Johnson <bjohnson@gtcounty.org>; Holly Richardson <hrichardson@gtcounty.org>
Cc: Dan Stacy (DStacy@OxnerandStacy.com) <DStacy@OxnerandStacy.com>
Subject: FW: questioning application for MQ3

Came in the mail today. Technicalities are never viewed in favor of the jurisdiction! Boyd/Holly, we may need to discuss this tomorrow.

Dan, FYI.

Wesley P. Bryant
 Georgetown County Attorney
 P.O. Drawer 421270
 Georgetown, SC 29442
 843-545-3194

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

From: economiccopier@georgetowncountysc.org [mailto:economiccopier@georgetowncountysc.org]

Sent: Monday, October 22, 2018 3:17 PM

To: Wesley Bryant <wbryant@gtcounty.org>

Subject:

This E-mail was sent from "RNP00BF96" (Aficio MP C2550).

Scan Date: 10.22.2018 15:16:58 (-0400)

Queries to: economiccopier@georgetowncountysc.org

Boyd Johnson

From: Boyd Johnson
Sent: Tuesday, June 11, 2019 6:46 PM
To: Holly Richardson
Subject: MQ

Let's talk about the procedural problems the Gulf S lawyer is alleging.

Boyd Johnson
Director, Planning and Code Enforcement
Georgetown County, SC
Office (843) 545-3162

EXHIBIT

39

 Huseby.com

Boyd Johnson

From: Steven Elliott
Sent: Thursday, October 25, 2018 2:08 PM
To: Boyd Johnson
Subject: FW: Marlin Quay Marina Restaurant and Store - Code Review Questions

Any thoughts?

From: Beth Novak [mailto:Beth@SGAarchitecture.com]
Sent: Wednesday, October 24, 2018 5:13 PM
To: Steven Elliott <sellott@gtcounty.org>
Cc: Luda Sobchuk <Luda@SGAarchitecture.com>; Steve Goggans <Steve@SGAarchitecture.com>
Subject: Marlin Quay Marina Restaurant and Store - Code Review Questions

Good afternoon Mr. Elliott,

As you may be aware, the replacement structure for the Marlin Quay Marina Restaurant and Store was contested after it received its building permit last year. SGA Architecture is redesigning a new facility to meet the guidelines that resulted from the related court case. I am the project architect for the redesigned facility.

We have changed from a wood framed structure to steel framing and therefore have changed building types. There are other code related items that I would like reviewed prior to us submitting our new permit review package. Would it be best to send you drawings along with my questions or set up an appointment to meet in person? If you want to meet, please let me know a time you are available early next week.

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

EXHIBIT

40

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Holly Richardson

From: Heather Kakert <Heather@SGAarchitecture.com>
Sent: Wednesday, September 6, 2017 12:33 PM
To: Joanne Ochal
Cc: Boyd Johnson; Holly Richardson
Subject: RE: meeting 8-24-17 summary

We submitted updated drawings to comply with the 45 ft requirement.
 The current heated square footage is stated on the submitted drawings and is under 4600sf.

All items have been answered and submitted.

Thank you,
 Heather

From: Joanne Ochal [mailto:jochal@gtcounty.org]
Sent: Friday, August 25, 2017 2:28 PM
To: Heather Kakert
Cc: Boyd Johnson; Holly Richardson
Subject: meeting 8-24-17 summary

Heather,

Here is a summary of what I understood from our meeting.

- Heated square footage of proposed building is 4,598, need to make sure that is not any larger than the building that was torn down;
- Proposed unheated area is 4,250, can be constructed as long as parking can be met. The parking calculations have been confirmed. There is adequate parking on site;
- Roof line of the elevator will be redesigned to a 5/12 pitch;
- The railing for the roof mechanicals will be sloped;
- Finished height from grade to mid-roof is 45 feet which conforms to the 45 foot requirement for PD's;
- How will the pending court case affect issuance of this permit? Previous permit is void according to Mike.
- The unheated square footage amount as listed on the building permit application is based on occupancy, not gross floor area which explains the difference of 323 square feet. Parking calculations will be based on the larger number for unheated square feet.

Please add or change anything.

Thanks,
 Joanne Ochal
 Zoning Administrator Georgetown County
 129 Screven St.
 Georgetown, SC 29440
 Phone: 843-545-3602
 Cell: 843-503-6729
 E-mail: jochal@gtcounty.org



Holly Richardson

From: Steve Goggans <Steve@SGAarchitecture.com>
Sent: Friday, May 13, 2016 8:45 AM
To: Holly Richardson; Boyd Johnson
Subject: FW: Marlin Quay Parking Study

Holly, and Boyd,

See Patrick's information below. It appears we have ample parking for the restaurant as currently designed plus the store. We did not include the decks in this analysis, which may require an additional 2 or 3 spaces. Before we continue, however, I would appreciate you taking a look and making sure we haven't overlooked anything.

Thanks,

Steve

From: Patrick Williams
Sent: Thursday, May 12, 2016 4:29 PM
To: Steve Goggans
Cc: Luda Sobchuk
Subject: Marlin Quay Parking Study

Steve,

Below is a breakdown of the required/proposed parking for Marlin Quay:

Kitchen/Dining: 3,060 SF (does not include outdoor deck & bar) / 1 space per 100 SF of gross floor area = 31 spaces

Marina Store/Support Rooms/Restrooms/Lobby: 2,053 SF / 1 space per 200 SF of gross floor area = 11 spaces

Required Parking: 42 spaces

Proposed Parking: 62 spaces

Patrick Williams, RLA, ASLA
pwilliams@sgaarchitecture.com



SGA ARCHITECTURE

Architecture • Landscape Architecture • Landplanning

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Pawleys Island, SC 29585

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 Mobile: 843-602-8200
 Web Address: www.SGAarchitecture.com

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Holly Richardson

From: Holly Richardson
Sent: Tuesday, May 3, 2016 2:18 PM
To: 'Steve Goggans'
Cc: Boyd Johnson
Subject: RE:
Attachments: marlin quay flood maps.pdf

Steve,

Boyd and I met together and went over these questions after looking at some of our previous correspondence with Dan Stacy on this issue and the PD documents.

1. As long as the total square footage does not change, can the amount of square footage for the marina store and restaurant change from the existing?

Once we received approval from the POA "giving" the amount of square footage on their property to Dr. Lawhon, we indicated that we would approve a transfer of this square footage from one parcel to another at the staff level. Since this is a transfer, we will need to keep the square footages the same. An increase in intensity of land use is considered a major change to the PD and would require a PD amendment. The restaurant portion of the building will be limited to its existing size.

2. What is the maximum height requirement? 35 feet or whatever the new requirement would be based on the zoning ordinance?

There is a section in the PD section of the Zoning Ordinance that allows for increased heights in flood zones. Based on that we would apply Section 806 of the Ordinance in determining the height for the new building. I have attached the existing and proposed flood maps along with the contour map for information only. Basically the way the ordinance is written, your height would be measured 35 feet from the base flood elevation – so however much you are required to raise the building to meet flood, you would gain that much above the 35 feet.

3. Do decks count in the total calculation for square footage assuming parking can be accommodated?

Since the decks on the existing building are open, we are assuming they were not included in the total square footage amount that was provided earlier (4,603 SF), so any decking on the new building would similarly not be included in this maximum. However, any deck area that is to be used for outdoor seating or a bar area must meet the parking requirements.

I hope this helps you to be able to move forward with this project.

Holly

From: Steve Goggans [mailto:Steve@SGAarchitecture.com]
Sent: Thursday, April 28, 2016 8:05 PM
To: Holly Richardson <hrichardson@gtcounty.org>
Subject: RE:

Thanks, Holly. Those are the questions!

Steve

From: Holly Richardson [mailto:hrichardson@gtcounty.org]
Sent: Thursday, April 28, 2016 1:49 PM
To: Steve Goggans
Cc: Boyd Johnson
Subject: RE:

Hi Steve,

I have these 3 main questions down for Boyd and I to go over and get back to you with our answers:

1. As long as the total square footage does not change, can the amount of square footage for the marina store and restaurant change from the existing?
2. What is the maximum height requirement? 35 feet or whatever the new requirement would be based on the zoning ordinance?
3. Do decks count in the total calculation for square footage assuming parking can be accommodated?

I'm going to review my information for Boyd and we will get together and formulate a response for you asap.

Holly

From: Steve Goggans [mailto:Steve@SGAarchitecture.com]
Sent: Wednesday, April 27, 2016 5:39 PM
To: Holly Richardson <hrichardson@gtcounty.org>; Boyd Johnson <bjohnson@gtcounty.org>
Subject:

One further question we have is the restaurant space interchangeable with the marina store space?

Steve

EXHIBIT 35

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.
Tiffany Coleman 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: TIFFANY COLEMAN
12 (Appearing via VTC)
13 DATE: March 4, 2021
14 TIME: 3:26 p.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:

2 ATTORNEYS FOR PLAINTIFF
3 THE GULFSTREAM CAFE, INC.:

4 BLOOM PARHAM, LLP
5 BY: ADAM D. NUGENT
(Appearing via VTC)
6 977 Ponce de Leon Avenue, NE
Atlanta, Georgia 30306
7 404-56-7710
anugent@bloom-law.com

8 ROGERS TOWNSEND, LLC
9 BY: SEAN M. FOERSTER
(Appearing via VTC)
10 1221 Main Street, 14th Floor
Columbia, South Carolina 29202
803-771-7900
sean.foerster@rogerstownsend.com

11 ATTORNEYS FOR DEFENDANTS
12 GEORGETOWN COUNTY, GEORGETOWN COUNTY
13 COUNCIL, JOHN THOMAS, RON CHARLTON,
14 LILLIE JOHNSON, AUSTIN BEARD, STEVE
GOGGANS, AND LOUIS MORANT, INDIVIDUALLY
AND IN THEIR OFFICIAL CAPACITY AS
GEORGETOWN COUNTY COUNCIL MEMBERS:

15 BURR & FORMAN, LLP
16 BY: HENRIETTA GOLDING
(Appearing via VTC)
17 2411 North Oak Street, Suite 206
Myrtle Beach, South Carolina 29577
18 843-444-1107
hgolding@burr.com

19 BURR & FORMAN, LLP
20 BY: BROOKE WATSON
(Appearing via VTC)
21 420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
22 205-251-3000
bwatson@burr.com

23 ALSO PRESENT:

24 HOLLY RICHARDSON (Appearing via VTC)

25

1 TIFFANY COLEMAN

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. NUGENT:

5 Q. Could you state your name for the
6 record, please.

7 A. Tiffany Coleman.

8 Q. And what's your address, Ms. Coleman?

9 A. 323 Rose Avenue, Georgetown,
10 South Carolina 29440.

11 Q. Thank you.

12 What's your date of birth?

13 A. November 2nd, 1974.

14 Q. And have you ever been deposed before?

15 A. No, sir.

16 Q. I'm going to go through a few ground
17 rules here, fairly straightforward. I'm here to
18 ask questions today. I represent the Gulfstream
19 Cafe in the lawsuit involving Georgetown County. I
20 understand you're a county employee.

21 I will be asking you questions today,
22 and you'll be answering those questions. And we
23 have a court reporter here via Zoom who will take
24 down everything both of us says.

25 But the first important ground rule is

1 for you to answer questions verbally. The court
2 reporter can take everything down, but if you nod
3 or shake your head like you just did there --

4 A. Okay.

5 Q. -- she can't actually take that down.
6 So please provide a verbal answer. And if you
7 don't, then you'll likely get a reminder from the
8 court reporter to start doing that.

9 The other important ground rule is for
10 you and me to not talk over each other. Sometimes
11 you will know exactly where I'm going with my
12 question and want to answer it so we can move on,
13 but, again, the court reporter can't take it down
14 cleanly if we're both talking at the same time.

15 So if you'll try to let me finish my
16 questions before you answer, I will attempt to
17 extend the same courtesy to you. If we get off
18 track, I'm sure the court reporter will interrupt
19 us and remind us. But please try to abide by that.

20 If there are any questions I ask you
21 and you're not sure or they're unclear and you want
22 me to repeat or rephrase them, I'm happy to do so.
23 All I ask is that you request me to do that.
24 Absent a request for clarification, I'm going to
25 assume that you understand the question; is that

1 fair?

2 A. Yes.

3 Q. I'm happy for you to take a break. I
4 don't think your deposition is going to take
5 terribly long, but if you need a break, that's
6 perfectly fine. The only thing I ask is that you
7 answer any question that's pending on the table
8 before taking a break.

9 A. Okay.

10 Q. Any questions about those ground rules?

11 A. No, sir.

12 Q. Anything that would prevent you from --
13 additionally, Ms. Golding is here. And is she
14 representing you in connection with this
15 deposition?

16 A. Yes.

17 Q. She may object from time to time, but
18 unless she instructs you not to answer a question,
19 you still need to answer the question subject to
20 her objection.

21 A. Okay.

22 Q. Is there anything that would prevent
23 you from testifying truthfully and fully today?

24 A. No.

25 Q. Are you under the influence of any

1 drugs or medication today?

2 A. No.

3 Q. What did you do to prepare for today's
4 deposition, Ms. Coleman?

5 A. Had a brief meeting with Ms. Golding
6 and the rest of the staff.

7 Q. And did you review any documents to
8 prepare for today's deposition?

9 A. No.

10 Q. Other than your meeting with
11 Ms. Golding, did you meet with anybody else to
12 prepare for today's deposition?

13 A. No.

14 Q. Did you discuss today's deposition with
15 anybody else in the Georgetown County Planning
16 Department?

17 A. No.

18 Q. Did you send any emails or text
19 messages with anybody other than your attorney
20 regarding today's deposition?

21 A. No.

22 Q. And did you prepare any notes or
23 written outlines for today's deposition?

24 A. No.

25 Q. And I can't see you because you're

1 obviously appearing virtually, but do you have any
2 sort of handwritten or paper documents in front of
3 you as you sit here today?

4 A. No.

5 Q. What is your occupation, Ms. Coleman?

6 A. I am the associate planner.

7 Q. And are you with the Georgetown County
8 Government Planning Department?

9 A. Yes.

10 Q. How long have you been an associate
11 planner with Georgetown County?

12 A. June of 2017.

13 Q. Where did you work prior to 2017?

14 A. I worked for a company called Coastal
15 Wire in Georgetown.

16 Q. Could you repeat the name of that
17 company again? I'm sorry.

18 A. Coastal Wire.

19 Q. What was your position with that
20 company?

21 A. I did sales and shipping.

22 Q. What kind of educational background do
23 you have, Ms. Coleman?

24 A. I have an associate's degree in
25 business from Horry-Georgetown Technical College.

1 Q. And you've stated that you're an
2 associate planner with Georgetown County. Do you
3 have any coursework or certifications related to
4 planning issues?

5 A. No.

6 Q. Tell me what your job duties are as an
7 associate planner with Georgetown County.

8 A. I basically run the front of the office
9 suite, so everything from reception work to data
10 entry for any applications that are received if
11 they're plats or whatever.

12 Q. What kind of data entry do you do for
13 applications?

14 A. Any application that's received in the
15 office would come to me to be entered into the
16 computer system.

17 Q. Any other type of data entry you do
18 other than entering the application into the
19 computer system?

20 A. No, sir.

21 Q. And when you say enter into the
22 computer system, does that just mean scanning
23 documents and saving them to the file somewhere, or
24 can you just explain that for me?

25 A. Sure. We use a software program called

1 EnerGov so you would have to do the data entry in
2 that system to create the case file. And then I
3 would scan documents in and attach them to that
4 case file.

5 Q. Once you have done the data entry for
6 an application, do you pass that information on to
7 somebody else in the office?

8 A. Yes.

9 Q. And how does that process work?

10 A. We have a relatively small staff so
11 plat reviews for plat application would go to Judy
12 Blankenship in our department. Anything that goes
13 to planning commission would get filed in a
14 planning commission file cabinet under the month
15 it's going to be heard. If there are variances,
16 they are handled in the same way, filed in a filing
17 cabinet under the month that they're going to be
18 heard.

19 Q. And are you the person who physically
20 puts the planning commission related files into
21 that specific filing cabinet under the appropriate
22 month?

23 A. Yes.

24 Q. And then do you notify your colleagues
25 in the planning department about there's a new

1 application and you need to go look at it, or is
2 there some other process?

3 A. In EnerGov in the system, they are
4 assigned to an employee, so I would assign them to
5 an employee and then that employee would know that
6 they had a case that's been assigned to them, and
7 they probably would take the file from the drawer
8 and start doing their review work.

9 Q. And you said you're the person who does
10 the assignment; is that right?

11 A. Yes.

12 Q. How do you decide who gets which
13 application?

14 A. Sometimes it's difficult. Judy
15 Blankenship in our department typically does
16 rezoning, so rezoning requests or plat requests
17 would get assigned to her. Anything that has to do
18 with a planned development or a flexible design
19 district, those have...

20 (Internet connection was lost.)

21 THE REPORTER: I'm sorry, my Internet
22 froze. Could I have you repeat that answer?

23 THE WITNESS: Sure. Sure. The
24 applications, depending on the type of application
25 that we receive, the rezoning requests would go to

1 Judy Blankenship in our department. The plan
2 development applications, whether it is to amend a
3 planned development or rezone to a planned
4 development or a flexible design district, those
5 would get assigned to Holly Richardson. Variance
6 requests would also be done in our office for data
7 entry and those would be assigned to our zoning
8 administrator.

9 Q. Thank you, Ms. Coleman.

10 And am I correct that currently in
11 2021, Ms. Richardson is the director of planning
12 for the department?

13 A. She is.

14 Q. And prior to maybe October of 2020, was
15 Boyd Johnson the director of planning?

16 A. Yes.

17 Q. And was the work flow prior to
18 Mr. Johnson's departure different than what you
19 just described?

20 A. No, sir.

21 Q. Okay. So even prior to Mr. Johnson's
22 departure, you said that zoning applications
23 typically went to Ms. Blankenship and flexible
24 design district PD applications would go to
25 Ms. Richardson --

1 A. That's correct.

2 Q. -- is that correct?

3 A. Correct.

4 Q. And I assume you're not the person
5 dictating that policy, you're just there executing
6 on it and making the assignments in the system?

7 A. That's correct. Now, there may be
8 cases where I'm unsure of who to assign it to so it
9 may change. You know, Holly may decide that it's
10 something Judy can handle, or Judy may decide that
11 it's something Holly needs to handle. So just
12 because it gets put in there initially doesn't mean
13 that's written in stone.

14 Q. Sure. And the job responsibilities you
15 described, have they changed at any point during
16 the three plus years you've been at Georgetown
17 County?

18 A. No.

19 Q. Once you've done that initial data
20 entry and put the application in the file
21 cabinet -- I'm talking about zoning applications or
22 planned development amendments, things that go to
23 the planning commission -- do you have any role
24 typically once you've done the initial data entry
25 and placing the documents in the file?

1 A. It would then go to whomever the
2 project is assigned to. It would come back to me
3 when it is time to mail notices. So if they're a
4 rezoning or anything to do with the planned
5 development, we have to mail notices, and it would
6 come back to me to mail those notices.

7 Q. Okay. And then what do you do in order
8 to go about mailing the notices for those types of
9 applications?

10 A. The applicant is required to submit
11 self-addressed stamped envelopes for everyone
12 within a 400-foot radius of the property. So when
13 those envelopes come in, I would take those. I am
14 the one who writes up the notice. And on the back
15 of the notice, there is a location map that we
16 provide, so I copy that as many as we need and
17 stuff those in the envelopes and mail them out on
18 the appropriate date.

19 Q. And you said you are the person who
20 writes the notice. How do you go about creating
21 that written notice?

22 A. The notice is simply an informational
23 piece that lets the property owners know that there
24 is a case, where the case is located. It's
25 basically a standard template that we use. The

1 information from the case is pulled from the
2 newspaper ad that Judy Blankenship writes typically
3 during that same week. So I would pull her
4 description of the case from the ad and include
5 that in the notice with the location map.

6 Q. And do you also generate the location
7 map that you just mentioned?

8 A. Ms. Blankenship does.

9 Q. Okay. Ms. Blankenship creates the
10 location map, and then does she just provide it to
11 you to put in that envelope with the noticed
12 document that you've created using the template?

13 A. She would put it all back in the file
14 and then just hand the file back to me to do the
15 notices.

16 Q. And I assume once you've got that
17 notice and that location map, you have somebody
18 sign off and say, okay, this is sufficient, this is
19 ready to go out before you start making copies?

20 A. The notice is typically reviewed by
21 Judy or myself, you know, just to proof it. Like I
22 said, it's a template so there's not a lot of
23 information that you have to change on there other
24 than dates and just the case information. And then
25 on the inside of the file folder for the case, we

1 would write down or I would write the date that the
2 notices have been mailed, the number of notices
3 that were mailed with my initials.

4 Q. And you stated that the self-addressed
5 stamped envelopes come from the applicant. Do you
6 make any effort to cross-reference that number of
7 envelopes with the map that Ms. Blankenship
8 creates?

9 A. Yes, we do. We would have the list of
10 property owners within a 400-foot radius of the
11 affected property, and we would check that against
12 the number of envelopes and make sure that they are
13 addressed correctly.

14 Q. When you say we would check it, is that
15 something you personally did, or did somebody else
16 do that?

17 A. Sometimes it's me, sometimes it's Judy.
18 It's just whoever has time to cross-reference that
19 and give it a look over is who does it.

20 Q. And I think you stated -- and I just
21 want to make sure I've got this correct --
22 Ms. Blankenship is the person who creates the map
23 with the locations for the affected property
24 owners; is that right?

25 A. No. What we provide is a property

1 location map for the affected property so that when
2 people within that zone get the notice, they can
3 flip it over on the back and see the affected
4 property. But it doesn't show the radius of who
5 all was included.

6 Q. Okay. So the map that's included with
7 the notice is really only just a reference map so
8 the affected property owner can say, hey, this is
9 the piece of property that is subject to whatever
10 pending application?

11 A. Exactly.

12 Q. And you might have stated this and I
13 may have just missed it, but the applicant provides
14 the self-addressed stamped envelopes. What is the
15 process that your office uses to make sure that's
16 the right list of people? How does that go about
17 happening?

18 A. We use a system called GIS. It is an
19 online system. It can be accessed by the public
20 also. And we would put in the tax map number of
21 the affected property or properties and then there
22 is a function in there that will allow you to set a
23 400-foot buffer around that property. And it will
24 pull the names from the tax records. And then we
25 print that list. Obviously, we would look over the

1 list, cross out any duplicates. We don't want to
2 mail a notice, you know, to someone two or three
3 times if they own multiple property. So that's
4 where the list comes from.

5 Q. Okay. Is that something you personally
6 do every time or on occasion?

7 A. On occasion.

8 Q. Okay. And then are you the person who
9 actually physically makes the copies of the notice
10 of the map?

11 A. Yes.

12 Q. Stuffs the envelope and sends them out?

13 A. Yes.

14 Q. Do you have any involvement with the
15 zoning or planning development applications beyond
16 the creation of this notice and the mailing out of
17 the notices to affected property owners?

18 A. No.

19 Q. And your understanding of what type of
20 notice is required and the specifics of what needs
21 to be on that document, where does that come from?

22 A. Like I mentioned earlier, it is a
23 template that the department has been using way
24 before my time there. So all I have to do on that
25 template is change the dates so that the property

1 owner is aware of when the planning commission
2 meeting will be, and they are also provided with my
3 email address. So if they want to contact me with
4 concerns or questions, it also has my telephone
5 number on there. And then it just lists the case
6 information.

7 Q. And just so we're -- you're not going
8 to the zoning ordinance and reading that and trying
9 to figure out what's --

10 A. No.

11 Q. -- supposed to be -- that's not your
12 job. Your job is to fill out the notice and get it
13 sent out?

14 A. Yes.

15 Q. Okay. And are you familiar,
16 Ms. Coleman, with the application to amend the
17 Marlin Quay PUD that was received in the late
18 summer or fall of 2018?

19 A. I do not specifically recall receiving
20 that application. It would have been received by
21 our department and then landed on my desk for data
22 entry.

23 (EXHIBIT 3, Application to Amend a
24 Planned Development, was marked for
25 identification.)

1 BY MR. NUGENT:

2 Q. And I'm going to put up on the screen
3 what's been marked as Plaintiff's Exhibit No. 3.
4 And this is a fairly long document. I'll represent
5 to you this is the application that was submitted
6 to amend the Marlin Quay PUD in the late 2018
7 timeframe. I'm happy to scroll through this. But
8 do you know, does this look familiar to you as I
9 put it up here?

10 A. Yes.

11 Q. You've seen this document in
12 preparation for today's deposition or sometime in
13 the last year or two?

14 A. I don't recall at this time. It's
15 possible that I have looked at it, but I can't
16 recall specifically.

17 Q. But it's fair to say you see a lot of
18 applications to amend either zoning ordinances or
19 planned developments in the course of your job?

20 A. Yes.

21 Q. And I just want to walk through a
22 couple of things here just to make sure that we're
23 on the same page here. I'm happy to scroll down
24 and let you read as much as of this as you do want
25 to read it. I'm not trying to zip through this.

1 So stop me if you see something you want to look
2 at.

3 So, Ms. Coleman, that's all the pages
4 in the application that we have. Did you see a
5 list of the property owners contained in the
6 document that I just scrolled through?

7 A. No.

8 Q. Do applicants typically include a
9 history of the affected property owners that need
10 to be notified?

11 A. Not always. Sometimes they do have a
12 list in there. Sometimes the property owners
13 obviously do not know how to generate that list so
14 it would be generated by our office. It really
15 depends. Sometimes they're there; sometimes
16 they're not.

17 Q. If the list is not there, does the
18 department take any step to communicate with the
19 applicant about the notice issue?

20 A. No. What we would do in that case is
21 generate the list ourselves and compare that with
22 the envelopes received.

23 Q. And so it still required for the
24 property owner to provide the envelopes?

25 A. Yes.

1 Q. And do you know whether this
2 application for the Marlin Quay PUD Amendment
3 included the required envelopes?

4 A. Yes, it did.

5 Q. Okay. They're not included in this
6 document, but I take it that may be because they
7 were sent out and not --

8 A. Exactly.

9 Q. -- not something --

10 A. Exactly, yes.

11 Q. -- this department makes a copy of?

12 A. Right.

13 Q. And this document that we're looking at
14 here, is this the sort of document that you would
15 scan into the system you described and then place
16 in the planning commission file?

17 A. Yes.

18 Q. And when the County goes about mailing
19 out the notices using the envelopes provided by the
20 applicant, does it keep some sort of record? Do
21 you have some sort of internal system where you
22 make notes of what mail has been sent out?

23 A. There is a calendar that we go by, so
24 the planning commission notices our mail 15 days
25 prior to the meeting. So I would mark that on my

1 calendar. I know that's the day that the notices
2 need to go out of the office. And then I would
3 make a notation on the inside of the case file that
4 they were mailed with the date and the number that
5 was mailed with my initials so if anybody looks,
6 they would know it was done on that date.

7 Q. And when you say inside the case file,
8 is that a folder of some description?

9 A. Yes.

10 Q. Like a physical folder. If you open it
11 up there's handwriting or something like that on
12 one of the interior portions of the folder?

13 A. Yes.

14 Q. And do you know if that's still in
15 existence for this particular application that
16 we're looking at right now?

17 A. Yes.

18 Q. And have you reviewed that folder at
19 any point since this late 2018 timeframe when the
20 application was first submitted to the planning
21 department?

22 A. No.

23 Q. And do you know if anybody has made a
24 copy of that or scanned it or otherwise reproduced
25 it in connection with this dispute that's going on?

1 A. No.

2 Q. And were you asked to gather any
3 documents related to this application in connection
4 with either a Freedom of Information Act request or
5 some other type of document request connected to
6 the ongoing litigation involving the Marlin Quay
7 Planned Development?

8 A. Yes.

9 Q. And tell me what you were asked to
10 gather and what you gathered.

11 MS. GOLDING: Now, if you were asked by
12 the county attorney, that would be subject to
13 attorney-client privilege.

14 THE WITNESS: Okay.

15 Several FOIA requests were received so
16 I did pull together a great deal of information. I
17 cannot recall at this time exactly who that was
18 sent to, but it was many, many pages of
19 information.

20 BY MR. NUGENT:

21 Q. And is responding to FOIA requests part
22 of your job duties working for the planning
23 department?

24 A. That would depend on the type of FOIA
25 request received. Sometimes.

1 Q. Sometimes.

2 But you recall specifically responding
3 to several FOIA requests connected to this Marlin
4 Quay Planned Development?

5 A. Yes.

6 Q. And how do you go about gathering the
7 documents and responding to the FOIA requests?

8 A. I would pull together anything from the
9 planning commission packets that would include
10 minutes, any correspondence obviously that I had
11 with anyone associated with the case. And then
12 other staff members would also pull together
13 whatever documents they have, and then everything
14 would be given to me to scan in.

15 Q. And just so I understand what your role
16 was, you would pull the physical file for the
17 specific application and then also your own
18 correspondence that you had related to it; is that
19 right?

20 A. Yes.

21 Q. And then would you give that
22 information to somebody else in the department for
23 them to review prior to it getting sent out?

24 A. Yes.

25 Q. And who did you typically give it to,

1 or at least in the case of these specific FOIA
2 requests for the Marlin Quay PD, who did you give
3 it to?

4 A. The county attorney at the time was
5 Wesley Bryant. He would have reviewed those
6 documents before they were sent out.

7 Q. I mean, you were the one tasked with
8 physically sending out those responses to the FOIA
9 request?

10 A. I would have been the one tasked with
11 scanning it in, either emailing it to whomever it
12 went to, who I can't recall at this time, or
13 providing it on a jump drive or similar electronic
14 format.

15 Q. And you said that you responded to
16 multiple FOIA requests related to the Marlin Quay
17 project. And have you also done responses for
18 other FOIA requests not related to Marlin Quay?

19 A. Yes.

20 Q. And did you ever have any meetings with
21 your fellow planning department members about
22 responding to the FOIA requests for the Marlin Quay
23 project?

24 A. A FOIA request always requires a lot of
25 staff involvement. Obviously everyone is pulling

1 documents that they have that relate to the request
2 and then given to the county attorney for review.
3 And then that sometimes is handed off to me. If
4 it's from the building department or zoning, it may
5 be handed off to our department.

6 Q. Do you recall any meetings with other
7 members of the planning department regarding the
8 FOIA requests that were received related to the
9 Marlin Quay Planned Development?

10 A. No.

11 Q. Do you know if those meetings occurred,
12 or do you recall one way or the other?

13 A. I do not recall.

14 (EXHIBIT 43, Marlin Quay Neighbor List,
15 was marked for identification.)

16 BY MR. NUGENT:

17 Q. Ms. Coleman, I'm going to put in front
18 of you what's been marked as Plaintiff's
19 Exhibit 43. The document is three pages long and
20 I'm happy to scroll through it. Do you recognize
21 this item?

22 A. Yes. That looks like the report that
23 we would run for the 400-foot buffer of the
24 property.

25 Q. And this is run using the GIS system

1 that you described a few minutes ago, correct?

2 A. Yes.

3 Q. And do you recall whether you -- for
4 this particular property, do you know if that
5 report was run by Ms. Blankenship or somebody else?

6 A. I do not recall who generated that
7 report.

8 Q. And in this document, this last
9 document -- I'll rotate it -- is this the document
10 showing that 400-foot radius?

11 A. Yes.

12 Q. And then in terms of reviewing the
13 possible duplicates, was that something you did in
14 the case of the notice --

15 A. Yes.

16 Q. -- providing notice for this Marlin
17 Quay PD project?

18 A. Yes.

19 (EXHIBIT 44, Notice of Public Hearing,
20 was marked for identification.)

21 BY MR. NUGENT:

22 Q. Ms. Coleman, I'm going to show you
23 what's been marked as Plaintiff's Exhibit No. 44.
24 Ms. Coleman, do you recognize this document?

25 A. Yes. That is the public notice.

1 Q. And this is the notice that's got your
2 email address at the bottom. Is this the notice
3 you created for --

4 A. Yes.

5 Q. -- providing to property owners in
6 connection with the Marlin Quay PD Amendment in
7 late 2018?

8 A. Yes.

9 Q. And this is the form that the county
10 planning department uses for all of its notices
11 that are sent out to property owners?

12 A. Yes.

13 Q. And you testified that there was a map
14 that's typically included. There's not one here,
15 but do you recall whether there was, in fact, a map
16 that was provided with this notice?

17 A. Yes.

18 Q. And when you said map, I think you
19 described it as just having the location of the
20 property impacted?

21 A. Yes.

22 Q. Is that right?

23 A. It's a property location map. And we
24 make it double sided so the front has the notice
25 and the back has the map.

1 Q. Got it.

2 And going back to Plaintiff's
3 Exhibit 43, is that up on your screen, or do I need
4 to refresh?

5 A. I can see that.

6 Q. Okay. The people listed on this
7 notice, are these the only people who were sent
8 notice of the proposal for the Marlin Quay PD
9 Amendment?

10 A. It would have been these people and
11 then also I see at the bottom there the Marlin Quay
12 Homeowner's Association. That is the condominiums
13 next to that property. I also emailed the notice
14 to Nancy Gardner, who is the manager of that
15 homeowner's association, so that she could notify
16 the residents of that building.

17 Q. And what prompted you to send the
18 notice via email to Ms. Gardner?

19 A. There was some discussion within the
20 office. We know that that list did not contain the
21 property owners for the Marlin Quay Condominiums
22 because that information would not pull from the
23 tax records in the GIS system. So I was instructed
24 to also email Nancy and make her aware and send her
25 a copy of the notice so that she could distribute

1 that to the homeowners or property owners in that
2 building.

3 Q. And do you recall who inside the
4 department you discussed this issue regarding
5 providing notice to the condominium owners?

6 A. It would have been Holly and Judy.

7 Q. And so as I understand it, the issue
8 was that this reference to Marlin Quay Homeowner's
9 Association, in the planning department, you knew
10 that that didn't accurately identify all of the
11 individual owners of the condominiums; is that
12 correct?

13 A. Not accurately.

14 Q. Okay. And who made the determination
15 to email the notice to Ms. Gardner?

16 A. I do not recall at this time who
17 specifically said to do that. I just know that it
18 was a move that we made in an attempt to be sure
19 that they were notified.

20 Q. Do you have any idea of how many
21 individual condominium owners there are at that
22 Marlin Quay Condominiums area?

23 A. No.

24 (EXHIBIT 45, Email chain dated
25 September 24, 2018, and October 10, 2018, was

1 marked for identification.)

2 BY MR. NUGENT:

3 Q. And I'm going to put up on your screen
4 what's been marked as Plaintiff's Exhibit 45. Let
5 me know if it doesn't show up. Does it show up?
6 Do you see a new email?

7 A. Yes. Yes.

8 Q. Okay. And this email, it was printed
9 out as Judy Blankenship's name, but up here it's
10 from Tiffany Coleman. Do you see that?

11 A. Yes. Judy probably printed that in
12 response to a FOIA request. She was copied on the
13 email. And for FOIA requests, we are required to
14 pull up and present any information that we have
15 regarding the case.

16 Q. And so regardless of who printed it,
17 it's an email sent from you September 24th, of
18 2018, to NancyG@surfsiderealty, correct?

19 A. Correct.

20 Q. And where did you get the information
21 for Nancy G? Is that Ms. Gardner?

22 A. That is Ms. Gardner. Judy Blankenship
23 had her email address because she had dealt with
24 her in the past in a situation similar to this.

25 Q. And did you have any understanding of

1 what Ms. Gardner's position was related to the
2 condominium owners?

3 A. Yes.

4 Q. And what was your understanding?

5 A. My understanding was that she was the
6 manager of the Marlin Quay Homeowner's Association
7 and would be responsible for distributing that
8 notice to those property owners.

9 Q. And where did you learn or come to that
10 understanding about Ms. Gardner's position or her
11 role?

12 A. That would have come from discussion
13 within our office from the staff. And that is who
14 we felt was the best person to contact.

15 Q. And was that a joint decision amongst
16 the staff members?

17 A. It was probably a joint decision after
18 discussing it, yes. I do not recall a specific
19 person other than Nancy Gardner.

20 Q. Did you know who Ms. Gardner was prior
21 to receiving the instruction to send the notice to
22 her via email?

23 A. No. No.

24 Q. And this email has this attachment.

25 You can see it referenced --

1 A. Uh-huh.

2 Q. -- on the document.

3 Was that attachment just the notice
4 that we looked at, I believe it was Exhibit No. 44?

5 A. It would have been the notice along
6 with the location map.

7 Q. Okay. The same information that you
8 testified is put in the envelopes --

9 A. Yes.

10 Q. -- correct?

11 A. Yes.

12 Q. Do you recall any prior zoning or PD
13 amendment applications where notice was provided to
14 a condominium or a homeowner's association rather
15 than to individual property owners?

16 A. Yes.

17 Q. And how frequently does that issue come
18 up?

19 A. Not often, but it does come up with
20 homeowner's associations. We always notify them in
21 writing. You know, the Marlin Quay Homeowner's
22 Association was notified in writing and with this
23 email. So it does come up occasionally with
24 homeowner's associations depending on how the tax
25 notices are. Like I said, the GIS system will pull

1 from tax records, and sometimes all of the property
2 owners are not listed.

3 Q. And when not all the property owners
4 are listed, what is the typical process for
5 providing notice to those property owners?

6 A. To notify the homeowner's association
7 so that they can pass that information on to the
8 property owners.

9 Q. And how often has that issue come up
10 during the three plus years you've been with the
11 department?

12 A. At the time I could not tell you. I
13 don't recall.

14 Q. Has it happened more than once, setting
15 aside the Marlin Quay PD Amendment that we're
16 talking about right now.

17 A. I honestly cannot answer that question
18 either way. I don't recall.

19 Q. Okay. And that's all I'm trying to
20 figure -- can you think of any other instance where
21 it's come up during the time you've been with the
22 department where there was a homeowner's
23 association that was notified because individual
24 property owners were not listed in the tax
25 assessor's GIS website?

1 A. I cannot recall at this time.

2 Q. And this Exhibit 45 that we're looking
3 at, you sent the email to Ms. Gardner September 24,
4 2018. If we scroll down, I'm happy for you to take
5 a look at this. And I apologize. This actually
6 has your name as being the person who printed it
7 out.

8 A. Uh-huh.

9 Q. But it lists -- it's still an email
10 from you to Judy Blankenship October 10, 2018. Are
11 you with me?

12 A. Yes.

13 Q. Do you see where I am?

14 And you are forwarding on an email you
15 received from Ms. Gardner?

16 A. Yes.

17 Q. And in that email, Ms. Gardner informed
18 you that she sent the notice to all owners whose
19 email addresses she had on record, correct?

20 A. Yes.

21 Q. Do you know whether she had email
22 addresses for all the property owners who owned
23 units in the condominium?

24 A. I don't know.

25 Q. Okay. And did you make any effort to

1 find out how many of the property owners

2 Ms. Gardner had the email address for?

3 A. No.

4 Q. And Ms. Gardner went on to indicate
5 that -- she references a Ms. Lowery. We can look
6 at that email in just a second.

7 A. Yes.

8 Q. She goes on to state that we did not
9 receive any plans or diagrams of the proposed
10 building to forward to all. Do you see that?

11 A. Yes.

12 Q. And did you take any action when you
13 received the email from Ms. Gardner indicating that
14 plans and diagrams had not been provided to
15 condominium owners?

16 A. The plans and diagrams would not be
17 included in the public notice. The public notice
18 is strictly to notify the property owners that
19 there will be a meeting. So that email would have
20 been forwarded on to probably Holly, possibly Boyd,
21 and Judy, probably everyone in the office so that
22 they could contact her and send her whatever
23 documents she requested.

24 Q. It looks like Ms. Richardson and
25 Mr. Johnson were actually copied or cc'd on that

1 email from Ms. Gardner. Do you see that?

2 A. Yes.

3 Q. And then you would have forwarded it to
4 Judy Blankenship, right?

5 A. Yes.

6 Q. And did you discuss this issue with
7 either Ms. Richardson, Mr. Johnson, or
8 Ms. Blankenship following receipt of this email?

9 A. I do not recall right now if there was
10 discussion.

11 Q. And do you know if anybody sent
12 Ms. Gardner the plans or diagrams for the proposed
13 building in response to this email?

14 A. I do recall that the documentation was
15 sent. I do not recall who sent it, but I know that
16 Ms. Lowery also came to our office to review the
17 plan so she was aware of the plans and got to see
18 them.

19 Q. And so you testified you know that some
20 documentation was sent in response to Ms. Gardner's
21 email. Were you copied on any of those emails
22 sending that documentation?

23 A. No.

24 Q. Okay. Do you know when those emails
25 were sent or what was attached to them?

1 A. No.

2 Q. And then you mentioned that
3 Ms. Lowery -- and we're looking at the next email
4 down that says Constance Lowery. She sent an email
5 to you regarding the notice and the documentation,
6 correct?

7 A. Yes.

8 Q. Did you respond to this email from
9 Ms. Lowery that was sent on October 10th?

10 A. No. I forwarded that email to the rest
11 of the staff, and I believe Ms. Richardson
12 contacted Ms. Lowery and made an appointment for
13 her to come in and review the file.

14 Q. And were you present when Ms. Lowery
15 came in?

16 A. Not in the meeting, but I was in the
17 office that day.

18 Q. Okay. You said in a meeting. Is it
19 your understanding that Ms. Lowery had a meeting
20 with somebody else on the planning staff about the
21 contents of the file?

22 A. Ms. Richardson sat in with Ms. Lowery
23 and let her review the case file that we had that
24 contained the plans.

25 Q. Do you know if any other members of the

1 public visited the office in person to review plans
2 or materials related to this amendment, proposed
3 amendment to the Marlin Quay PD?

4 A. I cannot recall right now. It's
5 possible. Occasionally, we do have members of the
6 public that want to come in and see the case file.
7 Of course, that's all public information so they're
8 welcome to do that. I do not recall if anyone else
9 came in.

10 Q. Do you recall the applicant for this
11 planned development application or anybody
12 affiliated with that applicant coming in for
13 meetings related to this proposed amendment?

14 A. No.

15 Q. And are you the person -- you said you
16 run the front desk of the planning department; is
17 that right?

18 A. Yes.

19 Q. Are you the person who maintains the
20 schedule and schedules meetings for other members
21 of the planning department?

22 A. No, I do not schedule meetings. The
23 extent of what I do is direct traffic. So I would
24 not know if someone had a meeting.

25 Q. But if someone comes in and wants

1 information, you would be the first point of
2 contact; is that right?

3 A. Yes.

4 Q. And do you recall any other individuals
5 coming in and asking for information related to the
6 Marlin Quay Planned Development like physically
7 into the office?

8 A. Not that I can recall at this time, no.

9 Q. Beyond sending out this notice, did you
10 have any other involvement in the planning
11 department's review of this application to amend
12 the Marlin Quay Planned Development?

13 A. No.

14 Q. There was a notice published in the
15 newspaper. Are you aware of that process for
16 presenting applications?

17 A. Judy Blankenship is responsible for
18 writing the ads that go to the newspaper and making
19 sure it gets there and what dates that it's
20 published.

21 Q. Did you have any involvement in that
22 with respect to this particular application to
23 amend the Marlin Quay Planned Development?

24 A. No.

25 Q. Did you attend any planning commission

1 or county council meetings related to this proposed
2 amendment to the Marlin Quay Planned Development?

3 A. The planning commission meeting, yes.
4 But I do not go to county council meetings.

5 Q. And what's your role when you go to the
6 planning commission meetings?

7 A. I take notes. I am the secretary so I
8 am the one responsible for writing the minutes for
9 the meetings, so I sit up front and do a lot of
10 writing.

11 Q. And so the planning commission minutes
12 that get created after each meeting, those are done
13 by you; is that right?

14 A. Yes. Yes.

15 Q. And do you provide that to somebody for
16 them to look over and verify?

17 A. Yes.

18 Q. And do you have any other role other
19 than taking notes and creating minutes of the
20 planning commission meeting?

21 A. I am the one who copies all of the
22 meeting packet information and mails it out to the
23 planning commission members, and I also notify the
24 press with a copy of the completed planning
25 commission packet the week before the meeting.

1 Q. And tell me what you mean by the
2 planning commission packet. I'm sorry.

3 A. The staff member who writes the staff
4 report and puts the information together would give
5 it to me. I would be sure that any other reports
6 are included, attendance reports, you know, the
7 agenda, things like that. Once all the information
8 is gathered, I'm the one who copies it all, makes
9 all the copies, mails it to the planning commission
10 members, and then I email it to members of the
11 press.

12 Q. And did you do that process of mailing
13 information out in connection with this amendment
14 or proposed amendment to the Marlin Quay Planned
15 Development back in late 2018?

16 A. Yes.

17 Q. Did you have any other involvement with
18 the planning department's review of the application
19 to amend the Marlin Quay PUD that was submitted in
20 late 2018?

21 A. No.

22 Q. All right. Those are all my questions.

23 A. Okay. Thank you.

24 MS. GOLDING: Brooke, before we started
25 Tiffany's deposition, I asked Adam...

1 MR. NUGENT: I think we lost you,
2 Henri.

3 MS. GOLDING: Adam asked for an email
4 setting forth the two questions I instructed the
5 witness not to answer. Both today were related as
6 to attorney-client privilege. If you can just send
7 that to him, those two questions because I don't
8 know whether Adam is going to decide whether they
9 need to be part of our motion or not. Okay?
10 You're muted.

11 Adam, could you hear me?

12 MR. NUGENT: Yes, I could.

13 MS. WATSON: Yes, I heard you as well.

14 MS. GOLDING: Okay. Thank you.

15 And, Adam, we plan to file our motion
16 tomorrow probably in the afternoon, just to let you
17 know that.

18 MR. NUGENT: Okay. I appreciate it.

19 MS. GOLDING: Yeah, I appreciate it.
20 Thank you.

21 MR. NUGENT: Yeah, thank you.

22 MS. GOLDING: You'll send me the
23 electronic copy.

24 (Signature reserved.)

25 (Deposition was concluded at 4:16 p.m.)

1 CERTIFICATE OF REPORTER

2

3 I, Karen M. Ernst, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.

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

11 Witness my hand, I have hereunto
12 affixed my official seal this 10th day of March,
13 2021, at Myrtle Beach, Horry County,
14 South Carolina.

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24

25

Karen M. Ernst

Karen M. Ernst
Court Reporter
My Commission expires
September 2, 2025

1	I N D E X		
2			
3		Page	Line
4			
5	TIFFANY COLEMAN	3	1
6	EXAMINATION	3	3
7	BY MR. NUGENT		
8	CERTIFICATE OF REPORTER	44	1
9			
10			
11	REQUESTED INFORMATION INDEX		
12	(No Information Requested)		
13			
14	E X H I B I T S		
15	PLAINTIFF'S EXHIBITS	Page	Line
16	EXHIBIT 3, Application to	18	23
17	Amend a Planned Development		
18	EXHIBIT 43, Marlin Quay	26	14
19	Neighbor List		
20	EXHIBIT 44, Notice of Public	27	19
21	Hearing		
22	EXHIBIT 45, Email chain dated	30	24
23	September 24, 2018, and		
24	October 10, 2018		
25			

1 CHANGES AND SIGNATURE

2 WITNESS NAME: Tiffany Coleman, 03/04/2021

3 PAGE LINE CHANGE REASON

4 _____

5 _____

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14 _____

15 _____

16 I, Tiffany Coleman, have read the foregoing
17 transcript and hereby affix my signature that same is
18 true and correct, except as noted above.

19

20 _____

21 Tiffany Coleman

22 Sworn to and Subscribed before me

23 _____, Notary Public.

24 This _____ day of _____, 20____.

25 My Commission Expires:

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: 10..application

Exhibits	2020 11:14	accessed	amend 11:2
	2021 11:11	16:19	18:16, 23
ColemanT 3-OCR	24 30:25	accurately	19:6, 18
18:23 19:3	35:3	30:10, 13	40:11, 23
45:16	24th 31:17	Act 23:4	42:19
ColemanT 43-OCR	29440 3:10	action 36:12	amendment
26:14,	2nd 3:13	ad 14:2, 4	21:2 28:6
19 29:3		Adam 42:25	29:9 33:13
45:18	3	43:3, 8, 11,	34:15
ColemanT 44-OCR		15	39:2, 3, 13
27:19,	3 18:23	additionally	41:2
23 33:4	19:3	5:13	42:13, 14
45:20	323 3:9	address 3:8	amendments
ColemanT 45-OCR		18:3 28:2	12:22
30:24	4	31:23 36:2	answering
31:4 35:2		addressed	3:22
45:22	400-foot	15:13	apologize
1	13:12	addresses	35:5
	15:10	35:19, 22	appearing
10 30:25	16:23	administrator	7:1
35:10	26:23	11:8	applicant
10th 38:9	27:10	ads 40:18	13:10 15:5
15 21:24	43 26:14, 19	affected	16:13
1974 3:13	29:3	15:11, 23	20:19
	44 27:19, 23	16:1, 3, 8,	21:20
2	33:4	21 17:17	39:10, 12
	45 30:24	20:9	applicants
2017 7:12,	31:4 35:2	affiliated	20:8
13	4:16 43:25	39:12	application
2018 18:18	A	afternoon	8:14, 18
19:6 22:19	abide 4:19	43:16	9:6, 11
28:7 30:25	Absent 4:24	agenda 42:7	10:1, 13, 24
31:18			12:20
35:4, 10			16:10
42:15, 20			18:16, 20,

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: applications..chain

23 19:5	associate's		building
20:4 21:2	7:24	B	26:4 29:16
22:15, 20	association		30:2 36:10
23:3 24:17	29:12, 15	back 13:2,	37:13
39:11	30:9 32:6	6, 14	business
40:11, 22	33:14, 22	14:13, 14	7:25
42:18	34:6, 23	16:3 28:25	
		29:2 42:15	
applications	associations	background	C
8:10, 13	33:20, 24	7:22	cabinet
10:24			9:14, 17, 21
11:2, 22, 24	assume 4:25	basically	12:21
12:21 13:9	12:4 14:16	8:8 13:25	
17:15	attach 9:3	birth 3:12	Cafe 3:19
19:18	attached	Blankenship	calendar
33:13	37:25	9:12 10:15	21:23 22:1
40:16	attachment	11:1, 23	called 7:14
appointment	32:24 33:3	14:2, 8, 9	8:25 16:18
38:12	attempt 4:16	15:7, 22	
area 30:22	30:18	27:5 31:22	Carolina
		35:10	3:10
assessor's	attend 40:25	37:4, 8	case 9:2, 4
34:25	attendance	40:17	10:6 13:24
assign 10:4	42:6	Blankenship's	14:1, 4, 24,
12:8	attorney	31:9	25 18:5
assigned	6:19 23:12	bottom 28:2	20:20
10:4, 6, 17	25:4 26:2	29:11	22:3, 7
11:5, 7			24:11 25:1
13:2	attorney-client	Boyd 11:15	27:14
assignment	23:13	36:20	31:15
10:10	43:6	break 5:3, 5,	38:23 39:6
	Avenue 3:9	8	cases 12:8
assignments	aware 18:1	Brooke 42:24	cc'd 36:25
12:6	29:24	Bryant 25:5	certifications
associate	37:17	buffer 16:23	8:3
7:6, 10	40:15	26:23	chain 30:24
8:2, 7			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: change..date

change 12:9	compare	contents 26:2 28:9
14:23	20:21	38:21 41:1, 4
17:25	completed	copied 31:12 couple 19:22
changed	41:24	36:25 coursework
12:15	computer	37:21 8:3
check 15:11, 14	8:16, 19, 22	copies 14:19 court 3:23
clarification	concerns	17:9 41:21 4:1, 8, 13, 18
4:24	18:4	42:8, 9
cleanly 4:14	concluded	copy 13:16 courtesy
Coastal	43:25	21:11 4:17
7:14, 18	condominium	22:24 create 9:2
Coleman 3:1, 7, 8 6:4	30:5, 21	29:25 created
7:5, 23	32:2 33:14	41:24 14:12 28:3
11:9 18:16	35:23	43:23 41:12
20:3 26:17	36:15	correct
27:22, 24	condominiums	11:10 creates 14:9
31:10	29:12, 21	12:1, 2, 3, 7 15:8, 22
colleagues	30:11, 22	15:21 27:1 creating
9:24	connected	30:12 13:20
College 7:25	23:5 24:3	31:18, 19 41:19
commission	connection	33:10 creation
9:13, 14, 20	5:14 10:20	35:19 38:6 17:16
12:23 18:1	22:25 23:3	correctly
21:16, 24	28:6 42:13	15:13 cross 17:1
24:9 40:25	Constance	correspondence
41:3, 6, 11, 20, 23, 25	38:4	24:10, 18 cross-reference
42:2, 9	contact 18:3	15:6, 18
communicate	32:14	council
20:18	36:22 40:2	41:1, 4
company	contacted	county 3:19, 20 6:15
7:14, 17, 20	38:12	7:7, 11 data 8:9, 12, 17 9:1, 5 11:6
	contained	8:2, 7 12:19, 24
	20:5 38:24	12:17 18:21
		21:18 date 3:12
		23:12 25:4

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: dated..earlier

13:18 15:1	39:16, 21	24:4 26:9	10:19
22:4, 6	department's	39:11	11:4, 24
dated 30:24	40:11	40:6, 12, 23	document
dates 14:24	42:18	41:2 42:15	14:12
17:25	departure	developments	17:21
40:19	11:18, 22	19:19	19:4, 11
day 22:1	depend 23:24	diagrams	20:6 21:6,
38:17	depending	36:9, 14, 16	13, 14 23:5
days 21:24	10:24	37:12	26:19
deal 23:16	33:24	dictating	27:8, 9, 24
		12:5	33:2
dealt 31:23	depends	difficult	documentation
decide 10:12	20:15	10:14	37:14, 20,
12:9, 10	deposed 3:14	direct 39:23	22 38:5
43:8	deposition	director	documents
decision	5:4, 15	11:11, 15	6:7 7:2
32:15, 17	6:4, 8, 12,	discuss 6:14	8:23 9:3
degree 7:24	14, 20, 23	37:6	12:25 23:3
department	19:12	discussed	24:7, 13
6:16 7:8	42:25	30:4	25:6 26:1
9:12, 25	43:25	discussing	36:23
10:15	description	32:18	double 28:24
11:1, 12	14:4 22:8	discussion	drawer 10:7
17:23	design 10:18	29:19	drive 25:13
18:21	11:4, 24	32:12	drugs 6:1
20:18	desk 18:21	37:10	duly 3:2
21:11	39:16	dispute	duplicates
22:21	determination	22:25	17:1 27:13
23:23	30:14	distribute	duties 8:6
24:22	development	29:25	23:22
25:21	10:18	distributing	
26:4, 5, 7	11:2, 3, 4	32:7	
28:10	12:22 13:5	district	E
30:4, 9	17:15		
34:11, 22	18:24 23:7		earlier
			17:22

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: educational..front

educational	entered 8:15	F	fine 5:6
7:22	entering		finish 4:15
effort 15:6	8:18	fact 28:15	flexible
35:25	entry 8:10,	fair 5:1	10:18
electronic	12,17 9:1,	19:17	11:4,23
25:13	5 11:7	fairly 3:17	flip 16:3
43:23	12:20,24	19:4	flow 11:17
email 18:3	18:22	fall 18:18	FOIA 23:15,
28:2	envelope	familiar	21,24
29:18,24	14:11	18:15 19:8	24:3,7
30:15,24	17:12	fellow 25:21	25:1,8,16,
31:6,8,13,	envelopes	felt 32:14	18,22,24
17,23	13:11,13,	figure 18:9	26:8
32:22,24	17 15:5,7,	34:20	31:12,13
33:23	12 16:14	file 8:23	folder 14:25
35:3,9,14,	20:22,24	9:2,4,14	22:8,10,
17,19,21	21:3,19	10:7	12,18
36:2,6,13,	33:8	12:20,25	form 28:9
19 37:1,8,	EXAMINATION	14:13,14,	format 25:14
13,21	3:3	25 21:16	forward
38:3,4,8,	executing	22:3,7	36:10
10 42:10	12:5	24:16	forwarded
43:3	exhibit	38:13,21,	36:20 37:3
emailed	18:23 19:3	23 39:6	38:10
29:13	26:14,19	43:15	forwarding
emailing	27:19,23	filed 9:13,	35:14
25:11	29:3 30:24	16	Freedom 23:4
emails 6:18	31:4 33:4	files 9:20	frequently
37:21,24	35:2	filing 9:16,	33:17
employee	existence	21	front 7:2
3:20 10:4,	22:15	fill 18:12	8:8 26:17
5	explain 8:24	find 36:1	28:24
Energov 9:1	extend 4:17		39:16 41:9
10:3	extent 39:23		
enter 8:21			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: froze..information

froze 10:22	GIS 16:18	7:2	7:25
fully 5:23	26:25	happened	
function	29:23	34:14	I
16:22	33:25	happening	idea 30:20
	34:25	16:17	identification
G	give 15:19	happy 4:22	18:25
	24:21, 25	5:3 19:7,	26:15
Gardner	25:2 42:4	23 26:20	27:20 31:1
29:14, 18	Golding 5:13	35:4	identify
30:15	6:5, 11	head 4:3	30:10
31:21, 22	23:11	hear 43:11	impacted
32:19, 20	42:24	heard 9:15,	28:20
35:3, 15, 17	43:3, 14,	18 43:13	important
36:2, 4, 13	19, 22	Hearing	3:25 4:9
37:1, 12	Government	27:19	include 14:4
Gardner's	7:8	Henri 43:2	20:8 24:9
32:1, 10	great 23:16	hey 16:8	included
37:20	ground 3:16,	history 20:9	16:5, 6
gather 23:2,	25 4:9	Holly 11:5	21:3, 5
10	5:10	12:9, 11	28:14
gathered	Gulfstream	30:6 36:20	36:17 42:6
23:10 42:8	3:18	homeowner's	indicating
gathering	H	29:12, 15	36:13
24:6	hand 14:14	30:8 32:6	individual
generate	handed 26:3,	33:14, 20,	30:11, 21
14:6	5	21, 24	33:15
20:13, 21	handle	34:6, 22	34:23
generated	12:10, 11	homeowners	individuals
20:14 27:6	handled 9:16	30:1	40:4
Georgetown	handwriting	honestly	influence
3:9, 19	22:11	34:17	5:25
6:15 7:7,	handwritten	Horry-	information
11, 15 8:2,		georgetown	9:6 14:1,
7 12:16			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: informational..made

23, 24 18:6	internet	14:2, 21	lists 18:5
23:4, 16, 19	10:20, 21	15:17 30:6	35:9
24:22	interrupt	31:9, 11, 22	litigation
29:22	4:18	35:10	23:6
31:14, 20	involvement	36:21 37:4	located
33:7 34:7	17:14	40:17	13:24
39:7 40:1,	25:25	jump 25:13	location
5 41:22	40:10, 21	June 7:12	13:15
42:4, 7, 13	42:17		14:5, 6, 10,
informational	involving	K	17 16:1
13:22	3:19 23:6	kind 7:22	28:19, 23
informed	issue 20:19	8:12	33:6
35:17	30:4, 7	knew 30:9	locations
initial	33:17 34:9		15:23
12:19, 24	37:6	L	long 5:5
initially	issues 8:4		7:10 19:4
12:12	item 26:21	landed 18:21	26:19
initials		late 18:17	looked 19:15
15:3 22:5	J	19:6 22:19	33:4
inside 14:25	job 8:6	28:7	lost 10:20
22:3, 7	12:14	42:15, 20	43:1
30:3	18:12	lawsuit 3:19	lot 14:22
instance	19:19	learn 32:9	19:17
34:20	23:22	lets 13:23	25:24 41:9
instructed	Johnson	list 15:9	Lowery 36:5
29:23 43:4	11:15	16:16, 25	37:16
instruction	36:25 37:7	17:1, 4	38:3, 4, 9,
32:21	Johnson's	20:5, 12,	12, 14, 19,
instructs	11:18, 21	13, 17, 21	22
5:18	joint 32:15,	26:14	
interior	17	29:20	M
22:12	Judy 9:11	listed 29:6	made 22:23
internal	10:14 11:1	34:2, 4, 24	30:14, 18
21:21	12:10		38:12

mail 13:3, 5,6,17 17:2 21:22,24	18,23,25 33:6 mark 21:25 marked 18:24 19:3 26:15,18 27:20,23 31:1,4 Marlin 18:17 19:6 21:2 23:6 24:3 25:2,16, 18,22 26:9,14 27:16 28:6 29:8,11,21 30:8,22 32:6 33:21 34:15 39:3 40:6,12,23 41:2 42:14,19	meetings 25:20 26:6,11 39:13,20, 22 41:1,4, 6,9 member 42:3 members 24:12 25:21 26:7 32:16 38:25 39:5,20 41:23 42:10 mentioned 14:7 17:22 38:2 messages 6:19 minutes 24:10 27:1 41:8,11,19 missed 16:13 month 9:14, 17,22 motion 43:9, 15 move 4:12 30:18 multiple 17:3 25:16 muted 43:10	N names 16:24 Nancy 29:14, 24 31:21 32:19 Nancyg@ surfsiderealty 31:18 Neighbor 26:14 newspaper 14:2 40:15,18 nod 4:2 notation 22:3 notes 6:22 21:22 41:7,19 notice 13:14,15, 20,21,22 14:5,17,20 16:2,7 17:2,9,16, 20 18:12 20:19 27:14,16, 19,25 28:1,2,16, 24 29:7,8, 13,18,25 30:5,15 32:8,21
mailed 15:2, 3 22:4,5			
mailing 13:8 17:16 21:18 42:12			
mails 41:22 42:9			
maintains 39:19			
make 15:6, 12,21 16:15 19:22 21:22 22:3 28:24 29:24 35:25			
makes 17:9 21:11 42:8			
making 12:6 14:19 40:18			
manager 29:14 32:6			
map 13:15 14:5,7,10, 17 15:7,22 16:1,6,7, 20 17:10 28:13,15,			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: noticed..place

33:3, 5, 13		ordinances	pass 9:6
34:5 35:18	0	19:18	34:7
36:17 38:5	object 5:17	outlines	past 31:24
40:9, 14	objection	6:23	PD 11:24
noticed	5:20	owned 35:22	25:2 27:17
14:11	occasion	owner 16:8	28:6 29:8
notices	17:6, 7	18:1 20:24	33:12
13:3, 5, 6, 8	occasionally	owners 13:23	34:15 39:3
14:15 15:2	33:23 39:5	15:10, 24	pending 5:7
17:17	occupation	17:17	16:10
21:19, 24	7:5	20:5, 9, 12	people 16:2,
22:1 28:10	occurred	28:5, 11	16 29:6, 7,
33:25	26:11	29:21	10
notified	October	30:1, 5, 11,	perfectly
20:10	11:14	21 32:2, 8	5:6
30:19	30:25	33:15	person 9:19
33:22	35:10 38:9	34:2, 3, 5,	10:9 12:4
34:23	office 8:8,	8, 24	13:19
notify 9:24	15 9:7	35:18, 22	15:22 17:8
29:15	11:6 16:15	36:1, 15, 18	32:14, 19
33:20 34:6	20:14 22:2	P	35:6 39:1,
36:18	29:20	p.m. 43:25	15, 19
41:23	32:13	packet	personally
November	36:21	41:22, 25	15:15 17:5
3:13	37:16	42:2	physical
NUGENT 3:4	38:17 39:1	packets 24:9	22:10
19:1 23:20	40:7	pages 20:3	24:16
26:16	ongoing 23:6	23:18	physically
27:21 31:2	online 16:19	26:19	9:19 17:9
43:1, 12,	open 22:10	paper 7:2	25:8 40:6
18, 21	order 13:7	part 23:21	piece 13:23
number 15:2,	ordinance	43:9	16:9
6, 12 16:20	18:8		place 21:15
18:5 22:4			

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: placing..published

placing	20, 23, 24	print	16:25	27:4 28:5,
12:25	42:2, 9, 18	printed		11, 20, 23
Plaintiff's	plans 36:9,	31:8, 11, 16		29:13, 21
19:3 26:18	14, 16	35:6		30:1 32:8
27:23 29:2	37:12, 17	prior 7:13		33:15
31:4	38:24 39:1	11:14, 17,		34:1, 3, 5,
plan 11:1	plat 9:11	21 21:25		8, 24 35:22
37:17	10:16	24:23		36:1, 18
43:15	plats 8:11	32:20	proposal	
planned	point 12:15	33:12	29:8	
10:18 11:3	22:19 40:1	privilege	proposed	
12:22 13:4	policy 12:5	23:13 43:6	36:9 37:12	
18:24	portions	process 9:9	39:2, 13	
19:19 23:7	22:12	10:2 16:15	41:1 42:14	
24:4 26:9	position	34:4 40:15	provide 4:6	
39:11	7:19 32:1,	42:12	13:16	
40:6, 12, 23	10	program 8:25	14:10	
41:2 42:14	possibly	project 13:2	15:25	
planner 7:6,	36:20	25:17, 23	20:24	
11 8:2, 7	preparation	27:17	41:15	
planning	19:12	prompted	provided	
6:15 7:8	prepare 6:3,	29:17	18:2 21:19	
8:4 9:13,	8, 12, 22	proof 14:21	28:16	
14, 20, 25	present	properties	33:13	
11:11, 15	31:14	16:21	36:14	
12:23	38:14	property	providing	
17:15 18:1	presenting	13:12, 23	25:13	
21:16, 24	40:16	15:10, 11,	27:16 28:5	
22:20	press 41:24	23, 25	30:5 34:5	
23:22 24:9	42:11	16:1, 4, 8,	public 16:19	
25:21 26:7	prevent	9, 21, 23	27:19, 25	
28:10 30:9	5:12, 22	17:3, 17, 25	36:17	
38:20		20:5, 9, 12,	39:1, 6, 7	
39:16, 21		24 26:24	published	
40:10, 25			40:14, 20	
41:3, 6, 11,				

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: PUD..request

PUD 18:17	41:2	40:4, 8	related 8:3
19:6 21:2	42:14, 19	receipt 37:8	9:20 23:3
42:19	question	receive	24:18
pull 14:3	4:12, 25	10:25 36:9	25:16, 18
16:24	5:7, 18, 19	received	26:8 32:1
23:16	34:17	8:10, 14	39:2, 13
24:8, 12, 16	questions	18:17, 20	40:5 41:1
29:22	3:18, 21, 22	20:22	43:5
31:14	4:1, 16, 20	23:15, 25	remind 4:19
33:25	5:10 18:4	26:8 35:15	reminder 4:7
pulled 14:1	42:22	36:13	repeat 4:22
pulling	43:4, 7	receiving	7:16 10:22
25:25	R	18:19	rephrase
put 12:12,	radius 13:12	32:21	4:22
20 14:11,	15:10 16:4	reception	report 26:22
13 16:20	27:10	8:9	27:5, 7
19:2, 9	read 19:24,	recognize	42:4
26:17 31:3	25	26:20	reporter
33:8	reading 18:8	27:24	3:23 4:2,
puts 9:20	ready 14:19	record 3:6	8, 13, 18
42:4	recall 18:19	21:20	10:21
Q	19:14, 16	35:19	reports
Quay 18:17	23:17 24:2	records	42:5, 6
19:6 21:2	25:12	16:24	represent
23:6 24:4	26:6, 12, 13	29:23 34:1	3:18 19:4
25:2, 16,	27:3, 6	reference	representing
18, 22	28:15	16:7 30:8	5:14
26:9, 14	30:3, 16	referenced	reproduced
27:17 28:6	32:18	32:25	22:24
29:8, 11, 21	33:12	references	request
30:8, 22	34:13, 18	36:5	4:23, 24
32:6 33:21	35:1 37:9,	refresh 29:4	23:4, 5, 25
34:15 39:3	14, 15	relate 26:1	25:9, 24
40:6, 12, 23	39:4, 8, 10		26:1 31:12

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: requested..similar

requested	25:8, 17	rotate	27:9	41:7
36:23	responsibiliti	rule	3:25	self-addressed
requests	es 12:14	4:9		13:11 15:4
10:16, 25	responsible	rules	3:17	16:14
11:6	32:7 40:17	5:10		send 6:18
23:15, 21	41:8	run	8:8	29:17, 24
24:3, 7	rest 6:6	26:23, 25		32:21
25:2, 16,	38:10	27:5 39:16		36:22
18, 22 26:8	review 6:7			43:6, 22
31:13	10:8 24:23	s		sending 25:8
required	26:2 37:16			37:22 40:9
13:10	38:13, 23	sales	7:21	sends 17:12
17:20	39:1 40:11	sat	38:22	September
20:23 21:3	42:18	saving	8:23	30:25
31:13	reviewed	scan	9:3	31:17 35:3
requires	14:20	21:15		set 16:22
25:24	22:18 25:5	24:14		setting
reserved	reviewing	scanned		34:14 43:4
43:24	27:12	22:24		shake 4:3
residents	reviews	9:11	scanning	shipping
29:16	rezone	11:3	8:22 25:11	7:21
respect	rezoning		schedule	show 16:4
40:22	10:16, 25		39:20, 22	27:22 31:5
respond 38:8	13:4	schedules		showing
responded	Richardson	39:20		27:10
25:15	11:5, 11, 25	screen	19:2	sided 28:24
responding	36:24 37:7	29:3 31:3		sign 14:18
23:21	38:11, 22	scroll	19:7,	signature
24:2, 7	role	12:23	23 26:20	43:24
25:22	24:15	35:4		similar
response	32:11	scrolled		25:13
31:12	41:5, 18	20:6		31:24
37:13, 20	Rose	3:9	secretary	
responses				

THE GULFSTREAM CAFE, INC. vs GEORGETOWN COUNTY, ET AL.

Tiffany Coleman on 03/04/2021

Index: simply..today's

simply 13:22	standard	sworn 3:2	terribly 5:5
sir 3:15	13:25	system 8:16,	testified
5:11 8:20	start 4:8	19, 22 9:2	3:2 28:13
11:20	10:8 14:19	10:3 12:6	33:8 37:19
sit 7:3	started	16:18, 19	testifying
41:9	42:24	21:15, 21	5:23
situation	state 3:5	26:25	text 6:18
31:24	36:8	29:23	thing 5:6
small 9:10	stated 8:1	33:25	things 12:22
software	15:4, 20		19:22 42:7
8:25	16:12	T	
sort 7:2	step 20:18	table 5:7	Tiffany 3:1,
21:14, 20,	stone 12:13	taking 5:8	7 31:10
21	stop 20:1	41:19	Tiffany's
South 3:10	straightforward 3:17	talk 4:10	42:25
specific	strictly	talking 4:14	time 4:14
9:21 24:17	36:18	12:21	5:17 13:3
25:1 32:18	stuff 13:17	34:16	15:18
specifically	Stuffs 17:12	tasked 25:7,	17:6, 24
18:19	subject 5:19	10	19:14
19:16 24:2	16:9 23:12	tax 16:20,	23:17
30:17	submit 13:10	24 29:23	25:4, 12
specifics	submitted	33:24	30:16
17:20	19:5 22:20	34:1, 24	34:12, 21
staff 6:6	42:19	Technical	35:1 40:8
9:10 24:12	sufficient	7:25	timeframe
25:25	14:18	telephone	19:7 22:19
32:13, 16	suite 8:9	18:4	times 17:3
38:11, 20	summer 18:18	template	today 3:18,
42:3	supposed	13:25	21 5:23
stamped	18:11	14:12, 22	6:1 7:3
13:11 15:5		17:23, 25	43:5
16:14		terms 27:12	today's 6:8,
			12, 14, 20,
			23 19:12

todays's 6:3	38:19	worked 7:14
tomorrow 43:16	units 35:23	working 23:22
track 4:18	unsure 12:8	write 15:1
traffic 39:23	V	writes 13:14, 20
truthfully 5:23	Variance 11:5	14:2 42:3
type 8:17	variances 9:15	writing 33:21, 22
10:24	verbal 4:6	40:18
17:19	verbally 4:1	41:8, 10
23:5, 24	verify 41:16	written 6:23
types 13:8	virtually 7:1	12:13
typical 34:4	visited 39:1	13:21
typically 10:15	W	Y
11:23	walk 19:21	year 19:13
12:24	WATSON 43:13	years 12:16
14:2, 20	website 34:25	34:10
20:8 24:25	week 14:3	Z
28:14	41:25	zip 19:25
U	Wesley 25:5	zone 16:2
Uh-huh 33:1	whomever 13:1 25:11	zoning 11:7,
35:8	Wire 7:15,	22 12:21
unclear 4:21	18	17:15 18:8
understand 3:20 4:25	work 7:13	19:18 26:4
24:15 30:7	8:9 9:9	33:12
understanding 17:19	10:8 11:17	Zoom 3:23
31:25		
32:4, 5, 10		



129 Screven St. Suite 222
Post Office Drawer 421270
Georgetown, S. C. 29440
Phone: 843-545-3158
Fax: 843-545-3299

APPLICATION TO AMEND A PLANNED DEVELOPMENT (PD)

COMPLETED APPLICATIONS MUST BE SUBMITTED ALONG WITH THE
REQUIRED FEE, AT LEAST FORTY-FIVE (45) DAYS PRIOR TO A PLANNING
COMMISSION MEETING.

Please note this approval applies to this particular property only.

Name of Planned Development: Marlin Quay

Regulation to which you are requesting an amendment *(check applicable):*

- ☐ Setback – Complete SECTION B: SETBACK AMENDMENT
- ☐ Signage – Complete SECTION C: SIGNAGE AMENDMENT
- ☒ Site Plan – Complete SECTION D: SITE PLAN AMENDMENT
- ☒ Other – Change of Building Configuration

All Applicants must complete SECTION A: APPLICANT INFORMATION

SECTION A: APPLICANT INFORMATION

Property Information:

TMS Number: 41-0128-032-61-00 (a portion) and 41-0129-02-00-00 (a portion)
(Include all affected parcels)

Street Address: 1508 South Waccamaw Drive

City / State / Zip Code: Garden City Beach, South Carolina 29576



See - \$ 262.50

Lot / Block / Number: Tract 3, Marlin Quay

Existing Use: Marina Retail Store and Restaurant

Proposed Use: Marina Retail Store and Restaurant

Commercial Acreage: Less than .5 Acres

Residential Acreage: _____

Property Owner of Record:

Name: Palmetto Industrial Development, LLC

Address: 611 West Palmetto Street, Suite B

City/ State/ Zip Code: Florence, South Carolina 29501

Telephone/Fax: 843-235-6747 (Attorney for Owner)

E-Mail: marklawhon@gmail.com

Signature of Owner / Date: _____

Contact Information:

Name: Dr. Mark Lawhon

Address: 611 West Palmetto Street, Suite B, Florence South Carolina 29501

Phone / E-Mail: 843-235-6747 (Attorney for Owner) / marklawhon@gmail.com

I have appointed the individual or firm listed below as my representative in conjunction with this matter related to the Planning Commission of proposed new construction or improvements to the structures on my property.

Agent of Owner:

Name: Daniel W. Stacy, Jr., Esquire

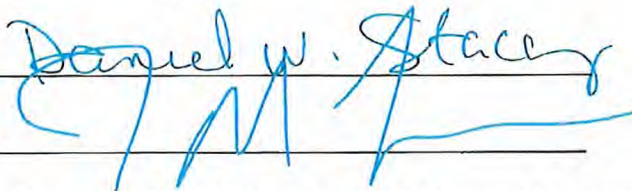
Address: 90 Wall Street / Unit B

City / State / Zip Code: Pawleys Island, South Carolina 29585

Telephone/Fax: 843-235-6747 / 843-235-6650

E-Mail: dstacy@oxnerandstacy.com

Signature of Agent/ Date:



✱

Signature of Owner /Date:



Fee Schedule: \$250.00 plus \$10.00 per Residential acre or \$25.00 per Commercial acre.

Adjacent Property Owners Information required:

1. The person requesting the amendment to the Zoning Map or Zoning Text must submit to the Planning office, at the time of application submittal, stamped envelopes addressed with name of each resident within **Four Hundred Feet (400)** of the subject property. The following return address must appear on the envelope: **"Georgetown County Planning Commission, 129 Screven St. Suite 222, Georgetown, SC 29440."**
2. A list of all persons (and related Tax Map Numbers) to whom envelopes were addressed to must also accompany the application.

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with the applicant.

Please submit this **completed application** and appropriate **fee** to Georgetown County Planning Division at 129 Screven St. Suite 222, Georgetown, S. C. 29440. If you need any additional assistance, please call our office at 843-545-3158.

Site visits to the property, by County employees, are essential to process this application. The owner\applicant as listed above, hereby authorize County employees to visit and photograph this site as part of the application process.

A sign will to be placed on your property informing residents of an upcoming meeting concerning this particular property. This sign belongs to Georgetown County and will be picked up from your property within five (5) days of the hearing.

All information contained in this application is public record and is available to the general public.

SECTION B: SETBACK AMENDMENT

Please supply the following information regarding your request:

- List any extraordinary and exceptional conditions pertaining to your particular piece of property. _____

-
- Do these conditions exist on other properties elsewhere in the PD?
-
- Amending this portion of the text will not cause undue hardship on adjacent property owners. _____

Submittal requirements: 12 copies of 11 x 17 plans

- A scaled site plan indicating the existing conditions and proposed additions.
- Elevations of the proposal (if applicable).
- Letter of approval from homeowners association (if applicable).

SECTION C: SIGNAGE AMENDMENT

Reason for amendment request: _____

Number of signs existing currently on site _____

Square footage of existing sign(s) _____

Number of Proposed signs: _____

Square footage of the proposed sign(s) _____

Submittal requirements:

- Proposed text for signage requirements.
- 12 copies (11 x 17) of proposed sign image.
- Site plan indicating placement of the proposed sign(s).
- Elevations.
- Letter from POA or HOA (if applicable)

SECTION D: SITE PLAN AMENDMENT

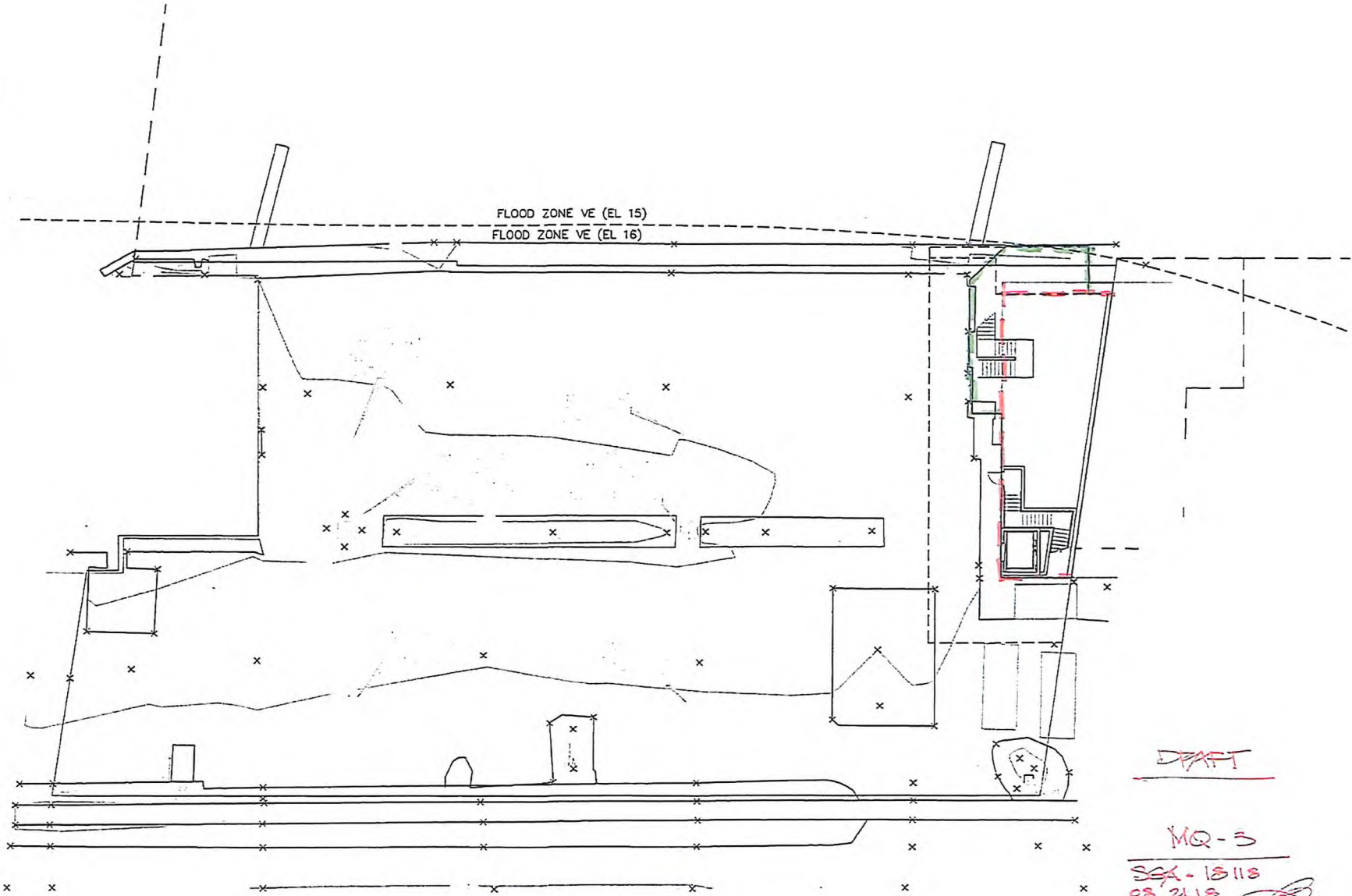
Proposed amendment request: Per Separate litigation, a court has ordered that the site plan approved by Planning Commission and County Council cannot be built, and the applicant has to rebuild wholly within the footprint of the building that existed prior on this site. This change is to bring the site into compliance with said Court Order.

Reason for amendment request: Site plans attached to application, revised calculation to follow under separate cover.

Submittal requirements:

- 12 copies of existing site plan.
- 12 copies of proposed site plan.
- Revised calculations (*calculations may include density, parking requirements, open space, pervious/impervious ratio, etc.*).

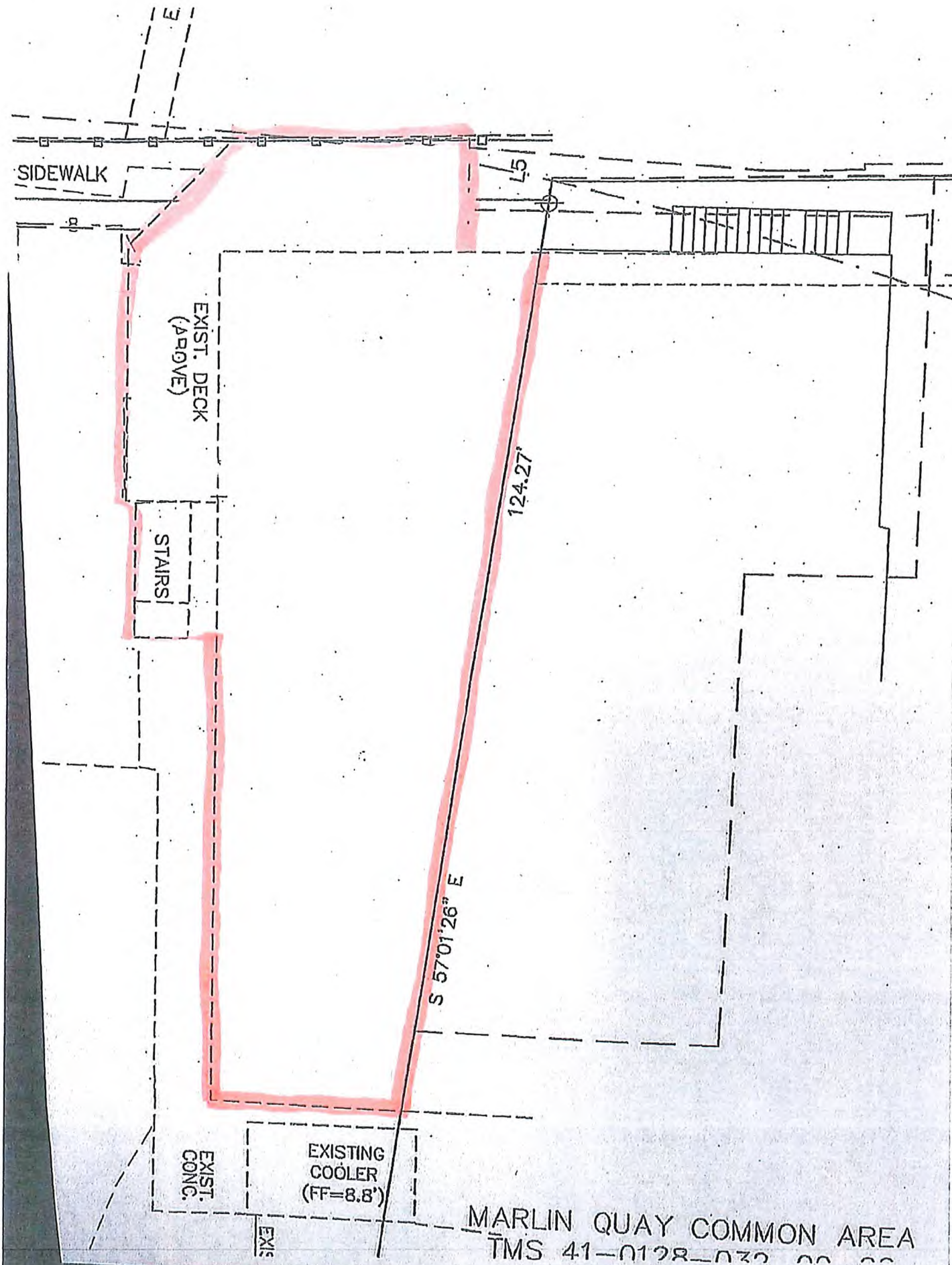
SYMBOL TABLE



DRAFT

MQ-5
SGX-15118
08.21.18

DEFS 00006



[illegible]

Selected Lot Lines Feature

PLAT	6-214
TMS	41-0129-002-00-00
OBJECTID	44378
editdate	
Shape.STLength()	
editdate	
GlobalID	{03273CD1-5B3F-4C58-91FC-A2774073A507}
sde.SDE.parcelpoly2017.Area	26063.26794434
created_user	
created_date	
last_edited_user	
last_edited_date	
Legal	LTS 3, 4 & 5, BLK C SOUTH POINT A/K/A TRACT 3
TMS	41-0129-002-00-00
Street Number	1508
Acreage	1
Date	2014-08-19 20:00:00
Sale	800000
Legal Ref	2421-267
Location	SOUTH WACCAMAW DR
Owner	PALMETTO INDUSTRIAL DEVELOP LLC
Owner 2	
Address1	611 WEST PALMETTO STREET
Address2	
City	FLORENCE
State	SC
Zip	29501

Selected Lot Lines Feature

PLAT	06-214
TMS	41-0128-032-61-00
OBJECTID	44377
editdate	
Shape.STLength()	
editdate	
GlobalID	{40423107-2289-4752-8A88-54A232ADFFC7}
sde.SDE.parcelpoly2017.Area	102775.00720215
created_user	
created_date	
last_edited_user	
last_edited_date	
Legal	YACHT BASIN Boat Docks
TMS	41-0128-032-61-00
Street Number	
Acreage	1
Date	2014-08-19 20:00:00
Sale	800000
Legal Ref	2421-267
Location	BASIN DR
Owner	PALMETTO INDUSTRIAL DEVELOP LLC
Owner 2	
Address1	611 WEST PALMETTO STREET
Address2	
City	FLORENCE
State	SC
Zip	29501



EXHIBIT

43

Huseby.com

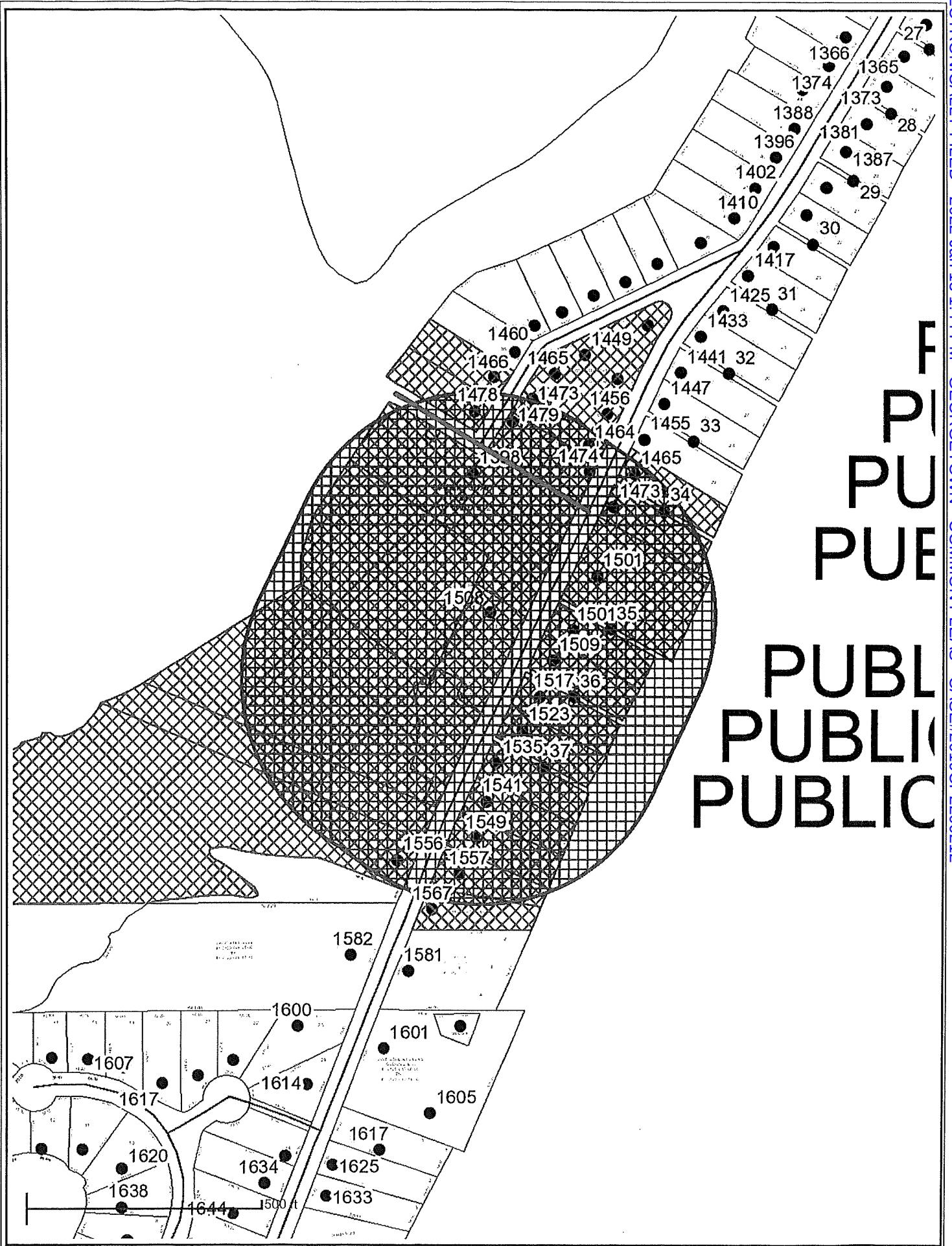
Page 1 of 2

	PLAT	TMS	Area	TMS	Housenum	Street	Name	Name2	AD1	AD2	City	Staqt	Zip	Acres	Deed	Date	Sale	Legal	LUC
1		41-0129-011-00-00	17060.90466309	41-0129-011-00-00	1517	SOUTH WACCAMAW DR	JACOBS HOWARD N	JACOBS EMELINE S	71 DOCK RD		CHESTER	CT	06412	1	2127-328	2013-04-15 20:00:00	1375000	35 BLK B GARDEN CITY	N500
2	264-5	41-0128-034-00-00	53753.44616699	41-0128-034-00-00	1438	BASIN DR	SEAPORT VILLAGE HPR		C/O SURFSIDE REALTY INC	213 S OCEAN BLVD	SURFSIDE	SC	29575	1	848-262	1998-01-31 19:00:00	5	58, 59, 60 & 61 BLK A GARDEN CITY SLD 466-2 & 3, 474-7 & 10~	E452
3		41-0128-030-00-00	15811.19116211	41-0128-030-00-00	1472	BASIN DR	GRANTHAM TERRELL W	GRANTHAM VICTORIA I	2508 TROTTER RD		FLORENCE	SC	29501	1	650-144	1995-08-31 20:00:00	425000	56 BLK A GARDEN CITY	N500
4	03-243	41-0128-032-62-00	617.12744141	41-0128-032-62-00		BASIN DR	GEORGETOWN CO WATER & SEWER		PO DRAWER E		GEORGETOWN	SC	29442	1	2291488	1983-10-31 19:00:00	1	MARLIN QUAY LIFT STATION	E970
5		41-0129-005-01-02	52842.25952148	41-0129-005-01-02	1556	WACCAMAW DR S	DEBERRY JOHN S		179 SOUTH COIT STREET		FLORENCE	SC	29503	1.33	1657-137	2005-05-31 20:00:00	40000	PARCEL E-1 SLD 351-9~	N500
6	S-078 351	41-0129-005-01-00	335735.60803223	41-0129-005-01-00	1556	WACCAMAW DR S	ALLEN JEAN D		1210 CHEROKEE ROAD		FLORENCE	SC	29501	9.84	495-107	2007-04-29 20:00:00	5	PARCEL E SOUTH POINT SLD 351-9~F/K/A BLK E SOUTH POINT~	N500
7	145-2	41-0129-005-02-01	17410.65930176	41-0129-005-02-01	1535	SOUTH WACCAMAW DR	K & R LAND HOLDINGS LLC		90 HANES MILL RD		ST MATTHEWS	SC	29135	1	1471-293	2010-04-29 20:00:00	2050000	1 BLK F SOUTH POINT	N500
8			17260.90527344																
9	O-031	41-0128-031-00-00	16578.57287598	41-0128-031-00-00	1478	BASIN DR	BRICKLE GREGORY S		155 SYLVAN DRIVE		CHAPIN	SC	29036	1	2492-142	2014-12-18 19:00:00		57 BLK A GARDEN CITY	N500
10		41-0128-067-00-00	17160.27526855	41-0128-067-00-00	1465	WACCAMAW DR S	TIMPANOGOS LLC LIFE ESTATE		P.O. BOX 1024		MURRELLS INLET	SC	29576	1	1265-313	2002-04-03 19:00:00	5	30 BLK B GARDEN CITY	N500
11	O-031 054	41-0128-068-00-00	17463.86608887	41-0128-068-00-00	1473	WACCAMAW DR S	GRANTHAM TERRELL W	GRANTHAM VICTORIA I	2508 TROTTER ROAD		FLORENCE	SC	29501	1	379-222	1990-04-30 20:00:00	450000	31 BLK B GARDEN CITY	N500
12		41-0129-008-00-00	51070.93395996	41-0129-008-00-00	1501	SOUTH WACCAMAW DR	BAGWELL JAMES KEITH		1275 S SUBER RD		GREER	SC	29650	1	1469-100	2010-04-19 20:00:00	119700	DWL 1A A PLACE AT TH	N450
13	Z-015	41-0129-009-00-00	17293.53979492	41-0129-009-00-00	1501	SOUTH WACCAMAW DR	A PLACE AT BCH OCEAN FRONT NO2	ASSOC INC	PO BOX 14280		SURFSIDE BEACH	SC	29587	1	152-454	1977-09-22 20:00:00	1	33 BLK B SOUTH POINT	N701
14			17551.99060059		1509		SHULL LAURA T		PO BOX 2074		CAMDEN	SC	29020	1			1500000		N500

DEFS 00058

127-10A	41-0129-010-00-00		41-0129-010-00-00		SOUTH WACCAMAW DR									1428-280	2003-09-29 20:00:00		34 BLK B GARDEN CITY		
15	O-031	41-0129-012-00-00	16811.66357422	41-0129-012-00-00	1523	SOUTH WACCAMAW DR	KUPERMAN PAUL M	KUPERMAN JENNIFER O	133 GREEN LAKE DRIVE		MYRTLE BEACH	SC	29572	1	1872-295	2012-04-01 20:00:00	900000	36 BLK B GARDEN CITY	N500
16	145-2	41-0129-005-04-00	17713.83898926	41-0129-005-04-00	1541	SOUTH WACCAMAW DR	OGDEN SHERRILL R CO-TRUSTEE	OGDEN PHILLIP R CO-TRUSTEE	790 OLD LATHEMTOWN ROAD		CANTON	GA	30115	1	2052-236	2012-12-25 19:00:00	1600000	LOT 2 BLK F SOUTH POINT	N500
17	S-078	41-0129-005-02-00	17592.16101074	41-0129-005-02-00	1549	SOUTH WACCAMAW DR	DEBERRY JOHN S		PO BOX 1422		FLORENCE	SC	29503	1	2369-202	2006-12-31 19:00:00	5	3 BLK F SOUTH POINT	N500
18		41-0129-005-02-02	16274.30834961	41-0129-005-02-02	1557	SOUTH WACCAMAW DR	YOUNG STEPHEN F	BATTS SARAH Y	109 STONYBROOK RD		ROCKY MOUNT	NC	27804	1	2925-302	2016-11-14 19:00:00		4 BLK F SOUTH POINT	N500
19	6-438	41-0129-005-03-00	23934.20556641	41-0129-005-03-00	1536	SOUTH WACCAMAW DR	GULFSTREAM CAFE INC THE		236 ALBEMARLE RD		CHARLESTON	SC	29407	1	234-778	1986-02-24 19:00:00	149812	LOTS A & B PLAT 6-438	N150
20	6-438	41-0129-005-00-00	134362.85412598	41-0129-005-00-00		SOUTH WACCAMAW DR	PALMETTO INDUSTRIAL DEVELOP LLC		611 WEST PALMETTO STREET		FLORENCE	SC	29501	4.8	2421-274	2014-08-19 20:00:00	5	BLK D SOUTH POINT	N009
21	06-214	41-0128-032-61-00	102775.00720215	41-0128-032-61-00		BASIN DR	PALMETTO INDUSTRIAL DEVELOP LLC		611 WEST PALMETTO STREET		FLORENCE	SC	29501	1	2421-267	2014-08-19 20:00:00	800000	YACHT BASIN Boat Docks	N003
22	6-214	41-0129-002-00-00	26063.26794434	41-0129-002-00-00	1508	SOUTH WACCAMAW DR	PALMETTO INDUSTRIAL DEVELOP LLC		611 WEST PALMETTO STREET		FLORENCE	SC	29501	1	2421-267	2014-08-19 20:00:00	800000	LTS 3, 4 & 5, BLK C SOUTH POINT A/K/A TRACT 3	N231
23		41-0128-032-00-00	108666.11877441	41-0128-032-00-00	1398	BASIN DR	MARLIN QUAY HOMEOWNERS ASSN		SOUTH WACCAMAW DR		GARDEN CITY	SC	29576	1	205-270	1982-10-31 19:00:00		MARLIN QUAY COMMON AREA	E451

DEFS 00059



DEFS 00060



NOTICE OF PUBLIC HEARING

The Planning Commission will consider a request from Dan Stacy, as agent for Dr. Mark Lawhon of Palmetto Industrial Development, LLC to amend the Marlin Quay Planned Development to allow for the redevelopment of the Marlin Quay Marina Store/Restaurant. The property is located at 1508 S. Waccamaw Drive in Murrells Inlet. TMS 41-0129-002-00-00. Case Number AMPD 9-18-21424.

The Planning Commission will be reviewing this request on **Thursday, October 18, 2018 at 5:30 p.m. in the Georgetown County Council Chambers entering at 129 Screven Street in Georgetown, South Carolina.**

If you wish to make public comments on this request, you are invited to attend this meeting. If you cannot attend and wish to comment please submit written comment to:

Georgetown County Planning Commission

PO Drawer 421270

Georgetown, South Carolina 29442

Telephone (843) 545-3158

Fax (843) 545-3299

E-mail: tcoleman@gtcounty.org



Judy Blankenship

From: Tiffany Coleman
Sent: Monday, September 24, 2018 2:52 PM
To: NancyG@surfsiderealty.com
Cc: Holly Richardson; Judy Blankenship; Boyd Johnson
Subject: Georgetown County Planning Commission: Application to Amend the Marlin Quay PD
Attachments: Marlin Quay AMPD 9-18-21424.pdf

Hello Nancy:

Please find attached a notice for property owners regarding an amendment to the Marlin Quay PD. We are available to answer any questions.

Thank you,

Tiffany Coleman

Associate Planner Georgetown County
129 Screven St.
Georgetown, SC 29440
Phone: 843-545-3158
E:mail: tcoleman@gtcounty.org



Tiffany Coleman

From: Tiffany Coleman
Sent: Wednesday, October 10, 2018 4:27 PM
To: Judy Blankenship
Subject: FW: Notice of Public Hearing, Thursday Oct. 18, 2018 - Amendment of Marlin Quay Planned Development

FYI...

Tiffany Coleman

Associate Planner Georgetown County
 129 Screven St.
 Georgetown, SC 29440
 Phone: 843-545-3158
 E-mail: tcoleman@gtcounty.org



From: Nancy Gardner [mailto:NancyG@surfsiderealty.com]
Sent: Wednesday, October 10, 2018 4:24 PM
To: Constance Lowery <ithdolldoc@hotmail.com>; Tiffany Coleman <tcoleman@gtcounty.org>
Cc: Holly Richardson <hrichardson@gtcounty.org>; Boyd Johnson <bjohnson@gtcounty.org>
Subject: RE: Notice of Public Hearing, Thursday Oct. 18, 2018 - Amendment of Marlin Quay Planned Development

I did send the notice you sent the Association to all owners whose email address the management office had on record. I believe this is how Ms. Lowery received her notice and talking about. We did not receive any plans or diagram of the proposed building to forward to all.

From: Constance Lowery [mailto:ithdolldoc@hotmail.com]
Sent: Wednesday, October 10, 2018 4:01 PM
To: tcoleman@gtcounty.org
Cc: Holly Richardson; Boyd Johnson; Nancy Gardner
Subject: Notice of Public Hearing, Thursday Oct. 18, 2018 - Amendment of Marlin Quay Planned Development

Dear Ms. Coleman:

I believe you are the Georgetown County Associate Planner to be contacted with any questions in regard to the above Notice.

I note that you forwarded the Notice to Nancy Gardner (Surfside) of the above meeting. I also note that you forwarded to Chris Sanders, Marlin Quay Homeowner, by e-mail, the Application to Amend a Planned Development (PD) submitted by Attorney Stacy for Palmetto Industrial Development, LLC. While I see signatures of Mr. Stacy and Dr. Lawhon, on page 3 of that Application, no dates appear. Preliminary red-lined drawings were included, but no hard information as to the elevations or number of floors of the planned building was included. I am most interested in knowing of this latter information.

Page 3 of the Application calls for " Adjacent Property Owners Information (required)". I own two units within 400 feet of the subject property, and did not receive this Notice in the US mail. I submit that paragraphs 1 and 2 (page 3) have not properly been executed. I believe that the many owners within 400 feet of the subject property (Marlin Quay condos and homeowners on S. Waccamaw Drive) are entitled to receive this Notice of Public Hearing by US Mail, as outlined in the Application, not a two-stepped, or three-stepped blanket process of e-mail.

I welcome your explanation of these discrepancies. Thank you for your time.

Yours truly,

Constance A. Lowery
Owner of Condos 501 and 205 at Marlin Quay
Mailing address: 1181 Crooked Oak Drive, Pawleys Island, SC 29585
Telephone: 607-229-6044
October 10, 2018

Sent from Mail for Windows 10

EXHIBIT 36

BOARD OF ZONING APPEALS
GEORGETOWN COUNTY, SOUTH CAROLINA
PLANNING AND DEVELOPMENT

IN RE: Appeal - Marlin Quay Marina Store and Snack
Bar

DATE: Thursday, February 2, 2017

TIME: 6:30 p.m. through 8:10 p.m.

LOCATION: GEORGETOWN COUNTY COURTHOUSE
129 Screven Street
Georgetown, South Carolina

TRANSCRIBED BY: LUANNE W. JIVIDEN, CCR

STENOTYPE REPORTING SERVICE, LLC

Luanne W. Jviden, CCR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

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REPRESENTING GEORGETOWN COUNTY:

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E-mail: Wbryant@gtcounty.org

ALSO PRESENT:

BOARD OF ZONING APPEAL MEMBERS:

THOMAS ONIONS, CHAIRMAN
JAMES HOLMES
EUGENE GILFILLIN
GARETH BONDS
PAUL YARBOROUGH

STAFF: HOLLY RICHARDSON
BOYD JOHNSON

INDEX

		PAGE	LINE
1			
2			
3	MR. AVENA	05	15
	MR. NEISLER	06	16
4	MR. OGOREK	07	14
	MR. MATT TYLER	08	16
5	MR. STEVE TYLER	11	16
	MR. HASTY	11	19
6	MR. KAWA	12	15
	MR. HARTLEY	14	07
7	MR. CAREY	14	21
	MR. DURENZO	15	20
8	MS. LOWERY	17	09
	MR. HUCKS	18	08
9	MR. ALLISON	19	05
	MR. VICK	20	18
10	MR. ALTMAN	21	16
	MR. SPRINGS	22	13
11	MR. COLLINS	23	09
	MR. NAPPIER	25	05
12	MS. NEWMAN	26	10
	MR. MOORE	27	09
13	MR. BRADY	28	01
	MS. COLLINS	28	21
14	MR. JOHNSON	29	07
	MR. REDMAN	34	22
15	MR. STACY	49	09
	MR. GOGGANS	56	05
16	MR. LAWHON	64	07
	MR. REDMAN	69	14
17	MR. BRYANT	75	06

EXHIBITS**PAGE****LINE**

18
19 All exhibits were retained by Board and Counsel -
20 not attached

21
22 CERTIFICATE OF REPORTER 88 01
23
24
25

1 MR. CHAIRMAN: We do have a quorum so
2 we will proceed. There are, I think, 25
3 people that signed up wishing to speak. I
4 want to try to simplify things so if -- a
5 lot of you, I'm sure, know each other. So
6 if you could kind of perhaps elect a few
7 spokespeople and we can simply it.

8 I am going to limit public comment to
9 each individual that wants to speak, I am
10 going to limit them to two minutes. The
11 attorneys get limited to five. So each
12 individual from the public, if there is
13 something you want to say, you are more than
14 welcome, but you are limited to two minutes.

15 If you can kind of get together, if a
16 couple of people are going to say the same
17 thing, maybe just one person can get up.
18 That will move things along a little bit
19 better.

20 We -- I don't need to swear you in for
21 the public comments, so we're going to start
22 with that this evening. We will listen to
23 public comment and then we will go on and
24 get into swearing everybody in, and the rest
25 of the meeting.

1 So anyone that wants to speak from the
2 public? Raise your hand or something and I
3 will call on you. You will have to stand up
4 when you get up to the podium. You've got
5 it there? Okay.

6 When your name is called, if you're not
7 going to speak, if somebody else is going to
8 speak because they are going to say the same
9 thing, you can just -- just let me know and
10 we will move to the next name.

11 Go ahead.

12 MS. RICHARDSON: Al Avena.

13 MR. CHAIRMAN: Yeah, give us your name
14 and then just spell your last name.

15 MR. AVENA: Al, Avena. A-v-e-n-a.
16 I've had my boat at Marlin Quay about three
17 years now. I understand there is some
18 issues with the parking that's being brought
19 up, that's why we're all here tonight.

20 But another concern, the closest Coast
21 Guard station we have is down here in
22 Georgetown. The building at Marlin Quay
23 with their antennas serves as a little bit
24 of a safe haven for Murrells Inlet boaters.

25 They can reach us 40 miles offshore,

1 our families can communicate, we
2 communicate back. Us not having that
3 building, that way of communication, puts a
4 lot of people in danger.

5 Over this summer there was an incident
6 at Three Mile Reef. Danny Carey, you heard
7 the call for help, you were at the Marina.
8 He zipped right out there and got there
9 before the Coast Guard did.

10 So I strongly feel this building needs
11 to -- that is the purpose, it needs to be
12 there. It's is a public safety issue.
13 Thank you.

14 MR. CHAIRMAN: Thank you.

15 MS. RICHARDSON: Matthew Neisler.

16 MR. NEISLER: First of all, I want to
17 thank you for the opportunity to speak and
18 I, like Al, three years have been at Marlin
19 Quay Marina, you know. They are a safe
20 haven. I don't really understand the
21 logistics of everything that's happening
22 here, but you know, it is a vital part of
23 the community.

24 I've been a businessman for 37 years,
25 they are not going to do anything but bring

1 people and tourists and fishermen into the
2 community, to bring money into the
3 community. And, you know, I'm just here to
4 support 'em. They treat everyone very
5 nicely and like I say, they look after
6 people.

7 Just like he was talking about Three
8 Mile Reef, we was all on our boats going out
9 there, that quick, just because of a call on
10 the radio. You know, but anyway, I'm here
11 to support them.

12 MR. CHAIRMAN: Thank you.

13 MS. RICHARDSON: George Ogorak.

14 MR. OGORAK: George, last name, Ogorak,
15 O-g-o-r-a-k, with Gulfstream.

16 Thank you, again, for hearing us. I'm
17 not here to talk about not having a
18 building, I'm talking about a parking spot
19 -- parking lot that is going to have some
20 serious issues with two buildings that have
21 worked together for 31 years.

22 And the parking situation will be the
23 problem for both businesses. We're morally
24 here to figure out if we can just put the
25 process through the right channels to get it

1 to the Zoning Committee to see if it's a
2 minor or major change.

3 We are not here to dispute the fact
4 that they are good people or bad people. We
5 are just here to speak to the facts, figure
6 out how it's going to go through the zoning,
7 how they can figure out the parking, and if
8 a building is built, we just don't want a
9 13,000 square foot building built over our
10 parking lot that we pay rent for and have
11 easement rights to. Thank you for your time
12 and hopefully you will -- you are
13 appreciated. Thank you.

14 MR. CHAIRMAN: Thank you.

15 MS. RICHARDSON: Matt Tyler.

16 MR. MATT TYLER: Good evening. My name
17 is Matt Tyler. I have a home, basically a
18 quarter mile from Marlin Quay. I wanted to
19 tell the Board that these are good
20 neighbors.

21 Marlin Quay is a great neighbor to
22 have. They are literally walking distance
23 from the home. Let me position this
24 microphone. I'm trying to be respectful of
25 your two minutes.

1 They have elevated the game that --
2 Marlin Quay being there elevated the game.
3 When the new owners bought it, better
4 dockage, fuel availability for other people
5 that want to come, whether they are locals
6 or whether they are tourists or guests
7 coming to the area. A place to dock your
8 boat.

9 Of course, the marina store is there,
10 that serves a very valuable need. If you
11 ever go to Garden City, especially during
12 the tourist season, you know that you will
13 get so stuck in traffic if you try and go
14 anywhere north of the end where we are.

15 And so it's so convenient, and valued
16 to be able to stop by the store and get a
17 gallon of milk or a loaf of bread or
18 whatever you may need, soft drinks.
19 Otherwise, you're tied up for an hour of
20 your time to get something simple.

21 So that is a resource that is valued by
22 this local community down there. I don't
23 really understand the parking issue, other
24 than to say, folks, it's my understanding as
25 a layperson that there is no change in the

1 parking amount and, in fact, there actually
2 may be an increase in the parking spaces
3 available, so they picked some up.

4 I will let the proper authorities deal
5 with that, but I do know that what was
6 needed, was this building had to be redone.
7 It was dilapidated, it was old, it needed
8 repairs. And I even heard rumors that it
9 was sinking. I don't know if that is true
10 or not. But it had to be rebuilt, redone.

11 And so this is a good thing for the
12 area. I know that the Zoning Board
13 appreciates and helps to foster development
14 when it's a good thing for this area, which
15 it is.

16 The last thing is, I also, like the
17 Gulfstream Cafe, I'm a customer there, but
18 it's a different demographic. You know, if
19 I want to go have a nice dinner with a
20 bottle of wine and appetizers, I take my
21 family to Gulfstream. If I want to go have
22 a cheeseburger after I have been working in
23 the yard, I will go to the marina store and
24 that little grill that they have. And we
25 need that in that area. They don't compete

1 against one another.

2 So all I'm asking for is for the Board
3 to please give favorable consideration to
4 the request of Marlin Quay. Thank you.

5 MS. RICHARDSON: Steve Tyler.

6 MR. STEVE TYLER: Steve Tyler, I didn't
7 realize when Doc Lawhon asked me to speak
8 that I was going to come up with laryngitis.
9 I think that is the good lord telling me to
10 sit down and shut up.

11 But I have to reiterate what Matt just
12 said. I fully support both. I've eaten at
13 the Gulfstream Cafe a hundred times. I hope
14 to eat there a hundred more times. But I
15 think having the marina revamped would be a
16 compliment to the whole area there. And
17 that's my support. Thank you.

18 MS. RICHARDSON: Max Hasty.

19 MR. HASTY: I'm Max Hasty. I raised my
20 children in Surfside and am partners on a
21 shrimp boat that is docked at Marlin Quay.

22 Marlin Quay has been really helpful
23 with us in something that is a dying
24 southern tradition, in running a shrimp
25 boat. When we are there, we get people --

1 just vacationers, we'll get patrons from the
2 restaurant just coming over and looking and
3 checking out the boat. They enjoy us being
4 there because of the people that it brings
5 in just to see that.

6 My kids used to ride their bikes from
7 Surfside down the Boulevard to the marina
8 and I knew it was okay. It's a community
9 place, it always has been. The parking has
10 always been what it is. It hasn't been an
11 issue to this point other than apparently an
12 opportunity to make it one. That's all I've
13 got. Thank you.

14 MS. RICHARDSON: Ray Kawa.

15 MR. KAWA: Hi, my name is Ray Kawa.
16 I'm from Surfside Beach. I would like to
17 tell you that I first started using the
18 Marlin Quay Marina in 1976 when I came here
19 in the military. It was a marina there with
20 a public landing, or a boat landing. There
21 wasn't no condos and there wasn't no
22 Gulfstream Cafe.

23 I believe somewhere around the mid 80's
24 or early 80's they built Gulfstream Cafe and
25 them guys shared parking places. The

1 property that was there, that they built on,
2 I guess they made a deal to help each other
3 out.

4 I've been going there for 40 years. I
5 use that place as a safe haven, a place for
6 fuel, if we're out on the water and bad
7 storms come up it's a quick tuck in, some
8 place safe to hide. The people that own the
9 marina, Chris and his family, are super
10 friendly to people, they are very helpful.

11 I've seen them take their boats out to
12 help strangers that get stuck or in trouble.
13 Having that marina that close to the mouth
14 of the inlet is a benefit to us boaters.
15 Other people have testified that they are
16 quick to respond if you need some help.

17 But as far as the parking thing goes,
18 you know, pretty much -- now, I'm not an
19 expert on what happens over there, but from
20 what I see in the daytime the marina uses
21 the land and in the evening time it's more
22 the Cafe.

23 Yeah, it is a problem sometimes on
24 Sunday mornings, but it's been a problem.
25 And the answer ain't to prevent -- they are

1 going up. They're not expanding their
2 footprint. They are going in the same spot,
3 just up. So I don't understand how that
4 affects anything and I'm here to support the
5 marina.

6 MS. RICHARDSON: Caleb Hartley.

7 MR. HARTLEY: Hello, my name is Caleb
8 Hartley and I'm the inshore captain for
9 Marlin Quay Marina and I'm in full support
10 of the marina being there.

11 The Lawhons have been nothing but nice
12 to me. They've given me an opportunity to
13 pursue my dream of being a boat captain. It
14 brings -- it's bringing in people for both
15 sides. There's fishermen and then they can
16 go eat and -- all around, that marina needs
17 to be there. I really think if they could
18 work together it could benefit both parties.
19 That is all I have. Thank you.

20 MS. RICHARDSON: Danny Carey.

21 MR. CAREY: Good evening, thanks for
22 having us here tonight to talk about this.
23 I talk a little funny. I'm from New York.
24 I moved down here a few years ago and I
25 started a small business and I rely on

1 Marlin Quay Marina.

2 I started my own charter boat business
3 and if it wasn't for Marlin Quay Marina I
4 would have no place to keep my boat, to run
5 my business, to pick up my customers. I'm
6 in favor of Marlin Quay Marina. I hope they
7 get this issue resolved.

8 We also frequent the Gulfstream
9 restaurant, you know, we come in from
10 fishing and some people go to Gulfstream
11 restaurant and some people go to the Marlin
12 Quay Marina.

13 I just hope we can get this parking lot
14 issue resolved and continue our business. I
15 generate anywhere from 30 to \$50,000 just
16 running a small business like that. And
17 there are several businesses that rely on
18 this marina. Thank you.

19 MS. RICHARDSON: Kevin Durenzo.

20 MR. DURENZO: I was going to speak on a
21 couple of different fronts. One, as a
22 resident of Dolphin Street down there in
23 Garden City we most certainly enjoy both
24 establishments. We go to Gulfstream as much
25 as any place and Marlin Quay as well. And

1 it's nice to have, you know, a variety.

2 My kids certainly like going over there
3 to see the boats come in and eat lunch and
4 all of that kind of stuff. I also own Beach
5 Realty in Garden City Beach, which is -- we
6 have 37 oceanfront homes that house 1,100
7 and 30 something heads at the high season,
8 you know, every week during the season.

9 And I'm here to tell you, neither one
10 of them can support all of those people, so
11 seven nights, you know, two restaurants,
12 they might get them both -- we need them
13 all. There is no, what do you call it,
14 monopoly down there if someone is going to
15 run one or the other off, I think they work
16 very good in unison. But that ancillary
17 value of that marina, when you get people
18 coming down there and they make that turn to
19 come through Atlantic Avenue and -- South
20 Garden City, I mean, we're getting 18,
21 \$17,000 a week for those big houses. And
22 y'all are making real good money on that as
23 well, you know, the accommodations tax.

24 And we've got to give some ancillary
25 value out there. The beaches are great, the

1 creek is great, but they've got to have some
2 activities down there and I think both
3 places really represent the area well.

4 And if we could find a way to kind of
5 get this worked out so they could both make
6 it work down there, there is plenty to go
7 around for everyone.

8 MS. RICHARDSON: Constance Lowry.

9 MS. LOWRY: Thank you for letting us
10 speak. I'm a resident of Marlin Quay. I
11 own two condos there, a penthouse which is a
12 two story and a three bedroom, and another
13 one that is two bedroom.

14 I'm concerned that we haven't really
15 been told the plans of -- for the Marlin
16 Quay Marina. This appeal came to our
17 attention sort of at the last minute. And
18 we really would like to know, instead of
19 hearing all of the, you know, rumors and
20 everything, we would like to know what their
21 real plans are and how high this building is
22 going to be, and how that is going to impact
23 our views.

24 I enjoy going to both places. I've
25 been a customer at the bar and the marina

1 ship store and over at the Gulfstream, and
2 my guests like to go there, too. So that's
3 not an issue.

4 I just think we need to have more
5 transparency in what's really happening
6 here. Thank you.

7 MS. RICHARDSON: Buddy Hucks.

8 MR. HUCKS: Buddy Hucks, H-u-c-k-s.
9 I've got a long history with this property.
10 In fact, I owned it at one time. And
11 realize the difficulty of this Commission
12 with the PUD that was written back in the
13 day.

14 But as a resident, I will say that it
15 is very much needed and the cooperation
16 between the parties is -- obviously, y'all
17 can't control that, but to bring something
18 up to new standards to meet the existing PUD
19 seems to be a good compromise or a good --
20 and a lot of support from the local
21 community. And I just tell you that it's --
22 they are raising the bar, Marlin -- I mean,
23 Gulfstream has improved their act through
24 the years.

25 There seems to be commitment from the

1 marina people to do that, and we welcome a
2 cooperative solution to this situation, as a
3 resident.

4 MS. RICHARDSON: Jim Allison.

5 MR. ALLISON: Jim Allison with Dunes
6 Realty in Garden City Beach. Allison,
7 A-l-l-i-s-o-n.

8 The company I work for is predominately
9 rentals, approximately 800 vacation rental
10 homes, south of the Garden City Pier is the
11 peninsula itself where the marina is located
12 as well as the Gulfstream Cafe.

13 Those are the only two commercial
14 operations south of the pier. Both of them
15 are locations that attract tourists, not
16 only from the standpoint of seeing it,
17 seeing the sunset, it's an unusual location
18 because you can see the sunset from both
19 properties.

20 It's a destination, not only for locals
21 that are fueling boats, buying ice, buying
22 boating supplies, eating hamburgers,
23 enjoying comradery, but as well as a
24 location for tourism, to pick up a T-shirt,
25 to pick up, like was said earlier, to pick

1 up a gallon of milk. That's it. There's no
2 clubs in Garden City. There is very little
3 commercial activity except for those two
4 things. So it serves -- both entities serve
5 our community well.

6 The Marlin Quay building itself was in
7 bad repair. What I know, and I've not seen
8 any plans, is there is going to be a net
9 gain perhaps of two parking spots and there
10 is going to be a brand new building. The
11 existing building is no longer there.

12 I've know the Marlin Quay Marina for
13 about 25 years and watched that building
14 come down. So I think a new structure that
15 is going to be up to Code is going to be a
16 benefit to our community.

17 MS. RICHARDSON: Todd Vick.

18 MR. VICK: Sorry about that guys.
19 Thank you for your time, I appreciate it. I
20 have a prepared statement real quick, so I
21 won't take your two minutes.

22 Marlin Quay owners are very
23 responsible, reliable folks and they only
24 have the best interest of the community at
25 heart. It's my understanding that they did

1 everything they were asked to by the County
2 when they applied for all of the permitting
3 and everything that they needed.

4 Now it's stuck at a technicality which
5 is just trying to slow down the process.
6 The improvements that it will bring to that
7 area are -- you can't count them. These are
8 not only for the Georgetown residents, but
9 also for visitors for many years to come in
10 that area. It's needed. I hope that
11 everyone can work together, we can get this
12 resolved, because that is one amazing area
13 down there on that part of Georgetown
14 County. Thank you for your time.

15 MS. RICHARDSON: Stewart Altman.

16 MR. ALTMAN: Stewart Altman, I'm a
17 businessman here in Georgetown and I live in
18 Murrells Inlet. I'm in the boat business.
19 I sell and service boats and Marlin Quay and
20 the guys that own it have been a tremendous
21 asset to my business since I've been here
22 the last three years.

23 They have put on tournaments and
24 provided services to all boaters which is a
25 positive for me. I think the economical

1 aspect of it as well as has been mentioned,
2 the convenience, the fun, is much needed in
3 that area. Whatever it would take to -- and
4 I don't know anything about the big picture,
5 but I do know that Marlin Quay has done
6 tremendous things for the community since
7 they've been there. And it looks to me like
8 they are trying to better what they've been
9 doing and move forward and I think that
10 would benefit everybody in Georgetown
11 County. Thank you.

12 MS. RICHARDSON: Danny Springs.

13 MR. SPRINGS: My name is Danny Springs.
14 We have Harrelson Seafood in Murrells Inlet
15 and I would just like to say without knowing
16 too many of the technicalities involved with
17 the parking issue, I do know that Marlin
18 Quay has set there and done nothing but
19 decompose for the past 15 years.

20 The Lawhons have come in and gambled
21 with their money to make this place a better
22 spot for visitors, a better spot for locals,
23 and there is no bad feelings towards
24 Gulfstream. I understand completely, but if
25 it comes down to a technicality, I ask that

1 it's going to be for -- it's going to be a
2 beautiful building on a beautiful piece of
3 land, and that's only going to do wonders
4 for the community, as well as for tax
5 dollars.

6 So, you know, I ask that you give them
7 a fair shake here. Thank you.

8 MS. RICHARDSON: Larry Collins.

9 MR. COLLINS: My name is Larry Collins.
10 I speak as a homeowner over at Marlin Quay
11 Condominiums. I personally -- I cannot
12 speak for the Association -- but I
13 personally want a viable ship store over
14 there at the marina and I wish them all of
15 the luck in the work with it.

16 I don't understand what we're talking
17 about here tonight, I thought the whole
18 thing was over a technicality of whether
19 this was a minor or a major alteration to
20 the property over there. I don't understand
21 all of these other things that we're talking
22 about here.

23 MR. CHAIRMAN: You're correct.

24 MR. COLLINS: That's not even on the
25 table, as I -- as I see. But I wish Mark

1 and them the best in the world. We want --
2 the store and the marina has got to work
3 together and get their heads together and
4 work this thing out. And that's about the
5 only thing we can do. And I wish y'all the
6 best.

7 MS. RICHARDSON: Debbie Lutz.

8 MS. LUTZ: My name is Debbie Lutz and
9 I'm a homeowner at Marlin Quay, and again,
10 I'm not really sure what we seem -- I'm like
11 Larry, I thought we were here to discuss was
12 this a major change or a minor change and
13 tearing down a building and putting up a new
14 one, which we haven't even seen plans for.

15 The parking as it is, is a problem over
16 there. I sit on my balcony every night and
17 there is people parking up and down the
18 streets and in the parking lots. So if we
19 are building another large restaurant/bar
20 marina store, which I think is good, but
21 it's just going to add more parking issues
22 than we already have.

23 And that's my concern as a homeowner.
24 My view, and the fact that we have people
25 parking on the streets, it makes it hard to

1 go up or across the street. I'm just afraid
2 we are going to have accidents. And that's
3 my biggest concern.

4 MS. RICHARDSON: Mark Nappier.

5 MR. NAPPIER: Hi, my name is Mark
6 Nappier and I'm with the law firm of Joye
7 Nappier Risher and Hardin. I represent the
8 Homeowners Association, and the Homeowners
9 Association has indicated that they are not
10 taking a definitive position regarding the
11 issue that is before you today, which is
12 this question of a minor or major change.

13 We can simply say as an Association
14 that they -- I've been told that certainly
15 as far as having a ship store, they like the
16 idea. What was taken down was about a --
17 just about a 4,000 square foot building, and
18 we simply ask that you guys look at what was
19 -- what are the requirements for the PD,
20 what are the necessary requirements for
21 making a change, major/minor that you have
22 counsel on both sides who I know are both
23 very capable of making their respective
24 arguments.

25 All we ask is that this -- that this

1 Board consider what is said and apply the
2 requirements under the zoning laws and under
3 the laws of our state, when analyzing what
4 they're requesting to build and what was
5 taken down. And that's all we can hope for.
6 Thank you.

7 MS. RICHARDSON: Charles MacElven.

8 MR. MACELVEN: I have nothing to say.

9 MS. RICHARDSON: Katy Newman.

10 MS. NEWMAN: My name is Katy Newman and
11 I've worked at Marlin Quay for the past two
12 summers. And personally I know how Mark and
13 Chris run and they don't do anything without
14 making sure their I's are dotted and their
15 T's are crossed.

16 And having worked there for the past
17 two summers, I know the building had to be
18 redone. There was no way it could make any
19 changes or be, you know -- I can't speak
20 tonight -- it had to go up and it had to be
21 redone in order to do something better for
22 the community.

23 And even with the building we had, it's
24 obvious that the community functions,
25 especially in Garden City, around that

1 building. I know for a fact that the spots
2 -- there will be two new spots added with
3 the new plans in place -- and it's going up
4 and for the marina and everyone that works
5 there, that is something we've been -- it's
6 just going to do amazing things for the
7 community.

8 MS. RICHARDSON: Kenny Moore.

9 MR. MOORE: My name is Kenny Moore. I
10 can only speak about my own experiences and
11 observations of years of working and
12 recreating and spending my money in the
13 Marlin Quay and the Gulfstream restaurants.

14 And that is that Marlin Quay Marina is
15 an immeasurable resource for Georgetown
16 County and for the State of South Carolina.
17 It is utilized by locals as well as
18 visitors. And I know there is a lot of
19 decision that goes into progress like this,
20 but the Lowhans have already invested pretty
21 heavily in renovating and improving that
22 area and have given people a reason to drive
23 south of the Garden City Pier. That is
24 pretty much all I have to say.

25 MS. RICHARDSON: Mike Brady.

1 MR. BRADY: Good evening. My name is
2 Mike Brady, B-r-a-d-y. What I'm hearing
3 sitting back here is a lot of compromise
4 wanting to be had by all parties.

5 A friend of mine and I were just
6 talking, I remember when the condos were
7 built at the Marlin Quay. I remember going
8 to the Gulfstream in the 80's. So both
9 businesses prosper and kind of feed off of
10 each other.

11 You know, if you're at the Marlin Quay
12 fishing during the day you look over at the
13 Gulfstream, hey, honey, let's go out to
14 dinner tonight. It makes sense.

15 I think what I really want to see here
16 is a compromise. Because both businesses
17 are very, very important to the Point.
18 That's just all I have to say. Thank you.

19 MS. RICHARDSON: Brad and Missy
20 Collins.

21 MR. COLLINS: My name is Brad Collins,
22 C-o-l-l-i-n-s. Pretty much what we've heard
23 here tonight is compromise. You know,
24 that's what needs to be done. The Lowhans
25 have invested a lot of money and it's a good

1 thing for Murrells Inlet. And that's all I
2 have to say. Thank you.

3 MR. CHAIRMAN: Thank you each and every
4 one of you for your input. And we will
5 continue. Boyd, do you want to give us the
6 steps? The presentation?

7 MR. JOHNSON: I'm not going to go over
8 every -- I assume y'all have memorized the
9 green staff report so I won't go over every
10 number in here.

11 But this is basically an appeal from
12 George Redman, an attorney as agent for
13 Gulfstream Cafe regarding staff's
14 interpretation of *Section 6.19.3* of the
15 Zoning Ordinance, specifically related to
16 the Marlin Quay PD.

17 This PD is in Garden City, in which the
18 Marlin Quay Marina is there, the Gulfstream
19 Cafe, condominiums, and also a
20 store/restaurant associated with the marina.
21 These are located in that PD.

22 This PD was approved in 1982. I guess
23 it's one of the older ones in the county.
24 Palmetto Industrial, LLC now owns the marina
25 restaurant and store. Until recently this

1 building was approximately 4,603 square
2 feet. And the building was literally
3 straddling the property line between the
4 marina property and the condominiums.

5 I might add, this is an unusual PD in
6 that there are zero setbacks in this PD. Of
7 course, this PD -- this building was a minus
8 setback because it was straddling the
9 property line.

10 On June 15th, 2016, Georgetown County
11 staff determined that removing that building
12 and constructing a new building entirely on
13 the marina property was a minor change to
14 the plan development. And the subject
15 building I just described was then
16 demolished.

17 The difference between a minor change
18 and a major change in a planned development,
19 which we've heard mention tonight is
20 primarily that minor changes can be
21 processed by staff in-house, and major
22 changes are an amendment to the plan
23 development and have to go to the Planning
24 Commission for a public hearing and County
25 Counsel for three readings of the amended

1 ordinance.

2 And a minor change, which is outlined
3 in our Zoning Ordinance in *Section 619.301*
4 and a major change is outlined in *Section*
5 *619.302*.

6 To be a minor change a project has to
7 do the following: Not increase the density.
8 Not change the outside exterior boundaries
9 or height limitations. And I might add,
10 this project must meet the County's height
11 regulations established in the Zoning
12 Ordinance.

13 It also must not materially change the
14 location or amount of land devoted to
15 specific land uses. One of the things that
16 we talked about when we were reviewing this,
17 is when we first saw -- staff, I'm talking
18 about -- when we first saw the building with
19 the property line cutting through the center
20 of the building, you know, we thought it
21 would be a plus to have the building
22 entirely on one lot and not be straddling
23 the property line. So that was one of --
24 part of our thinking as far as location.

25 It also should not increase the

1 intensity of land use. And I will describe,
2 that's a key point. I will give you the
3 definition of intensity in a minute. It
4 should not significantly change the exterior
5 appearance from those shown on any plans
6 submitted by the developer.

7 I will say this -- some PDs have
8 architectural standards that they have to
9 build by, this PD, to my knowledge, does not
10 have any architectural standards. There may
11 be some in their covenants or deed
12 restrictions, but as far as the County's PD,
13 I don't believe there are any architectural
14 standards.

15 Also, as far as a minor change, it may
16 include the minor shifting of buildings and
17 other infrastructure such as a sidewalk or
18 something like that. However, if staff was
19 to approve anything it could not include --
20 the building could not encroach in any
21 setback. Again, as I said earlier, there is
22 no setbacks for this project.

23 Intensity, that is one thing that is
24 not supposed to increase to fall under the
25 minor -- to fall under the definition of

1 minor change. And intensity is defined in
2 the Zoning Ordinance as the degree of
3 negative impacts on the environment and
4 neighboring land uses. That's a pretty
5 board definition.

6 A permit was issued by the County on
7 November 7th, 2016, for a foundation and
8 piers only portion of the project, and that
9 was for a 4,350 square foot heated building
10 with 811 square feet of unheated space.

11 Work on the site has since been stopped
12 due to this appeal. There has been one or
13 more court orders temporarily addressing the
14 project, but I'm not familiar enough with
15 court orders to get into those.

16 The Applicant's appeal, again, they are
17 saying staffed erred in its interpretation
18 of the Ordinance and this should be a major
19 change and it did not meet those conditions
20 I went over via a minor change.

21 The Applicant's appeal based on their
22 information basically states that staff's
23 determination was wrong and that it violates
24 their rights regarding a parking easement,
25 creates increased intensity and density,

1 changes the exterior appearance of the
2 building, and changes the bulk and height of
3 the building and changes the location of the
4 building.

5 So the BZA's role tonight is to
6 determine if staff's interpretation to the
7 new replacement building is, in fact, a
8 minor change or did staff error in its
9 interpretation of the Zoning Ordinance and
10 the project should have been viewed as a
11 major change.

12 And it's not the role of the BZA to
13 decide the merits of the project, you know,
14 whether it's a good project or a bad
15 project. It's simply to determine if staff
16 was correct in its interpretation or did
17 staff err in declaring it a minor change.
18 That's our report.

19 MR. CHAIRMAN: All right, Mr. Redman,
20 why don't you give us, as the Applicant,
21 your presentation.

22 MR. REDMAN: Thank you, Mr. Chairman,
23 and members of the Board. If I may, I have
24 a few CAD documents, if I could have those
25 up, I have enough for everyone to have.

1 First off, I would like to say thank
2 you for your time in considering this
3 appeal. I know everybody here has a family
4 and a life and we appreciate you showing up,
5 because it's a beautiful piece of property
6 that we're talking about down there.

7 I -- my name is George Redman and I
8 work at the Bellamy Law Firm in Myrtle Beach
9 with David Gundling who works in our Pawleys
10 Island office. We represent the Gulfstream
11 Cafe, and as you know, we filed this appeal.

12 The Gulfstream Cafe has been in
13 operation for about 31 years. And it is
14 part of the Marlin Quay Planned Unit
15 Development. The PD was formed in 1982.

16 Also in that PUD is the condominium
17 owners, who you have heard from, boat slip
18 owners, 67 boat slip owners. There was a
19 marina store and a snack bar there too, and
20 of course, the Gulfstream Cafe.

21 Now for 31 years, except for this
22 issue, everyone has worked together and
23 compromised on that piece of property, there
24 is no question. Doctor Lawhon purchased the
25 property approximately two or so years ago

1 and with that purchase he bought the marina
2 store, which we've heard a lot about, and a
3 snack bar and grill, and also the parking
4 lot in between the Gulfstream restaurant and
5 the prior marina store.

6 Now, when they were planning this
7 Planned Unit Development, they took into
8 account a lot of the things that these folks
9 are talking about together, that they have
10 to work together. How is it that they can
11 share this one parking lot, these two
12 competing businesses? Well, they did it in
13 recognition of the fact that the marina
14 store was opened primarily during the
15 daytime hours and the restaurant would be
16 primarily opened during the evening hours.

17 And, in fact, there were easements,
18 agreements between the developer and the
19 Marlin, and the Gulfstream Cafe, when the
20 property was purchased in 1985 that said
21 exactly that. And that's in Exhibit 2 of
22 the tab right there.

23 You don't need to read it, but if
24 you're interested in seeing exactly what it
25 says, it's behind Tab 2 and I put a little

1 red mark there and I highlighted it for you.

2 It says that while each party shall
3 have full and continuous permanent use of
4 that property in between as a parking lot,
5 it is understood that the Gulfstream will be
6 using it primarily in the evening business
7 hours and the marina store during the
8 primary daytime business hours. That is how
9 it has worked and that parking lot has
10 worked. And that's what we're here about.

11 I hear a lot of comments about the
12 marina store. We have no opposition to a
13 marina store whatsoever. When I say that,
14 that is absolute.

15 What we're talking about is the parking
16 lot and whether this change in these plans
17 are a minor or major change. Because that
18 parking lot on that configuration is
19 essential to the operations of the
20 Gulfstream Cafe. Anybody who has gone down
21 there at nighttime knows that and has seen
22 it.

23 As a matter of fact, in 2003 when there
24 were people parking on the street because of
25 a shortage of parking there was an accident,

1 and people were seriously hurt. In fact,
2 two were killed.

3 So we don't want people parking on the
4 road down there. And if you look at Exhibit
5 3, you don't have to actually look in there,
6 but there is a plat that is referenced in
7 all of the easements that says, here is what
8 the parking lot looks like. It shows the
9 parking spots in there as they are today,
10 just like that. And it is a public record
11 to provide notice to anybody who wants to
12 buy that property, that that's a parking lot
13 and these folks have easement rights.
14 Permanent easement rights to it, if you buy
15 the property you buy it subject to those
16 rights. And that's how it's worked and it
17 hasn't been a problem.

18 Now, this issue came to us just like it
19 has still with a lot of people who that are
20 here today, a lot of people who are here
21 today have said, "I would like to see the
22 plans before I make a decision." Well,
23 before construction started we were informed
24 that they were going to renovate that
25 building.

1 We thought like everyone else here,
2 good. That would be great if they had a
3 nicer building there. But we were never
4 told that -- we were never shown any plans,
5 just like in your appeal brochure you don't
6 have plans of what is actually going to be
7 built there, and that seems to me to be
8 critical.

9 But this came to us, this problem came
10 to us when construction started and a fence
11 went up, poles driven into asphalt with hard
12 wire saying, "Construction, keep out." It
13 blocked off the entire parking lot for the
14 customers of Gulfstream right before
15 Thanksgiving. That was a shock.

16 That initiated a lawsuit, the judge
17 stepped in and issued a ruling that said
18 take the fence down and leave this parking
19 lot open while the litigation -- until we
20 have an opportunity to hear this clear. And
21 that's what has happened. But litigation
22 isn't the subject here.

23 What we are talking about is the plans,
24 and I have included -- Holly, if you could
25 go to Slide 1 to show the parking lot, my

1 Slide 1, is essentially the same, I guess.
2 You can't see it as well. But it's --
3 there's the old building to the right, and
4 there's the parking lot that we're talking
5 about.

6 Now, the plans that we go in there --
7 we were wondering, can I see a copy of the
8 plans? And we were initially told no. But
9 the lawsuit started and we got some of the
10 plans and just as shocked as we were when we
11 saw the fence go up, we were equally shocked
12 when we saw the portion of the plans that we
13 were able to see, we saw a 10,000 square
14 foot building.

15 Actually, to my eyes it looks more like
16 13,000 square foot. We saw a 4,000 square
17 foot restaurant going in there. We saw the
18 marina store in there. We saw an extra
19 5,300 square feet of conditioned storage
20 space. We wondered who needs that much
21 storage on an entire floor that is built
22 wind rated and with windows and everything.

23 So it gave us more questions than
24 really answers at that point, and we
25 wondered how could this happen? And we

1 learned that there were e-mails and
2 correspondence, and I've got those in
3 Exhibit 5, back and forth between the
4 developers and the staff.

5 And they essentially asked what if,
6 what if we tore down the building we have
7 which is old and we build the exact same
8 size building back up? And it had the exact
9 same size -- same uses inside of it, and the
10 restaurant was the same size, and the marina
11 store was the same size and the parking, the
12 parking only gets better because we are
13 going to redesign -- we are going to put it
14 up and cars can park under there and we get
15 two more parking spaces.

16 That's what the staff was asked in May
17 -- in January and in May of 2016. It's
18 important to note they weren't reviewing any
19 plans, they were just being asked a
20 hypothetical question. They weren't
21 reviewing any plans because no plans had
22 been drawn up yet, which makes sense. You
23 don't want to spend a lot of money on plans
24 before you have an idea of how staff is
25 going to rule on something like that. So

1 that's not out of the ordinary.

2 Now, whether it's a minor or a major
3 change -- Holly, can you go to the next
4 site? Here is an interior -- this comes
5 from their web page. This is approximately
6 half of the inside of the marina store and
7 snack bar. This is in the marina store
8 part, obviously, but there is a small
9 portion of the building behind. We're
10 informed that -- can you go to the next one
11 there? The restaurant was 1,900 square
12 feet. And now -- let's talk about the plans
13 that we do see.

14 In the blue area there you will see
15 that that is the proposed building that will
16 be up on stilts and two stories up on top of
17 the stilts and on the green area there is
18 the prior building there.

19 So when we talk about what is actually
20 being considered here and what we're
21 appealing, we don't agree that the building
22 was originally 4,600 square foot. The
23 biggest approval we saw was 4,200 in the PUD
24 when we looked at it.

25 But that aside, we're not saying

1 necessarily that if they build the exact
2 same thing that shouldn't be allowed, we
3 certainly not saying we're against a marina
4 store because we're not. What we're saying
5 is, if you look at the plans you will be
6 amazed at how big of a major change, and I
7 feel confident in saying that. Maybe you
8 will use your own adjective, I'm sure Mr.
9 Stacy might disagree.

10 But in Item Number 7 is a -- if you
11 could open that in your packs. I will ask
12 you to look at that -- Holly, if you could
13 go to the next slide. That is an elevation
14 of the building showing that it is three
15 floors, the stilts, the car parking
16 underneath it, and then two full stories
17 with windows, improved, and a four story
18 lighthouse.

19 We talked about whether a minor or
20 major change includes anything going over
21 the height elevations. If you look at the
22 base of the observation deck and the
23 lighthouse there, we -- they have the
24 elevations in front of them with their
25 packet right there -- we don't have the

1 slide for everyone to see of the elevation,
2 but the Board members do.

3 Now, that lighthouse, the bottom of the
4 observation deck is at 50 feet. The height
5 restrictions, minor/major change, 45 is the
6 limit. Anything above it means it's a major
7 change, and that's just one aspect of it.

8 I put the Ordinances as Tab 1, so you
9 can see that there. But I looked at this as
10 a lawyer and we hired an engineer, Mr.
11 Robert Castle is here today to look at it,
12 so it's not just what George over in his law
13 firm cooked up.

14 We had an engineer look at these plans
15 and tell us what does he see when he sees
16 them. If you look at the parking lot, the
17 building goes on top of the parking lot.
18 That is not -- it manipulates the easement,
19 the picture of record. And that's
20 impermissible, but we will deal with that in
21 the court also. But that is something the
22 Planning Commission should consider, that
23 easement, that agreement, how things were
24 supposed to work together.

25 Our count, Mr. Castle's count, is that

1 with this plan you lose 11, the PUD loses 11
2 parking spaces. 20 of the parking spaces
3 become compact parking spaces, meaning they
4 are much smaller. The lanes have been
5 shifted so that it is not safe when you're
6 driving around.

7 Now, you take that decrease in parking
8 and consider what we have for the
9 restaurant, the proposed restaurant on the
10 first floor. These are plans from the
11 architect's file that we pulled. They were
12 not submitted to the County. And the County
13 never, to our knowledge, issued a
14 determination as to whether 144 seats was
15 what the snack bar had before, the highest
16 possible count that I've been able to get,
17 although the building is gone now, was they
18 had as many as 70 seats, that includes
19 barstools, that includes out on deck, that
20 includes everything. And the square footage
21 of the restaurant was 1,900 square feet.

22 This restaurant is 3,000 square feet.
23 The deck on the outside is 900 square feet.
24 So we're going from a 1,900 foot, including
25 indoor and outdoor restaurant, to one that

1 is 4,000 square feet total, okay? So we
2 think that will increase the intensity. We
3 think that increases the density. We think
4 when you're shrinking the parking lot down
5 that creates a problem. And we don't want
6 people parking out on the street because
7 it's not safe and it's not good for anyone
8 down there.

9 Now, if we could talk about the second
10 floor, which is the next floor, which was a
11 real surprise to us when we saw those.
12 Holly, if you could go to the next one.

13 The second floor was 5,200 square feet
14 of vacant space in the plans that were
15 submitted to the County. When we reviewed
16 the architect's file, which we obtained
17 through litigation, we see that the plans
18 actually show seven motel rooms. Not that
19 that is being requested to be permitted
20 right now, but it shows the future -- that's
21 why you build 5,200 extra square feet of
22 storage and it's all -- you can see, future
23 waste, discharge drops, it's all wired for
24 electrical and plumbing and it's fire rated
25 and it's to withstand 150 mile hour winds,

1 that is an expensive venture to build an
2 entire new story of just storage. And we
3 see what the intent there is. And we were
4 surprised and also disappointed in that.

5 So in Mr. Castle's expert opinion, and
6 I've got his Affidavit, it's in the back of
7 the pack that I've handed you. The changes
8 that are being proposed with this huge
9 restaurant that will go against the
10 agreement of who uses it in the nighttime
11 primarily and who uses it in the daytime
12 primarily, it really creates a problem.

13 In his expert Affidavit he says these
14 changes will overburden the property, there
15 is not enough parking. And the situation
16 could be dangerous.

17 We feel -- we're just seeking -- we're
18 not saying that a building -- particularly a
19 marina store -- should not be built. What
20 we're saying is, let's be more, like I heard
21 from somebody else today, transparent about
22 it. Let's send this to the Planning
23 Commission and let's have them look at the
24 plans along with staff and not answer
25 hypothetical questions, and say, what did

1 you have in the before, what exactly are you
2 planning in the after? That is all we're
3 seeking, is that you ask that this be a
4 major amendment that requires public notice,
5 a hearing, an opportunity to be heard, and
6 everybody coming together and doing the
7 right thing to compromise on this.

8 It's my understanding that I have three
9 minutes of rebuttal at the end, is that
10 correct? Or --

11 MR. CHAIRMAN: Well -- yes.

12 MR. REDMAN: Okay, then I will --

13 MR. CHAIRMAN: You only had five
14 minutes to start with.

15 MR. REDMAN: Did I go over five? My
16 rebuttal -- I will keep my rebuttal to 30
17 seconds, if that will be okay.

18 MR. CHAIRMAN: Okay, thank you.

19 MR. REDMAN: I'm so sorry. Thank you
20 so much for your time.

21 MR. CHAIRMAN: That's okay. Mr.
22 Redman, do you have any witnesses that
23 you're calling?

24 MR. REDMAN: I have -- as far as --
25 with five minutes, it's really difficult to

1 put up anybody so I submitted Mr. Castle's
2 Affidavit in an effort to save time. But he
3 is a witness and that is the -- we ask that
4 all of the documents be entered into
5 evidence in this hearing.

6 MR. CHAIRMAN: Okay, that's very good.
7 All right, let's move to the opponent's
8 presentation. Dan, go ahead.

9 MR. STACY: Thank you, Mr. Chair,
10 Members of the Zoning Board of Appeals.
11 Because Mr. Redman was generous with his
12 time, I would respectfully ask -- I have
13 some things I would like to present to the
14 BZA but because there has been a lot of
15 suggestions and allegations made about
16 theoretical plans that have not been
17 presented to the County for approval, I have
18 Mr. Steve Goggans here who actually prepared
19 these plans and would like to yield some
20 time to him to be able to explain what has
21 actually been presented versus what he and
22 his client may have been dreaming and
23 scheming about for future use. If that's
24 okay.

25 MR. CHAIRMAN: Okay.

1 MR. STACY: So the subject matter has
2 been correctly stated, is whether or not the
3 staff decision about tearing down the old
4 building and replacing it with a new
5 building is a minor change or a major
6 change.

7 I think it's important to explain a
8 little bit about the project, everybody's
9 got their tabs and everybody's got their
10 (inaudible.)

11 This is the initial plat of the PD
12 which shows this store being on a split
13 piece of property, half owned by the condo's
14 Association and half owned by the former
15 owner of the marina store.

16 The building was built 30 plus years
17 ago, it was not a great building the day it
18 was built and it suffered from a lack of
19 maintenance the whole time. It was, in
20 fact, sinking due to some bulkhead problems.
21 And we looked at renovating the existing
22 building. Federal flood code required that
23 if we are going to spend more than 50% of
24 the value of the building we have to bring
25 it into compliance, which means we have to

1 raise it.

2 So we realized we could not renovate
3 the existing building. So over a series of
4 meetings, we met with Boyd and Holly and
5 JoAnn and members of the condominium owners
6 Association to discuss whether or not we
7 could simply allocate square footage that
8 was belonging to the condo Association but
9 used for our building, allocate it wholly on
10 our site and rebuild a building in
11 approximately the same size as what was
12 there. Remembering that by the
13 International Building Code there has to be
14 some ADA bathroom issues and some other
15 things that have to be slightly increased to
16 comply with building code.

17 The former building was 4,603 feet,
18 approximately 2,600 feet of retail, about
19 1,950 of restaurant. The new building, in
20 fully conditioned space is scheduled to be
21 4,350 square feet, with about 1,680 feet of
22 retail and about 2,600 hundred feet of
23 restaurant operation. Mr. Goggans can deal
24 with that more.

25 Because everybody is so concerned about

1 parking, under the current plan Zoning
2 requires 50 spaces. There are currently 59
3 spaces in place, and the new parking plan
4 would provide 67.

5 But we are here about whether this is a
6 major or minor change. This is not an
7 architectural review board to determine
8 whether the plans are acceptable, that is a
9 County building code issue.

10 You have the Code section between you,
11 but if you go down your own PD code section
12 about what is a major versus a minor change,
13 we are not increasing the density, it's the
14 same amount of square feet that was there,
15 that will be there again.

16 We are not changing the outside
17 boundaries of the PD. We're not increasing
18 the intensity of the land use, and I will
19 respond to Mr. Redman's allegations. We're
20 not materially changing the location or
21 amount of land devoted to specific uses.

22 We are changing the exterior
23 appearance, but because there are no
24 architectural guidelines here that condition
25 should not apply, there is nothing to

1 compare it to.

2 And it does specifically say we can
3 shift the location of the buildings. One of
4 the issues raised by the Applicant -- or by
5 the Appellant is that the building height
6 will be increased. Well, absolutely. But
7 your own PD Ordinance specifically provides
8 that a change in height to comply with flood
9 zones is not a major change. By Code it is
10 a minor change.

11 I think it's important to do a little
12 bit of examination of what the law in South
13 Carolina is. You have Counsel from -- Mr.
14 Bryant. I've searched high and low, there
15 is not an appellant case in the entirety of
16 the United States of America except one in
17 Minnesota that dealt with a major change
18 versus a minor change, and in that case the
19 staff determination was upheld.

20 The state law in South Carolina comes
21 out of a case called *Vulcan Materials v*
22 *Greenville County* and the holding is simply
23 this; the construction of a statute by the
24 agency charged with its administration
25 should be accorded great deference and will

1 not be overruled without a compelling
2 reason. So the judgement of the staff
3 should be upheld barring some specific
4 egregious violation of its own ordinances.

5 There is something I think is important
6 for the Board of Zoning Appeals to consider
7 here. This is not specifically about this
8 issue, this is more of a macro issue. Every
9 week, homeowners, business owners, real
10 estate professionals, architects, lawyers,
11 developers, engineers, contact Mr. Johnson's
12 office to talk to he or Holly or JoAnn
13 about, this is my property, this is what I
14 would like to do with it, I've read the
15 Code, can we do this? Staff makes these
16 interpretations all the time.

17 And based on their interpretations, the
18 public makes big decisions and expends lots
19 of money in reliance on those decisions. I
20 simply offer that -- and I don't want to
21 make them feel old, but their collective 80
22 years of experience as planning
23 professionals to interpret the very codes
24 that their county counsel wrote, is
25 something that we should be entitled to rely

1 on and their expertise in these matters
2 should be deferred to.

3 We've heard a lot about the plans. I
4 want Mr. Goggans to address the plans. I
5 ask for that courtesy from Mr. Onions. I'm
6 sure the Members of this Board have that
7 consideration.

8 We've not applied for a set of building
9 plans to be approved. This was a demolition
10 plan and a plan to drive pilings to raise
11 the building.

12 We believe our plan increases parking.
13 We do not believe it decreases parking. But
14 if you have concerns about the plans, I
15 would defer to Mr. Goggans.

16 We respectfully ask that you uphold the
17 decision of the staff, because that is the
18 current status of the state law of South
19 Carolina and people make very expensive
20 decisions in reliance on what they are told
21 by the planning staff. Thank you.

22 MR. CHAIRMAN: Mr. Goggans, as a
23 witness I need to swear you in.

24 MR. GOGGANS: Yes, sir.

25 MR. CHAIRMAN: If you will raise your

1 right hand.

2 STEVE GOGGANS, being first duly sworn,
3 testified as follows:

4 MR. CHAIRMAN: Thank you, go ahead.

5 MR. GOGGANS: One of the things, as
6 these plans evolved, I was concerned about
7 were some of the issues that have been
8 raised here tonight so I have had
9 considerable dialogue with the planning
10 staff over a number of months. Not one
11 conversation, but many, many conversations
12 and an endeavor to also document those
13 conversations in writing. And some of that
14 this group has and some of it may have been
15 -- may have surfaced in your packets and
16 packages.

17 But one of the things I want to note is
18 that this building -- this site, as a
19 professional planner and an architect, is a
20 little different and unique is, it's
21 previously developed. And I mean, developed
22 100%. The site is totally impervious. It's
23 totally paved and/or buildings occupy it.
24 Ergo, when we think about things like
25 intensity, as you move things around on site

1 you're really not changing the intensity if
2 you change -- don't change the impervious
3 area of the site.

4 Had numbers of discussions with storm
5 water and so on. So it's a unique site in
6 that way, again, fully paved, fully
7 developed. Every square inch of site is
8 occupied. If we were doing that today we
9 would have to have a certain amount of open
10 space.

11 The other criteria that we were faced
12 with when we designed the building, is that
13 the previous building was 4,600 square feet
14 of heated space. Now, the graphic that was
15 shown by Bellamy Law Firm, could we flip
16 back to that? I think it was developed by
17 Mr. Castle that has the blue -- if we can
18 find that. There we go.

19 The -- it appears per that graphic that
20 we are building a much, much larger building
21 when, in fact, the green building that you
22 see existing, at least half of that, is two
23 stories. So what is a little different
24 here, even though we are only building 4,600
25 square feet of heated space, 4,350 actually

1 in blue, of the 4,600 square feet of space,
2 is that we've spread that out in one floor
3 plate.

4 And, again, I urge you to keep in mind
5 the site is totally impervious, totally
6 paved, so it doesn't matter in a sense in
7 terms of environmental considerations and so
8 on.

9 The other thing I ask you point out --
10 or would like to point out is a good bit of
11 that floor plate that you see is a stair
12 tower, an elevator, a deck, a generator pad
13 and a platform for air conditioning. I
14 would like to submit an exhibit, if I may, I
15 will distribute that too, which shows a
16 slightly different graphic, which shows the
17 net useable and heated space versus the
18 unheated space.

19 In conversing with planning staff it
20 was also determined that provided --
21 provided that the heated square feet didn't
22 change and provided that didn't -- exterior
23 space, decks, were okay, and indeed there
24 were decks originally in the original
25 building -- and provided there was parking.

1 We actually increased parking considerably
2 by a number of spaces in this. We went from
3 59 to 67.

4 Now, we have proposed a modification to
5 make circulation a little easier. The
6 spaces that are there are consistent with
7 the size, the ones that we propose are
8 consistent with the size of the ones that
9 are already there. If those are substandard
10 or -- if ours are substandard, then those
11 are substandard. But we, again, modeled our
12 sizes after those sizes.

13 In the course of developing the plans,
14 Mr. Lawhon had us look at a lot of options.
15 Some of those options have been shown
16 tonight, they were speculative in nature.
17 They have not been submitted for
18 consideration by planning and zoning or by
19 the building department.

20 You saw one which had the seven rooms,
21 that is unconditioned space, no electrical,
22 no heating and air. It will not be occupied
23 unless, some point in the future, Mr. Lawhon
24 decides he wants to go through the process
25 of asking for a major change and convincing

1 the public bodies at that point that he has
2 sufficient capacity on his land with respect
3 to parking and other considerations to do
4 some of those things.

5 So that was the subject of conversation
6 with Zoning, too. It -- provided we don't
7 condition that space or improve it, then
8 it's basically a big attic. We even talked
9 about leaving out that floor so that that
10 was a large cathedral space open to the
11 restaurant.

12 I will mention, too, in all commercial
13 buildings in Georgetown County, the local
14 fire chief, fire marshall, does conduct an
15 annual inspection. He looks into attics.
16 And so if our opposition or others don't
17 seem to trust Mr. Lawhon, he would be
18 readily found out if he tried to sneak
19 anything into that space.

20 So that is a reality. So with those
21 things, I think I would ask you to consider
22 -- I think staff accurately and adequately
23 considered all of this, the impacts, judged
24 that we weren't building a building that was
25 larger in terms of usable square footage.

1 It is spread out on one floor.

2 The seating doesn't measurably change
3 when you look at all of the seating in the
4 old building, which included a place -- a
5 deck at the bottom, a deck on the top, and
6 two levels of dining and snack bar area. So
7 with that, I would be happy to answer
8 questions, but I will conclude my
9 presentation. Thank you.

10 MR. CHAIRMAN: Let me ask you one
11 question.

12 MR. GOGGANS: Yes, sir.

13 MR. CHAIRMAN: When County reviewed
14 these plans that were submitted to them,
15 they were reviewing plans where this
16 building went from a 4,600 square foot
17 building down to 4,300 square feet of usable
18 space, and the additional square feet,
19 because we heard a lot about it's a 10,000
20 square foot building, 13,000 square foot
21 building, that's potential future use, and
22 they would have to go through the whole
23 procedure to use that?

24 MR. GOGGANS: That is correct.

25 MR. CHAIRMAN: But for this -- for the

1 change the County reviewed, we were going
2 kind of from the same square footage to the
3 same square footage?

4 MR. GOGGANS: The definition we used
5 was conditioned space, and it -- we were
6 actually a few feet less than the original
7 space, or conditioned space of the building.

8 And I might add, that was all
9 negotiated very carefully with the
10 neighboring HOA in prior years. So that
11 when the building was torn down and moved
12 across the property line that net usable --
13 so we were alert to that, paid careful
14 attention to the fact that we didn't
15 increase that space.

16 MR. CHAIRMAN: Okay. Just two more
17 brief questions. We've heard a little
18 discrepancy about parking spaces, we've gone
19 from people commenting on there will
20 actually be a few more parking spaces, Mr.
21 Redman said there would be a few less
22 parking spaces --

23 MR. GOGGANS: We've actually gone from
24 59 to 67. Now, there has been a recent --
25 before litigation began there was a

1 discussion between some members or people
2 associated with Gulfstream and Mr. Lawhon,
3 to create a cut-through or an alleyway.
4 That would have reduced the parking
5 somewhat, but it still would have -- even if
6 we allowed the cut-through or the passage,
7 we still had two more spaces than is
8 currently existing.

9 If you don't do the little cut-through
10 and I would have to show you on the plan
11 where that would occur, then it's 67 versus
12 59 existing. 67, proposed. 59, existing.
13 So we've increased the parking. And I might
14 add, that if you do a Code review on our
15 building only 50 is required per the
16 Ordinance. 50 is required, 59 exists, 67
17 proposed.

18 MR. CHAIRMAN: Okay, thank you.

19 MR. STACY: Mr. Chairman, I'm sorry we
20 are running long, but the Applicant himself
21 would like to speak if the Board would like
22 to hear from him.

23 MR. CHAIRMAN: As your witness?

24 MR. STACY: Yes, sir.

25 MR. CHAIRMAN: All right. I will swear

1 you in, sir. You may approach. If you will
2 raise your right hand.

3 **JAMES MARK LAWHON**, being first duly
4 sworn, testified as follows:

5 MR. CHAIRMAN: If you could state your
6 full name?

7 MR. LAWHON: Sure. My name is James
8 Mark Lawhon. I'm the owner of Palmetto
9 Industrial Development. I own the Marlin
10 Quay Marina.

11 MR. CHAIRMAN: Okay.

12 MR. LAWHON: I just want to say, you
13 know, I feel compelled to speak. I know
14 this issue is over a minor versus a major
15 change, okay? But Jeff knew about this for
16 a year. I think everybody in Murrells Inlet
17 knew about it for a year. We went through
18 the process of the County. I've been doing
19 commercial and residential real estate for
20 the last 17 years.

21 The first thing I do is hire an
22 architect or a land planner. The second
23 thing I do is hire an attorney and we go to
24 County and we ask. I'm a surgeon, I can
25 tell you anything you want to know about the

1 head and neck, the body part, whatever you
2 want to know. But I don't know the actual
3 building codes like they do. So we asked
4 specifically, here is what we want to do,
5 can we do it?

6 We tore down a functioning business
7 that my son ran, that's his only source of
8 income. I understand your decision is not
9 based upon that, but in good faith of
10 getting a building permit for the
11 foundation, we tore that building down.

12 Now, we do have -- I don't care what
13 anybody says, we have a net gain of parking
14 spaces and if you want me to show them to
15 you, I will. Or Steve can.

16 Number two, if we do the cut-through
17 where the trash cans are, we still have a
18 net gain of two. I'm sorry, I will show it
19 to you in black and white. Not just take my
20 word for it.

21 As far as the hotel rooms that Mr.
22 Redman pointed out, at one time I was
23 almost, almost to the point, I could secure
24 an oceanfront beach house right across the
25 street. I missed it by one day.

1 You know, when I building, I'm
2 renovating a historic building or a new
3 construction, I always think about
4 potential, what I can do. The Gulfstream is
5 anywhere from 7, 8,000 square feet. Well,
6 I've already been asked, do I want to buy
7 them out? I will consider that, sure.

8 That translates into I buy that much
9 square footage. I didn't anticipate that,
10 being -- buying them out, that is what it
11 transfers into. So I'm not trying to hide
12 anything. I come straight at you. Honest,
13 whatever you want to know. They went
14 through the whole process. We told people
15 what we were doing. I don't want to be
16 perceived as someone trying to hide
17 something, because anyone who knows me, I
18 will tell you just what I think when I think
19 it. There is no need hiding anything. It
20 always comes out.

21 So when I asked Steve, or Steve and I
22 were talking about, what else can we do if
23 this thing if -- we were going to do a two
24 story and I'm like, "I don't want to heat
25 all of this space. Put a floor in it, do

1 something. Lower the height of the ceiling
2 because it costs money to heat that stuff."

3 Of course, they do what they do, "You
4 can do this, you can do that. You can do
5 this." I mean, you know, they get paid to
6 do that stuff. So we're not trying to hide
7 anything. That's a two story building, with
8 half of it -- we have 4,600 square feet by
9 two different architect's measurements. Not
10 just Mr. Goggans, but another architect, two
11 of them, got around about the same square
12 footage.

13 What they are not telling you is,
14 downstairs in the marina store, we were the
15 only ones in the State of South Carolina, is
16 what DHEC told me that has a special
17 variance that we take food up and downstairs
18 to eat. What they are not telling you is,
19 the restaurant is just not the upstairs.
20 When you walked in the ship store, it was a
21 combination. There was six tables to your
22 right, four chairs per table. We had four
23 or five rocking chairs that people would sit
24 under the deck and have a drink or eat
25 appetizers. We had an outside deck that

1 people sat at, all around and you -- I'm not
2 trying to hide that, you can ask anybody
3 here, that happened. We had five round
4 tables upstairs, four chairs apiece. We had
5 a 10 top -- I mean, you walk into the room,
6 we had a small, little four chair table that
7 we sat food down on and that sometimes, in
8 overflow, we would use that.

9 So if you add all of those spaces up
10 and count the ship store, the ship store was
11 a combination of restaurant and ship store.
12 I want to make sure you understand that.
13 We're not talking about just 1,900 square
14 foot up top. We're talking about the chairs
15 downstairs, the rocking chairs outside under
16 the deck, the 20 or so -- 18 or whatever
17 they were -- upstairs on the deck. Inside
18 the 10 top, the little four thing when you
19 walk in, plus nobody has ever talked about,
20 we had a 10 by 10 room, and you can see it
21 in Mr. Redman's pictures if you look close
22 that we stored dry goods on. We didn't even
23 count that space. We just counted what was
24 under the roof, so to speak. But we used
25 the upstairs attic on a 10 by 10 room that

1 was there when I bought the place to store
2 overflow spirits and dry stuff and all of
3 that.

4 So I'm not trying to hide anything from
5 you. The square footage is the square
6 footage. Thank you.

7 MR. CHAIRMAN: All right, I appreciate
8 it. Mr. Redman, you can go ahead and take
9 your time with rebuttal. You can have three
10 minutes --

11 MR. REDMAN: Thank you, Mr. Chairman.

12 MR. CHAIRMAN: -- you promised me 30
13 seconds, but you can have three minutes.

14 MR. REDMAN: The issues that you're
15 hearing are complicated, particularly in
16 this PUD that was formed in 1982, one of the
17 first in the County.

18 The parking there isn't just used by
19 their proposed building, it's obviously used
20 by the Gulfstream Cafe as well in a shared
21 agreement. It's a complicated calculation
22 of -- when I asked the staff, "Did you take
23 our easement into consideration?" The
24 answer was, "No, we didn't, because they
25 said y'all were happy with it and consulted

1 about it." And we obviously were not too
2 pleased about it. We are like many other
3 people here, we had no idea what the plans
4 are. They still haven't seen -- the public
5 still hasn't seen the plans.

6 I would also mention that the 67 boat
7 slips, they use the parking as well, and per
8 the Code for every three slips you're
9 supposed to have one parking space. So it's
10 a complicated matter.

11 And so is square footage, heated,
12 enclosed, decking, what did you have before,
13 what did you have -- what are you proposing
14 now? And that is exactly why this matter
15 should go to the Planning Commission.

16 It shouldn't be for y'all to look and
17 stare at the plans and say, "Who is right?
18 Who is not right?" Our parking calculations
19 were not done by me, they were done by --
20 Mr. Castle is an engineer.

21 And if you look behind Tab 6, I put a
22 blue tab on it and I put a red circle around
23 the numbers for there -- for what we have
24 now and are proposed, and you lose 11 spots.
25 You just do.

1 Now, one exhibit I would point you to
2 is Exhibit 10 in the packet that we handed
3 out. And this is a letter that was -- that
4 we obtained that Mr. Goggans, the site
5 architect obtained -- or that he wrote to
6 his client, Doctor Lawhon, about this
7 project.

8 It was his subsequent -- initially he
9 was paid quite a bit of money and he wrote
10 this letter saying I've done more work and I
11 would like you to pay me more money for it.
12 And in Mr. Goggan's, in his letter,
13 September 22, I will read it, he says, "Dear
14 Mark: I hope you are well. A month ago I
15 had a phone conversation regrading the
16 Marlin Quay project many additions and out
17 of the scope of requirements that have
18 occurred over the course. These have
19 included the following: Increase of the
20 building size to include a possible future
21 inn. Doubling the size of the enclosed
22 space to almost 10,000 square feet to
23 include a fire rated second floor.

24 Our original proposal was based on
25 approximately 5,000 square feet." If you go

1 down the letter a little bit he talks about
2 that he went -- apart from the design
3 changes and all of that had to be
4 engineered, he went to the staff and got
5 favorable outcomes, but he didn't talk to
6 anybody in the public or anything about
7 these, but he got approval that the porch
8 did not count against the 4,000 square foot
9 that was previously negotiated.

10 This item had to be negotiated in
11 consider of local parking requirements, that
12 wasn't our language, that's the architect's
13 language. So they're adding 800 square feet
14 onto 4,600 without anyone from the public
15 having any notice or opportunity to say
16 anything about it.

17 Number two, on the second page, he says
18 that he obtained approval for confirming
19 that the existing parking, which is
20 substandard, would comply with the Zoning
21 requirements in terms of stalls, driveways
22 and green space.

23 There is an acknowledgment there that
24 the existing parking is substandard. I --
25 that's a reason to send this to the Planning

1 Commission and let the matter be considered.

2 The next item, Item 3, he received
3 approval for a full second story,
4 unconditioned and designed for future
5 expansion. And I will pause it as to the
6 future expansion, once that space is built
7 the same opportunity exists to do then what
8 has been done now, just go the building
9 department and ask for an interior non-load
10 bearing wall, and without anyone in the
11 public knowing, that could happen. I'm not
12 saying it will happen, but that's why we are
13 here today, to avoid that.

14 Number 5, approval for increasing the
15 size of the kitchen area to within the 4,600
16 square foot requirement. This is where I
17 say the restaurant is 4,000 square feet. I
18 think the Planning Commission should look at
19 that.

20 And finally, Number 6, approval for the
21 observation tower and not a violation of the
22 height requirement. I've talked about, if
23 you look at Tab 1, the Zoning Code says the
24 height requirement is 35 feet except for in
25 a series of zones. We are in a VE Zone, but

1 shall not exceed 45 feet. The tower is
2 above 60 feet. The observation deck itself
3 is at 50 feet. That, pursuant to the Code,
4 along with the change of the exterior of the
5 building, along with the doubling of the
6 size of the seats and the square footage of
7 the restaurant, all we're saying is, let
8 this be considered by the Planning
9 Commission, because these are complicated
10 issues and it's important that the citizens,
11 the invitees, the tourists aren't out there
12 walking on South Waccamaw Drive because they
13 see a beautiful, beautiful piece of property
14 they would like to enjoy.

15 So the issue you're considering is
16 whether this is minor or a major is
17 extremely important. The only thing we're
18 seeking is that it goes to the Planning
19 Commission, everybody gets notice, everybody
20 gets a copy of the plans, which they have
21 not gotten today, an opportunity to speak,
22 and then the marina store, whatever
23 variation of snack bar goes with it, then it
24 can be properly considered, permitted,
25 safely for everyone. That is all we're

1 saying. We appreciate your time. If you
2 have any questions, myself or Mr. Castle
3 would be happy to address them. Thank you.

4 MR. CHAIRMAN: Wes, do you want to give
5 us the County's --

6 MR. BRYANT: Mr. Chairman, I'm not sure
7 there is anything left to say, but I do have
8 a few things.

9 I do agree with Mr. Redman in one
10 respect, that we are here for a minor or a
11 major change. It's important that the Board
12 understands exactly what your purpose is
13 today. And I know we go over this every
14 meeting. This is a different one. Some of
15 the newer members haven't had a -- this sort
16 of request before.

17 And this is authorized by State Code
18 and I will just simply read it, "The Board
19 of Appeals has the following powers to hear
20 and decide appeals where it is alleged there
21 is error in a determination made by an
22 administrative official in the enforcement
23 of the Zoning Ordinance." And that's it.
24 That is what we are here for, that is what
25 they are appealing.

1 Our staff has concluded that this a
2 minor change to a Planned Unit Development
3 from 1982. The Applicant disagrees.

4 Now, let me give you some background on
5 how this law works. This law -- the body of
6 law that we use to do this zoning thing we
7 do in the county all started in 1994. That
8 is when this started.

9 This PUD is before the body of law, the
10 state level that even governs what we do
11 now. So, you know, we have an issue with
12 the retrofitting, you know, all of this
13 together and meshing these things.

14 But I will say this, with regard to
15 minor changes, and this is specific, it
16 talks about planned developed districts in
17 the Code specifically and it specifically
18 says, "The adopted plan may include a method
19 for minor modifications to the site or
20 development provisions." That is it.

21 If you search this entire body of law,
22 minor comes up one time, and that's it.
23 That gives County Counsel the latitude to
24 create its own regulations regarding minor
25 changes. It gives them the ability to

1 assign how they want those minor changes
2 treated, how they want them administratively
3 reviewed, how they want them approved.

4 What we have here is a body of law, our
5 local Zoning Ordinance, that these folks
6 wrote. The very folks in this room wrote
7 this. And they presented that to County
8 Counsel.

9 County Counsel then vetted that, talked
10 it over, discussed it, approved that as law
11 for this county. Theses folks wrote we are
12 dealing with here.

13 Who best to interpret and determine the
14 law or a change in this PD than the folks
15 who wrote the law on which this change is
16 based? I think it's important, you need to
17 remember that here.

18 So we have an outside body who has
19 never looked at this except until last week,
20 and he has his experts and everybody else,
21 but we have the folks who wrote the law
22 here.

23 Mr. Stacy stole my thunder a little bit
24 with my Vulcan case quote, but he's right.
25 In this state, case law defers to the local

1 governing body with regard to zoning
2 interpretations with respect to its local
3 rules. And that's all there is to it.

4 I'm not going to recapitulate
5 everything we've gone over here tonight,
6 there is seven points in the minor section,
7 you can read them. They have been discussed
8 by both parties.

9 I think it's important to note that one
10 of the things that has been emphasized, at
11 least by the Applicant, is that there is a
12 height issue here. There's not.

13 *Section 804* of the Zoning Ordinance
14 specifically exempts an observation tower
15 from height requirements. It's not intended
16 for permanent human occupancy. That's
17 something that these people wrote into that
18 rule some four or five years ago. So that
19 exists.

20 I also need to point out that parking
21 lot easements are not here for this Board to
22 consider. I know it's important to those
23 folks in a private setting, and they have a
24 civil case that they will deal with that
25 individually, separate from you.

1 But what I think you need to consider
2 is, is this a minor change or a major
3 change. All of the sentiment, all of the
4 pros and cons that have been discussed here
5 tonight are important to certain
6 individuals.

7 I think here you need to look at the
8 facts, you need to look at staff's
9 interpretation of this and consider what's
10 been said, and that's what you're supposed
11 to do, and nothing more.

12 And we would respectfully request that
13 you do that and I will answer any questions
14 on behalf of staff that I can actually
15 answer.

16 BOARD MEMBER: Yeah, I have a couple of
17 questions that I think sort of cut to the
18 chase here, we've heard all kinds of
19 definitions of heated space, unheated space,
20 4,600 square feet, 10,000 plus. To me -- is
21 the footprint of this building, the square
22 foot of the footprint, is it no larger than
23 it was?

24 MR. BRYANT: And let me add something
25 to that, too, before we get to that specific

1 answer. I want to point out that that plan
2 that was presented up there on Slide 4 or 5
3 tonight, we've never seen that until earlier
4 today when it was sent over to us.

5 BOARD MEMBER: I understand. But in my
6 mind, I would think that if we increase,
7 drastically anyway, the size of a building
8 it would have -- almost have to be a major
9 change.

10 MR. BRYANT: And my point is, the plan
11 that was submitted to us did not increase
12 the building. It is that same square
13 footage.

14 BOARD MEMBER: Okay, so we're ruling on
15 what was presented and I assume that you
16 would not allow a larger footprint that what
17 was there?

18 MR. BRYANT: Well, I think it would
19 determine -- there is a number of factors
20 involved and we would have to determine that
21 on a case by case basis.

22 BOARD MEMBER: Okay.

23 MR. Bryant: But the assumption you're
24 making is -- you know, seems correct.

25 BOARD MEMBER: Okay. Now, the other

1 thing that troubles me a little bit,
2 although you solved a problem, is exactly
3 where -- I'm looking at this blue up here,
4 the new building. How much was it moved,
5 and you don't have to tell me inches, but
6 where was it before? How much did we shift
7 the location?

8 MR. BRYANT: My understanding is where
9 the green was --

10 BOARD MEMBER: Uh-huh.

11 MR. BRYANT: -- that is where the old
12 building was. It's gone. It's been
13 demolished.

14 BOARD MEMBER: So all of this other is
15 added --

16 MR. Bryant: Right. So the blue
17 building is going to encroach on that old
18 section a little bit and then go over to the
19 left on the owner's property.

20 BOARD MEMBER: The green is gone.

21 BOARD MEMBER: The green will be gone
22 or -- is the green already gone?

23 MR. BRYANT: The green is gone, yes.

24 BOARD MEMBER: And the third, I don't
25 think -- maybe this is not a County

1 consideration, is the use of the building
2 covered in the PD plan -- the PD
3 restrictions?

4 MR. BRYANT: My understanding is, the
5 PUD allows the marina store and the
6 restaurant and -- yes, sir.

7 BOARD MEMBER: Okay, everything there
8 is the same --

9 MR. BRYANT: Right.

10 BOARD MEMBER: -- it's legal as far as
11 PD is --

12 BOARD MEMBER: Not an inn, that was
13 talked about earlier --

14 MR. BRYANT: Yeah, not an inn. And
15 let's make that clear as well. That's a
16 totally -- if they want to come in a year
17 from now and ask for that to be a canning
18 factory, they can do that.

19 BOARD MEMBER: I'm not talking about
20 use, really, just the location and so forth.

21 MR. BRYANT: You know, or a hotel or
22 whatever, but it would be a different
23 process and we would start anew. But that's
24 not what they are asking for here.

25 BOARD MEMBER: I have a question.

1 MR. BRYANT: Yes, sir.

2 BOARD MEMBER: Once you said the
3 definition will (inaudible) but primarily
4 our purpose tonight, we're just here to
5 decide minor/major?

6 MR. BRYANT: You're here to decide
7 whether this man erred with respect to these
8 seven criteria right there.

9 BOARD MEMBER: Not to (inaudible) what
10 anybody else said, but a lot of the things
11 that were said has no bearing on the
12 minor/major footprint of the building and
13 all of that? Somebody else can deal with
14 that. Is my understanding as you said, we
15 are (inaudible.) From that they have
16 presented they are within the realm of
17 (inaudible.)

18 MR. CHAIRMAN: All right, in essence we
19 need -- we, as the Board, we need to decide
20 whether a motion is going to be made to
21 overrule the decision that was made by the
22 staff or whether the staff was correct. The
23 staff looked at this correctly and it met
24 the criteria, what they were given, what
25 they reviewed, did they err or did they not?

1 That is the only issue that is before
2 us. That is the only issue that we need to
3 vote on tonight. I -- with the information
4 that was given to the staff, I don't see
5 that they erred. The potential for that
6 building becoming bigger and having more use
7 is future. It's not now.

8 Staff wasn't even given that
9 information. They were given the
10 information that it was going from 4,600 up
11 to 4,600 or 4,300. It was moving within the
12 site, it wasn't changing the environment as
13 far as negative impacts affecting the
14 intensity, I -- I'm hearing nothing but
15 positive. I'm not hearing negative.

16 So, you know, at this point if anyone
17 cares to make a motion as to whether --
18 either a motion to overrule the staff's
19 decision, that they erred; or to make a
20 motion that the staff looked at what they
21 had at the time correctly, they did not err
22 in what they looked at and met the criteria.

23 BOARD MEMBER: Mr. Chairman, I would
24 like to make a motion to affirm the staff.

25 BOARD MEMBER: I second that motion.

1 MR. CHAIRMAN: All right, then we will
2 take a vote.

3 MS. RICHARDSON: Mr. Holmes?

4 MR. HOLMES: (Inaudible.)

5 MS. RICHARDSON: Mr. Yarborough.

6 MR. YARBOROUGH: I agree.

7 MS. RICHARDSON: Mr. Bonds?

8 MR. BONDS: Yes.

9 MS. RICHARDSON: Mr. Gilfillin?

10 MR. GILFILLIN: Yes.

11 MS. RICHARDSON: Chairman Onions?

12 MR. CHAIRMAN: Yes.

13 (Ambient room noise of crowd talking.)

14 MR. CHAIRMAN: We need a motion to
15 approve the minutes.

16 BOARD MEMBER: I make a motion.

17 BOARD MEMBER: Second.

18 MS. RICHARDSON: We need to do election
19 of officers.

20 MR. CHAIRMAN: First, before that?

21 MS. RICHARDSON: Yeah. Either way, but

22 --

23 MR. CHAIRMAN: Old officers ought to
24 approve the minutes. Did you make a motion
25 to approve?

1 BOARD MEMBER: A motion was made down
2 there, wasn't it?

3 MR. CHAIRMAN: A motion to approve?

4 BOARD MEMBER: I made a motion to
5 approve --

6 MS. RICHARDSON: Bonds, approve
7 minutes.

8 MR. CHAIRMAN: You've got it right?

9 MS. RICHARDSON: I have it.

10 MR. CHAIRMAN: Okay, we made it.

11 BOARD MEMBER: Subject to one
12 correction.

13 MR. CHAIRMAN: All right, and now we
14 need election of the Board, the officers. I
15 will open the floor for nominations.

16 BOARD MEMBER: I nominate (inaudible.)

17 BOARD MEMBER: Second.

18 MS. RICHARDSON: For Chair?

19 BOARD MEMBER: For Chair.

20 MR. CHAIRMAN: Any other motions?

21 Well, we need to --

22 MS. RICHARDSON: Do we need a Vice?

23 MR. CHAIRMAN: One at a time -- you
24 want to vote on them one at a time or do it
25 all at once?

1 MS. RICHARDSON: We have Chair, we need
2 a Vice.

3 MR. CHAIRMAN: All right, I will make a
4 motion to keep Gene as Vice-Chair. I guess
5 we will do it together. All in favor of
6 both of those motions? (Ayes unanimous.)

7 MR. CHAIRMAN: All opposed? (No
8 *response.*) Motion is carried. Motion to
9 adjourn?

10 MS. RICHARDSON: Just so -- we do have
11 a meeting next month.

12 MR. CHAIRMAN: We do have a meeting?

13 MS. RICHARDSON: Yes, two cases.

14 (Meeting adjourned.)
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25

1 CERTIFICATE OF REPORTER

2 I, Luanne W. Jividen, Certified Court
3 Reporter and Notary Public in and for the State of
4 South Carolina, do hereby certify that the forgoing
5 is, to the best of my skill and ability, a
6 transcript of the digitally recorded meeting of the
7 Georgetown Board of Zoning Appeals, Pages 4 through
8 87, inclusive, and transcribed by me to the best of
9 my ability.

10 I FURTHER CERTIFY that the foregoing
11 transcript is a true and correct transcript of the
12 testimony given by the said witnesses at the time
13 and place specified.

14 I FURTHER CERTIFY that I am neither attorney
15 or counsel for, nor related to or employed by any
16 of the parties to the action in which this
17 deposition is taken, or financially interested in
18 this action.

19 IN WITNESS WHEREOF, I have set my hand and
20 seal this 15th day of May, 2017.

21 _____
22 Luanne W. Jividen, CCR
23 Notary Public
24 My commission expires
25 February 4, 2024

STENOTYPE REPORTING SERVICE, LLC

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EXHIBIT 37

(Part 1)

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

THE GULFSTREAM CAFÉ, INC.,

Plaintiff,

vs.

C.A. No.: 2019-CP-22-00212

GEORGETOWN COUNTY, GEORGETOWN COUNTY
COUNCIL, JOHN THOMAS, RON CHARLTON,
LILLIE JOHNSON, AUSTIN BEARD,
STEVE GOGGANS, AND LOUIS MORANT,
INDIVIDUALLY AND IN THEIR OFFICIAL
CAPACITY AS GEORGETOWN COUNTY
COUNCIL MEMBERS,

Defendants.

30(B(6) DEPOSITION OF THE GULF STREAM CAFE, INC.
GIVEN BY: GREG GREENBAUM

DATE TAKEN: Friday, February 12, 2021

TIME START: 10:03 a.m.

TIME END: 2:19 p.m.

LOCATION: Taken via Videoconference

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

ELECTRONICALLY FILED - 2022 Jan 13 1:44 PM - GEORGETOWN - COMMON PLEAS - CASE#2019CP2200212

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I N D E X

	PAGE
EXAMINATION	
BY MS. GOLDING	4
Signature of Deponent	149
Certificate of Reporter	150

E X H I B I T S

GREENBAUM	DESCRIPTION	FIRST REFERENCE
1	Defendant's Fifth Amended Notice of Virtual 30(b)(6) Deposition of Plaintiff	5
2	Application to Amend a Planned Development, DEFS 00001 through 00012	68
3	Notice of Public Hearing, DEFS 00061	96
4	Photograph, DEFS 00065	97
5	Classified Ad, DEFS 00068	98
6	Emails Beginning November 30, 2017, DEFS 00073 through 00078	100
7	Georgetown County Planning Commission Staff Report Dated October 18, 2018, DEFS 00156 through 00159	101

GREENBAUM	EXHIBITS CONTINUED	FIRST REFERENCE
8	Agenda Addendum Dated October 18, 2018, DEFS 00091 and 00092	117
9	Public Hearing Sign-In Sheet, DEFS 00167	116
10	The Bellamy Law Firm Letter Dated October 18, 2018, DEFS 00331 through 00332	5
11	Planning Commission Minutes Dated October 18, 2018, DEFS 00093 through 00097	124
12	Meeting Agenda Dated November 13, 2018, DEFS 00351 through 000353	129
13	Email with Attachments Dated October 12, 2018, GS000077 through GS000087	5
14	Planning Commission Minutes Dated November 13, 2018, DEFS 00354 through 00358	129
15	Bloom Parham Letter Dated December 11, 2018	133
16	Public Comments Sign-In Sheet Dated December 11, 2018, DEFS 00169 through 000170	138
17	Ordinance No. 2018-40	140
18	Plaintiff's Third Supplemental Answer to Defendant Georgetown County's First Set of Interrogatories to Plaintiff	5
19	Summons and Complaint	5
20	Appraisal Report as of November 25, 2019	83

1 - - -

2 P R O C E E D I N G S

3 - - -

4 (GREENBAUM EXHIBIT NUMBERS 1 - 20 were
5 premarked for identification.)

6 - - -

7 GREG GREENBAUM, being first duly
8 sworn, was examined and testified as follows:

9 - - -

10 EXAMINATION

11 - - -

12 BY MS. GOLDING:

13 Q. Okay. Mr. Greenbaum, it is good to see you
14 again.

15 A. Good morning.

16 Q. Let me first ask you --

17 MS. GOLDING: And maybe, Adam, you will let
18 me know.

19 BY MS. GOLDING:

20 Q. We have marked as Exhibit Number 1 the
21 Notice of Deposition and with respect to the
22 designated matters. Let me see if I can pull up this
23 exhibit so it can be shared. Exhibit Number 1.

24 Do you see that, Mr. Greenbaum?

25 A. I don't see it on the screen. I have it in

1 front of me.

2 Q. You do?

3 Mr. Greenbaum, can you see the document?

4 A. Yes, ma'am.

5 Q. Thank you. I have to say to begin with, I
6 am a troglodyte when it comes to electronics, and
7 this may take a little longer simply because I have
8 no proficiency with computers.

9 A. I have somewhere to be on Sunday.

10 Q. Oh, that sounds fine. I promise you, we
11 won't be here.

12 You've been put under oath, Mr. Greenbaum.
13 And you have before you Exhibit Number 1, which is
14 the Notice of Deposition. You see the 25 matters
15 designated in the designated matters.

16 Are you here to address each of the 25
17 matters?

18 A. Yes, ma'am.

19 Q. Okay. Thank you.

20 Do you intend that in addition to you,
21 anyone else on behalf of the Plaintiff will address
22 any portions of the 25 matters?

23 A. No, ma'am. No one else.

24 Q. Thank you. And have you had an opportunity
25 to review the 25 matters listed in Defendants'

1 Exhibit Number 1?

2 A. Yes, I have.

3 Q. Thank you.

4 I just want to know, can you tell me what
5 you've done to prepare for the deposition today?

6 A. Yes. I've reviewed the 25 questions and
7 reviewed with counsel the areas that I needed to be
8 able to answer for you.

9 Q. Thank you.

10 With respect to your presence today, where
11 are you located?

12 A. In the Bloom Law Firm conference room.

13 Q. And who else is in that conference room?

14 A. Adam Nugent.

15 Q. Anyone else?

16 A. No.

17 Q. Do you have any documents in front of you?

18 A. I have two. I have the book full of all
19 your exhibits, and I have a resource book for the 25
20 questions so I can reference them and answer them
21 properly.

22 Q. With respect to the resource book, when was
23 that prepared?

24 A. The initial -- prior to the initial
25 scheduled deposition.

1 Q. And who prepared the resource book?

2 A. Counsel.

3 Q. Particularly who? Do you know?

4 A. No.

5 Q. And can you just -- I'm not asking you to
6 open it up, but can you please pick up that resource
7 book so I may look at it.

8 Thank you.

9 With respect to -- you indicated there was
10 another book you had in front of you, what is that?

11 A. Exhibits.

12 Q. Okay. And those are the exhibits that are
13 labeled as exhibits 1 through 20; is that correct?

14 MR. NUGENT: Yes, Henri. These are the
15 exhibits you sent over or your assistant sent
16 over yesterday. We printed them out and put
17 them in a notebook for Mr. Greenbaum to review
18 during the deposition.

19 THE WITNESS: I wanted to see them on
20 paper. I'm not very -- well, if you're a
21 troglodyte, I'm that way, too, regarding the
22 computer.

23 BY MS. GOLDING:

24 Q. Okay. Thank you.

25 Any other documents or information you have

1 in front of you, Mr. Greenbaum?

2 A. No. Just a bottle of water.

3 Q. Okay. Thank you.

4 Now, you understand that during the course
5 of this deposition, that my questions are to be
6 answered by you and only you; is that correct?

7 A. Yes, ma'am.

8 Q. And you understand that you are not to seek
9 assistance from your attorney with respect to
10 responding to questions?

11 A. Yes, ma'am.

12 Q. Thank you.

13 Mr. Greenbaum, just for the record, can you
14 please tell me your full name.

15 A. Gregory Scott Greenbaum.

16 Q. And, Mr. Greenbaum, where do you reside?

17 A. 935 Gatewood Court Northwest, Atlanta,
18 Georgia 30327.

19 Q. With respect to the Plaintiff,
20 Gulfstream Cafe, Inc., what is your position with
21 that entity?

22 A. I am not an employee of Gulfstream Cafe,
23 Inc.

24 Q. Do you have any position with the
25 Plaintiff, Gulfstream Cafe, Inc.?

1 A. No, ma'am.

2 Q. Why have you been identified as a
3 representative today to speak on behalf of the
4 Gulfstream Cafe, Inc.?

5 A. I've been designated by the sole owner as
6 the most capable, knowledgeable person with regards to
7 the operation and this lawsuit.

8 Q. Who is the sole owner of Plaintiff?

9 A. Jerry Greenbaum.

10 Q. And how is he related to you?

11 A. My father.

12 Q. And where does he live?

13 A. He lives Boca Raton.

14 Q. Does he have any residence or a place to
15 reside that's real estate property in the counties of
16 Georgetown or Horry County in South Carolina?

17 A. I don't know if he personally owns a
18 residence in Horry or -- I know he doesn't in
19 Georgetown. I don't think he owns a residence in
20 Horry.

21 Q. When was the last time he has been to
22 Georgetown County?

23 MR. NUGENT: Object to the form.

24 THE WITNESS: I don't know.

25 BY MS. GOLDING:

1 Q. Have you been with your father to
2 Georgetown County in the last two years?

3 A. Yes.

4 Q. When?

5 A. I don't remember.

6 Q. Can you not give an idea as to when?

7 A. No. Again, I don't remember. I'm real
8 prepared on your 25 questions. I don't know when we
9 last traveled to Myrtle Beach. We've been pretty
10 locked down with COVID. So I would say it was not
11 since March of last year -- prior to March of last
12 year.

13 Q. With respect to the Plaintiff, does it have
14 any employees? With respect to Gulfstream Cafe, does
15 it have any employees?

16 A. I believe the employees that worked at
17 Gulfstream Cafe are employees of Gulfstream Cafe.

18 Q. How many employees currently does
19 Gulfstream Cafe have?

20 A. Are we now referring to the restaurant or
21 the corporation?

22 Q. The corporation.

23 A. I'm not certain. I believe that the
24 employees of Gulfstream Cafe restaurant work for
25 Gulfstream Cafe. Yes, but I'm not sure how many work

1 there.

2 Q. Do you know approximately how many
3 employees are employed at the restaurant,
4 Gulfstream Cafe?

5 A. Between 25 and 50.

6 Q. Mr. Greenbaum, do you know approximately
7 how many employees are employed at the Gulfstream
8 Cafe currently?

9 MR. NUGENT: Let me interpose an objection.
10 I don't know that employees of Gulfstream is on
11 the list in your recent deposition notice.

12 MS. GOLDING: Well, you can post your
13 objection.

14 MR. NUGENT: I certainly don't see how it
15 has any relevance to the subject matter of this
16 case. It's outside the topic. I don't know
17 that he has any obligation to be prepared to
18 answer questions on that.

19 MS. GOLDING: Are you instructing him not
20 to answer, Adam?

21 MR. NUGENT: He can answer if he knows the
22 answer, but it's not within the topics that he
23 was required to prepare for.

24 MS. GOLDING: Well, I disagree with you in
25 that respect.

1 MR. NUGENT: If you want to point out which
2 topic it is, I'm happy to reconsider. But I
3 believe that it's not on the most recent
4 deposition notice.

5 MS. GOLDING: Adam, my job is not to point
6 out the topics to you. You can either instruct
7 him to answer or not to answer. That is your
8 prerogative.

9 MR. NUGENT: He can answer if he knows the
10 answer to the question.

11 BY MS. GOLDING:

12 Q. Mr. Greenbaum, do you know approximately
13 how many employees are now employed at
14 Gulfstream Cafe?

15 A. I do not know.

16 Q. You have not an idea?

17 A. As I just answered, I believe there are
18 between 25 and 50.

19 Q. I'm sorry, I did not hear that answer. I
20 apologize.

21 With respect to the management of the
22 restaurant at Gulfstream Cafe, is there an entity
23 that manages that restaurant?

24 A. There is an operating partner of the
25 restaurant.

1 Q. And who is that operating partner?

2 A. Jef Kirk.

3 Q. And how long has Mr. Kirk been the
4 operating partner?

5 A. I don't know.

6 Q. What is your role with a company by the
7 name -- I believe it's CentraArchy?

8 A. I'm retired CEO.

9 Q. Did you say retired?

10 A. Excuse me?

11 Q. I'm sorry, can you repeat that? I did not
12 hear what you said.

13 A. Yes, I'm the retired CEO. Or CEO emeritus.

14 Q. When did you retire?

15 A. October of 2018.

16 Q. And who currently is the CEO of this
17 company?

18 A. Vince Van Brunt.

19 Q. Can you give the proper name of that
20 company to the court reporter, please.

21 A. CentraArchy Restaurant Management Company.

22 Q. And how long has Mr. Vince Van Brunt been
23 the CEO?

24 A. Since October of 2018.

25 Q. Prior to him being the CEO starting in

1 October 2018, did he have any association with
2 CentraArchy?

3 A. No, ma'am.

4 Q. What was Mr. Van Brunt's employment prior
5 to October 2018?

6 A. No, ma'am.

7 Q. Did you hear me, Mr. Greenbaum?

8 A. I guess not. I'm sorry.

9 Q. What was Mr. Van Brunt's employment prior
10 to assuming position as CEO in October 2018?

11 MR. NUGENT: I'm going to object to the
12 form.

13 THE WITNESS: He worked for Hillstone
14 Corporation.

15 BY MS. GOLDING:

16 Q. What corporation?

17 A. Hillstone.

18 Q. And what was the business purpose of
19 Hillstone or is?

20 MR. NUGENT: Object to the form.

21 THE WITNESS: It's another restaurant
22 company.

23 BY MS. GOLDING:

24 Q. Mr. Greenbaum, I've asked you a question.
25 What is the business purpose of Hillstone, if you

1 know?

2 A. It's a restaurant company.

3 Q. And where do you -- where is it located?

4 A. Nationwide.

5 Q. Where is the office of Hillstone?

6 A. I don't know.

7 MR. NUGENT: Object to the form. This is
8 not remotely related to any of the topics that
9 Mr. Greenbaum has been designated to testify on
10 today. Why don't we move on to something else?

11 MS. GOLDING: Adam, I'm going to ask the
12 questions I need to ask. I believe it is
13 squarely within the matters that I'm requesting,
14 so I will proceed with questioning
15 Mr. Greenbaum. If you instruct him not to
16 answer, that's another thing.

17 MR. NUGENT: If you want to point out which
18 topic you're referencing, Henri, I'm happy to
19 let this go on.

20 MS. GOLDING: That's not really my job,
21 Adam. But just for the sake -- I have to get
22 you to stop objecting. You will note that one
23 of the matters was answers to discovery to
24 interrogatories. Mr. Van Brunt is listed as a
25 witness. So I have a right to ask questions

1 with regard to his background and his
2 involvement.

3 MR. NUGENT: To the extent Mr. Greenbaum
4 has knowledge of Mr. Van Brunt's prior
5 employment, he can answer. But I don't believe
6 it has anything to do with the fact that he's
7 identified --

8 MS. GOLDING: I'm not asking any questions
9 that he has no knowledge of. Mr. Greenbaum is
10 certainly confident to testify as to what he
11 knows. If he doesn't know it, I anticipate he
12 will testify that he does not know.

13 So, Adam, I don't like starting the
14 deposition this way, but you don't need to
15 continue to object.

16 MR. NUGENT: Well, I'm going to interpose
17 my objection to the record. But subject to that
18 objection, he can answer if he knows the answer
19 to the question.

20 MS. GOLDING: So you are the waiving your
21 objection that my question is not within the
22 matter --

23 MR. NUGENT: No. I continue to interpose
24 that objection, but subject to that objection,
25 he can answer that question if he has knowledge.

1 MS. GOLDING: Adam, that's about the fourth
2 time you've interrupted me. Please do not
3 interrupt me anymore.

4 MR. NUGENT: I'm going to object if I need
5 to object for the record. That's just what's
6 going to happen. But I interpose my objection,
7 you can move on. You can let him answer the
8 question and ask the next question.

9 MS. GOLDING: Adam, I want to get a
10 confirmation from you that you will stop
11 interrupting me.

12 MR. NUGENT: Henri, I'm going to interpose
13 objections when I need to for the record, and
14 that's all I've done so far. That's what I'm
15 going to do.

16 MS. GOLDING: Adam, do you agree that it's
17 improper for you to interrupt me?

18 MR. NUGENT: Henri, I'm not interrupting
19 you. I'm interposing objections, and that's it.

20 BY MS. GOLDING:

21 Q. Okay. Mr. Greenbaum, let's get back to my
22 questions with regard to Vince Van Brunt. How long
23 have you known him?

24 A. 20 years.

25 Q. And how did you get to know him?

1 A. We were peers in the restaurant business.

2 Q. What do you mean by peers in the restaurant
3 business?

4 A. He worked in a restaurant company similar
5 to our restaurant company or similar to CentraArchy
6 when I was working for CentraArchy.

7 Q. Well, how did you get to know him?

8 A. Different training meetings or restaurant
9 organizations, Georgia Hospitality; dining at his
10 restaurant versus him dining in mine.

11 Q. Where does he live?

12 A. Atlanta.

13 Q. When you retired as the CEO, did you
14 advertise for that position for a replacement?

15 A. No, ma'am.

16 Q. Okay. How did it come about that you hired
17 Mr. Vince Van Brunt?

18 A. I recruited him.

19 Q. And how did you recruit him?

20 A. I called him up and offered to interview
21 him for my position.

22 Q. And when did you interview him for your
23 position?

24 A. In -- several months in 2018. Probably
25 beginning around March.

1 Q. Did you interview anyone else other than
2 Mr. Van Brunt?

3 A. Not at this time.

4 Q. Subsequently, did you interview anyone else
5 other than Mr. Van Brunt?

6 A. You mean before this?

7 Q. Before or after.

8 A. No, I have not. He's the CEO. I have not
9 interviewed anyone since I hired him. But prior to
10 hiring him, I interviewed several in-house
11 candidates.

12 Q. And which are the several candidates you
13 interviewed?

14 MR. NUGENT: I'm going to object to form.

15 THE WITNESS: Lisa Bowen and George Ogorek.

16 BY MS. GOLDING:

17 Q. Can you, for the court reporter, spell the
18 last name of Lisa.

19 A. B-o-w-e-n.

20 Q. And the other gentleman?

21 A. George Ogorek?

22 Q. Yes.

23 A. O-g-o-r-e-k, I think.

24 Q. Is Lisa Bowen still with your company?

25 A. No, ma'am.

1 Q. When did she leave?

2 A. Over five years ago.

3 Q. With respect to George, is he still with
4 the company?

5 A. No, ma'am.

6 Q. When did he leave?

7 A. Sometime this summer.

8 Q. When you say this summer, that would be the
9 summer of 2020?

10 A. Yes, ma'am.

11 Q. With respect to Mr. Vince Van Brunt, prior
12 to you hiring him as the CEO, had he ever been to the
13 Gulfstream Cafe?

14 MR. NUGENT: Object to the form.

15 THE WITNESS: I don't know.

16 BY MS. GOLDING:

17 Q. Do you know when the first time your CEO,
18 Mr. Van Brunt, ever visited the Gulfstream Cafe?

19 A. No, ma'am.

20 Q. To your knowledge, has Mr. Van Brunt, since
21 becoming the CEO in October 28, visited the
22 Gulfstream Cafe?

23 A. Yes, ma'am.

24 Q. How many times?

25 A. I don't know.

1 Q. Did you ever visit the Gulfstream Cafe with
2 Mr. Van Brunt?

3 A. Yes.

4 Q. Do you know when?

5 A. No.

6 Q. How many times did you visit the
7 Gulfstream Cafe with Mr. Van Brunt?

8 A. Several.

9 Q. And when you say several, can you give me
10 some quantification of that?

11 A. Five to ten.

12 Q. When do you recall was the last time you
13 visited Gulfstream Cafe with Mr. Van Brunt?

14 A. Before March of this -- of 2020.

15 Q. With respect to your current position as
16 the emeritus -- I think that's what you said,
17 emeritus; is that correct?

18 A. CEO Emeritus, yes.

19 Q. CEO Emeritus. What do you do as CEO
20 Emeritus?

21 A. I offer support and advice and resources
22 for the CEO.

23 Q. And how frequently do you do that on a
24 weekly basis?

25 A. Every day.

1 Q. Do you see Mr. Van Brunt every day?

2 A. No, ma'am.

3 Q. How often on a weekly basis do you see
4 Mr. Van Brunt?

5 A. Once.

6 Q. Is there a scheduled meeting or a time
7 period that you have communications with
8 Mr. Van Brunt every week?

9 A. No.

10 Q. Any other way, any other duties you have
11 with respect to your position as CEO Emeritus?

12 A. No. Whatever he needs me to do. I try
13 to --

14 Q. I'm sorry, I didn't hear that.

15 A. I'm sorry, I try to assist him.

16 Q. Okay. Do you continue to be an owner in
17 CentraArchy?

18 MR. NUGENT: Object to the form. This is
19 not within the topics that have been noticed,
20 and I'm going to instruct the witness not to
21 answer about his ownership in CentraArchy.

22 THE WITNESS: I don't think so.

23 BY MS. GOLDING:

24 Q. When was the last time you've had any
25 ownership interest in CentraArchy?

1 MR. NUGENT: Object to the form.

2 THE WITNESS: I don't know.

3 BY MS. GOLDING:

4 Q. How did it come about that you no longer
5 became -- no longer were an owner of CentraArchy?

6 MR. NUGENT: Object to the form.

7 THE WITNESS: I'm not sure of my ownership
8 of CentraArchy at any time. I'm not -- I don't
9 know.

10 BY MS. GOLDING:

11 Q. Why are you not sure of your ownership of
12 CentraArchy?

13 A. I was the CEO and employed by CentraArchy.
14 I do not know the ownership structure of CentraArchy.

15 Q. Do you know any of the shareholders of
16 CentraArchy?

17 MS. GOLDING: Object to the form.

18 THE WITNESS: I don't know the
19 shareholders, what the actual legal ownership of
20 CentraArchy is.

21 BY MS. GOLDING:

22 Q. That was not my question.

23 Do you know any of the shareholders of
24 CentraArchy?

25 MR. NUGENT: Object to the form.

1 Henri, this is way outside the topic of
2 this deposition. I'm instructing him not to
3 answer on the corporate structure of
4 CentraArchy.

5 MS. GOLDING: Okay. And just for the
6 record, I have more questions to ask about the
7 ownership of CentraArchy. So I assume that your
8 instruction to the witness not to answer will be
9 applicable to any additional questions.

10 Would that be correct, Adam?

11 MR. NUGENT: That's correct. He's already
12 testified he doesn't know the ownership
13 structure, and that's not within the topics that
14 you noticed for today. So, yeah, we're not
15 answering my questions about that.

16 BY MS. GOLDING:

17 Q. Very good. What is the relationship
18 between CentraArchy and the Plaintiff in this
19 lawsuit?

20 A. Gulfstream Corp pays a management fee to
21 CentraArchy to manage the restaurant.

22 Q. And is that in a written agreement?

23 A. Excuse me?

24 Q. Is that agreement -- is there a written
25 agreement between the Plaintiff and CentraArchy?

1 A. No, ma'am.

2 Q. Has there ever been a written agreement
3 between the Plaintiff and CentraArchy?

4 A. No, ma'am.

5 Q. How long has CentraArchy managed the
6 Plaintiff's business operation?

7 A. Approximately 25 years.

8 Q. How does CentraArchy receive compensation
9 for its services of management?

10 A. As a percentage of sales that are paid
11 monthly.

12 Q. Is that a percentage on gross or net?

13 A. Gross.

14 Q. And currently what is the percentage
15 management fee?

16 A. I don't know if it's changed since I
17 retired. It was 6 and a half percent.

18 Q. With respect to this lawsuit, how many
19 times has anyone on behalf of Gulfstream Cafe had any
20 communications or contact with the council member
21 John Thomas?

22 A. Can you ask me that again?

23 Q. Certainly. How many times has anyone on
24 behalf of Gulfstream Cafe had any communications or
25 contacts with the council member John Thomas who is a

1 defendant in this lawsuit?

2 A. Individually?

3 Q. Yes, sir.

4 A. None.

5 Q. Why has no one on behalf of Gulfstream Cafe
6 ever had any contact with John Thomas as an
7 individual?

8 A. I don't know.

9 Q. What information do you know about
10 Mr. Thomas' background?

11 A. None.

12 Q. Why did Gulfstream Cafe sue John Thomas
13 individually?

14 MR. NUGENT: Object to the form. That
15 calls for a legal conclusion.

16 MS. GOLDING: Go ahead and answer.

17 THE WITNESS: I don't know.

18 BY MS. GOLDING:

19 Q. In the complaint, Mr. Greenbaum,
20 Gulfstream Cafe alleges that John Thomas engaged in
21 malicious acts. Please identify the malicious acts
22 that Mr. John Thomas engaged in.

23 MR. NUGENT: Object to the form. Calls for
24 a legal conclusion. You can answer.

25 THE WITNESS: Okay. As a member of the

1 Georgetown County Council, John Thomas was part
2 of the --

3 MS. GOLDING: Go ahead and answer.

4 THE WITNESS: I am answering. Are you not
5 hearing me?

6 BY MS. GOLDING:

7 Q. Can you answer, please, Mr. Greenbaum?

8 A. Can anyone else hear me?

9 MR. NUGENT: He's answering right now,
10 Henri.

11 THE WITNESS: Can you hear me now?

12 BY MS. GOLDING:

13 Q. Mr. Greenbaum, I want you to identify each
14 and every malicious act that was committed by John
15 Thomas.

16 MR. NUGENT: Henri, can you hear us? We
17 interposed an objection, and Mr. Greenbaum was
18 in the process of answering. I think you're
19 having some sort of a technical issue. You seem
20 to be sort of freezing. Can you hear us?

21 MS. GOLDING: Now I can.

22 THE WITNESS: Okay. Mr. Thomas
23 participated in the vote that took our parking
24 and ability to operate the Gulfstream Cafe
25 restaurant.

1 BY MS. GOLDING:

2 Q. Any other malicious acts that Mr. -- that
3 you allege Mr. John Thomas engaged in other than
4 voting?

5 Mr. Greenbaum, did you hear me?

6 A. Yes, I'm not sure.

7 Q. Currently, today, as you sit here today, do
8 you know of any other malicious acts that John Thomas
9 engaged in other than the act of voting?

10 MR. NUGENT: Same objection.

11 THE WITNESS: That's all I know.

12 BY MS. GOLDING:

13 Q. Why do you say that Mr. John Thomas' act of
14 voting is a malicious act?

15 MR. NUGENT: Object to the form. Calls for
16 a legal conclusion.

17 Henri, do you want to put the complaint up
18 there on the screen since you're asking about
19 allegations? That would actually direct him to
20 that exhibit.

21 MS. GOLDING: I'm asking the questions.
22 Thank you, Adam.

23 MR. NUGENT: Well, I'm going to object
24 without --

25 MS. GOLDING: My question was --

1 MR. NUGENT: -- letting him look at the
2 complaint. I don't think that's appropriate.
3 And it's also asking him --

4 MS. GOLDING: John, I'm asking the
5 questions --

6 MR. NUGENT: -- to answer your question.

7 MS. GOLDING: Adam, I tell you again, don't
8 interrupt, interfere with my deposition.

9 BY MS. GOLDING:

10 Q. Mr. Greenbaum, my question is this: Why do
11 you contend that the act of voting on the part of
12 Mr. John Thomas is a malicious act?

13 A. Our ability to operate the business was
14 taken from us. We were not given due process.

15 Q. My question is: The vote that you contend
16 Mr. John Thomas did maliciously, why do you contend
17 that vote of Mr. John Thomas was a malicious vote?

18 MR. NUGENT: Object to the form.

19 THE WITNESS: I'm unable to give a legal
20 conclusion.

21 BY MS. GOLDING:

22 Q. I'm not asking you for a legal conclusion.
23 I'm only asking for facts.

24 Why do you believe John Thomas' act of
25 voting is malicious?

1 MR. NUGENT: Object to the form, asked and
2 answered.

3 He's answered the question, Henri.

4 MS. GOLDING: Go ahead, Mr. Greenbaum.

5 THE WITNESS: The ability to operate the
6 restaurant and consider the parking for the
7 restaurant was not properly performed by the
8 County Council.

9 BY MS. GOLDING:

10 Q. And what do you mean it was not properly
11 performed?

12 A. There were no provisions for our easement
13 for joint use of the parking.

14 Q. Any other reason?

15 A. That's pretty -- pretty complete, I
16 believe.

17 Q. Are there any other acts of Mr. John Thomas
18 that you contend are malicious?

19 MR. NUGENT: Object to the form.

20 THE WITNESS: In my nonprofessional
21 opinion, I don't know anything more than -- or
22 eliminating our ability to do business.

23 BY MS. GOLDING:

24 Q. When you say "Eliminating our ability to do
25 business," that's something new. What do you mean

1 about eliminating our ability to do business?

2 A. We have a cross easement for parking that
3 requires our need for every space in that lot with
4 predominantly the parking usage at night. And the
5 approval of the structure or development on the other
6 side will -- will prevent us from being able to
7 operate.

8 Q. You said the words eliminating our ability
9 to do business. I want to know what you mean by the
10 words "Eliminating our business to do business."

11 A. Over the 25 -- over the 40 years almost of
12 Gulfstream's existence, the restaurant has been able
13 to operate and be successful with the use of the
14 majority, almost entirety, of the parking lot at
15 night. The size of the project on the same property,
16 regardless of the type of business, will overburden
17 our parking lot and prevent the restaurant from being
18 able to operate.

19 Q. So you're saying that because this
20 ordinance passed in January of 2019, you cannot --
21 excuse me, you cannot operate -- Gulfstream cannot
22 operate its business?

23 A. We will not be able to operate when the new
24 project opens.

25 Q. And since the ordinance has passed -- since

1 its passage in January 2019, has the Plaintiff been
2 able to operate its business?

3 A. Yes, ma'am.

4 Q. Okay. When do you anticipate that the
5 ordinance will then prevent the Plaintiff from
6 operating its business?

7 A. When the new project opens.

8 Q. And when is that?

9 A. I don't know.

10 Q. Do you have any idea whatsoever?

11 A. No, ma'am.

12 Q. So as of today, this ordinance that was
13 passed in January of 2019 has not had -- has not
14 prevented Gulfstream from conducting its business; is
15 that correct?

16 A. Yes, ma'am.

17 Q. Now, with respect to council member
18 Ron Charlton, has anyone on behalf of Ron Charlton
19 [sic] ever had any communication or contact with
20 Ron Charlton?

21 MR. NUGENT: Object to the form.

22 THE WITNESS: Am I able to ask you or
23 comment that if we're going to go through every
24 one of these people, the answers are exactly the
25 same?

1 MS. GOLDING: You can certainly say that,
2 but I'm going to ask you each question --
3 identify each council member.

4 THE WITNESS: Okay. No, ma'am. No one
5 reached out to Ron Carlton.

6 BY MS. GOLDING:

7 Q. With respect from Ron Charlton, have you
8 ever had any type of information as to his
9 background?

10 A. No, ma'am.

11 Q. Can you identify each and every malicious
12 act committed by Ron Charlton?

13 A. Participating in the vote to eliminate our
14 ability to utilize the parking to -- for the
15 Gulfstream Cafe.

16 Q. When you say "participating in the vote,"
17 are you meaning the act of voting?

18 MR. NUGENT: Object to the form.

19 THE WITNESS: The decision. Participating
20 in the decision. I'm not sure -- I don't know
21 the legal terminology.

22 BY MS. GOLDING:

23 Q. I'm not asking you for legal terminology.
24 I'm just asking you what you believe to be the
25 malicious acts of Ron Charlton, and I need to know

1 each and every malicious act you believe was
2 committed by Ron Charlton. So please tell me those
3 supposed malicious acts.

4 MR. NUGENT: Object to the form. Asked and
5 answered.

6 BY MS. GOLDING:

7 Q. Can you please go ahead.

8 A. Participating in the vote that took the
9 parking from the Gulfstream Cafe, that did not
10 consider the cross easement for parking that had
11 existed and ratified between the owners of the
12 property for the entire development of the property.

13 Q. Other than voting, did Ron Charlton
14 participate in any other supposed malicious act?

15 A. Not that I know of at this time.

16 Q. With respect to the voting, what day or
17 days do you contend that his act of voting occurred
18 that were malicious acts?

19 A. You want the dates of the decision by the
20 council?

21 Q. No, sir. I want the dates that
22 Ron Charlton committed or undertook the malicious
23 acts.

24 A. I don't know.

25 Q. How many times did Ron Charlton engage in

1 any malicious act towards the Plaintiff?

2 A. I don't know.

3 Q. Now, the next person that you sued is
4 Lillie Johnson. Does the Plaintiff know anything
5 about Lillie Johnson?

6 A. No, ma'am.

7 Q. Why was she sued individually?

8 MR. NUGENT: Object to the form.

9 THE WITNESS: I don't know.

10 BY MS. GOLDING:

11 Q. Please identify all malicious acts that
12 were conducted by Lillie Johnson.

13 MR. NUGENT: Object to the form.

14 THE WITNESS: Participating in the vote
15 that -- that failed to consider the cross
16 easement for parking as necessary for
17 Gulfstream Cafe to operate.

18 BY MS. GOLDING:

19 Q. Based on your answer, is it fair to state
20 that Gulfstream believes that Lillie Johnson's act of
21 voting is a malicious act?

22 MR. NUGENT: Object to the form.

23 THE WITNESS: The failure to consider the
24 cross easement for parking malicious. We are
25 the victim.

1 BY MS. GOLDING:

2 Q. How do you know that Lillie Johnson failed
3 to consider the parking cross easements?

4 A. There's no record of any consideration in
5 any of the reports.

6 Q. Any other reason that you believe that
7 Lillie Johnson did not consider the parking easement
8 other than there's no record?

9 A. No, ma'am.

10 Q. I want to ask the same question. I forgot
11 to with respect to John Thomas. How do you know that
12 John Thomas failed to consider the parking or the
13 parking easements when voting?

14 A. The lack of any record.

15 Q. The same question for Ron Charlton. How
16 does Plaintiff know that Ron Charlton failed to
17 undertake any consideration of the parking or the
18 parking easements when voting?

19 A. There's no record.

20 Q. And with respect to Mr. Thomas and
21 Mr. Charlton, is there any other basis that you
22 contend that they did not consider the easements and
23 the parking other than there's no record?

24 A. No, ma'am.

25 Q. The next individual is Austin Beard. What

1 does the Plaintiff know about the background of
2 Austin Beard?

3 A. Nothing.

4 Q. Has the Plaintiff ever had any type of
5 communication or contact with Austin Beard?

6 A. No, ma'am.

7 Q. Please identify the malicious acts of
8 Austin Beard.

9 MR. NUGENT: Object to the form.

10 THE WITNESS: Participating in the vote
11 that eliminated the -- or did not consider the
12 easement or our cross easement for parking vital
13 to the success -- to the operation of the
14 business.

15 BY MS. GOLDING:

16 Q. Any of other basis for saying that
17 Austin Beard committed a malicious act?

18 A. No, ma'am.

19 Q. How do you know that Austin Beard did not
20 make any consideration of the parking or the parking
21 easements?

22 A. No record.

23 Q. Any other reason?

24 A. No, ma'am.

25 Q. The next individual is Steve Goggans.

1 Do --

2 A. I lost your voice there.

3 Q. I apologize. The next council member is
4 Steve Goggans. Do you know Steve Goggans?

5 A. I don't know him.

6 Q. With respect to Steve Goggans, identify the
7 malicious acts of Steve Goggans that you believe are
8 the basis for your lawsuit.

9 MR. NUGENT: Object to the form.

10 THE WITNESS: Steve Goggans was the
11 architect of record for 1.0 and 2.0 on the
12 buildings. Steve Goggans was paid an additional
13 bonus for his influence on the committee. Steve
14 Goggans appointed or hired the people who
15 gathered the information and was compensated for
16 his influence with them.

17 His architectural firm designed, whether he
18 was directly involved or not, but his firm
19 designed 3.0. And he -- his willingness to or
20 his lack of consideration for the cross easement
21 and his influence on his fellow members created
22 a situation where we have had our -- can't
23 operate our restaurant without the necessary
24 parking to offer at night.

25 BY MS. GOLDING:

1 Q. The last thing you said was his influence
2 on his fellow members; is that correct?

3 A. That's correct.

4 Q. Tell me what facts you rely upon when you
5 say that his -- he influenced his fellow members.

6 A. I have email records from another case that
7 show that he was compensated for his influence on the
8 committee.

9 Q. What's the date of that email?

10 A. I don't know.

11 Q. What does that email say?

12 A. I don't have it here.

13 Q. And when you say another case, what are you
14 referring to?

15 A. In the lawsuit against Palmetto Corp.

16 Q. How many emails?

17 A. I don't know.

18 Q. And when you said influence on his fellow
19 members, who are you -- who are the fellow members?

20 A. It doesn't stipulate.

21 Q. What do you mean it doesn't stipulate?

22 A. The emails or the receipts or the bill
23 where he was compensated for his influence on the
24 County Council members, it doesn't stipulate which
25 members he specifically influenced.

1 Q. And when you say fellow members, you're
2 referring to the county -- Georgetown County Council
3 members?

4 A. Yes. And, also, I believe -- again, I
5 don't have the exhibit. I don't remember the term
6 for the people that gather all the information for
7 the council members. If you need me to look up what
8 that name is, I've got it somewhere in my --

9 Q. Yes, please do.

10 A. It's the staff. Again, I can edit that and
11 get the actual term when I review the deposition, but
12 the staff that works for the County Council members.

13 Q. And are you saying there are emails that
14 show his influence on the staff?

15 A. During discovery for his communications
16 with Palmetto, there's a bill for communications
17 that, again, I don't have that exhibit, but it does
18 stipulate that he was paid additional for his
19 influence on the committee. It came up also in his
20 trial for ethics.

21 Q. What do you mean his trial for ethics?

22 A. There was an ethics complaint against Steve
23 Goggans because of this involvement, and he was
24 censured or sanctioned.

25 Q. And how do you know about the ethics

1 complaint?

2 A. Because it was complaint -- it was -- it
3 was done by the owner of Gulfstream Cafe, and I am
4 here as his representative today.

5 Q. Okay. What was done by the owner of
6 Gulfstream Cafe?

7 A. The complaint.

8 Q. The complaint. What do you mean the
9 complaint?

10 A. The complaint about the actions of Steve
11 Goggans as the architect of record, a member of the
12 council, and the political figure that he is in the
13 county.

14 Q. And what was the complaint? The basis of
15 the complaint?

16 A. That it was unethical in the way he acted.

17 Q. When was this complaint made?

18 A. I don't know.

19 Q. Was it recently made?

20 A. It's been a couple of years.

21 Q. And with whom was the complaint -- on what
22 entity? Where was the complaint filed?

23 A. I don't know.

24 Q. Was there an attorney that was handling
25 this complaint for Gulfstream Cafe?

1 A. I think so.

2 Q. Who?

3 A. I think it would have been the Bloom Law
4 Firm, I think. It could have been -- it could have
5 been our local counsel in South Carolina. I don't
6 know.

7 Q. And who are the local counsel in
8 South Carolina with respect to this complaint?

9 A. I don't know who our local counsel was or
10 who the counsel was for Gulfstream Cafe at that time.

11 Q. Other than this bill that you're referring
12 to, any other documentation that you know of that in
13 any way establishes that Steve Goggans acted
14 maliciously?

15 MR. NUGENT: Object to the form.

16 THE WITNESS: At this time he has not been
17 deposed for this case, so -- or deposed.
18 So I don't have any additional information at
19 this time.

20 BY MS. GOLDING:

21 Q. With respect to any -- you indicated that
22 you believe Mr. Goggans had some influence on his
23 fellow members. Other than this bill that you're
24 referring to, any other documentation you believe
25 shows any influence by Mr. Goggans on his fellow

1 members?

2 MR. NUGENT: Object to the form.

3 THE WITNESS: I don't know. I don't
4 remember.

5 BY MS. GOLDING:

6 Q. With respect to the bill, can you please
7 describe what you mean by the bill?

8 A. An invoice for Palmetto from Goggans'
9 architectural firm.

10 Q. And is there one invoice or more than one
11 invoice?

12 A. I don't know, and I'm not sure that there's
13 not a reference in an email about the invoice.

14 Q. And is there any particular member that
15 Gulfstream believes were influenced by Mr. Goggans?

16 A. I don't have any -- I wouldn't have any
17 ability to distinguish which members he was
18 compensated for his influence.

19 Q. When did Mr. Goggans influence his
20 council -- his fellow council members with respect to
21 Palmetto?

22 A. I don't remember.

23 Q. Do you know how Mr. Goggans influenced his
24 fellow members?

25 A. No, ma'am.

1 Q. Did you personally have any participation
2 in this complaint against Mr. Goggans that you've
3 testified about?

4 A. I don't believe so.

5 Q. Just to go back with respect to
6 Mr. Goggans, what are the malicious actions that the
7 Plaintiff believes were undertaken by Mr. Goggans?

8 MR. NUGENT: Object to the form.

9 THE WITNESS: In addition to Goggans, I
10 believe he influenced the vote for his clients
11 to receive a major amendment, which overburdened
12 our parking and will basically -- basically
13 disregards our easement and will cause us damage
14 and inability to operate the restaurant.

15 BY MS. GOLDING:

16 Q. Other than Mr. Goggans engaging and
17 influencing his fellow members, any other malicious
18 acts that you believe he engaged in?

19 A. Not that I know of at this time.

20 Q. To your knowledge, did Mr. Goggans vote on
21 the ordinance that was passed in January 2018
22 permitting the major amendment to the Marlin Quay PD?

23 A. I don't understand the question.

24 Q. Certainly. In January of 2019, was
25 Mr. Goggans a County Council member at Georgetown

1 County?

2 A. I don't know.

3 Q. When was Mr. Goggans a County Council
4 member in Georgetown County?

5 MR. NUGENT: Object to the form.

6 THE WITNESS: I don't know.

7 BY MS. GOLDING:

8 Q. Any other acts that you believe Mr. Goggans
9 committed that you believe were malicious?

10 A. I think you already asked me this, but I'll
11 answer again. I don't know at this time.

12 Q. With respect to Louis Morant, to your
13 knowledge, did Gulfstream or anyone on behalf of
14 Gulfstream ever have any contact or communications
15 with Louis Morant -- Morant? Excuse me.

16 A. Not that I know of.

17 Q. Does Gulfstream have any knowledge as to
18 Louis Morant's background?

19 A. No, ma'am.

20 Q. Identify all the malicious acts you believe
21 Louis Morant committed or engaged in.

22 MR. NUGENT: Object to the form. Calls for
23 legal conclusion.

24 THE WITNESS: He participated in a vote
25 that approved the nature of business that

1 disregarded the parking necessities,
2 overburdened the parking lot, and causes us to
3 be unable to operate.

4 BY MS. GOLDING:

5 Q. Any other actions on behalf of Louis Morant
6 that you believe were malicious acts?

7 A. No, ma'am. Not that I know of.

8 Q. With respect to -- and I think I asked you
9 with respect to John Thomas, but I'll ask you with
10 respect to Ron Charlton, why was he personally sued
11 by Gulfstream?

12 MR. NUGENT: Object to the form.

13 THE WITNESS: I don't know.

14 BY MS. GOLDING:

15 Q. Why was Lillie Johnson personally sued by
16 Gulfstream?

17 MR. NUGENT: Object to the form.

18 THE WITNESS: I don't know.

19 BY MS. GOLDING:

20 Q. Why was Austin Beard personally sued by
21 Gulfstream?

22 MR. NUGENT: Object to the form.

23 THE WITNESS: I don't know.

24 BY MS. GOLDING:

25 Q. Why was Steve Goggans personally sued by

1 Gulfstream?

2 MR. NUGENT: Object to the form.

3 THE WITNESS: Because he was the architect
4 of record and he was compensated for his design
5 and influence on the commission.

6 BY MS. GOLDING:

7 Q. When you say influence on the commission,
8 what are you referring to as the commission?

9 A. The Georgetown County Council members.

10 Q. Any other reasons why Steve Goggans was
11 sued individually?

12 A. No, not that I know of.

13 Q. Why was Louis Morant sued individually?

14 MR. NUGENT: Object to the form.

15 THE WITNESS: I don't know.

16 BY MS. GOLDING:

17 Q. With respect to each council member,
18 starting with John Thomas, identify every arbitrary
19 act engaged in by John Thomas which Gulfstream
20 contends harmed it.

21 MR. NUGENT: Object to the form.

22 THE WITNESS: I don't understand what the
23 arbitrary act is.

24 BY MS. GOLDING:

25 Q. That is the question. You don't understand

1 the definition of arbitrary?

2 A. Just a second. Okay. If we can go --

3 Q. What are you looking at, Mr. Greenbaum?

4 A. This is my resources to access the right
5 information for the arbitrary acts, which I will
6 provide for you. You can have the whole thing.
7 There's nothing in here that -- which doesn't
8 reference the different things from the notice that
9 you gave us.

10 Q. Okay.

11 A. So if we can move on from there, we can go
12 to the complaint. And we can either identify lines
13 51 through 57 of the complaint, or I can read them
14 for you.

15 Q. My question is: I want you to identify
16 every arbitrary act that you believe was committed by
17 John Thomas which harmed Gulfstream.

18 A. That's the answer I'm about to give you.

19 Q. Okay.

20 A. We'll go to the complaint. We can either
21 read paragraph 51 through 57 or enter them as
22 paragraph 51 through 57 of the complaint. I can
23 read --

24 Q. I'm asking you a question.

25 A. Okay.

1 Q. I'm not asking the complaint the question.
2 I'm asking you the question to identify every
3 arbitrary act.

4 MR. NUGENT: Henri, he's answering your
5 question. He's telling you what's in the
6 complaint, the specific paragraph that
7 corresponds.

8 Do you want him to read that into the
9 record, or do you want to accept that he is
10 telling you which paragraphs in the complaint
11 address your particular question?

12 MS. GOLDING: Adam, I don't want -- all
13 you're doing has been assisting and abiding this
14 witness to answering questions. I've asked him
15 a very simple question, and I have yet to get an
16 answer.

17 MR. NUGENT: He has given you an answer.
18 We're trying to try to expedite this. If you
19 want him to sit here and read the specific
20 paragraph of the complaint, he can do that.
21 Just ask --

22 MS. GOLDING: No, sir, I want an answer. I
23 told you, Adam, stop instructing and assisting
24 the witness. I want an answer to my question.

25 THE WITNESS: Okay. The Georgetown City

1 Council held three readings of the application
2 for a major amendment of which John Thomas is a
3 member of the Georgetown City Council.

4 On December 11th, 2018, the Council held a
5 second reading for Palmetto's application for a
6 major amendment. At that hearing, council for
7 Gulfstream explained the procedural and
8 substantive defects of the application.

9 Council for Gulfstream also provided the
10 County Council with a position paper outlining
11 the defects with Palmetto's application.

12 Numerous members of the public attended the
13 December 11th meeting to express their
14 opposition to the proposed major amendment.
15 More than a dozen individuals expressed concern
16 that Version 3.0 would cause significant
17 problems with parking and traffic in the Marlin
18 Quay area.

19 Neither council for the applicant nor
20 anyone who spoke in favor of Palmetto's
21 application addressed the impact that Version
22 3.0 would have on the parking situation at
23 Marlin Quay.

24 Despite being presented with numerous
25 procedural and substantive defects in Palmetto's

1 application, along with significant community
2 opposition to the proposal, the Georgetown
3 County Council approved the second reading of
4 Palmetto's application for a major amendment.

5 Palmetto's application for a major
6 amendment received final approval from the
7 Georgetown County Council on January 8th.

8 The -- Upon information that we previously
9 discussed, Defendant Goggans, consistent with
10 his actions on prior applications by Palmetto,
11 advocated on behalf of the client for approval
12 of Version 3.0 by his fellow County Council
13 members.

14 Upon information and belief, members of
15 County Council were influenced to vote in favor
16 of Palmetto's application because of Defendant
17 Goggans' role as the architect for Palmetto."

18 Now, if we can move on to paragraph 60
19 through 69.

20 Defendants acted arbitrarily and capricious
21 in advocating for or approving Palmetto's
22 application for a major amendment to construct
23 Version 3.0.

24 Highlighting the arbitrary and capricious
25 nature of the Defendants' action is the fact

1 that defendants wholly failed to consider the
2 impact of Version 3.0 upon the parking situation
3 at Marlin Quay despite the evidence presented by
4 Gulfstream and numerous community members.

5 Defendant failed to follow the requirements
6 of Georgetown County Zoning Ordinance in
7 approving Palmetto's application for a major
8 amendment to construct Version 3.0.

9 For example, Defendants failed to consider
10 the requirements for a major amendment contained
11 in the Georgetown County Zoning Ordinance,
12 namely whether the public necessity,
13 convenience, general welfare or good zoning
14 practices supported Palmetto's application.

15 Additionally, the zoning ordinance does not
16 permit an application [sic] to submit two
17 applications per zoning amendment for the same
18 parcel of property in a 12-month period.

19 Likewise, the zoning ordinance has multiple
20 restrictions regarding the timing of
21 applications and notice required to be provided
22 to nearby property owners, which requirements
23 were not followed.

24 As a result of the Defendants' approval of
25 Palmetto's application for a major amendment,

1 the value of Gulfstream's property has been
2 reduced.

3 Because of the Defendants' actions,
4 Palmetto will be permitted to construct Version
5 3.0, which is substantially larger than its
6 previous building, contains a full-size
7 commercial kitchen, and will be open as a
8 restaurant, serving dinner in the evening with a
9 focus on nightlife.

10 The parking lot at Marlin Quay cannot
11 support the new operation along with
12 Gulfstream's existing business. Gulfstream
13 requires sufficient parking in order to operate.

14 If Palmetto is allowed to proceed,
15 Gulfstream will be unable to continue operating
16 its restaurant because of the catastrophic
17 parking situation. Given that Gulfstream's
18 property value may only be used as a restaurant
19 pursuant to the PUD, Gulfstream's property will
20 lose all value.

21 Defendants' action in approving Palmetto's
22 application for a major amendment to build 3.0
23 constitutes a taking for which compensation is
24 constitutionally mandated.

25 All right. I have the Exhibit 10 if you

1 would like to go through that. That is the
2 position paper.

3 Would you like for me to read the position
4 paper, or would you like to take that in as a
5 document?

6 BY MS. GOLDING:

7 Q. Mr. Greenbaum, my question is, again, I
8 want to know the specific acts on the part of John
9 Thomas that you perceive and consider to be
10 arbitrary. You have yet to answer that question.

11 MR. NUGENT: Asked and answered, Henri.

12 MS. GOLDING: No, it's not. No, it has
13 not. I want to know the specific acts engaged
14 in or conducted by John Thomas that the
15 Plaintiff considers to be arbitrary. I want to
16 know those specific acts.

17 THE WITNESS: Okay. In addition to what
18 I've already expressed to you --

19 BY MS. GOLDING:

20 Q. Mr. Greenbaum, you haven't given me one
21 single act on the part of John Thomas.

22 MR. NUGENT: Henri, do you have a question
23 for him? He's answered your question, you've
24 asked him again, he's given you another answer
25 even though he has no obligation to do so. You

1 don't need to argue with him.

2 BY MS. GOLDING:

3 Q. Mr. Greenbaum, my question is again:
4 Identify each and every specific act engaged in by
5 Mr. Thomas that you believe to be arbitrary.

6 A. Okay. So far in addition to what I've
7 already answered, I have the paragraph 1 of the
8 complaint seeking relief on the malicious, arbitrary
9 and capricious acts of the Council, including John
10 Thomas, that if improperly advocating for, approved
11 the major amendment to the Marlin Quay planned unit
12 development in direct contradiction of the Georgetown
13 County Building Ordinance, South Carolina law, and
14 the United States Constitution.

15 Q. So now you're saying that Mr. Thomas was
16 arbitrary because he improperly advocated a major
17 amendment? Is that what you're saying?

18 A. I will read it to you again. I'm not
19 finished with my answer.

20 Q. No, sir, I'm asking you a question. I'm
21 not asking you to --

22 MR. NUGENT: Henri --

23 THE WITNESS: I believe you still have a
24 question that I haven't finished answering. If
25 you'd like me to -- I'm respectful of allowing

1 you to ask the questions; can I please answer?

2 MS. GOLDING: Well, no, sir. You need to
3 be respectful of my questions and answer my
4 questions. You are avoiding answering my
5 questions.

6 MR. NUGENT: Henri, he has answered your
7 question. You've asked him again. He's trying
8 to answer it again. Now you're interrupting
9 him. You have to let him finish his answer.

10 THE WITNESS: I just need to know if I'm
11 able to answer my -- answer your questions
12 completely before you ask a different question.

13 BY MS. GOLDING:

14 Q. Okay. I have yet to hear the answer. My
15 question is: What specific acts of John Thomas do
16 you believe were arbitrary?

17 A. I've answered to the best of my ability
18 what I believe to be the case. I have not completed
19 my answer, but I will continue if you would like.

20 Q. I want to know the specific acts. Let's do
21 it this way. Since apparently you're having a -- you
22 can't understand my question.

23 What is the very first arbitrary act that
24 you believe John Thomas committed?

25 MR. NUGENT: Henri, I'm going to object.

1 That is the exact same question. He just
2 answered it. He can finish his answer, but
3 we're wasting a lot of time going round and
4 round on this.

5 BY MS. GOLDING:

6 Q. Please answer that question. What is the
7 very first arbitrary act that you believe John Thomas
8 committed?

9 A. He failed to -- let's see. He accepted the
10 procedural and substantive defects of the
11 application.

12 Q. And what are those defects?

13 A. All right. Number one, Georgetown County
14 Zoning Ordinance does not permit two applications for
15 zoning amendment on the same parcel in a 12-month
16 period.

17 Q. Let me stop you right there. Why do you
18 say that there were two applications within 12 years
19 that violated Georgetown ordinances?

20 A. Because there were. And it was 12 months.

21 Q. Okay. When did this application -- when
22 was it submitted?

23 A. Which one?

24 Q. You're saying there were two applications
25 submitted --

1 A. Yes.

2 Q. -- in 12 months. When were those
3 applications submitted?

4 A. Okay. In November -- on November 3rd,
5 2017, Palmetto submitted an application to the
6 Planning Commission, made recommendation on
7 December 21st, 2017. On August 27th, 2018, Palmetto
8 made another application. The Planning Commission
9 made a recommendation on October 18th, 2018. Those
10 are within 12 months.

11 Q. And why were you saying that John Thomas
12 ignored this issue?

13 A. This -- this happened. He's part of the
14 County Council members who could have stopped this
15 from happening on a procedural error.

16 Q. And what information do you have that John
17 Thomas had knowledge that there was a procedural
18 error?

19 A. It was advised by my counsel or the counsel
20 of Gulfstream Cafe in the hearings.

21 Q. Okay. Anything else that you believe shows
22 that John Thomas acted arbitrarily when he accepted
23 the application within a 12-month period?

24 A. You're asking me now if I have any other
25 reasons that I think that he arbitrarily accepted two

1 applications in one year?

2 Q. Yes, sir. Like I said before, I just need
3 to know --

4 A. I'm just --

5 Q. Okay.

6 A. If we go to -- I have the Planning
7 Commission meeting minutes for both 2.0 and 3.0, and
8 there's no -- those exist, so if we would like to
9 reference those, I can give you Bates numbers if you
10 want to pull them up on screen.

11 Q. Mr. Greenbaum, I'm asking you the
12 questions. I just want you to answer my questions.
13 I need to know every arbitrary act that you believe
14 John Thomas committed.

15 MR. NUGENT: Henri, he's given you an
16 answer here. He is cooperating and trying to
17 answer your question. I know you don't like his
18 answers, but he is answering the questions.

19 We're not going to keep playing these
20 games. You've got to let him finish his answer.
21 All he asked was do you want Bates numbers for
22 the specific documents?

23 MS. GOLDING: He doesn't ask the questions.

24 I ask the questions; he answers my questions.

25 BY MS. GOLDING:

1 Q. Can you please answer my question,
2 Mr. Greenbaum?

3 A. Can we bring back up which question is on
4 the table now?

5 Q. Okay. Well, I'll do this now. You
6 testified that the Council Member Thomas engaged in
7 the arbitrary acts when he accepted the
8 application -- two applications in a year.

9 My next question: Any other arbitrary acts
10 of Mr. Greenbaum?

11 A. You mean Mr. Thomas?

12 Q. Mr. Thomas. Excuse me.

13 A. Okay. The Palmetto failed to give proper
14 notice to the surrounding property owners of its
15 provision for Version 3.0.

16 Q. And what do you mean by that?

17 A. Each individual resident within 400 feet is
18 required to get individual notification. They did
19 not receive it.

20 Q. And how do you know they did not receive
21 it?

22 A. Through discussions with the operating
23 partner of the restaurant who said that numerous
24 guests of his restaurant said they never knew that
25 was going on.

1 Q. And are you referring to Jef Kirk?

2 A. Yes, ma'am.

3 Q. Okay. When did Jef Kirk have these
4 discussions with residents?

5 A. Over the course of the last three years.

6 Q. When?

7 A. I don't know.

8 Q. Is there any documentation that Jef Kirk
9 made with his discussions with these residents?

10 A. I don't have any.

11 Q. Is there -- does any documentation exist?

12 A. I don't know.

13 Q. With whom did Mr. Kirk have these
14 discussions?

15 A. I don't know.

16 Q. How many residents did he have these
17 discussions with?

18 A. I don't know.

19 Q. How many residents reside within 400 feet
20 of the project which is the subject of this lawsuit?

21 A. I think 300, but I'm not certain at this
22 moment.

23 Q. Why do you say 300?

24 A. I think I read that somewhere in my
25 multitude of documents that I read in preparation. I

1 didn't think that it was a critical number to
2 memorize.

3 Q. Well, you allege in your complaint --

4 A. You went away.

5 Q. Hold on.

6 A. I can't hear you.

7 Q. Look at your complaint, paragraph 36.

8 MR. NUGENT: Henri, are you putting the
9 exhibit up on the screen here so we're real
10 clear?

11 MS. GOLDING: No. Adam, please, I'm taking
12 the deposition.

13 MR. NUGENT: No. You just directed him to
14 look at a specific document. We don't have that
15 exhibit here. I'm asking --

16 MS. GOLDING: Come on. He's been reading
17 from it, Adam. Where are you? Haven't you been
18 listening?

19 THE WITNESS: Okay. The Complaint 36?

20 MS. GOLDING: Yes.

21 THE WITNESS: More than 300 property
22 owners. That's where I read it. Thank you.

23 BY MS. GOLDING:

24 Q. Okay. What do you base information on?
25 What information do you have that there are more than

1 300 property owners within a 400-foot radius?

2 A. Research by my counsel.

3 Q. And what's that research?

4 A. I'm not sure.

5 MR. NUGENT: I'm instructing him not to
6 reveal attorney-client privileged information.

7 Do not answer that question.

8 THE WITNESS: Okay. I don't know.

9 BY MS. GOLDING:

10 Q. Is there any documentation that exists that
11 shows there are more than 300 property owners within
12 a 400-mile radius?

13 MR. NUGENT: Object to the form.

14 THE WITNESS: I don't know.

15 BY MS. GOLDING:

16 Q. Has Gulfstream, other than through the
17 operating agent or partner, Mr. Kirk, had any
18 communications with any of the 300 or so residents
19 within the 400-foot radius?

20 A. Yes.

21 Q. Who?

22 A. Our local counsel in Myrtle Beach.

23 George -- hold on one second. George Redman
24 communicated with residents on prior to the request
25 to produce who we spoke with. I don't know. I don't

1 know how many, but he spoke with people in the area.

2 Q. And do you know when he spoke with
3 residents in the area?

4 A. No, I do not.

5 Q. You were reviewing a document. What were
6 you reviewing in responding to these questions about
7 the 300 people?

8 A. Whatever it's called, the notes, the
9 questions from your notice, I had them printed out so
10 that I would have them without -- without in the
11 legal form. It's just the notice.

12 So there's a notice 15 that stipulates or
13 states, "All contacts or communications by
14 Plaintiff's agents with any residents within a
15 600-yard radius of Plaintiff's property or any agent
16 of said residents relating to any allegations."

17 And I have the response that George Redman
18 met with them, and we produced that information for
19 you in October of 2020.

20 Q. Okay. And is that a written response that
21 you have by the matter number 15?

22 A. Yes, ma'am.

23 Q. When did you write that response?

24 A. It was prepared for me.

25 Q. When do you plan to provide me that? I

1 think earlier you said it would be provided to me.

2 A. Whenever you want it. After this hearing.
3 After this deposition.

4 Q. Okay.

5 A. There's nothing in the entirety of my
6 folder that you don't already have.

7 Q. Thank you.

8 Now, going back to my question with regard
9 to council member John Thomas, you indicated that he
10 acted arbitrarily because proper notice wasn't given.
11 Is that what you're saying?

12 A. That he disregarded the necessity of proper
13 notice and arbitrarily decided to go ahead with the
14 vote.

15 Q. Okay. And what documents do you have to
16 support that he disregarded the proper notice?

17 A. The fact there was a vote after we notified
18 the council that that had not taken place.

19 Q. Do you have the name of one resident within
20 400 feet of the Marlin Quay Marina PD, or project,
21 who did not receive notice?

22 A. I do not.

23 Q. Do you know if there exists one resident
24 within 400 feet radius -- foot radius of the Marlin
25 Quay PD who did not receive notice?

1 A. Only from the discussions with our general
2 manager of the Gulfstream Cafe. And there have been
3 several who said they had no idea that was coming.

4 Q. And if I understand you correctly,
5 there's -- you don't know the name of any of those
6 individuals? When they had these discussions? Is
7 that correct?

8 A. That's correct.

9 Q. Okay. Let's go to -- are there any other
10 acts that you think John Thomas conducted which were
11 arbitrary?

12 A. Yes. The application that was submitted
13 did not include any drawings, sketches, or other data
14 that show the building proposed by the amendment.

15 Q. Okay.

16 A. Which I believe he arbitrarily voted to
17 without those that are required.

18 Q. And do you have that application in front
19 of you?

20 A. Yes. I can get it out of the exhibits
21 book. I have Bates-stamps, if you would like those.
22 I do not have it right in front of me right now.

23 Q. You do not have the application in front of
24 you?

25 A. It's not up in front of me right now. I

1 have the -- your notice questions and I have the
2 exhibits book.

3 Q. Okay.

4 A. I do not have the -- I have the Bates
5 numbers. I do not have the document in front of me.

6 Q. Well, you have the exhibit book. You've
7 testified when we started this deposition that your
8 attorney made an exhibit book of the exhibits that I
9 sent yesterday; is that correct?

10 A. That's correct.

11 Q. And in that you have that exhibit book in
12 front of you, do you not?

13 A. Yes, ma'am.

14 Q. Okay. And in that exhibit book, under tab
15 2, in Exhibit 2, which is identified as Application
16 to Amend a Planned Development. Is that correct?

17 A. Yes, ma'am.

18 Q. Okay. So you've just testified that this
19 application was incomplete?

20 A. Yes, ma'am.

21 Q. Okay. And tell me how this application was
22 incomplete.

23 MR. NUGENT: Object to the form.

24 THE WITNESS: The initial submission of the
25 application failed to have the drawing sketches

1 and other data. And that was the -- the
2 document -- the last half of the document that
3 includes those now were not submitted until two
4 weeks before the hearing by the Planning
5 Commission.

6 And that further strengthens the argument
7 that each person within the area did not get
8 proper notification that the -- what was being
9 built.

10 Additionally, this was submitted in the
11 winter. And from 25 years of being in
12 Gulfstream, the majority of the residents in the
13 immediate area are not there in the winter.

14 So without any information or any
15 indication that each individual resident within
16 400 feet -- or 400 feet received an individual
17 notification, it is pretty simple to assume that
18 the majority of the people would not have been
19 notified and he arbitrarily permitted the vote
20 anyway.

21 BY MS. GOLDING:

22 Q. With respect to the application, which you
23 have in front of you, that your attorney provided
24 you, which is marked as Exhibit 2 -- do you have
25 that?

1 A. Yes, ma'am.

2 Q. And at the bottom they are Bates-stamps
3 Defendants' 1 through 12; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. So you have those 1 through 12 pages
6 in Exhibit 2?

7 A. Yes, ma'am.

8 Q. Okay. You said that it's arbitrary because
9 this application did not contain drawings, sketches.
10 What drawings was this application required to
11 contain?

12 MR. NUGENT: Object to the form. Calls for
13 a legal conclusion.

14 THE WITNESS: I don't know.

15 BY MS. GOLDING:

16 Q. What sketches was the application required
17 to contain?

18 A. I don't know.

19 Q. What documents was the application required
20 to contain or have part of that were not part of
21 Exhibit 2 presented on August 27, 2018?

22 MR. NUGENT: Same objection.

23 THE WITNESS: The -- I think we're
24 confusing an issue here, Henri. I'll try and
25 clear it up.

1 The notice to the surrounding owners was
2 not properly met. That was arbitrary issue
3 separate from the plaintiffs.

4 Additionally, there were no -- no attempt
5 for the drawings, plans to be included in the
6 notification to the neighbors prior to two weeks
7 before the hearing.

8 It appears, on my own observations, the
9 drawings, sketches submitted to the Council,
10 are, in fact, inclusive of some rough drawings
11 and sketches. But the arbitrary nature of
12 electing to have a vote when the people around
13 the property never or had much more limited time
14 in the winter to see what was being built next
15 to their residence was an arbitrary issue that
16 he had victimized me with.

17 BY MS. GOLDING:

18 Q. My question was: What documentation needed
19 to be part of the application, which is Exhibit 2,
20 which did -- was not part of the application? What
21 was missing?

22 MR. NUGENT: Object to the form. Calls for
23 a legal conclusion.

24 THE WITNESS: I don't know.

25 BY MS. GOLDING:

1 Q. Okay. Any other basis for your statement
2 that this application, Exhibit 2, is incomplete?

3 A. Yes. The final application, even with the
4 supplements two weeks before, failed to include data
5 on the required number of parking spaces needed by
6 the proposed building.

7 Q. I'm still going back -- I'm going to the
8 application, Exhibit 2, which was submitted on
9 August 27th, 2018. I'm asking you, that document,
10 which is Exhibit 2, that you have in front of you, I
11 want to know was anything else incomplete in this
12 document that was required to be part of the document
13 on August 27th, 2018?

14 A. To the best of my knowledge, I've answered
15 that question. There's no parking data in the
16 application.

17 Q. Now, where in the application does it call
18 for parking data to be part of the application?

19 A. I don't know.

20 Q. Take your time and take a look at it. If
21 you want me to get it up on the screen, I'll be glad
22 to do that.

23 A. No, ma'am. I don't know.

24 Q. Okay. What's on the screen here? Is that
25 Exhibit 2 in your notebook? In your exhibit

1 notebook?

2 A. Yes, ma'am.

3 Q. Okay. Let's just go page by page. On the
4 first page, is there anything that's incomplete?

5 MR. NUGENT: I'm going to object to form,
6 Henri. He's already testified he's doesn't know
7 what's missing from the application. He's not a
8 lawyer. This is a legal question you're asking
9 him.

10 MS. GOLDING: I'm not asking him legal
11 questions. I'm asking for facts.

12 THE WITNESS: I have no idea.

13 BY MS. GOLDING:

14 Q. Okay. How about the second page, anything
15 incomplete on the second page?

16 A. I don't know.

17 Q. Okay. The third page, anything incomplete
18 on the third page?

19 A. I don't know.

20 Q. The fourth page, anything incomplete on the
21 fourth page?

22 A. I don't know.

23 Q. The fifth page, anything incomplete on the
24 fifth page?

25 A. I don't know.

1 Q. And you see the sixth page is called
2 Defendants' -- it's got a Bates stamp 6. Do you know
3 what that is?

4 A. It looks like something my five-year-old
5 drew.

6 Q. So what is the sixth page?

7 A. I don't know. It looks like -- it looks
8 like it could be -- it looks like it's a kitchen
9 drawn with two big rectangles. I don't know. I see
10 stairs maybe. I have no idea what this is a drawing
11 of.

12 Q. Let's look at the next page, which is
13 marked Bates stamp Defendants' Number 7. What is
14 that page?

15 A. Looks like a plan view of something.

16 Q. Let's look at the next page in Exhibit 2.
17 What is that page?

18 A. It's a smaller version. It's with the two
19 other drawings combined.

20 Q. Okay. And then let's look at the next page
21 of Exhibit 2, which is marked Bates stamp Defendants'
22 Number 9. What is that page?

23 A. I don't know.

24 Q. And the next page of Exhibit Number 2,
25 which is Bates stamp 10, what is that page?

1 A. I don't know.

2 Q. The next page of Defendants' Exhibit Number
3 2, what is that page?

4 A. Are we on 11?

5 Q. Yes, sir. Bates stamp 11.

6 A. It looks like a property line. I don't
7 know exactly what it is. It looks like the lot lines
8 or houses in the PUD.

9 Q. Okay. And then the next page in
10 Defendants' Exhibit Number 2, which is Bates stamp
11 12, what is that page?

12 A. It's an aerial photo.

13 Q. And what's the purpose of that page in the
14 application?

15 MR. NUGENT: Object to the form.

16 THE WITNESS: I have no idea.

17 MS. GOLDING: Madam Court Reporter, I've
18 just -- we've been through Defendants' Exhibit
19 Number 2, so will that be part of the
20 deposition?

21 THE COURT REPORTER: Yes, ma'am. I got all
22 of them that you had sent that were premarked,
23 so I have everything. And I'll mark them as we
24 go through.

25 MS. GOLDING: Now, it's 11:30. Can we take

1 a break for just five minutes, and we'll be back
2 on.

3 MR. NUGENT: Do you not want to finish the
4 question regarding Mr. Thomas, or do we need --

5 MS. GOLDING: Sure. I'll be glad to. I
6 just didn't want you to go on. Oh definitely.

7 BY MS. GOLDING:

8 Q. So the last act that you contend on the
9 part of Mr. Thomas that was arbitrary was the
10 acceptance of an incomplete application.

11 What's the next act that you believe was
12 arbitrary on the part of Mr. Thomas?

13 A. Make sure I'm in the right place. The
14 application and parking analysis ignored the
15 requirements for the shared and mix use in Georgetown
16 County Building Ordinance, Section 1102.3.

17 Q. Okay. You say parking analysis. What are
18 you referring to?

19 A. The required parking analysis for whether
20 there was need or availability to develop the project
21 on the other side of the PUD.

22 Q. Tell me what you said that you believe is
23 an arbitrary act on the part of John Thomas with
24 respect to the parking analysis.

25 A. He did not consider the requirements for

1 shared and mixed uses in Georgetown County's own
2 ordinance and then by going ahead and voting.

3 Q. How do you know there was no consideration
4 on the part of Mr. Thomas with respect to the
5 parking?

6 A. There's no record of any parking issue.

7 Q. Any other reason why you base your
8 contention that Mr. Thomas was arbitrary with respect
9 to the parking other than there was no record?

10 A. There's no information that they considered
11 the easement, the existing parking, or the necessity
12 for a second building of any kind of business on the
13 same property.

14 Q. When you say no necessity of a second
15 building, I don't understand that. What do you mean
16 by that?

17 A. That additional building operating in the
18 evening with the size that that building is would
19 require additional parking that didn't exist.
20 There's nowhere else to park in that area. So
21 arbitrarily, they disregard -- I assume they
22 disregarded the -- they didn't do a parking analysis.
23 There is no record that they considered. So I ...

24 Q. Must there be a record to substantiate a
25 claim there was a parking analysis, or could they

1 have undertaken a parking analysis without a record?

2 MR. NUGENT: Object to the form.

3 THE WITNESS: I would imagine in a
4 deposition that would come out. I don't know.

5 BY MS. GOLDING:

6 Q. Do you have any other acts on the part of
7 Mr. Thomas that you believe were arbitrary?

8 A. No. That's the arbitrary section.

9 MS. GOLDING: Okay. Do you want to take a
10 break now? I mean, I don't mind going forward.
11 I was just going to take a five-minute break.

12 THE WITNESS: Five minutes is fine.

13 MS. GOLDING: Okay. Great. Thank you.

14 - - -

15 (A recess transpired.)

16 - - -

17 BY MS. GOLDING:

18 Q. Now, Mr. Greenbaum, we've gone through the
19 malicious acts of Mr. Thomas as well as every council
20 member and the arbitrary acts of Mr. Thomas.

21 Now I need to establish what you believe
22 are the arbitrary acts of each council member. And
23 the next council member is Ron Charlton. What
24 arbitrary acts did Ron Charlton engage in which the
25 Plaintiff contends harmed him?

1 A. Okay. I believe the acts of this
2 councilman are the same as Mr. Thomas, and also the
3 same for all the councilmen except for Mr. Goggans.

4 You want to hear all of the same answers
5 again?

6 Q. So would it be fair to state your --

7 A. Go ahead.

8 Q. No. Would it be fair to state that your
9 testimony with respect to the arbitrary acts of John
10 Thomas are the same arbitrary acts of all council
11 members you've named in this lawsuit other than Steve
12 Goggans?

13 A. Yes, ma'am. Yes.

14 Q. Do you have any knowledge of any arbitrary
15 acts committed by the council members other than
16 Steve Goggans to which you have not testified about
17 today?

18 A. No, ma'am.

19 Q. With respect to Steve Goggans, what are the
20 arbitrary acts that you believe Mr. Goggans committed
21 that resulted in harm to the Plaintiff?

22 A. Okay. Again, I believe that the arbitrary
23 acts were the same as I mentioned in the malicious
24 acts. We can go through all that the same way. I
25 believe they're the same in this case. But I will be

1 glad to read through those again if you would like
2 that.

3 Q. What I want to know is, Mr. Greenbaum, are
4 you saying -- are you testifying that the arbitrary
5 acts of Mr. Steve Goggans are the same acts that you
6 identified as being malicious on the part of
7 Mr. Goggans?

8 A. Yes. Until we conduct further discovery
9 via deposition. I don't have any other --

10 Q. All I want to know is, yeah, the
11 Plaintiff's knowledge. I understand about additional
12 discovery. But what I want to know is what the
13 Plaintiff knows about arbitrary acts or any of those
14 acts on behalf of council members?

15 A. That's correct. I am complete with the ...

16 Q. Now, the next item is the capricious acts
17 of the council members.

18 A. Can I just say thank you for not making me
19 go through all of those again.

20 Q. Certainly.

21 Now, let's go through the capricious acts
22 of the council members. And I will be utilizing
23 Mr. Thomas again because he's the first council
24 member identified in the complaint.

25 Identify each capricious act that you

1 believe John Thomas committed that harmed the
2 Plaintiff.

3 A. I'm going to get with you in just a second.

4 Q. Certainly.

5 A. My responses for all of the council
6 members, excluding Mr. Goggans, are the exact same as
7 they are for arbitrary and malicious, paragraphs 51
8 through 57, 60 through 69 of the complaint, our
9 position paper.

10 And the same responses I gave previously
11 regarding the -- basically the answers to malicious
12 and the arbitrary issues. I don't have them
13 differentiated by malicious, arbitrary, capricious.
14 I believe their acts were all three.

15 Q. Okay. So it's your testimony that what
16 you've testified about as being malicious acts on the
17 part of each council member, those same acts were
18 also arbitrary and capricious except for Steve
19 Goggans?

20 A. Correct. And the things that I testified
21 on Steve Goggans are also malicious, capricious, and
22 arbitrary.

23 Q. Okay. To your knowledge, the acts of Steve
24 Goggans to which you have testified to as being
25 malicious, are you testifying that those same acts