

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2024-000144

Case No. 2021-CP-26-07489

City of North Myrtle Beach,

Appellant,

v.

Sun TRS Ocean Club, LLC, Sun TRS
Carolina Pines, LLC, and Sun Carolina
Pines RV, LLC,

Respondents.

**FIRST AMENDED
RECORD ON APPEAL**

VOLUME IV

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1 in the week, but Thanksgiving's coming up, I assume there might
2 be a Thanksgiving event at the RV resort?

3 A. Correct.

4 Q. So generally big holidays, July 4th might be another
5 example?

6 A. Correct.

7 Q. Okay. Occasionally there are live bands that will play,
8 as well, at the resort?

9 A. Correct.

10 Q. With all of these amenities, your RV resort doesn't need
11 to rely on a cabana house, does it?

12 A. No, "rely" is probably not the right word, however, you
13 know, as I mentioned earlier, our main competitors are
14 Pirateland, Ocean Lakes, Myrtle Beach Travel Park, all very
15 large RV resorts situated directly on the oceanfront. So for
16 us being in Conway 20 miles from the ocean, our way to compete
17 with those folks was through the beach club.

18 Q. Okay. Well, would you agree then that with all these
19 amenities that your guests never have to leave the resort if
20 they don't want to?

21 A. Correct.

22 Q. The cabana house has always been used as a free amenity
23 from 2019 to 2021 when it was opened, correct?

24 A. Correct.

25 Q. You can shuttle guests to public access points on the

1 beach, right?

2 A. Correct.

3 Q. And you all did that while the cabana house was closed?

4 A. Correct.

5 Q. In the summer of 2022 you all shuttled guests to Myrtle
6 Beach, right?

7 A. Correct.

8 Q. And that was the same drive time that you all had when
9 you were shuttling folks to the cabana house in North Myrtle
10 Beach?

11 A. Approximately, I would say so, I don't know exactly
12 where they were dropping off in Myrtle.

13 Q. Okay. So sitting here today you don't know exactly what
14 the difference in drive time was, if there was any difference?

15 A. Correct.

16 Q. Is it possible that it was the same drive time?

17 A. It's possible, yeah.

18 MR. RICARD: Your Honor, permission to approach?

19 THE COURT: Yes.

20 MR. RICARD: Next exhibit in line for plaintiff. For
21 the record, I'm just having this marked as Plaintiff's Exhibit
22 No. 96. Your Honor, here's a copy.

23 (Plaintiff's Exhibit No. 96 was marked for identification.)

24 BY MR. RICARD:

25 Q. Mr. Dibella, I've just handed you what's been marked as

1 Plaintiff's Exhibit 96. If you could, there's a comment at the
2 bottom-hand portion of that, it's a Facebook post. Do you
3 recognize that Facebook post being related to the Carolina
4 Pines RV resort, correct?

5 A. Yes.

6 Q. Could you read that comment for the record?

7 A. Sure. Kimberly Watson Funderburke: Kimberly, the beach
8 club is not open this season due to the neighbors filing a
9 petition with the City of North Myrtle Beach because they did
10 not like our guests being there. We are currently in
11 litigation with the City to make it so our guests are allowed
12 to return. For now this is our temporary solution. Also, fun
13 fact, it was a 25,30 minute drive to our beach club in North
14 Myrtle Beach. This dropoff point in Myrtle Beach is also a 25
15 to 30 minute drive. It's the same exact amount of time, just a
16 different section of beach.

17 Q. Okay. After reviewing that, Mr. Dibella, do you have
18 any disagreement that it's the same drive time?

19 A. No.

20 Q. And in the summer, actually this past summer, summer of
21 2023, you all dropped off folks at the public access point in
22 North Myrtle Beach, correct?

23 A. Correct.

24 Q. Okay. Similar time frame for the drive between the
25 dropoff location this summer in North Myrtle Beach versus at

1 the cabana house in 2021?

2 A. Correct.

3 Q. So you would agree, your RV resort guests were not being
4 excluded by the City from being shuttled to and from North
5 Myrtle Beach, right?

6 A. Just being excluded from being shuttled to the beach
7 club.

8 Q. But again, not being excluded from public access points
9 in North Myrtle Beach?

10 A. Correct.

11 Q. And the guests at the RV resort, they can still shop in
12 North Myrtle?

13 A. Yes.

14 Q. They can still dine there?

15 A. Yes.

16 Q. And they can still go to the beach there?

17 A. Yes.

18 Q. Dennis Onken was an employee of Carolina Pines before he
19 retired, right?

20 A. Correct.

21 Q. He was the food and beverage director?

22 A. Yes.

23 Q. He formulated a business plan, do you recall that?

24 A. No, I don't.

25 Q. You don't ever recall seeing a business plan developed

1 for the cabana house?

2 A. No, not at my level, no.

3 Q. Okay. What was your position at the time of 2020, 2021
4 time frame?

5 A. Senior vice president, same role I'm in now.

6 Q. And remind me, when did you take that role?

7 A. The end of '19.

8 Q. Is there any question in your mind, though, that the
9 defendants wanted to use the property as a revenue stream?

10 A. Yeah, I mean, we discussed all of the options, right,
11 what could we possibly do, sort of wishful thinking, possibly,
12 but, you know, at the end of the day, whatever was allowed to
13 do we were going to do, but, yes, of course we discussed
14 different options including potentially driving some revenue.

15 Q. Okay. So that included selling food and beverages?

16 A. Yeah, it was discussed at the initial purchase.

17 Q. And that included renting beach chairs and umbrellas?

18 A. I would imagine so.

19 Q. Hosting events there, as well?

20 A. Yeah.

21 Q. But you all never pursued a business license, correct?

22 A. The license, I believe, was under the RV resort, that's
23 how we operated the beach club.

24 Q. Okay. You did not have a separate business license for
25 the cabana house, though?

1 A. No.

2 Q. Even though that was a separate LLC that owned the
3 cabana house?

4 A. Correct.

5 Q. So in your mind the business license in Conway for the
6 RV resort was supposed to cover the business application for
7 the cabana house in North Myrtle Beach?

8 A. To my knowledge.

9 Q. Okay. But you understand that's two different
10 municipalities?

11 A. Correct.

12 Q. Are you aware that Mr. Onken checked on whether
13 defendants could sell food and beverage at the cabana house?

14 A. I believe so.

15 Q. And he was told that defendants would not be allowed to
16 provide for food and beverage services at the cabana house?

17 A. Correct.

18 Q. And he ends up telling upper management, wouldn't you
19 agree?

20 A. (No audible response.)

21 Q. I'm sorry, I need a verbal.

22 A. I'm sorry.

23 Q. Did he tell upper management that the instruction from
24 the City that the defendants would not be able to provide food
25 and beverage service?

1 A. Correct.

2 Q. And that would include, I'm displaying what's been
3 marked as Plaintiff's Exhibit 45. That would include both to
4 Mindy Kirtley and to Troy Bittner, correct?

5 A. Correct.

6 Q. And Mindy Kirtley, what was her role at the time?

7 A. Just regional vice president, regional manager.

8 Q. And then Mr. Bittner was the general manager underneath
9 her?

10 A. Correct.

11 Q. So Mr. Onken directly reports to the two supervisors in
12 to his chain of command about the instruction of not being able
13 to provide the food and beverage services at the cabana house,
14 correct?

15 A. Correct.

16 Q. And the following exhibit, Plaintiff's Exhibit 46, Mr.
17 Onken provides the same instruction again to upper management,
18 would you agree?

19 A. Correct, yup, agree.

20 Q. So he tells upper management, not once, but twice, about
21 this instruction not to provide the food and beverage services?

22 A. Well, upper management, are you referring to Troy
23 Bittner?

24 Q. Sure. That's his direct supervisor, right?

25 A. Correct, I don't call that upper management, but, yeah,

1 he's the on-site manager at the property.

2 Q. Okay. And Mindy Kirtley from Plaintiff's Exhibit 45,
3 would you consider her to be upper management?

4 A. I would, yes.

5 Q. Okay. So he certainly tells her, right?

6 A. Correct.

7 Q. And then, here on Plaintiff's Exhibit 46, Vergie Orr,
8 she's the licensing coordinator?

9 A. Correct.

10 Q. And headquarters up in Michigan?

11 A. Correct.

12 Q. Would you consider her to be upper management?

13 A. No.

14 Q. Okay. But still in the headquarters?

15 A. Correct.

16 Q. Alright. Dennis Onken was not given the
17 responsibilities for the cabana house, was he?

18 A. The responsibilities?

19 Q. Right, to oversee the cabana house.

20 A. No, not to direct oversee, no.

21 Q. Okay. That responsibility was given to Chris Martucci
22 instead, right?

23 A. Correct.

24 Q. Despite this instruction from the City that Mr. Onken
25 passes on to management, upper management, we may just leave it

1 at management.

2 A. Okay.

3 Q. But despite that instruction that you passed along,
4 Carolina Pines serves food and beverage at events at the cabana
5 house following these e-mail chains in this Plaintiff's
6 Exhibits 45 and 46, right?

7 A. But it says we were allowed to consume food and beverage
8 on the property.

9 Q. If guests bring their own.

10 A. Correct.

11 Q. Okay. But you understand that at the weddings and
12 events that were being hosted at the cabana house that the RV
13 resort was actually providing and catering for food and
14 beverages services, right?

15 A. Okay, correct.

16 Q. And those events happened despite the City's guidance
17 not to do that, right?

18 A. Correct.

19 Q. And there were multiple events with alcohol being
20 served, right?

21 A. I believe so.

22 Q. And the defendants never had a liquor license for the
23 property, right?

24 A. Correct.

25 Q. And you all attempted to get a liquor license after some

1 events had occurred, right? Do you know?

2 A. I don't know.

3 Q. I'm going to display Plaintiff's Exhibit 63. Do you
4 recognize the name Vergie here?

5 A. Correct.

6 Q. That was the same licensing coordinator that we
7 discussed before?

8 A. Yeah, that's correct.

9 Q. Were you familiar with Ken Allen at all?

10 A. Ken Allen? No.

11 Q. And are you aware if Ken Allen was defendant's attorneys
12 to apply for a liquor license?

13 A. I do not know who Ken Allen is.

14 Q. You're familiar, there is a checklist in order to apply
15 for an alcohol license, correct?

16 A. Yes.

17 MR. RICARD: Your Honor, permission to approach?

18 THE COURT: Yes.

19 (Plaintiff's Exhibit No. 97 was marked for
20 identification.)

21 BY MR. RICARD:

22 Q. I'll have the next exhibit in line marked. Mr. Dibella,
23 I've just handed you what's been marked as Plaintiff's Exhibit
24 97, and I'll represent to you that this is a checklist from the
25 Department of Revenue for the State of South Carolina and what

1 you need to go through in order to apply for a liquor license.
2 I'm going to direct your attention to page two. I've got it
3 here displayed on the screen and I'm going to highlight with
4 subparagraph 5 to paragraph A of the general qualifications.
5 It says: Check with the city and county authorities to ensure
6 you are in compliance with the zoning laws and local business
7 license requirements. Do you see that?

8 A. Yes.

9 Q. Okay. So that is the checklist and one of the
10 requirements in order to apply for a liquor license, correct?

11 A. Correct.

12 Q. And you all ended up applying for a liquor license,
13 right?

14 A. Yes, I believe so. I don't know, I really don't. I
15 would imagine so if we've gotten to this point.

16 (Plaintiff's Exhibit No. 98 was marked for
17 identification.)

18 MR. RICARD: Permission to approach, Your Honor?
19 For the record I've handed you what's going to be marked as
20 Plaintiff's Exhibit 98. Mr. Dibella, I've handed you what's
21 going to be marked Plaintiff's Exhibit 98 or a copy of it and
22 I'll display it on the screen for you, as well.

23 Q. After you've had a chance to review it I'll ask you a
24 question, but do you see the name John McLaren there at the
25 top?

1 A. Yes.

2 Q. And who is he?

3 A. Former chief operating officer.

4 Q. And do you also see the name of Troy Bittner?

5 A. Yes.

6 Q. We've already explained who he is, right?

7 A. Correct.

8 Q. And then there is a signature down there at the bottom?

9 A. Yes.

10 Q. Okay. And this is a certification that you all had
11 completed the requirements in order to -- and the checklist in
12 order to apply for a liquor license in the State of South
13 Carolina?

14 A. Yes.

15 Q. And so you all certified compliance with the zoning
16 laws, right?

17 A. This is for the liquor license?

18 Q. Correct.

19 A. You're referring to those requirements on the other
20 page, right?

21 Q. Right, right, the checklist goes to the requirements for
22 what you have to do in order to certify for a liquor license,
23 would you agree?

24 A. To check with the city and county authorities?

25 Q. Right.

1 A. Yes.

2 Q. Okay. And you all certified compliance with that?

3 A. Correct.

4 Q. Okay. Ultimately the application for the liquor license
5 for the cabana house was withdrawn?

6 A. Yes.

7 Q. And if you don't mind, Mr. Dibella, if I could ask you
8 to keep your voice up just so the court reporter can capture
9 everything. Mr. Bittner and Ms. Kirtley, they don't put a stop
10 to the events at the cabana house, do they?

11 A. Once we got some communication with the neighbors, that
12 stopped.

13 Q. Okay. I'm suggesting after Mr. Onken informed them
14 about the restriction on food and beverage being provided, Mr.
15 Bittner and Ms. Kirtley, they don't stop the events from
16 occurring at the cabana house, do they?

17 A. No.

18 Q. And at some point Ms. Kirtley is given a promotion,
19 right?

20 A. Correct.

21 Q. She becomes the divisional vice president?

22 A. Correct.

23 Q. At the time of the withdraw of the alcohol license
24 application in July of 2021 and this lawsuit being filed in
25 November of 2021, I'll represent to you that the city manager

1 of the City of North Myrtle Beach testified to his calls and
2 e-mails being ignored by Mr. Bittner. Are you aware if Mr.
3 Bittner ever responded to the city manager?

4 A. No, I'm not aware, unfortunately.

5 Q. I'm going to display what's been marked as Plaintiff's
6 Exhibit 69, and I'll represent to you that this is a letter
7 dated September 9, 2021. It's from the Sea Cloisters
8 Communities. I'll zoom in on the addresses, but you recognize
9 those at the South Hill, Michigan address, don't you?

10 A. Correct, that's the main office address.

11 Q. Right. So that's the headquarters for Sun Communities,
12 Incorporated?

13 A. Yes.

14 Q. So Sun Communities receives a complaint from Sea
15 Cloisters around this time frame, September 9, 2021, right?

16 A. Yes.

17 Q. Sun Communities never responds to Sea Cloisters before
18 the lawsuit was filed by the City in November?

19 A. What was that, what was the question?

20 Q. Sun Communities never responds to the Sea Cloisters
21 complaint before the lawsuit was filed by the City in November
22 of 2021, right?

23 A. I don't believe so.

24 Q. And you also received a notice from the City's attorneys
25 in this case informing you as to the defendant's violations of

1 the zoning ordinance, right?

2 A. Right.

3 Q. That was a Cease-and-Desist letter of September 2, 2021?

4 A. Yes, that seems right.

5 Q. This has been marked as Plaintiff's Exhibit 71. Are you
6 familiar with the name Kenneth Clarkston?

7 A. Yes.

8 Q. Who is that?

9 A. The attorney that represented us on the purchase of the
10 beach club.

11 Q. And then in the CC line, the name John McLaren again, he
12 was the CEO at the time?

13 A. COO.

14 Q. COO, I'm sorry, excuse me. And do you see the name,
15 Mark Cooper, who is that?

16 A. Another attorney with the Jaffe firm.

17 Q. Okay. And this e-mail appears to be from Mr. Clarkston
18 to counsel for the City, correct, Ms. Shoun?

19 A. Yes.

20 Q. And he indicates that he would just like to chat about
21 that letter of September 2, 2021, right?

22 A. Correct.

23 Q. Do you know if Mr. Clarkston ever responded subsequently
24 after this e-mail?

25 A. I'm not aware.

1 MR. RICARD: Permission to approach, Your Honor?

2 THE COURT: Yes.

3 (Plaintiff's Exhibit No. 99 was marked for
4 identification.)

5 Q. Mr. Dibella, I've handed you what's been marked as
6 Plaintiff's Exhibit 99. Have you had a chance to review that
7 e-mail chain, Mr. Dibella?

8 A. No, not until this moment.

9 Q. And take your time. Just let me know when you're ready
10 to speak to me.

11 A. Sounds good. Alright.

12 Q. He says he'll follow up with Ms. Shoun, does he not?

13 A. Yes.

14 Q. Are you aware that he never follows up?

15 A. I'm not aware.

16 Q. Okay. Despite these issues, Mr. Dibella, that have been
17 identified with the ownership and use of the cabana house in
18 September of 2021, defendants still make plans to continue
19 utilizing the cabana house, do they not? And I'm displaying
20 what's been marked as Plaintiff's Exhibit 72. It's an e-mail
21 from Isaac Imager (phonetic) of September 22, 2021. Can you
22 describe who Isaac Imager is for the Court?

23 A. Isaac Imager is an employee of Carolina Pines, I
24 believe, like the front desk, for example.

25 Q. And he CC'd the general manager, Mr. Bittner?

1 A. Correct.

2 Q. And again, after all of these issues have been
3 identified Mr. Imager says: Troy and I have decided to keep
4 the beach club open a little longer. Starting November 1st the
5 shuttle will run weekends only to the beach club until after
6 Thanksgiving, correct?

7 A. Correct.

8 Q. And so, again, after defendants have been put on notice
9 of all of the issues related to the ownership and use of the
10 cabana house, defendants have decided to keep the beach club
11 open even longer, would you agree?

12 A. It looks like on a limited basis, correct.

13 Q. Defendants are alleging of taking in this case, right?

14 A. Yes.

15 Q. Are you aware that your counsel in opening statements
16 said that the affirmative act in this case was the
17 Cease-and-Desist letter?

18 A. I wasn't here for that.

19 Q. Is that the only affirmative act that's being alleged in
20 this case, do you know?

21 A. I don't know.

22 Q. Okay. You're not testifying on behalf of defendants as
23 the 30(b)(6) designee, are you, sitting here today?

24 A. No, correct.

25 Q. But you did in your deposition earlier this year?

1 A. Yes.

2 Q. Okay. Do you in your individual capacity contend that
3 the Cease-and Desist letter sent to defendants on behalf of the
4 City demands the defendants to relinquish the property?

5 A. To relinquish it?

6 Q. Right.

7 A. No. Just to stop operating it until we get to a
8 solution.

9 Q. Okay. We can pull up Defendant's Exhibit Number 29.
10 Would you agree that the City in the portion here that I've
11 highlighted on Defendant's Exhibit 29 is only asking for the
12 cease and desist of using the beach club in any manner not
13 permitted by the zoning ordinance?

14 A. Correct.

15 Q. So the City is just trying to seek the defendants to
16 come into compliance, right?

17 A. Yes.

18 Q. So after this cease and desist there are was a lawsuit
19 filed in 2021, correct?

20 A. Correct.

21 Q. And then I believe on direct examination you were asked
22 about the consent order that was entered in January of 2022,
23 does that sound right?

24 A. Yes.

25 Q. So the beach club was closed for the RV resort guests

1 beginning in January of 2022, or January 11, 2022, right?

2 A. Correct.

3 Q. At that particular point in time, Mr. Bittner, he had
4 been terminated, or did he quit?

5 A. He was terminated, but I don't know the exact date.

6 Q. Okay. Defendants had to hire a new manager to come in
7 to replace him, right?

8 A. Correct.

9 Q. That was Michelle Maynora?

10 A. Correct.

11 Q. And there was a hiring process that she had to go
12 through?

13 A. Correct.

14 Q. And that included three meetings with management?

15 A. Three meetings, interviews?

16 Q. Right.

17 A. Correct.

18 Q. During that interview process Michelle Maynora was never
19 told about the closure of the cabana house, right?

20 A. I'm not sure, I never talked to Michelle during the
21 interview process.

22 Q. Okay. Switching gears a little bit, Mr. Dibella, I'm
23 going to go to Plaintiff's Exhibit Number 81. I'm going to
24 scroll to the initial e-mail at the bottom of the screen. This
25 is an e-mail, again, from Mr. Isaac Imager who we've already

1 discussed. Can you describe for the Court who Hunter Tresnicky
2 is in the two line?

3 A. Hunter is in the marketing, I think, social media
4 support team on property there.

5 Q. And what about Pamela Kline?

6 A. I don't know who Pamela Kline is.

7 Q. Would you dispute that she's in the marketing arm of Sun
8 TRS, as well?

9 A. Once again, I'm not familiar with the name.

10 Q. Okay. Mr. Imager, during this e-mail talks about in the
11 last bullet point: The pool at the beach club will be open
12 April 1st for members only. Do you see that?

13 A. Yes.

14 Q. Okay. And then Ms. Kline in the e-mail above, the one
15 dated March 23, 2022 that sent, just three minutes later, I
16 believe, after the initial e-mail. She tells Mr. Imager: I
17 don't understand for members only, it's a shuttle going there
18 from the resort for registered guests only but no beach access.
19 Correct? Can they walk to a different part of the beach area
20 that is not associated with the beach club? And then in
21 response, Mr. Imager, in the next e-mail in this chain informs
22 Ms. Kline as to the status of the beach club, correct? In the
23 third paragraph down she says: The beach club is completely
24 off limits to everyone except for the tennis members and
25 workers.

1 A. Correct.

2 Q. And this is March 23, 2022, right?

3 A. Right.

4 Q. And she also says, or excuse me, Mr. Imager also informs
5 Ms. Kline that: The guests are still, though, they're
6 allowed free -- free to go to other beach access points if they
7 would like, right?

8 A. Yes.

9 Q. Next, I'm going to display what's been marked as
10 Plaintiff's Exhibit 85. You can see the Sun Outdoors, Myrtle
11 Beach Facebook page in this image, correct?

12 A. Correct.

13 Q. And the post on July 1st of 2022 notes that the beach
14 club remains closed this season.

15 A. Yes.

16 Q. Are you aware this is the first time that Sun defendants
17 notified on Facebook of the beach club closure?

18 A. I'm not aware of the timing of that on Facebook.

19 Q. Okay. Ultimately, though, defendants are alleging that
20 cabana house impacts interstate commerce, right?

21 A. Correct, yup.

22 Q. And you all alleged that is impacting your bottom line,
23 from a financial perspective, right?

24 A. Correct.

25 Q. Okay. But, number one, you all consented to close it in

1 January of 2022, right?

2 A. Yes.

3 Q. That was done by your consent, right?

4 A. Yes.

5 Q. And you don't tell your incoming general manager about
6 that closure, do you?

7 A. I'm not aware of that.

8 Q. And you wait two months to tell your marketing team,
9 correct?

10 A. Once again, I'm not aware of that.

11 Q. And you don't tell your guests that they are cutting
12 customers on Facebook until about six months later, would you
13 agree?

14 A. I'd have to look through the Facebook post. Once again,
15 I'm not posting on Facebook from this level, so I'm not aware
16 of when the communication went out on Facebook.

17 Q. Okay. You were asked some questions on direct
18 examination about the RV resort's competitors. Would you agree
19 that the RV market is different than the hotel market?

20 A. I don't believe it's different. I mean, it's offering
21 the same type of get-away stay for people that want to -- are
22 leaving from home, so I think the only distinction would be if
23 you can only show up at an RV resort if you have an RV.

24 Q. Okay. Right. To have an RV unit reservation you need
25 an asset, right, you need an RV?

1 A. Correct.

2 Q. Okay. You either have to own that asset or you have to
3 rent it, correct?

4 A. Correct, or you can stay at one of our vacation rentals
5 on site that are specifically the same as a hotel room.

6 Q. So let's talk about that real quick. So at the RV
7 resort, you would agree that most of the units, the majority of
8 the units are designed for the physical RV asset to drive on
9 in?

10 A. Correct.

11 Q. And so generally speaking, that RV resort requires a
12 customer to have that asset?

13 A. Correct.

14 Q. So given that distinction do you believe that the RV
15 market, RV industry, is different than the hotel industry?

16 A. No, I don't believe it is.

17 Q. What about the short-term rental market?

18 A. It's the same.

19 Q. Despite the fact that for me to go down the block and
20 rent a hotel room, I don't have to have an RV to do that, do I?

21 A. No. But you don't have to have an RV to rent a vacation
22 rental on site either.

23 Q. Okay.

24 A. There's 120 of them, just like a hotel.

25 Q. Okay, but there's roughly 834 units on site at the RV

1 resort in Conway?

2 A. Correct.

3 Q. Do you have any market analysis comparing RV resorts
4 with hotels or short-term rentals?

5 A. I mean, we have research that we do, once again, just
6 comparing how trends and those types of things are going over
7 the years, but nothing in front of me.

8 Q. On direct examination you were asked some questions that
9 related to the Form 10(k) for Sun Communities, Incorporated,
10 right?

11 A. Correct.

12 Q. Are you aware if you do a search of this document, which
13 is a 205-page document, that there's no mentions of hotels
14 being competitors for the RV industry?

15 A. I am not aware of that.

16 Q. Okay. You didn't search this document for hotel
17 competitors?

18 A. Looking for the word "hotel?"

19 Q. Right.

20 A. No, I did not.

21 Q. Okay. And what about for short-term rentals?

22 A. From this document?

23 Q. Right.

24 A. Once again, I'm not putting together the verbiage in
25 this document.

1 Q. Okay. Are you aware, in the City's 11th set of request
2 for production, we requested defendants to quote and produce
3 any and all documents evidencing a market survey or industry
4 analysis of competitive communities or other competitors to the
5 RV resort, meaning the Carolina Pines RV resort, since its
6 inception through the present. Were you aware that we asked
7 for a document production like that?

8 A. Yes.

9 Q. And you all responded and produced documents in response
10 to that question, correct? And that included what has been
11 identified -- Excuse me, let me pull it up here. That included
12 what's been marked as Plaintiff's Exhibit 84, specifically,
13 base labeled: Sun underscore 05448. Have you seen this
14 document before, Mr. Dibella?

15 A. I have not.

16 Q. After taking a look at it would you agree that this is a
17 list of competitors for the RV resort?

18 A. It looks like it, yes.

19 Q. And this was produced in response to the request for
20 production that I just provided?

21 A. Yes.

22 Q. Okay. You can take your time looking. I'll kind of
23 scroll through it.

24 A. Uh-huh.

25 Q. Would you agree there's approximately 109 competitors

1 that were identified in the spreadsheet?

2 A. I wouldn't call them all competitors. Some are national
3 forests in state parks and those are not direct competitors of
4 ours, but it looks like a list of potential campgrounds, and I
5 don't even know, a market in South Carolina, this was probably
6 when we looked at building the property, understanding the
7 scope of how many campgrounds are in the area.

8 Q. Okay. And I'll represent to you, that request of
9 production that we asked for, a list of all other competitors
10 or analysis of competitive communities to the RV resorts since
11 its inception, this is the only list of competitors that the
12 City received from defendants, I'll represent to you to that.

13 A. Uh-huh.

14 Q. Do you see any hotels listed on this spreadsheet?

15 A. No.

16 Q. These are all parks, RV resorts and campgrounds, right?

17 A. Correct.

18 Q. You were asked some questions on direct examination
19 about the budget you all set. Would you agree that a budget
20 forecasting, that's a subjective type of metric?

21 A. I don't know about subjective. It's based on history
22 and there is some objectivity to it.

23 Q. Would you agree it's aspirational?

24 A. I would agree it's the goal.

25 Q. Okay. So it's a goal, aspiration?

1 A. Aspirational, I mean, to me aspirational means it's not
2 achievable.

3 Q. Okay. So the budget is set to be a goal, you would
4 agree with that?

5 A. Correct.

6 Q. And sometimes goals can be achieved --

7 A. Correct.

8 Q. -- and sometimes they're not achieved in the budget
9 world?

10 A. Correct.

11 Q. Alright. I know we spoke about this before, but COVID
12 hit in 2020, right?

13 A. Yes.

14 Q. And then following that in 2021, I think you testified
15 on direct examination, that was a banner year, right?

16 A. Yes.

17 Q. That RV industry was booming?

18 A. Yes.

19 Q. People wanted to be outside?

20 A. Correct.

21 Q. People did not want to be in hotel rooms?

22 A. Well, a lot of hotels weren't open at that point.

23 Q. Okay. So they didn't even have the option to be in
24 hotel rooms?

25 A. Correct.

1 Q. So you would agree that there was a peak in the RV
2 industry in 2021?

3 A. Yes.

4 Q. And then I believe you testified earlier that the market
5 stabilized back to normal travel routines in 2022 and into this
6 year, 2023?

7 A. Correct, back to pre-COVID levels.

8 Q. Would you agree the RV industry can experience cycles of
9 growth and downturn?

10 A. Yes.

11 Q. And sometimes those cycles can be nationwide?

12 A. Yes.

13 Q. And then sometimes those cycles can be more regional?

14 A. Correct.

15 Q. Or even local?

16 A. Correct.

17 Q. And you would agree that regional economic influences
18 can affect your success in the RV industry?

19 A. Yes.

20 Q. Sun Communities has resorts all over the country in the
21 United States, right?

22 A. Yes.

23 Q. I'm going to display what's been marked as Plaintiff's
24 Exhibit 83. Are you familiar with this document, Mr. Dibella?

25 A. Yes.

1 Q. What does it depict?

2 A. It depicts, it looks like year-to-date total occupancy
3 based upon total occupancy and then it's broken down by the
4 different sub-categories, meaning, annual seasonal, all of them
5 to the right of that is transient, to the right of that is
6 vacation rental, so breaking it down by the segments and then
7 the total is all of those combined. For the year of 2022
8 versus looking at year over year '21 to '22.

9 Q. Okay. And there's probably a dozen different tabs at
10 the bottom of this excel spreadsheet, but I'm currently on tab
11 two, occupancy percentage year over year, correct?

12 A. Correct.

13 Q. So that's what you were just describing?

14 A. Correct.

15 Q. And this tracks all of the RV resorts in the Sun
16 Communities portfolio, correct?

17 A. The Sun managed properties, correct.

18 Q. I believe on Direct Examination you testified that there
19 was a concentration of RV resorts in Florida, I think Texas and
20 California, correct?

21 A. Yes.

22 Q. And Michigan would be another kind of larger area of
23 concentration?

24 A. Not necessarily for the RV, no.

25 Q. Okay. But those three states would have some of the

1 more higher concentrations of RV resorts?

2 A. Correct, yeah.

3 Q. But you do all do have some RV resorts scattered across
4 the southeast?

5 A. Very limited in the southeast.

6 Q. And you testified earlier to the region numbers. I'd
7 like for you to describe those region numbers for the Court.
8 So I think you said region nine was the one that you first
9 started with; is that right?

10 A. Yes.

11 Q. Can you describe for the Court where the RV resorts were
12 located in your particular region? Like, what geographic areas
13 were they located in?

14 A. Which one, for region nine?

15 Q. Region nine.

16 A. Region nine, specifically, would be California, West
17 Coast, California, Oregon and Washington, I believe.

18 Q. Does every single region number correspond to,
19 necessarily, a set of states that are geographically
20 approximate to each other?

21 A. As best as we can, like I mentioned earlier, but it's
22 not an exact science.

23 Q. Are you aware that one of many Kirtley's regions had
24 like several different states all up and down eastern seaboard
25 originally?

1 A. Correct.

2 Q. So it's fair to say that there could be some geographic
3 differences and distances, I should say, distances within the
4 region number?

5 A. Correct.

6 Q. Have you done any analysis of the occupancy rate in the
7 southeast region?

8 A. Not specific in the southeast.

9 Q. Okay. So you haven't compared the southeast region 2022
10 to 2021?

11 A. No.

12 Q. Shifting gears a little bit, Mr. Dibella, I'm going to
13 display what's been marked as Plaintiff's Exhibit 87. Are you
14 familiar with this spreadsheet?

15 A. Yes.

16 Q. Generally speaking, and I realize there's also a number
17 of tabs here on this spreadsheet, as well, but can you describe
18 what this document is for the Court?

19 A. Sure. So it's for the profit and loss statement for
20 2023 by month through September, which these are actual results
21 for a given month. Starting at the top, as you see, with
22 revenue, flowing down to the expenses, and then to the bottom
23 would be the profit. These are just actual results by month
24 for 2023.

25 Q. Okay. And just for the record, I've got it displayed on

1 the tab that's labeled 2023 actual by month. So Mr. Dibella,
2 the next question would be these same are depicted for the year
3 of 2022, correct?

4 A. Correct.

5 Q. And for the record I've displayed tab now, and then also
6 for 2021?

7 A. Correct.

8 Q. And I'd like to stay on 2021 for a second, the 2021
9 actual by month. In line 14, you see total usable RV sites as
10 being listed as 711, correct?

11 A. Correct.

12 Q. And then at the very beginning, we spoke about this at
13 the beginning of cross-examination, but there's a significant
14 portion of units that are developed at the end of 2021,
15 correct?

16 A. Correct.

17 Q. It jumps from 711 units to 834 units?

18 A. Correct.

19 Q. Can you remind us how the occupancy rate is calculated?

20 A. Take the total occupied site nights and divide it by the
21 total available site nights.

22 Q. Okay. So the total available site nights in 2021 into
23 2022 increases, right?

24 A. The available site nights in '22 is higher than '21, is
25 that what you're saying?

1 Q. Right.

2 A. Correct.

3 Q. Yes. It jumps from 711 to 834. Are you aware that
4 that's a 17 -- technically it's over 17 percent increase in the
5 supply of available units?

6 A. Correct.

7 Q. Okay. Did you factor that into your consideration as to
8 what might affect the occupancy rate and the comparison of 2022
9 to 2021?

10 A. Yeah. Once again, I think the occupancy rate is the
11 appropriate measure for looking at this property.

12 Q. Okay. But on direct examination you testified that the
13 beach club is what you put your finger as explaining the six
14 and a half percent profit in occupancy rate?

15 A. Right.

16 Q. But there's actually a 17 percent increase in supply of
17 units so --

18 A. Correct.

19 Q. -- you believe that that has an impact on occupancy
20 rate?

21 A. I don't believe it had an impact on the occupancy rate.
22 It had an impact on the available site nights.

23 Q. So the denominator is increasing from 2021 to 2022,
24 right?

25 A. Correct.

1 Q. Okay. And so because that supply increases, that
2 impacts the occupancy rate year to year, would you agree?

3 A. Yes.

4 Q. Okay. We may have been on this a little bit, but just
5 to make sure the record is clean, the RV transient sites that's
6 listed here on line 12, can you describe what that is?

7 A. Those are the sites that are available for a short-term
8 rental, meaning, daily, weekly, those are the sites that are
9 available and marked for those folks that don't want to stay
10 for longer than that.

11 Q. So you would agree that the Carolina Pines guests are
12 more transient, they're vacationers, mostly, right?

13 A. Correct.

14 Q. And that's different from other markets like Florida?

15 A. Depending on the property, yes.

16 Q. I think on Direct Examination, correct me if I'm wrong,
17 I believe you also testified that year-over-year sites really
18 have an impact on these financial numbers, as well, right?

19 A. Correct, and specifically the revenue.

20 Q. And that would be line nine?

21 A. The revenue?

22 Q. Yeah, revenue producing annual sites?

23 A. No, I'm talking total revenue, so row 34, actual
24 dollars.

25 Q. Okay. But those actual dollars that you're talking,

1 explain it to me, what did you mean on Direct Examination by
2 year-over-year sites?

3 A. Adding more sites to what you see here on the screen.
4 Right? In 2021, in theory, we had 711 sites, except for
5 probably a little bit in December, versus in '22 you're going
6 have 834 sites available the entire year, so obviously, your
7 revenue is going to be significantly higher.

8 Q. Okay, I see, so, right, right. So on Direct Examination
9 when you stated that -- I think I asked kind of a rhetorical
10 question, well, is the revenue just increasing just because of
11 additional sites? That would be an important thing to
12 understand in this analysis, right?

13 A. Correct, yeah.

14 Q. On the flip side of that, though, when the occupancy
15 rate may be going down, could that also be ignoring the
16 addition of sites that were developed?

17 A. Once again, you have to look at the occupied site nights
18 and see if they're going down or up.

19 Q. One moment. Okay. Just to reset the table a little
20 bit, Mr. Dibella, again, you agree that in comparing 2021 to
21 2022 that there's more supply of units available for rent in
22 2022, right?

23 A. Correct.

24 Q. And so when you're comparing the occupancy rate from
25 2022 to 2021, in this particular case, in this particular RV

1 resort, would you agree that that's not really comparing apples
2 to apples?

3 A. With the site counts?

4 Q. Right.

5 A. Correct.

6 Q. You also testified as to the lazy river may have
7 accounted for the occupancy rate rebound in 2023, do you recall
8 testifying to that?

9 A. Yes.

10 Q. Do you have any surveys that suggest that, like, guest
11 surveys, customer surveys that would suggest that?

12 A. No, I don't.

13 Q. I believe you testified that the lazy river was decided
14 after the cabana house was closed.

15 A. Correct.

16 Q. Okay. You testified as the Rule 30(b)(6) designee
17 alongside Ms. Kirtley; is that right?

18 A. Right.

19 Q. Okay. Are you aware of what she testified to regarding
20 the lazy river?

21 A. I'm not.

22 Q. Are you aware that she testified under oath?

23 A. Correct.

24 Q. And you're aware that it's important to tell the truth
25 as a Rule 30(b)(6) designee?

1 A. Correct.

2 MR. RICARD: Your Honor, for the record, I'm just
3 opening the sealed transcript of Mindy Kirtley's deposition.
4 I'm probably not as proficient as Mr. Willis is. It's never
5 easy. Would you like it marked, Your Honor.

6 (Court's Exhibit No. 1 was marked for
7 identification.)

8 Q. Alright, Mr. Dibella, I've handed you the transcript of
9 the Rule 30(b)(6) deposition. If you don't mind opening up to
10 page 112. I'm going to begin on line 24. I'm going to ask
11 that you follow along with me and make sure that I'm reading
12 this right, but on page 112, line 24, there at the bottom, it
13 begins: Let's talk about the lazy river. Do you see that?

14 A. Correct.

15 Q. Okay: So let's talk about the lazy river. When was
16 that first discussed as a concept for Sun defendants? Answer:
17 The concept was discussed early on. Question: By early on,
18 when do you mean? Answer: Early planning phases of the
19 resort. So prior to the resort even being open there was
20 conversation about a potential lazy river. Question: So prior
21 to the cabana house even being purchased? Answer: Yes.
22 Question: When were plans drawn for the lazy river? Answer:
23 The plans for the lazy river were not finalized until some time
24 in, my guess, would be late 2021. Did I read that accurately,
25 Mr. Dibella?

1 A. Yes.

2 Q. Having read Ms. Kirtley's testimony as the Rule 30(b)(6)
3 designee for defendants, would you agree that the lazy river
4 had been in the works prior to the purchase of the cabana
5 house?

6 A. The lazy river was identified when we sketched the
7 property out when we built it. So it was always on our site
8 plan as a future possibility to put there, so that's what she's
9 referring to. It was always the possibility that it could be
10 there, but was it something that we were going to do in the
11 moment? No.

12 Q. Okay. It wasn't decided to do that just --

13 A. Until the beach club was closed.

14 Q. -- until the occupancy rates would bounce back up,
15 right?

16 A. Correct. It was there to offset the loss of the beach
17 club. That's why we decided to move forward with the lazy
18 river construction.

19 Q. It had been in the plans from prior to the purchase of
20 the cabana house, correct?

21 A. Correct.

22 Q. Okay.

23 A. It had always been a potential option for us.

24 Q. Just bear with me one moment, Mr. Dibella. I'm
25 displaying now what's been marked as Plaintiff's Exhibit 24.

1 Do you recognize your e-mail address there on page one of this
2 exhibit?

3 A. Yes.

4 Q. Okay. And I'm going to actually start at the e-mail
5 below yours that's dated January 29, 2019 at 9:22 a.m. from
6 Mindy Kirtley, do you see that e-mail?

7 A. Yes.

8 Q. And she states: I think we should buyout the members.
9 I don't believe they will be happy after we begin to drop
10 hundreds of guests off at their private club during the busy
11 summer months. Did I read that correctly?

12 A. You did.

13 Q. And then your response was that you agree, right?

14 A. Correct.

15 Q. Okay. So you knew that there might be issues that were
16 created by dropping off hundreds of guests at the RV resort?

17 A. I don't know about issues. I would just say, from what
18 the members were used to what might change, yes. There were 45
19 members at a private beach club. So the experience with 45
20 people versus, at the RV resort, there could potentially be a
21 change in the vibe on the property.

22 Q. Issues like quality of life?

23 A. I don't know about quality of life.

24 Q. Well, just the general experience of the comforts and
25 whatever benefit --

1 A. Yeah, I just think privacy, in general, overcrowding,
2 and those types of things that could potentially happen, yeah.

3 Q. And ultimately, and I don't want to belabor the point,
4 we discussed this with Mr. Colman, but ultimately, there's a
5 notice that is given to the members, correct?

6 A. Correct.

7 Q. And that also indicated that the use of the cabana house
8 may significantly increase?

9 A. Correct.

10 Q. So for the record, I just previously displayed
11 Plaintiff's Exhibit 27. So now I want to switch to Plaintiff's
12 Exhibit 62, Mr. Dibella. Do you recognize this document?

13 A. It looks like the beach club log from the shuttle
14 driver, or I'm not sure.

15 Q. Okay. In the middle column there it indicates the bus,
16 so that would be the buses that were used to shuttle guests
17 from the RV resort to the cabana house?

18 A. Correct.

19 Q. Okay. And then there's also walk-in's. So that would
20 be guests of the RV resort that did not take the bus or the
21 shuttle and instead drove themselves to the cabana house?

22 A. I would imagine so.

23 Q. And then members would be the members that we just
24 discussed that received the notice about change in ownership?

25 A. Correct, yup.

1 Q. And ultimately, this data was tracked for the summer
2 months in 2021, right?

3 A. Correct.

4 Q. So beginning in May we see that the beach club, and not
5 every day is listed on this particular spreadsheet on
6 Plaintiff's Exhibit 62, page one, but you can see that the
7 members, there's an average daily use of the members of around
8 eight, right?

9 A. Correct.

10 Q. Okay. But then, bus, coming in by bus it's over 52 and
11 the walk-in's are over 23 on average, right?

12 A. Correct.

13 Q. And that just increases in the following months, right,
14 so in June, the members on average are using it just under six
15 on a daily average, would you agree?

16 A. Correct.

17 Q. But it's like over 165 when you combine the bus and
18 walk-in numbers?

19 A. Correct.

20 Q. And then in July of 2021, I'll zoom in on here, this is
21 page three of the exhibit, the members, again, average or so is
22 around five and a half, little over five and a half on a daily
23 basis with whom we've got, like, over a hundred and, probably
24 seventy, I guess, 180 or so.

25 A. During the peak month of the July, correct.

1 Q. Right, right. So again, you agree that the metrics
2 being tracked by defendants in keeping with, there's a
3 significant number of folks that are using the cabana house in
4 relation relative to the number of members that had been
5 previously been using it, right?

6 A. Correct.

7 Q. And you agree that this led to overcrowding around the
8 pool area?

9 A. I would imagine at times it did, correct.

10 Q. Well, I mean, we saw, I don't know if you saw them in
11 particular, but it led to canceled memberships, right? I'm
12 sorry, I need a verbal?

13 A. Yes.

14 Q. Okay. And Mr. Colman testified to that?

15 A. Yes.

16 Q. Okay. And ultimately, that overcrowding, that issue
17 wasn't just identified by members, right?

18 A. Correct.

19 Q. It was identified by other people, as well?

20 A. Correct.

21 Q. Including employees of the Sun defendants?

22 A. I don't know.

23 Q. Let's take a look at Plaintiff's Exhibit 61.

24 A. Okay.

25 Q. So the beginning chain is from Mr. Bittner to Ms. Robin

1 Stryker. Are you familiar with Ms. Stryker?

2 A. I'm not.

3 Q. Any reason to dispute that she was an attendant at the
4 beach club?

5 A. No.

6 Q. So the first e-mail in this chain, the top e-mail in
7 this chain from July 17th of 2021 from Ms. Stryker to Mr.
8 Bittner, she says in the first line in the line there: Quote,
9 hello, Troy, I talked to Isaac about the beach club and I am
10 aware that it is extremely overcrowded. Do you see that?

11 A. Yes.

12 Q. Do you agree that employees have also identified issues?

13 A. Yes.

14 Q. And Ms. Stryker also has a Sun Communities e-mail
15 address?

16 A. Correct.

17 Q. So no dispute that she's an employee?

18 A. No, no dispute.

19 Q. She goes on to say that: I don't know of anything that
20 can be done about it. We don't have any control over who stays
21 at pool and who goes to the beach. I talked to Barbara about
22 the report of something in the pool. She said at no time did
23 she see anything and nothing was ever reported to her. Please
24 let me know if you have any further feedback about what can be
25 done to control the crowd. Again, you'd agree that there were

1 overcrowding issues at the cabana house due to the RV resort's
2 use of it?

3 A. Yes.

4 MR. RICARD: Thank you, Mr. Dibella, I don't have any
5 further questions for you.

6 THE WITNESS: Thank you.

7 THE COURT: Any Redirect?

8 MR. TAMASITIS: No, Your Honor. No further
9 questions, Your Honor. May the witness be excused?

10 THE COURT: Any objections?

11 MR. RICARD: No objection to the witness being
12 excused. Thank you.

13 THE COURT: You have a good day. Is that it for
14 today or do you have anymore witnesses?

15 MR. TAMASITIS: Your Honor, we were hoping that we
16 might be able to get some of these depo designations done and
17 get out of here tomorrow. If we can get one or two done today
18 that would be great, we have three left.

19 THE COURT: Okay. I'm ready when you are.

20 MR. TAMASITIS: Your Honor, we'll do the depo
21 designation of Tidewater Plantation Community Association.

22 **(Deposition of Catherine S. Weiss was read into the**
23 **record by Attorney John Tamasitis and Sara Tyer at this time.)**

24 THE COURT: Is that it?

25 MR. TAMASITIS: Your Honor, we've got two more, but I

1 think we've done.

2 Enough for today, so we'll finish the other two tomorrow.

3 THE COURT: We'll see you back at 9:30 in the
4 morning.

5 (Concluded for the day on Thursday, November 2, 2023)

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25 (Whereupon, proceedings reconvened Friday, November 3, 2023)

1 MR. WILLIS: We have one live witness, Your Honor,
2 Ms. Maynora who's here today right now, and then we have two
3 more depositions to read.

4 MR. TAMASITIS: We're gonna do those first and then
5 we'll put on the live witness.

6 MR. WILLIS: And then we've got the Debra Tripp
7 situation, so let me just inform the Court, and I've made a
8 suggestion to counsel of a potential solution to this, but it
9 may not be a problem. So Ms. Tripp is our property appraiser,
10 Your Honor, she's an MAI appraiser and the City has an
11 equivalent witness, Mr. Beckham, who is also an appraiser and
12 both of them looked at properties. Ms. Tripp's opinion is that
13 the zoning ordinance destroys the value of property, and Mr.
14 Beckham's opinion is that the zoning ordinance has no impact on
15 the value of the property. Both of those reports are in the
16 record, and under Your Honor's Brown versus Allstate
17 evidentiary standard, Your Honor can take them up and read them
18 and consider them for what they're worth. Ordinarily, in a
19 trial we wouldn't put in an expert report in a jury trial
20 because it's hearsay, but Your Honor can take that into
21 account, obviously. I suggested to Mr. Ricard and Ms. Shoun
22 that if they wanted a cross-examination of these reports both
23 the depositions of these experts are here, they are in the
24 record, we can submit them to the Court. They're essentially
25 cross-examinations because there was no direct done of either

1 expert in those depositions, but Your Honor, they're not trial
2 ready, they're messy. Ms. Tripp had an energy breakdown during
3 that, she's diabetic, and so, these depositions are, frankly,
4 not great for either side, and when I suggested to Cheryl that
5 we put the depositions in, the back of her head almost came
6 off.

7 MS. SHOUN: That's fair.

8 MR. WILLIS: They're just terrible depositions. I'd
9 be embarrassed to read them to the Court, frankly. If Your
10 Honor wants to see them, we're happy for you to look at them,
11 but we don't think they're necessary or germane, so we're not
12 going to call Ms. Tripp, she's too sick, Your Honor. I talked
13 to her last night, she's got COVID, she's 74-years-old, and
14 she's having a hard time talking, and so when I talked to her,
15 I tried calling her this morning, didn't get her, and I talked
16 to her daughter, and so anyway, so we're not going to do the
17 Zoom deposition. Mr. Ricard and Mr. Tamasitis have talked
18 about this earlier, both these experts are really more germane
19 to the second phase of this case anyway, so that's what we're
20 gonna do with Ms. Tripp, and if our colleagues on the other
21 side want to put these depositions in, we have no objection to
22 that.

23 THE COURT: Alright. Yes, sir?

24 MR. RICARD: Yes, Your Honor. I mean, frankly, we
25 were going to move in limine anyways, and I'd like to go ahead

1 and make that motion in limine just to preserve for the record
2 orally, but to defense counsel's point about the deposition, we
3 don't feel like they're relevant and we would ask that the
4 Court not consider them and they not be admitted. Obviously
5 the report's already in, but our motion in limine, which I'll
6 go ahead and go through, we would just ask the Court not to
7 consider either of the expert reports during this phase of the
8 trial either, and the reason being because Ms. Tripp's
9 testimony -- well, number one, she's not qualified to --

10 THE COURT: We've already bifurcated the case anyway,
11 and that would be germane to the second part of the case.

12 MR. RICARD: Yes, sir, that's our position.

13 THE COURT: That's my position, as well.

14 MR. RICARD: Okay. Understood, Your Honor.

15 THE COURT: Okay.

16 MR. RICARD: Thank you, Your Honor.

17 THE COURT: Let's go ahead and begin.

18 MR. TAMASITIS: Your Honor, we're going to present
19 the deposition testimony of the Barefoot Resort Residential
20 Association.

21 MR. RICARD: I have one housekeeping matter, Your
22 Honor. There was an exhibit that the City displayed for John
23 Colman with his handwritten notes. I was going to attach that
24 to the record with the Court's permission.

25 MR. WILLIS: No objection.

1 MR. RICARD: Permission to approach, Your Honor?

2 THE COURT: Sure.

3 (Plaintiff's Exhibit No. 100 was marked for
4 identification.)

5 MR. TAMASITIS: This will be Plaintiff's Exhibit 100,
6 Your Honor.

7 (Sara Tyer was duly sworn at this time.)

8 (Deposition of Kelly Nelson White was read into the
9 record by Attorney John Tamasitis and Sara Tyer and Attorney
10 Ricard at this time.)

11 MR. TAMASITIS: Thank you, Mrs. Tyer.

12 THE COURT: Next witness?

13 MR. TAMASITIS: Yes, Your Honor, the defense is going
14 to call through designation, the Links Golf and Racquet Club
15 Association.

16 (Brian Gibbs was duly sworn at this time.)

17 (Deposition of Kenneth Lloyd McKelvey was read into
18 the record by Attorney John Tamasitis, Brian Gibbs and Attorney
19 Ricard at this time.)

20 MR. TAMASITIS: Your Honor, can we ask for a brief
21 Willis recess?

22 THE COURT: 15 minutes.

23 (Recess taken.)

24

25

1 **Michelle Maynora was duly sworn at this time and**
2 **testified as follows:**

3 THE CLERK: Could you please state your name for the
4 Court?

5 THE WITNESS: Michelle Maynora.

6 **DIRECT EXAMINATION**

7 BY MR. TAMASITIS:

8 Q. Good morning, Ms. Maynora, could you please spell your
9 last name for the record?

10 A. M-A-Y-N-O-R-A.

11 Q. And what is your current position with Carolina Pines?

12 A. I am the general manager.

13 Q. How long have you been the General Manager at Carolina
14 Pines?

15 A. Since April 1, 2022.

16 Q. Where were you employed previously?

17 A. In Virginia in Gwynn's Island in New Point RV Resorts
18 still with Sun Communities.

19 Q. And what was your position there?

20 A. I was the district manager.

21 Q. And what is the difference between a district manager
22 and a general manager?

23 A. I operated two resorts in the same district.

24 Q. And here at Carolina Pines you only operate one?

25 A. Yes.

1 Q. What are your roles and responsibilities as the general
2 manager of Carolina Pines?

3 A. I am in charge of the budget, the financials, my team,
4 training, guests, guest relations, the safety of the park,
5 enforcing rules.

6 Q. And how many employees are under your supervision?

7 A. Right now at Carolina Pines?

8 Q. Yes, ma'am.

9 A. So during the winter months it goes to about 110.
10 During peak season it's about 218.

11 Q. And what is peak season?

12 A. April 1st to November 1st.

13 Q. Has there been any recent changes to the management
14 structure at Carolina Pines?

15 A. Yes.

16 Q. Can you please explain?

17 A. We are currently managed by a third party, EOS, which
18 is, they are just a third party management company.

19 Q. And when did that change happen?

20 A. April 12, 2023, this year.

21 Q. What type of guest sites are available at the Carolina
22 Pines RV Resort?

23 A. The rentals, like what accommodations we have?

24 Q. Yes, ma'am.

25 A. So we have 122 cottages, which are like tiny homes, RV

1 sites, 523 RV sites, we have transient sites and we have annual
2 sites.

3 Q. What's the difference between a transient site and an
4 annual site?

5 A. So a transient site comes and goes, more weekends or
6 seven days at a time. Annual site is an annual lease, they
7 sign annually.

8 Q. And what is the typical duration of a stay at the RV
9 resort?

10 A. I'd say typically in peak season, typically it would be
11 weekend stays in peak season, but they could be anywhere
12 from -- and a lot of seven-day stays, too.

13 Q. What is the total number of guest sites at the RV resort
14 currently?

15 A. 823.

16 Q. And of those 823 guest sites how many of those sites are
17 what Carolina Pines considers those annual sites?

18 A. 162.

19 Q. I want to talk briefly about the annual guests. How
20 many current annual guests are staying at Carolina Pines?

21 A. Currently, right now?

22 Q. Yes, ma'am.

23 A. 162.

24 Q. Okay. So you're 100 percent full up?

25 A. With the annual sites?

1 Q. Yes, ma'am.

2 A. Yes, they are 100 percent.

3 Q. Is there a waiting list?

4 A. There's a huge waiting list.

5 Q. How long is the waiting list?

6 A. Probably every day you add ten names to it, so saying we
7 have a waiting list, we don't really advertise that we have a
8 waiting list because you can't get through a waiting list that
9 long so we try to operate when a site becomes available, like
10 last minute. It's kind of becomes somebody, if they keep
11 calling and bugging you to get on it, I don't mean to say it
12 like bugging, but if they just keep calling, or they just
13 called at the right time.

14 Q. What are the terms, the lengths of terms for the annual
15 guest stay?

16 A. So if someone becomes an annual guest they're committing
17 to staying at the resort for one year, that's basically your
18 only terms. We take care of everything else. They just have
19 to commit and they get sort of a discounted rate for a year's
20 stay.

21 Q. Approximately how many of the annual guests currently at
22 Carolina Pines have been there for longer than a year?

23 A. For longer than a year?

24 Q. Yes.

25 A. So if I had to, and I wouldn't say this is exact, but I

1 would say probably 90 percent of them have been there longer
2 than a year.

3 Q. How many have been there since the Carolina Pines
4 opened?

5 A. Probably 60 percent.

6 Q. So 60 percent have remained as annual guests at Carolina
7 Pines since it opened in 2019?

8 A. Yes, nobody wants to give it up.

9 Q. Do you know how many of those annual guests came from
10 outside the State of South Carolina before they moved to
11 Carolina Pines?

12 A. So we ran a report like through Excel just to get an
13 idea, too, for ourselves, so about 60 percent of our guests are
14 from outside of South Carolina.

15 Q. And these are the annual guests?

16 A. These are, yeah, our annual guests are.

17 Q. And what do many of those annual guests use their sites
18 for?

19 A. I think a lot of them come and go, like, use it as a
20 second home and come and go. They go to work at their home
21 during the week, come back for the weekends, or they use it for
22 their vacation home. Some people are full-time travelers so
23 it's their home.

24 Q. Now, let's discuss reservations at the RV resort in
25 general. In your role as the general manager at Carolina

1 Pines, how important is it for you to have a firm grasp on the
2 reservations that are being made at Carolina Pines?

3 A. It's important, it's our business.

4 Q. Is it part of your roles and responsibilities in your
5 position to remain well informed on the details or reservations
6 at Carolina Pines?

7 A. Yes.

8 Q. Do you know how many reservations have been made at the
9 RV resort since its inception back in 2019?

10 A. Because I think it is close to, I want to say it's close
11 to \$100,000.

12 Q. And how do you know that information?

13 A. You can run a report on our camp spot system, so from
14 the very beginning, the first day it opened until yesterday.

15 Q. Can we please turn to Exhibit Number 5, that's going to
16 show up on your screen, Defendant's Exhibit No. 5. Can you see
17 it?

18 A. I do.

19 Q. Now, the RV resort is not just available to South
20 Carolina residents, correct?

21 A. Correct.

22 Q. It's open to anyone from across the country?

23 A. Yes.

24 Q. And there are even reservations, my understanding, from
25 other countries; isn't that correct?

1 A. Yes.

2 Q. Are you familiar with the reservation data records for
3 Carolina Pines?

4 A. Yes.

5 Q. Now, Ms. Maynora, we asked you to review the records for
6 all reservations made at the Carolina Pines RV Resort since its
7 inception through present; is that right?

8 A. Correct.

9 Q. And did you review them?

10 A. Yes.

11 Q. And how many pages of spreadsheets were there?

12 A. I can't even remember the exact number, it was huge.

13 Q. Was it more than a thousand?

14 A. It was more than a thousand.

15 Q. Were you also asked to review those records to determine
16 how many of the reservations were made by persons who indicated
17 they lived outside the State of South Carolina?

18 A. Yes.

19 Q. Did you do that?

20 A. Yes.

21 Q. Finally, Ms. Maynora, have you reviewed the summary
22 charts identified as Defendant's Exhibit 5, which summarized
23 the reservations at the Carolina Pines RV Resort since
24 inception?

25 A. Yes.

1 Q. And does this summary accurately and completely
2 summarize the reservation records of Sun defendants with
3 respect to out-of-state guests since the opening of Carolina
4 Pines?

5 A. On Exhibit 5, you mean just for 2019, correct?

6 Q. And the other charts that are located on Exhibit Number
7 5. You can pull up the binder if you'd like.

8 A. Oh, okay. I didn't know if I was missing something and
9 it was on there.

10 Q. Yeah, if you want to just go ahead and flip through
11 them.

12 A. Okay. Yes, yes.

13 Q. So let's go through this data. So if we go back in
14 2019, which is the year the RV resort opened, how many total
15 reservations were there?

16 A. So in total for 2019 would be 3,900, 3,936.

17 Q. And out of that number of reservations, what percentage
18 were made by people outside the State of South Carolina?

19 A. 62 percent, so 24, 32.

20 Q. And let's go to 2020 and I'll ask you the same
21 questions. How many reservations total?

22 A. 15,000 total.

23 Q. And how many were from the percentage from outside the
24 State of South Carolina?

25 A. Over 9,000, so 63 percent.

1 Q. And for 2021? How many reservations?

2 A. 24,525.

3 Q. And what percentage were from folks outside the State of
4 South Carolina?

5 A. 16,000, so 68 percent.

6 Q. And 2022? How many number of reservations?

7 A. 25,000.

8 Q. And the percentage from outside the State of South
9 Carolina?

10 A. 17,000, so 71 percent.

11 Q. And 2023 through the present, which this data I'll
12 represent to you is current as of October 31st of 2023, how
13 many reservations?

14 A. 21,532.

15 Q. And the percentage from out of South Carolina?

16 A. So 74 percent.

17 Q. So if we go to the next chart, from 2019 through present
18 how many total reservations have been made at Carolina Pines?

19 A. 90,000.

20 Q. You said \$100,000 before. Are there more reservations
21 that have been made since this chart was created?

22 A. Yes.

23 Q. And out of that amount what percentage of the
24 reservations made were from people outside the State of South
25 Carolina?

1 A. So 69 percent.

2 Q. And if we can flip to the next page. Can you please
3 tell the Court what this is a summary of?

4 A. So this is just a summary, a breakdown of the different
5 areas that people come from to the resort.

6 Q. From the different states?

7 A. Yes.

8 Q. And what state has the highest number of reservations at
9 Carolina Pines?

10 A. North Carolina.

11 Q. Now, I want to turn our attention to the amenities at
12 the RV resort. Approximately how many amenities are at
13 Carolina Pines?

14 A. Do you want me to name them?

15 Q. No, just give me a --

16 A. Just give you a round number?

17 Q. Yeah.

18 A. Like, fifteen, I would say.

19 Q. Can you give me some examples of those amenities?

20 A. So we have a water park, miniature golf, we have a
21 bowling alley, an arcade, several pools, we have a jumping
22 pillow, there really is so much, I'm trying to think of
23 everything, a lazy river, we have a lazy river and hot tubs, an
24 indoor pool.

25 Q. If we could pull up defendant's number 50, and do you

1 recognize this document?

2 A. Yes.

3 Q. What is it?

4 A. This is our, like our property map, so when guests first
5 arrive we give them this so they can find their way around the
6 resort.

7 Q. And it says, there's a heading there that says
8 "amenities." Are those the amenities that are numbered on the
9 map?

10 A. Yes.

11 Q. And it looks like it goes all the way down to 30. So
12 would it be there's 30 amenities at the Carolina Pines RV
13 Resort?

14 A. There are, but dumpster is also there --

15 Q. Oh, is it?

16 A. -- so you know, I don't know that I --

17 Q. Oh, yeah, it is, you could consider that an amenity,
18 right?

19 A. -- so I don't know that I'd count that and brag about
20 it, you'd expect that, right?

21 Q. But it counts, right.

22 A. It does.

23 Q. Do guests have to pay a fee for each time they use an
24 amenity?

25 A. Some of them.

1 Q. Which ones?

2 A. The arcade, the bowling alley, everything else is,
3 that's all -- everything else is included with your stay.

4 Q. So is it fair to characterize the amenities that are
5 used at the Carolina Pines RV Resort is all inclusive?

6 A. Yes.

7 Q. So, like, you don't pay separately to use the pool?

8 A. No.

9 Q. Do you know if you had to pay to use the cabana house,
10 or the beach club?

11 A. No, you do not.

12 Q. So the use of amenities are included as part of the
13 reservation?

14 A. Yes.

15 Q. If you know, how poplar was the beach club as an amenity
16 when it was open?

17 A. So the beach club was not ever open while I've been in
18 my position, but I do know, because it's all the talk, is that
19 it was very poplar.

20 MS. SHOUN: Your Honor, I'm going to object on the
21 basis of speculation, foundation and hearsay. We're going to
22 as to "all the talk." I understand Your Honor's position.

23 THE COURT: The question was, if you know.

24 MR. TAMASITIS: Yes, it was, Your Honor, and I can
25 lay a foundation, too, after that, and we'll get to that.

1 Q. Does Carolina Pines have a resort fee?

2 A. We do have a resort fee, yes.

3 Q. And when was that started?

4 A. I believe it started in February this year.

5 Q. Do you know whether annual guests pay the resort fee?

6 A. They do not.

7 Q. If we can pull back, where can I find this map if I was
8 looking for it?

9 A. When you check in you get it at the front desk, or when
10 you check in it's a part of your check-in packet.

11 Q. Where on this map is the main entry point to Carolina
12 Pines? Is it up at the top there by number 17?

13 A. Yes, by 17.

14 Q. And what's that road that runs past Carolina Pines?

15 A. That is, I know what it is and I'm actually new to South
16 Carolina and it just slipped my mind, is it 501?

17 Q. Okay. How important are the amenities to the operations
18 of the beach club, or the Carolina Pines? How important are
19 the amenities to the operation of Carolina Pines?

20 A. So they are very important, yes.

21 Q. And you testified previously that you used to work at
22 Gwynn's Island in New Point, correct?

23 A. Yes.

24 Q. Did those locations have amenities?

25 A. We did, yes, different than what we have here at

1 Carolina Pines.

2 Q. What was the difference?

3 A. Both of those resorts had beaches, so both of them were
4 on the water, which was the main amenity there. They had
5 pools, rec centers, fishing piers, fishing, New Point had a
6 marina.

7 Q. How about the quality of the amenities at the different
8 resorts?

9 A. So they're not, they're very different. I would say
10 that New Point in Gwynn's Island are more of just an RV resort,
11 whereas Carolina Pines is a premier resort, so very different.

12 Q. What does that mean?

13 A. Premier resort is more, they have wide roads, it's new,
14 it's got beautiful fire pits on every site, the landscaping is
15 nice, the pads are concrete, they come with patios, our
16 cottages, too, they are elite cottages, so we're just a
17 different, a different level of -- for RV resorts it's, I don't
18 know how to describe it, but different, it's very remarkable, I
19 think, in comparison.

20 Q. What kind of events are held at the RV resort?

21 A. At Carolina Pines?

22 Q. Yes.

23 A. So this past month, to give an example, was like
24 Halloween month, so we had big Halloween festivals every
25 weekend. The first weekend of October was an October fest. We

1 have bands, we have a lot of different events like that, we
2 have trivia on Wednesdays. Last night, actually, was a
3 meet-and-greet cocktails in the courtyard around fire pits
4 doing smores and coffees, all kinds of stuff.

5 Q. Are there third-party vendors that are brought in for
6 that?

7 A. We do bring in third party vendors for events, but most
8 of them we do ourselves.

9 Q. And are there, I guess, would you have concerts and
10 things like that at the RV resort?

11 A. Yes.

12 Q. Who would you classify as the competitors to Carolina
13 Pines?

14 A. So I do know this because I just did a report on it, so
15 I would say, like, we use like Ocean Lakes and Lakewood, we do
16 comparisons, Pirateland, and then we have, what is it, North
17 Myrtle Beach Dry Dock is a new competitor for us.

18 Q. Are you aware of whether any of these competitors have
19 private beach access?

20 A. They do, yes.

21 Q. Which ones?

22 A. Ocean Lakes, Lakewood and Pirateland.

23 Q. I want to talk something about the shuttle
24 transportation that the Carolina Pines provides. In your
25 position as the general manager for Carolina Pines what

1 involvement do you have in the shuttle transportation system
2 for the resort?

3 A. Currently, it isn't running, but I would have,
4 everything has to run through me before they can put it on the
5 schedule. So I need to know what shuttle rides they have
6 going, capacity, how many people need taken.

7 Q. If we could turn to Defendant's Exhibit Number 48. Do
8 you recognize the photos that were marked as Exhibit Number 48?

9 A. Yes.

10 Q. And what are those a photographs of?

11 A. Those are shuttle vans.

12 Q. And what capacity are these shuttle vans depicted in
13 Exhibit 48?

14 A. These ones are twelve.

15 Q. How many of these vans does Carolina Pines utilize?

16 A. We have two of these.

17 Q. And are these the shuttle vans that we were just talking
18 about?

19 A. Yes.

20 Q. So these are used in the shuttle transportation?

21 A. Yes.

22 Q. Are there any other types of vans or buses that Carolina
23 Pines has?

24 A. We have a seven-passenger mini van, and we have a
25 20-passenger bus, but we don't use that.

1 Q. And when Carolina Pines transports guests to the beach
2 do they use the vans that are depicted in Exhibit 48?

3 A. Yes.

4 Q. Do they use any of the other vans that you have?

5 A. I wouldn't be aware of that. These are the only two I
6 know that were ever used as shuttles.

7 Q. When Carolina Pines was transporting guests to the beach
8 club while it was open, if you know, what vans were they using?

9 A. These two vans.

10 Q. Do you consider the shuttle system a resort amenity?

11 A. Yes.

12 Q. Who is able to use the shuttle system?

13 A. Our guests.

14 Q. Do they have to pay to access the shuttle system?

15 A. No.

16 Q. When does the shuttle system currently operate at
17 Carolina Pines?

18 A. It's always ran, like, all year round. Just recently
19 just at the beginning of October we decided to stop running the
20 shuttle system, just because it's slow, but during peak season,
21 I'll use as an example, seven days a week in different events
22 throughout the week.

23 Q. And other than the beach what locations does it take a
24 guest to in the area?

25 A. So Tanger Outlets, I'm trying to think of the different

1 areas, Calabash, like, shopping in Myrtle Beach, Broadway, what
2 is it, the Opry, the Carolina Opry, Medieval Times, what is
3 the, the Pirate? Pirates Voyage, Pirates Voyage, just shopping,
4 and the little, you know, some of the touristy places,
5 WonderWorks, we do WonderWorks, too.

6 Q. So if you know, was there a scheduled shuttle to take
7 guests to and from the beach club while it was open?

8 A. There was, yeah, when it was open.

9 Q. And if you know, how often did the shuttle travel the
10 beach club each day?

11 A. I wouldn't know, I wouldn't know that specifically.

12 Q. Do you know what time frame during the year did the
13 shuttle traveled to the beach club?

14 A. I would assume during peak season.

15 Q. After the closure of the beach club in January of 2022
16 did Carolina Pines offer shuttle service to the beach?

17 A. We did. I think we started that, I want to say it was
18 in July of 2022, yes.

19 Q. How did that come about?

20 A. I think because it was one of our big, when I got there,
21 I got there after it had already been closed, so it was one of
22 those things that people complained about. They felt that they
23 weren't made aware that the beach club was closed and that's
24 why they came, so we started shuttle access to public access
25 areas of the beach.

1 Q. So is it fair to say that it was a big deal that the
2 beach club would be closed?

3 A. Yes, that's fair.

4 Q. And is it your understanding that that's because the
5 beach club was a popular amenity at the resort?

6 A. Yes.

7 Q. What drop-off points did Carolina Pines consider when it
8 decided to look for public beach access points?

9 A. So to start, Hunter and Elaine originally started at
10 North Myrtle Beach. There was an area, I think it was 6th
11 Avenue, was the ideal location because it has really great
12 restrooms, but our van wouldn't fit, so we started with, there
13 was one in South Myrtle, I think it was 9th Avenue, that's
14 where we did it for 2022, we did it for a few months there.

15 Q. And you said Hunter and Elaine, who are they?

16 A. Hunter is our marketing coordinator, Elaine is our
17 shuttle driver, our driver supervisor.

18 Q. Did you contact the City of North Myrtle Beach about
19 public access points to take guests to the beach?

20 A. So I didn't personally, Hunter did, this was in the
21 beginning where we were trying to find options.

22 MS. SHOUN: Your Honor, objection, based on hearsay.

23 MR. TAMASITIS: You can keep going.

24 A. Okay. Hunter had called just asking, inquiring, if
25 we're allowed to, if we're allowed to do it at all, just to

1 make sure we were doing everything by the rules, which we were
2 told as long as we didn't block traffic we were good, and this
3 was shared with all of us, you know, because this was a big
4 deal to start, and then South Myrtle ended up being easier
5 because it had a wider area to drop off.

6 Q. Did Carolina Pines drop guests off that wanted to go to
7 the beach in the summer of 2023 at the same dropoff point?

8 A. We did start 2023 at the South Myrtle, we did a few
9 weeks, and then we realized it wasn't a good idea. We didn't
10 have a lot of people wanting to go. It was costing us a lot
11 because it was a longer drive, so we revisited the North Myrtle
12 Beach dropoff, and started, that's where we started doing it
13 for the season.

14 Q. You're saying South Myrtle, do you just mean Myrtle
15 Beach?

16 A. I think so.

17 Q. Do you know what intersection or road it was on in
18 Myrtle Beach?

19 A. I think it was 9th Avenue.

20 Q. And so you said then you started dropping folks off in
21 North Myrtle Beach?

22 A. Yes.

23 Q. Where at?

24 A. That one was, that was 1st Avenue North.

25 Q. And why was that dropoff point selected?

1 A. It was closer, and that seems to be where the guests
2 wanted to be in North Myrtle and they felt better about it, and
3 it was a good area, there was restrooms there, and it ended up
4 being a good area where we could drop them off without blocking
5 traffic.

6 Q. And how did you coordinate with the City of North Myrtle
7 Beach for that dropoff point?

8 A. I don't know, it was just asking that we were allowed to
9 do it without being in trouble and knowing that we weren't
10 going to block traffic.

11 Q. And who did you ask?

12 A. I did not ask anybody, personally, this was Hunter.
13 Hunter is the one who worked on that the whole time.

14 Q. And are you aware of whether someone from the City of
15 North Myrtle Beach was communicating with Hunter?

16 A. I don't know that necessarily anybody was communicating
17 with Hunter. He made a phone call. He gave us his notecard
18 afterwards. It was just, he wasn't talking to anybody
19 specifically, I think he felt confident in calling when they
20 said, as long as you don't block traffic you're good. Like,
21 there's no problems as long as you're not holding up traffic.

22 Q. How would Carolina Pines operate the shuttle buses to
23 the beach club if it were open differently than the public
24 dropoff access points that it's currently using?

25 A. Are you saying, how would we do it if we had access to

1 the beach club today?

2 Q. Yes, ma'am?

3 A. Well, it would be very different, and I think it would
4 be similar to the way we do it for the beach drop offs, because
5 it's coordinated and it's, we're not, you're taking a limited
6 amount of people, I think it would be very similar, like a
7 coordinated effort with the three scheduled drop offs a day,
8 three scheduled pick ups a day.

9 Q. Would Carolina Pines continue the shuttle service into
10 the future to the beach if the beach club would remain
11 permanently closed?

12 A. I don't know the answer to that, no.

13 Q. Why not?

14 A. I don't know that it's been necessarily, maybe, you
15 know, go a new direction, because it is difficult to keep up
16 with the different drop offs and trying to round people up.
17 Like, you know, you show up for 4:00 for a pickup and you're
18 waiting because you got to find people, so I don't know that
19 it's something we'll keep doing.

20 Q. Is it cost prohibitive, as well?

21 A. I don't know that that so much is different than it
22 would have been because it's right down the street from where
23 the beach club is, so I guess the drive and the fuel would be
24 the same, but I think, you know, like, I think we've lost
25 occupancy without it, so that does change revenue and then you

1 have to take into the expenses of, you know, versus revenue,
2 and I don't know, I don't know that it makes sense.

3 Q. Let's flip our attention to the first few months where
4 you became the general manager at Carolina Pines. When you
5 started in April of 2022 the beach club had just been closed,
6 correct?

7 A. Yes.

8 Q. What were the guests reaction to that development?

9 A. They were very upset.

10 Q. Do you recall, personally, whether you handled any
11 reservation cancellations directly attributable to the beach
12 club?

13 A. I did, several. They weren't -- they escalated up to
14 me, and I think it was, it caught us all off-guard, because a
15 GM doesn't typically do cancellations, they would have
16 escalated, and the team up front and on the phone, they were
17 overwhelmed, and there are were people that were not letting
18 up, they wanted to talk to the GM and share their feels, those
19 are the ones that I would handle.

20 Q. Did you personally provide any refunds to folks because
21 of the closure of the beach club?

22 A. I did, yes.

23 Q. Approximately how many?

24 A. Owe gosh, it was several, and I think once they got to
25 me it was an easy choice, just give refunds, many, I've given

1 many.

2 Q. Are you able to quantify how many cancellations were the
3 direct result of the closure of the beach club?

4 A. No. I can't quantify, no, I wouldn't be able to.

5 Q. And why not?

6 A. Because we tried because it was requested several times
7 through all of this, and the reason is because when someone
8 cancels, you put it in their notes that why they canceled,
9 whereas you wouldn't -- when searching cancellations we just
10 get cancellations. Some of them are COVID, you know, or other
11 things, I couldn't say what was due to the beach club.

12 Q. And straying slowly to a different topic, we haven't
13 really discussed it yet, but is there a membership at the beach
14 club separate and apart of from the guests at Carolina Pines?

15 A. There is, yes.

16 Q. How many members are there currently?

17 A. Currently, there are eight.

18 Q. Do you know who these members are?

19 A. I do, yes.

20 Q. Are they all from North Myrtle Beach?

21 A. Yes.

22 Q. What are the annual dues for members?

23 A. One thousand dollars.

24 Q. And what was the members reaction to the closure of the
25 beach club?

1 A. It seemed like in the beginning they were kind of happy
2 because they had it to themselves, but I think as time went on
3 they weren't, there's a lot of questions that they have about
4 their dues, is it available next year, so there's a lot of
5 questions.

6 Q. And there was a mistake made in communicating to those
7 members that the pool was to be opened when, in fact, it was
8 supposed to be closed for a period of time?

9 A. So I do, and I'm only, because I know that we've all
10 talked about this through this last year. There was
11 miscommunication early on, and this would have been when I
12 first got there, which is how I'm aware of it, I also
13 thought -- I was told, and this is where I may not have
14 understood that beach club members could use the pool but
15 Carolina Pines guests could not, and that was communicated to
16 beach club members early on when this happened.

17 Q. And that's been since corrected?

18 A. Yes, it has.

19 Q. And you said there are eight current members at the
20 beach club. How many members were there when you first arrived
21 at Carolina Pines?

22 A. When I first got there I think there was 21.

23 Q. Wrapping up here, Ms. Maynora, if the beach club were to
24 open back up as a result of this case, what would your plans be
25 to utilize the beach club as the current general manager of

1 Carolina Pines?

2 A. So I think exactly the way we were talking, where you
3 would take the same thing, three shuttles, you know, daily,
4 listening to, and I don't know what to say, when you guys just
5 did the, when you guys were reading I never knew anything about
6 any other people having cabana houses and listening to the
7 descriptions of how they would operate is exactly the way we
8 would want to operate, where it's simply guests just have a
9 place to get away from the heat, to be able the use the pool,
10 to take, you know, a certain amount, like for us it would be
11 shuttles, you couldn't drive yourself there. It would be,
12 basically, you get your shuttle ride there, very simple.

13 Q. How would you handle the risk of overcrowding?

14 A. That's where we would watch capacity, and because we
15 would be in control of the amount of people that could use the
16 beach club with our shuttles, is how we would control the
17 capacity there.

18 Q. And what events, if any, would be held at the beach
19 club?

20 A. There wouldn't be events at the beach club.

21 Q. How would you limit the hours of operation?

22 A. That would be, I think, and even listening, and I was
23 getting ideas just from listening how that went, but it would
24 be good to do where it is sort of the dusk to dawn, like,
25 operating, like, before dark, like it closes before dark, opens

1 in daylight.

2 Q. Any other actions that you would institute to ensure
3 that the beach club was used properly?

4 A. We would. We'd have somebody that would be stationed
5 down there during operating hours, like we would for any other,
6 like, you know, what you do for the water park when it's open,
7 you have team members watch it.

8 MR. TAMASITIS: No further questions at this time.
9 Please answer any questions.

10 MS. SHOUN: May it please the Court, Your Honor?

11 **CROSS-EXAMINATION**

12 BY MS. SHOUN:

13 Q. Good morning, Ms. Maynora.

14 A. Good morning.

15 Q. I am Cheryl Shoun. I'm honored to be one of the
16 attorneys representing the City of North Myrtle Beach, and I'm
17 trying to move out of the way of everybody. I probably got in
18 the way of somebody here. Do you remember having had your
19 deposition taken on two different occasions?

20 A. Yes, ma'am.

21 Q. And I think originally it was on April 25th of this
22 year, and that was in your individual capacity, correct?

23 A. Yes.

24 Q. And that was because you came into Carolina Pines
25 effective April 1, 2022 as the new general manager?

1 A. Yes.

2 Q. And then you had your deposition taken again on
3 September 1st of this year, does that sound about right?

4 A. Yes.

5 Q. And that was because you had been designated as a
6 spokesperson, or as the face for certain reasons or certain
7 topics for the Sun defendants, does that sound about right, as
8 well?

9 A. Yes.

10 Q. And I think the purpose or purposes of those depositions
11 were a couple fold. One was to testify as to current
12 operations of the RV park and report the impact of the closure
13 of the cabana house, do you remember that?

14 A. Yes.

15 Q. And your words in your deposition in your individual
16 capacity was that you thought it was to tell what you had dealt
17 with since taking over as the manager there, fair?

18 A. Yes.

19 Q. Now, you've worked for the Sun Community, I think you
20 told Mr. Tamasitis since 2017, if I heard that correctly?

21 A. Yes.

22 Q. And we talked about some other locations before coming
23 to Conway, right?

24 A. Yes.

25 Q. And how did you end up coming to Conway?

1 A. The position came open. That's exactly how. I came
2 here for that resort.

3 Q. And you were encouraged to do that by people with whom
4 you worked, correct?

5 A. Yes.

6 Q. Okay. And it wasn't a one-and-done process, you went
7 through a series of interviews with various individuals,
8 correct?

9 A. I did, yes.

10 Q. Including Mindy Kirtley?

11 A. Yes.

12 Q. What was Ms. Kirtley's title with the Sun defendants at
13 that time?

14 A. She was the divisional vice president.

15 Q. And these interviews took place over about a three-month
16 period, right?

17 A. It did, yes.

18 Q. And during those interviews, including one with Mindy
19 Kirtley which spanned from January '22 until April '22, nobody
20 ever told you that the cabana house was closed as a result of
21 the consent order?

22 A. They did not.

23 Q. That's probably something you wish you would have known
24 before you got there?

25 A. I did the first week when I finally did get there, and

1 reached out, too, and found out more.

2 Q. And I think you told Mr. Tamasitis it was hard for
3 everybody to grasp because you weren't given the information,
4 correct?

5 A. I mean, that could be correct, yes.

6 Q. Okay. So much so that the information, the wrong
7 information was sent out to club members because they were told
8 that the cabana house was going to open again in 2022, right?

9 A. Correct.

10 Q. Okay. Now, was it your understanding, originally, that
11 the cabana house was closed because it conflicts with
12 neighbors?

13 A. Yes.

14 Q. And at that time you had no idea that the cabana house
15 was subject to ordinances pursuant to which the City of North
16 Myrtle Beach said, you can't operate in this fashion?

17 A. No, I did not know that.

18 Q. And nobody from Sun told you that?

19 A. Not at the time.

20 Q. Is it fair to also assume then nobody from Sun told you
21 that the cabana house is also subject to deed restrictions or
22 restrictive covenance that limits the manner in which it can
23 be used?

24 A. I did not know this at the time.

25 Q. Do you know that now?

1 A. I do know that now, yes.

2 Q. Okay. Now, beginning April 1st of 2022, you effectively
3 are on site every day, right?

4 A. Every day.

5 Q. Okay. That's 24/7, basically.

6 A. Yes.

7 Q. And let's talk a little bit about the impact of the
8 closure, one of the reasons you said you felt like you were
9 given your deposition. First, let's get a little bit of an
10 overview of the RV park, and Mr. Tamasitis went through this a
11 little bit. If we could put up Plaintiff's Exhibit 34. If
12 you'll look at that Ms. Maynora, does that look like an
13 accurate representation of the Carolina Pines RV Resort?

14 A. Yes.

15 Q. Okay. Now, I think, if I'm correct, you testified
16 earlier in your deposition, so the Carolina Pines park is
17 basically unlike the other two where you previously worked,
18 fair?

19 A. Unlike any other.

20 Q. Unlike any other, right?

21 A. Yes.

22 Q. And one of the things that you pointed out, I believe,
23 is that this is all concrete?

24 A. Yes.

25 Q. Okay. Which in the RV park world is important?

1 A. It is, yes.

2 Q. Okay. And Mr. Tamasitis took some of my thunder because
3 I was going to get you to explain to me what the various
4 categories of the sites were, but I think that you went through
5 that with him very well, but it's safe to say based on the
6 numbers that you provided that the vast majority of sites at
7 the RV park are transient sites?

8 A. Yes.

9 Q. And so if a guest is not in a cottage they are going to
10 be in -- they're either going to be an annual guest or
11 considered a transient guest, but they're going to be in one of
12 those sites?

13 A. Yes, they'll bring their own RV.

14 Q. Okay. And let's talk about that a little bit. When
15 people bring their own RV's, and you're there 2/47, is it safe
16 to assume that they may drive a drivable RV in and tow a car?

17 A. Yes.

18 Q. Okay. Or, they'll -- what else would they do if they're
19 not in the cottages? They would drive an RV and then have a
20 vehicle there, right?

21 A. Yeah, pretty much, most people with a motor home.

22 Q. Either drive one in with a car?

23 A. Yeah, with a truck.

24 Q. With a truck.

25 A. They'll have a truck and pull in an RV or, like a motor

1 home you could pull a small vehicle behind.

2 Q. Gotcha. So they're gonna have cars with them?

3 A. Most of them, yes.

4 Q. Most of them. And we know that the vast majority of
5 them probably do, right?

6 A. Yes.

7 Q. And we certainly know that, if we look at Plaintiff's
8 Exhibit Number 62, have you seen the beach logs, Ms. Maynora?

9 A. I don't know that I've seen this, no.

10 Q. Okay. If we look at this, just the first page on there
11 which is May, 2021, do you see there's a category for walk-in's
12 at the beach house --

13 A. Yes.

14 Q. -- at the cabana house?

15 A. Yes.

16 Q. Okay. And you see the average of walk-in visitors at
17 the cabana house at the bottom there?

18 A. Yes.

19 Q. Twenty-three, little more than 23? Okay. And then flip
20 through. And again, in June 2021, you have walk-in's there,
21 and you see that number?

22 A. Yes.

23 Q. The total number being 1864 for that month?

24 A. Yes.

25 Q. So you would agree with me that certainly having a

1 vehicle at the RV park is the norm?

2 A. Yes, yes, it is.

3 Q. Okay. But the shuttle has by and large been viewed as a
4 convenience for your visitors, right?

5 A. It is, yes.

6 Q. And I think you said it's not running now, but that's
7 because things are slow?

8 A. Yes.

9 Q. And if the RV park had an extraordinary weekend of some
10 sort, let's say a lot of people want to visit for Thanksgiving,
11 it would certainly implement the shuttles if demand required
12 it?

13 A. Yeah.

14 Q. Okay. Now, Mr. Tamasitis showed you a photograph of a
15 van, and I think you said it's a 12-passenger van?

16 A. Yes.

17 Q. Okay. And the park runs two of those normally?

18 A. Yes.

19 Q. Okay. Now, you wouldn't disagree with me, would you,
20 Ms. Maynora, if I represented to you that previously those were
21 not the only vehicles that were used to shuttle visitors to the
22 cabana house?

23 A. I -- because, really, I wouldn't know.

24 Q. So you don't know that?

25 A. I don't know that, yeah.

1 Q. So therefore you would have no reason to refute a
2 representation by someone from Sea Cloisters that the 20 or
3 22-passenger buses were taking people to the cabana house?

4 A. So I guess I would ask, because the only thing I would
5 know about that through the guests of Sea Cloisters say it's
6 the black, there's the black old, and there's only one of them.
7 Would that be the one you're talking about?

8 Q. It's a large 22 or 20-passenger bus.

9 A. Okay.

10 Q. Now, the shuttle helps people, your visitors in a number
11 of ways, and one way would be, let's say they just don't have
12 to worry about getting sandy feet in their personal vehicles,
13 right?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Okay. And they wouldn't have to worry about finding
18 parking, correct?

19 A. True.

20 Q. And if so inclined, they may want to go to the cabana
21 house and overindulge in alcohol and not have to drive back?

22 A. I wouldn't, you know --

23 Q. It's possible.

24 A. But I would think, first, just knowing how to get there,
25 you know? Like, because, while I hear the rumors of the

1 drinking, I am not aware that that would be why somebody would
2 want to go.

3 Q. Okay. Alright. Now, you had a number of tasks when you
4 arrived at the RV park on the first of April, as you've told us
5 already, because I think you had been under the interim general
6 manager, for not an extended period of time but maybe a couple
7 of months, three months, four months?

8 A. In Florida.

9 Q. I thought here.

10 A. No, I came, I was doing interim at Florida before I came
11 here.

12 Q. Yes, ma'am, but was there an interim here for a short
13 period of time before you took over permanently?

14 A. A different?

15 Q. Yes, ma'am, a different GM?

16 A. Oh, an RVP, yes, yes.

17 Q. Sorry, sorry about that. Okay. And just to go back and
18 reiterate. The cabana house had been closed for roughly three
19 months by the time you got here?

20 A. Yes.

21 Q. And we've already talked about that, I think you said
22 right when you got here that's when Mr. Imager (phonetic) sent
23 the e-mail to the members of the cabana house with the
24 incorrect information that it was going to reopen?

25 A. Yes.

1 Q. And then about the time that you got here, I think you
2 were responsible for a Facebook post advising people that the
3 cabana house was not open for use; is that correct?

4 A. I didn't -- I didn't make the post. I mean, I didn't
5 make it, I asked for it to be made to let people know, yes.

6 Q. Yes, ma'am. So it was in your capacity as the general
7 manager that you requested that that post be made?

8 A. Yes.

9 Q. And that was not until July of 2022?

10 A. Yes.

11 Q. And then shortly after that, I think the modification
12 might have been made to the website, as well?

13 A. Yes.

14 Q. And that was at your direction, as well, correct?

15 A. Yes.

16 Q. And that, too, was toward the latter part of July of
17 2022?

18 A. Yes.

19 Q. And Mr. Tamasitis went through with you peak season, and
20 I think you said beginning of April 1 until after Labor Day?

21 A. Yes.

22 Q. And just to go back. So you had visitors to the RV park
23 where people had planned visits to the RV park who had no way
24 of knowing until July, late July of 2022, that something that
25 had been promised to them was not available?

1 A. True.

2 Q. And even when you modified the website to advise people
3 who went on the website that the cabana house was not
4 available, it was not up on the front page, was it?

5 A. You had to click on the beach house, the amenity of the
6 beach house to say closed.

7 Q. So you had to look for it?

8 A. Yeah, you had to be interested in the beach house.

9 Q. And it would be fair to say that a lot of people were
10 upset because Carolina Pines had not told us?

11 A. Correct.

12 Q. So while you told Mr. Tamasitis people were upset about
13 not using the cabana house, a lot of people were upset that
14 they didn't know before they got there?

15 A. Correct.

16 Q. And a lot of people were upset because Carolina Pines
17 was not running the shuttle, correct?

18 A. Correct.

19 Q. And we now know that Carolina Pines could have been
20 running the shuttle the whole time, correct?

21 A. To?

22 Q. To public access.

23 A. Not early on, that wasn't even, we thought we did a good
24 thing when we finally came up with it. I couldn't say we could
25 have been doing it all along because we didn't know, we have to

1 to figure that out, that was adapting to the situation.

2 Q. Right. And the adaptation was not made until late
3 summer?

4 A. I was new, yeah.

5 Q. I understand. Now, as I remember your deposition
6 testimony, and please do correct me if I'm wrong, there was the
7 one Facebook update in July of 2022, and after that there were
8 no additional posts about the lack of availability of the
9 cabana house, right?

10 A. I couldn't -- around that time it started heating up
11 where we needed to get that out. I can't remember what else we
12 might have put out at the time.

13 Q. Do you remember testifying that it was just too scary to
14 post it up there?

15 A. Did I say it was too scary, is that what I said, really,
16 and it was, because once you do it you get beat up by the
17 public.

18 Q. Carolina Pines didn't want to deal with talking to the
19 folks about it unless they had to, did they?

20 A. No, we wanted to talk to them about it.

21 Q. How did you reach out to them and say, hey, let me talk
22 to you about this?

23 A. I think we needed details first. You know? I didn't
24 know what to say, and you have your guests saying fights
25 happened and that's why I think it's closed, so we weren't

1 afraid to be honest, we wanted to be honest, but we didn't know
2 what we were supposed to say.

3 Q. Your upper management didn't tell you?

4 A. Well, we started asking and we thought that this was all
5 temporary. Like, I got there in April, we thought it would be
6 open by Memorial Day, so it didn't feel urgent to get that out.
7 You know, and then you think, oh, it will be open July 4th,
8 pull them people back, we hope we know something soon, and then
9 you start to realize in July, like, oh, my God, this isn't
10 happening, we got to tell people.

11 Q. One of the things I think you will agree with me that
12 Carolina Pines also showed on the website it that it had, it
13 offered up its visitors miles of private beach, correct?

14 A. We did that?

15 Q. I'm asking you, yes, ma'am?

16 A. No, not that I'm aware of, no.

17 Q. Okay. Would you have anything to refute that if I made
18 the representation that that has been on the Carolina Pines
19 website?

20 A. If you showed it to me and it was there, I'm not trying
21 to argue it, I just don't ever remember hearing or seeing
22 anything that said we had miles of, yeah.

23 Q. You told Mr. Tamasitis that you think the occupancy rate
24 is down at Carolina Pines because the lack of availability at
25 the cabana house?

1 A. I do, yes.

2 Q. Do you have any data that establishes that?

3 A. I wouldn't be able -- you could do comparisons, though.
4 You could look at a 2020 -- you could do comparisons, so, yeah,
5 I think I could.

6 Q. Okay.

7 A. Yeah, I do think I could.

8 Q. You could?

9 A. Yeah.

10 Q. But you haven't?

11 A. Nobody's asked it, and it's actually, we're at the end,
12 we're at budget season now, so you start looking at numbers and
13 you try to do comparisons, and you do research to understand
14 why occupancy is down now of all times, in 2023 we're lower
15 than we've been -- we're lower than we were in 2022.

16 Q. Okay. Thank you. You took me to my next topic, which
17 is budget. You were not here for Mr. Dibella's testimony
18 yesterday, I do not believe?

19 A. Did you say Dibella?

20 Q. Yes.

21 A. I was not here, no.

22 Q. Mr. Dibella made the representation to this Court that
23 occupancy, and I'm summarizing this, occupancy essentially
24 equals the total occupied site nights divided by the total
25 number of sites?

1 A. Yes.

2 Q. So you agree with that? Okay. Alright, good, I wanted
3 to make sure we were using the same formula there. And so as
4 those available sites change, the denominator changes, and the
5 numbers will change, correct?

6 A. Yes.

7 Q. Okay. And Mr. Dibella also indicated that budgets are a
8 goal. Would you agree with that, as well?

9 A. It is a goal, yes.

10 Q. Okay. And Carolina Pines does its budget sort of in
11 year over year approach, if you will?

12 A. Yes.

13 Q. Okay. So whatever revenue is for year of 2025,
14 hypothetically speaking, is going to effect what the budget is
15 going to be for 2026?

16 A. Yes.

17 Q. Okay. So just to understand here, so Carolina Pines was
18 not open for the full year of 2019, right?

19 A. Correct.

20 Q. And that was its opening year?

21 A. Yes.

22 Q. And then COVID hit, roughly March of 2020?

23 A. Yes.

24 Q. So you didn't have completely a full representation for
25 2020 either?

1 A. True.

2 Q. I mean, it was a different --

3 A. It was a different year, yes.

4 Q. Okay. But there was some, just you couldn't make, I
5 don't think anybody can make great budget predictions based on
6 2020 or what we were going to be dealing with at that point.
7 So then in 2021, would you agree that the southeast states
8 opened up earlier than most others?

9 A. Yes.

10 Q. And in 2021 you experienced what you deemed to be, which
11 is a great phrase, COVID grounds?

12 A. Yes.

13 Q. And it's your understanding that during COVID lots of
14 people bought campers and went camping, right?

15 A. Yes.

16 Q. Okay. And they did that because they couldn't do
17 anything else, true?

18 A. Correct.

19 Q. And then when the world opened back up people's
20 lifestyles changed again, I think you explained?

21 A. Yes.

22 Q. And so then when people's lifestyles changed again they
23 started to sell their campers, right?

24 A. Yes.

25 Q. And you've seen this as a trend in your industry?

1 A. Yes.

2 Q. Okay. And so in your words, Carolina Pines 2022's
3 budget was aggressive, correct?

4 A. I felt it was if I couldn't reach it.

5 Q. Because it was based in part on those wild 2021 numbers
6 when nobody could go stay in hotels?

7 A. Yeah.

8 Q. Okay. Now, when we're talking about occupancy, let's
9 take a quick look at Defendant's Number 5 again. In
10 Defendant's Number 5, that's 2019, your opening year, with a
11 little over 3,900 reservations, correct?

12 A. Yes.

13 Q. And 62 percent of those based on what sounds like a
14 painful review of spreadsheets, you determined were non-South
15 Carolina visitors, right?

16 A. Yes.

17 Q. And let's look at 2020. Okay. In 2020 there were
18 15,000, slightly more than 15,000 reservations, correct?

19 A. Yes.

20 Q. And 63 percent of those were from out of state?

21 A. Yes.

22 Q. And let's look at 2021. Okay. In 2021 you had 24,525
23 reservations, correct?

24 A. Yes.

25 Q. And 68 percent of those were from out of the State of

1 South Carolina?

2 A. Yes.

3 Q. Okay. And 2022 we have 25,000 reservations and an even
4 higher percent of out-of-state visitors, right, 71 percent?

5 A. Yes.

6 Q. Okay. The last line. When Mr. Tamasitis was asking you
7 questions about, when he asked you -- let me make sure I got
8 this correct. I think he asked you, had you looked at the
9 reservations for the RV park since it opened and come up with a
10 number there, and your number was \$100,000, right?

11 A. Reservations, around that.

12 Q. Yes, ma'am. Okay. And then when we get this slide, it
13 shows that it's as of October 31, 2023, correct?

14 A. Correct.

15 Q. But the different numbers there were about 10,000
16 reservations that have been made, you said since that chart was
17 prepared, right?

18 A. Yes.

19 Q. Okay. And that chart's effective the end of October and
20 today's, would it be fair to say that the additional 10,000
21 reservations came in the first two days of November?

22 A. No, not like that. Are you saying, like when I said
23 around \$100,000?

24 Q. Yes, ma'am.

25 A. I think that's just because I just had a strategy

1 meeting yesterday where you go over reservations and your goal
2 for the year, so -- and that's what we're picking up. So I
3 would say, that's how I'm gonna talk and say \$100,000, but no,
4 there's no -- we did not get 10,000 in two days.

5 Q. Now, again, you shuttled guests to the beach in 2022,
6 correct?

7 A. Yes.

8 Q. And 2023, correct?

9 A. Yes.

10 Q. And you've been to the cabana house property, right?

11 A. Yes.

12 Q. And you're aware the cabana house property is basically
13 flanked by a public access on each side?

14 A. Yes.

15 Q. And you're aware that there are a number of public
16 access points in North Myrtle Beach, right?

17 A. Yes.

18 Q. And there are a number of public access points in Myrtle
19 Beach, as well?

20 A. Yes.

21 Q. And you would agree that you could certainly access a
22 number of access points in North Myrtle, but definitely those
23 two that flanked the cabana house in essentially the same
24 length of time it takes you to drive from the RV park to the
25 cabana house?

1 A. When you say "flank"?

2 Q. Right. There's one on each side of the Sea Cloisters,
3 right?

4 A. Okay.

5 Q. Right?

6 A. Of -- there's public?

7 Q. Yes, ma'am.

8 A. Are you saying --

9 Q. Yes, ma'am.

10 A. So I didn't know that. Do they have restrooms or like
11 the Porta Potties?

12 Q. Oh, you haven't looked at them?

13 A. Because we only went to the ones that had restrooms with
14 them. It wouldn't have been -- we couldn't have dropped our
15 guests off where there's outhouses, you know.

16 Q. You're aware that one of those two -- then you're aware
17 that one of those two has restrooms?

18 A. No, I'm not.

19 Q. Okay. Throughout this, Ms. Maynora, nothing has stopped
20 Carolina Pines visitors from accessing North Myrtle Beach, has
21 it?

22 A. Not individually. Are you saying if they were to drive
23 themselves or just with shuttles?

24 Q. Either way.

25 A. Yeah. Everybody could still go there, yes.

1 Q. And they can still shop in North Myrtle Beach, correct?

2 A. Correct.

3 Q. And they can still dine in North Myrtle Beach, correct?

4 A. Yes.

5 Q. And they can feel free to take advantage of any of the
6 amenities or any of the niceties that the City of North Myrtle
7 Beach provides them, right?

8 A. Sure.

9 Q. Okay. I think you testified in your deposition, and I
10 do want you to correct me on this if I'm wrong, I think you
11 said you're the mother of six kids?

12 A. Yes.

13 Q. I only have three, so bless you. Out of six kids,
14 however, I'm sure that you have experienced from to time, kids
15 will just push you as far as they can, won't they?

16 A. They sure will, yes.

17 MS. SHOUN: Thank you, Ms. Maynora.

18 THE COURT: Any Redirect?

19 MR. TAMASITIS: No, Your Honor.

20 THE COURT: You may step down.

21 MR. TAMASITIS: We ask that the witness be excused.

22 THE COURT: Any objection?

23 MS. SHOUN: None at all, Your Honor.

24 THE COURT: You have a good day.

25 MS. SHOUN: Thank you.

1 THE COURT: How many more witnesses do you have?

2 MR. TAMASITIS: No, Your Honor, we'll just note for
3 the record that defendant's Exhibits 1 through 62 have been
4 admitted into evidence, as well as Court's Exhibits 2, which is
5 the Sea Cloisters deposition, Court Exhibit 3, which is the
6 Paul Blust deposition, Court Exhibit 4, which is the Ben
7 Caldwell deposition, and this morning we put in Exhibit 5,
8 which are the depo designations that have been read before the
9 Court.

10 THE COURT: Sounds good. Any other witnesses?

11 MR. TAMASITIS: No, Your Honor, Defendants rest.

12 THE COURT: How do you all want to proceed from here?
13 Would you like to take a lunch break and come back and do
14 closings? Why don't we take an hour lunch and we'll come back,
15 hear from the plaintiff, take a short break and hear from the
16 defendant. We'll see you in about an hour.

17 MR. TAMASITIS: Thank you, Your Honor.

18 MS. SHOUN: Thank you, sir.

19 (Recess taken.)

20 MR. RICARD: With your permission, Your Honor, may I
21 approach?

22 THE COURT: Sure.

23 MR. RICARD: The first exhibit is just a Facebook
24 post. We'll have that marked as the next plaintiff's exhibit
25 in line, I believe 101.

1 **(Plaintiff's Exhibit Nos. 101, 102 & 103 were marked**
2 **for identification.)**

3 Here's your copy, Your Honor, so this would be
4 Plaintiff's Exhibit 102. These are ordinances related to the
5 R-1 district, R-2 district business commercial resort,
6 commercial and highway commercial districts. I believe these
7 summaries, Your Honor, will be marked as Plaintiff's Exhibit
8 103. There's a summary here regarding cancellations and that's
9 derived from Plaintiff's Exhibit No. 82. There's a chart that
10 tracks the southeast regional occupancy rate, and that's
11 derived from Plaintiff's Exhibit No. 87 -- excuse me,
12 Plaintiff's Exhibit No. 83, and then there's two other charts
13 related to the income generated, as well as the occupancy rate
14 in the comparison year 2021, 2022, 2023, and those two
15 spreadsheets derived from Plaintiff's Exhibit 87. With the
16 admission of those exhibits, Your Honor, our paper case in
17 rebuttal is finished, so we rest our case in rebuttal.
18 Also, Your Honor, I know we discussed this kind of at the
19 halfway point or after the plaintiff's case in chief, but we
20 don't intend to argue to substantially in closing related to
21 defendant's takings claim or due process claim. We've drafted
22 some bench briefs for the Court's assistance with those claims.
23 We understand that the Court may wish to reserve its ruling on
24 all those claims and we're not exactly sure whether we should
25 be making a motion for directed verdict or a motion for

1 involuntary nonsuit, but we did want to present the Court with
2 Bench briefs related to those two counterclaims for the Court's
3 consideration understanding that you may wish to preserve your
4 ruling on that, but we would make a formal motion for
5 involuntary nonsuit on those two claims in particular.

6 MR. TAMASITIS: Your Honor, I understand the due
7 process, but don't understand the takings claim, I don't
8 believe that's been nonsuited, so.

9 MR. RICARD: And I suppose with the Court's
10 permission we'd have this marked as the Court exhibit.

11 THE COURT: Sure.

12 Your Honor, we would just ask the Court give an
13 opportunity to reply.

14 **(Attorney Ricard presented a closing argument on**
15 **behalf of the Plaintiff at this time.)**

16 MR. RICARD: Your Honor, in this case we started out
17 by saying it's about forgiveness and not permission, and that's
18 what you've seen in this case. Beginning first and foremost
19 with Plaintiff's Exhibit No. 7, beginning on page 7 of that
20 exhibit, are the defendant's responses to the plaintiff's, the
21 City's, first set of request for admission. Defendant's
22 admitted to being aware of Section 23-2 of the City's zoning
23 ordinance prior to acquiring the property, so in essence, they
24 knew they couldn't own the property, nor could they operate the
25 cabana house, and yet, they purchased it anyways. You didn't

1 hear any Rule 30(b)(6) representative of defendants of how they
2 were aware, but Mr. Colman expressly denied having any personal
3 knowledge, Mr. Dibella didn't testify to knowing, and Ms.
4 Maynora wasn't around, and in fact, she wasn't even told about
5 the closure of the cabana house, but again, Your Honor, they
6 admitted to knowing this section of the City's zoning ordinance
7 and purchased the property anyways, and likewise, they also
8 knew about the next section, Section 23-22 of the City's zoning
9 ordinance. Now, defendant stated in the opening of this case
10 that it's about events or weddings or noise or trespassing or
11 other use issues, however, the City's complaint sets forth this
12 case is about those things. This case started out as a
13 declaratory judgment action related, not only to defendant's
14 ownership, but also to their use, so that remains true through
15 this week, as well, and defendants haven't disputed those use
16 issues and so we're not going to go line by line through all
17 the testimony or through e-mails that are contained within the
18 City's exhibits to prove up those use violations, however, it
19 is important for the Court to note from the outset in
20 considering the defendant's counterclaim analysis all the
21 City's interest in regulating the safety and the quality of
22 life issues that arise when a commercial enterprise goes
23 unregulated, when they don't apply for a special exception use
24 and when they don't attempt to attain business licenses or
25 alcohol permits. Thankfully, no one was killed or injured as a

1 result of the unregulated alcohol service or the overcrowding
2 around the pool, perhaps getting drowned or something like
3 that, but the quality of life issues that did result, they are
4 still serious, and they arose from defendant's ownership and
5 use, and their actions have led us directly to where we are
6 today. The City has an interest in promulgating zoning
7 ordinances and enforcing them so that we don't end up in a
8 situation where it's the wild, wild west. Ultimately,
9 defendants didn't contest the use violations in this case,
10 simply there's really no other way around it. Instead, what
11 they've done is log constitutional challenges, most of which
12 are not going to be analyzed in this closing argument by the
13 City, and even defendants in their opening statements said they
14 weren't going to be presenting any evidence on the due process
15 counterclaim, and we would humbly submit that their takings
16 counterclaim is equally without merit, and we are going to
17 incorporate by reference our argument in the Bench brief that
18 we just presented for the Court.

19 Instead, this closing argument is going to focus on
20 the Dormant Commerce Clause. This Court started this case by
21 asking an important question. What is the definition of
22 substantial? As the Court knows, it's common in the legal
23 world, there's a factor test here, specifically a four-factor
24 test. There's two cases from the United States Supreme Court:
25 United States versus Lopez and United States versus Morrison,

1 which the City cited in its opening that are the primary cases
2 here.

3 In the Fourth Circuit and others have viewed this
4 Lopez decision and the Morrison Opinion and set forth what that
5 four-factor test is, and we've cited to the Fourth Circuit
6 cases here in our slides: United States vs Bukalay
7 (phonetic) and United States versus Gibert, and we're going to
8 go through each factor here, Your Honor. So regarding the
9 first factor, whether the statute relates to an activity that
10 has something to do with commerce or any sort of economic
11 enterprise. Thankfully, commerce is definition that's a little
12 bit easier than substantial. Black's Law Dictionary defines
13 commerce as the exchange of goods or services. The two cases
14 that the City cited in our opening statement, Dean Milk versus
15 the City of Madison, Wisconsin. We've got the citations there
16 on the screen, 340 U.S. 349. The good that was at issue in
17 that case was pasteurized milk. The ordinance there prohibited
18 the sale of pasteurized milk unless it was bottled within a
19 five mile radius from the central square of Madison, Wisconsin,
20 so the good was pasteurized milk. That good has a direct value
21 in the market that has a set price, and it's dependent upon how
22 open or closed the markets are to the flow of milk across
23 municipal lines or state lines. Likewise, in Wickard v.
24 Filburn, although there was not a store selling a good or
25 service, congress passed an act that limited the amount of home

1 grown wheat that could be used for self consumption, so again,
2 the good was wheat. It didn't have to come from a store, but
3 it still impacted the market. Goods and services have a direct
4 relation to commerce, that's not what we have here in this
5 case. Here we have a property that's at issue, and that
6 property contains an amenity. It's an amenity use under the
7 ordinance, and what's more, the facts also bore out that it's a
8 free of charge amenity. All of the other cabana houses in the
9 city are free of charge and the cabana house at issue in this
10 case that's owned and operated by defendants was used in a free
11 of capacity way. The City has not been able to find any cases
12 in which the Dormant Commerce Clause analysis was found to
13 apply to an amenity like the one here. Instead, the Commerce
14 Clause analysis applies to the exchange of good and services,
15 that's the definition of commerce.

16 Moving to the second factor, Your Honor, the factor
17 is whether the statute contains an expressed jurisdictional
18 element which might limit its reach. So again, going back to
19 one of the primary Supreme Court precedence in this field, the
20 case of Dean Milk, it holds a City may not place itself in a
21 position of economic isolation. Clearly, the Supreme Court is
22 focused on the complete exclusion of the market, and again,
23 that's not what we have here. The project requirement in the
24 City's code of ordinance has a jurisdictional limit. It only
25 applies in the R-4 resort residential district. The City

1 leaves itself open to commercial recreational activities in
2 many other areas. For example, in Section 23-27, which is for
3 the zoning district resort commercial district, which was just
4 submitted to the Court in our case on rebuttal. It allows as a
5 permitted use commercial recreation establishments. A
6 permitted use, that's a use by right. Defendants haven't shown
7 that they have been unable to secure property and own and
8 operate commercial recreation establishment in the resort
9 commercial district within the City of North Myrtle Beach. In
10 that definition, although it may not be highlighted on the
11 screen, within that definition of Section 23-27, it considers
12 pools to be a recreational use as well under the commercial
13 recreation establishment definition. In the zoning map within
14 defendant's exhibits and testimony from the City's corporate
15 representative, Jim Wood, established that the R-C zones, the
16 resort commercial zones, they also include beachfront lots, and
17 so, again, the defendants are not excluded from the beachfront
18 either. Likewise, the business commercial district and the
19 highway commercial district allows for these same commercial
20 recreation establishments, as well, so there's two other zoning
21 districts on top of the resort commercial, which we see here on
22 the screen. Business commercial allows these facilities and
23 amenities to be used as special exceptions rather than a
24 permitted right or a permitted use, but the highway commercial
25 district actually allows them to be a permitted use, as well,

1 just like the resort commercial. And you heard testimony from
2 the City's representative that these three zoning districts
3 span from the beachfront to just a few blocks away from the
4 beach, as well.

5 Moving to the third factor, Your Honor, is the one
6 that regards to legislative history. Whether legislative
7 history supports the judgment that the activity in question has
8 a substantial effect on interstate commerce. We submitted to
9 the Court in Plaintiff's Exhibit No. 6 22 pages of that
10 legislative history, and nowhere does it purport in that
11 legislative history to show that the City was concerned or
12 wanted to regulate interstate commerce. Now, defendants very
13 likely in a few minutes will come up and talk to you about some
14 of the City's interrogatory responses, and their beholding to
15 this idea that the City has conceded the case in responding
16 interrogatories, but they do not, Your Honor. The law holds
17 that interrogatory responses are not binding, and I'll cite the
18 Fourth Circuit case of Marcoin, Incorporated versus Edwin K.
19 Williams & Company, Incorporated, 605 F.2d 1325, which states,
20 quote: As a general rule and answer to an interrogatory does
21 conclusively bind the answering party, and likewise here, Your
22 Honor, so Mr. Wood testified that interrogatory responses were
23 due before the City had searched for, compiled and reviewed the
24 legislative history, and so the interrogatory response that the
25 defendants find so important to their case has little weight

1 here. Instead, what matters under this third factor is the
2 legislative history. What was the original intent behind this
3 ordinance? When you conduct that analysis it reveals the
4 following: In Plaintiff's Exhibit No. 7, the very first page,
5 you see is an agenda from the City of North Myrtle Beach
6 Planning Commission. This is November 27, 1995. And what it
7 states is what they were actually trying to accomplish with
8 cabana houses being a special exceptions, and they've
9 highlighted from the very first instance, from the very first
10 instance, that cabana houses are meant to be used in a limited
11 non-commercial manner. Further into that legislative history,
12 Your Honor, is a staff report that was drafted by Mr. Blust,
13 and this is just a few days later, November 29th of 1995, and
14 what's noted here is that the public will benefit from this
15 type of arrangement because of the reduction of competition for
16 the public parking spaces by the residents of these projects.
17 Public parking is currently in short supply, and you heard the
18 City testify that the public parking is always a concern in a
19 tourist destination. By allowing residents and guests of
20 in-city projects the ability to shuttle to cabana houses it
21 actually reduces the competition for public parking. So that
22 means out-of-state tourists can benefit from that reduction of
23 competition. So in actuality, this special exception allowance
24 allows for more travel and more tourism into the city from
25 outside of its boundaries, and so in so doing what these

1 ordinances accomplish is a strike and a bounds of preserving
2 the character of residential neighborhoods, establishing the
3 density and intensity of use for residential neighborhoods and
4 directing the flow of tourists into heavy influx of transient
5 visitors to the public beaches of North Myrtle Beach. You also
6 heard testimony that the City did not want to become a beach
7 area dominated by highrises on the oceanfront. Ocean
8 visibility and family-friendly communities has always been
9 important to the City, and by allowing for beachfront cabanas
10 it creates the opportunity for developers to move inland rather
11 than push for higher and higher condominiums on the oceanfront,
12 and you see that in the definition and the very purpose of the
13 R-4 resort residential district. At the very tail end of that
14 purpose statement for this district it says that it's meant for
15 the mixed use developer of the residential area but not at the
16 expense of ocean visibility and access by the community. And
17 again, you heard testimony that access by the community
18 includes those concerns about parking and congestion and
19 density.

20 The final factor, Your Honor, is the fourth factor,
21 whether the link between the activity and a substantial effect
22 on interstate commerce is attenuated. Now, defendant's own
23 conduct shows you that they did not view that the cabana house
24 had a substantial effect on their individual personal commerce.
25 They consented to the cabana house closure, indeed it was at

1 their prompting, and they were the primary drafters of the
2 consent order in this case. They did not tell their incoming
3 general manager, Ms. Maynora, at the RV resort about the cabana
4 house closure during any of her interviews which took place
5 between that January time frame and April when she was hired.
6 They waited two months to inform their marketing team, they
7 waited over six months to inform respective customers on
8 Facebook. If this was a substantial concern for defendants
9 they would have acted completely opposite, Your Honor, but even
10 outside of defendant's actions their data shows a clear
11 attenuation. You heard testimony about cancellations from Ms.
12 Maynora. What's depicted on this screen is a summary of
13 Plaintiff's Exhibit No. 82, and they were produced by
14 defendants in this case. There are thousands and thousands of
15 cancellations at the RV resort over the course of several
16 years. Beginning in 2020 there were just over 5,000, then in
17 2021 there were over 5,700 cancellations. It was at the
18 beginning of January 2022, January 11th, to be exact, when the
19 consent order was entered. It was also in December of 2021,
20 just one month before, where defendants opened a whole new
21 phase, 123, I believe, new spots, new units, available for rent
22 at their RV resort. Despite all of that, cancellations
23 compared to 2021 to 2022 actually go down. Reservations are
24 increasing, they have more spots available, the consent order
25 is in place, and yet, cancellations go down in 2022 compared to

1 2021. And then you see the cancellations in 2023 which we're
2 still currently in, however, they made notations on their
3 cancellation spreadsheets, and there's only 12 times, a dozen
4 there's 12 times out of over 5,300 cancellations, 12 times
5 where they note that the closure of the cabana house was the
6 reason for the cancellation. That is .22 percent, if you do
7 the math for the numbers of 2022, and year-to-date, 2023, at
8 least as of September 12, 2023, there are zero notations in
9 their cancellation remarks that the cancellation was due to the
10 closure of the cabana house. If they find that this closure of
11 the cabana house is so important to their bottom line, you
12 would think that they would make notations about it, and what
13 they've done, they only done 12, they've only done 12. Mr.
14 Dibella also testified that the nationwide portfolio of RV
15 resorts within the Sun Communities umbrella was down, I think
16 he said around one percent or so, comparing 2022 with the 2021
17 banner year, however, he specifically testified that he was
18 testifying on behalf of the nationwide portfolio, and he also
19 testified on Cross that regional impacts can occur and regional
20 differences matter. He stated that Florida caters to a much
21 more permanent crowd and so it makes sense that Florida's
22 numbers may be more stable than a more transient location like
23 Carolina Pines and other resorts across the southeast. Mr.
24 Dibella testified that he hadn't done a review of the
25 southeastern region, but we have, Your Honor. What I'm

1 displaying now is year-to-date total occupancy percentage, and
2 this is not year-to-date in September, this is year-to-date,
3 the full calendar year of 2021 and comparing it to 2022. At
4 the very top you see Carolina Pines listed there, and below
5 that are all the southeastern RV resorts within the Sun
6 Communities portfolio, and what you see there is a lot of red.
7 Sun Communities doesn't have a nationwide problem, they have a
8 southeastern problem. The occupancy rate from 2021 dropped
9 fairly significantly between nine and ten percent, if you do
10 the average across these dozen or so locations, and it makes
11 sense, Your Honor, the southeastern region opened up a whole
12 lot quicker than other parts of the country, and so in 2021
13 when that RV boom was happening, it was great for locations
14 like Carolina Pines and other places across the southeast, but
15 in 2022 when folks, especially when the southeast started
16 reverting back to the traditional traffic patterns, such as
17 going to hotels and short term rentals, the RV industry
18 suffers, as you see here with all the red percentages. What
19 I've done here, Your Honor, because I do understand that there
20 might be some outliers here, if you see Camp Golden Valley and
21 Cape Charles, they have pretty precipitous declines, around a
22 negative 53 percent or so decrease. And so in the bottom of
23 this chart, Your Honor, I've actually excluded those and I'm
24 just giving all the benefit of the doubt to defendants here in
25 excluding those, and what you'll still find is that across the

1 southeastern region, even if you exclude outliers like those,
2 there's still a decrease in the year-to-year occupancy rate
3 across the southeast, and so for Mr. Dibella to testify that
4 Carolina Pines occupancy rate has gone down for the cabana
5 house closure and the cabana house closure alone, is simply
6 relied by the data, Your Honor. What Mr. Dibella did do, Your
7 Honor, was create a chart that looks something like this, this
8 is a slightly different visualization of what defendants
9 produced in their summary, I believe it was their summary,
10 Defendant's Exhibit 40. We just kind of created a slightly
11 different chart that tracks this data, but it's a year-to-date
12 average from January through September comparing the years
13 2021, '22 and '23, and what you'll see, as Mr. Dibella
14 testified, was that 2021 was a banner year, and then it goes to
15 a slight decrease in 2022, and then an uptick in 2023, and that
16 happens, that level of data, that tracks whether you're just
17 considering the entire year, or from January through September,
18 or whether you do the April to September summer average, the
19 peak season, if you will. However, Your Honor, again, what Mr.
20 Dibella testified was that supply matters. The occupancy rate
21 is determined by the total occupied nights over the
22 denominator, which is the total available units available for
23 reservations, and what happens in December of 2021 is a 17-plus
24 percent increase in the available sites. There's an additional
25 123 sites that are added to the RV resort, and so he even

1 admitted on cross-examination that to try to compare just the
2 raw numbers of 2022 with 2021 is an apples-to-oranges
3 comparison, because it does not factor in that increase in the
4 denominator that should -- that is there, but what we've done,
5 Your Honor, is create a normalization chart, and so what we've
6 done is we've taken the 2022 total available site nights, used
7 that for the denominator, and then taken the 2021 occupied site
8 nights in order to come up with the normalization rate for the
9 year of 2021. Again, we take the same time span, from January
10 to September, and you see on the right-hand side the columns
11 there, there's the year-to-date average, and then there's also,
12 we've done the same calculation just taking the April to
13 September summer average or peak season average, and what you
14 see is that when you take into consideration those additional
15 123 sites, that additional 17-plus percent, the normalized 2021
16 occupancy rate goes down to 60 percent instead of the
17 71 percent that the defendants have been alleging, and so when
18 you do that you actually see a growth year, over year, over
19 year. It goes from 60 percent in 2021 to 63 and a half in
20 2022, to nearly 67 percent in 2023. So when you take this
21 analysis into consideration, Carolina Pines is actually way
22 outperforming everywhere else in the southeast. That entire
23 southeastern trend that we just talked about, Carolina Pines is
24 well above that when you factor in this additional supply, and
25 of course, Your Honor, this impacts the bottom line, the

1 revenue that's being generated, and so in our final chart, Your
2 Honor, we've got a year-to-date revenue comparison relative to
3 the available site nights, and that's a year-to-date through
4 September 2021, '22 and '23, and what you see is there's,
5 again, the numbers over 17 percent increase in those available
6 site nights. There's actually a slight downtick to going into
7 2023 in available site nights, but regardless, the total
8 occupied site nights in raw absolute numbers increases, and
9 increases by over four-and-a-half percent in 2022 compared to
10 the prior year, and then it increases another nearly five
11 percent in 2023 relative to the prior year. So I'm trying do
12 my math here, nearly ten percent, nearly a ten percent growth
13 from 2023, relative to 2021. And despite a 17 percent increase
14 in supply, there's actually over a 23-percent increase in
15 revenue that's being generated by Carolina Pines. So the
16 bottom line, Your Honor, with all these charts is that
17 defendant's reservations have increased, their revenue has
18 increased, and they don't have any occupancy issue at all at
19 their Carolina Pines RV resort, and again, once that occupancy
20 rate is normalized in 2021 with the 2022 supply of units, they
21 are vastly outperforming the southeast region, as well as the
22 nationwide portfolio. Even if defendants can demonstrate a
23 substantial effect on interstate commerce, the City has
24 nevertheless established a legitimate local interests that are
25 promoted by the project requirement and the HOA requirement.

1 First, these requirements are not unique. Cabana houses are
2 essentially accessory uses, and much like clubhouses are
3 accessory uses to projects also inside the city, and those are
4 found in the R-1 and R-2 zoning districts, which we've just
5 presented to the Court as exhibits in our case in rebuttal.
6 Defendants are not allowed to have a clubhouse in R-1 or R-2
7 because they are not a project inside the city, but that
8 doesn't mean they are discriminated against. Again, they can
9 go have a recreational commercial facility in a number of other
10 different zoning districts. The legitimate interest of the
11 city includes, as we've discussed, ocean visibility, reduction
12 in public parking competition, but the City also has an
13 interest in regulating the intensity of use within zoning
14 districts, and the City went through e-mail after e-mail of
15 internal discussions amongst defendants in which they
16 recognized in advance that intensity issues were going to
17 result from their use of the cabana house. We went through
18 those e-mails at length with Mr. Colman and Mr. Dibella. They
19 knew that they were about to start dropping off hundreds of
20 guests, and that led to canceled memberships due to
21 overcrowding and so these complaints and these issues were not
22 just from the neighbors, these were also from the members of
23 Seabrook that were also using the cabana house, even
24 defendant's own employees noticed this, as well. They've noted
25 that the beach club is over capacity, they noticed the issues

1 that were resulting from it, and Ms. Stryker said it was
2 extremely overcrowded and they weren't able to control it and
3 had no way to control it, and that issues, these intensity of
4 use issues, that leads to safety issues, it leads to health
5 issues if things are floating around in the pool, it leads to
6 altercations and trespassing and congested parking lots for Sea
7 Cloisters, the neighboring properties. It also lead to noise
8 issues and light issues. I'll talk briefly, I know I don't
9 want to go through every single wedding or event, Your Honor,
10 but we did talk about the 6:00 a.m. sunrise wedding, and that
11 was for the Christenson wedding on April 10, 2021. A DJ was
12 there, alcohol was served, according to Mr. Martucci, but if
13 you notice, in Plaintiff Exhibit 5, this is the guest guide for
14 the RV resort, defendants have quiet time hours from 11:00 p.m.
15 to 8:00 a.m., and they ask for no loud noise, no loud talking,
16 no loud music, or anything like that during these quiet hours,
17 and they ask their guests to please be courteous around others,
18 the defendants didn't do that at the cabana house. They have a
19 DJ playing at 6:00 a.m. in the morning. So again, generally
20 speaking, the intensity of use issues result in a number of
21 quality of life issues, and that was ultimately vastly
22 different from a comparison of how the cabana house was being
23 used by a project inside the city. A project inside the city
24 has more permanent residence compared to the more transient
25 vacationers from the RV resort. The more permanent residents

1 simply are not going to frequent a cabana houses as much as a
2 more transient vacation population from the RV resort. One
3 argument that you may hear, and those numbers bear out in
4 Plaintiff's Exhibit 62, defendants tracked these numbers, and
5 you can see that there and I do want to make this point to be
6 clear for the Court. Just because there's a substantial use
7 and substantial overcrowding that occurs at the cabana house,
8 that's vastly different from whether there's a substantial
9 effect on interstate commerce. In fact, if you do these
10 numbers and compare them, you know, there's on average, you
11 know, over 100 in the June time frame, but their total occupied
12 site nights are in the thousands. They've got tons of people
13 at the RV resorts, so relatively speaking, its substantial
14 effect on neighboring properties, but as far as the use that's
15 being -- as far as the numbers of folks at the RV resort that
16 are using the cabana house, insubstantial. It's the density
17 and intensity of use differences that I'm trying to make clear
18 here, Your Honor, and ultimately, the use ordinances alone are
19 not sufficient to handle this intensity of use. As you heard
20 Mr. Shortle state, we'd be in court every day with citations,
21 and that's not something that a municipality like the City of
22 North Myrtle Beach has the resources to handle. You heard from
23 Mr. Mahaney that there are a lot of pressing issues that the
24 city faces, sometimes cops getting shot, sometimes getting
25 killed, you have issues all over the city that the city does

1 not want to have to focus its time and resources and energy on
2 trying to regulate noise and lighting issues and overcrowding,
3 and that sort of thing. That's why they designed these
4 ordinances like they did, for an HOA to be there, to be that
5 intermediary body, to be self regulated and self governing,
6 because when you don't have a business license it is the wild,
7 wild west, and the HOA use is designed in order to alieve and
8 relieve the City from having to expend resources to regulate.
9 In a situation like this, Your Honor, in the context of a
10 cabana house, even if the defendants were cited every single
11 day, that \$500.00 would simply be viewed, that \$500.00 citation
12 will simply be viewed at the cost of doing business. We
13 already know that they were backed by a billion-dollar company
14 or so, you can see that in the 10-K that was produced by
15 defendants in their exhibit, and you can also see that in
16 Plaintiff's Exhibit No. 56. They are going to pass this cost
17 on to the customer. What you see here is an e-mail that
18 regards -- we didn't cover this -- it's been admitted into
19 evidence, but we didn't cover this with any witnesses, but what
20 you'll see here is communications regarding a wedding, and what
21 this e-mail reveals is that their fee for the use of the beach
22 club clubhouse is \$500.00. Pretty coincidentally, that's the
23 same exact price of a citation that the City would have for
24 violating the zoning ordinances, but if you read further they
25 say: As you're a guest of the resort we may be able to provide

1 alternate locations at the RV resort at no charge. They will
2 \$500.00 for the cabana house, but they will give you a free
3 location to reserve if you want to have a wedding or a vow
4 renewal, or some type of event at the RV resort. It's pretty
5 telling why they want to charge \$500.00 for the cabana house,
6 because, perhaps, they know that if they get fined and cited
7 they are going to pass that \$500.00 off to the customer to pay
8 for it. In order to ensure a non-commercial use and provide
9 mechanisms for enforcement in the absence of a business
10 license regulation, an HOA makes reasonable sense to ensure
11 that the location can be self-governed in a way that takes
12 account the neighboring properties. You also have heard
13 testimony from the City's representatives that an HOA is more
14 responsive in this context than a corporation that is asking
15 for forgiveness rather than permission, and I'll just note,
16 Your Honor, that you can, perhaps, see the responsiveness on
17 display this week in this courtroom. Mr. Shortle as the HOA
18 president for Sea Cloisters I has been here this entire week.
19 I don't think you can say the same thing about the defendant's
20 representatives. Lastly, the quality of life issues, of which
21 there are many, can impact property values, and multiple
22 witnesses testified to that point, as well, Your Honor. The
23 City has an interest in ensuring the maintenance of property
24 values.

25 In conclusion, Your Honor, the law says defendants

1 are not entitled to operate in their preferred way of doing
2 business. It's not the Interstate Convenience Clause, you
3 don't get to do whatever you find to be convenient. Instead,
4 it's the Commerce Clause, and defendants have not proven an
5 effect on the interstate commerce. According to the case of
6 Wal-Mart Stores versus the City of Turlock, there is no
7 constitutional right to do business in a retailer's optimally
8 profitable store configuration, especially if a resulting
9 operation burdens all the interest that a city has, and that's
10 what you have here, Your Honor. Defendants want to use
11 property as they see fit, but they are not allowed to under
12 normal traditional zoning laws. The City is based on tourism,
13 Your Honor, it's not isolating itself from tourists. It's not
14 excluding outside forces from entering its market, it welcomes
15 them. Defendants argument that we're discriminating against
16 them and the interstate tourism belies all facts and logic.
17 The City respectfully requests that you find in its favor and
18 dismiss defendant's counterclaims. Thank you, Your Honor.

19 THE COURT: Thank you. Defense will recognize.

20 MR. TAMASITIS: Thank you, Your Honor. I just need a
21 few minutes to set up.

22 MR. RICARD: Your Honor, while Defendants are
23 preparing, I would like to enter the City's closing arguments
24 slides into the record.

25 **(Plaintiff's Exhibit No. 104 was admitted into evidence.)**

1 **(Attorney Tamasitis presented a closing argument on**
2 **behalf of the Defendants at this time.)**

3 MR. TAMASITIS: May it please the Court, Your Honor
4 opposing counsel, first I want to thank the Court and court
5 staff for this week. It's been a long week for all of us, and
6 I appreciate you accommodating us for this.

7 I want to talk about the roadmap for this case if and
8 how the Court can decide and the way we view it is, you know,
9 option one would be that the Court would declare the entirety
10 of the residency requirement unconstitutional as a violation of
11 the Dormant Commerce Clause, and then we would proceed to a
12 jury phase of the trial on the damages and attorneys fees
13 pursuant to 42 USC 1983 and 1988. The second option is to
14 declare a portion of the residency requirement unconstitutional
15 under the Dormant Commerce Clause, and then we would proceed to
16 the jury phase of the trial for damages and attorney's fees.
17 The third option is to declare the zoning ordinance enforceable
18 and that Sun defendants ownership and use of the property must
19 immediately cease and desist as the plaintiffs have requested
20 in their claim and then find that such a declaration in favor
21 of the City constitutes a regulatory taking, and in that case
22 we would then proceed to the jury phase of this trial for
23 determination of just compensation and then attorney's fees, or
24 the Court could declare the zoning ordinance enforceable and
25 that no taking has occurred, which would then end the case.

1 Obviously, Your Honor, we don't want you to go the
2 fourth route, but I want to go back to my opening statement
3 about what this trial was really about and what it wasn't
4 about. It was not about past operational issues at the beach
5 club, this is not a nuisance case, and it's not a lawsuit that
6 was brought by Sea Cloisters, this was a lawsuit brought by the
7 City of North Myrtle Beach, and this is the R-4 resort
8 residential district, and this is the testimony from Mr. Wood
9 in his 30(b)) (6), which he confirmed on the stand that there
10 was no reasonable cure for the residency requirement issues
11 here, that a cabana house has to be owned and accessed by
12 homeowner's association for a project in North Myrtle Beach.
13 If it had just been the use issues they would have taken their
14 normal enforcement mechanisms and would have gone that route,
15 instead, what's at this issue here is this residency
16 requirement, whether it's constitutional or not. As a matter
17 of fact, Mr. Mahaney testified in his deposition, and also
18 testified on the stand that he doesn't care who owns it, he
19 just wants the use issues to be resolved, and he didn't have
20 any say in why they brought this lawsuit, and the reason why is
21 because the only issue here is the residency requirement,
22 everything else is just sound and furious signifying nothing.
23 It was not about whether Sun defendants had full knowledge of
24 the zoning ordinance and how the City would interpret it, and
25 after this trial I'm not sure it's clear anyone knows how the

1 City interprets its zoning ordinance at the present time. I
2 mean, just yesterday we found out that the homeowner's
3 association might not have to be in North Myrtle Beach, but the
4 zoning ordinance itself does clearly state -- or the zoning
5 letter does clearly state that the cabana house was being used
6 as a cabana house at the time and legally used as such since
7 construction, we've heard a lot of testimony that that was not
8 the case. We heard from Mace Watts that he was using it as a
9 private beach club, which the City knew was in violation of
10 the zoning ordinance, and it's also not about what other
11 remedies Sun could pursue. There's been testimony about going
12 after the title insurance, about suing Sun's attorneys, or
13 suing Mace Watts. None of those, though, would result in the
14 Sun defendants continued ownership and use at the beach club,
15 and that's why we're here at this trial, and this trial was not
16 about Sun defendants asking for forgiveness rather than
17 permission. The Sun defendants were simply planning to use the
18 beach club as Mace Watts did when they purchased it.

19 What this trial is about and what this case has
20 always been about is whether the residency requirement imposed
21 by Sections 23-2 and 23-22 discriminating against interstate
22 commerce on its face and its effect or in its purpose. I have
23 to admit, drafting this closing argument was difficult because
24 the City has made the interpretation of the applicable sections
25 a moving target. Let's start with the zoning letter. The City

1 said that, or testified on the stand, that you could rely on
2 the interpretation of the zoning administrator for the zoning
3 ordinance and the City relied on them and that the citizens
4 could rely on the zoning administrator, as well, unless the
5 zoning administrator was wrong, and then you had to look behind
6 the zoning administrator and do his work for him, even though
7 he's an AICP certified land planner and that his standard of
8 care is to make sure that he did an accurate and thorough job
9 when representing interpretations of the zoning ordinance, but
10 in case he got it wrong you needed to look behind him. The
11 City also previously stated that the residency requirement
12 provided that the ownership and access to the cabana house was
13 exclusively limited to projects in North Myrtle Beach, but at
14 trial it could now be used for guests and potentially
15 homeowner's associations outside of the City, and as far as the
16 economic considerations are concerned when the special
17 exception was created, previously this was a large part of the
18 residency requirement, was to protect the economic interest of
19 the city, but now after Mr. Wood has taken a deeper look at the
20 legislative history of counsel before trial and presumably
21 spoken to his attorneys, it's only a small factor, however, the
22 City has never backed away from its original interrogatory
23 responses, and I understand what counsel said that
24 interrogatory responses are not an admission, but in their
25 depositions and Mr. Caldwell on the stand after he was

1 confronted with his past deposition, have all confirmed that
2 they agree with these statements, that the project restriction
3 is set up to operate and encourage and support local private
4 developments and their corresponding homeowner's associations
5 as opposed to non-local and corporate enterprises by providing
6 them with private beach club access and access points to the
7 beach. It also encourages investments in the city, rather than
8 projects outside of the city, and the same goes for the
9 homeowner's association requirement. It may not be an
10 admission, but the testimony is.

11 Finally, and perhaps most startling, is that the
12 residency requirement that the cabana house must be owned by a
13 homeowner's association for a project in North Myrtle Beach no
14 longer requires that the homeowner's association be located in
15 North Myrtle Beach. I sat down a long time last night trying
16 to figure out how that would work and I couldn't come up with a
17 reasonable explantation. It's clear why the City's testimony
18 and interpretation of the zoning ordinance is constantly
19 changing. The City's looking for any avenues to avoid a
20 straight forward reading of the plain language in Sections 23-2
21 and 23-22, and that's all we're asking the Court to do.

22 Now, Your Honor, we've presented this in somewhat of
23 a different manner at the two motions for summary judgment.
24 What is this test, the Dormant Commerce Clause test? In
25 question one, the question the Court posed to us at opening

1 statements was, what is the substantial effect on interstate
2 commerce and how do you define that? And so the question one
3 is, does the ordinance and/or activity have a substantial
4 effect, which would then implicate the Dormant Commerce Clause
5 or vice versa, the Commerce Clause, under the United States
6 constitution. The second question, then, is does the ordinance
7 discriminate against interstate commerce on its face in its
8 practical effect or in its purpose? You'll note that closing
9 arguments and on the stand, the City does not dispute that the
10 zoning ordinance discriminates. And then the burden would
11 shift to the City if the answers to those first questions are
12 yes, and then the City must show that it has no other
13 reasonable non-discriminatory alternatives that exist to
14 achieve its legitimate purposes, and I will tell Your Honor, we
15 do not take issue with the City's municipal purposes, they're
16 valid. We understand quality of life, responsiveness and the
17 preservation of property values, which is an economic
18 consideration, but the City can't go through that process and
19 achieve those interests unconstitutionally, so what question
20 three is actually saying is does the City have no other choice
21 but to discriminate against interstate commerce, and there is
22 only one Supreme Court Opinion out there, Maine versus Taylor
23 that said that, yes, you can get through the strictest
24 scrutiny, and I believe it was dealing with big fish and
25 natural resources. So let's talk about the residency

1 requirement that's imposed by Section 23-2 and 23-22, that a
2 cabana house must be owned and utilized exclusively by a
3 homeowner's association for a project located in North Myrtle
4 Beach. I want to talk, Your Honor, about this substantial
5 effect test that the City Counsel has posed, and I want to walk
6 through the case law that created this Lopez and Morrison
7 factors, and I want to take issue with something, because it's
8 not a full comprehensive look at the case law. After Wickard
9 v. Filburn, which we've talked about ad nauseam and you read it
10 in every law school book, after Wickard v. Filburn in 1942,
11 from 1942 until about 1995, the Supreme Court never struck down
12 a law that congress enacted under its congress power, until
13 Lopez and Morrison, and the Rehnquist Court, and the Rehnquist
14 Court finally said, enough is enough, because what Lopez and
15 Morrison were dealing with were non-economic activity. Lopez
16 was dealing with the Gun-free School Zones Act of 1990 and
17 Morrison was dealing with the Violence Against Women's Act of
18 1994. Five years after Morrison came Gonzales v. Raich, which
19 was a medical marijuana case where the Court found that it was
20 an economic activity, albeit, a legal one, that said congress
21 can regulate under the commerce power because it's an economic
22 activity, and in that there's the quote: To support their
23 contrary submission respondents rely heavily on two or more
24 recent commerce clause cases. In their myopic focus they
25 overlook the larger context of modern era commerce clause

1 jurisprudence preserved by those cases, moreover, even in the
2 narrow prisma response creation they read those cases far too
3 broadly. They're talking about Lopez and Morrison, and here
4 North Myrtle Beach has made the very same mistake. Because in
5 Raich, what the Court found and said that Morrison and Lopez
6 were different, is that that Morrison Lopez dealt with
7 non-economic activity, and under that non-economic activity you
8 go to the Lopez Morrison factors. The Lopez and Morrison did
9 not get rid of our Commerce Clause jurisprudence that
10 originates from Wickard, and from Wickard it says that if it's
11 an economic activity in the aggregate if it has a substantial
12 effect on interstate commerce congress can regulate it, and the
13 breath of this scope how substantial it needs to be is under a
14 rational basis test. All congress needs to do if it's an
15 economic activity is show that they may have an opportunity to
16 regulate it, it may be interstate commerce. With Lopez and
17 Morrison, these factors that the City went through, let me talk
18 to you about them and let me explain what they actually mean.
19 When the statute relates to an activity that has something to
20 do with commerce or any sort of economic enterprise, question
21 mark, is it economic or non-economic? If it's economic we go
22 to Wickard. If it's non-economic, we got to look at the next
23 step, and the next step is whether the statute contains and
24 expressed jurisdictional element which might limit its reach.
25 What the Court was interested in here, specifically for Lopez,

1 and there was actually a gun law that was passed after Lopez
2 that, I do some firearms regulatory work and I see this law all
3 the time and it talks about, well, if the gun was used in the
4 commission of a crime and also used in interstate commerce it
5 creates that jurisdictional hook for congress then to enact it
6 under the commerce clause, that's what it means. It doesn't
7 mean that there's other places you could go to satisfy your
8 economic interests. It's a jurisdictional hook for congress to
9 use to get under the Commerce Clause, that's what number two is
10 about. Number three, whether the legislative history supports
11 the judgment that the activity in question has a substantial
12 effect on interstate commerce. The case law talks about
13 congress doing congressional findings here to find research as
14 to whether or not this attenuated non-economic activity
15 actually does have an impact on interstate commerce, and if so,
16 how, to see if it's substantial enough. And finally, whether
17 the link between the activity and substantial effect on
18 interstate commerce is attenuated, and that attenuation is what
19 the Rehnquist Court warned congress about when they were
20 deciding Lopez and Morrison. They said, you can't go inference
21 by inference by inference with a non-economic activity, there
22 must be with a direct link between the non-economic activity
23 and the interstate commerce that you're trying to regulate. So
24 as I said, Your Honor, when we're dealing with non-economic
25 activity, that is the proper test, but when congress is

1 exercising its power on economic activity, we go back to
2 Wickard, and Wickard said that even the home consumption in the
3 home engagement of Wheat could have a substantial impact on
4 interstate commerce in the aggregate, and that's what
5 substantial effect on interstate commerce means. It's whether
6 in the aggregate all of to people engaged in that economic
7 activity, in that intrastate economic activity would have an
8 impact on interstate commerce. So here's the real question,
9 Your Honor. What is the activity here that's being regulated
10 by the zoning ordinance? There are two things being regulated
11 under 23-2 and 23-22 of the zoning ordinance, the use of cabana
12 houses in the city, which we've heard a ton of testimony about,
13 and the ownership and access to cabana houses in the city.
14 What's being challenged? The use of the cabana house can be
15 non-commercial, but the ownership and access is the substantial
16 effect on interstate commerce, that's the economic activity for
17 a project, whether it be a homeowner's association, whether it
18 be a residential district, whether it be a condominium
19 association, whether it be a timeshare, an RV resort, or even a
20 commercial project, which Mr. Woods said, could it be a project
21 under the definition, whether they can own a cabana house and
22 use it in its operations, that's why the homeowner's
23 association and the project are tied together, and that's why
24 they have both have to be in North Myrtle Beach, and that's why
25 they both discriminate against interstate commerce. The thrust

1 of the City's argument is that because the use of the cabana
2 house in the city cannot be with commercial use, then the
3 zoning ordinance does not substantially effect interstate
4 commerce, however, the ownership and access to the cabana house
5 is the regulation that's being challenged. So what is a
6 project? I just went through this. Residential communities,
7 condominiums, timeshares, manufactured housing, commercial
8 projects, RV resorts, HOA's, all of whom can have short-term
9 rentals, all of whom, including HOA's, can be organized as
10 not-for-profit companies, cases we've cited previously, which
11 we're going to talk about, Hignell-Stark versus City of New
12 Orleans with short-term rentals. The Court didn't even look at
13 whether or not that was interstate commerce. That's in, let's
14 figure out if it's under The Dormant Commerce Clause. In Camps
15 Newfound Owatonna, they actually did look at it because it was
16 a not-for-profit campground, and the Court decided, well, I
17 guess we're being challenged, if that is interstate commerce,
18 yeah, that's in the interstate commerce, let's see if it
19 violates The Dormant Commerce Clause. Homeowner's
20 associations, RV resorts, commercial projects, manufactured
21 housing, timeshares, condos in residential communities do
22 engage in interstate commerce, whether through vendors, as
23 we've talked about, advertising, whether utilizing the cabana
24 houses themselves for events, all of that is interstate
25 commerce. Now, it may be interstate on its face with that

1 single firm, but in the aggregate when they all do it, it has a
2 substantial effect on interstate commerce, and that's what
3 Wickard is about, and that's what substantial effect meets.
4 Each type of project is not substantially affected, but they
5 are engaged in interstate commerce. In the RV resort, the
6 reason why we put the occupancy rates up, the reason why we
7 discussed the shuttle buses, the reason why we discussed all of
8 the business that Carolina Pines does is because it's laughable
9 to argue it's not engaged in interstate commerce, and the RV
10 resort, one of its amenities is that cabana house, it is part
11 of the RV resort, just like Barefoot's cabana house is part of
12 Barefoot. They are one of the same, and they're engaged in the
13 same business, the hospitality industry, in one of the biggest
14 tourism industry markets in the state, if not in southeast. To
15 say it doesn't implicate interstate commerce, it just doesn't
16 make sense, of course it does. Here's some cases that we can
17 talk about where substantial effect on interstate commerce was
18 at issue and we talked about some of these cases: Camps
19 Newfound Owatonna, C&A Carbone versus Clarkstown, which is
20 regulations regarding the service of processing and disposing
21 of solid waste. Hignell-Stark, I'm going to talk about that in
22 a little more detail in a second. In the Northeast Patients
23 Group versus United Cannabis Patients & Caregivers of Maine,
24 residency requirement for officers and directors of medical
25 marijuana dispensaries. It's not the selling of wheat, it's

1 not carting the milk across state lines, the Court found all of
2 these implicate interstate commerce in all having doing the
3 Commerce Clause analysis.

4 Here's from our own Court of Appeals. Talking about
5 how the Dormant Commerce Clause jurisprudence significantly
6 limits the ability of state and localities to regulate or
7 otherwise burden the flow of interstate commerce. What the
8 City has done through the residency requirement is burden the
9 flow of interstate commerce by eliminating who can own and
10 operate a cabana house. Yes, they can put restrictions on the
11 use, and we don't take issue with that. We've made multiple
12 references that if we were allowed to open up again, yeah,
13 we'll follow these use of requirements. We made mistakes, we
14 don't shy away from it, but you have those municipal interests
15 and you can try to satisfy those municipal interests, but you
16 can't do it unconstitutionally. Camps Newfound Awatonna, we
17 talked about this in the previous hearing. Interstate
18 commerce, and what I've done is I've the case and I've actually
19 added into the RV resort language, because it matches so
20 perfectly. It's a not-for-profit campground that was operating
21 in, I believe, 90 percent of its guests were from out of state,
22 here we have 69 percent, yet, not anyone's taken issue, I
23 haven't seen an attorney chart that takes issue with that
24 percentage, so 69 percent of our guests are from out of state.
25 Interstate commerce is substantially affected by the activities

1 of the RV resort, just like hotels, that solicit patronage from
2 outside the State of South Carolina to various national
3 advertising media, Facebook, internet, and provide goods and
4 services that are consumed locally, that's what the RV resort
5 does. There was not a better way for me to put it so I just
6 figured I'd pull it from the case. The services that Carolina
7 Pines provides for its principally out-of-state guests clearly
8 have a substantial effect on commerce as to local restrictions
9 on making those services available to non-residents, and that's
10 what the resident restriction does, it makes the service and
11 the availability by a cabana house to non-residents restricted.
12 You have to come inside the city and use a project inside of
13 the city in order to have access to a cabana house, that's what
14 the residence requirement does, and the same holds true for
15 other projects that qualify to own a cabana house. I go back
16 to their interrogatory again, they basically admitted that,
17 yes, it encourages investment in the city rather than in
18 projects outside of the city, and the city's witnesses agreed
19 with this statement on multiple occasions, same for the
20 homeowner's association. So I think I've covered the
21 waterfront on the substantial effects as to whether or not the
22 regulation here regarding ownership and access to a cabana
23 house has a substantial effect on interstate commerce. The
24 next question is: Does the ordinance discriminate against
25 interstate commerce on its face in its practical effect or in

1 its purpose? Camps Newfound again, to allow a state to avoid
2 the structure of the dormant commerce clause by simply the
3 labeling of the device as discriminatory tax at a levy on real
4 estate would destroy the barrier against protection that the
5 constitution provides. The City tells you that the zoning
6 ordinances are special, almost that they're special exceptions
7 to the constitution, Your Honor, you can't touch them, they're
8 purely local. That's not what the Supreme Court says. Every
9 law is subject to the United States Constitution. In the
10 proper scope of analysis, and this is critical, the focus is
11 not on individual firms, and the reason why is because you're
12 not going to get that aggregation effect on interstate commerce
13 by just looking at an individual firm. You have to look at how
14 the regulation, how the zoning ordinance has an effect on
15 interstate commerce, and so you look at whether or not a
16 homeowner's association, Calabash in North Carolina could own a
17 cabana house, the answer is no. I mean, even if we ran the
18 cabana house perfectly we would still be in violation of the
19 zoning ordinance because we're not a homeowner's association
20 for a project in North Myrtle Beach. The same would be true
21 for a project in Little River. Nature of profits are
22 immaterial. Whether the cabana generates a profit or not, and
23 go back to my argument that it's part of the RV resort, so it
24 does, and we talked about the resort fee and the all
25 inclusiveness of Carolina Pines, but there is no such thing as

1 a profit-driven motive as determining as to whether you
2 get inside the Dormant Commerce Clause, not for profit
3 entities, like, the not-for-profit campground and Camps
4 Newfound, or homeowner's associations, are not-for-profit
5 companies. Even if it's not-for-profit, it still becomes
6 subject to the Dormant Commerce Clause. The Dormant Commerce
7 Clause also applies to service industries, and I don't think
8 that opposing counsel disputes that, they actually brought up
9 in the definition of commerce that service is part of commerce.
10 The definition of discrimination, very simple. It simply means
11 different treatment of in-state and out-of-state economic
12 interests where local and non-local, and the purpose is not
13 dispositive. Whether or not the City intended to do this
14 doesn't matter, and we don't think the City intended to do it.
15 I don't think the City was sitting there in the drafting room
16 thinking how are we going to violate the Dormant Commerce
17 Clause, I think the City was sitting there thinking, how do we
18 protect our city and the tax revenue coming into the city. Mr.
19 Mahaney testified about there is 20,000 residents of North
20 Myrtle Beach, and yet, there's three to five million, estimate,
21 of visitors that come into the city every year, 20 million
22 almost, that come into the Grand Strand. Of course they want
23 to find a way to protect their residents, and so they lower the
24 tax rate and they're able to subsidize that lowering of the tax
25 rate by getting the accommodation tax coming in. The only way

1 the accommodation tax is collected from the state is if the
2 activity happens within the city, and so the residency
3 requirement plays into that. Hignell-Stark versus City of New
4 Orleans --

5 MR. TAMASITIS: May I approach, Your Honor? I know
6 you have Westlaw, but I figured I'd print it out.

7 THE COURT: Thank you.

8 MR. TAMASITIS: Hignell-Stark, we cited it in our
9 memo, and I think this case is really on point, and I'll
10 implore the Court to read it. Homeowner's associations who
11 sought to operate short-term rentals and companies providing
12 services for those short-term rentals brought a Section 1983
13 Action against the City alleging violations of the Dormant
14 Commerce Clause against the City of New Orleans. The City's
15 short-term rental ordinance required that to qualify for a
16 short-term rental license for a property in a residential
17 neighborhood, it was in a residential district, this is a
18 zoning ordinance, the owner must reside on the property as the
19 owner's primary residence, but they are requiring it being
20 enforced by you have to show the homestead exemption for the
21 property. So if it was your principal residence, you could do
22 a short term rental. The Fifth Circuit held that the primary
23 residence requirement violated The Dormant Commerce Clause
24 which prohibits states and local governments from restricting
25 interstate commerce. What is eerie about the Opinion is the

1 arguments that the City of New Orleans made and the comparison
2 to the arguments the City is making here in this case. First,
3 the City maintains that it did not adopt a residency
4 requirement to protect its residents from interstate
5 competition, that's what happened here, and the Court said, but
6 even if that count is true the Dormant Commerce Clause
7 prohibits more than laws with protectionist purposes. It
8 prohibits laws that discriminate against interstate commerce on
9 their face, and if you recall Mr. Wood said, he had the
10 exclusion of projects outside of North Myrtle Beach, yeah, it
11 excluded, of course, it's on its face. Second, and this is one
12 of the arguments that the City has over and over again talked
13 about, and they just handed up the other zoning ordinances,
14 that we could have gone to the R-C district, we could have gone
15 to the R-1, that's what the City argued in Hignell-Stark.
16 Second, the City observed that it allows out-of-staters to own
17 STR's, short-term rentals, in non-residential neighborhoods.
18 From there it reasons that the residency requirement does not
19 entirely prohibit interstate commerce in the city-wide market
20 for temporary lodging. First of all, there's a good reason to
21 reject the City's market definition, and I want to do that
22 right now. The City's market definition in this case is that
23 the market is access to North Myrtle Beach and access to the
24 beaches, access to public access beaches. No, the market is
25 owning and operating a cabana house in the R-4 resort

1 residential district. The City had several witnesses testify
2 about how the R-4 resort residential district is a great place
3 to live and do business. It has a unique structure in its
4 mixed use and it has certain requirements for how the building
5 should be, it's a good place to be and in property values and
6 in any property market, what's the number one thing that
7 matters, location, location, location. As the Fifth Circuit
8 said, in any event even if the residency requirement merely
9 imposes a discriminatory burden and you've got to go to another
10 district on interstate commerce, it still qualifies as
11 discriminatory, and so the City's argument there holds no
12 water. Finally, the City emphasized in the Fifth Circuit case
13 for Hignell-Stark that the residency requirement discriminates
14 against other Louisianans, not just out-of-staters. However,
15 as is the case here, as the Supreme Court is repeatedly held,
16 local ordinances that discriminate against interstate commerce
17 are not valid simply because they also discriminate against
18 interstate -- intrastate commerce. It's clear there's
19 discrimination, and it's clear it's on its face. It's in the
20 language of the ordinance. It's in the effect of the
21 homeowner's association. It must be a homeowner's association
22 for a project in North Myrtle Beach, and we've talked about the
23 homeowner's association statutes that require that in order for
24 a homeowner's association to be effective the governing
25 documents must be recorded in the county where the property is

1 located. The property must be in North Myrtle Beach, the
2 project for the homeowner's association must be in North Myrtle
3 Beach, the homeowner's association must be in North Myrtle
4 Beach, that's discriminatory against anything outside of North
5 Myrtle Beach. Here's the City's burden, it's strict scrutiny.
6 It's a constitutional right, and so it is the strict scrutiny
7 like race or gender. To survive summary judgment in this case
8 the City must demonstrate issues of fact regarding whether the
9 laws are justified by a valid factor unrelated to uneconomic
10 protectionism, and if so there must be no neutral alternatives
11 available. The City must show that there are no reasonable
12 non-discriminatory alternatives available to achieve their
13 legitimate municipal purposes. So what are those purposes?
14 Responsiveness. Discriminating against interstate commerce is
15 not the only option to satisfy this responsiveness interest.
16 They could raise the fines. They could, as opposed to what, I
17 believe it was Mr. Caldwell testified to, as opposed to just
18 waiting for public complaints, the zoning administrator could
19 go out and find issues. They can enforce, they can be stricter
20 in their enforcement, and those fines, if they raise them,
21 could help pay for that stricter enforcement. They can also
22 beef up the other portions of the zoning ordinances in Sections
23 23-22 to spell it out more clearly what is and is not allowed.
24 There's nothing in 23-22 that says it's non-commercial use.
25 There's nothing in 23-22 that says you can't serve liquor or

1 alcohol or you can't bring liquor or alcohol. There's nothing
2 in 23-22 that says you can't have food or beverage. We
3 understand the City's position, we don't take issue with it,
4 but there are alternatives available other than the
5 discrimination against interstate commerce. Same thing for
6 quality of life, all of those reasons are the same, as well,
7 and preservation of property values falls right in there, too.
8 So here's what we're asking the Court to do. We did this at
9 the opening and we'll do it again here. On the definition of
10 Section of 23-2, we're asking that the Court first strike out
11 the requirement of in North Myrtle Beach. We're also asking
12 you to strike out the requirement that it must be owned and
13 maintained by a homeowner's association, because in 23-22 it
14 links the project and the homeowner's association. 23-22, D-1,
15 again, we're asking the Court to strike out the homeowner's
16 association requirement for the project. We are not asking the
17 Court eviscerate the zoning ordinance. We are not asking the
18 Court to change the other provisions in there that to go to
19 quality of life and responsiveness. Again, we agree with the
20 City's position on those, those are important, and those are
21 legitimate municipal interests, they just cannot be achieved
22 through unconstitutional means. The City Manager nailed it on
23 the head. He doesn't care who owns the property, just that
24 they're following the rules. Now, to the extent that the Court
25 finds that the zoning ordinance is enforceable, what the City

1 has asked for in their Complaint is for the Court to order that
2 we cease and desist using and owning the property. I don't
3 what else you call that except a taking. Sun has testified
4 that they would not have purchased the property, or at least
5 wouldn't have engaged in negotiations with the City, but for
6 that affirmation from the zoning administrator in the zoning
7 letter. I think we can all agree the zoning administrator did
8 not do his job as good as he could have, and I would argue that
9 the standard of care required him to do more, and so that act
10 by the zoning administrator led Sun into this position and then
11 the City pulled a bait-and-switch, and said, oh, you know what,
12 we've got a public complaint, and as Mr. Caldwell said, once we
13 get a public complaint, you know, we knew about this before,
14 but now that we've got a public complaint we got to step up and
15 do something, and instead of moving to simply ask for them to
16 cease the use, they've asked them to cease ownership, and
17 they've asked this Court to declare that. If that's the
18 Court's finding, we believe it's a taking, it's a regulatory
19 taking, and if that's the case, Your Honor, we ask that the
20 Court find that, as well. Thank you.

21 THE COURT: Brief reply?

22 MR. RICARD: It will be brief, Your Honor. Your
23 Honor, I think closing argument by defense was opened up with,
24 you know, Mr. Blust, and that's just how it ended, as well.
25 I'll just note for the record that Quail Hill, Carolina

1 Chloride, I don't have the citation, but I can provide the
2 Court in a post-trial briefing, if the Court so desires, but
3 those make it very, very clear that if a governmental officer
4 provides inaccurate information, that does not bind the City.
5 Now, we don't believe Mr. Blust gave inaccurate information,
6 but the Estoppel arguments that are being made by defendants in
7 this case are simply without merit. I've informed the Court in
8 advance that defendants were likely going to bring out the
9 request for -- or excuse me, the interrogatory response. Now,
10 I just wanted to cite again for the record a different case
11 this time. The one I cited earlier was Mark Horn (phonetic)
12 coming from the Fourth Circuit, this is another case coming out
13 of the Ninth Circuit, Victory Carriers, Incorporated versus
14 Stockton Stevedoring Company, 388 F.2d 955, quote: Answers to
15 interrogatories must often be supplied before investigation is
16 completed and can rest only upon knowledge which is available
17 at that time. Again, Your Honor, after the legislative history
18 was compiled, reviewed and produced to defendants, we see that
19 the legitimate local interest that were originally on the minds
20 of the City's personnel. Defense spent a decent amount of time
21 asking what reasonable alternatives may exist in this case, and
22 here you've got the City offering the resort commercial, the
23 business commercial, the highway commercial areas for
24 defendants to do a recreational commercial establishment, and
25 when defense counsel was mentioning all of that, he mentioned

1 the case of Maine v. Taylor, which is actually a pretty helpful
2 case, we think, for the City, because in Maine v. Taylor which
3 a zoning ordinance was upheld, or excuse me, an ordinance was
4 upheld, Maine v. Taylor, again, cited to the principle, that a
5 municipality cannot isolate itself, and again, that's not what
6 we're doing here. Defense counsel also mentioned the case of
7 Gonzales versus Raich. If you notice, that case was from 2005.
8 United States v. Gibert, which is a Fourth Circuit case, coming
9 after Gonzales v. Raich, occurred in 2012. Clearly, the Lopez
10 Morrison factors are good law, understanding defense counsel
11 may disagree that Gonzalez v. Raich may have tried to limit or
12 do away with Lopez Morrison, and that's simply not the case.
13 The Fourth Circuit is the one post Gonzalez v. Raich that's
14 still looking to apply Lopez and Morrison. Again, the Gibert
15 case comes from 2012, and that's because non-economic activity
16 falls under the Lopez Morrison standard, and that's what we
17 have here, it's an amenity, it's not a good or service, so the
18 Lopez Morrison standard applies. Defendants wants you to take
19 the route of trying to aggregate, and in Wickard v. Filburn
20 with the wheat case, that is what the Supreme Court did,
21 however, in a case that we have here we're dealing with a
22 special exception that's not a use permitted by a right. It's
23 not like the good or service like going out and buying milk or
24 going out and buying wheat, which you have a right to buy
25 anywhere at any time. In this particular situation, a special

1 exception use, you do not have the right to a use of a
2 property. Many cases state that. We said it earlier with the
3 City of Turlock case. The City has not been able to find any
4 case that invalidates a special exception use, and so we don't
5 have any evidence that you could aggregate something like the
6 amenity center that we have here. Likewise, within an
7 accessory use, the City hasn't been able to find any case
8 invalidating an accessory use, because, here, again, the
9 amenity center is very similar to an accessory use. You go to
10 a hotel for a roof over your head, not because the amenity pool
11 out back behind the hotel. It's just not something that is a
12 substantial effect on interstate commerce. I think defense
13 counsel used the words, it's laughable not to think that
14 there's some effect. Well, they have the burden to prove that
15 there's an effect, but if defense counsel thinks it's laughable
16 they have to prove that, that even if there is an effect, that
17 it has to be substantial. So the pool out back behind the
18 hotel, that's the reason why you choose one hotel over another,
19 so be it, but is that a substantial effect on interstate
20 commerce, the City contends not, Your Honor. And again, the RV
21 resort has a host of amenities. Their resort map itself has
22 30. Now, understanding one of them might be a dumpster,
23 however, they break down a few of them into different
24 recreational courts. So you have the Pickleball court and the
25 basketball court both falling under the same numbered line item

1 there, and so again, we used the approximation when we were
2 talking to Mr. Dibella about that, we understand defense
3 counsel may be trying to make a point there, but again, there's
4 a host of amenities at this RV resort, and they are the ones in
5 their Facebook post that say, you don't ever have to leave if
6 you don't want to. They recognize that this cabana house is
7 not something that's driving a substantial effect on their
8 bottom line, much less the interstate market. Defense counsel
9 went over a few cases with you, and it may be beneficial for
10 the Court if you'd like post-trial briefings and bench briefs
11 on all of this case law, but I'll try to cover three of them
12 very quickly. The first is C&A Carbone, that was regulating
13 disposal of trash and the Court found that regulation increased
14 the cost to customers, that's not what we have here. We have
15 an amenity that was free of charge, and the other two cases, in
16 the Hignell case that were cited and the Camp Newfound case,
17 the Court there is implicitly finding a complete exclusion of
18 the market to be imported. In Hignell, the issue there is a
19 different market, it's the short-term rental market. Again, a
20 roof over your head, there is a direct good or service being
21 provided there, the short-term rental market. Here we have an
22 amenity, that's an accessory, that is tangential, that is an
23 attenuation of what the direct good or service that's being
24 provided. If this case were about the RV resort, we would
25 grant you that interstate commerce, that is providing a place

1 for someone to lay their head, but that's not what the amenity
2 is, it's a different market. Likewise, in Camp Newfound, what
3 was happening there, Your Honor, a tax was being imposed across
4 the entire state of Maine, I believe, the entire state. No
5 matter where that camp went, no matter where Camp Newfound
6 went, they were going to be taxed throughout that market.
7 Again, that is not what you have here. There is simply an
8 accessory special exception use that's being allowed in the R-4
9 district, defendants are not entirely excluded from the market,
10 they don't face this same restriction elsewhere. Your Honor,
11 there was a quick point made about the City, that defense
12 counsel believed that the City was simply protecting its tax
13 base, but you know, if defendants were allowed to use this
14 property, the cabana house, they would have to get a business
15 license, and to the Government, that is a way to tax
16 businesses, and so the Government is going to get its own one
17 way or the other, and so there was no evidence that the City
18 was concerned about protecting the tax base in that regard.
19 Your Honor, there were some comments made about increasing
20 fines and whether that constitutes a reasonable alternative.
21 We contend that that would face constitutional problems, as
22 well, and cruel and unusual punishment. The increase in fines
23 on every day citizens, regular folks, that's going to face
24 other unconstitutional challenges, again, the City is trying to
25 strike a balance here. Your Honor, again, although substantial

1 may not be very clearly defined, although there may be a
2 four-factor test, commerce is defined. It's the regulating a
3 good or service, and again, what we have here is a special
4 exception use. You do not have the right to own and operate
5 however you want wherever you want. It's not the interstate
6 convenience clause, you don't just go wherever you find it to
7 be convenient. You don't the right to the use of a property.
8 That is what traditional historic land use law and zoning laws
9 apply. Again, you can't go establish an adult entertainment
10 establishment next to a school. There is not constitutional
11 problems with that, but defendants are trying to use this
12 cabana house and claiming that they have a right to use it,
13 they simply do not, Your Honor, it's a special exception, and
14 for those reasons with respectfully request that the Court find
15 in the City's favor and dismiss defendant's counterclaims.
16 Thank you.

17 THE COURT: Thank you. I'll tell you what, if you
18 all would submit proposed orders to me by Friday, November 10,
19 2023 at 5:00 p.m., I would appreciate it. That way it will
20 still be clear in your minds, it will still be clear in my
21 mind. The following week I have a short week --

22 MR. RICARD: Next Friday, Your Honor?

23 THE COURT: Next Friday.

24 MR. RICARD: Very good.

25 THE COURT: -- the following week I have a short week

1 so I can take it and digest it and mess with it. Send it to me
2 in a word document, again, 25 pages or less.

3 MR. WILLIS: Your Honor, before we break, I just want
4 to say one thing. First of all, I want to compliment the
5 City's lawyers and the City's witnesses, they did an excellent
6 job. This is what being a lawyer is all about and getting the
7 opportunity to argue a United States Constitutional issue in a
8 courtroom like this in front of someone as knowledgeable as you
9 are, Your Honor, who listens as well as you do, it's a real
10 privilege, so I want to thank the Court and thank opposing
11 counsel for the tremendous professionalism that everybody
12 showed, and this is an interesting issue.

13 THE COURT: It is.

14 MR. WILLIS: And we've had fun doing it, and we thank
15 you.

16 THE COURT: I have a murder case next week, I'd much
17 rather go into week two with you all, I can assure you I would.

18 MS. SHOUN: Your Honor, I'll just follow up on what
19 Mr. Willis stated. Mr. Willis and I have been practicing law
20 for about the same period of time, and in all sincerity, Your
21 Honor, it is a pleasure to come in and find the demeanor and
22 the interest and the engagement of the Court, and I think I'm
23 going to speak on behalf of defendant's counsel when I say
24 that, so we do appreciate you, your clerk, and all the court
25 personnel. Thank you very much.

1 MR. TAMASITIS: Thank You, Your Honor.

2 THE COURT: We've enjoyed it. Thank you.

3

4 CERTIFICATE

5 STATE OF SOUTH CAROLINA

6 COUNTY OF HORRY

7 I, Julie A. Kevish, Official Court Reporter for the
8 State of South Carolina, do hereby certify that the foregoing
9 is a true, accurate and complete Transcript of Record of the
10 proceedings had and evidence introduced in the Court of Common
11 Pleas for Horry County, South Carolina, on the 3rd of November,
12 2023.

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

15

16 November 3, 2023

17

18



19

JULIE A. KEVISH
OFFICIAL COURT REPORTER

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Sec. 23-0. - Enactment and exceptions.

Pursuant to the authority conferred by Chapter 29 of Title 6 of the South Carolina Code of Laws, 1976, as amended and supplanted by all applicable laws, and to promote the public health, safety, morals and general welfare, lessen congestion in the streets, secure safety from fire, panic and other dangers, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, and facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements in accordance with a comprehensive plan, the city council does ordain and enact into law the following regulations to be incorporated as new Chapter 23, Zoning, sections 23-0 to 23-162 of the City Code including the official zoning map adopted by reference under section 23-16; repealing Chapter 23, zoning, sections 23-1 to 23-116 of the City Code including the official zoning map adopted by reference under section 23-9; incorporating amendments to the previous zoning map enacted between November 1, 1988, and February 1, 1989; and providing for the following exceptions:

- (1) *Effective date and project completion:* Recognizing the expense involved in plan development and the time required for project initiation, the effective date of this ordinance shall be February 1, 1989. This effective date will allow any landowner a three-month grace period in which to secure a building permit and thereby achieve a right to complete a project in conformance with the codes and ordinances in effect at the time the permit is issued despite any changes in the newly adopted zoning ordinance that would make some element of the project nonconforming. Upon completion of the project, the zoning administrator shall be authorized to issue a certificate of zoning compliance specifying any nonconformities with the zoning ordinance in effect at that time.

However, for a project to achieve this right, a complete set of site plans and building plans must be submitted and stamped received by the city planning and development department prior to January 1, 1989; and a building permit must be lawfully issued prior to February 1, 1989; and construction must begin prior to August 1, 1989, and remain active and continuous until completion.

- (2) *Incomplete multifamily group developments:* Incomplete multifamily group developments with more than one (1) principal building on site and high density single-family (patio home) projects where a building permit has been lawfully issued and development has commenced will be allowed to be completed, provided:
 - a. A plat for the entire project has been lawfully recorded prior to February 1, 1989; and
 - b. A site plan for the entire project has been reviewed by the planning commission and/or approved by the staff for permit; and
 - c. A building permit has been lawfully issued for the project or a portion of the project prior to February 1, 1989; and

- d. Construction commenced prior to February 1, 1989; and
- e. For multifamily group developments, an active unexpired valid building permit was in effect on February 1, 1989; and
- f. For multifamily group developments, construction must be completed prior to October 31, 1998.

These developments are hereby given nonconforming status as authorized by Section 6-29-730 of the Code of Laws of South Carolina, 1976, as amended. The chief building official shall be authorized to issue building permits and certificates of occupancy for the completion of these projects subject to the conditions of the approved site and building plans; the zoning administrator shall be authorized to issue certificates of zoning compliance subject to the approved site and building plans and the zoning ordinance in effect at the time of last permit.

(Ord. No. 88-35, 11-1-88; Ord. No. 94-27, § 1, 10-3-94; Ord. No. 95-10, §§ 1, 2, 3-20-95; Ord. No. 95-55, § 1, 12-4-95; Ord. No. 97-34, § 1, 8-18-97)

Sec. 23-1. - Title and objectives.

This chapter shall be known and may be cited as the "Zoning Ordinance of the City of North Myrtle Beach, South Carolina."

As authorized in Title 6, Chapter 29 of the Code of Laws of South Carolina, the general purposes of this chapter are to guide development in accordance with existing and future needs and to promote the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the community with reasonable consideration for the following specific purposes, where applicable:

- (1) To provide for adequate light, air, and open space;
- (2) To prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;
- (3) To facilitate the creation of a convenient, attractive, and harmonious community;
- (4) To protect and preserve scenic, historic, or ecologically sensitive areas;
- (5) To regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;
- (6) To facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements specified in the ordinance;
- (7) To secure safety from fire, flood, and other dangers; and
- (8) To further the public welfare in any other specified regard.

As presented in the comprehensive plan, the city's economy is dependent on the retail and service industries supported by tourism. As such, it is a further objective of the city to encourage the future growth in tourism in an orderly fashion without compromising the character of residential areas or the natural environmental assets so important to tourist attraction.

(Ord. No. 88-35, 11-1-88; Ord. No. 95-10, §§ 3, 4, 3-20-95)

Sec. 23-2. Definitions.

Generally. For the purpose of this chapter, certain words and terms are herein defined. Words used in the present tense shall include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. Any words not herein defined shall carry their customary dictionary definition.

Accessory building: A subordinate building, the use of which is incidental to and customary in connection with the principal building or use, and which is located on the same lot with such principal building or use.

Accessory use: A subordinate use which is incidental to and customary in connection with the principal building or use and which is located on the same lot with such principal building or use.

Alley: A public or private way, at the rear or side of property, permanently reserved as a means of providing secondary or service vehicular access to abutting property, less in size than a street, and which is not designed for general vehicular traffic.

Boatyard: A facility for the construction or major repair of watercraft, including overhaul of hull, engines and other major components.

Body piercing: Any method of piercing of the human skin of one (1) person by another person with the intention of inserting any object including, but not limited to jewelry. For the purposes of this zoning ordinance, the term body piercing shall also include any process of marking or disfiguring the skin or other tissue of any person by branding or scarification but shall not include the piercing of the fatty lobe of the ear by an ear-piercing gun designed solely for the purpose, or physician-authorized surgical procedures. This definition of body piercing includes that process commonly referred to as implantation.

Building: Any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property.

Building height: The highest vertical distance measured from the finished grade at ground level at the building line to the midpoint between the eave and the highest point of the roof.

For the purpose of calculating side setbacks in R-2A, R-4, HC and RC, the height of the roof section (if not devoted to living or storage space) shall not be considered in determining the height of the structure.

Building, principal: A building in which is conducted the main or principal use of the lot on which the building is located.

Cabana house: A structure utilizing single-family design and development standards in close proximity to the oceanfront to be used by projects in North Myrtle Beach not located near the ocean. The use of the cabana house shall be limited to drop-off and parking area, bathing, changing clothes and similar uses. Additionally, it can be used as an occasional guest quarters and similar residential uses. A cabana house shall be owned and maintained by a homeowner's association with a maintenance agreement submitted and approved by the planning department.

Caliper: The diameter of a tree measured three (3) feet above the base of the tree. The two (2) largest diameters of multiple trunk trees shall be added to obtain the caliper.

Camp, youth day or educational: A camp providing facilities for groups with nonpermanent accommodations, not to include recreational vehicles or mobile homes, used for related youth recreational or educational purposes. This can also include adult educational and training activities.

Club: Buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business.

Commercial center: Two (2) or more retail stores, service establishments, professional offices, and/or mixed-use, or any other businesses serving a community or neighborhood, not necessarily owned by one (1) party nor by a single land ownership, which occupy a common and/or adjacent building(s) on premises and also utilize common parking area(s).

Commercial craft: Any boat that is used for excursions such as dinner cruises, sightseeing cruises (excluding smaller sightseeing boats with no more than forty (40) seats and a maximum authorized capacity of forty (40) passengers), overnight cruises and similar trips, commercial fishing and shrimping (excluding smaller charter fishing), industrial uses such as tug boats, tankers, barges, and military craft. Gaming/gambling boats are commercial craft, which are further defined elsewhere.

Compact automobile space: Designated parking space which allows parking for only compact automobiles. The overall dimensions of the same space are fifteen (15) feet by eight (8) feet.

Conditional use: A zoning ordinance provision that imposes conditions, special provisions, or limitations on a use that are in addition to those applicable to other uses permitted by right in the same zoning district. S.C. State Law requires that the list of conditions must be set forth in the text of the Zoning Ordinance, and then; when all are met, the "conditional use" may be permitted by the zoning administrator without review of the board of appeals.

Condominium: A condominium is an ownership arrangement, not a land use. It is individual ownership of a unit in a multi-unit structure.

Condotel: A condominium set up like a hotel in which each room is individually owned and in which some or all rooms are available to transients for rent.

Convenience store: A one-story, retail store containing less than three thousand (3,000) square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items. It is designed to attract and depends upon a large volume of stop-and-go traffic.

Court: An open space which may or may not have direct street access and around which is arranged a single building or group of related buildings.

Day care facilities, including:

- (1) *Family day care home:* A family day care home is one in which care is given in a family only during the day for one (1) but not more than seven (7) children, including the day care parents' own children.
- (2) *Child care center:* A child care center shall mean or include any home, center, agency or place, however styled, where children not related to the operator are received for custodial care, apart from their parents whether for compensation, reward, or otherwise, during part or all of the day or night and upon any number of successive days or nights.

Density: The number of dwelling units per acre of "developable land" within the boundaries of a residential project.

Developable land: The term developable land or land which is suitable for development is defined to mean all lands within a project's boundaries, including lands or parcels designated for support of the development; that is, all areas for lots, parking areas, drives, roads, drainage and utility easements or rights-of-way, sign easements, entrance structure easements, and lands designated for private recreation. Off-site parking, marsh and wetlands shall not be included as developable land for purposes of calculating density, except that marsh and wetlands held in fee simple may be applied to the open space requirements of this chapter.

Developments of regional significance: Retail and/or office uses in which the gross floor area of combined buildings within a development equals or exceeds seventy-five thousand (75,000) square feet.

Dwelling: A structure or portion thereof which is used exclusively for human habitation.

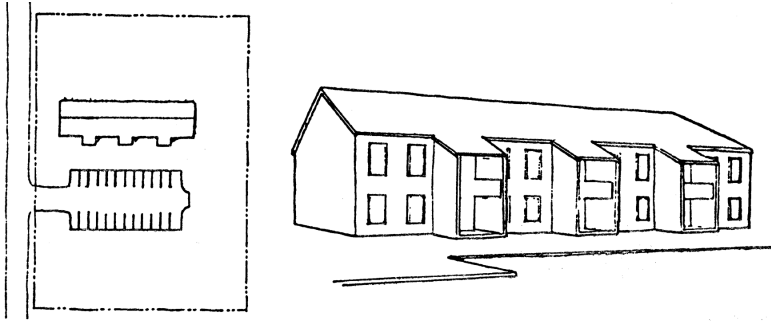
Dwelling, attached: A dwelling unit attached to two (2) or more dwelling units by common vertical walls.

Dwelling, boarding house: A detached residential structure similar in style to a single-family structure where lodging is provided for periods in excess of two (2) weeks, for compensation or other consideration, for three (3) or more individual boarders. This definition excludes the use of boarding houses in single-family, duplex, multifamily, and other residential uses separately defined. Houses parties, groups of golfers, shaggers, bikers, and other tourist-related groups with a commonality and prearranged purpose are not included in this definition.

Dwelling, detached: A dwelling which is not attached to any other dwelling by any means.

Dwelling, duplex: A structure on a single lot containing two (2) dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units.

Dwelling, garden apartment: A multifamily dwelling up to three (3) stories in height.

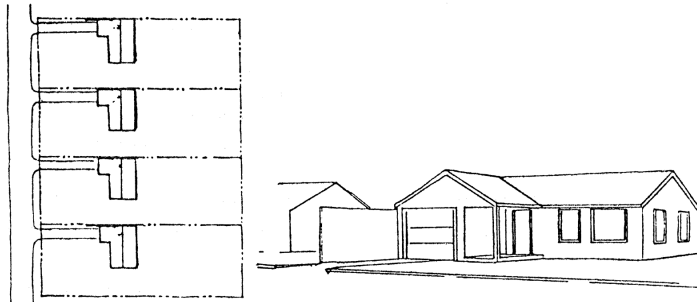


Dwelling, Garden Apartment

Dwelling, mobile/manufactured home: A structure transportable in one (1) or more sections, which in the traveling mode, is eight (8) body feet or more in width, or forty (40) body feet or more in length or when erected on site is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term mobile/manufactured home shall not include the term modular building or structure as herein separately defined, or the term recreational vehicle or camping trailer.

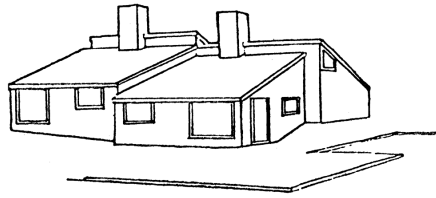
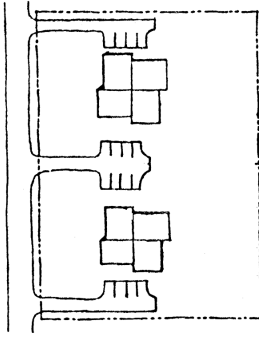
Dwelling, multifamily: A structure containing more than two (2) dwelling units, not including triplexes or quadruplexes, separately defined by this chapter.

Dwelling, patio home: A single-family dwelling on a separate lot with open space setbacks usually on three (3) sides. The term is usually synonymous with zero lot line dwellings.



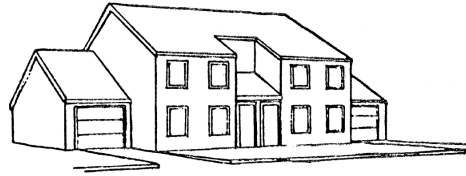
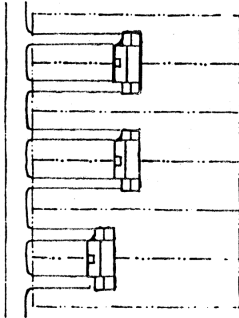
Dwelling, Patio Home

Dwelling, quadruplex: A multiplex containing four (4) attached dwellings in one (1) structure. Each unit has two (2) open space exposures and shares one (1) or two (2) walls with adjoining unit or units.



Dwelling, Quadruplex

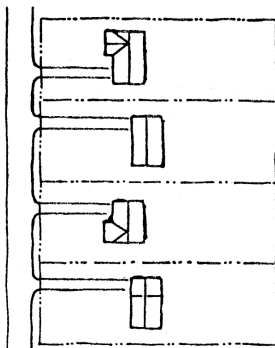
Dwelling, semidetached: A dwelling attached to one (1) other dwelling by a common vertical wall, and each dwelling located on a separate lot.



Dwelling, Semidetached

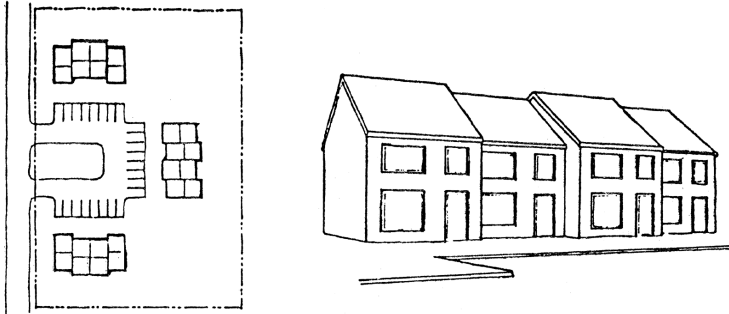
Dwelling, single-family: A building containing one (1) dwelling unit.

Dwelling, single-family detached: A dwelling which is designed for and occupied by not more than one (1) family and surrounded by open space or yards and which is not attached to any other dwelling by any means.



Dwelling, Single-Family Detached

Dwelling, townhouse: A single-family dwelling in a row of at least three (3) such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, each unit is separated from any other unit by one (1) or more common fire-resistant walls, and each unit is serviced by separate utilities.



Dwelling, Townhouse

Dwelling, triplex: A multiplex dwelling containing three (3) dwelling units, each of which has direct access to the outside or to a common hall.

Dwelling unit: One (1) or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single-family maintaining a household.

Family: One (1) or more persons occupying premises and living together as a single housekeeping unit.

Flood hazard area: Any area of the city so designated on FEMA Flood Hazard Boundary Maps.

Floor area: The square feet of floor space within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. It does not include porticos, garages, or space in a basement or cellar when the basement or cellar space is used for storage or incidental uses.

Floor area ratio: The total floor area of a building excluding porches, decks and attic space but including garages and other enclosed storage areas divided by the square footage of the lot.

Frontage: The side of a lot abutting on a street, the front lot line.

Gaming/gambling boats: Any boat or other floating structure or craft on which any game of chance is played. This includes all electronic video game machines that are available to play or simulate the play of games utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash and all dice, card, roulette, and lottery type games in which money is staked or a wager made.

Gazebo: A freestanding, wood-constructed, roofed structure, open on all sides, no larger than one hundred forty-four (144) square feet, intended as a shady rest area, but shall not be utilized for any commercial activity. An unenclosed shower and lighting are permissible as accessories.

Gross trailer area: Gross trailer area is the total living area of a recreation vehicle measured to the maximum horizontal projection of exterior walls when in the setup mode.

Home occupation: Any occupation within a dwelling and clearly incidental thereto, carried on by a member of the family residing on the premises, provided that no person not a resident of the premises is employed, no stock in trade is kept or commodities sold, no mechanical equipment is used except such that is normally used for family, domestic or household purposes, and there is no exterior indication that the building is being used for any purpose other than a dwelling. When within the above requirements, a home occupation includes but is not

limited to the following: (a) art studio; (b) dressmaking; (c) salesman, real estate agent, insurance agent, or other similar occupation; (d) teaching, with musical instruction limited to one (1) or two (2) pupils at a time.

Hotel: A building in which lodging or boarding and lodging are provided and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all times. As such, it is open to the public in contradistinction to a multifamily structure which is herein separately defined.

Impervious surface: Impervious surfaces are those that do not absorb rain. All buildings, parking areas, driveways, roads, sidewalks, and any areas in concrete and asphalt shall be considered impervious surfaces within this definition. In addition, other areas determined by the zoning administrator to be impervious within the meaning of this definition will also be classed as impervious surfaces.

Impervious surface ratio: The impervious surface ratio is a measure of the intensity of land use. It is determined by dividing the total area of all impervious surfaces within the site by the total site area.

Institution: A nonprofit establishment for public use.

Interior court: An open space other than required yards or setbacks which does not have direct street access and around which is arranged on three (3) sides a group of related buildings.

Junk yard: A junk yard is defined as a place where two (2) or more wrecked or disabled vehicles, without current license tags, and/or otherwise inoperable are placed or stored in an open area, including parts thereof, scrap building material, scrap contractor's equipment, tanks, cases, cans, barrels, boxes, drums, piping, bottles, glass, old iron, machinery, rags, paper, excelsior, mattresses, beds, or bedding, or any kind of scrap or waste material.

Landscaped area: An area that is permanently devoted to and maintained for the growing of shrubbery, grass and other plant material.

Lot: A parcel of land which fronts on and has access to a street and which is occupied or intended to be occupied by a building or buildings with customary accessories and open space.

Lot, corner: A lot abutting upon two (2) or more streets at their intersection.

Lot, depth: The mean horizontal distance between the front and rear lot lines.

Lot, double frontage: A lot having a frontage on two (2) nonintersecting roads, as distinguished from a corner lot.

Lot, interior: A lot other than a corner lot.

Lot, width: The width of a lot at the front building line.

Lot of record: A lot or parcel of land the plat or deed of which has been legally recorded.

Marina: There are four (4) types of marinas, defined as follows:

- (1) *Marina, noncommercial multiple docking facility:* A basin or marine terminal that provides space, docks, moorings for five (5) or more boats on a private or noncommercial basis. This includes multiple docking facilities such as for condominiums or other residential uses or subdivisions, and includes nonprofit "yacht clubs." It does not include service generally associated with commercial marinas, such as fuel, overnight docking, ship's store, etc. Dry storage and/or dry stack facilities are prohibited.
- (2) *Marina, commercial:* A basin or marine terminal that provides space, docks, moorings, and related facilities and services for five (5) or more pleasure boats. This includes the sale and minor in-water repair of recreational marine craft and the sale of fuel, food, beverages, supplies, hardware and other accessory uses. The overhaul of hulls and the painting, finishing and building of boats are prohibited.

Commercial craft are prohibited from docking, mooring or being repaired. Dry storage and/or dry stack is permitted as a special exception if approved by the zoning board of appeals.

- (3) *Marina, boatyard*: A basin or marine terminal that provides space, docks, moorings, and related facilities and services for five (5) or more boats, including pleasure and commercial craft. This includes the sale, repair, painting, finishing, and building of boats, dry storage, and/or dry stack, fueling operations, and other uses permitted by commercial marina definition.
- (4) *Marina, dry stack*: A facility for storing and keeping boats out of water. This is principally a land operation, where boats are dry stored or "stacked" in a common structure until such time as they are transferred to the water for use.

Massage parlor: An establishment or business which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, unless operated by a medical practitioner or professional physical therapist licensed by the state.

Mini-warehouse: A structure comprised of individually rented units for the purpose of storage, separated by permanent walls with individual exterior doors. Each unit generally not exceeding three hundred (300) square feet in floor area.

Mini-warehouse, climate controlled: A building where individually rented units for the purpose of storage are contained within the wall of the building, and no unit opens directly to the exterior of the building, but rather to an interior hall with security, controlled through an interior office area. Climate control shall be by central heat and air only.

Mini-warehouse facility: A warehouse facility complex designed with numerous component storage units, each for lease to clients for storage.

Mixed use building/site: A single building that contains a residential dwelling unit or units and commercial uses or a site that has multiple uses in multiple, separate buildings located upon it.

Mobile/manufactured home park: A parcel of land under single ownership, with required improvements and utilities for the long-term parking and occupancy of mobile/manufactured homes where mobile/manufactured home sites are available for rent or lease and which may include services and common facilities for the residents.

Mobile/manufactured home site: A parcel of land (space) within a mobile/manufactured home park for the placement of a mobile/manufactured home and its accessory buildings and structures and containing approved sewer and water connections.

Mobile/manufactured home subdivision: A subdivision designed and intended for residential use, where residence is primarily in mobile/manufactured homes.

Modular building or structure: A structure or building including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, as a finished building, and not designed for ready removal to another site. The term is applicable to all buildings or structures, including residential, commercial, industrial, institutional, etc. When meeting the requirements of the Modular Building's Construction Act (23-43 of the South Carolina Code of Laws), said building or structure may be located in any of the city's several zoning districts.

Motel: A building or buildings in which lodging, with or without meals, is provided and offered through an on-site office to the public for compensation, which is open to transient or permanent guests.

Neighborhood convenience store: A convenience store limited to three thousand (3,000) square feet of gross floor space including storage and providing convenience items and services to the general public but excluding sale of motor fuels. Such establishments are limited to the following uses: drug and food stores, flower shops, beverage stores, confectioneries, delicatessens, and bakeries whose products are sold exclusively at retail and on premises.

Overlay zone: A zone imposed over a primary zoning district which imposes a set of requirements or relaxes a set of requirements imposed by the underlying primary zoning district when there is a special public interest in a particular geographical area that does not coincide with the underlying district boundaries.

Park and sports complex. A tract of publicly owned land one hundred (100) acres or more in size, with athletic fields, active and/or passive recreation facilities and regional attractions such as, but not limited to, zip lines and water parks and associated facilities and activities, dog parks, biking/hiking trails, water activities, and entertainment/gathering venues. Such facilities may also have accessory on-site sales and consumption of food, legal beverages, gifts, clothing, ticket sales, fee-based recreational activities, equipment rental and similar activities.

Primary zoning district: Geographic sections of the city delineated on the official zoning map and designated in the zoning ordinance text in which requirements for the use of land and building and development standards are prescribed.

Protected tree: Any tree regulated by the tree protection regulation article of this chapter excluding pine trees.

Public buildings: Any nonrecreational state, county, or municipal building used for public purposes.

Public park and recreation facilities: Any park, playground, or other recreation facility, and/or open space officially designated as a public park or recreation facility including community centers, passive and active outdoor uses and indoor uses, and all structures associated with such uses. Supportive commercial activities such as food and merchandise vending, sports, leisure and tourism activities and the like are permissible within parks with city approval, whether through direct management, sponsorship, or franchising.

Recreational vehicle: A vehicular type unit primarily designed to provide seasonal or temporary living quarters which has its own motive power or is towed by another vehicle and may be connected to utilities necessary for operation of installed fixtures and appliances and with a gross trailer area not exceeding four hundred (400) square feet when in the setup mode. The basic entities are: travel trailer, folding camping trailer, park trailer, truck camper, motor home and multi-use vehicle.

Resort accommodations: A building in which lodging or boarding and lodging are provided and offered to the public for compensation in which ingress and egress to and from all rooms can be made through an inside lobby or office supervised by a person in charge at all times and which may have individual units owner occupied as dwelling units within the same building.

Retail, "big box": A single retail establishment that exceeds fifty thousand (50,000) square feet in gross sales floor area either as a single use on a property or within a commercial center.

Retail, convenience: Convenience retail establishments are those providing convenience items and services to the general public, such as drug, beverage, grocery stores, hardware, etc.

Retail, primary: Primary retail establishments are those selling commodities in small quantities to the consumer, usually low bulk comparison items which are normally found in large regional shopping centers, including department stores and stores selling general merchandise, variety merchandise, shoes, millinery, clothing, jewelry, etc.

Retail, secondary: Secondary retail establishments are those selling primarily one-stop items usually high bulk and very often more expensive items than those found in the primary retail establishments, including stores selling appliances, radios, televisions, floor coverings, furniture, etc.

Short term rental: Any residential unit offered for lease for a period of ninety (90) days or less.

Sleeping area: As it relates to *short term rentals*, a sleeping area is any room (including bedrooms) that is not one of the following: A kitchen, a hallway not exceeding seven (7) feet in width, a mechanical room designed

primarily for containing HVAC equipment or hot water heaters or electrical panels or similar, a bathroom, a closet not exceeding seventy (70) square feet in size, or an elevator or stairwell.

Story: That portion of a building included between the surface of any floor and the surface of the floor next above it; or if there is no floor above it, then the space between such floor and the ceiling next above it. If the finished floor level directly above a basement or cellar is more than six (6) feet above grade, such basement or cellar shall be considered a story.

Structure: Anything constructed, erected or established, including but without limiting the generality of the following: swimming pools, buildings, signs, trailers, fences, screened enclosures, patio walls, backstops and sun decks or similar activities.

Structural alteration: Any change except those required by law or ordinance, which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders, not including openings in bearing walls as permitted by other ordinances.

Tavern: For the purpose of regulating adult uses and amusements, a tavern is any establishment which sells or is authorized to sell alcoholic beverages to patrons by the individual drink for consumption on the premises. A tavern or bar is an establishment used primarily for the serving of alcohol for on-premises consumption to the general public, and where food is served only as accessory to the primary use.

Town center: A large contiguous (including streets) commercial area which contains at least twenty (20) acres and a minimal commercial area of at least fifty thousand (50,000) square feet within a Planned Development District (PDD) and not covering more than fifty (50) percent of the total land area of the entire PDD.

Video gaming establishment: Any building (under one (1) roof) in which more than five (5) video gaming machines or stations are located.

Video gaming machine: An electronic video game machine that, upon insertion of cash, is available to play or simulate the play of games as authorized by the South Carolina Tax Commission utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash.

Yard: A required open space other than a court occupied and unobstructed by a structure or portion of a structure from twelve (12) inches above the general ground level of the graded lot upward; however, fences, walls, poles, posts, permitted signs, and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

- (1) *Yard, front:* A yard extending between side lot lines across the front of a lot adjoining a street or the twelve and one-half feet (12.5) easement on twenty-five feet (25) private rights-of-way. In one (1) required front yard, no fence or wall shall be permitted which materially impedes vision across that yard above the height of thirty (30) inches, and no hedge nor vegetation shall be permitted which materially impedes vision across such yard between the heights of thirty (30) inches and ten (10) feet.
- (2) *Yard, side:* A yard extending along the side lot line from the front yard to the rear yard.
- (3) *Yard, rear:* A yard extending between side lot lines across the rear of the lot.

(Ord. No. 88-35, 11-1-88; Ord. No. 90-3, §§ 1, 2, 2-20-90; Ord. No. 90-35, § 1, 8-28-90; Ord. No. 91-8, §§ 2, 3, 2-4-91; Ord. No. 93-36, §§ 1, 2, 10-4-93; Ord. No. 94-1, § 1, 1-3-94; Ord. No. 95-4, § 1, 2-6-95; Ord. No. 95-49, § 1, 10-16-95; Ord. No. 96-02, § 1, 2-5-96; Ord. No. 97-31, § 1, 8-18-97; Ord. No. 98-37, § 1, 12-7-98; Ord. No. 99-46, § 1, 11-15-99; Ord. No. 00-15, § 1, 3-6-00; Ord. No. 00-45, § 1, 10-16-00; Ord. No. 01-12, § 1, 2-19-01; Ord. No. 01-51, §§ 1, 2, 11-19-01; Ord. No. 02-03, § 2, 2-4-02; Ord. No. 03-13, § 1, 4-21-03; Ord. No. 03-34, § 1, 8-18-03; Ord. No. 06-46, § 1, 7-17-06; Ord. No. 07-09, § 1, 2-19-07; Ord. No. 07-21, § 1, 6-18-07; Ord. No. 09-17, § 1, 3-2-09; Ord. No. 09-21, § 1, 6-1-09; Ord. No. 09-36, § 1, 11-16-09; Ord. No. 11-28, § 1, 10-17-11; Ord. No. 11-30, § 1, 11-21-11; Ord. No. 12-16, § 1, 9-17-12; Ord. No. 15-18, § 1, 5-18-15; Ord. No. 17-12, § 1, 6-5-17; Ord. No. 18-19, § 1, 10-15-18; Ord. No. 22-20, §§ 1, 2, 5-2-22)

Sec. 23-7. Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined as provided in section 1-6. Each day such violation continues shall be considered a separate offense. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy a violation.

(Ord. No. 88-35, 11-1-88; Ord. No. 93-27, § 11, 8-2-93)

Sec. 23-22. R-4 Resort Residential District.

- (1) *Purpose.* The purpose of this district is to provide for the orderly development of certain areas within the community where both year-round and seasonal or resort housing may be developed and where, because of proximity to the ocean, such "mixed development" would promote year-round use of public facilities, and permit housing choices in response to market demands, but not at the expense of ocean visibility and access by the community.
- (2) *Permitted uses:* Within the R-4 District, a building or lot shall be used only for the following purposes:
 - (a) Dwellings, including:
 - Single-family detached.
 - Semidetached.
 - Patio homes.
 - Two-family (duplex).
 - Multiplex (triplex and quadruplex).
 - Townhouse developments.
 - Multifamily, including garden.
 - Mid-and high-rise apartments.
 - Zero lot line single-family detached developments, as provided in section 23-119.
 - Boarding house.
 - Resort accommodation.
 - (b) Hotels, motels, inns, [and] lodges.
 - (c) Accessory uses customarily incidental to dwellings.
 - (d) Accessory uses customarily included in hotels, motels, inns, lodges and resort accommodations: provided such uses are located within the principal building and are accessible only from an interior court, lobby corridor or pool deck except for poolside activities as regulated under section 23-118: Further that such uses shall be limited to the following: restaurants, newsstands, snack bars, florists, gift shops, confectionery stores, beach and convenience retail shops, automobile rental agencies, drug and sundry shops, nightclub and radio broadcasting studios, health clubs, barber and beauty shops.
 - (e) Parking lots.

(f) Signs permitted by and in accord with all applicable provisions of Article III.

(3) *Development standards for uses in R-4 District:*

	Hotels, Motels, Inns, Lodges Resort Accommodation ⁷	Nonresi- dential Uses	Single- family Detached	Semi- detached	Duplex	Multi- plex Boarding house	Town- house	Multi- family ⁷	Restaurant
Minimum site area (square feet)	15,000	NA	5,000	7,000	7,000	10,000	16,000	15,000	10,000
Minimum lot area* (square feet)	NA	NA	5,000	3,500	3,500	2,000	2,000	NA	NA
Minimum lot width	100 feet	NA	50 feet	35 feet	55 feet	75 feet	14 feet ⁸	100 feet	70 feet
Minimum yards:									
Front	15 feet	15 feet	15 feet	15 feet	15 feet	15 feet	15 feet	15 feet	10 feet
Side	³	5 feet	5 feet	5 feet	5 feet	7.5 feet	²	³	10 feet
Rear	15 feet	15 feet	15 feet	15 feet	15 feet	15 feet	⁴	15 feet	15 feet
Maximum impervious surface ratio	90%	60%	60%	60%	60%	60%	60%	80%	90%
Common open space	10%	NA	NA	NA	NA	15%	25%	20%	NA
Maximum height of buildings	90 feet ⁵	90 feet	90 feet	90 feet	90 feet	90 feet	90 feet	90 feet ⁵	35 feet
Maximum height of signs	30 feet					10 feet	10 feet	10 feet	8 feet
Minimum distance between buildings	Where more than one (1) principal building is located on a lot, minimum distance between buildings shall be twenty (20) feet with one (1) additional foot for each six (6) feet in height over thirty-five (35) feet, using the highest building.								

*Per dwelling unit

Notes:

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¹ A five-foot setback shall be applied to the ends of the structure and the exterior property lines, and zero (0) setback shall be allowed for the common interior property line.

² Zero (0) between units; ten (10) feet between end structures and side property line; no more than six (6) units shall be attached in one (1) building.

³ Ten (10) feet for first thirty-five (35) feet in height and fifteen (15) feet for buildings in excess of thirty-five (35) feet in height.

⁴ Rear yard shall be ten (10) feet except where contiguous to the project site property line, then a twenty-foot setback shall be required, and shall remain unoccupied by any accessory building or structure.

⁵ Hotel/motel, resort accommodation and multifamily uses may exceed the ninety-foot height limitation by one (1) floor of units for each full level of above grade parking deck construction below the principal building not to exceed four (4) additional floors of units.

[⁶ *Reserved.*]

⁷ The use may be constructed in the airspace above a noncontiguous parking lot of the same use subject to the requirements of section 23-41 and an agreement between the owners sharing the off-site lot and the city; and/or an easement protecting access and required off-site parking; and deed restriction of off-site spaces; and compensation for any lost required interior landscaping.

⁸ Minimum lot width and/or unit width.

(4) *Special exceptions:* Owing to their potential negative impact on the community and surrounding areas, the following uses may be approved as special exceptions by the board of zoning appeals:

(a) Noncommercial marinas, subject to the siting standards of section 23-120.

(b) Fishing piers, provided that the uses permitted on such piers are limited to restaurants, bait and tackle shops, and marine accessories. Refer to section 23-124 for separation requirements.

(c) Lighted tennis courts, subject to the following:

1. That the proposed lighted tennis court not be located closer than fifty (50) feet to any residential structure.

2. That the lighting be a minimum to sufficiently illuminate the playing surface utilizing sharp cut-off lights with adjustable glare shields.

3. When in close proximity to a residential structure or lot, the board may require a vegetative screen as described in section 23-58(2)(d) on the side(s) of the court or other method to minimize noise levels.

4. In granting the special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement will enhance the siting of the proposed special exception.

(d) Cabana houses subject to the following:

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1. That a homeowner's association shall have been established for the project and a maintenance agreement has been submitted to the planning department.
 2. That at least eight (8) parking spaces per zoning standards be established on site and that more spaces may be required by the board if there is no other means to limit the number of cars traveling to the property provided such as a shuttle service to and from the property to the project.
 3. That the use of the house be limited to bathing and change of clothing facilities, and occasional use as guest quarters and other similar uses.
 4. That the special exception will be in substantial harmony with the area in which it is to be located.
 5. That the special exception will not be injurious to the adjoining property.
 6. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
 7. That in granting the special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgment, will enhance the siting of the proposed special exception.
- (5) *Conditional uses:* Due to the manner of operations, conditional uses must meet certain conditions stated in this section, as well as the restrictions and/or limitations applicable to all land uses in the R-4 District and all applicable supplemental regulations for the use contained throughout the zoning ordinance (See Article I, section 23-2 of this chapter entitled "Definitions"). If the conditions or standards are met, the zoning administrator may permit the use without review by the board of [zoning] appeals. (S.C. Code 6-29-720 of the S.C. Comprehensive Planning Act of 1994).
- (a) *Restaurants.*
1. That the use complies with all applicable development standards in the R-4 district and/or an R-4 site also designated in an "Activity Center Overlay" area.
 2. That the use will be an enhancement to the character and sense of place of the area in which it is to be located, increasing pedestrian accessibility to eating establishments and reducing traffic congestion. Towards this goal, auto oriented drive through pickup restaurants are not eligible for this conditional use.
 3. That parking requirements/incentives be met as follows:
 - a. Any proposed R-4 restaurant site also located in a designated activity center overlay will be eligible for the fifty (50) percentage parking requirement reduction, as well as the ability to satisfy parking requirements off site within five hundred (500) feet and located on land owned or leased by the restaurant owner.
 - b. Any proposed R-4 restaurant site that does not fall in an activity center overlay designated area will also qualify for the fifty (50) percent parking reduction and the ability to locate the other fifty (50) percent of the parking off site (on owned or leased within five hundred (500) feet and not necessarily adjacent); with one major exception that the offsite parking be improved to full city parking lot standards including lighting, landscaping, surfacing, and drainage).

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- c. In cases where there is a change of use in an existing building from some other use to restaurant, the zoning administrator shall evaluate the site on a case-by-case basis to determine if there is room to provide on-site parking. If there is he/she may require any number and combination of vehicular, bicycle, and golf cart parking stalls to be provided as a condition for issuance of the permit. For purposes of this section, a bicycle stall shall mean a space in a standard bicycle rack specifically designed for the temporary parking and securing of bicycles. A golf cart space shall have a dimension not less than six (6) feet wide by ten (10) feet deep, and shall be identified as "golf cart parking only" via small informational signage.

NOTE: Restaurants allowed as accessory uses to the permitted use of resort accommodations in R-4 (see Article II Sec. 22-23(d) of this section) will not require parking in addition to that calculated for the hotel/permitted principal use. Also see Article IV of this chapter, off street parking)

4. That the use has taken measures to not be injurious to adjoining property including, but not limited to:
- i. Controlling and shielding all lighting so as not to cast undue glare onto adjoining residential uses. In addition, landscape buffers and/or fencing must be added if the R-4 adjoins an R-1 District parcel. These requirements will be based on buffering of R-1 from adjacent commercial uses in other commercial districts in this chapter.
 - ii. Signage will be limited to wall signage as permitted this use if it were locating in The RC District. However there will be no freestanding signage allowed, other than pedestrian oriented (sandwich/menu boards) per RC District standards.
 - iii. Controlling all elements that produce noise, such as interior/exterior music and table availability announcements for waiting customers so as not to create a nuisance for neighboring properties.
5. That the use is limited to restaurant and not bar/nightclub. (For purposes of this section, a bar/nightclub shall be defined as any establishment licensed by the State of South Carolina to serve alcoholic beverages, and whose sale of such beverages constitutes forty (40) percent or more of its gross revenues. For those applicants who wish to claim that their sales of such beverages constitute less than forty (40) percent of gross revenues, the burden of proof shall rest with the applicant to so demonstrate.)
6. That the use will contribute to the economic vitality and promote the general welfare of the community.
7. That the use will not discourage or negate the use of surrounding property for use(s) permitted by right in the district.

(6) *Off-street parking*: Off-street parking [requirements] for the various uses permitted herein are set forth in Article IV.

(Ord. No. 88-35, 11-1-88; Ord. No. 89-16, § 1, 4-18-89; Ord. No. 95-10, § 7, 3-20-95; Ord. No. 95-16, § 2, 4-3-95; Ord. No. 95-40, § 1, 7-3-95; Ord. No. 95-45, § 1, 7-17-95; Ord. No. 96-02, § 2, 2-5-96; Ord. No. 98-10, § 3, 4-20-98; Ord. No. 98-11, §§ 1, 2, 4-20-98; Ord. No. 98-13, § 3, 5-4-98; Ord. No. 98-35, § 3, 11-2-98; Ord. No. 99-35, § 2, 9-20-99; Ord. No. 02-14, § 1, 4-15-02; Ord. No. 03-13, § 2, 4-21-03; Ord. No. 04-51, § 1, 10-4-04; Ord. No. 06-10, §§ 1—4, 2-20-06; Ord. No. 12-13, § 1, 7-2-12; Ord. No. 21-02, § 2, 3-1-21)

Sec. 23-18. - R-1 Single-Family Residential Low-Density and R-1A Single-Family Residential Low-Medium Districts.

- (1) *Purpose:* The purpose of these districts is to preserve and protect the character of existing neighborhoods and subdivisions, and to prohibit any uses which would compromise or alter existing conditions and uses. Also, these districts are intended to encourage residential infilling and expansion of existing neighborhoods and subdivisions. Development land uses permitted in each are designed to reflect existing conditions and enhance the prospects of "lie development."
- (2) *Permitted uses:* Within the R-1 and R-1A Districts, a building or lot shall be used only for the following purposes:
- (a) Single-family detached dwellings, excluding mobile homes.
 - (b) Neighborhood and community parks and centers, golf courses and similar outdoor uses, but not lighted for night use.
 - (c) Publicly owned recreation facilities.
 - (d) Churches, places of worship, religious institutions including accredited educational facilities when accessory thereto.
 - (e) Accessory uses.
 - (f) Home occupations.
 - (g) Signs permitted by and in accord with all applicable provisions of article III.
- (3) *Development regulations:* Regulations governing the location and height of structures, and the area upon which they may be located are as follows:

(a)	<i>Lot area requirements:</i>	<i>R-1</i>	<i>R-1A</i>
	Single-family dwelling (square feet)	10,000	7,500

	Minimum lot width (linear feet)	80	60
	Churches	1 acre	1 acre
	Other permitted uses (square feet)	10,000	10,000
(b)	<i>Yard requirements:</i>	<i>R-1 and R-1A</i>	

	<i>Single-Family Dwelling</i>	<i>Churches</i>	<i>Other Permitted Uses</i>
Minimum depth of:			
Front yard	25 feet	25 feet	25 feet
Rear yard	20 feet	25 feet	25 feet
Minimum width of:			
Side yards:			
R-1	10 feet ¹	25 feet	10 feet
R-1A	5 feet	25 feet	10 feet

Note¹: A five-foot side yard setback shall be required for substandard lots of record.

(c) *Height requirements: R-1 and R-1A*

Maximum height of structures:

Single-family structures 35 feet

Accessory building 15 feet

Other permitted uses 45 feet

(d) *Impervious surface requirements*: No more than forty (40) percent of any lot surface shall be impervious to water absorption in the R-1 District and forty-five (45) percent in the R-1A District. For church use, no more than sixty (60) percent of any lot shall be impervious.

(e) A dwelling unit shall not contain more than five (5) bedrooms or sleeping areas of not more than three hundred (300) square feet each.

(4) *Special exceptions*: Owing to their potential negative impact on the community and surrounding areas, the following uses may be approved as special exceptions by the board of zoning appeals:

(a) Noncommercial marinas, subject to the siting standards of section 23-120.

(b) Commonly owned amenities: The board of zoning appeals may approve commonly owned amenities on parcels platted for said amenities in new subdivisions subject to the standards contained in subsection 23-161(3). Amenities can include a swimming pool, tennis court, clubhouse and open space as defined in section 23-109.

Title to all improved and unimproved commonly owned amenities lying within the subdivision shall be held as undivided interests by owners of lots within the subdivision, each of whom jointly and severally shall be charged with proper care and maintenance of such property through a lawfully established association of lot owners approved by the city and recorded with the final plat documents.

- (c) Off-street parking: Off-street parking (requirements) for the various uses permitted herein are set forth in article IV of this chapter.
- (5) *Conditional uses.* Certain uses that assist in enhancing the character and sense of place of the community for residents and visitors, and which are compatible to the purpose of this district, may be allowed in the Single Family, Low Density Residential, R-1 District. However, due to the manner of operations, conditional uses must meet certain conditions stated in this section, as well as the restrictions and/or limitations applicable to all land uses in the R-1 District (See article I, section 23-2 of this chapter entitled "Definitions"). If the conditions or standards are met, the zoning administrator may permit the use without review by the board of zoning appeals.
 - (a) Park and sports complexes are subject to the following conditions:
 - 1. That the use will be an enhancement to the character and sense of place of the area in which it is to be located.
 - 2. That the use has taken measures to not be injurious to adjoining property, including, but not limited to: controlling of all elements that produce light and noise, so as not to create nuisance conditions off-site. Night time lighting of athletic fields and other attractions may be permitted if it meets this standard.
 - 3. That the use will contribute to the economic vitality and promote the general welfare of the community.

4. That the use will not discourage or negate the use of surrounding property for use(s) permitted by right.
5. The following additional performance standards shall be imposed upon park and sports complexes:
 - i. A scaled site plan shall be submitted indicating the location, size, and arrangement of all structures, fields, light poles, parking spaces, and traffic circulation aisles.
 - ii. Lighting of parking areas shall be provided and shall be of a type and placement so as not to pose visual disturbance to adjacent property owners. The maximum pole height is thirty (30) feet. If facilities are to be illuminated, the type and placement shall not to pose visual disturbance to adjacent property owners. The maximum pole height for facilities is one hundred (100) feet.
 - iii. Structures are limited to a maximum height of one hundred (100) feet.
 - iv. Accessory uses may erect signage advertising their offerings and/or sponsorships and promotional deals. Each use shall submit a comprehensive sign plan package to the planning and development and parks and recreation department staff who will make a recommendation to the city manager who will approve or deny the request prior to the erection of any such signage. The comprehensive sign plan package shall include quantities, sizes, locations, duration, and a maintenance and replacement schedule with obligations to keep signage in good condition for all proposed signage.
- (6) *Off-street parking.* Off-street parking requirements for the various uses permitted herein are set forth in Article IV. Additionally, parking spaces provided in park and sports complexes may consist of alternative pervious

paving material including, but not limited to, porous/pervious brick pavers, grass pavers, porous asphalt or porous concrete, or any other technique approved by the city engineer. However, driveways, circulation aisles and handicapped accessible parking stalls shall be constructed with hard surface impervious materials, unless the city engineer approves an alternate design. In case of conflicts in the various sources for safety, design, and functionality standards; the city engineer will consult with the director of planning and development and both will determine the appropriate standard to be required.

(Ord. No. 88-35, 11-1-88; Ord. No. 93-1, § 1, 1-4-93; Ord. No. 95-10, § 7, 3-20-95; Ord. No. 96-23, § 1, 6-3-96; Ord. No. 03-15, § 1, 5-19-03; Ord. No. 06-47, § 1, 7-17-06; Ord. No. 06-60, § 1, 11-20-06; Ord. No. 06-62, § 1, 11-20-06; Ord. No. 09-06, § 1, 2-2-09; Ord. No. 12-16, § 2, 9-17-12; Ord. No. 16-09, § 1, 4-4-16; Ord. No. 17-25, § 1, 10-16-17; Ord. No. 18-07, § 1, 4-2-18; Ord. No. 21-22, § 1, 5-17-21)

Sec. 23-19. - R-2 Medium Density Residential District.

- (1) *Purpose:* The purpose of this district is to provide for limited alternatives to single-family housing, smaller lot development and correspondingly higher densities, but not permit the crowding of development on individual lots or parcels.
- (2) *Permitted uses:* Within the R-2 District, a building or lot shall be used only for the following purposes:
- (a) Single-family detached dwellings, and other uses permitted by the R-1 and R-1A Districts, together with conditions attached thereto.
 - (b) Zero lot line, single-family detached developments, as provided in section 23-119.
 - (c) Semidetached dwellings and duplexes.
 - (d) Townhouse developments.
 - (e) Family day care homes.
 - (f) Multiplex (triplex and quadraplex) dwellings.
 - (g) Single-Family in common projects.

(3) *Development standards:*

	Single-family Detached	Semi-detached Dwelling	Duplex	Townhouse	Other Permitted Uses	Multiplex
Floor area ratio			.5			
Minimum site area (square feet)	5,000	7,000	7,000	16,000	5,000	16,000
Minimum lot area per DU	5,000	3,500	3,500	3,000	5,000	2,000
Minimum lot width	50 feet	35 feet	55 feet	14 feet ⁶	NA	75 feet
Minimum yards:						
Front	25 feet	25 feet	25 feet	25 feet	25 feet	25 feet

Side	5 feet	7.5 feet ¹	10 feet ₃		20 feet	20 feet
Rear	20 feet	20 feet	20 feet		25 feet	20 feet
Maximum impervious surface ratio	50%	60%	60%	60%	60%	60%
Common open space	N/A	N/A	N/A	25%	N/A	25% ⁵
Minimum distance between principal buildings on same lot	N/A	N/A	N/A	N/A	N/A	20 feet
Minimum distance to single-family dwelling	N/A	N/A	N/A	N/A	N/A	75 feet ⁴

- (a) Maximum height: Thirty-five (35) feet for residential uses, fifteen (15) feet for accessory uses, and forty-five (45) feet for all other permitted uses.
- (b) A dwelling unit shall not contain more than five (5) bedrooms or sleeping areas of not more than three hundred (300) square feet each.

Notes:

¹ A seven-and-one-half-foot setback shall be applied to the ends of the structure and the exterior property line and zero-foot setback shall be allowed for the interior common property line.

² Zero (0) feet between units; ten (10) feet between end structures and side property line; no more than six (6) units shall be attached in one (1) building; for projects with multiple townhouse buildings on land owned "in common" the site side yard setback shall be twenty (20) feet.

³ Rear yard setback shall be ten (10) feet except where contiguous to the project site property line, then a twenty-foot setback shall be required, and shall remain unoccupied by any accessory building or structure.

⁴ Measured from the closest exterior wall of a single-family dwelling unit on the adjacent property to the closest exterior wall of the multiplex dwelling.

⁵ Reference common open space requirements pursuant to section 23-119(4).

⁶ Minimum lot width and/or unit width.

(4) *Special exceptions:* Owing to their potential negative impact on the community and surrounding areas, the following uses may be approved as exceptions special by the board of zoning appeals:

(a) Noncommercial marinas, subject to the siting standards of section 23-120.

(b) Lighted tennis courts, subject to the following:

1. That the proposed lighted tennis court not be located closer than fifty (50) feet to any residential structure.
2. That the lighting be a minimum to sufficiently illuminate the playing surface utilizing sharp cut-off lights with adjustable glare shields.
3. When in close proximity to a residential structure or lot, the board may require a vegetative screen as described in section 23-58(2)(d) on the side(s) of the court or other method to minimize noise levels.
4. In granting the special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement will enhance the siting of the proposed special exception.

(c)

Commonly owned amenities: The board of zoning appeals may approve commonly owned amenities on parcels platted for said amenities in new subdivisions subject to the standards contained in section 23-161(3). Amenities can include a swimming pool, tennis court, club house and open space as defined in section 23-109.

Title to all improved and unimproved commonly owned amenities lying within the subdivision shall be held as undivided interests by owners of lots within the subdivision, each of whom jointly and severally shall be charged with proper care and maintenance of such property through a lawfully established association of lot owners approved by the city and recorded with the final plat documents.

(5) *Off-street parking*: Off-street parking [requirements] for the various uses permitted herein are set forth in Article IV of this chapter.

(Ord. No. 88-35, 11-1-88; Ord. No. 95-10, § 7, 3-20-95; Ord. No. 95-16, § 1, 4-3-95; Ord. No. 96-25, § 1, 6-17-96; Ord. No. 97-33, §§ 1, 2, 8-18-97; Ord. No. 98-13, § 1, 5-4-98; Ord. No. 98-35, § 1, 11-2-98; Ord. No. 03-15, § 2, 5-19-03; Ord. No. 03-56, § 1, 11-3-03; Ord. No. 06-28, § 1, 5-15-06; Ord. No. 06-31, § 1, 6-5-06; Ord. No. 07-21, § 1, 6-18-07; Ord. No. 07-22, § 1, 6-18-07)

Sec. 23-25. - BC Business Commercial District.

- (1) *Purpose:* The purpose of this district is to maintain a beach-oriented business environment in areas previously developed for beach-related business. Here, commercial centers and high-rise construction are not allowed except in the zero lot line overlay district. The district is designed to encourage low density residential, beach-oriented retail and professional office uses. It is intended to serve pedestrian traffic and allow uses with minimal vehicular impact.
- (2) *Permitted uses:* Within the BC District, a building or lot shall be used only for the following purposes:
 - (a) Personal service establishments such as barber and beauty shops; laundromats; laundry pick-up; tailor; dressmaker; shoe shops; photo studio; libraries; child care centers; restaurants, but not drive-throughs; and similar personal service establishments, but not massage parlors.
 - (b) Convenience retail establishments such as drug, hardware, grocery and beverage stores; bakery; flower and gift shops; newsstands and bookstores; and similar uses.
 - (c) Primary retail establishments such as department stores, general mercantile stores, clothing, variety, and similar low-bulk comparison items.
 - (d) Professional offices such as business, financial, medical, clinics, and governmental.
 - (e) Lodges and civic clubs.
 - (f) Commercial schools and schools providing training in any of the arts, sciences, trades and professions.
 - (g) Commercial parking lots.
 - (h) Signs in accordance with Article III of this chapter.
 - (i) Accessory uses.

- (j) Video gaming machines or stations limited to five (5) or fewer as accessory to arcades, restaurants/taverns and convenience stores.
- (k) Mixed-use buildings.
- (l) Single-family detached.
- (m) Semidetached.
- (n) Duplex.
- (o) Townhouse.

(3) *Development standards:*

	Nonresidential Uses	Single- Family Detached	Semidetached	Duplex	Townhouse	Mixed- use ²
Minimum lot area (square feet)	5,000	3,000	7,000	7,000	16,000	
Minimum lot area per DU	N/A	3,000	3,500	3,500	3,000	
Minimum lot width	N/A	35	35	35	14 ⁴	
Minimum yards:						
Front (feet)	10	15 ³	15	15	15	15 ³
Side (feet)	8	5	7.5	7.5	6	8
Rear (feet)	10	15	20	20		20
Maximum yards:						
Front	N/A	N/A	N/A	N/A	20	20
Maximum impervious surface ratio	100%	60%	60%	60%	70%	70%

Open space ratio	N/A	N/A	N/A	N/A		N/A
Maximum height of buildings and structures	45	40	40	40	40	45

Notes:

¹ Zero lot line overlay zone per section 23-31(2).

² No parking, parking lots or parking garages are permitted in front of the front building line of the building.

³ Covered porches and/or decks can extend up to six (6) feet and accompanying steps up to three (3) feet.

⁴ Minimum lot width and/or unit width.

⁵ Zero (0) feet between units; ten (10) feet between end structures and side property line; no more than six (6) units shall be attached in one (1) building. For projects with multiple townhouse buildings on land owned "in common," the site side yard setback shall be twenty (20) feet.

⁶ Rear yard shall be ten (10) feet except where contiguous to the project site property line, then a twenty-foot setback shall be required, and shall remain unoccupied by any accessory building or structure.

(4) *Special exceptions:* Owing to their potential negative impact on the community, the following uses may be approved as special exceptions by the board of zoning appeals.

(a)

Business establishments serving or permitting on premise consumption of alcoholic beverages, beer and/or wine, subject to the following conditions:

1. That the special exception shall not be located closer than two hundred (200) feet (measured from property line) from an R-1, R-2, R-2A or R-3 District line or residential neighborhood, except in unusual circumstances where mitigating conditions can be imposed to minimize adverse effects to residential uses.
 2. That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.
 3. That the special exception will be in substantial harmony with the area in which it is to be located.
 4. That the special exception will not be injurious to adjoining properties.
 5. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
 6. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
 7. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement, will enhance the siting of the proposed special exception.
- (b) Commercial recreation establishments, including theaters; pool and video game rooms, bowling [alleys] and skating rinks, miniature golf, water slides and arcades, but not amusement parks with rides, provided that such uses meet the following criteria:
- 1.

That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.

2. That the special exception will be in substantial harmony with the area in which it is to be located.
3. That the special exceptions will not be injurious to adjoining property.
4. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
5. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
6. That adequate provision is made for such items as fences, buffer or planting strips, to protect adjacent properties from possible adverse influence of the proposed use such as noise, vibration, dust, glare, order, traffic congestion and similar factors.
7. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement, will enhance the siting of the proposed special exception.

(5) *Off-street parking*: Off-street parking requirements for the various uses permitted herein are set forth in article IV.

(Ord. No. 88-35, 11-1-88; Ord. No. 89-15, § 1, 4-4-89; Ord. No. 89-57, § 1, 1-2-90; Ord. No. 90-3, § 3, 2-20-90; Ord. No. 90-24, §§ 1, 2, 7-16-90; Ord. No. 90-35, §§ 3, 4, 8-28-90; Ord. No. 93-24, § 1, 6-7-93; Ord. No. 95-10, § 7, 3-20-95; Ord. No. 95-49, § 4, 10-16-95; Ord. No. 97-03, § 1, 2-3-97; Ord. No. 97-31, § 3, 8-18-97; Ord. No. 02-36, § 1, 9-16-02; Ord. No. 07-17, §§ 1, 2, 5-21-07; Ord. No. 11-28, § 2, 10-17-11)

Sec. 23-26. - HC Highway Commercial District.

- (1) *Purpose:* The purpose of this district is to provide commercial opportunities to the traveling public, and areas in the community where large scale commercial projects may take place with minimal impact on contiguous residential development.

This district is designed to support local as well as regional shopping centers, and business complexes. As such, this district will accommodate a wide range of business and commercial uses, clustered where feasible for "cumulative attraction" and located for optimum accessibility.

- (2) *Permitted uses:* Within the HC District, a building or lot shall be used only for the following purposes:
- (a) Personal service establishments such as barber and beauty shops; laundromats; laundry pick-up; tailor; dressmaker; shoe shops; photo studio; libraries; child care centers; restaurants; and similar personal service establishments, but not massage parlors.
 - (b) Convenience retail establishments such as drug, hardware, grocery and beverage stores; bakery; flower and gift shops; newsstands and bookstores, and similar uses.
 - (c) Primary retail establishments such as department stores, general mercantile stores, clothing, variety, and similar low-bulk comparison items. Any single retail establishment that exceeds fifty thousand (50,000) square feet but is less than seventy-five (75,000) square feet in gross sales floor area is separately defined as "big box" retail. Establishments that are seventy-five thousand (75,000) gross square feet or greater are separately defined as "developments of regional significance" and found in section 23-129.5 developments of regional significance.
 - (d)

Secondary retail establishments such as those selling principally one-stop items, usually high bulk, including furniture, appliances, home furnishings, floor coverings, business machines, heating and air conditioning sales and service, and similar establishments, also including establishments selling automobiles, truck, boats, farm equipment, building and plumbing supplies, tombstones, surplus materials, and heavy machinery, bicycle sales and service. Any single retail establishment that exceeds fifty thousand (50,000) square feet in gross sales floor area is separately defined as "big box" retail. Establishments that are seventy-five thousand (75,000) gross square feet or greater are separately defined as "developments of regional significance" and found in section 23-129.5 developments of regional significance.

- (e) General business services such as duplicating, mimeographing, and multilithing shops, addressing and mailing services, blueprinting photostating and film development.
- (f) Funeral homes and accessory crematoriums provided there are no obnoxious odors, fumes, or emissions generated by the use.
- (g) Professional offices such as business, financial, medical, clinics, and governmental offices.
- (h) Commercial recreation establishments, including theaters, pool and video gamerooms, bowling alleys and skating rinks, miniature golf, water slides and arcades, but not amusements parks with rides.
- (i) Churches, places of worship, religious institutions including accredited educational facilities when accessory thereto.
- (j) Motels, hotels, lodges, and inns.
- (k) Hospitals, clinics, nursing and convalescent homes.
- (l) Educational institutions, primary through graduate, public and private.
- (m) Armories, lodges and civic clubs.
- (n) Commercial schools and schools providing training of any of the arts, sciences, trades and professions.

- (o) Animal hospitals, veterinary clinics provided all boarding arrangements are maintained within a building and no noise connected with the operation of the facility is discernible beyond the premises.
- (p) Automobile service and repair provided that there shall be no openings toward adjoining residential districts, and no junked or salvaged vehicles shall be kept on the premises.
- (q) Public and private transportation service and facilities, including bus terminals and taxi stands.
- (r) Commercial parking lots and structures.
- (s) Adult entertainment establishments, as defined in and subject to the provisions of article VI.
- (t) Signs in accordance with article III of this chapter.
- (u) Accessory uses customarily incidental to multifamily dwellings.
- (v) Accessory uses customarily incidental to hotels, motels, inns, lodges and resort residential; provided such uses for hotels are located within the principal building and are accessible only from an interior court, lobby, corridor or pool deck except for poolside activities as regulated under section 23-118; further provided that such uses for hotels, motels, inns, lodges and resort accommodations shall be limited to the following: restaurants, newsstands, snack bars, florists, gift shops, confectionery stores, beach and convenience retail shops, automobile rental agencies, drug and sundry shops, nightclubs and radio broadcasting studios, health clubs, barbershops, and beauty shops.
- (w) Other accessory uses.
- (x) Cemeteries, including mausoleums, columbariums, administrative offices, mortuary, chapel, maintenance facility, crematoriums provided there are no obnoxious odors, fumes, or emissions generated by the use, caretakers residence and other accessory uses.

- (y) Video gaming machines or stations limited to five (5) or fewer as accessory to arcades, restaurants/taverns and convenience stores.

(3) *Development standards:*

	Single-Family Dwelling	Multifamily Dwellings	Hotels, Motels, Resort Accommodations	All Other Uses ³
Minimum site area (square feet)	NA	15,000	15,000	10,000
Minimum lot area per dwelling unit	10,000	1,350	NA	NA
Minimum lot width	NA	100 feet	100 feet	NA
Minimum yards:				
Front	25 feet	20 feet	20 feet	20 feet
Side	10 feet ⁵	1	1	8 ²
Rear	20 feet	20 feet	20 feet	20 feet
Maximum impervious surface ratio	60%	80%	80%	90%

Common open space		20%	20%	NA
Maximum height of structures	35 feet	50 feet	70 feet	50 feet ¹
Maximum height of signs	N/A	10 feet	40 feet	40 feet

Notes:

- ¹ Ten (10) feet for the first thirty-five (35) feet plus one (1) foot for each one and one-half (1½) feet over thirty-five (35) feet; for each building in excess of eighty (80) feet in width, one (1) additional foot on each side shall be required for each seven (7) feet in building width over eighty (80) feet. For the purpose of calculating side setbacks and/or building separations, the height of the roof section (if not devoted to living or storage space) shall not be considered in determining the height of the structures.
- ² On buildings two hundred (200) feet in width or less, an eight-foot setback shall be required, except that commercial condominium projects shall be allowed to share interior property lines; for buildings greater than two hundred (200) feet in width, the following setbacks shall be required on the end units; further provided that such projects (buildings) shall not exceed six hundred (600) feet in width.

Width of Project	Side Yard Required (two (2) sides)
------------------	---------------------------------------

To 200 feet	8 feet
201—400 feet	16 feet
401—600 feet	30 feet

- ³ "Big box" retail shall provide the following: All lighting systems installed within the parking area shall use a ninety-degree (or less) cutoff luminaire angled away from noncommercial properties with a maximum height of thirty (30) feet measured from the base of the pole when installed. All lamp posts shall be contained within a landscape island. Reference article VII, general supplemental, developments of regional significance, for guidelines and standards affecting gross retail square footage of seventy-five thousand (75,000) square feet or greater.
- ⁴ With approval of the North Myrtle Beach Board of Zoning Appeals as a special exception, amusement rides in amusement parks can extend up to seventy (70) feet in height.
- ⁵ A five-foot side yard setback shall be required for substandard lots of record.
- (4) *Special exceptions:* Owing to their potential negative impact on the community, the following uses may be approved as special exceptions by the board of zoning appeals:
- (a) Amusement parks, arcades, and rides, subject to the following conditions:
- 1.

That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.

2. That the special exception will be in substantial harmony with the area in which it is to be located.
 3. That the special exception will not be injurious to adjoining property.
 4. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
 5. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
 6. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgment, will enhance the siting of the proposed special exception.
- (b) Commercial and noncommercial marinas, subject to the siting standards of section 23-120.
- (c) Business establishments, excluding accessory uses to hotels and motels with access exclusively from an interior lobby, serving or permitting on premise consumption of alcoholic beverages, beer and/or wine, subject to the following conditions:
1. That the special exception shall not be located closer than two hundred (200) feet (measured from property line) from an R-1, R-2, R-2A, or R-3 District line or residential neighborhood, except in unusual circumstances where mitigating conditions can be imposed to minimize adverse effects to residential uses.
 2. That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.

3. That the special exception will be in substantial harmony with the area in which it is to be located.
 4. That the special exception will not be injurious to adjoining property.
 5. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
 6. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
 7. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgment, will enhance the siting of the proposed special exception.
- (d) Dry storage and/or dry stack facilities as a principal or accessory use subject to the following conditions:
1. That boat storage shall not be located closer than two hundred (200) feet from the nearest residential district line, except in unusual circumstances where mitigating conditions can be imposed to minimize adverse effects to residential uses.
 2. That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.
 3. That the special exception will be in substantial harmony with the area in which it is to be located.
 4. That the special exception will not be injurious to adjoining property.
 5. That the special exception will not contribute to the economic vitality and promote the general welfare of the community.
 - 6.

That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.

7. That adequate provision is made for such items as fences, buffer or planting strips, to protect adjacent properties from possible adverse influence of the proposed use such as noise, vibration, dust, glare, odor, traffic congestion and similar factors.
 8. As a principal use, dry storage and/or dry stack facilities shall be subject to the siting standards listed in section 23-120.
 9. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgment, will enhance the siting of the proposed special exception.
- (e) Mini-warehouses facilities: The board of zoning appeals may approve mini warehouse facilities subject to the following minimum development regulations and site location standards:
1. Minimum development regulations:
 - a. Each storage space shall not exceed three hundred (300) square feet with an exterior entrance under the control of the tenant.
 - b. Overall development size shall be limited to a maximum of three (3) acres.
 - c. Use standards shall prohibit:
 - i. Any other business activity, other than the rental of storage units on the premise.
 - ii. Outside storage.
 - iii. The servicing, repair or fabrication of motor vehicles, boats, trailers, lawn mowers, appliances or similar equipment.
 - iv.

The operation of power tools, spray painting equipment, table saws, lathes, compressors, welding equipment, kilns or other similar equipment.

- v. The establishment of a transfer and storage business.
 - d. Where determined necessary by the board of zoning appeals, a screening barrier around the perimeter of the development shall be required. Such barrier may be a solid or semi-solid fence, but woven wire is expressly prohibited.
 - e. Storage structures shall be limited to one (1) story or twelve (12) feet in height.
2. Site location standards:
- a. The special exception will not abut Highway 17, Main Street or Sea Mountain Highway.
 - b. The special exception will not be injurious to adjoining property.
 - c. The special exception will be in substantial harmony with the area in which it is to be located.
 - d. The special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
3. Legislative intent: Recognizing that mini warehouse facilities are permitted by right in the Limited Industrial Districts, it is council's intent that the zoning board of appeals exercise its discretion gingerly in approving site locations for mini warehouse facilities in the Highway Commercial District. It is council's further intent that in granting the special exception, the board of zoning appeals impose such reasonable and additional stipulations, conditions, and/or safeguards as, in its judgement, will enhance the siting and aesthetic quality of the special exception.

(f)

Mini-warehouse, climate controlled: The board of zoning appeals may approve climate controlled mini-warehouse facilities subject to the following minimum development regulations and site location standards:

1. Minimum development regulations:

- a. Each individual storage unit shall meet the definition of mini-warehouse.
- b. No individual storage unit shall have a door that opens to the exterior of the building.
- c. The exterior of the building shall consist of a finished surface such as brick, vinyl, plaster (synthetic or nonsynthetic), wood, mortar (stucco or drivet), or any other material approved by the zoning administrator, covering at least seventy-five (75) percent of the outer walls of the building.

2. Site location standards:

- a. The special exception will not abut Highway 17, Main Street or Sea Mountain Highway.
- b. The special exception will not be injurious to adjoining property.
- c. The special exception will be in substantial harmony with the area in which it is to be located.
- d. The special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
- e. Where determined necessary by the board of zoning appeals, additional screening may be required over and above that required by the landscape regulations.

(g) Single-family residential subject to the following conditions:

1. That the special exception will not be a property which abuts Highway 17, Main Street or Sea Mountain Highway.
- 2.

That the special exception will be in substantial harmony with the area in which it is to be located.

3. That the special exception will not discourage or negate the use of surrounding property for uses permitted by right.
 4. That in granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement will enhance the siting of the proposed special exception.
- (h) Video gaming establishments: Owing to the potential deleterious effects such as traffic congestion, late hours of operation and noise, the criteria by which the board of zoning appeals will evaluate each location are as follows:
1. That the special exception shall not be located closer than two hundred (200) feet (measured from property lines) from an R-1, R-1A, R-2, R-2A, R-3 or R-4 zoning district line.
 2. That the special exception will not be located closer than five hundred (500) feet (measured from property lines) to another such use.
 3. That only one (1) video gaming establishment be located on the same parcel of property.
 4. That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.
 5. That the special exception will be in substantial harmony with the area in which it is to be located.
 6. That the special exception will not be injurious to adjoining property.
 - 7.

That the special exception will contribute to the economic vitality and promote the general welfare of the community.

8. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
 9. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement will enhance the siting of the proposed special exception.
- (i) Resort accommodations subject to the following conditions:
1. That the special exception is no closer than two hundred (200) feet property line to property line from an established single-family neighborhood except where mitigating conditions can be imposed to minimize adverse effects to the residences.
 2. That the special exception complies with all applicable development standards, and off-street parking.
 3. That the special exception will be in substantial harmony with the area in which it is to be located.
 4. That the special exception will not be injurious to adjoining property.
 5. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
 6. That the special exception will not discourage or negate the use of surrounding property for uses(s) permitted by right.
 7. In granting a special exception, the board of zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgment, will enhance the siting of the proposed special exception.

(5)

Conditional uses: Certain uses that assist in enhancing the character and sense of place of the community for residents and visitors, and which are compatible to the purpose of this district, may be allowed in the Highway Commercial HC districts. However, due to the manner of operations, conditional uses must meet certain conditions stated in this section, as well as the restrictions and/or limitations applicable to all land uses in the HC district (See article I, section 23-2 of this ordinance entitled "Definitions"). If the conditions or standards are met, the zoning administrator may permit the use without review by the board of zoning appeals.

(a) Public farmers' markets, subject to the following conditions:

1. For purposes of this section a public farmers' market shall be defined as a tract of publicly owned land used for purposes of allowing a vendor to set up, display, and sell produce and similar goods, hosting approved festivals, arts and crafts fairs, serving as a hub for community supported agriculture, and similar activities under conditions established by the city and/or this ordinance.
2. That the use will be an enhancement to the character and sense of place of the area in which it is to be located.
3. That the use has taken measures to not be injurious to adjoining property, including, but not limited to:
 - a. Controlling of all elements that produce noise, so as not to create nuisance conditions off-site.
 - b. Vending and all other activities on the site are approved, supervised and managed by the city or its designee.
4. That the use will contribute to the economic vitality and promote the general welfare of the community.
5. That the use will not discourage or negate the use of surrounding property for use(s) permitted by right.
- 6.

The following additional performance standards shall be imposed upon the operation of farmers' markets:

- a. A site plan shall be submitted indicating the location, size and arrangement of all vendor spaces, parking spaces and traffic circulation aisles, and any existing or proposed structures or uses on the site.
- b. Vendors may offer merchandise directly from a vehicle parked within an approved vendor space, or in spaces assigned to them under any shelter structure. Merchandise shall not be displayed or sold from vehicles parked in approved parking spaces. Vendors may not take up parking spaces that are required for any other use on the site.
- c. Each vendor may erect one (1) temporary portable sign within their vendor space. Such signs shall not be erected, displayed or visible outside of the approved hours of operation.
- d. Vendors shall be limited to the sale of the following merchandise:
 - i. Pasture-raised meat, poultry, eggs and dairy products grown and harvested within North Carolina or South Carolina and kept frozen or cooled during transport and display.
 - ii. Fish and shellfish lawfully harvested within the territorial waters of North Carolina or South Carolina and kept frozen or cooled during transport and display. The cleaning or shelling or shucking of such items on premises shall not be permitted.
 - iii. Produce, vegetables, fresh cut or dried flowers and herbs, fruits, and edible plants grown and harvested within North Carolina or South Carolina.

- iv. Breads, pastries, baked goods or other foods prepared, transported, stored, and sold/served according to the South Carolina Department of Health and Environmental Control, Food Protection Division, Regulation 61-25, sections applicable to flea markets.
- v. Arts and craft items that are produced or hand made in North or South Carolina. Such items may include, but shall not be limited to: paintings, drawings, sketches, small furniture items, pottery, jewelry, toys, textile products, and similar items.
- vi. Items of a seasonal nature, such as Christmas trees, wreaths, live plants, etc.
- e. No vehicles, merchandise, signs, canopies, tents, structures, or any other material may be left anywhere on the premises outside of the approved hours of operation.
- f. Parking design: Due to the transient nature and limited hours of operation of this type of land use, farmers' markets located on sites where no other land use is situated shall be exempt from having to provide a dust-free parking surface or landscape buffers.

(b) Mixed-use buildings.

- 1. Multifamily dwellings are allowed, subject to the following conditions:
 - a. That multifamily dwelling units within 1 and 2-story buildings shall not exceed fifty (50) percent of a buildings square footage.
 - b. For multifamily dwellings within buildings 3 stories or greater, residential dwelling units shall not exceed seventy-five (75) percent of a buildings square footage.

c. That the parking requirement shall be reduced to twenty-five (25) percent of the minimum otherwise required.

- (6) *Off-street parking:* Off-street parking requirements for the various uses permitted herein are set forth in article IV.
- (7) *Parking design:* Due to the transient nature and limited hours of operation of this type of land use, farmer's markets located on sites where no other land use is situated shall be exempt from having to provide a dust-free parking surface or landscape buffers.

(Ord. No. 88-35, 11-1-88; Ord. No. 89-15, § 2, 4-4-89; Ord. No. 89-16, § 1, 4-18-89; Ord. No. 90-35, §§ 5—8, 8-28-90; Ord. No. 93-36, § 4, 10-4-93; Ord. No. 94-1, § 2, 1-3-94; Ord. No. 95-10, § 7, 3-20-95; Ord. No. 95-26, § 1, 4-17-95; Ord. No. 96-22, § 1, 6-3-96; Ord. No. 96-23, § 2, 6-3-96; Ord. No. 96-24, §§ 1, 2, 6-17-96; Ord. No. 97-03, § 2, 2-3-97; Ord. No. 97-31, §§ 5, 6, 8-18-97; Ord. No. 99-46, §§ 2—4, 11-15-99; Ord. No. 00-28, §§ 1, 2, 5-15-00; Ord. No. 01-12, § 2, 2-19-01; Ord. No. 01-45, § 1, 10-15-01; Ord. No. 04-50, §§ 1—3, 10-4-04; Ord. No. 04-51, § 2, 10-4-04; Ord. No. 04-59, §§ 1, 2, 11-15-04; Ord. No. 09-20, § 1, 6-1-09; Ord. No. 10-5, § 1, 5-3-10; Ord. No. 10-17, § 1, 10-4-10; Ord. No. 10-18, § 1, 10-4-10; Ord. No. 11-30, § 2, 11-21-11; Ord. No. 14-05, § 1, 4-7-14; Ord. No. 15-18, § 2, 5-18-15; Ord. No. 15-28, § 1, 9-21-15)

Sec. 23-27. - RC Resort Commercial District.

- (1) *Purpose:* The purpose of this district is to define certain areas of the community where commercial uses may be established, and tourist and visitor attraction enhanced. To strengthen the drawing power of this district, it should remain relatively small and tightly developed for maximizing cumulative attraction, and minimizing the adversities of such uses on nearby residential developments.
- (2) *Permitted uses:* Within the RC District, a building or lot shall be used only for the following purposes:
 - (a) Motels, hotels, resort accommodations, lodges and inns.
 - (b) Multifamily dwellings, including garden and high-rise apartments and boarding houses.
 - (c) Personal service establishments such as barber and beauty shops, laundromats, laundry pick-up, tailor, dressmaker, shoe shops, photo studios, libraries, child care centers, restaurants, and similar personal service establishments, but not massage parlors.
 - (d) Commercial recreation establishments, including theaters, pool and video gamerooms, bowling alleys and skating rinks, miniature golf, water slides and arcades, but not amusement parks with rides.
 - (e) Rental of sport and recreation equipment, including rental of motorized equipment and vehicles, including golf cart rental.
 - (f) Primary and convenience retail shops, but not adult bookstores.
 - (g) Professional offices, such as real estate, business, financial, medical and governmental offices.
 - (h) Accessory uses customarily incidental to dwellings, including an accessory dwelling unit provided the following requirements are met:
 - 1.

The accessory dwelling unit does not exceed six hundred (600) square feet of gross floor area, excluding storage and parking areas;

2. The accessory dwelling unit is separated from the principal structure by a minimum of fifteen (15) feet;
 3. One (1) additional parking space is provided for the accessory dwelling unit;
 4. The principal structure must be owner-occupied.
 5. The accessory dwelling unit must use compatible exterior materials and be architecturally similar to the principal structure. Applications for accessory structures shall contain sufficient details for this requirement to be reviewed.
 6. The accessory dwelling unit must be located only in the rear yard, and must meet all applicable setback, impervious surface, and other requirements for the district as if it were a principal structure.
- (i) Single family dwellings, duplex dwellings, and multiplex dwellings.
 - (j) Semi-detached dwellings.
 - (k) Townhouse developments.
 - (l) Mixed-use buildings.
 - (m) Accessory uses customarily incidental to hotels, motels, resort accommodations, inns and lodges; provided such uses are located within the principal building and are accessible only from an interior court, lobby corridor or pool deck except for poolside activities as regulated under section 23-118 and off-site parking decks for hotels/motels; further provided that such uses shall be limited to the following: restaurants, newsstands, snack bars, florists, gift shops, confectionery stores, beach and convenience retail shops, automobile rental agencies, drug and sundry shops, nightclubs and radio broadcasting studios, health clubs, beauty and barber shops.

Accessory retail may be located on the first floor of off-site parking decks in association with hotel/motel uses and be accessible from the street.

(n) Other accessory uses.

(o) Signs permitted by and in accord with all applicable regulations of Article III.

(p) Off-street parking lots and structures.

(3) *Development standards:*

	Hotels, Motels, Resort Accommodations, Lodges, Inns ⁵	Single-Family Detached	Multifamily Dwellings ⁵	Mixed-Use ⁶	All Other Uses
Minimum lot area (square feet)	15,000	5,000	15,000	N/A	N/A
Minimum lot width (feet)	100	35	100	N/A	N/A
Minimum yards:					
Front (feet)	15 ³	15	15	25	15 ¹
Side (feet)	10 ³	5	Note ²	20 ⁵	10 ¹
Rear (feet)	15 ³	15	15	30	10
Maximum impervious surface ratio	90%	50	80%	70%	95%
Common open space	10%	N/A	20%	N/A	N/A
Maximum height of structures (feet)	165	35	165	45	50
Maximum height of signs (feet)	30	N/A	10	N/A	30

Distance between structures (feet)	20	N/A	20	N/A	10
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Notes:

¹ Zero lot line overlay zone per [sub]section 23-31(2).

² Ten (10) feet for the first thirty-five (35) feet in height and fifteen (15) feet for buildings in excess of thirty-five (35) feet in height.

³ Off-site parking decks for hotels/motels shall have a six-foot front yard, zero (0) side yard and zero (0) rear yard setback.

[⁴ *Reserved.*]

⁵ The use may be constructed in the airspace above a noncontiguous parking lot of the same use subject to the requirements of section 23-41 and an agreement between the owners sharing the off-site lot and the city; and/or an easement protecting access and required off-site parking; and deed restriction of off-site spaces; and compensation for any lost required interior landscaping.

⁶ No parking, parking lots or parking garages are permitted in front of the front building line of the building.

(4) *Special exceptions.* Due to their potential negative impact on the community and incompatibility with residential neighborhoods the following uses may be approved as special exceptions by the board of zoning appeals:

- (a) Fishing piers, provided that the uses permitted on such piers are limited to restaurants, bait and tackle shops, and marine accessories. Refer to section 23-124 for separation requirements.

- (b) Business establishments, excluding accessory uses to hotels and motels with access exclusively from an interior lobby, serving or permitting on premise consumption of alcoholic beverages, beer and/or wine, subject to the following conditions:
- (1) That the special exception shall not be located closer than two hundred (200) feet from an R-1, R-2, R-2A, or R-3 District line or residential neighborhood, except in unusual circumstances where mitigating conditions can be imposed to minimize adverse effects to residential uses.
 - (2) That the special exception complies with all applicable development standards, including off-street parking, and dimensional requirements.
 - (3) That the special exception will be in substantial harmony with the area in which it is to be located.
 - (4) That the special exception will not be injurious to adjoining property.
 - (5) That the special exception will contribute to the economic vitality and promote the general welfare of the community.
 - (6) That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
 - (7) That in granting a special exception, the Board of Zoning Appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement, will enhance the proposed special exception.
- (5) *Conditional uses.* Certain uses that assist in enhancing the character and sense of place of the community for residents and visitors, and which are compatible to the purpose of this district, may be allowed in the Resort Commercial (RC) district. However, due to the manner of operations, conditional uses must meet certain conditions stated in this section, as well

as the restrictions and/or limitations applicable to all land uses in the RC district. (See Article I, section 23-2 of this ordinance entitled "Definitions"). If the conditions or standards are met, the zoning administrator may permit the use without review by the board of zoning appeals. (S.C. Code 6-29-720 of the S.C. Comprehensive Planning Act of 1994).

- (a) Public farmers' markets, subject to the same conditions and review procedures as set forth for this use in subsection 23-26(5)(a) public farmers' markets, in the Highway Commercial (HC) District.
- (b) Amusement parks and rides, including traditional accessory uses, subject to the following conditions:
 - (1) That the use complies with all applicable development standards of the RC district, including parking requirements.
 - (2) That the use will be an enhancement to the character and sense of place of the area in which it is to be located.
 - (3) That the use has taken measures to not be injurious to adjoining property, including, but not limited to:
 - i. Limiting the hours of amusement ride operation to between 11:00 a.m. and 11:00 p.m. (All other uses associated with the amusement park are not restricted as to hours of operation.)
 - ii. Limiting the heights of amusement ride structures to one-hundred and sixty (160) feet or less. All other structures must meet the normal height limitations of the district.
 - iii. Controlling and shielding of all lighting so as not to cast undue glare onto adjoining residentially zoned or used properties.
 - iv. Controlling of all elements that produce noise, so as not to create nuisance conditions off-site.
 - (4) That the use will contribute to the economic vitality and promote the general welfare of the community.

(5) That the use will not discourage or negate the use of surrounding property for use(s) permitted by right.

(6) *Off-street parking.* Off-street parking requirements for the various uses permitted herein are set forth in article IV and in the Priority Investment Activity Center Overlay zone of section 23-31, Overlay Zones.

(Ord. No. 88-35, 11-1-18; Ord. No. 89-15, § 2, 4-4-89; Ord. No. 89-16, § 1, 4-18-89; Ord. No. 90-35, § 9, 8-28-90; Ord. No. 91-20, § 1, 5-20-91; Ord. No. 91-39, § 1, 11-11-91; Ord. No. 92-7, § 1, 1-20-92; Ord. No. 92-35, § 1, 7-20-92; Ord. No. 94-21, §§ 1—3, 7-18-94; Ord. No. 94-23, § 1, 7-18-94; Ord. No. 94-24, § 1, 7-18-94; Ord. No. 95-4, §§ 2—4, 2-6-95; Ord. No. 95-10, § 7, 3-20-95; Ord. No. 95-40, § 2, 7-3-95; Ord. No. 95-45, § 2, 7-17-95; Ord. No. 95-49, § 5, 10-16-95; Ord. No. 97-03, § 3, 2-3-97; Ord. No. 97-09, §§ 1, 2, 3-17-97; Ord. No. 97-31, § 4, 8-18-97; Ord. No. 98-12, §§ 1, 2, 4-20-98; Ord. No. 98-10, § 4, 4-20-98; Ord. No. 99-35, § 2, 9-20-99; Ord. No. 01-29, § 1, 6-4-01; Ord. No. 02-14, § 2, 4-15-02; Ord. No. 03-13, § 4, 4-21-03; Ord. No. 04-51, § 3, 10-4-04; Ord. No. 08-16, § 1, 8-18-08; Ord. No. 09-21, § 2, 6-1-09; Ord. No. 10-5, § 2, 5-3-10; Ord. No. 10-17, § 2, 10-4-10; Ord. No. 11-22, § 1, 8-15-11; Ord. No. 17-09, § 1, 5-1-17)

CITY OF NORTH MYRTLE BEACH
PLANNING COMMISSION
1015 Second Avenue South
MONDAY, NOVEMBER 27, 1995
5:30 p.m.

AGENDA

1. CALL TO ORDER:
2. COMMUNICATIONS:
3. READING OF MINUTES:
 - a) Meeting of November 13, 1995.
4. OLD BUSINESS:
5. NEW BUSINESS:
 - A. PUBLIC HEARING: ZTX-95-19 ZONING TEXT AMENDMENT. An amendment to the zoning ordinance text to permit as a special exception in the R-4 (Resort Residential) district, "cabana houses" designed as single family structures to be used in a limited noncommercial manner by home owners associations of large developments located in North Myrtle Beach not in close proximity to the oceanfront. Cabana houses are to be generally limited in use to drop off area, bath, change of clothing facilities, and occasional guest quarters and similar uses.
 - B. PUBLIC HEARING: Z-95-19 REZONING. An application to rezone approximately 2 acres located between 6th Ave. S. and 7th Ave. S. from R-1 (Single Family Residential) and R-2 (Medium Density Residential) to HC (Highway Commercial). This property begins at the centerline of McLean Street, approximately 550 feet southeast of the intersection of Highway 17 South and 6th Ave. S. and extending approximately 250 feet farther southeast along 6th Ave. S. It also extends from 6th Ave. S. to 7th Ave. S. The area requested for rezoning comprises approximately one (1) acre currently R-1 and one (1) acre zoned R-2.
 - C. PUBLIC HEARING: Z-95-22 REZONING. An application to rezone one (1) lot on Madison Drive contain 7,830 square feet from NC (Neighborhood Commercial) to HC (Highway Commercial). This lot is located on the southeast side (oceanside) of Madison Drive approximately halfway between 16th Ave. S. and 17th Ave. S.
 - D. RECOMMENDATION: AN-95-08 ANNEXATION. A request to annex approximately 8.5 +/- acres into the City of North Myrtle Beach. The subject property abuts 6th Ave. South, and is generally located between the Masonic Temple, the Fun Village lot, and the North Strand Plaza. The property runs parallel with US 17 at a starting depth of approximately 275 feet. The property owner is seeking HC (Highway Commercial)

zoning for the front (US 17) portion of the property and OC (Office Commercial) zoning for the rear.

- E. PUBLIC HEARING: Z-95-20 ZONING DESIGNATION. A request to zone approximately 6 acres as HC (Highway Commercial). This property begins approximately 600 feet northwest of the intersection of Highway 17 S. and 6th Ave. S. abutting the Masonic Temple property and extends approximately 150 feet further northwest along 6th Ave. S. It is approximately 500 feet deep. The property is currently incorporated and is proposed for annexation.
 - F. PUBLIC HEARING: Z-95-21 ZONING DESIGNATION. A request to zone approximately 2.5 acres as OC (Office Commercial). This property begins approximately 750 feet northwest of the intersection of Highway 17 S. and 6th Ave. S. abutting the aforementioned property and extends approximately 320 feet further northwest fronting on 6th Ave. S. It is approximately 250 to 350 feet deep. The property is currently unincorporated and is proposed for annexation.
 - G. PRELIMINARY PLAT: SUP-95-07 TILGHMAN ESTATES/SHOREHAVEN. A request for preliminary plat approval to create four new lots of record from three existing lots and to create a new public street called Shorehaven Drive. The property fronts North Ocean Boulevard approximately 385 north of 18th Ave. North and contains 13.71 acres, R-4 zoning.
 - H. FINAL PLAT: SUF-95-10 PHASE II-C (REVISED), TIDEWATER PLANTATION. A request for final plat approval to add eight (8) additional lots to Phase II-C, and to create a new private street called Staysail Court, and to add a cul-de-sac to Harbor Drive. This is a zero lot line development, PUD zoning.
6. ADJOURNMENT:

Respectfully submitted,



Greg Niles
City Planner

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: 12/04/95

Agenda Item: 4K	Prepared By: PAUL BLUST
Agenda Section: BUSINESS: Discussion	Date: NOVEMBER 29, 1995
Subject: Zoning Text Amendment - To Permit "Cabana Houses" as a special exception in R-4	Division: PLANNING & DEVELOPMENT

Background:

Staff has proposed a zoning text amendment to create a new use category called "cabana house" as a special exception within the R-4 (resort residential) district.

The purpose of creating the "cabana house" use is to recognize that projects have and will continue to be built which are not in close proximity or walking distance to the beach and ocean and would still like to take advantage of that important asset. A "cabana house" is to be specifically limited in use by these projects. It will be owned and maintained by the homeowner's association of the project.

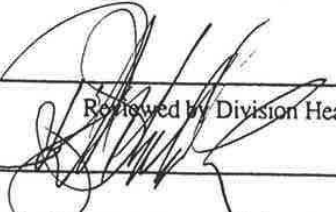
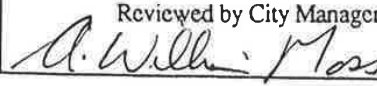
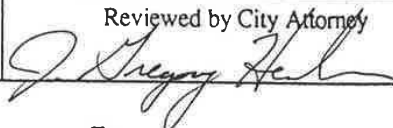
A "cabana house" will utilize single family design and be subject to the developmental standards for single family construction except that the parking areas shall be required to be paved.

The specific use of the project will be limited to drop off and parking areas, bathing, changing clothes and similar uses. Additionally, it can also be used as occasional guest quarters and similar residential uses.

Creating "cabana house" use as a special exception allows the Board of Zoning Appeals to review each proposed site for compatibility with surrounding uses and impose additional conditions and safeguards where they deem necessary. One criterion the Board will review is establishment of a shuttle service from the project to the "cabana house". The public benefit for this type of arrangement will be the reduction of competition for the public parking spaces by the residents of these projects. Public parking is currently in short supply.

Other criteria the Board of Zoning Appeals will review before approval are as follows:

1. That a homeowner's association shall have been established for the project and a maintenance agreement has been submitted to the Planning Department.
2. That a shuttle schedule be established with an on site paved area for the shuttle vehicle to enter the property, turn around and exit without backing into the street.

Reviewed by Division Head 	Reviewed by City Manager 	Reviewed by City Attorney 
Council Action: Motion By _____ 2nd By _____ To _____		

5A. Zoning Text Amendment ZTX-95-19.

Staff has proposed a zoning text amendment to create a new use category as a special exception within the R-4 (resort residential) district. The use is proposed to be called "cabana houses".

The "cabana house" will utilize single family design and be subject to the developmental standards of single family except that the parking areas shall be required to be paved.

The purpose of creating the "cabana house" use is to recognize that projects have and will continue to be built which are not in close proximity or walking distance to the beach and ocean and would still like to take advantage of that important asset. A "cabana house" is to be specifically limited in use by these projects. It will be owned and maintained by the homeowner's association of the project.

One of the primary uses of the property will be a drop-off and parking area. A shuttle service to and from the property shall be established as a criterion of the Board of Zoning Appeals. The public benefit for this type of arrangement will be the reduction of competition for the public parking spaces by the residents of these projects. Public parking is currently in short supply.

Other uses of the "cabana house" will be a place for bathing, changing clothes and similar uses. It can also be used as an occasional guest quarters and similar residential uses since the design is that of single family residential.

As a special exception, some criteria the Board of Zoning Appeals should be ensuring before approval are as follows:

1. That a homeowner's association shall have been established for the project and a maintenance agreement has been submitted to the Planning Department.
2. That a shuttle schedule be established with an on site paved area for the shuttle vehicle to enter the property, turn around and exit without backing into the street.
3. That the use of the house be limited to bathing and change of clothing facilities, and occasional use as guest quarters and other similar uses.
4. That the special exception will be in substantial harmony with the area in which it is to be located.
5. That the special exception will not be injurious to the adjoining property.
6. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
7. That in granting the special exception, the Board of Zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement, will enhance the siting of the proposed special exception.

3. That the use of the house be limited to bathing and change of clothing facilities, and occasional use as guest quarters and other similar uses.
4. That the special exception will be in substantial harmony with the area in which it is to be located.
5. That the special exception will not be injurious to the adjoining property.
6. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
7. That in granting the special exception, the Board of Zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement, will enhance the siting of the proposed special exception.

Recommended Action:

Discussion.

CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA
NORTH MYRTLE BEACH MUNICIPAL COMPLEX
CITY COUNCIL MEETING
Monday, December 4, 1995
7:30 PM

M I N U T E S

(SUMMARY MINUTES OF CITY COUNCIL MEETING. AUDIO TAPES OF THE MEETING ARE ON FILE AND ARE INCLUDED BY REFERENCE AS PART OF THIS MEETING. AN AGENDA OF THIS MEETING HAS BEEN EITHER MAILED OR MADE AVAILABLE TO PERSONS, ORGANIZATIONS AND LOCAL NEWS MEDIA AS PER THEIR REQUEST. THE AGENDA GIVES THE DATE, TIME AND PLACE OF THE MEETING AS WELL AS THE ORDER OF BUSINESS. THIS DISCLOSURE IS IN COMPLIANCE WITH THE SOUTH CAROLINA CODE OF LAWS OF 1976, SECTION 30-4-80(e).)

PRESENT:

MAYOR
COUNCIL:

PHILIP N. TILGHMAN
BILLY W. SMITH
TERRY W. WHITE, SR.
RUSSELL R. BURGESS, JR.
TRACY R. EDGE

ASSISTANT TO CITY MANAGER
CITY ATTORNEY

JOHN H. SMITHSON
J. GREGORY HEMBREE

CITY CLERK

BEVERLY K. FRANZ

NEWS MEDIA:

SHERM DELMAGE, NMB TIMES
KENT BERNHARD, SUN NEWS

ABSENT:

Regular Meeting

Mayor Philip N. Tilghman called the Meeting to Order. City Clerk called the roll. Quorum was established. Assistant to the City Manager John Smithson delivered the Invocation. Mayor Tilghman led the Pledge of Allegiance.

Mayor Tilghman announced that Item 4M would be withdrawn from the Agenda at the request of the developer. Mayor Tilghman stated the developer, Mr. McNair, would be making some changes to the original proposal. He said it would be readvertised prior to another public hearing by the Planning Commission. He said Mr. McNair was available outside the Council Chambers if any interested parties wished to speak to him.

Item 4M was on the Agenda for discussion of an annexation and zoning designation for 8.55 acres of property located between 6th Avenue South and the North Strand Plaza.

**ITEM 2A, MINUTES OF THE REGULAR CITY COUNCIL MEETING OF
NOVEMBER 20, 1995**

MOTION was made by Councilman White to adopt the Minutes of the November 20, 1995 Meeting as presented, SECONDED by Councilman Burgess. All voted "AYE". MOTION CARRIED.

ITEM 3A, LONGEVITY BONUSES

Longevity Bonuses were presented to Connie Cox and Fred Morris for fifteen years of service each.

ITEM 3B, EMPLOYEE OF THE MONTH AWARDS

Employee of the Month Awards were presented to Crew Leader Ricky Bellamy and Accounting Clerk Donya Jordan.

ITEM 3C, MONTHLY REPORTS

Monthly Reports of the Planning/Development, Personnel/Support Services, and Recreation Departments were dispensed with.

Mayor Tilghman commended the Recreation Department and Ms. Emily Stephens for the Christmas programs. He said Mr. Don Hamacher was not doing the Christmas Cantata anymore and asked that he be given some form of recognition for his past work on the Cantatas.

**ITEM 4A, SECOND READING OF ORDINANCES FOR THE ANNEXATION AND
ZONING DESIGNATION OF 33 ACRES LOCATED ON THE WESTERN SIDE OF
HIGHWAY 17 SOUTH, SOUTH OF SOUTHEASTERN MEMORIAL GARDENS
CEMETERY - RC (RESORT COMMERCIAL) ZONING DESIGNATION**

Assistant to the City Manager John Smithson stated Ms. Sally Beaty, agent for Briarcliffe RV Resort Incorporated, has requested annexation of 33.08 acres of property owned by the corporation and requested the property be zoned RC (Resort Commercial). The property is located along the western side of U. S. Highway 17 to the south of Barefoot Landing and Southeastern Memorial Gardens Cemetery and north of the residential subdivision of The Forest at Briarcliffe. The Town of Briarcliffe Acres is directly across Highway 17 from

the subject property. Assistant to the City Manager read the annexation ordinance by title:

AN ORDINANCE ANNEXING 33.08 ACRES OF LAND LOCATED ALONG THE WESTERN SIDE OF U.S. HIGHWAY 17 APPROXIMATELY 650 FEET SOUTH OF SOUTHEASTERN MEMORIAL GARDENS CEMETERY, BOUNDED BY THE LUTHERAN CHURCH PROPERTY, U.S. HIGHWAY 17, THE FOREST AT BRIARCLIFFE, THE INTRACOASTAL WATERWAY, PHASE 1 OF THE BRIARCLIFFE RV RESORT, AND SOUTHEASTERN MEMORIAL GARDENS CEMETERY, INTO THE CITY OF NORTH MYRTLE BEACH.

MOTION was made by Councilman Burgess to adopt second reading of the ordinance, SECONDED by Councilman White.

Mayor Tilghman opened the floor for public comment.

Mr. Bob McGroarty, President of the Homeowners Association of Forest II and Skimmer Bay, addressed Council and stated opposition to the RC (Resort Commercial) zoning. He stated his concerns about setback, noise abatement, and the type of development that it would be.

Mr. Curtis Matthews, 1010 Waterway Lane, addressed Council. He said his house was adjacent to the RV Park. He stated his concerns about the zoning designation.

Mr. Joe Carter, Briarcliffe Acres, addressed Council. Mr. Carter expressed his concerns about the RC zoning and asked Council to consider zoning it PUD (Planned Unit Development).

Mayor Tilghman stated City Council could ask the developer to consider a PUD; but, if Council wanted to the annex the property, they would have to go with the zoning that was requested or not annex it.

Ms. Nancy Skelley, a property owner at both Briarcliffe Acres and Tilghman Estates, addressed Council. She stated concerns about adding to the traffic problem and the type of commercial development that would be permitted.

Mayor Tilghman called for a vote on the annexation ordinance. All voted in favor. MOTION CARRIED.

Assistant to the City Manager then read the ordinance, by title, for the zoning designation:

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF NORTH MYRTLE BEACH TO ZONE 33.08 ACRES OF LAND LOCATED ALONG THE WESTERN SIDE OF U. S. HIGHWAY 17 APPROXIMATELY 650 FEET SOUTH OF SOUTHEASTERN MEMORIAL GARDENS CEMETERY, BOUNDED BY THE LUTHERAN CHURCH PROPERTY, U. S. HIGHWAY 17, THE FOREST AT BRIARCLIFFE, THE INTRACOASTAL WATERWAY, PHASE 1 OF THE BRIARCLIFFE RV RESORT, AND SOUTHEASTERN MEMORIAL GARDENS CEMETERY, TO RC (RESORT COMMERCIAL).

MOTION was made by Councilman Burgess to adopt second reading of the ordinance, SECONDED by Councilman Smith.

Councilman Edge stated he had voted in favor of the RC zoning at the last Meeting. He said, even though the County would probably allow the developer to get what he wanted, he was going to cast a vote based on principal and experience and vote "no". He said he was not comfortable with the RC zoning and the developer had not made any attempt to clarify his intentions to Council concerning the development of the property.

Councilman Burgess stated the residents would be better off with the City having control of the project rather than if it were to remain in the County, especially, if the RV Park did go into bankruptcy.

Mayor Tilghman then called for a vote. Mayor Tilghman and Council Members Smith and Burgess voted "AYE". Council Members Edge and White voted "NO". MOTION CARRIED.

ITEM 4B, SECOND READING OF AN ORDINANCE FOR A ZONING TEXT AMENDMENT TO LENGTHEN THE TIME TO COMPLETE PROJECTS DESIGNATED ACCORDING TO THE OLD ZONING ORDINANCE

Assistant to the City Manager stated this ordinance would allow an extension of time for the completion of multifamily group developments in accordance with the old Zoning Ordinance regulations. He said a developer was requesting additional time to complete the unfinished townhouse project of Marsh Manor located in the 800 block of Sea Mountain Highway and had asked for an extension of the deadline until October 31, 1997. He read the ordinance by title:

AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH PROVIDING THAT THE CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, BE AMENDED BY REVISING SECTION 23-0(2)(f)

OF SAID CODE.

MOTION was made by Councilman Burgess to adopt second reading of the ordinance, SECONDED by Councilman White. Mayor Tilghman and Council Members Edge, White, and Burgess voted "AYE". Councilman Smith voted "NO". MOTION CARRIED.

ITEM 4C, SECOND READING OF AN ORDINANCE TO RELOCATE A 10 FOOT SECOND ROW PUBLIC ACCESSWAY, NORTH OF 16TH AVENUE SOUTH

Mayor Tilghman said this item would be deferred to the Executive Session. He said the developer had submitted some new proposals for the relocation; and Council would discuss them in Executive Session. He stated the results would be made public.

This was a request by Mr. William McGonnigal for the relocation of a 10 foot public walkway, located between two of his lots. This is a second row walkway located approximately 115 feet north of 16th Avenue South.

ITEM 4D, FIRST READING OF ORDINANCES FOR THE ANNEXATION AND ZONING DESIGNATION OF 61 ACRES OF PROPERTY LOCATED BETWEEN LITTLE RIVER NECK ROAD AND CHERRY GROVE MARSH, R-3 (MOBILE HOME RESIDENTIAL) ZONING DESIGNATION

Assistant to the City Manager stated Mr. N. F. "Sonny" Nixon submitted a petition to annex his property into the City. The property consists of approximately 61 acres located on Little River Neck Road west of Creekside Mobile Home Park. Mr. Nixon was requesting R-3 (Mobile Manufactured Home Residential) zoning. Mr. Nixon was also requesting zoning and subdivision text amendments to permit recreational vehicle (RV) park subdivisions. Assistant to the City Manager said those amendments would follow as the next two business items on the Agenda. He read the annexation ordinance by title:

AN ORDINANCE ANNEXING A 61 ACRE PARCEL OF LAND, TAX MAP NUMBER 131-00-04-001, INTO THE CITY OF NORTH MYRTLE BEACH.

MOTION was made by Councilman White to adopt first reading of the ordinance, SECONDED by Councilman Smith. All voted "AYE". MOTION CARRIED.

Assistant to the City Manager then read the zoning ordinance

by title:

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF NORTH MYRTLE BEACH TO ZONE ONE (1) SIXTY ONE (61) ACRE PARCEL OF LAND, TAX MAP NUMBER 131-00-04-001, TO R-3 (MOBILE MANUFACTURED HOME RESIDENTIAL) DISTRICT.

MOTION was made by Councilman Burgess to adopt first reading of the zoning ordinance, SECONDED by Councilman White. All voted "AYE". MOTION CARRIED.

ITEM 4E, FIRST READING OF AN ORDINANCE FOR A ZONING TEXT AMENDMENT TO ALLOW RV SUBDIVISIONS AND CREATE STANDARDS IN THE R-3 (MOBILE HOME RESIDENTIAL) DISTRICT

Assistant to the City Manager stated this zoning text amendment would create site standards as well as individual lot standards for RV subdivisions in the R-3 (Mobile Home Residential) district. He read the ordinance by title:

AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH PROVIDING THAT THE CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, BE AMENDED BY REVISING SECTIONS 23-21(2), 23-21(3) AND 23-116(7) OF SAID CODE.

MOTION was made by Councilman White to adopt first reading, SECONDED by Councilman Smith. All voted "AYE". MOTION CARRIED.

ITEM 4F, FIRST READING OF AN ORDINANCE FOR A SUBDIVISION TEXT AMENDMENT TO ALLOW PRIVATE STREETS IN RECREATIONAL PARK SUBDIVISIONS

Assistant to the City Manager stated this amendment would be in conjunction with the previous amendment for RV subdivision standards. He stated this amendment would allow RV subdivisions to have private streets. He said sections of the ordinance dealing with Design Standards for Streets would also be amended to include RV subdivisions. He read the ordinance by title:

AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA BE AMENDED BY REVISING SECTIONS 20-31(d)(2), 20-31(m)(1)b., AND 20-31(m)(2)b. OF SAID CODE.

MOTION was made by Councilman White to adopt first reading, SECONDED by Councilman Smith. All voted "AYE". MOTION CARRIED.

ITEM 4G, DISCUSSION AND FIRST READING OF AN ORDINANCE FOR A BUDGET ADJUSTMENT FOR THE PURCHASE OF SECOND ROW LOT FOR PUBLIC PARKING

Assistant to the City Manager said Council had authorized the acquisition of Lot 1, Block 23 of the Tilghman Section to be used for public parking. The property is located at 3rd Avenue North and Ocean Boulevard. Assistant to the City Manager stated this ordinance would provide for the purchase of the lot and also for improvements to it. He said the budget adjustment would be for One Hundred Fifty Thousand Dollars (\$150,000) from the General Fund Fund Balance. He read the ordinance by title:

AN ORDINANCE TO APPROPRIATE MONIES FROM GENERAL FUND UNDESIGNATED FUND BALANCE FOR THE EXPENDITURE FOR LAND ACQUISITION AND IMPROVEMENTS.

MOTION was made by Councilman Burgess to adopt first reading, SECONDED by Councilman White. All voted "AYE". MOTION CARRIED.

ITEM 4H, RESOLUTION FOR THE ADOPTION OF THE FLOODPLAIN MANAGEMENT PLAN

Assistant to the City Manager stated the City has participated in the Community Rating System (CRS) of the National Flood Insurance Program (NFIP) which is administrated by the Federal Emergency Management Agency (FEMA). He stated this resolution would authorize the adoption of the revised Floodplain Management and Repetitive Loss Plan. He said the adoption of this plan was a requirement by NFIP for continued participation in the program. He said this plan has qualified the City for a Class 8 rating of the Insurance Services Organization (ISO) and earns each flood insurance policy holder in the City a ten percent (10%) discount in flood insurance premiums. He read the resolution by title:

A RESOLUTION FOR THE ADOPTION OF THE REVISED FLOODPLAIN MANAGEMENT PLAN FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA.

MOTION was made by Councilman White to adopt the resolution, SECONDED by Councilman Burgess. All voted "AYE". MOTION CARRIED.

ITEM 4I, DISCUSSION OF A PREANNEXATION AGREEMENT WITH EDWARD C. IMMIG FOR 3206 WILEY DRIVE

Assistant to the City Manager stated Mr. Edward C. Immig has requested a preannexation agreement to allow him to connect to the City water system prior to formal annexation of his property. The property is located at 3206 Wiley Drive. Assistant to the City Manager stated this could be approved by Motion.

MOTION was made by Councilman Burgess to authorize the City Manager to enter into a preannexation agreement with Mr. Immig, SECONDED by Councilman White. All voted "AYE". MOTION CARRIED.

ITEM 4J, DISCUSSION OF THE WIDENING OF NORTH OCEAN BOULEVARD FROM 25TH AVENUE NORTH TO 53RD AVENUE NORTH

Assistant to the City Manager stated the widening of North Ocean Boulevard, from 25th Avenue North to 53rd Avenue North, was currently included in the GSAT Transportation Improvement Plan for the Grand Strand Area. The proposed improvements would include the widening of the Boulevard from two lanes to three lanes, installation of curb and gutter, installation of a sidewalk, and installation of drainage. Assistant to the City Manager said, after completion of the survey work, the South Carolina Department of Transportation (SC DOT) had reservations about the proposed design. He said they were concerned about the cost for the acquisition of the right of way and of the impact it would have on the residents and businesses on the Boulevard. He stated SC DOT has proposed revising the design to add twelve feet to the existing pavement but to delete the curb and gutter, sidewalk, and drainage work. He stated they were asking for the City's opinion of the changes. He said the original concept was the best design for traffic safety, drainage, and appearance. He said it would, however, cause significant impact on the residents and businesses in the area. He said, if City Council agreed to the deletion of the curb and gutter, SC DOT might be willing to consider keeping the sidewalk and the drainage work in the plan. He said this was being presented for discussion.

Mr. Frank Boulineau, Cherry Grove Section, addressed Council. He said sidewalks were necessary in Cherry Grove and there was enough right of way to have four lanes and sidewalks.

Public Works Director Jerry Pierce said some of the businesses along the Boulevard were using the right of way for parking.

Mayor Tilghman suggested surveying the property owners concerned to find out if they wanted sidewalks. Mayor Tilghman recommended trying to get the three lanes, with better drainage, and a sidewalk if possible. Mayor Tilghman said he wouldn't mind working with them but did not want them to eliminate everything.

Council agreed to direct Public Works Director Jerry Pierce to discuss this with SC DOT and extend an invitation for them to meet with City Council at a Workshop Session.

ITEM 4K, DISCUSSION OF A ZONING TEXT AMENDMENT TO PERMIT CABANA HOUSES AS A SPECIAL EXCEPTION IN R-4 (RESORT RESIDENTIAL) DISTRICT

Assistant to the City Manager stated this was a zoning text amendment to create a new use category called "cabana house" as a special exception in the R-4 (Resort Residential) district. He said each proposed site would be reviewed by the Board of Zoning Appeals subject to specified criteria and stated what that criteria was. He said the Board could impose additional conditions and safeguards if deemed necessary. He stated this was presented for discussion.

Councilman White asked what had prompted this amendment.

Planning/Development Director Doug Maddock said the City Manager had asked for this amendment in response to Tidewater's original request.

Mayor Tilghman and Councilman Smith stated concerns about the lack of parking requirements in the amendment.

Council directed staff to bring this back in ordinance form and asked that more than two (2) parking spaces be required.

ITEM 4L, DISCUSSION OF THE REZONING OF 2 ACRES LOCATED BETWEEN 6TH AND 7TH AVENUES SOUTH ON EAST SIDE OF HIGHWAY 17 FROM R-1 (SINGLE FAMILY RESIDENTIAL) AND R-2 (MEDIUM DENSITY

RESIDENTIAL) TO HC (HIGHWAY COMMERCIAL)

Assistant to the City Manager stated Mr. Jack Springs, agent for Joe McLean and the estate of Sarah McLean, was asking to rezone two (2) acres of property located between 6th and 7th Avenues South from R-1 (Single Family Residential) and R-2 (Medium Density Residential) to HC (Highway Commercial). He said the Comprehensive Plan did not recommend HC zoning for that area. He further stated the Planning Commission recommended denial of the request. This was presented for discussion.

Mr. Jack Springs addressed Council and said they were asking for the rezoning in order to build a hotel on the property.

Mayor Tilghman asked them to consider having more of a buffer between the development and the nearby residents.

Councilman White stated he would not agree to have an HC district next to a residential neighborhood.

Council discussed other zoning alternatives such as a PUD or an R-4.

Mr. William Foster, 6th Avenue South resident, stated concerns about having a hotel or motel in close proximity to his home.

During discussion, issues came up regarding the rededication of McLean Street to the City as well as the sewer line easement on the property. Council also discussed the possibility of moving the sewer line.

Mr. Foster said he and the other residents did not have sewer; and if it were possible, they would tap on to City sewer.

Mayor Tilghman asked the Public Works Director to present this at the Budget Retreat.

Council concurred not to pursue the requested HC zoning.

Mayor Tilghman advised the applicant and the residents to consider the R-4 zoning and advised Mr. McLean to work with the Public Works Director on the sewer line. He said the McLean Street rededication issue could be addressed when this issue came back and advised the residents to watch for it to come back.

ITEM 4M, DISCUSSION OF AN ANNEXATION AND ZONING DESIGNATIONS FOR 8.55 ACRES LOCATED BETWEEN 6TH AVENUE SOUTH AND THE NORTH STRAND PLAZA ON WEST SIDE OF HIGHWAY 17, HC (HIGHWAY COMMERCIAL) AND OC (OFFICE COMMERCIAL) ZONING DESIGNATIONS REQUESTED

This item was withdrawn by the developer as noted at the beginning of the Meeting.

ITEM 4N, DISCUSSION OF THE REZONING OF ONE LOT ON MADISON DRIVE LOCATED BETWEEN 16TH AND 17TH AVENUES SOUTH FROM NC (NEIGHBORHOOD COMMERCIAL) TO HC (HIGHWAY COMMERCIAL)

Assistant to the City Manager stated Mr. Phil Pate, agent representing the property owner, had requested the rezoning of a lot located on the oceanside of Madison Drive between 16th and 17th Avenues South. He said the property was in an area zoned NC (Neighborhood Commercial); and, HC (Highway Commercial) was not a recommended zoning alternative. He said the Planning Commission recommended denial of the request. This issue was presented for discussion.

Councilman White asked what uses would be allowed in an NC district.

Planning/Development Director Doug Maddock and City Attorney Greg Hembree responded.

Mr. Phil Pate, Grand Strand Resorts, addressed Council. He said the problem with the lot was that it was directly behind Martin's Golf and Tennis and the property would not be marketable for residential use.

After discussion, Council concurred not to pursue.

ITEM 5, PUBLIC COMMENT

There was none.

ITEM 6, ANNOUNCEMENTS BY MAYOR AND COUNCIL

Councilman White asked that Council look into the possibility of leasing a lot for public parking. He said there was one available that was located in the 1700 block of the Crescent

Beach Section. He said the property owner, Bob McInnis, would lease it to the City for the cost of the property taxes.

Mayor Tilghman said this type of venture had not been very successful in the past but Council could take a look at it. Mayor asked City Attorney to contact Mr. McInnis and inform Council of the particulars.

Mayor Tilghman announced a Workshop Session would be conducted following adjournment of the formal Meeting to discuss a request to have floating docks attached to a proposed fishing pier. Mayor Tilghman said Council would also discuss the moving of telephone poles for D.O.I.T. He invited the public to attend.

ITEM 7, EXECUTIVE SESSION

Mayor Tilghman entertained a Motion to enter into an Executive Session to discuss Item 4C that was deferred earlier.

MOTION was made by Councilman Burgess to enter into an Executive Session for the purpose of discussing a public accessway relocation, SECONDED by Councilman White. All voted "AYE". MOTION CARRIED.

Council recessed the formal Meeting and entered into an Executive Session at 9:25 p.m.

Council reconvened the formal Meeting at 9:45 p.m.

Mayor Tilghman stated Council had discussed some alternate proposals for the relocation of a public accessway at 16th Avenue South.

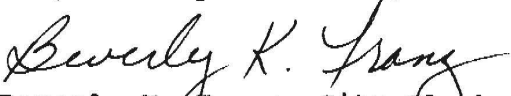
Mayor Tilghman then directed staff to continue review of these proposals. Council took no action on Item 4C.

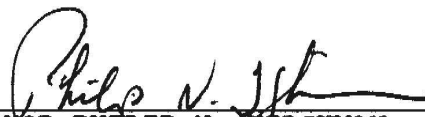
ITEM 8, ADJOURNMENT

There being no further business, MOTION was made by Councilman White, SECONDED by Councilman Burgess, to adjourn. All voted "AYE". MOTION CARRIED.

Meeting adjourned at 9:50 p.m.

Respectfully submitted,


Beverly K. Franz, City Clerk


MAYOR PHILIP N. TILGHMAN


COUNCILMAN TRACY R. EDGE


COUNCILMAN BILLY W. SMITH


COUNCILMAN RUSSELL R. BURGESS, JR.


COUNCILMAN TERRY W. WHITE, SR.

Minutes approved and adopted this 15th day of January, 1996.

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: 01/15/96

Agenda Item: 4C	Prepared By: PAUL BLUST January 8, 1996
Agenda Section: BUSINESS: Ordinance/1st Reading	Date: January 8, 1996
Subject: Zoning Text Amendment - To permit "Cabana Houses" as a special exception in R-4 District	Division: PLANNING & DEVELOPMENT

Background:

At the meeting of December 4, 1995, City Council discussed a proposed zoning text amendment to permit a new use category called "cabana houses" as a special exception in the R-4 (resort residential) district.

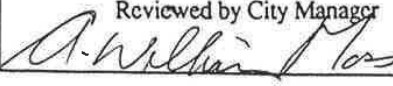
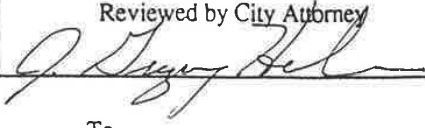
The purpose of the "cabana house" is to allow projects not in close proximity to the ocean and beach to take advantage of that asset by utilizing a property for drop off and parking areas, bathing, changing clothes and similar uses. The "cabana house" will utilize single family design and can be additionally used as occasional guest quarters and similar uses.

Creating "cabana house" as a special exception allows the Board of Zoning Appeals to review each proposed site for compatibility with surrounding uses and impose additional conditions and safeguards where they deem necessary.

A particular concern of Council at the meeting of December 4, 1995 was that no additional parking is required. Staff has amended the criteria the Board of Zoning Appeals will review before approval and added a parking requirement of eight (8) spaces with the possibility of the Board increasing that number if there are no provisions to lessen the amount of cars using the property such as a shuttle service. Those criteria are spelled out in the accompanying ordinance.

Recommended Action:

Adopt ordinance on first reading.

Reviewed by Division Head 	Reviewed by City Manager 	Reviewed by City Attorney 
Council Action: Motion By _____ 2nd By _____ To _____		

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH PROVIDING THAT THE CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, BE AMENDED BY REVISING SECTION 23-22(4) OF SAID CODE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, IN COUNCIL DULY ASSEMBLED, THAT:

Section 1:

That section 23-22(4) be amended to add subsection (d) to read as follows:

(d) Cabana houses subject to the following:

1. That a homeowner's association shall have been established for the project and a maintenance agreement has been submitted to the Planning Department.
2. That at least eight (8) parking spaces per zoning standards be established on site and that more spaces may be required by the Board if there is no other means to limit the number of cars traveling to the property provided such as a shuttle service to and from the property to the project.
3. That the use of the house be limited to bathing and change of clothing facilities, and occasional use as guest quarters and other similar uses.
4. That the special exception will be in substantial harmony with the area in which it is to be located.
5. That the special exception will not be injurious to the adjoining property.
6. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
7. That in granting the special exception, the Board of Zoning appeals may impose such reasonable and additional stipulations, conditions or safeguards as, in its judgement, will enhance the siting of the proposed special exception.

DONE, RATIFIED AND PASSED, THIS _____ DAY OF _____, 1996.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

REVIEWED:

City Manager

FIRST READING: _____
SECOND READING: _____

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: 11/19/2001

Agenda Item:	Prepared By: Paul Blust J:jamie/issue01/ztx-01-08
Agenda Section: Business: 1 st Reading	Date: November 12, 2001
Subject: Zoning Text Amendment: Oceanfront Cabana House and amenities as accessory to second row projects	Division: Planning & Development

Background:

City Council has initiated an amendment to the zoning ordinance text to permit oceanfront cabana homes and amenities when accessory to second row multifamily projects and located directly across the street in the Oceanfront Overlay Zone.

If approved, this amendment will allow more footprint on the second row. The effect of a greater footprint could be more density. However, due to the cost of oceanfront property, the applicability of oceanfront cabanas will be limited.

This amendment could encourage second row development. The oceanfront building height will be limited ensuring a view of the ocean from the second row building.

The Planning Commission held a public hearing on this proposed text amendment on November 12, 2001, at which time they voted to recommend approval to City Council. The staff report to the Planning Commission accompanies the report as well as an ordinance should Council decide to adopt on first reading.

Recommended Action: Adopt on first reading.

Reviewed by Division Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2 nd By _____ To _____		

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: 12/3/2001

Agenda Item:	Prepared By: Paul Blust J:jamie/issue01/ztx-01-082nd
Agenda Section: Business: Ordinance/Second Reading	Date: November 27, 2001
Subject: Zoning Text Amendment: Oceanfront Cabana House and amenities as accessory to second row projects	Division: Planning & Development

Background:

At the meeting of November 19, 2001, City Council adopted first reading of an ordinance to permit oceanfront cabana houses and amenities when accessory to second row projects and located directly across the street in the Oceanfront Overlay Zone.

Recommended Action: Adopt ordinance on second reading.

Reviewed by Division Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2 nd By _____ To _____		

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CA No. 2021-CP-26-07489
	)	
CITY OF NORTH MYRTLE BEACH,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT SUN TRS CAROLINA
vs.	)	PINES RV, LLC'S RESPONSES TO
	)	PLAINTIFF'S FIRST SET OF
SUN TRS OCEAN CLUB LLC, SUN TRS	)	REQUESTS FOR ADMISSION
CAROLINA PINES LLC, and SUN TRS	)	
CAROLINA PINES RV, LLC	)	
	)	
Defendants.	)	
	)	

Defendant Sun TRS Carolina Pines RV, LLC ("Carolina Pines") hereby serves the following responses to Plaintiff's First Set of Requests for Admission, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure.

1. Admit the Property is not currently being used by a project in North Myrtle Beach.

RESPONSE: Carolina Pines objects to this Request on the grounds that the sections of the North Myrtle Beach Code of Ordinances (the "Ordinances") at issue in this litigation regarding Cabana Houses in North Myrtle Beach is facially unconstitutional and, therefore, cannot be enforced as currently enacted. Moreover, Carolina Pines objects to this Request on the grounds that the term "project" is not defined by the Ordinances or Plaintiff's Definitions to these Requests and, therefore, is vague and ambiguous. Subject to and reserving these objections, assuming the term "project" includes recreational vehicle ("RV") parks and property owners' associations such as Seabrook Planation Property Owners Association and/or its members, the Request is denied.

2. Admit that, from the time period commencing upon Defendant Sun TRS Ocean Club LLC's purchase of the Property until the present, the Property has not been used by a project in North Myrtle Beach.

RESPONSE: Carolina Pines objects to this Request on the grounds that the sections of the Ordinances at issue in this litigation regarding Cabana Houses in North Myrtle Beach is facially unconstitutional and, therefore, cannot be enforced as they are currently enacted. Moreover, Carolina Pines objects to this Request on the grounds that the term "project" is not defined by the Ordinances or Plaintiff's Definitions to these Requests and, therefore, is vague and ambiguous. Subject to and reserving these objections, assuming the term "project" includes recreational vehicle ("RV") parks and property owners' associations such as Seabrook Planation Property Owners Association and/or its members, the Request is denied.

3. Admit Defendant has not and is not operating as a homeowners' association, from their [sic] inception until the present.

RESPONSE: Carolina Pines objects to this Request on the grounds that the sections of the Ordinance at issue in this litigation regarding Cabana Houses in North Myrtle Beach is facially unconstitutional and, therefore, cannot be enforced as it is currently enacted. Carolina Pines further objects to this Request on the grounds that it assumes that Carolina Pines is an owner of the Property that is the subject of this action, which is expressly denied. Subject to and reserving these objections, Carolina Pines admits that Carolina Pines has never operated as homeowners' associations.

4. Admit Defendant did not submit a maintenance agreement to NMB's Planning Department between the date of its purchase of the Property and November 11, 2021.

RESPONSE: Carolina Pines objects to this Request on the grounds that the sections of the Ordinances at issue in this litigation regarding Cabana Houses in North Myrtle Beach is facially unconstitutional and, therefore, cannot be enforced as they are currently enacted. Carolina Pines further objects to this Request on the grounds that it assumes that Carolina Pines is an owner of the Property that is the subject of this action, which is expressly denied. Subject to and reserving these objections, Carolina Pines admits, upon information and belief, that none of the owners of the Property since the Cabana House was approved by Plaintiff and constructed on the Property had ever submitted a “maintenance agreement” to Plaintiff’s Planning Department until November 11, 2021.

5. Admit Defendant has marketed the Property as a wedding and/or wedding reception venue.

RESPONSE: Carolina Pines objects to this Request on the grounds that it assumes that Carolina Pines is an owner of the Property that is the subject of this action, which is expressly denied. Subject to and reserving this objection, Carolina Pines admits that it has in the past marketed the Property as a wedding and/or wedding reception venue.

6. Admit Defendant has used the Property as a wedding and/or wedding reception venue on one or more occasions.

RESPONSE: Carolina Pines objects to this Request on the grounds that it assumes that Carolina Pines is an owner of the Property that is the subject of this action, which is expressly denied. Subject to and reserving this objection, Carolina Pines admits that it has used the Property as a wedding and/or wedding reception venue.

7. Admit Defendant’s use of the Property, including but not limited to the marketing of the cabana house located on the Property as a wedding venue and hosting one or more weddings

and/or wedding receptions on the Property, is not a similar use of the Property as a bathing and change of clothing facility and occasional use as guest quarters.

RESPONSE: Carolina Pines objects to this Request on the grounds that “bathing and change of clothing facility and occasional use as guest quarters” is not defined by the Ordinances or Plaintiff’s Definitions to these Requests and, therefore, is vague and ambiguous. Carolina Pines further objects to this Request on the grounds that it assumes that Carolina Pines is an owner of the Property that is the subject of this action, which is expressly denied. Subject to and reserving these objections, this Request is denied.

8. Based upon SUN_01340, admit there were more reservations at the Carolina Pines RV Resort located in Conway, South Carolina for the year 2022 (as categorized in Column A of SUN_01340) than for the year 2021 (also as categorized in Column A o SUN_01340).

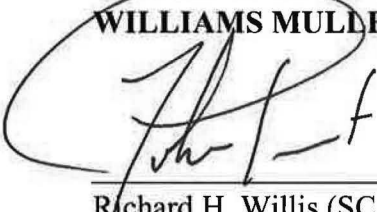
RESPONSE: Relying solely on the parameters provided for in the Request, which requires a review of the data provided in Column A of SUN_01340, the Request is admitted. The number of reservations identified in Column A of SUN_01340 for 2021 is 24,537 versus 24,973 for 2022.

9. Based upon SUN_01340, admit the reservations were for a longer average duration at the Carolina Pines RV Resort located in Conway, South Carolina for the year 2022 (as categorized in Column A of SUN_01340) than for the year 2021 (also as categorized in Column A of SUN_01340).

RESPONSE: Relying solely on the parameters provided for in the Request, which requires a review of the data provided in Columns A, G, and H of SUN_01340, the Request is admitted. The average duration for reservations identified in Column A of SUN_01340 for 2021 is 8.64 days versus 9.47 days for 2022.

10. Admit the shuttle service provided by Carolina Pines RV Resort in Conway, South Carolina, which shuttled/shuttles guests to and from its RV resort, takes the same exact amount of time to drive between the RV resort and both the beach drop-off point in the City of Myrtle Beach and the cabana house at the property located in the City of North Myrtle Beach.

RESPONSE: Carolina Pines objects to this Request on the grounds that it is wholly immaterial to the claims, defenses, and counterclaims at issue in this case and not reasonably calculated to lead to the discovery of admissible evidence. Further, Carolina Pines objects to this Request on the grounds that it is virtually impossible to accurately admit or deny the Request, as stated, without knowing the time of day, date of travel, weather conditions, or any other factual background to adequately respond to this Request. Accordingly, the Request is denied as stated.

WILLIAMS MULLEN


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dtarver@williamsmullen.com

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Columbia, SC 29201

Office: 803.567.4617

Fax: 803.567.4601

Attorneys for the Sun TRS Carolina Pines
RV, LLC

March 30, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CITY OF NORTH MYRTLE BEACH,

Plaintiff,

vs.

SUN TRS OCEAN CLUB LLC, SUN TRS
CAROLINA PINES LLC, AND SUN TRS
CAROLINA PINES RV, LLC

Defendant.

IN THE COURT OF COMMON PLEAS

CA No. 2021-CP-26-07489

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Defendant Sun TRS Carolina Pines RV, LLC's Responses to Plaintiff's First Set of Requests for Admissions in the above-captioned matter via electronic mail and by placing the same, postage prepaid in the United States Mail on March 30, 2023 to the below named parties at their address of record:

Cheryl D. Shoun, Esq.
Rhett Douglas Ricard, Esq.
Nexsen Pruet, LLC
Post Office Box 486
Charleston, SC 29402
cshoun@nexsenpruet.com
rrichard@nexsenpruet.com

Attorneys for City of North Myrtle Beach


Kristi Love
Williams Mullen
1230 Main Street, Suite 330
Columbia, South Carolina 29201
803-567-4600

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CA No. 2021-CP-26-07489
	)	
CITY OF NORTH MYRTLE BEACH,	)	
	)	
Plaintiff,	)	
	)	DEFENDANTS SUN TRS OCEAN
vs.	)	CLUB LLC, SUN TRS CAROLINA
	)	PINES LLC, AND SUN TRS
SUN TRS OCEAN CLUB LLC, SUN TRS	)	CAROLINA PINES RV LLC'S
CAROLINA PINES LLC, and SUN TRS	)	RESPONSE TO PLAINTIFF'S FIRST
CAROLINA PINES RV, LLC	)	SET OF REQUESTS FOR ADMISSION
	)	TO ALL DEFENDANTS
Defendants.	)	
	)	

Defendants Sun TRS Ocean Club LLC, Sun TRS Carolina Pines LLC, and Sun TRS Carolina Pines RV, LLC (collectively, "Sun Defendants") hereby serve the following responses to Plaintiff's First Set of Requests for Admission to all Defendants, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure.

11. Admit you have not received any written complaints or cancelled visits from guests or prospective guests of your RV Resort related to the unavailability of the Cabana House between January 11, 2022 through the present.

RESPONSE: Denied.

12. Admit you were aware of Section 23-2 of the City's Zoning Ordinance prior to acquisition of the Property.

RESPONSE: Sun Defendants admit they were aware of the existence Section 23-2 of the City's Zoning Ordinance prior to the purchase of the Property and were also aware of the City's Zoning Administrator's position, as set forth in the Zoning Letter dated March 19, 2019, that the Property was zoned R-4 (Resort Residential) and permitted as a 'Cabana

House' that had been legally used as such since construction and, accordingly, that all prior ownership and use of the Property and the Cabana House by entities that were not homeowners' associations for projects in North Myrtle Beach was compliant and consistent with the Zoning Ordinance.

13. Admit you were aware of Section 23-2 of the City's Zoning Ordinance prior to July 1, 2021.

RESPONSE: Sun Defendants admit they were aware of the existence Section 23-2 of the City's Zoning Ordinance prior to July 1, 2021 and were also aware of the City's Zoning Administrator's position, as set forth in the Zoning Letter dated March 19, 2019, that the Property was zoned R-4 (Resort Residential) and permitted as a 'Cabana House' that had been legally used as such since construction and, accordingly, that all prior ownership and use of the Property and the Cabana House by entities that were not homeowners' associations for projects in North Myrtle Beach was compliant and consistent with the Zoning Ordinance.

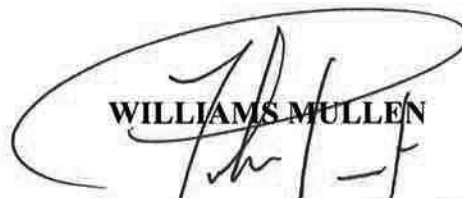
14. Admit you were aware of Section 23-22 of the City's Zoning Ordinance prior to acquisition of the Property.

RESPONSE: Sun Defendants admit they were aware of the existence Section 23-22 of the City's Zoning Ordinance prior to the purchase of the Property and were also aware of the City's Zoning Administrator's position, as set forth in the Zoning Letter dated March 19, 2019, that the Property was zoned R-4 (Resort Residential) and permitted as a 'Cabana House' that had been legally used as such since construction and, accordingly, that all prior ownership and use of the Property and the Cabana House by entities that were not

homeowners' associations for projects in North Myrtle Beach was compliant and consistent with the Zoning Ordinance.

15. Admit you were aware of Section 23-22 of the City's Zoning Ordinance prior to July 1, 2021.

RESPONSE: Sun Defendants admit they were aware of the existence Section 23-22 of the City's Zoning Ordinance prior to July 1, 2021 and were also aware of the City's Zoning Administrator's position, as set forth in the Zoning Letter dated March 19, 2019, that the Property was zoned R-4 (Resort Residential) and permitted as a 'Cabana House' that had been legally used as such since construction and, accordingly, that all prior ownership and use of the Property and the Cabana House by entities that were not homeowners' associations for projects in North Myrtle Beach was compliant and consistent with the Zoning Ordinance.



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Fax: 803.567.4601

Attorneys for the Sun TRS Carolina Pines
RV, LLC

March 30, 2023
Columbia, South Carolina

) IN THE COURT OF COMMON PLEAS
)
) CA No. 2021-CP-26-07489

)
) **CERTIFICATE OF SERVICE**

)

)
)
)

)


Kristi Love
Williams Mullen
1230 Main Street, Suite 330
Columbia, South Carolina 29201
803-567-4600



City of North Myrtle Beach
North Myrtle Beach, South Carolina

**Application for Special Exception
Board of Zoning Appeals**

CASE NO.

Owner or Authorized Applicant: SEABROOK PLANTATION LLC / BEN P. POWELL JR. MEMBER

Mailing Address: PO Box 750

City N. MYRTLE BEACH S. State/Zip 29597
1814 N. OCEAN BLVD.

Telephone: (843) 450-8472

(Address of Property for which Special Exception is Requested)

TMS# 144-08-11-005

Zoning District R-4

Application Date: 5-23-07

Owner of Property: PAN LLC

VARIANCE REQUEST. Describe the variance requested (include the specific zoning code section):

SEE ATTACHED

The Board of Zoning Appeals has the power to hear and decide special exceptions upon which the Board is required to pass under the terms of this chapter.

Describe those things which you feel justify the special exception requested. Include in your justification how each of the required findings will be met. You may attach additional sheets if the space provided is not adequate.

1. That the special exception complies with all applicable development standards and off-street parking.

SEE ATTACHED

2. That the special exception will be in substantial harmony with the area in which it is to be located.

SEE ATTACHED

3. That the special exception will not be injurious to adjoining property:

SEE ATTACHED

4. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right:

SEE ATTACHED

5-23-07

Date


Signature of Applicant

owner/member
Title

THIS SECTION FOR USE BY THE ZONING ADMINISTRATOR ONLY.

RECORD OF BOARD, MOTION MADE TO:

GRANT VARIANCE

DENY VARIANCE

Meeting Date: _____

Motion By: _____

Second By: _____

Other Members: _____

Findings of Fact to support the vote:

**Answers to Questions – Seabrook Plantation, LLC, Board of Zoning Appeals
Application for Special Exception****Variance Request:**

Oceanfront gated Amenity Center (to support off-site development project) to include on-grade standard size parking with golf cart parking (for the majority, golf cart parking is underneath the building), landscaping, swimming pool facilities, dune cross-over walk, and one (1) story raised beach club building with bathroom facilities, server-kitchen area, storage, elevator for handicap, open decks, and covered decks on ocean side.

Answer to Question 1: The special exception meets all required development standards and will adhere to all zoning requirements such as front, side, and rear setbacks, is substantially under the building height allowed in R-4, will exceed minimum landscaping requirements, and to the best of my knowledge, meets required parking.

Answer to Question 2: The proposed Amenity Center is located on the ocean-front between Sea Cloisters 1 & 2 Condominiums. Sea Cloisters are all 3-story buildings on – grade. The proposed Amenity Center building height of 30 feet (to ridge of roof) is under the height of the adjacent buildings of Sea Cloisters and has the appearance of a single-family raised structure.

Located to the south of Sea Cloisters are raised 2+ story single-family houses on pilings with parking on-grade, privately owned, and for the most part, are on the market for weekly rentals. Located to the north of the subject property and Sea Cloisters is Peppertree Ocean Club, a five and six story condominium project and on the market as daily or weekly rentals. Located across Ocean Boulevard from the subject property is Tilghman Lakes By The Sea which are two story condos (four units per building) on pilings with parking underneath that are privately owned with some units on the rental market. Also located across Ocean Boulevard from the subject property is Tilghman Beach and Golf Resort, a new 14-story condominium building with parking decks under construction and that will also be on the rental market.

The existing R-4 zoning on the subject property allows for a multi-story condominium project with multi-story parking decks and swimming pools that could also be on a daily or weekly rental. The applicant feels that the proposed Amenity Center would not have the look of a massive structure and has on-grade parking versus parking decks and therefore, would be substantially in harmony with the area in which it is located and not be injurious to adjoining property.

Answer to Question 3: See answer to Question 2

Answer to Question 4: See answer to Question 2

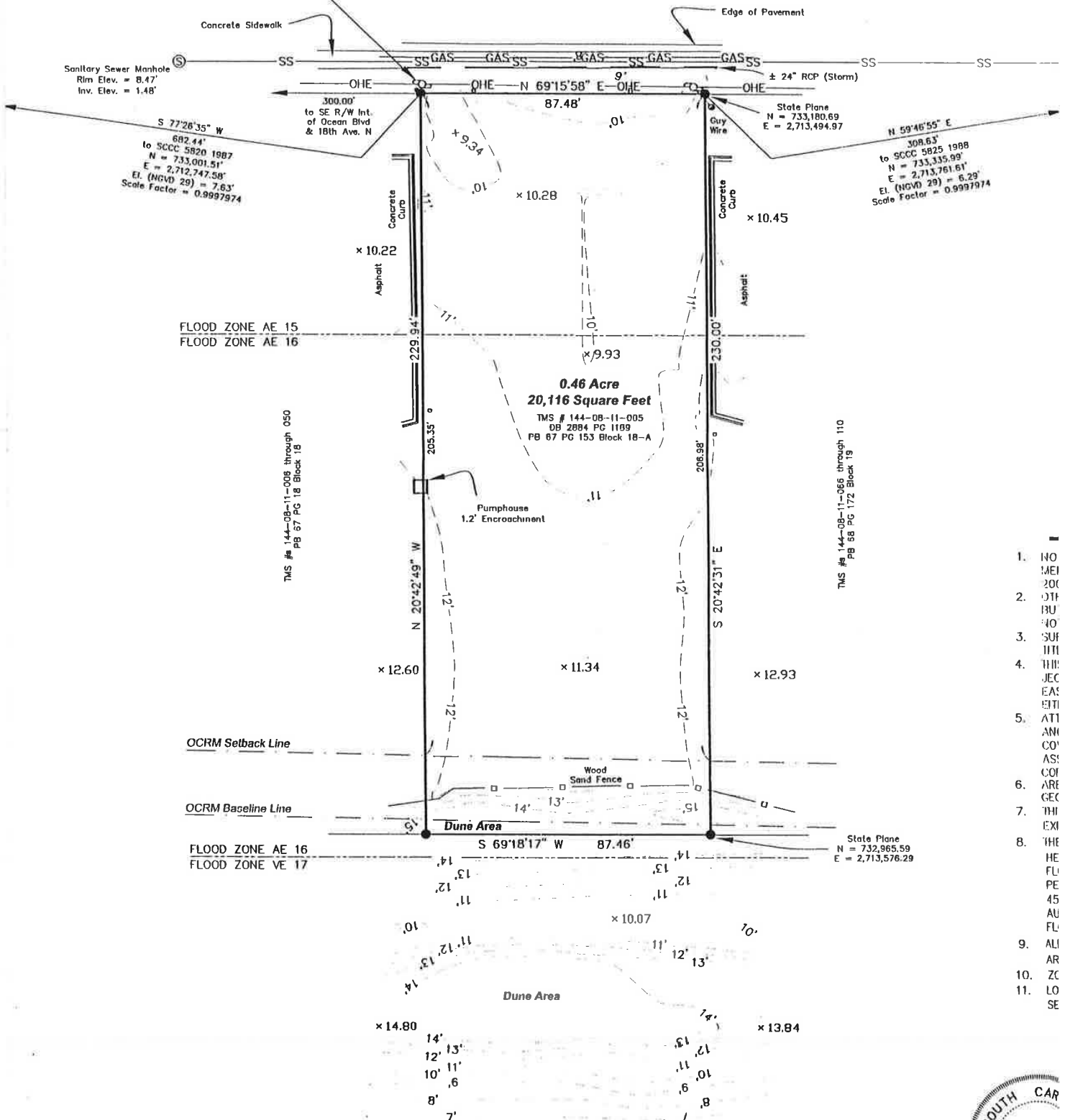
TBM
Bench-Tie Set In Power Pole
Elevation 10.61'

Ocean Boulevard

100' R/W

DATE _____

DATE _____



1. NO
2. MEI
3. 200
4. 0TH
5. BU
6. 40'
7. 30'
8. 11TH
9. JEC
10. EAS
11. EITI
12. ATT
13. ANN
14. CO'
15. AS'
16. CO'
17. ARE
18. GEC
19. THI
20. EXI
21. THE
22. HE
23. FL
24. PE
25. 45
26. AU
27. FL
28. 9.
29. AR
30. ZC
31. LO
32. SE

Atlantic Ocean



NMB0042

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