

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
Honorable Larry B. Hyman, Circuit Court Judge

ORIGINAL

Case No. 2012-CP-26-06987

Appellate Case No. 2013-000971

Helicopter Solutions, Inc.
d/b/a Helicopter Adventures Respondent,

v.

Richard Hinde and Horry County Zoning Administrator, ... Defendants,
of whom Richard Hinde is Appellant.

RECORD ON APPEAL

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& MOSS, PLLC**

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

**BEFORE THE BOARD OF
 ZONING APPEALS**
 Case No.: 2012-07-008

In re: Richard Hinde)
)
 _____)

ORDER OF THE BOARD

Hearing was held before this Board on September 10, 2012, pursuant to the request of the applicant for appeal of the Zoning Administrator's decision that a helicopter/sightseeing tour facility is allowed in the Amusement Commercial (AC) zoning district. The property in question is identified by TMS# 173-00-01-058 and is located at 1860 21st Avenue North in the Myrtle Beach area of Horry County. The affected business owner is Helicopter Solutions, Inc. d/b/a Helicopter Adventures.

Article XIV, Section 1402 of the Zoning Ordinance states, "[t]he concurring vote of a majority of the members present at a meeting of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator...." The applicant is appealing the Zoning Administrator's decision that a helicopter/sightseeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

The applicant, the affected business, and the zoning administrator were given the opportunity to offer witnesses and exhibits; cross-examine witnesses; and, to make argument for the record. A public hearing was held and all interested parties were invited to comment before the Board.

Pursuant to Section 1403 of the Zoning Ordinance, an appeal to the board may be filed by any person aggrieved or by any officer, department, board, or bureau of the county. Such appeal shall be filed within a reasonable time, as provided by the rules of the Board.

FINDINGS OF FACT

1. The property in issue is owned by Burroughs & Chapin, Inc. (B&C) and is located between the NASCAR Speed Park and the City of Myrtle Beach Wastewater Treatment facility off of Highway 17 By-pass and 21st Avenue North, Myrtle Beach.
2. The property is 46.17 acres and the business in issue, Helicopter Adventures, is located on approximately 5.47 acres of the parcel directly behind the NASCAR Speed Park parking lot.
3. The property is split zoned Amusement Commercial (AC) and Limited Industrial (LI). The business in issue is located within the AC portion of the property.
4. The landing pads are approximately 1350 ft. from the property line abutting residential property. The property is buffered by a large berm covered in fully grown trees.
9. A helicopter sight-seeing tour facility is not specifically referenced in any of the zoning districts, however the AC zoning district allows a variety of outdoor amusements and specifically lists sight-seeing depots.
13. On November 18, 2011, Steve Strickland, P.E. contacted Deputy Planning Director Carol Coleman via email about locating a helicopter sight-seeing tour facility on the above referenced property. Ms. Coleman advised that the zoning looked good.
14. On November 22, 2011, Zoning Administrator Rennie Mincey, wrote a letter to Mr. Strickland stating that a helicopter tour facility would be allowed in AC.
15. From November 21, 2011 through March 28, 2012, a series of site plan reviews and revisions were conducted by the Horry County Planning & Zoning, Code Enforcement, Engineering, and Stormwater Departments. A Stormwater Permit was issued on February 17, 2012, and final site plan construction approval granted on March 28, 2012.
16. On March 16, 2012, Helicopter Adventures submitted an application for a building permit and the permit was issued on April 10, 2012.
17. Since a portion of the property upon which a part of the business parking lot is located is within the city limits of the Myrtle Beach, a hearing before the City's Community Appearance Board (CAB) was required, advertised and held on May 3, 2012. The CAB granted approval.
19. A Certificate of Occupancy was issued by the Horry County Code Enforcement Department on May 25, 2012.
20. On June 22, 2012, the applicant filed this appeal requesting that the Board overturn the Zoning Administrator's decision and determine that such use is not an allowed use in the

Amusement Commercial (AC) district. This request was deferred at the August 13, 2012 Board hearing.

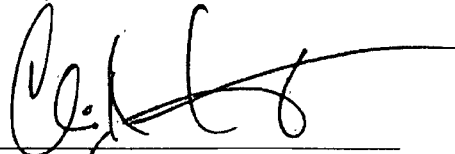
21. ZBA members observe and question whether a helicopter tour ride can be classified as an Amusement.

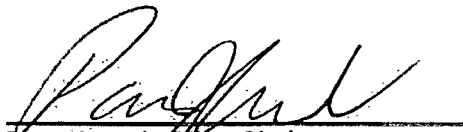
CONCLUSIONS OF LAW

Based on the evidence presented, the Board finds that this appeal was filed within a reasonable time after the applicant knew or should have known of the November 22, 2011, decision by the Zoning Administrator. Although the plans and permits referenced above were maintained as records of the county and available for public inspection for months before the appeal was filed, the applicant had no reason to inquire and lacked actual knowledge of them.

The Board overturns the decision of the Zoning Administrator finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district. Therefore, the **appeal is granted and the Zoning Administrator's decision is overturned.**

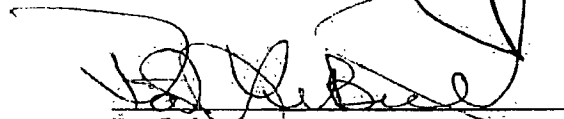
AND IT IS SO ORDERED, this 10th day of September, 2012.


Christopher Hanna, Chairman


Pam Creech, Vice-Chairman


Allen Beverly


Hunter Platt

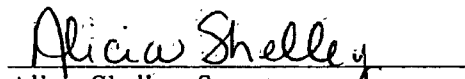

Pat Lebiecz


Ace Parker


Pat Keelan


Bo Ives

ATTEST:


Alicia Shelley, Secretary

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2012-CP-266987
Helicopter Solutions, Inc. d/b/a Helicopter Adventures	)	
	)	
Appellant,	)	
	)	
v.	)	ORDER
Richard Hinde and Horry County Zoning Administrator,	)	(REVERSING ORDER OF HORRY COUNTY BOARD OF ZONING APPEALS)
	)	
Respondents.	)	

13 JAN 2013
 10:21 AM
 COURT

On December 11, 2012, a hearing was held before me on the merits of Helicopter Solutions, Inc. d/b/a Helicopter Adventures' (hereinafter "Appellant") appeal of the Order of the Horry County Board of Zoning Appeals (hereinafter "the Board") entered September 10, 2012 and mailed for service September 11, 2012 in the case of In re: Richard Hinde, Case No. 2012-07-008.

Present at the hearing were Benjamin A. Baroody, Esq., counsel for Appellant, Emma Ruth Brittain, Esq., counsel for Respondent Horry County Board of Zoning Appeals, and Kenneth Moss, Esq., counsel for Respondent Richard Hinde. The record before me consists of the pleadings filed in this case and the Record on Appeal which was certified and filed with this Court on October 18, 2012.

BACKGROUND

This matter arises out of a determination by Horry County Zoning Administrator Renee Mincey on November 22, 2011 that "a helicopter tour facility is a permitted use in the AC zoning district." Appellant has operated a "helicopter/sightseeing tour facility" upon the property at issue in this case since May 25, 2011. On June 22, 2012, Richard Hinde, a resident of the Plantation

Pointe subdivision, filed an appeal to the Horry County Board of Zoning Appeals, "appealing the Zoning Administrator's decision that a helicopter/sightseeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district and is ask[ed] the Board to reverse the determination of the Zoning Administrator."

Following a hearing on the merits of Mr. Hinde's appeal, the Board entered an Order on September 10, 2012 reversing the determination of the Zoning Administrator. Appellant filed a Notice of Appeal of the Order on September 12, 2012. At the hearing before me, Appellant informed the Court that it disputed no finding of fact made by the Board, and only disputed its two conclusions of law.

What follows are the Board's **FINDINGS OF FACT**¹:

1. The property in issue is owned by Burroughs & Chapin, Inc. (B&C) and is located between the NASCAR Speed Park and the City of Myrtle Beach Wastewater Treatment facility off of Highway 17 By-pas and 21st Avenue North, Myrtle Beach.
2. The property is 46.17 acres and the business in issue, Helicopter Adventures, is located on approximately 5.47 acres of the parcel directly behind the NASCAR Speed Park parking lot.
3. The property is split zoned Amusement Commercial (AC) and Limited Industrial (LI). The business in issue is located within the AC portion of the property.
4. The landing pads are approximately 1350 ft. from the property line abutting residential property. The property is buffered by a large berm covered in fully grown trees.
5. A helicopter sight-seeing tour facility is not specifically referenced in any of the zoning districts, however the AC zoning district allows a variety of outdoor amusements and specifically lists sight-seeing depots.
6. On November 18, 2011, Steven Strickland, P.E., contacted Deputy Planning Director Carol Coleman via email about locating a helicopter sight-seeing tour facility on the above referenced property. Ms. Coleman advised that the zoning looked good.

¹ The Board's Findings of Fact are misnumbered. This Order correctly numbers the findings of fact.

7. On November 22, 2011, Zoning Administrator Rennie Mincey, wrote a letter to Mr. Strickland stating that a helicopter tour facility would be allowed in AC.
8. From November 21, 2011 through March 28, 2012, a series of site plan reviews and revisions were conducted by the Horry County Planning & Zoning, Code Enforcement, Engineering, and Stormwater Departments. A Stormwater Permit was issued on February 17, 2012, and final site plan construction approval granted on March 28, 2012.
8. On March 16, 2012, Helicopter Adventures submitted an application for a building permit and the permit was issued on April 10, 2012.
9. Since a portion of the property upon which a part of the business parking lot is located is within the city limits of the Myrtle Beach, a hearing before the City's Community Appearance Board (CAB) was required, advertised and held on May 3, 2012. The CAB granted approval.
10. A Certificate of Occupancy was issued by the Horry County Code Enforcement Department on May 25, 2012.
11. On June 22, 2012, the applicant filed this appeal requesting that the Board overturn the Zoning Administrator's decision and determine that such use is not an allowed use in the Amusement Commercial (AC) district. The request was deferred at the August 13, 2012 Board hearing.
12. ZBA members observe and question whether a helicopter tour ride can be classified as an Amusement.

What follows are the Board's **CONCLUSIONS OF LAW:**

1. Based on the evidence presented, the Board finds that this appeal was filed within a reasonable time after the application knew or should have known of the November 22, 2011 decision by the Zoning Administrator. Although the plans and permits referenced above were maintained as records of the county and available for public inspection for months before the appeal was filed, the appellant had no reason to inquire and lacked actual knowledge of them.
2. The Board overturns the decision of the Zoning Administrator finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district. Therefore, the appeal is granted and the Zoning Administrator's decision is overturned.

ISSUES PRESENTED

1. Did Richard Hinde have standing to appeal the determination of the determination of the Zoning Administrator?²
2. If so, did Mr. Hinde file his Notice of Appeal within a timely manner?³
3. If so, was the decision of the board correct as a matter of law?

STANDARD OF REVIEW

While a reviewing court must treat the Board's factual findings as those of a jury and refrain from substituting its own judgment of those facts from that of the Board, a Court may reach a different conclusion of law. See Wyndham Enterprises, LLC v. City of North Augusta, 2012 WL 3828237 (SC App. Op. No. 5030, filed September 5, 2012) (reversing a Board's denial of a special exception to sell fireworks, finding the Board's decision was not correct as a matter of law, was not supported by "competent, substantial, and material evidence," and was, instead, based upon "opinion and speculation testimony.").

In reviewing the questions presented by an appeal from a Board of Zoning Appeals, "the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. 6-29-840(A) (Code of Laws 1976, as amended). South Carolina courts applying this standard of review have overturned Boards of Zoning Appeals when the Board's decision "is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." Wyndham, *infra*.

² This Court finds that Hinde had standing to appeal the determination of the Zoning Administrator.

³ This Court finds that the Board did not err in determining that Hinde filed his appeal of the determination within a reasonable time.

"Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." Mikell v. County of Charleston, 386 SC 153, 158, 687 SE2d 326, 329 (2009). "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance." Id. (internal quotations omitted).

DISCUSSION

In this case, the third issue presented concerns the interpretation of a County ordinance, an issue of law, and such is the only issue before me.⁴ The Board found that Appellant operates a "helicopter sightseeing tour facility" upon the subject premises and that the subject premises is zoned Amusement Commercial (AC), as is found within Section 712 of the Horry County Code of Ordinances.

Therefore, the only issue for determination by me is whether the Amusement Commercial zoning district allows Appellant to operate a "helicopter sightseeing tour facility." Stated another way, this Court must determine whether the Board's finding that "a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district" was an error of law.

Based upon the record before me, I find that Horry County Zoning Ordinance 712 permits the use of a helicopter sightseeing tour facility. This finding is based upon the following interpretive guidance within the Horry County Zoning Ordinance:

⁴ While Hinde presented arguments to the Board that the helicopters were a nuisance, I find those arguments and the evidence presented in support thereof irrelevant to the issue before me. Further, I find that the record is undisputed that Appellant's business is in compliance all applicable laws, including the Horry County noise ordinance.

1. "The intent of the Amusement Commercial District is to allow for the mixing of certain specified land uses in the county where both residential and limited business uses are competing for land and accelerated transition is in evidence." Section 712, Horry County Code of Ordinances.
2. Permitted uses include the following: **"Establishments providing entertainment primarily as a commercial activity, including but not limited to theaters, ... water slides, skating rinks, dance halls, shooting galleries, ... clubs, amusement parks, piers, arcades, miniature and par-three golf, driving ranges, ... and sight-seeing depots."**
Id. At 712.1 (Emphasis added).
3. Neither the phrase nor any of the terms within the phrase "sight seeing depots" are defined within the Ordinance. Therefore, such words are to be given their **"customary dictionary definitions."** Section 400, Horry County Code of Ordinances.

It is undisputed in the Order of the Board and in the Record that Appellant provides a sight-seeing business. It is further undisputed that the purpose of the sight-seeing business is for entertainment and commercial/ business activity. It is further undisputed that the tours conducted originate and terminate upon the same subject property. The only issue with regard to interpreting this Ordinance raised by Hinde to the Board concerned the definition of the word "depot."

Based upon the facts in the record before me, I find that the common dictionary definition of the word "depot" is broad and contemplates a facility that is used for the purpose of transporting passengers by helicopter for such a sight-seeing tour. This finding is based upon the following:

Helicopter sight-seeing tour facilities function as outdoor amusements. Historically, outdoor amusement uses that may create noise, such as outdoor gun ranges and outdoor motor sports facilities have been limited to the AC district. Years ago, this was determined to be the appropriate zoning district for these use types because it was the only commercial district that allows outdoor amusements and does not allow residential uses. Further, there are a very limited number of properties in the County zoned AC. Therefore, anyone desiring to establish a use of this type has been told they would either have to procure one of the few properties already zoned for it or initiate rezoning action that requires public notice and County Council approval. Thus, the AC zoning district historically has been regarded as one of the most intense zoning districts and commercial sight-seeing uses by land, water or air; and, other outdoor amusement commercial uses have been limited to this district.

Janet Carter, Director of Planning for the Horry County Planning and Zoning Department, testified as follows:

The decision that Rennie Mincey rendered in the November 2011 letter was not a new decision. We have been telling people in the planning and zoning department for a long as I have been here or as long as she's been there, that the only district you could have helicopter tours in would be Amusement Commercial. ...[T]hat decision was made long before I came to work here. Ms. Mincey has been here for 23 years. I think we've had zoning for 24. ... Like I say, as far back as either of us knows, the answer to anyone asking about having

1. Appellant submitted the Oxford Dictionary definition of depot as **"a place where vehicles are kept and maintained."**
2. Hinde submitted the FreeDictionary.com definition, which included **"a station where transport vehicles load or unload passengers or goods," "a railroad or bus station," "a storage installation for military equipment and supplies,"** and the synonym **"air terminal,"** which it defined as **"a terminal that serves air travelers or air freight."**
3. Hinde also submitted the online Wikipedia definition, which included **"train station," "bus station," "bus garage, where buses are stored when not in use,"** and **"Main Operating Base, an overseas base for the US military."**

In addition to the foregoing, Appellant also presented into evidence a "SC Technical Advice Memorandum," the subject of which was "Sight-Seeing Tours." I find this Memorandum gives additional interpretive guidance. The Memorandum presented the following facts:

Tourist areas in South Carolina provide a variety of sight-seeing tours to our State's visitors. The mode of tour includes boats, buses, motorized trollies, helicopters, airplanes and horse drawn carriages....

Question: Are fees paid for sight-seeing tours conducted by carriage, bus, helicopter, airplane, trolley, boat, and other similar modes subject to the admissions tax...?

Conclusion: Fees paid for sight-seeing tours conducted by carriage, bus, helicopter, airplane, trolley, boat, and other similar modes are not subject to the admissions tax....

I also find interpretive guidance from the testimony on behalf of the Horry County Planning and Zoning Department, who testified at the hearing before the Board that Ms. Mincey correctly interpreted Section 712 of the Ordinance. At the hearing before the Board, Rennie Mincey, Horry County Zoning Administrator, offered the following testimony:

helicopter tours or any type of sight-seeing tours, whether by land or water or whether by air, was that you had to locate them in the amusement commercial zones district."

Amusement/Commercial has been considered one of our most intense zoning districts for as long as any of us can remember. You know, when Burroughs & Chapin wanted to or talked about building a NASCAR, not speed park, but a real race track, the full, I guess, Darlington 500 type deal, they rezoned hundreds of acres between Conway and Aynor Amusement/Commercial for that purpose.

...[S]o basically anyone wanting to operate a helicopter touring facility or any sight-seeing touring facility or do any of these other things talked about; motor sports, outdoor firing ranges, or anything else, has been told, "you've got to find a piece of amusement/commercial property."

CONCLUSION

Based upon the foregoing, I find the Board made an error of law in interpreting Section 712 of the Horry County Zoning Ordinance to exclude a helicopter sight-seeing tour facility as a permitted use within the Amusement Commercial District. As such, the decision by the Horry County Board of Zoning Appeals is hereby REVERSED.

IT IS SO ORDERED.

Joe
December 16, 2013

Conway, South Carolina

A handwritten signature in black ink, appearing to read "Larry B. Hyman", is written over a horizontal line.

The Honorable Larry B. Hyman

Presiding Judge, Fifteenth Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS FILED
HORRY COUNTY

CASE NO. 2012 CP-26-6987

Helicopter Solutions Inc et al

Richard Hinde et al

13 FEB 26 AM 11:07

PLAINTIFF(S)

MELANIE WIGGINS-WARD
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant's Motion Reconsider is denied, a formal order by Atty: Benjamin Albert Baroody.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

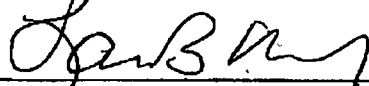
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

 2152
 Judge Code

 February
 13th, 2013
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

Benjamin Albert Barood

Emma Ruth Brittain

Kenneth R Moss

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Henry Young

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Helicopter Solutions, Inc., d/b/a
Helicopter Adventures,

Appellant,

vs.

Richard Hinde and Horry County
Zoning Administrator,

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-26-6987

ORDER

(Granting in part and denying in part
Respondents' Motions for Reconsideration
and to Alter or Amend)

HORRY COUNTY
13 APR 19 PM 1:38
CLERK OF COURT
MELANIE J. BURNS-WARD

A hearing was held before me on February 13, 2013, upon Motion for Reconsideration of Respondent Richard Hinde, and upon Motion to Alter or Amend of Respondent Horry County, both filed on January 28, 2013. Present at the hearing were Kenneth Moss, Esq., representing Respondent Richard Hinde, Emma Ruth Brittain, Esq., representing Respondent Horry County, and Benjamin A. Baroody, Esq. and David B. Miller, Esq., representing Appellant Helicopter Solutions, Inc. db/a Helicopter Adventures. Based upon the record as a whole and arguments of counsel, and after being fully informed, I hereby grant in-part and deny in-part Respondents' Motions, and the Court's Order (Reversing Order of Horry County Board of Zoning Appeals), dated January 16, 2013, is hereby amended as follows:

The second sentence of footnote 4, found on page 5 of 10 of the Order, is deleted in its entirety. I find the remaining grounds asserted by the Respondents in support of their Motions to be without merit.

AND IT IS SO ORDERED.

Done
March 10, 2013
Conway, South Carolina


Honorable Larry B. Hyman
Presiding Judge,
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.

Helicopter Solutions, Inc. d/b/a Helicopter
Adventures)

Appellant,)

v.)

Richard Hinde and Horry County Zoning
Administrator,)

Respondents.)

**NOTICE OF APPEAL
(PRIORITY MATTER PURSUANT TO S.C.
Code Ann. § 6-29-820)**

FILED
HORRY COUNTY
2012 SEP 12 PM 1:42
MELANIE HUGGINS
CLERK OF COURT

Helicopter Solutions, Inc. d/b/a Helicopter Adventures (hereinafter "Appellant") pursuant to S.C. Code Ann. § 6-29-820 (Supp. 2010), hereby appeals the Order of the Board of Zoning Appeals (hereinafter "the Board") entered September 10, 2012 and mailed for service September 11, 2012 in the case of In re: Richard Hinde, Case No. 2012-07-008. Appellant's Appeal is based upon the following grounds:

1. Appellant is the owner of a leasehold interest in certain real property located in Horry County, South Carolina that is zoned Amusement Commercial (AC).
2. Appellant constructed a helicopter sight-seeing tour business upon the subject real property pursuant to a Certificate of Zoning Compliance issued by the Horry County Zoning Administrator dated November 22, 2011.
3. Appellant has made substantial financial investments in the subject real property in reliance upon the Certificate of Zoning Compliance.

4. Appellant has operated a helicopter sight-seeing tour business upon the subject real property since May 25, 2012, the date upon which Horry County Code Enforcement issued Appellant a Certificate of Occupancy and Business License.
5. On June 22, 2012, Richard Hinde, a resident of a subdivision located nearby the subject real property, filed an appeal to the Horry County Board of Zoning Appeals challenging the Zoning Administrator's Certificate of Zoning Compliance dated November 22, 2011.
6. On September 10, 2012, a hearing was held before the Horry County Board of Zoning Appeals. By a vote of 4-3, the Board ruled to reverse the determination of the Zoning Administrator. A copy of the Order is attached hereto as Exhibit A and is incorporated herein by reference.
7. On September 12, 2012, Horry County notified Appellant that Appellant's business was not in compliance with the Order of the Board and must cease and desist from operating a helicopter sight-seeing tour business upon the subject property. A copy of this notification is attached hereto as Exhibit B and incorporated herein by reference.
8. Appellant has a substantial interest in the Order of the Board as it adversely affects his interest in the subject property and his ability to operate his business thereon.
9. The Order of the Board was arbitrary and contrary to law, as is set forth in the record and as is summarized as follows:
 - a. The interpretation of the subject Horry County Zoning Ordinance is a matter of statutory interpretation and, in turn, an issue of law, not fact.

- b. The Horry County Planning and Zoning Department testified the A/C zoning district had always been and was the only zoning district available for a helicopter sight-seeing tour business at the time of application.
- c. The A/C zoning district to which the subject real property is subject specifically permits use as a "sight-seeing depot." Appellant uses the subject real property as a sight-seeing depot from which sight-seeing tours are given via helicopter.
- d. Section 400 of the Horry County Code of Ordinances provides that "sight-seeing depot" and other terms within the zoning ordinance be given common dictionary definitions.
- e. The common dictionary definition of "depot" submitted by Richard Hinde to the Board of Zoning Appeals included facilities to store transportation equipment, including aircraft.
- f. It is undisputed that Helicopter Adventures provides sight-seeing tours via helicopter.
- g. The Board erroneously considered irrelevant evidence regarding safety and noise concerns, neither of which is germane to the issue of zoning compliance.
- h. The Board erroneously found that Mr. Hinde, who was neither the property owner nor the County, had standing to challenge the determination by the Zoning Administrator and that he did so within a reasonable time.
- i. The Board was estopped from issuing its Order after the Zoning Administrator, who is vested with the discretion to interpret the zoning ordinance, made its determination and the Appellant acted and took steps in reliance upon it.

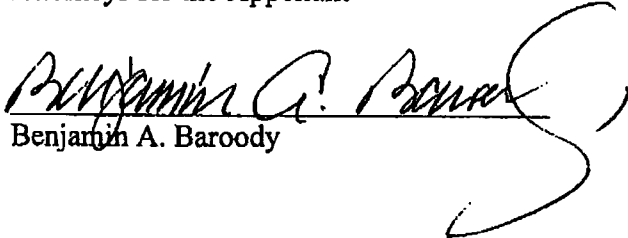
Pursuant to § 6-29-820, subsection C, Appellant hereby requests a Writ of Supersedeas that this Court order the status quo be maintained during the pendency of this appeal, to include continued business operations at the subject real property site as the Appellant will suffer irreparable harm without such relief. Appellant has filed a Writ of Supersedeas commensurate herewith.

In the event such relief is denied, Appellant requests Respondent post a Bond with this Court in a sufficient amount to ensure that Appellant will be compensated for any and all damages sustained up and until the subsequent reversal of the Order of the Board.

Appellant hereby gives notice of its reservation of all rights to pursue pre-litigation mediation and to pursue an action before a jury or otherwise for damages resulting from the action of the Board to reverse the Zoning Administrator.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
843-448-2400
Attorneys for the Appellant


Benjamin A. Baroody

Myrtle Beach, South Carolina

September 12, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

**BEFORE THE BOARD OF
 ZONING APPEALS**
 Case No.: 2012-07-008

In re: Richard Hinde)
)
 _____)

ORDER OF THE BOARD

Hearing was held before this Board on September 10, 2012, pursuant to the request of the applicant for appeal of the Zoning Administrator's decision that a helicopter/sightseeing tour facility is allowed in the Amusement Commercial (AC) zoning district. The property in question is identified by TMS# 173-00-01-058 and is located at 1860 21st Avenue North in the Myrtle Beach area of Horry County. The affected business owner is Helicopter Solutions, Inc. d/b/a Helicopter Adventures.

Article XIV, Section 1402 of the Zoning Ordinance states, "[t]he concurring vote of a majority of the members present at a meeting of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator...." The applicant is appealing the Zoning Administrator's decision that a helicopter/sightseeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

The applicant, the affected business, and the zoning administrator were given the opportunity to offer witnesses and exhibits; cross-examine witnesses; and, to make argument for the record. A public hearing was held and all interested parties were invited to comment before the Board.

Pursuant to Section 1403 of the Zoning Ordinance, an appeal to the board may be filed by any person aggrieved or by any officer, department, board, or bureau of the county. Such appeal shall be filed within a reasonable time, as provided by the rules of the Board.

FINDINGS OF FACT

1. The property in issue is owned by Burroughs & Chapin, Inc. (B&C) and is located between the NASCAR Speed Park and the City of Myrtle Beach Wastewater Treatment facility off of Highway 17 By-pass and 21st Avenue North, Myrtle Beach.
2. The property is 46.17 acres and the business in issue, Helicopter Adventures, is located on approximately 5.47 acres of the parcel directly behind the NASCAR Speed Park parking lot.
3. The property is split zoned Amusement Commercial (AC) and Limited Industrial (LI). The business in issue is located within the AC portion of the property.
4. The landing pads are approximately 1350 ft. from the property line abutting residential property. The property is buffered by a large berm covered in fully grown trees.
9. A helicopter sight-seeing tour facility is not specifically referenced in any of the zoning districts, however the AC zoning district allows a variety of outdoor amusements and specifically lists sight-seeing depots.
13. On November 18, 2011, Steve Strickland, P.E. contacted Deputy Planning Director Carol Coleman via email about locating a helicopter sight-seeing tour facility on the above referenced property. Ms. Coleman advised that the zoning looked good.
14. On November 22, 2011, Zoning Administrator Rennie Mincey, wrote a letter to Mr. Strickland stating that a helicopter tour facility would be allowed in AC.
15. From November 21, 2011 through March 28, 2012, a series of site plan reviews and revisions were conducted by the Horry County Planning & Zoning, Code Enforcement, Engineering, and Stormwater Departments. A Stormwater Permit was issued on February 17, 2012, and final site plan construction approval granted on March 28, 2012.
16. On March 16, 2012, Helicopter Adventures submitted an application for a building permit and the permit was issued on April 10, 2012.
17. Since a portion of the property upon which a part of the business parking lot is located is within the city limits of the Myrtle Beach, a hearing before the City's Community Appearance Board (CAB) was required, advertised and held on May 3, 2012. The CAB granted approval.
19. A Certificate of Occupancy was issued by the Horry County Code Enforcement Department on May 25, 2012.
20. On June 22, 2012, the applicant filed this appeal requesting that the Board overturn the Zoning Administrator's decision and determine that such use is not an allowed use in the

Amusement Commercial (AC) district. This request was deferred at the August 13, 2012 Board hearing.

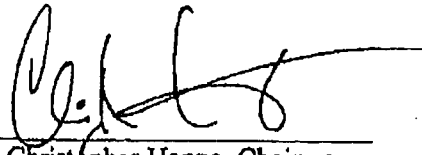
21. ZBA members observe and question whether a helicopter tour ride can be classified as an Amusement.

CONCLUSIONS OF LAW

Based on the evidence presented, the Board finds that this appeal was filed within a reasonable time after the applicant knew or should have known of the November 22, 2011, decision by the Zoning Administrator. Although the plans and permits referenced above were maintained as records of the county and available for public inspection for months before the appeal was filed, the applicant had no reason to inquire and lacked actual knowledge of them.

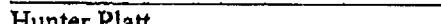
The Board overturns the decision of the Zoning Administrator finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district. Therefore, the appeal is granted and the Zoning Administrator's decision is overturned.

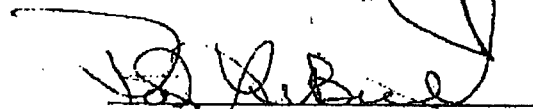
AND IT IS SO ORDERED, this 10th day of September, 2012.


Christopher Hanna, Chairman

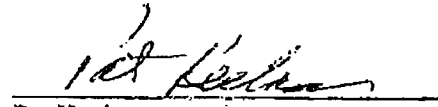

Pam Creech, Vice-Chairman


Allen Beverly


Hunter Platt

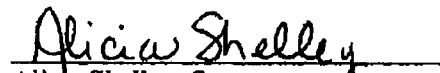

Pat Lebiecz


Ace Parker


Pat Keelan


Bo Ives

ATTEST:


Alicia Shelley, Secretary

Baroody, Benjamin A

From: Carotti, Arrigo [CarottiA@HorryCounty.org]
Sent: Wednesday, September 12, 2012 11:11 AM
To: Baroody, Benjamin A
Subject: Helicopter Adventures

On Monday, September 10, 2012, the Zoning Board of Appeals (ZBA) met and considered an appeal of the Zoning Administrator's decision that a helicopter/sightseeing tour facility is allowed in the Amusement Commercial (AC) zoning district. The effected business owner is Helicopter Solutions, Inc. d/b/a Helicopter Adventures (Helicopter Adventures).

The ZBA, after hearing from the affected parties, and receiving other evidence, voted to overturn the determination of the Zoning Administrator, finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC Zoning District. The legal affect of this decision is that the operations being conducted by Helicopter Adventures are an impermissible use at the location at issue.

Horry County, as a result of this ruling, is compelled to take immediate action to enforce the decision of the ZBA, which includes the termination of such operations at the site, should an appeal of the ZBA's decision not be filed by Helicopter Adventures, together with an application for supersedeas.

Arrigo P. Carotti
County Attorney
Horry County
(843) 915-7412 (direct tele #)
(843) 915-6270 (fax)

STATE OF SOUTH CAROLINA)
 HORRY COUNTY)
 Helicopter Solutions, Inc. d/b/a)
 Helicopter Adventures)
)
 APPELLANT)
 Vs)
 Richard Hinde and Horry County)
 Zoning Administrator)
)
 RESPONDENTS.)

IN THE COMMON PLEAS COURT
 FIFTEENTH JUDICIAL CIRCUIT

2012-CP-26-06987

RESPONDENT RICHARD HINDE'S
 RETURN TO NOTICE OF APPEAL OF
 ORDER OF THE HORRY COUNTY BOARD
 OF ZONING APPEALS

HORRY COUNTY
 12 OCT 29 AM 9:11
 MELANIE HUGGINS-WARD
 CLERK OF COURT

The Respondent, Richard Hinde, (hereinafter referred to "this Respondent" or "Hinde"), answering the allegations of the Notice of Appeal of the Appellant herein, would allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. All allegations of the Notice of Appeal that are not hereinafter admitted or explained are denied.
2. This Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph One (1) of the Notice of Appeal and therefore denies same.
3. This Respondent admits so much of Paragraph Two (2) of the Notice of Appeal as alleges that Appellant constructed a helicopter sight-seeing tour business upon real property located in Horry County. This Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph Two (2) of the Notice of Appeal and therefore denies same.

4. This Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Three (3) of the Notice of Appeal and therefore denies same.

5. Upon information and belief, this Respondent admits so much of Paragraph Four (4) of the Notice of Appeal as alleges that Appellant operates a helicopter sight-seeing tour business upon real property located in Horry County. This Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph Four (4) of the Notice of Appeal and therefore denies same.

6. This Respondent admits the allegations of Paragraphs Five (5), Six (6) and Seven (7) of the Notice of Appeal.

7. Paragraph Eight (8) of the Notice of Appeals calls for a legal conclusion to which no response is required.

8. This Respondent is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of Paragraph Nine (9) of the Notice of Appeal and therefore denies same. Respondent further responds that portions of Paragraph Nine (9) of the Notice of Appeal calls for a legal conclusion to which no response is required; however, if a response is required, this Respondent denies same.

9. This Respondent admits so much of the prayer as alleges that Appellant has requested a Writ of Supersedeas; in regard to allegations calling for legal conclusions, no response is required; this Respondent denies that Appellant is entitled to a jury trial in regard to this matter and denies that Appellant is entitled to damages of any kind.

FOR A SECOND DEFENSE

10. This Respondent realleges the allegations of Paragraphs One (1) through Nine (9) above as fully as if set forth herein.

11. Appellant's Notice of Appeal fails to state facts sufficient to constitute an action and therefore should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P.:

FOR A THIRD DEFENSE

12. This Respondent realleges the allegations of Paragraphs One (1) through Eleven (11) above as fully as if set forth herein.

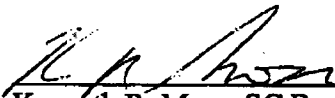
13. Based upon information and belief, this Respondent feels the Zoning Board's decision in this matter should be affirmed because it is neither arbitrary nor capricious, believes that it is reasonably related to a lawful purpose and believes the Board has not abused its discretion in its decision.

WHEREFORE, having fully responded to the Notice of Appeal herein, this Respondent requests that judgment be entered in its favor, that the Appellant's Notice of Appeal be dismissed, that the decision of the Horry County Board of Zoning Appeals be affirmed and that this action be dismissed and for such other and further relief as may be just and proper.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorney for the Respondent, Richard Hinde

October 25, 2012

Little River, South Carolina



Kenneth R. Moss, SC Bar No.: 15520
Post Office Box 250
Little River, South Carolina 29566
Tel: (843) 281-9901
Fax: (843) 281-9903
kennethmoss@wwpemplaw.com

HORRY COUNTY ZONING BOARD IF APPEALS

MONDAY, SEPTEMBER 10, 2012

THE FOLLOWING MEMBERS WERE PRESENT:

CHRISTOPHER HANNA

PAM CREECH

ALLEN BEVERLY

PAT KEELAN

PAT LEBIEDZ

ACE PARKER

RENNIE MINCEY

JANET CARTER

STEVE GOSNELL

CAROL COLEMAN

DAVID SCHWERD

PAM TOMPKINS

ALICIA SHELLEY

ESQUIRE, SANFORD GRAVES

PEPPER MCCARTHY

MABRY COURT REPORTING

PEPPER M. MCCARTHY (843) 957-7653

PEPPERMCCARTHY@SC.RR.COM

EXHIBIT'S

PLAINTIFF'S:

1. DEFINITION OF DEPOT.....PAGE 152
2. WIKIPEDIA'S DEFINITION.....PAGE 152
3. PAPERS FROM SOUTH CAROLINA
COURT OF APPEALS.....PAGE 152
- **NOTEBOOK FROM MR. HINDE.....PAGE 152**

DEFENDANT'S:

1. EXAMPLES FOR FLIGHT PATTERNS.....PAGE 140
2. MEMORANDUM FROM THE SOUTH
CARLINA DEPARTMENT OF REVENUE....PAGE 140

COURT REPORTERS NOTES:

ALL NAMES ARE SPELLED PHONETICALLY. SOME NAMES
WERE NOT WRITTEN IN THE BOARD OF APPEALS SIGN-IN
SHEET AND WERE NOT SPELLED OUT BY THE WITNESS.

****THE BOLD IS NOT ADMITTED, BUT ALL BOARD OF
APPEALS MEMBERS HAVE THEIR OWN COPIES AND IT'S
INCLUDED IN THE ORIGINAL.**

MR. HANNA: AGAIN, WELCOME. THANK YOU
FOR TAKING YOUR TIME AND INTEREST IN
YOUR COMMUNITY TO BE HERE. WE ARE

MABRY COURT REPORTING

PEPPER M. MCCARTHY (843) 957-7653

PEPPERMCCARTHY@SC.RR.COM

1 GOING TO TRY TO GET THROUGH THIS AS
2 EFFICIENTLY AS POSSIBLE, AS WELL AS TO
3 LET EVERYBODY GET THEIR SAY SO IN.
4 BEFORE WE GET STARTED, IS THERE ANY
5 COMMUNICATIONS FROM STAFF AT THIS TIME?
6 WE HAVE ALL SEEN THE MINUTES OF THE
7 MEETING. IS THERE A MOTION THAT NEEDS
8 TO BE APPROVED OR ANY COMMENTS?
9 MS. CREECH: I MAKE A MOTION TO APPROVE
10 THE MINUTES.
11 MR. LEBIEDZ: SECOND.
12 MR. HANNA: ALL IN FAVOR SAY I.
13 BOARD: I.
14 MR. HANNA: THERE IS NO OLD BUSINESS.
15 I WOULD LIKE TO POLL THE AUDIENCE. HOW
16 MANY OF YOU ALL ARE HERE FOR THE
17 PREVIOUSLY DEFERRED CASE? THE
18 APPLICANT BEING MR. RICHARD HINDE.
19 THIS WOULD BE IN REFERENCE TO, I
20 BELIEVE, THE HELICOPTER. WELL OVER THE
21 MAJORITY OF FOLKS ARE HERE. WE ARE
22 GOING TO MOVE THIS UP ON THE AGENDA TO
23 THE FIRST THING SO WE CAN TRY AND GET
24 YOU ON YOUR WAY. WITH THAT BEING SAID,
25 I THINK THERE'S SOME ATTORNEYS HERE

1 REPRESENTING PARTIES IN THIS MATTER.
2 YES OR NO?
3 MR. MOSS: YES.
4 MR. HANNA: MR. MOSS ANY OTHER
5 ATTORNEYS IN REGARD TO THIS CASE?
6 MR. BARODY: YES.
7 MR. HANNA: I UNDERSTAND THERE'S A
8 REQUEST TO CROSS EXAM SOME OF THE
9 WITNESSES AND THINGS OF THAT NATURE.
10 MR. BARODY: THAT'S CORRECT, MR.
11 CHAIRMAN. JUST VERY BRIEFLY.
12 MR. HANNA: WE ARE GOING TO ALLOW THAT.
13 WE ARE GOING TO SEE HOW IT GOES.
14 OBVIOUSLY, WE WOULD HOPE THIS WOULDN'T
15 GET OUT OF HAND. WE WOULD ASK THAT ANY
16 COMMENTS BE DIRECTED TOWARD THE BOARD,
17 EXCEPT IN THOSE SPECIFIC INSTANCES
18 OBVIOUSLY. IS THAT FAIR ENOUGH
19 COUNSELS?
20 MR. MOSS: YES.
21 MR. BARODY: YES.
22 MR. HANNA: WE ARE GOING TO BE
23 PROACTIVE WITH THIS THING. ALSO MY
24 UNDERSTANDING IS IN THIS BOARD -- PAGE
25 118, IN YOUR BOOK 219. I'M SORRY. BUT

1 MY UNDERSTANDING IS WHETHER THIS
2 APPLICATION WAS MADE IN A TIMELY
3 MANNER. I THINK WE ARE GOING TO GO
4 AHEAD AND BE PROACTIVE AND WE ARE GOING
5 TO HEAR ANY RESPONSE PARTICULARLY TO
6 THAT QUESTION. THE QUESTION BEING, WAS
7 THE APPLICATION PLACED IN A TIMELY
8 MANNER? IF THE BOARD DETERMINES INDEED
9 IT WAS, WE WILL THEN GO FORWARD AND
10 HEAR THE NEXT QUESTION. IF THE BOARD
11 DETERMINES IT WAS NOT, THEN WE WILL
12 MOVE ON FROM THERE. THAT BEING SAID,
13 MS. MINCEY, MEMBERS OF STAFF THAT ARE
14 GOING TO SPEAK, IF YOU WILL NOW RAISE
15 YOUR RIGHT HAND WE ARE GOING TO SWEAR
16 YOU IN.

17 **ZONING AND PLANNING STAFF**, HAVING BEEN FIRST
18 DULY SWORN, TESTIFIED AS FOLLOWS: YOU DO HAVE A
19 HANDOUT. IT'S HANDOUT NUMBER 3. IT'S BASICALLY
20 JUST FOR INFORMATION, A DOCUMENT, AND WE WANTED
21 TO MAKE SURE YOU HAVE A COPY OF THAT. AGAIN, IN
22 THIS CASE THE APPLICANT IS RICHARD HINDE AND THE
23 REQUEST IS AN APPEAL OF THE ZONING
24 ADMINISTRATORS' DECISION THAT THE HELICOPTER
25 SIGHT-SEEING TOUR FACILITY THAT IS ALLOWED USE

1 IN THE AMUSEMENT COMMERCIAL ZONING DISTRICT.
2 THE ISSUE BEFORE THE BOARD IS WHETHER OR NOT THE
3 ZONING ADMINISTRATOR HAS CORRECTLY INTERPRETED
4 THE ORDER BY CONFIRMING THAT A HELICOPTER
5 SIGHT-SEEING TOUR FACILITY IS IN THE ALLOWED USE
6 OF THE AC ZONING DISTRICT.

7 MR. HANNA: MS. MINCEY, I WANT TO STOP
8 YOU RIGHT THERE. I WANT TO HEAR FIRST
9 IN REFERENCE TO WHETHER THIS
10 APPLICATION WAS TURNED IN ON TIME SO
11 THE BOARD CAN ADDRESS THAT
12 SPECIFICALLY.

13 MS. MINCEY: MS. CARTER WILL ADDRESS
14 THAT ISSUE.

15 MS. CARTER: IN NOVEMBER OF 2011, THE
16 ZONING STAFF HAD SOME INQUIRY, I THINK,
17 IT WAS ON THE 18TH. NOVEMBER 1ST, MS.
18 COLEMAN RECEIVED AN E-MAIL ABOUT A
19 POSSIBLE LOCATION OF A HELICOPTER
20 SIGHT-SEEING TOUR OPERATION AT THE
21 LOCATION IN ISSUE. MS. COLEMAN STATED
22 IN HER E-MAIL THAT THE ZONING WAS GOOD,
23 THE ZONING LOOKED GOOD. AND
24 THEREAFTER, THE APPLICANTS CAME IN AND
25 MET WITH STAFF. I BELIEVE IT WAS 11/22

1 MS. MINCEY ISSUED HER LETTER TO STEVE
2 STRICKLAND WITH EARTH WORKS SPECIFYING
3 OR STATING -- CONFIRMING THAT THE
4 AMUSEMENT COMMERCIAL ZONING DISTRICT
5 WOULD ALLOW LOCATION OF A SIGHT-SEEING
6 TOUR OPERATION. THEN THEY BEGAN TO
7 SUBMIT PLANS RIGHT THROUGH HERE FROM
8 NOVEMBER UNTIL FEBRUARY. THEY
9 SUBMITTED PLANS THEN FEBRUARY 9TH,
10 2012. THEY RECEIVED CONSTRUCTION PLAN
11 APPROVAL. ON THE 17TH OF FEBRUARY THEY
12 RECEIVED A STORM WATER PERMIT FOR THE
13 SITE. ON FEBRUARY THE 28TH, THEY GOT
14 THE FINIAL CONSTRUCTION PLANS APPROVED.
15 THEN THEY MADE SOME REVISIONS. SO, AS
16 YOU CAN SEE, THIS IS GOING BACK AND
17 FORTH THEM SUBMITTING PLANS TO STAFF,
18 STAFF MAKING COMMENTS, THEM DOING
19 REVISIONS AND SENDING THEM BACK OUT
20 AGAIN. BUT, ANYWAY, YOU CAN SEE IN
21 MARCH 2012 THEY SUBMITTED REVISED
22 PLANS. ON MARCH THE 16TH, THEY WENT
23 AHEAD AND APPLIED FOR THEIR BUILDING
24 PERMIT. ON MARCH THE 28TH, THEY GOT
25 THEIR FINAL REVISED CONSTRUCTION PLANS

1 APPROVED. ON APRIL THE 10TH, THE
2 BUILDING PERMIT WAS ISSUED. ON MAY THE
3 3RD, THEY WENT BEFORE THE CITY OF
4 MYRTLE BEACH COMMUNITY APPEARANCE
5 BOARD. THEY WERE REQUIRED TO DO THAT
6 BECAUSE A PORTION OF THE PROPERTIES IS
7 LOCATED IN THE CITY OF MYRTLE BEACH,
8 SPECIFICALLY THE PARKING LOT. SO CABA
9 APPROVAL WAS ALSO REQUIRED AND A PERMIT
10 FROM THE CITY. ON MAY THE 25TH, OUR
11 CODE ENFORCEMENT DEPARTMENT ISSUED A
12 CERTIFICATE OF OCCUPANCY FOR THE
13 BUILDING ON THE PROPERTY. THAT IS YOUR
14 BASIC TIMELINE. THAT IS HOW WE GOT TO
15 WHERE WE ARE TODAY. I THINK IT WAS
16 PROBABLY AROUND THAT, I GUESS, THE
17 APPLICANTS WILL HAVE TO TELL US, BUT
18 SOMETIME IN MAY THEY BEGAN TO RUN TEST
19 FLIGHTS AND WE STARTED TO GET
20 COMPLAINS. WHICH IS WHEN KIND OF
21 EVERYTHING HIT THE FAN. THEN WE WENT
22 BACK AND FORTH WITH THESE FOLKS AND
23 WITH HELICOPTER ADVENTURES WITH PEOPLE
24 CALLING AND COMPLAINING ABOUT
25 HELICOPTER ADVENTURES. WE TRIED TO PUT

1 TOGETHER MEETS WITH THE PARTIES AND
2 WORK OUT SOLUTIONS. MR. RICK CAME TO
3 THE MEETING. HE IS THE OWNER OF
4 HELICOPTER ADVENTURES AND HIS ATTORNEY
5 ATTENDED, BUT WE WERE UNABLE TO GET ALL
6 PARTIES TOGETHER. I THINK THE
7 RESIDENTS AT THAT TIME WERE ORGANIZING
8 IT AND DIDN'T FEEL LIKE THEY WERE READY
9 TO COME AND SIT DOWN AND TALK. BUT, IN
10 ANY EVENT, MR. RICK DID AGREE TO CHANGE
11 FLIGHT PLANS. HE AGREED NOT TO FLY
12 OVER PLANTATION POINTE DIRECTLY SINCE
13 THE MAJORITY OF THE COMPLAINS WERE
14 COMING FROM PLANTATION POINTE. IN
15 ADDITION TO THAT, WE SENT THE POLICE
16 OUT ON SEVERAL OCCASIONS TO MEASURE THE
17 NOISE LIMITS AND THE POLICE FOUND NO
18 VIOLATION OF COUNTY NOISE ORDINANCE.
19 IT WENT BACK AND FORTH THROUGH A SERIES
20 OF E-MAILS AND TELEPHONE CALLS AND
21 ULTIMATELY, MR. HINDE FILED HIS APPEAL.
22 I BELIEVE IT WAS ON JUNE 22 OF 2012.
23 AND THAT IS HOW WE GOT TO WHERE WE ARE
24 TODAY.
25 MR. HANNA: MS. CARTER, THANK YOU. IF

1 I COULD ASK, WHAT THE BY-LAWS
2 DEFINITION -- HOW MUCH TIME DOES
3 SOMEONE HAVE TO MAKE AN APPEAL TO THE
4 ZONING ADMINISTRATORS' DECISION? WHAT
5 IS THE LENGTH OF TIME? IN OTHER WORDS,
6 IF SHE MADE THE DECISION IN NOVEMBER OF
7 2011, TYPICALLY HOW LONG WOULD I HAVE
8 TO APPEAL HER DECISION; 60 DAYS,
9 90 DAYS?
10 MS. CARTER: WE TYPICALLY THINK
11 30 DAYS. HOWEVER, THE ZONING ORDINANCE
12 SAYS WITHIN A REASONABLE TIME. SO THE
13 BOARD HAS TO REALLY DETERMINE WHAT IS
14 REASONABLE.
15 MR. HANNA: THERE IS NO SET TIME THAT'S
16 DEFINED AS REASONABLE?
17 MS. CARTER: IN OUR ORDINANCE, YES, IT
18 IS.
19 MR. HANNA: ANY QUESTIONS OF MS. CARTER
20 FROM ANY MEMBERS OF THE BOARD?
21 MS. CREECH: I WOULD THINK THAT MOST
22 RESIDENTS USUALLY DO NOT FIND OUT ABOUT
23 THINGS FROM THE START THAT PROBABLY THE
24 RESIDENTS DIDN'T FIND OUT THAT, THAT
25 WAS GOING TO BE THERE UNTIL THE TEST

1 FLIGHTS ON 5/25/2012, WHICH WOULD HAVE
2 MEANT, IF THEY FILED THAT JUNE 22ND,
3 THAT WOULD ACTUALLY HAVE BEEN LESS THAN
4 30 DAYS FROM THE TIME THEY WERE AWARE
5 THAT WAS THERE.
6 MS. CARTER: I GUESS THAT'S PART OF
7 WHAT THE BOARD WOULD BE HERE TO
8 DETERMINE TONIGHT. OBVIOUSLY, THE CITY
9 OF MYRTLE BEACH NEEDED THE APPROVAL.
10 IT WAS A PUBLIC MEETING AND I'M SURE
11 THAT IT WAS ADVERTISED WITH THE
12 ORDINANCE OF LAW. SO THERE WAS SOME
13 PUBLIC NOTICE THERE. I WOULD TELL YOU
14 THAT IN THE LAW THERE IS SUCH THING AS
15 CONSTRUCTIVE NOTICE, WHICH IS WHEN
16 SOMETHING IS OF RECORD IN A PUBLIC
17 LOCATION AND IT'S AVAILABLE FOR ANYONE
18 AND EVERYONE TO SEE. THEY COULD BE
19 SAID THEY HAD CONSTRUCTIVE NOTICE, BUT
20 I'LL LET THE ATTORNEYS ARGUE ABOUT
21 THAT. I WILL ALSO SAY THAT FROM A
22 STAFF CONCERN, WE ARE VERY CONCERNED
23 ABOUT PEOPLE, IN GENERAL, WHO COME INTO
24 OUR DEPARTMENT AND WHO RECEIVE BUILDING
25 PERMITS AND GO OUT AND SPEND A LOT OF

1 MONEY AND RELIANCE ON THEM. IF THE
2 TIME FRAME IS OPEN TO AN INDEFINITE
3 PERIOD OF TIME THAT MAKES IT EXTREMELY
4 DIFFICULT, NOT JUST IN THIS CASE, BUT
5 IN EVERY CASE.

6 MR. BEVERLY: OUR BY-LAWS, DO THEY
7 SPECIFICALLY ADDRESS THE THIRD PARTY
8 NORMAL? IT WAS THE PERSON APPEALING
9 THE ZONING ADMINISTRATOR IS THE
10 PROPERTY OWNER. DOES IT SAY ANYTHING
11 ABOUT THE THIRD PARTIES? DOES IT
12 SPECIFICALLY ADDRESS NOTICE FROM THE
13 CERTIFICATE OF THE ZONING COMPLIANCE OF
14 THE ZONING ADMINISTRATOR OR DOES IT
15 JUST SAY, "NOTICE" IN GENERAL? I'M
16 GETTING VERY TECHNICAL AND SPECIFIC.

17 MS. CARTER: I DON'T THINK THAT OUR
18 BY-LAWS -- AND SANFORD CAN CORRECT ME
19 IF I'M WRONG. DON'T BELIEVE OUR
20 BY-LAWS ADDRESS IT AT ALL. FALLING
21 BACK TO THE ZONING ORDINANCE, IT SAYS,
22 "ANY INTERESTED PERSON CAN APPEAL."
23 BUT IN TERMS OF NOTICE, IT DOESN'T
24 SPEAK TO THAT. IT JUST SAYS, "THE
25 APPEAL MUST BE FILED WITHIN A

1 REASONABLE PERIOD OF TIME."
2 MR. BEVERLY: SO IT DOESN'T ADDRESS
3 NOTICE AT ALL?
4 MS. CARTER: I DON'T BELIEVE IT DOES.
5 ESQUIRE GRAVES: MR. BEVERLY, I'M
6 READING FROM THE HORRY COUNTY CODE OF
7 ORDINANCES, APPEND B, ARTICLE 14,
8 ZONING BOARD OF APPEALS, SPECIFICALLY
9 SECTION 1403-A. "APPEALS TO THE BOARD
10 MAY BE FILED BY ANY PERSON AGGRIEVED OR
11 BY ANY OFFICER, DEPARTMENT, BOARD, OR
12 BUREAU OF THE COUNTY. SUCH APPEALS
13 SHALL BE FILED WITHIN A REASONABLE TIME
14 AS PROVIDED BY THE RULES OF THE BOARD
15 OR FILING WITH THE ZONING ADMINISTRATOR
16 AND WITH THE BOARD ZONING APPEALS
17 NOTICE OF SAID APPEAL SPECIFYING
18 GROUNDS THEREOF." THAT IS CONSISTENT
19 WITH THE STATE CODE, WHICH IS 629-800-B
20 AND THAT JUST SAYS THAT A AGGRIEVED
21 PARTY MAY APPEAL WITHIN A REASONABLE
22 TIME.
23 MR. HANNA: MR. LEBIEDZ.
24 MR. LEBIEDZ: WAS THERE ANY
25 NOTIFICATION MADE BY THE COUNTY TO THE

1 RESIDENTS AT ANY TIME FROM NOVEMBER OF
2 LAST YEAR UNTIL ALL THIS ACTION
3 STARTED?
4 MS. CARTER: NO. NONE OF THESE ACTS
5 REQUIRE A PUBLIC HEARING OR PUBLIC
6 NOTICE. THIS CASE -- EVERYTHING WENT
7 THROUGH THE ORDINARY COURSE OF BUSINESS
8 JUST LIKE ANY OTHER PERMITTING PROCESS.
9 MR. HANNA: THANK YOU. ANYTHING ELSE
10 OF MS. CARTER? IS THE APPLICANT OR THE
11 APPLICANTS REPRESENTATIVE AVAILABLE?
12 IF YOU WOULD PLEASE COME FORWARD. I'M
13 GOING TO HEAR FROM ONE OF YOU AT A
14 TIME. SO WHOEVER WANTS TO SPEAK FIRST,
15 THE OTHER CAN TAKE A SEAT.
16 MR. MOSS: MR. CHAIRMAN, I'M KENNETH
17 MOSS REPRESENTING MR. HINDE. I
18 APPRECIATE THE BOARD TAKING THIS OUT OF
19 ORDER. I REALIZE THAT MIGHT CAUSE SOME
20 PROBLEMS FOR THE OTHERS HERE AND I DO
21 APOLOGIZE, BUT THERE ARE A LOT OF
22 PEOPLE HERE. RESPECTFULLY, I DON'T
23 KNOW IF ANY OF THIS TIME FRAME REALLY
24 MATTERS WHEN THEY ARE IN YOUR BY-LAWS
25 OR IN THE CODE LAW OF SOUTH CAROLINA.

1 WHAT MATTERS IS WHEN MR. HINDE LEARNED
2 OF THE DECISION TAKEN BY THE
3 ADMINISTRATOR. IT DOESN'T MATTER THAT
4 THE BUILDING PERMIT THAT WAS APPLIED
5 FOR WAS ISSUED. UNDER TITLE 6, IT SAYS
6 HE HAS TO DO IT "WITHIN A REASONABLE
7 PERIOD OF TIME OF WHEN HE LEARNED OF
8 THE DECISION BEING APPEALED." AND IN
9 THIS CASE THAT IS WHEN MR. HINDE
10 LEARNED ABOUT THE DECISION TAKEN BY MS.
11 MINCEY. THAT THERE WAS COMPATIBILITY
12 WITH ZONING BY THIS BUSINESS, THAT'S
13 THE TRICK. NONE OF THESE ARE THE
14 TREATY ONES. NOW, I RESPECTFULLY
15 SUBMIT TO YOU THAT YOU CAN'T KNOW ANY
16 OF THOSE THINGS FROM ANYBODY BUT MR.
17 HINDE. AND YOU HAVE ASKED THAT FIRST
18 AND I WOULD ASK THE BOARD TO LET HIM
19 SPEAK TO THAT ISSUE.

20 MR. HANNA: YOUR POSITION WOULD BE THAT
21 MR. HINDE WAS OUT OF THE COUNTRY FOR
22 TWO YEARS AND DIDN'T KNOW ABOUT THIS.
23 HE'S STILL ENTITLED TO AN APPEAL.
24 WOULD THAT BE YOUR ARGUMENT?
25 MR. MOSS: THAT'S NOT MY ARGUMENT.

1 THAT'S WHAT THE STATUE SAYS. AND I
2 WILL READ IT TO YOU SPECIFICALLY. I
3 THINK THAT WOULDN'T BE UNREASONABLE,
4 BUT THAT'S NEVERTHELESS, WHAT THE
5 STATUE SAID. AND I QUOTE IT, "CODE OF
6 LAW OF SOUTH CAROLINA, TITLE 6-29-800,
7 SUB-SECTION B, APPEALS TO THE BOARD MAY
8 BE TAKEN BY EVERY PERSON OF GRIEVE OR
9 BY ANY OFFICER, DEPARTMENT, BOARD OR
10 BUREAU OF THE MUNICIPALITY OR COUNTY.
11 THE APPEAL MUST BE TAKEN WITHIN A
12 REASONABLE TIME IS PROVIDED FOR IN THE
13 ZONING ORDINANCE OR RULES OF THE BOARD
14 OR BOTH BY FILING WITH OFFICER FROM
15 WHOM THE APPEAL IS TAKEN THE APPEAL..."
16 I'M GOING TO PARAPHRASE IF NO TIME IS
17 PROVIDED. AS WE HAVE HERE, THE APPEAL
18 MUST BE TAKEN WITHIN 30 DAYS FROM THE
19 DAY THE APPEALING PARTY HAS RECEIVED
20 ACTUAL NOTICE OF THE ACTION WHICH THE
21 APPEAL WAS TAKEN. SO CONSTRUCTION
22 NOTICE IS NOT EVEN IN PLAY HERE. THE
23 STATUE OF CODE LAW OF SOUTH CAROLINA
24 SAYS, "WITHIN 30 DAYS" OF WHEN MR.
25 HINDE LEARNED THE DECISION OF THE

1 ADMINISTRATOR. IT'S HIS DEADLINE. SO,
2 AGAIN, I SUBMIT TO YOU THAT THE ONLY
3 RELEVANT TIME FRAME HERE IS WHEN HE
4 KNEW.

5 MR. HANNA: ANY QUESTIONS OF MR. MOSS
6 AT THIS TIME? THANK YOU, MR. MOSS.

7 MR. HINDE, IF YOU WILL STEP FORWARD.

8 **RICHARD HINDE**, HAVING BEEN FIRST DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 MR. HANNA: AS I UNDERSTAND, WE ARE
11 JUST GOING TO HEAR ABOUT WHEN YOU FOUND
12 OUT ABOUT THIS, OKAY? AND OBVIOUSLY IF
13 WE CONTINUE ON, WE WILL HEAR THE OTHER
14 INFORMATION.

15 MR. HINDE: I MADE A FAA COMPLAINT ON
16 THE 21ST OF MAY 'CAUSE I HAD SEEN SOME
17 LOW FLYING AIRCRAFT. BUT AS FAR AS THE
18 DATE THAT I KNEW SPECIFICALLY THAT HE
19 WAS GOING TO OPERATE A HELICOPTER TOUR,
20 I WOULD HAVE TO SAY THAT, THAT WAS THE
21 DAY OF THE GRAND OPENING. MY WIFE
22 CALLED ME AND SAID, "YOU NEED TO GET
23 OVER THERE TO BROADWAY AT THE BEACH."
24 AND SO I WENT OVER THERE AND I COULDN'T
25 BELIEVE WHAT I WAS HEARING. AND I MADE

1 A LOT OF CALLS AND DONE A LOT OF
2 THINGS. I CAN'T GIVE YOU SPECIFIC
3 DATES ON CERTAIN THINGS, BUT THAT'S
4 ABOUT THE TIMELINE.

5 MR. HANNA: IT IS FAIR TO SAY JUNE 2012
6 IS WHEN YOU FOUND OUT?

7 MR. HINDE: YES. WELL, I MADE THE FAA
8 COMPLAINT MAY...

9 MR. HANNA: BUT YOU DID NOT KNOW THEY
10 WERE SPECIFICALLY...

11 MR. HINDE: I DID NOT KNOW ABOUT THE
12 ZONING ADMINISTRATORS DECISION, YOU
13 KNOW. I STARTED MAKING PHONE CALLS
14 FROM...

15 MR. HANNA: YOU FOUND THAT OUT IN JUNE
16 ROUGHLY? 1ST OF JUNE, SOMETHING LIKE
17 THAT MAYBE.

18 MR. HINDE: SOMETIME...

19 MR. HANNA: WE ARE NOT GOING TO HOLD
20 YOU TO A EXACT DATE.

21 MR. HINDE: I THINK THAT'S ABOUT RIGHT.

22 MR. HANNA: ANY QUESTIONS OF MR. HINDE
23 FROM ANY MEMBERS OF THE BOARD AT THIS
24 TIME? THANK YOU. ANYONE ELSE WISHING
25 TO ADDRESS THIS QUESTION? PLEASE COME

1 FORWARD, MR. BAROODY.

2 MR. BAROODY: THANK YOU, MR. CHAIRMAN.
3 I WOULD ACTUALLY LIKE TO ASK MR. HINDE
4 JUST A COUPLE OF VERY BRIEF QUESTIONS
5 IN THIS REGARD. I AGREE WITH THE
6 INTERPRETATION OF THE SOUTH CAROLINA
7 STATUTE AS MR. MOSS READ IT. I BELIEVE
8 IT'S FROM THE DATE OF ACTUAL NOTICE
9 THAT'S THE MEASURING STICK IN THIS
10 CASE. THE ISSUE AND POTENTIAL DISPUTE
11 IS WHEN THAT ACTUAL NOTICE ACTUALLY
12 TOOK PLACE AND I WOULD JUST LIKE TO ASK
13 MR. HINDE ONE OR TWO VERY BRIEF
14 QUESTIONS IN LIGHT OF SOME E-MAILS THAT
15 ARE IN THE RECORD.

16 MR. HANNA: NO PROBLEM. MR. HINDE IF
17 YOU COME BACK FORWARD PLEASE.

18 **CROSS-EXAMINATION BY MR. BAROODY:**

19 Q WHEN YOU FILED YOUR INITIAL PACKAGE WITH THE
20 HORRY COUNTY ZONING BOARD OF APPEALS, YOU STATE
21 HERE THAT WE, I GUESS, THAT MEANS YOU AND YOUR
22 WIFE...

23 AUDIENCE: SPEAK UP PLEASE.

24 Q CAN YOU HEAR ME FINE NOW? MR. HINDE, WHEN YOU
25 FILED YOUR APPEAL OR SUBSEQUENT TO THAT, WHEN

1 YOU SUBMITTED YOUR PACKET THAT'S DATED JULY
2 16TH, 2012, IT SAYS, "WE FOUND OUT ABOUT
3 HELICOPTER ADVENTURES JUST BEFORE THEY OPENED."
4 AND THEN IT STATES, "I CALLED THE ZONING
5 ADMINISTRATOR'S OFFICE AND WAS TOLD IT WAS GOING
6 TO BE HELICOPTER ADVENTURES." AND SO, WHEN YOU
7 SPOKE WITH THE ZONING ADMINISTRATOR'S OFFICE, DO
8 YOU RECALL WHAT YOU SPOKE ABOUT AND WITH WHOM
9 YOU SPOKE?

10 **A** I HAD CALLED BECAUSE I HAD GONE BACK THERE AND
11 LOOKED AT THE TWO TRAILERS THEY HAD PUT TOGETHER
12 AND I DID NOT SEE A BUILDING PERMIT. SO I WAS
13 CALLING TO FIND OUT WHAT THEY WERE BUILDING.

14 **Q** AND AT THAT POINT IN TIME, DID THE ZONING
15 ADMINISTRATOR TAKE THAT PHONE CALL WHICH HE HAD
16 TOLD YOU ABOUT THIS DETERMINATION WHICH HAD BEEN
17 MADE THAT THERE WAS A HELICOPTER TOUR FACILITY
18 OPENING ON SITE?

19 **A** NO.

20 **Q** SO IT WASN'T UNTIL SOMETIME AFTER THAT
21 CONVERSATION THEN THAT YOU HAD FOUND OUT ABOUT
22 THE DETERMINATION THAT THE ZONING ADMINISTRATOR
23 HAD MADE?

24 **A** YES. LIKE I SAID BEFORE, I HAD MADE A FAA
25 COMPLAINT. I THINK IT'S ON MAY THE 21ST OR SOME

1 TIME AFTER THAT OR IT WOULD BE CLOSE TO THE
2 GRAND OPENING. WHEN WAS THE GRAND OPENING?

3 Q THE GRAND OPENING WAS ON THE 24TH. JUST A
4 COUPLE OTHER VERY BRIEF QUESTIONS.

5 MR. LEBIEDZ: MR. CHAIRMAN, I WOULD
6 FEEL A LOT MORE COMFORTABLE IF THESE
7 GENTLEMAN WOULD ADDRESS THE BOARD...

8 MR. HANNA: I'VE HAD DISCUSSIONS WITH
9 THESE GENTLEMAN. WE CAN HEAR. IF IT
10 GETS OUT OF HAND, WE WILL HAVE THEM
11 SPEAK DIRECTLY TO US, BUT I THINK THIS
12 IS THE BEST WAY TO DO THIS RIGHT NOW.

13 THAT'S THE DECISION OF THE CHAIRMAN.

14 A IT SEEMS TO ME LIKE THIS WHOLE PROCESS HAS
15 GOTTEN BACKWARDS AND REVERSED. I HAD ACTUALLY
16 CALLED JANET CARTER, I CAN'T TELL YOU THE DATE,
17 BUT I ASK HER IF SHE EVER HEARD OF A SITUATION
18 WHERE SOMEBODY HAD REVERSED, YOU KNOW. USUALLY
19 IT'S A LAND OWNER WHO GETS DENIED AND THEY HAVE
20 TO COME UP HERE AND ASK FOR PERMISSION TO DO
21 SOMETHING. SHE SAID SHE HAD NEVER HEARD OF IT,
22 BUT THAT WAS AFTER THE CASE.

23 MR. HANNA: WHAT HAPPENED HERE IS THE
24 LAND OWNER WENT TO THE COUNTY AND GOT
25 PERMISSION.

1 **A** BUT WE WEREN'T AWARE OF IT. AND I WONDER, YOU
2 KNOW, A HELICOPTER BUSINESS, ISN'T THAT REALLY
3 AN AIRPORT?

4 MR. HANNA: WE ARE NOT ADDRESSING THAT
5 AT THIS MOMENT. WE ARE ADDRESSING
6 WHETHER YOUR APPLICATION TO APPEAL THE
7 ZONING ADMINISTRATORS' DECISION WAS
8 DONE ON TIME. IF THE BOARD DETERMINES
9 IT WAS, THEN WE WILL HEAR THAT.

10 **A** FAIR ENOUGH.

11 **Q** MR. CHAIRMEN, VERY BRIEFLY AND MEMBERS OF THE
12 BOARD AS WELL, THERE'S AN E-MAIL THAT IS PART OF
13 THE PACKET. IT'S FROM RICKY WASHINGTON, WHO IS
14 WITH THE HORRY COUNTY AIRPORT, MYRTLE BEACH
15 AIRPORT, STATING THAT ON MAY 21ST, HE HAD
16 RECEIVED A COMPLAINT FROM MR. HINDE REGARDING
17 THE OPERATION THERE. NOW, IF MR. HINDE WERE TO
18 HAVE LEARNED ABOUT THIS, THE ZONING
19 ADMINISTRATORS' DETERMINATION ON THAT DATE, THAT
20 WOULD PROVE ACTUAL NOTICE IN EXCESS OF 30 DAYS.
21 SO, I JUST WANT THE BOARD TO UNDERSTAND THAT
22 THIS INQUIRY IS NOT MERELY TO CAUSE MR. HINDE
23 ANY HEARTACHE OR TO CAUSE ANY PROBLEMS FOR THE
24 BOARD OR DELAY IT. IT'S A GENUINE QUESTION.
25 AND SO, MY LAST QUESTION, MR. HINDE IS, DID YOU

1 LEARN OF THE ACTUAL DECISION BY THE ZONING
2 ADMINISTRATOR BEFORE OR AFTER YOU SPOKE WITH MR.
3 RICKY WASHINGTON?

4 **A** IT WAS AFTER.

5 **Q** I HAVE NO FURTHER QUESTIONS.

6 MR. HANNA: ANYTHING ELSE THAT YOU'D
7 LIKE TO ADD?

8 MR. BAROODY: NO, SIR.

9 MR. HANNA: ANY QUESTIONS FROM ANY
10 MEMBERS OF THE BOARD AT THIS TIME? ANY
11 OTHER FOLKS WISHING TO SPEAK IN
12 REFERENCE TO THIS QUESTION, THIS

13 QUESTION ONLY. ANY DISCUSSION? IF
14 NOT, CHAIR WILL ENTERTAIN A MOTION.

15 MR. LEBIEDZ: WHAT I SEE HERE IN THE
16 TIMELINE BEING WHAT I SEE, BASED ON
17 WHAT I SEE, BASED ON WHAT I'VE JUST
18 HEARD, THAT THEY WEREN'T AWARE THAT
19 DURING THE CONSTRUCTION PHASE PROBABLY
20 ALL -- I DON'T KNOW EXACTLY WHEN THE
21 CONSTRUCTION STARTED, BUT THEY WEREN'T
22 AWARE OF IT UNTIL THE LAST MINUTE.

23 WHEN FLIGHT OPERATIONS STARTED, THAT'S
24 WHEN THEY REALIZED THAT THERE WAS A
25 PROBLEM AND I THINK THAT IN THIS

1 PARTICULAR CASE THAT MR. HINDE DID, IN
2 FACT, FILE IN A TIMELY MANNER. IT
3 SAYS, "REASONABLE" AND JUST FEEL LIKE
4 THIS WAS DONE IN A TIMELY MANNER.
5 THANK YOU.
6 MR. HANNA: THANK YOU, MR. LEBIEDZ.
7 ANY OTHER DISCUSSION OR INPUT? IF NOT,
8 CHAIR WILL ENTERTAIN A MOTION TO THE
9 QUESTION AS TO WHETHER THE APPLICATION
10 WAS DONE IN A REASONABLE AMOUNT OF
11 TIME.
12 MR. LEBIEDZ: I MOVE, MR. CHAIRMAN,
13 THAT IT WAS A REASONABLE AMOUNT OF
14 TIME.
15 MS. CREECH: SECOND.
16 MR. HANNA: STARTING WITH MR. IVES, A
17 VOTE OF YES IS TO AFFIRM THE MOTION
18 THAT THE APPLICATION WAS TURNED IN, IN
19 A REASONABLE AMOUNT OF TIME.
20 MR. IVES: YES.
21 MR. KEELAN: YES.
22 MR. PARKER: YES.
23 MS. CREECH: YES.
24 MR. LEBIEDZ: YES.
25 MR. BEVERLY: YES.

1 MR. HANNA: YES. THAT QUESTION HAS
2 BEEN ANSWERED. WE WILL NEXT ADDRESS
3 THE MAIN QUESTION, WHICH IS WHY
4 EVERYONE IS HERE. I'M SORRY THAT Y'ALL
5 HAD TO SIT THROUGH THAT, BUT I THINK WE
6 DID NEEDED TO ADDRESS IT. MS. MINCEY,
7 I WILL TURN IT OVER TO YOU.

8 MS. MINCEY: AGAIN, THE ISSUE BEFORE
9 THE BOARD IS WHETHER OR NOT THE ZONING
10 ADMINISTRATOR HAS CORRECTLY INTERPRETED
11 THE ZONING ORDINANCE BY DETERMINING
12 THAT A HELICOPTER SIGHT-SEEING FACILITY
13 IS AN ALLOWED USE IN THE AMUSEMENT
14 COMMERCIAL ZONING DISTRICT. THE
15 PROPERTY IN ISSUE IS OWNED BY BURROUGHS
16 & CHAPIN AND IS LOCATED BETWEEN THE
17 NASCAR SPEED PARK AND THE CITY OF
18 MYRTLE BEACH WASTEWATER TREATMENT
19 FACILITY OFF OF HIGHWAY 17 BY-PASS AND
20 21ST AVENUE NORTH, MYRTLE BEACH. THE
21 PROPERTY IS 46.7 ACRES AND THE BUSINESS
22 IS -- AND THE ISSUE IS LOCATED ON
23 APPROXIMATELY 5.47 ACRES ON THE PARCELS
24 DIRECTLY BEHIND THE NASCAR SPEED PARK
25 PARKING LOT. THE LANDING PADS ARE

1 APPROXIMATELY 1350 FEET FROM THE
2 PROPERTY LINE ABUTTING THE RESIDENTIAL
3 PROPERTY. THE PROPERTY IS BUFFERED BY
4 A LARGE BERM COVERED IN FULLY GROWN
5 TREES. THE PROPERTY IS SPLIT ZONE
6 AMUSEMENT/COMMERCIAL AND LIMITED
7 INDUSTRIAL. THE BUSINESS IN ISSUE IS
8 LOCATED WITHIN THE AC PORTION OF THE
9 PROPERTY. THE PARCEL IS INCLUDED IN
10 THE DEVELOPMENT AGREEMENT THE COUNTY
11 SIGNED WITH B&C IN DECEMBER OF 2000.
12 PURSUANT TO THE TERMS OF THAT
13 AGREEMENT, THE ZONING ORDINANCE
14 APPLICABLE TO ALL PROPERTY COVERED BY
15 THE AGREEMENT IS THE ORDINANCE IN
16 EFFECT AT THAT TIME IF SIGNING DECEMBER
17 5, 2000. AT THAT TIME, THE FOLLOWING
18 COMMERCIAL AND INDUSTRIAL ZONING
19 DISTRICTS WERE IN EFFECT IN THE COUNTY:
20 AGRICULTURAL/RESIDENTIAL/COMMERCIAL
21 DISTRICTS WERE LIMITED FOREST
22 AGRICULTURE, FOREST AGRICULTURE,
23 COMMERCIAL FOREST AGRICULTURAL.
24 COMMERCIAL/OFFICE/RESIDENTIAL DISTRICTS
25 WERE RESORT COMMERCIAL, NEIGHBORHOOD

1 COMMERCIAL, COMMUNITY COMMERCIAL,
2 HIGHWAY COMMERCIAL, AND
3 OFFICE/PROFESSIONAL/INSTITUTION. THE
4 INDOOR AND OUTDOOR COMMERCIAL AMUSEMENT
5 WAS AMUSEMENT/COMMERCIAL. AND THE
6 INDUSTRIAL DISTRICTS WERE LIMITED
7 INDUSTRIAL AND HEAVY INDUSTRIAL. FOR
8 LICENSING PURPOSES, THERE ARE HUNDREDS
9 OF BUSINESS TYPES. THAT ZONING
10 ORDINANCE LISTS SOME BUSINESS TYPES
11 SPECIFICALLY, OFTEN AS EXAMPLES OF THE
12 TYPES OF USES ALLOWED IN A DISTRICT.
13 IT OFTEN USES THESE, "INCLUDING BUT NOT
14 LIMITED TO" WORDING. HOWEVER, IT IS
15 IMPOSSIBLE TO LIST EVERY BUSINESS TYPE
16 IN EVERY DISTRICT IN WHICH IT IS
17 ALLOWED. THEREFORE, STAFF MUST
18 DETERMINE WHICH BUSINESS TYPES ARE
19 ALLOWED USES IN WHICH DISTRICTS
20 WHENEVER THE QUESTION IS PRESENTED.
21 STAFF MAKES THIS DETERMINATION BASED ON
22 THE PLAIN WORDING OF THE ORDINANCE, THE
23 TYPES OF BUSINESS SPECIFICALLY LISTED
24 AND THE COMPATIBILITY OF THE USE WITH
25 OTHER USES IN THE DISTRICT, AND THE WAY

1 THE ORDINANCE HAS BEEN PREVIOUSLY
2 APPLIED. A HELICOPTER SIGHT-SEEING
3 TOUR FACILITY IS NOT SPECIFICALLY
4 REFERENCED IN ANY OF THE ZONING
5 DISTRICTS, ALTHOUGH THE AC DISTRICT
6 DOES SPECIFICALLY LIST "SIGHT-SEEING
7 DEPOTS". HELICOPTER SIGHT-SEEING TOUR
8 FACILITIES FUNCTION AS OUTDOOR
9 AMUSEMENT. HISTORICALLY, OUTDOOR
10 AMUSEMENT USES THAT MAY CREATE NOISE,
11 SUCH AS OUTDOOR GUN RANGE AND OUTDOOR
12 MOTOR SPORT FACILITIES HAVE BEEN
13 LIMITED TO THE AC DISTRICT. YEARS AGO,
14 THIS WAS DETERMINED TO BE A
15 APPROPRIATED DISTRICT FOR THOSE USE
16 TYPES BECAUSE IT WAS THE ONLY
17 COMMERCIAL DISTRICTS THAT ALLOWS
18 AMUSEMENT AND DOES NOT ALLOW
19 RESIDENTIAL USES. FURTHER, THERE ARE A
20 VERY LIMITED NUMBER OF PROPERTIES IN
21 THE COUNTY ZONED AC. THEREFORE, ANYONE
22 DESIRING TO ESTABLISH A USE OF THIS
23 TYPE HAS BEEN TOLD THAT THEY WOULD
24 EITHER HAVE TO PROCURE ONE OF THE FEW
25 PROPERTIES THAT WAS ALREADY ZONED FOR

1 IT OR INITIATE A RE-ZONING ACTION THAT
2 REQUIRES PUBLIC NOTICE AND COUNTY
3 COUNCIL APPROVAL. THUS, THE AC ZONING
4 DISTRICT HISTORICALLY HAS BEEN REGARDED
5 AS ONE OF THE MOST INTENSE ZONING
6 DISTRICTS AND COMMERCIAL SIGHT-SEEING
7 USES BY LAND, WATER OR AIR AND OTHER
8 OUTDOOR AMUSEMENT COMMERCIAL USES HAVE
9 BEEN LIMITED TO THIS DISTRICT.
10 PROPOSED ORDER OR CONDITIONS PURSUANT
11 TO SECTION 1402 OF THE ZONING
12 ORDINANCE, THE CONCURRING VOTE OF THE
13 MAJORITY OF THE MEMBERS PRESENT AT A
14 MEETING OF THE BOARD OF APPEALS SHALL
15 BE NECESSARY TO REVERSE ANY ORDER,
16 REQUIREMENT, DECISION OR DETERMINATION
17 OF THE ZONING ADMINISTRATOR. I WILL
18 NOW LET MS. CARTER SPEAK FOR VOTER
19 INFORMATION.
20 MS. CARTER: I JUST WANT TO START OFF
21 WITH TELLING YOU A LITTLE BIT ABOUT THE
22 DEVELOPING AGREEMENT BECAUSE I DON'T
23 KNOW HOW MANY OF YOU ARE FAMILIAR WITH
24 IT. BUT THE DEVELOPMENT AGREEMENT IS A
25 CONTRACT AGREEMENT THAT HORRY COUNTY

1 SIGNED WITH BURROUGHS & CHAPIN BACK IN
2 THE YEAR 2000 IN EXCHANGE FOR THE
3 DOTATION OF SOME PUBLIC SITES THAT
4 WE'VE USED FOR COUNTY BUILDINGS AND
5 PARKS AND OTHER THINGS. THE COUNTY
6 AGREED TO FREEZE THE ZONING THAT WAS IN
7 EFFECT ON CERTAIN BURROUGHS & CHAPIN
8 PROPERTY. THIS PROPERTY WAS ONE OF THE
9 PROPERTIES THAT THE ZONING WAS FROZEN
10 ON. SO, WHEN WE TALK ABOUT THE ZONING
11 ORDINANCE, WE ARE TALKING ABOUT THE
12 ZONING ORDINANCE THAT WAS IN EFFECT IN
13 DECEMBER OF THE YEAR OF 2000, NOT THE
14 ZONING ORDINANCE IN EFFECT TODAY.
15 MR. HANNA: MS. CARTER, I HATE TO
16 DISTRACT YOU, BUT IT MIGHT BE
17 BENEFICIAL TO KNOW, PLANTATION POINTE,
18 WHO DEVELOPED THAT. IS IT THE SAME
19 BURROUGHS & CHAPIN?
20 MS. CARTER: AS I UNDERSTAND IT
21 BURROUGHS & CHAPIN DEVELOPED IT.
22 THAT'S CORRECT. IF YOU GO BACK TO THE
23 ZONING ORDINANCE IN EFFECT IN 2000,
24 THESE ARE THE COMMERCIAL DISTRICTS THAT
25 WERE IN PLACE. I INCLUDED INDUSTRIAL

1 EVEN THOUGH NOT STRICTLY COMMERCIAL
2 JUST SO YOU CAN SEE THAT. SO WHEN
3 SOMEONE COMES IN AND PRESENTS TO THE
4 STAFF A BUSINESS TYPE AND WANTS TO KNOW
5 WHAT DISTRICT LOCATION CAN I CHOSE IN,
6 WE HAVE TO GO TO THE ORDINANCE, LOOK IN
7 THE AVAILABLE DISTRICTS AND GIVE THEM
8 THE DISTRICT THAT BEST SUITS THE USE
9 THEY ARE PROPOSING. THE DECISION THAT
10 RENNIE MINCEY RENDERED IN THE
11 NOVEMBER 2011 LETTER WAS NOT A NEW
12 DECISION. WE HAVE BEEN TELLING PEOPLE
13 IN THE PLANNING AND ZONING DEPARTMENT
14 FOR AS LONG AS I HAVE BEEN HERE OR AS
15 LONG AS SHE'S BEEN THERE, THAT THE ONLY
16 DISTRICT YOU COULD HAVE HELICOPTER
17 TOURS IN WOULD BE AMUSEMENT COMMERCIAL.
18 THIS IS SOME OF THE REASONING FOR THAT
19 AND I WILL SAY THAT DECISION WAS MADE
20 LONG BEFORE I CAME TO WORK HERE. MS.
21 MINCEY HAS BEEN HERE 23 YEARS. I THINK
22 WE'VE HAD ZONING FOR 24. ACTUALLY SHE
23 HAS BEEN WITH THE COUNTY FOR 30, BUT
24 SHE'S BEEN IN PLANNING AND ZONING FOR
25 23. LIKE I SAY, AS FAR BACK AS EITHER

1 OF US KNOWS, THE ANSWER TO ANYONE
2 ASKING ABOUT HAVING HELICOPTER TOURS OR
3 ANY TYPE OF SIGHT-SEEING TOURS, WHETHER
4 BY LAND OR WATER OR WHETHER BY AIR, WAS
5 THAT YOU HAD TO LOCATE THEM IN THE
6 AMUSEMENT COMMERCIAL ZONES DISTRICT.
7 AND NOW, I WILL GIVE YOU A LITTLE BACK-
8 GROUND. AS YOU CAN SEE FROM THE
9 DISTRICTS THAT WE HAVE TO CHOSE FROM,
10 WHEN SOMEBODY COMES IN, YOU KNOW,
11 YOU'RE TAKING HUNDREDS -- I THINK THE
12 BUSINESS LICENSES DEPARTMENT RECOGNIZES
13 OVER 450 BUSINESS TYPES. PLUS, THEY
14 HAVE A MISCELLANEOUS CATEGORY THAT'S
15 HEAVILY USED. SO BUSINESS TYPES, LAND
16 USES ARE TWO DIFFERENT THINGS. BUT,
17 ANYWAY, THESE ARE THE CHOICES AVAILABLE
18 TO US. THESE ARE THE TOOLS IN OUR TOOL
19 BOX. WE HAVE HIGHWAY COMMERCIAL,
20 COMMUNITY COMMERCIAL, NEIGHBORHOOD
21 COMMERCIAL AND RESORT COMMERCIAL,
22 OFFICE, PROFESSIONAL, AND
23 INSTITUTIONAL. ALL OF THESE DISTRICTS
24 ALLOW RESIDENTIAL USES, OFFICE USES AND
25 COMMERCIAL USES. SO, IF YOU PUT THEM

1 IN THESE DISTRICTS, YOU'VE ACTUALLY PUT
2 THEM IN THE SAME DISTRICT WITH
3 RESIDENTIAL USES. THE NEXT GROUP,
4 AGRICULTURAL, MIXED-USE COMMERCIAL OR
5 RESIDENTIAL; WE'VE GOT LFA, FA, CFA.
6 IF YOU PUT THEM IN ONE OF THESE
7 DISTRICTS, YOU'VE PUT THEM IN THE SAME
8 DISTRICTS THAT YOU'VE GOT AGRICULTURAL
9 USES, RESIDENTIAL USES, AND COMMERCIAL
10 IN LESSENING DEGREES. LFA HAS VERY
11 LITTLE COMMERCIAL, BUT IT DOES ALLOW A
12 LITTLE BIT. AND SO, THESE DISTRICTS
13 ARE NOT APPROPRIATE. THESE DISTRICTS
14 ARE CLEARLY NOT APPROPRIATE, WHICH KIND
15 OF LEAVES US WITH ONE CHOICE HERE,
16 AMUSEMENT COMMERCIAL WHICH ALLOWS A MIX
17 OF INDOOR AND OUTDOOR AMUSEMENTS AND
18 THAT'S IT, NO RESIDENTIAL. SO, FOR
19 THAT REASON, AMUSEMENT/COMMERCIAL HAS
20 BEEN CONSIDERED ONE OF OUR MOST INTENSE
21 ZONING DISTRICTS FOR AS LONG AS ANY OF
22 US CAN REMEMBER. YOU KNOW, WHEN
23 BURROUGHS & CHAPIN WANTED TO OR TALKED
24 ABOUT BUILDING A NASCAR, NOT SPEED
25 PARK, BUT A REAL RACE CAR TRACK, THE

1 FULL, I GUESS, DARLINGTON 500 TYPE
2 DEAL, THEY RE-ZONED HUNDREDS OF ACRES
3 BETWEEN CONWAY AND AYNOR AMUSEMENT/
4 COMMERCIAL FOR THAT PURPOSE. THE
5 PLANNING COMMISSION AND COUNTY COUNCIL
6 KNEW WHAT THEY WERE RE-ZONING IT FOR.
7 YOU'RE NOT GOING TO SEE MOTOR SPORTS,
8 RACE TRACKS SPECIFICALLY LISTED IN THE
9 AMUSEMENT/COMMERCIAL ZONING DISTRICT,
10 BUT THAT WAS THE ONLY TOOL IN OUR TOOL
11 BOX THAT SEEMED TO FIT. SIMILARLY,
12 WHEN PEOPLE HAVE COME IN THROUGH THE
13 YEARS AND WANTED TO DO DIRT BIKE TRACKS
14 OR EVEN OUTDOOR FIRING RANGES
15 AMUSEMENT/COMMERCIAL IS THE DISTRICT
16 THAT WE APPOINT THEM TO. YOU'VE GOT TO
17 FIND A PIECE OF THE AMUSEMENT/
18 COMMERCIAL PROPERTY IS WHAT EVERYONE
19 HAS BEEN TOLD OR YOU'LL HAVE TO
20 RE-ZONE. SO, THEY EITHER HAD TO FIND
21 AMUSEMENT/COMMERCIAL PROPERTY ALREADY
22 ZONED THAT WAY OR THEY HAD TO TAKE IT
23 BEFORE COUNTY COUNCIL FOR A PUBLIC
24 HEARING. ACTUALLY, THAT HAS BEEN A
25 PRETTY EFFECTIVE DETERRENT TO HAVING

1 THESE OBNOXIOUS USES IN CLOSE PROXIMITY
2 TO RESIDENTIAL AS A GENERAL RULE. THE
3 REASON BEING, THERE ARE ONLY ELEVEN
4 PIECES OF AMUSEMENT/COMMERCIAL PROPERTY
5 IN HORRY COUNTY AND A LOT OF THEM ARE
6 CLUSTERED. THIS IS THE LORIS FAIR
7 GROUNDS. THAT'S THREE OF THE PARCELS.
8 THIS IS THE PROPERTY THAT BURROUGHS &
9 CHAPIN HAS RE-ZONED FOR THAT RACING
10 TRACK THAT I DON'T THINK THAT THEY
11 STILL INTEND TO BUILD, BUT IT'S RIGHT
12 HERE AND I BELIEVE ARE THESE THREE
13 PARCELS THERE. I THINK SOMEONE HAS A
14 DIRT TRACK OUT HERE IN THE COUNTRY.
15 AND THEN WE'VE GOT THESE SPOTS HERE AND
16 THIS AND SO BASICALLY ANYONE WANTING TO
17 OPERATE A HELICOPTER TOURING FACILITY
18 OR ANY SIGHT-SEEING TOURING FACILITY OR
19 DO ANY OF THESE OTHER THINGS TALKED
20 ABOUT; MOTOR SPORTS, OUTDOOR FIRING
21 RANGES, OR ANYTHING ELSE, HAS BEEN
22 TOLD, "YOU'VE GOT TO FIND A PIECE OF
23 AMUSEMENT/COMMERCIAL PROPERTY, ONE OF
24 THESE, OR YOU'VE GOT TO RE-ZONE." SO,
25 I WILL TELL YOU FROM STAFF PROSPECTIVE,

MABRY COURT REPORTING

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1 WE REGARDED AMUSEMENT/COMMERCIAL AS
2 HARD TO COME BY AND HARD TO GET AND
3 FELT THAT IT WAS REALLY PROTECTING THE
4 PUBLIC...
5 AUDIENCE: (LAUGHTER.)
6 MS. CATER: NOW, SOME FOLKS HAVE SAID
7 YOU SHOULD GO WHERE AN AIRPORT WOULD
8 GO. THAT WOULD BE FAA AND CFA, WHICH
9 WOULD BE ABOUT 80 PERCENT OF OUR
10 COUNTY. RIGHT NOW, TODAY, LET ME SAY,
11 YOU'VE GOT THESE ELEVEN SITES AND SOME
12 OF THEM CONSIST OF AS MANY AS THREE
13 CLUSTERS, BUT YOU CAN'T GET AMUSEMENT/
14 COMMERCIAL ANYMORE, NOT AC, IN 2005.
15 THE COUNTY COUNCIL RETIRED AC AND YOU
16 CAN'T EVEN COME IN AND ASK TO RE-ZONE
17 IT ANYMORE. SO THESE ELEVEN PARCELS
18 ARE THE ONLY PARCELS THAT WILL EVER BE
19 ZONED AMUSEMENT/COMMERCIAL IN THIS
20 COUNTY. NOW, WE DO HAVE NEW ZONING
21 DISTRICTS THAT ARE NOT APPLICABLE TO
22 THIS CASE. WE TOOK OUR AC AND DIVIDED
23 IT INTO TWO DISTRICTS, AM 1 AND AM 2,
24 OUTDOOR AMUSEMENT AND INDOOR AMUSEMENT.
25 AND WE DID ACTUALLY HAVE A RE-ZONING

1 CASE COME IN, IN 2010 WHO WANTED TO DO
2 HELICOPTER TOUR OPERATIONS. WELL, HE
3 WAS TOLD, "YOU HAVE TO FIND A PIECE OF
4 AMUSEMENT/COMMERCIAL PROPERTY" WHICH HE
5 FOUND IMPOSSIBLE OR, "YOU HAVE TO
6 RE-ZONE." SINCE HE COULDN'T RE-ZONE TO
7 AC AMUSEMENT/COMMERCIAL HE TRIED TO
8 RE-ZONE TO AM 1. WE DISCUSSED THAT AT
9 PLANNING COMMISSION. WE DISCUSSED IT
10 AT COUNCIL. I DON'T THINK ANYBODY EVER
11 QUESTIONED THAT AMUSEMENT/COMMERCIAL
12 WAS THE APPROPRIATE ZONING DISTRICT FOR
13 THAT. NOW, BECAUSE THAT WAS A NEW
14 APPLICATION, HE HAD THE OPTION OF GOING
15 TO OUR NEW TRANSPORTATION DISTRICT PA1
16 AS WELL, BUT AS I SAID, THE WHOLE
17 CONCEPT OF HELICOPTER TOURS BEING
18 ALLOWED IN AMUSEMENT/COMMERCIAL WAS
19 DISCUSSED AT LENGTH. I THINK THAT'S
20 ALL I HAVE. THAT'S BASICALLY WHAT I
21 WANTED TO EXPLAIN TO YOU ABOUT THE
22 DEVELOPMENT AGREEMENT, ABOUT THE ZONING
23 ON THIS PROPERTY. GO BACK TO THE CHART
24 JUST A MINUTE. ABOUT THE TOOLS THAT
25 ARE AVAILABLE IN OUR TOOL BOX. I ALSO

1 WANT TO REMIND YOU THAT THIS IS AN
2 APPEAL AND IF YOU SAY HELICOPTER TOURS
3 ARE NOT ALLOWED IN
4 AMUSEMENT/COMMERCIAL, THEN AS STAFF, WE
5 REALLY NEED FOR YOU TELL US WHAT
6 DISTRICT THEY ARE ALLOWED IN BECAUSE
7 THROUGH ALL OF THIS, NOBODY HAS BEEN
8 WILLING TO TELL US. EVERYBODY WANTS TO
9 CRITICIZE, YOU KNOW, THE INFORMATION
10 MS. MINCEY PROVIDED. NOBODY HAS BEEN
11 ABLE TO GIVE US ANY OTHER OPTION.
12 MR. HANNA: IT'S THE BEST OPTION YOU
13 HAD AVAILABLE?
14 MS. CARTER: WE SEE IT AS THE ONLY
15 OPTION.
16 MR. HANNA: BACK TO THE DEVELOPMENT.
17 THIS IS -- AC ZONING WAS REQUESTED BY
18 WHO?
19 MS. CARTER: IT WAS ALREADY ZONED AC AT
20 THE TIME THIS DEVELOPMENT AGREEMENT WAS
21 SIGNED. IT'S ACTUALLY A SPLIT ZONE
22 PARCEL. I THINK IT'S 47 ACRES. IT'S
23 SPLIT ZONE LIMITED AND INDUSTRIAL AND
24 AMUSEMENT/COMMERCIAL. I CAN'T REMEMBER
25 EXACTLY WHAT BURROUGHS & CHAPIN CALLS

1. IT. THEIR PSA TRACK, PUBLIC SERVICE
2. AMUSEMENT, BECAUSE PART OF THE PARCEL
3. IS CURRENTLY, I THINK, LEASED TO THE
4. CITY OF MYRTLE BEACH AND THE REST OF
5. IT, OF COURSE, IS EITHER VACANT OR THIS
6. SMALL 5 ACRE CORNER IS BEING USED BY
7. THIS BUSINESS.

8. MR. IVES: MS. CARTER, TO WHAT EXTENT
9. WHEN A APPLICANT COMES IN AND MAKES A
10. APPLICATION, CAN YOU CONSIDER
11. CONTIGUOUS ZONING WHEN YOU'RE MAKING A
12. DECISION? IS THERE AN OPPORTUNITY TO
13. THINK ABOUT THE CONTIGUOUS PROPERTIES
14. AND WHAT THEIR ZONING IS WHEN YOU'RE
15. MAKING A DECISION ON APPLICABLE USE?

16. MS. CATER: NO. THERE IS NOT. THAT
17. CONSIDERATION IS MADE AT THE TIME THEY
18. ARE ZONED OR RE-ZONED AND THAT IS
19. CONSIDERATION THAT BOTH THE PLANNING
20. COMMISSION -- WELL, AND STAFF AND
21. COUNTY COUNCIL LOOK AT WHEN THEY ZONE
22. PROPERTIES. WHEN COUNTY COUNCIL SEES
23. FIT TO PLACE AMUSEMENT/COMMERCIAL AND
24. LIMITED INDUSTRIAL ADJACENT TO
25. RESIDENTIAL, THE STAFF HAS NO

1 DISCRETION WHEN THEY COME IN TO PERMIT
2 THE BUSINESSES THAT ARE ALLOWED WITHIN
3 THAT DISTRICT. THE DECISION NOT TO PUT
4 THEM IN AMUSEMENT/COMMERCIAL NEXT TO
5 RESIDENTIAL, THAT'S THE COUNTY
6 COUNCIL'S DECISION.
7 MR. LEBIEDZ: I HAVE SEVERAL QUESTIONS,
8 MS. CARTER. YOU SAID THAT DEVELOPING
9 AN AGREEMENT WITH HORRY COUNTY AND
10 BURROUGHS & CHAPIN WAS IN 2000?
11 MS. CARTER: THAT'S CORRECT.
12 MR. LEBIEDZ: DO YOU KNOW WHEN
13 PLANTATION POINTE AND THAT RESIDENTIAL
14 AREA WAS ESTABLISHED?
15 MS. CARTER: I DON'T. I KNOW THAT IT
16 WAS ALREADY PARTIALLY ESTABLISHED AT
17 THAT TIME. I THINK BURROUGHS & CHAPIN
18 STILL NOW OWES -- I THINK MR. COX SAID
19 17 LOTS IN THERE. BUT IT WAS CERTAINLY
20 WELL UNDERWAY.
21 MR. LEBIEDZ: DO YOU KNOW IF THE
22 HELICOPTER PEOPLE ASKED AIRPORT
23 OFFICIALS TO LOCATE ON AIRPORT PROPERTY
24 WHETHER IT BE MYRTLE BEACH, LORIS,
25 NORTH MYRTLE OR WHEREVER? DO YOU KNOW

1 IF THEY REQUESTED OPERATIONS TO GO ADD
2 TO ONE OF THE AIRPORTS?

3 MS. CARTER: I DON'T.

4 MR. LEBIEDZ: AND A QUESTION CROSSED MY
5 MIND WHEN YOU WERE TALKING ABOUT THE
6 DIFFICULTIES THAT YOU HAD PLACING THIS
7 ACTIVITY IN A ZONING DISTRICT. COULD
8 YOU HAVE, AND HINDSIGHT IS 20/20. I'M
9 NOT CRITICIZING, BUT COULD YOU HAVE
10 POSSIBLY ESTABLISHED AN AREA OTHER
11 THAN, YOU KNOW, THE WAY YOU DID IT
12 THROUGH PLANNING COMMISSION AND COUNTY
13 COUNCIL TO SAY WE'RE GOING TO HAVE NEW
14 ZONING DESIGNATION FOR OUTDOOR AIRCRAFT
15 AMUSEMENTS OR SOMETHING LIKE THAT?
16 COULD STAFF HAVE RECOMMENDED IT TO THE
17 PLANNING COMMISSION, THE PLANNING
18 COMMISSION TO THE COUNCIL, WHETHER OR
19 NOT THAT WOULD BE A VIABLE OPTION
20 INSTEAD OF TRYING TO FIND A PLACE TO
21 FIT THIS IN?

22 MS. CARTER: I WILL SAY THIS, AS I SAID
23 BEFORE, THIS WAS NOT A NEW DECISION OR
24 DECISION THAT MS. MINCEY MADE HERE IN
25 2011. THIS IS WHAT WE HAVE BEEN

1 TELLING PEOPLE SINCE ZONING CAME IN
2 EFFECT IN HORRY COUNTY IN 1987. SO, TO
3 BE HONEST WITH YOU, THAT WAS THE FIRST
4 ANSWER THAT CAME TO OUR MIND, TO MS.
5 MINCEY'S MIND, TO MS COLEMAN'S MIND,
6 WAS AMUSEMENT/COMMERCIAL. IT'S ALWAYS
7 BEEN WHAT EVERYBODY'S BEEN TOLD AND TO
8 THE BEST OF MY KNOWLEDGE, NOBODY'S EVER
9 HAD AN ISSUE WITH IT. NOW, CERTAINLY
10 NOW THAT ALL THIS HAS COME UP, COUNTY
11 COUNCIL HAS ASKED US TO DRAFT AN
12 ORDINANCE THAT WILL REGULATE THESE
13 ISSUES FOR THE FUTURE. SO EVEN IF THAT
14 ORDINANCE PASSES, WE STILL HAVE
15 THOUSANDS OF ACRES OF DEVELOPMENT
16 AGREEMENT PROPERTY IN THIS COUNTY THAT
17 IS NOT SUBJECT TO ANY NEW CHANGES. SO
18 WE STILL NEED THE QUESTION ANSWERED
19 EVEN IF WE DO PASS A NEW ORDINANCE.
20 MR. LEBIEDZ: THE AC ZONING DISTRICT IS
21 NO LONGER, IS THAT CORRECT?
22 MS. CARTER: IF YOU HAVE AC, WHEN THE
23 OLD DISTRICTS WERE RETIRED, COUNTY
24 COUNCIL THOUGHT THOSE DISTRICTS WERE
25 TOO GENERAL. THEY THOUGHT THEY WERE TO

1 BROAD AND COUNTY COUNCIL WANTED TO PASS
2 A LOT OF MORE SPECIFIC DISTRICTS. SO
3 IN 2005, THEY PASSED A WHOLE HOST OF
4 NEW DISTRICTS AND I THINK NOW WE HAVE
5 ABOUT 70 ZONING DISTRICTS. BUT AT THAT
6 TIME, THEY SAID THESE OLD DISTRICTS
7 THAT ARE ON THE BOOKS, IF YOU HAD THAT
8 ZONING YOU COULD KEEP IT. IT STAYS ON
9 THE ZONING ORDINANCE AND THOSE ARE THE
10 REGULATIONS BY WHICH YOUR PROPERTY IS
11 GOVERNED. SO AMUSEMENT/COMMERCIAL IS
12 STILL VALID ZONING DISTRICTS. PEOPLE
13 WHO HAVE THAT ZONING CAN KEEP IT
14 FOREVER, BUT NO ONE ELSE CAN EVER GET
15 THE AC VERSION OF IT.

16 MR. LEBIEDZ: THANK YOU, MS. CARTER.

17 MR. HANNA: MR. BEVERLY.

18 MR. BEVERLY: WAS IT ZONED BEFORE OR
19 AFTER PLANTATION POINTE WAS DEVELOPED?

20 MS. CARTER: YOU KNOW WE TRIED TO TRACK
21 IT BACK TO FIND OUT WHEN IT WAS ZONED
22 AC AND THE OLDEST MAPS WE HAVE SHOW IT
23 AS AC. SO, I'M NOT SURE WHETHER IT WAS
24 ORIGINALLY IN '87 ZONED AC OR SOMETHING
25 HAPPENED THEREAFTER, BUT LET ME ASK MS.

1 COLEMAN. MS. COLEMAN, DO YOU REMEMBER
2 WHAT YEAR THOSE MAPS WERE WE FOUND?
3 MS. COLEMAN: WE FOUND SOME MAPS --
4 WITH THIS A LIFT OUT MAP OF THE
5 ORIGINAL SCAN ZONING MAPS AND WE FOUND
6 SOME '87 MAPS THAT INDICATED SOME AREA
7 OF IT WAS AC. WE DIDN'T HAVE THE
8 DETAILED MAP, BUT WE DID FIND EVIDENCE
9 THAT SOME OF THE PROPERTY WAS RE-ZONED
10 SUBSEQUENT TO THE ORIGINAL ZONING TO
11 AC, BUT I THINK THAT WAS MORE FORWARD
12 PORTION WHERE EVENTUALLY THE NASCAR
13 PARK WAS LOCATED. THIS APPEARS TO HAVE
14 BEEN IN THE ORIGINAL MAPS TO WHAT WE
15 COULD LOCATE.
16 MS. CATER: RIGHT. EVERYTHING WE FOUND
17 SHOWS AC BACK TO THE BEGINNING OF
18 ZONING.
19 MR. BEVERLY: WHEN WAS PLANTATION
20 POINTE DEVELOPED?
21 MS. CARTER: I'M NOT SURE.
22 MR. HANNA: IS IT SAFE TO SAY PRIOR TO
23 THAT?
24 MS. CARTER: I THINK I SAW MR. TONY COX
25 COME IN. MAYBE HE CAN ANSWER THAT

1 QUESTION BECAUSE I CAN'T. I SORRY.
2 MR. HANNA: ANYTHING ELSE FROM ANY
3 MEMBER OF THE BOARD TO MS. CARTER AT
4 THIS TIME? IF NONE, THANK YOU, MS.
5 CARTER. THE APPLICANT OR THE
6 APPLICANT'S AGENT, COME FORWARD.
7 MR. MOSS: THANK YOU, MR. CHAIRMAN.
8 KEN MOSS FOR THE RECORD ON BEHALF OF
9 THE APPLICANT. I HAVE SOME COMMENTS TO
10 PRESENT TO YOU TONIGHT AND I WANT TO
11 CALL MR. HINDE AND SOME OTHER MEMBERS
12 OF THE COMMUNITY TO OFFER SOME
13 TESTIMONY TO YOU. AND I HAVE ASKED
14 THEM IN THEIR PREPARATION FOR THEM TO
15 COLLABORATE WITH EACH OTHER AND MAKE
16 SURE THEY'RE NOT OFFERING REDUNDANT
17 MATERIALS, WHICH I EXPECT YOU DON'T
18 NEED TO HEAR. SO, WE'RE GOING TO TRY
19 NOT TO DO THAT. OBVIOUSLY, WHEN YOU
20 HAVE THIS MUCH OPPOSITION AND THIS MANY
21 PEOPLE, IT COULD HAPPEN VERY EASILY.
22 BEFORE I MAKE A COUPLE OF COMMENTS, I
23 WOULD LIKE TO ADDRESS SOME OF THE
24 THINGS MS. CARTER SAID. FIRST OF ALL,
25 I DO THINK MS. CARTER AND HER STAFF TRY

1 TO PROTECT THE PUBLIC'S INTEREST. I DO
2 CONSIDER MS. CARTER AND HER STAFF TO BE
3 FRIENDS. WE ARE HERE TONIGHT TO APPEAL
4 A DECISION OF THE ZONING ADMINISTRATOR,
5 WHICH WE FEEL THAT'S IN ERROR.
6 EVERYBODY IN THIS ROOM MAY NOT SHARE
7 THAT POSITION, BUT I DO. I'VE ALWAYS
8 CONSIDERED THEM TO BE FRIENDS EVEN WHEN
9 I WORKED OVER AT THE COUNTY AND I STILL
10 DO. I HOPE AFTER TONIGHT THEY CONSIDER
11 ME TO BE A FRIEND. SO, I KNOW IT'S A
12 TERRIBLY DIFFICULT JOB TO HAVE. WE ARE
13 NOT HERE TO ATTACK THEM PERSONALLY OR
14 BEAT THEM UP PERSONALLY. WE JUST THINK
15 A MISTAKE WAS MADE AND THAT'S WHAT WE
16 BROUGHT BEFORE YOU TONIGHT. NOW, MS.
17 CARTER BROUGHT TO YOUR ATTENTION THERE
18 WAS A RE-ZONING REQUEST MADE IN 2010.
19 THERE WAS ACTUALLY TWO OF THEM. IT
20 TURNS OUT IT WAS THE SAME APPLICANT,
21 BUT I DON'T THINK ANY ACTION WAS EVER
22 DONE BECAUSE IT WAS WITHDRAWN AND FROM
23 THE INFORMATION THAT WE OBTAINED
24 BEFORE, THERE MAY HAVE BEEN SOME HEALTH
25 REASONS RELATING TO THAT WITH THE

1 APPLICANT'S FAMILY AND SO HE HAS
2 DECIDED NOT TO PROCEED WITH THE
3 BUSINESS. THE ACTUAL APPLICATIONS FOR
4 RE-ZONING REQUEST WAS 10/02/07 AND
5 10/06/04 AND IT APPEARS TO BE THE SAME
6 APPLICANT. THAT APPLICANT WAS TRYING
7 TO ESTABLISH A BUSINESS LIKE THIS OVER
8 ACROSS FROM HARD ROCK PARK OFF 501 AND
9 THOSE OF YOU ON THIS BOARD ARE HERE
10 BECAUSE YOU KNOW A LITTLE BIT ABOUT, AS
11 FAR AS WHEN YOU ARE AN APPLICANT, YOU
12 COME TO THE PLANNING DEPARTMENT WITH AN
13 IDEA, A PROPOSED USE AND YOU CONFIRM
14 WHETHER OR NOT ZONING IS APPROPRIATE
15 AND YOU LEARN FROM THAT WHETHER OR NOT
16 YOUR ZONING IS APPROPRIATE. THAT IS
17 HOW I SUBMIT TO YOU, MOST RE-ZONING
18 REQUESTS COME ABOUT BECAUSE OF WHAT YOU
19 LEARNED FROM INITIAL CONTACT WITH THE
20 STAFF. WELL, IN THIS CASE, THAT
21 APPLICANT EVIDENTLY LEARNED HE HAD TO
22 HAVE IT RE-ZONED AND SO THERE WAS
23 COMMUNICATION. SO I DON'T KNOW IF I
24 AGREE WITH THIS INTERPRETATION THAT
25 IT'S ALWAYS BEEN UNDERSTOOD THAT AC IS

1 THE ONLY PLACE IT CAN HAPPEN. BECAUSE
2 CLEARLY IN 2010, AN APPLICANT HAD
3 LEARNED SOMETHING DIFFERENT WITH THE
4 APPLICATION FOR RE-ZONING. THAT'S JUST
5 A MATTER OF PUBLIC RECORD. I'M
6 CERTAINLY NOT HERE TESTIFYING ON BEHALF
7 OF THE APPLICANT. I DON'T KNOW HIM.
8 IT WOULDN'T BE APPROPRIATE. THAT'S
9 WHAT THE PUBLIC SAYS.
10 MR. HANNA: JUST TO SUM IT UP REAL
11 QUICK. HE WAS TO ZONE IT WHAT? HE WAS
12 APPLYING FOR WHAT KIND OF RE-ZONING?
13 MR. MOSS: WELL, THERE WERE TWO
14 DIFFERENT PARCELS, BUT THEY WERE
15 ADJACENT AND IN ONE CASE HE WAS TRYING
16 TO SEEK THE RE-ZONING FROM HIGHWAY
17 COMMERCIAL TO PA1, WHICH IS THAT
18 TRANSPORTATION DISTRICT. AND IN THE
19 OTHER, THERE WAS A RE-ZONING SOUGHT
20 FROM HIGHWAY COMMERCIAL TO AM2.
21 MR. HANNA: YOU SAY THAT HE WAS
22 ATTEMPTING TO CHANGE THE ZONING NOT
23 FROM AC ZONING, BUT FROM ANOTHER
24 ZONING?
25 MR. MOSS: FROM HIGHWAY COMMERCIAL.

1 MR. HANNA: RIGHT.

2 MR. MOSS: WHICH IS ANOTHER ONE OF
3 THOSE DISTRICTS YOU CANNOT REQUEST ANY
4 LONGER, BUT IT EXISTED IN HORRY COUNTY
5 ZONING ORDINANCE.

6 MR. HANNA: WHICH STAFF DETERMINED IS
7 NOT APPROPRIATE FOR THIS TYPE USES.

8 MR. MOSS: WELL, HIGHWAY WAS NOT
9 APPROPRIATE FOR THIS TYPE OF USE
10 EITHER.

11 MR. HANNA: INCORRECT.

12 MR. MOSS: IF WE HAD THE RE-ZONING.

13 MR. HANNA: CORRECT.

14 MR. MOSS: THE POINT I WAS TRYING TO
15 MAKE IN THAT MAYBE IT'S NOT EXACTLY
16 CORRECT THAT EVERYBODY HAS ALREADY
17 UNDERSTOOD THE AMUSEMENT/COMMERCIAL
18 RIGHT PLACE BECAUSE THIS APPLICANT IS
19 DOING SOMETHING DIFFERENT.

20 MR. HANNA: AC, WAS IT AVAILABLE TO HIM
21 AT THAT TIME?

22 MR. MOSS: I DON'T BELIEVE IT WAS.

23 MR. HANNA: THAT'S WHY HE WOULDN'T HAVE
24 APPLIED FOR AC ZONING. THAT'S WHAT HE
25 APPLIED FOR THE OTHER ZONINGS. HAD

1 THAT HAVE BEEN AVAILABLE, HE PROBABLY
2 WOULD'VE APPLIED FOR THAT BECAUSE MY
3 UNDERSTANDING FROM STAFF IS THAT IS
4 WHERE STAFF PUTS THIS TYPE OF USE.
5 MR. MOSS: MAYBE, AND I UNDERSTAND
6 THAT'S WHAT'S BEEN REPRESENTED AND I
7 CERTAINLY AM NOT HERE TO SAY THAT'S NOT
8 THE TRUTH BECAUSE I DON'T KNOW. BUT
9 WHAT I WILL SAY IS THERE'S BEEN NOTHING
10 PRESENTED TO THIS BOARD OR IN RESPONSE
11 TO YOUR REQUEST MADE BY THE TIME THAT
12 EVIDENCES THAT THE ZONING ADMINISTRATOR
13 EVER ISSUED A CERTIFICATE OF A ZONING
14 COMPLIANCE FOR THIS TYPE OF BUSINESS IN
15 AN AC DISTRICT. SO, WHETHER OR NOT
16 THEY UNDERSTOOD IT, I DON'T THINK THIS
17 HAPPENED OR, AT LEAST, IT HASN'T BEEN
18 TURNED OVER TO US IF IT HAS HAPPENED.
19 SO THAT ALL...
20 MR. HANNA: SO WHAT YOU'RE SAYING IS
21 THERE IS CURRENTLY NO USE IN AN AC
22 ZONING DISTRICT LIKE THIS?
23 MR. MOSS: NOT THAT WE'RE AWARE OF...
24 MR. HANNA: THAT YOU KNOW OF?
25 MR. MOSS: WITH THOSE PRELIMINARY

1 PROBLEMS, I WOULD LIKE TO GIVE YOU AN
2 OUTLINE THAT I PREPARED FOR YOU. I DID
3 THAT IN HOPES OF KEEPING THINGS BRIEF.
4 MR. HANNA: I APOLOGIZE FOR
5 INTERJECTING. I'M TRYING TO KEEP IT
6 FLOWING IN MY MIND.
7 MS. MOSS: I'M GLAD YOU DID AND IF
8 ANYBODY ELSE WANTS TO ASK ANY
9 QUESTIONS, THEY WILL ASK YOUR
10 PERMISSION TO DO SO. THERE WAS A
11 DECISION MADE BY MS. MINCEY, THE ZONING
12 ADMINISTRATOR, USED TO DESCRIBE BY THIS
13 OPERATOR WAS CONSISTENT WITH AMUSEMENT/
14 COMMERCIAL. IT'S A ONE OR TWO
15 PARAGRAPH LETTER AND IS NOT TERRIBLY
16 SPECIFIC. IT DOESN'T -- IT DOESN'T --
17 IN MY MIND STATE, SPECIFICALLY THIS IS
18 ALL THE ELEMENTS OF THE PARAMETERS FOR
19 THIS USE AND THIS IS WHAT'S PERMITTED
20 AND THIS IS WHY WE SAY IT'S PERMITTED.
21 AND I'M NOT SUGGESTING THAT IT HAD TO
22 BE, BUT I'M NOT SURE THAT WE CAN TAKE A
23 LOT OUT OF THAT OTHER THAN WE'VE
24 LEARNED OF THE DECISION MADE. THAT IT
25 WAS CONSISTENT USE AND NOW THERE IS AN

1 APPEAL FROM THAT. NOW, WHAT WE HAVE
2 LEARNED SINCE THEN IS THAT THE DECISION
3 WAS MADE THAT THIS BUSINESS WAS
4 CONSISTENT WITH THE SIGHT-SEEING DEPOT,
5 BECAUSE IT COULDN'T BE ANYTHING ELSE IN
6 THAT PERMITTED AC DISTRICT BECAUSE NONE
7 OF THE OTHER USES DESCRIBE THIS TYPE OF
8 BUSINESS. AND I SUBMIT TO YOU, A
9 SIGHT-SEEING DEPOT DOESN'T DENY IT, BUT
10 IT'S CLEARLY NOT ANY OF THE OTHERS.
11 NOW, YOU'VE GOT A VERY LARGE PACKET OF
12 INFORMATION THAT YOU RECEIVED IN
13 PREPARATION FROM YOUR LAST MEETING AND
14 ALSO ADDITIONALLY, THERE WILL
15 INFORMATION FROM MR. HINDE, AND AGAIN,
16 WE WILL TRY NOT TO BE REDUNDANT. BUT,
17 IN THAT MATERIAL, THERE'S SOME THINGS
18 THAT ARE PRETTY IMPORTANT, AT LEAST, TO
19 MR. HINDE, AND ONE OF THEM IS, THIS HAS
20 REALLY CAUSED A GREAT STRESS UPON MR.
21 HINDE'S FAMILY. THE VERY FIRST PAGE OF
22 THAT PACKET HE GAVE Y'ALL A MISSION
23 STATEMENT FROM HORRY COUNTY AND HE FELT
24 SIGNIFICANTLY ABOUT INCLUDING IT. IT
25 STATES IN THE MISSION OF HORRY COUNTY

1 IS TO PROVIDE A COMMUNITY ENVIRONMENT
2 WHICH THE CITIZENS AND VISITORS OF
3 HORRY COUNTY ENJOY THE NICE QUALITY OF
4 LIFE. AND I SUBMIT TO YOU, THAT WE
5 HAVE ALL THIS OPPOSITION BECAUSE THE
6 QUALITY OF LIFE HAS BEEN ENCROACHED
7 UPON. WE HOPE THAT WILL BE THE
8 UNDERSCORING SCENE HERE. THERE ARE
9 ALSO SOME E-MAILS. THERE'S A PETITION.
10 THERE ARE LETTERS. AND BY THE WAY, I
11 WON'T SPEAK FOR HIM BECAUSE THAT WOULD
12 BE INAPPROPRIATE, BUT I HOPE YOU WILL
13 ALLOW ME TO RELAY SENATOR LUKE RANKIN'S
14 POLICIES. HE INTENDED TO BE HERE
15 TONIGHT. HE WROTE ONE OF THE LETTERS
16 IN THE PACKAGE. HE INTENDED TO COME
17 AND SPEAK TONIGHT, BUT EVIDENTLY WHEN
18 HE CALLED ME TODAY, HE'S GOT A FAMILY
19 SICKNESS AND HE WAS OUT OF TOWN IN
20 CHARLESTON. SO, I AM RELAYING THAT
21 APOLOGY FROM HIM. UNDERNEATH, IS A
22 BINDER, ADJOINED EXPRESS OPTIONS SEEK
23 BY THE ZONING ADMINISTRATOR AND THEY
24 HAVE VERY FIRM OPPOSITIONS EXPRESSED.
25 THERE WAS ONE POSTED, WHICH IS ALSO

1 PUBLIC RECORD BY -- IN MYRTLE BEACH, BY
2 A VACATIONER WHO SAID SHE HAD BEEN HERE
3 41 YEARS VACATIONING IN MYRTLE BEACH
4 AND SHE'S NOT COMING BACK. AND PART OF
5 HER CONCERN, IT'S ONE OF THE LAST PAGES
6 OF THE NOTEBOOK WE GAVE TO YOU LAST
7 TIME. AFTER 41 YEARS OF VACATION,
8 SHE'S NOT COMING BACK BECAUSE OF TWO
9 THINGS. ONE IS THE PARKING METER FEES
10 AND THE OTHER IS THE CONSTANT BUZZING
11 OF THE HELICOPTERS.

12 MR. BARODY: MR. CHAIRMAN, I APOLOGIZE
13 FOR THIS INTERRUPTION, BUT I'VE GOT TO
14 PROTECT THE RECORD SINCE THIS WILL BE A
15 RECORD UPON ANY APPEAL FILED BY EITHER
16 PARTY. -- THERE ARE A NUMBER OF MATERIALS
17 THAT ARE IN THE PACKETS SUBMITTED BY
18 MR. HINDE BEFORE YOU THAT CONCERN NOISE
19 CONCERNS, QUALITY OF LIFE CONCERNS, AND
20 SAFETY CONCERNS. NONE OF WHICH ARE
21 RELEVANT TO THE ISSUE AS TO WHETHER MS.
22 MINCEY MADE A CORRECT ZONING
23 DETERMINATION OR NOT AND FRANKLY, MANY
24 OF THE -- OF THOSE THAT ARE ALSO
25 CONTAINED IN THE PACKET BEFORE YOU

1 CONSIST OF NOISE STUDIES. THERE'S A
2 FAA STUDY, FOR EXAMPLE, FROM 1995.
3 THERE ARE A NUMBER OF ITEMS THAT ARE IN
4 THE RECORD TO WHICH, ON BEHALF OF MY
5 CLIENT, I WOULD HAVE TO RAISE AN
6 OBJECTION. I UNDERSTAND THAT Y'ALL ARE
7 NOT SUBJECT TO THE RULES OF EVIDENCE.
8 NONETHELESS, FOR ISSUE PRESERVATION
9 PURPOSES, I NEED TO RAISE THAT NOW.
10 AND FRANKLY, AS JUST A PRACTICAL MATTER
11 I THINK IN ORDER TO SPEED THINGS UP, WE
12 -- THAT IT'S GOOD FOR US TO FOCUS UPON
13 THE NARROW ISSUE AS PRESENTED BY MS.
14 CARTER AND AS SET FORTH IN YOUR PACKET
15 AS TO WHETHER OR NOT THE DETERMINATION
16 WAS RIGHT OR WRONG.
17 MR. HANNA: THANK YOU, MR. BAROODY. I
18 TEND TO AGREE WITH YOU. SO, HERE'S
19 WHAT I WOULD LIKE TO DO, AND WE WILL
20 LET THE BOARD MEMBERS DETERMINE WHETHER
21 THEY WANT TO TAKE THAT INTO
22 CONSIDERATION. EVERYBODY IN THE
23 AUDIENCE, I THINK WE CAN AGREE, THAT
24 THE HELICOPTERS ARE A PUBLIC NUISANCE.
25 THAT THE NOISE BOTHERS YOU. THAT YOU

1 DON'T LIKE IT. EVERYBODY WHO TAKES
2 THAT STANCE AND THAT'S WHAT THEY'RE
3 HERE FOR AND THAT'S WHY THEY ARE
4 OPPOSED TO THIS FOR SAFETY ISSUES,
5 PUBLIC NUISANCE, THINGS OF THAT NATURE,
6 STAND UP. HOW MANY PEOPLE DO YOU
7 GUESSTIMATE THAT IS, MR. MOSS?
8 MR. MOSS: I WOULD GUESSTIMATE 100..
9 MR. LEBIEDZ: I WOULD SAY MORE LIKE 40
10 OR 50.
11 MR. HANNA: LET THE RECORD SHOW THAT
12 IT'S ABOUT 50 PEOPLE.
13 AUDIENCE: NO, NO, NO. IT'S MORE THAN
14 THAT. (LAUGHING.)
15 MR. HANNA: HOW ABOUT WE SAY -- LET THE
16 RECORD SHOW THERE'S BETWEEN 50 AND 120
17 PEOPLE.
18 AUDIENCE: YES, OKAY.
19 MR. HANNA: Y'ALL BE SEATED. THANK
20 YOU. MR. MOSS, I AM GOING TO ASK YOU
21 TO MOVE ALONG AND ADDRESS THE ACTUAL
22 QUESTION AS TO WHY MS. MINCEY'S
23 DECISION WAS WRONG BASED ON WHAT SHE
24 HAD TO WORK WITH.
25 MR. MOSS: BECAUSE YOU'VE ASKED, I'LL

1 DO THAT. BUT I GUESS I WOULDN'T BE A
2 VERY GOOD LAWYER IF I DIDN'T MAKE SOME
3 ARGUMENT ABOUT THE OBJECTION NOTED BY
4 MR. BAROODY. BASICALLY, THE ORDINANCE
5 DOES NOT DEFINE IT. THE ZONING
6 ORDINANCES OF HORRY COUNTY DO NOT
7 DEFINE THE WORD "DEPOT". IT'S NOT
8 LISTED. THE COMPREHENSIVE PLAN DOES
9 DEFINE DEPOT. IT'S NOT IN THERE.
10 WELL, IT IS IN THERE IN THE
11 COMPREHENSIVE PLAN IN THREE LOCATIONS.
12 THE WORD DEPOT EXISTS AND IN EACH CASE,
13 IT'S DESCRIBED AS A HISTORICAL SITE.
14 THE TERM, 'DEPOT', BUT THERE'S NO
15 DEFINITION. AND IN THE CODE ZONING
16 ORDINANCE OF HORRY COUNTY, THE WORD
17 'DEPOT' EXISTS IN THE CONTEXT OF A
18 SIGHT-SEEING DEPOT IN THE AMUSEMENT/
19 COMMERCIAL ZONING DISTRICT, BUT THERE'S
20 NO DEFINITION. SO, WE DON'T HAVE A
21 GUIDE, AND TO BE FAIR TO HER, MS.
22 MINCEY DOESN'T HAVE A GUIDE. SO THERE
23 IS NOTHING THAT THE COUNTY COUNCIL HAS
24 GIVEN TO HER AS A GUIDE POST OF WHAT
25 THAT MEANS. OKAY. AND BECAUSE NOBODY

1 HAS APPEALED THE DECISION AND BROUGHT
2 IT TO YOU, YOU HAVEN'T GIVEN HER THAT
3 BECAUSE IT HASN'T BEEN BROUGHT TO YOU
4 TO GIVE HER THAT GUIDE. SO, AGAIN, I'M
5 NOT HERE TO ATTACK MS. MINCEY'S
6 INTERPRETATION. SO, IF YOU GO TO THE
7 SOUTH CAROLINA CODE OF LAW, THERE IS NO
8 DEFINITION. I SEARCHED TO BRING IT
9 HERE TONIGHT IF I COULD FIND IT. I
10 WENT TO THE COURT CASES, SEARCHED THE
11 SOUTH CAROLINA CASES IN WEST LAW. THE
12 ONLY PLACE I COULD FIND THE DEFINITION
13 OF DEPOT WAS IN THE CONTEXT OF TRAINING
14 POST, BUT NOTHING TO DO WITH THE
15 CONTEXT OF ZONING. SO, WHAT DO YOU DO?
16 I SUBMIT TO YOU THAT YOU USE THE PLAIN
17 MEANING OF THE WORD AND THE PLAIN
18 MEANING SOURCES WHEN YOU CAN'T FIND THE
19 DEFINITION AND WHEN IT'S AN IMPORTANT
20 ISSUE LIKE THIS. IF YOU CAN DETERMINE
21 IT'S A SIGHT-SEEING DEPOT, YOU'VE GOT
22 TO FIRST KNOW WHAT A DEPOT IS. AND SO,
23 WHEN YOU GO TO GOOGLE DICTIONARY OR
24 WEBSTER'S, YOU GO TO THE DICTIONARY
25 ONLINE, YOU DON'T FIND ANYTHING

1 REMOTELY CONNECTED WITH AVIATION OR
2 ANYTHING THAT'S NOT GROUNDED. AND I
3 ACTUALLY HAVE THAT FOR YOU. I'VE GOT
4 SOME COPIES I WANT TO PASS OUT TO YOU
5 JUST FROM DOING A SIMPLE SEARCH. IN
6 THE FIRST ONE I'VE GIVEN YOU, IT'S
7 PRETTY CLEAR IT'S A STORE FOR SUPPLIES.
8 HENCE, HOME DEPOT, I GUESS, OFFICE
9 DEPOT. OR IN THE TRANSPORTATION
10 RAILWAY, IT'S A BUILDING USED FOR
11 STORING SERVICES OF THE BUSINESS
12 ACTIVITY, BUS OR RAILWAY STATION. IT
13 IS NOT RELATED TO AVIATION IN ANY
14 FASHION. AND THEN WIKIPEDIA DOES NOT
15 ISSUE -- IT'S THE SAME THING. THE
16 CONTEXT IS TRANSPORTATION, TRAIN
17 STATION, BUS STATION, BUS GARAGE, ALL
18 LAND BASED. NOTHING TO DO WITH ANY
19 AVIATION. NOW, WHEN YOU START LOOKING
20 AT AIRPORTS/HELIPORTS/HELIPADS THAT'S
21 WHEN YOU START SEEING THINGS THAT DEAL
22 WITH AVIATION. SO, IN RESPONSE TO YOUR
23 QUESTION, THIS IS THE MOST DIRECTLY
24 RELATIVE INQUIRY. IS IT A DEPOT? CAN
25 IT BE A DEPOT? AND WHEN THE DEFINITION

1 IS NOT INCLUDED IN THE COMPREHENSIVE
2 PLAN, NOT INCLUDED IN THE ZONING
3 ORDINANCE, IT DOESN'T APPEAR TO BE IN
4 DOCUMENTED DECISIONS OR THE ZONING
5 ADMINISTRATOR'S ORDINANCE FOR YOU.
6 IT'S NOT IN THE CODE LAW OF SOUTH
7 CAROLINA. IT'S NOT IN THE SOUTH
8 CAROLINA CASES. THESE ARE COMMON AND
9 PLAIN DEFINITIONS. SO, RESPECTFULLY,
10 WE BELIEVE THERE WAS AN ERROR MADE BY
11 THE ADMINISTRATOR, NOT INTENTIONAL. WE
12 ARE NOT TRYING TO POINT ANY FINGERS.
13 WE JUST THINK IT WAS A MISTAKE, BUT THE
14 CONSEQUENCES WERE SEVERE. NOW, THE
15 STUDIES THAT MR. BARODY OBJECTED TO, I
16 UNDERSTAND THE OBJECTION AND WE DID NOT
17 OFFER ANY MATERIALS NECESSARILY BECAUSE
18 THEY SAY ANY ONE PARTICULAR THING IS
19 GOING TO BE YOUR GUIDE POST, OR THE
20 THINGS THAT YOU RELY ON, BUT THIS IS
21 WHAT THEY DO TELL YOU. THERE HAVE BEEN
22 EXTENSIVE STUDIES BY MORE THAN ONE
23 FEDERAL AGENCY THAT ARE IN YOUR
24 MATERIALS THAT DEAL WITH THIS PROBLEM
25 OF AIRPORT NOISE. ONE OF THEM DEALS

1 WITH SOLELY NON-MILITARY HELICOPTER
2 NOISE. ONE OF THEM IS AN EPA. THERE
3 ARE MILITARY CONSEQUENCES ASSOCIATED
4 WITH AIRPORT NOISE AND HELICOPTER NOISE
5 AND THAT'S WHY THEY ARE IN HERE AND
6 REALLY SOME KIND OF STUDY, IN MY
7 OPINION, SHOULD HAVE BEEN DONE BEFORE
8 THIS DECISION WAS MADE. MAYBE NOT
9 EXHAUSTED WHERE THE FEDERAL GOVERNMENT
10 WOULD PAY FOR IT. NO OPERATION COULD
11 DO THAT, BUT SOMETHING. PERHAPS A
12 ZONING REQUEST SUCH AS IN 2010 OCCURRED
13 AS TO WHAT IT WOULD COST TO PUT A
14 NOTICE FOR A PUBLIC HEARING AND APPEAL
15 AND THEN THERE WOULD HAVE BEEN SOME
16 EXAMINATION OF THE BUSINESS PLAN IN
17 THAT CONTEXT, BUT IN THIS CONTEXT THAT
18 DIDN'T HAPPEN. I'M NOT SAYING IT
19 SHOULD HAVE HAPPENED UNDER THE
20 PROCEDURES. I DON'T THINK THIS
21 OPERATION DID ANYTHING PROCEDURE LY
22 INAPPROPRIATE, BUT IT IS AN UNFORTUNATE
23 RESULT NEVERTHELESS. THAT'S WHY THAT
24 INFORMATION IS IN THERE. YOU HAVE
25 PHD'S WHO HAVE TESTIFIED THAT

1 CHILDREN'S DEVELOPMENT IS SLOWED
2 BECAUSE OF THE NOISE, SPECIFIC AIRPORT
3 NOISE. AND WHILE IT'S NOT BINDING UPON
4 YOU, IT'S NOT IRRELEVANT AND I EXPECT
5 YOU TO RECONSIDER. ONE THING YOU
6 LEARNED ON THE REPORT FOR CONGRESS, IF
7 YOU GOT A CHANCE TO REVIEW IT,
8 HELICOPTERS EVIDENTLY CREATE A WHOLE
9 LOT MORE OPPOSITION THAN FIXED WINGED
10 AIR TRAFFIC AND THAT CAME OUT IN THE
11 FEDERAL STUDY BEFORE YOU, THAT
12 HELICOPTERS ARE PARTICULARLY MORE
13 OFFENSIVE TO THE PUBLIC. AND THAT WAS
14 THE ONE THAT'S ENTITLED REPORT TO
15 CONGRESS ON NON-MILITARY HELICOPTERS.
16 I SUBMIT TO YOU, THE PURPOSE OF THE
17 ZONING. THERE ARE MANY PURPOSES FOR
18 ZONING AND WE COULD PROBABLY DEBATE IT
19 ALL NIGHT, BUT ONE OF THOSE PURPOSES
20 HAS TO BE TO ESTABLISH COMPATIBLE USES
21 OF PLANS. AND I DON'T THINK ANYBODY
22 WOULD CHALLENGE ME ON THAT. ONE OF
23 THOSE PURPOSES HAS TO BE PRESERVATION
24 OF PROPERTY VALUES AND I DON'T BELIEVE
25 ANYBODY WOULD CHALLENGE ME ON IT. I

1 SUBMIT TO YOU THAT ANOTHER PURPOSE OF
2 ZONING IS TO ESTABLISH, WHEN IN A
3 ZONING DISTRICT, THE USES FOR THE
4 DISTRICT ARE CONSISTENT AND COMPATIBLE.
5 HERE IN THE AMUSEMENT/COMMERCIAL
6 DISTRICT EXPRESSLY ALLOWED ARE
7 THEATERS, POOL HALLS, BOWLING ALLEYS,
8 WATER SLIDE, SKATING RINKS, DANCE
9 HALLS, SHOOTING GALLERIES, NONE OF
10 THESE EXISTS. ALTHOUGH, I HAVE MY
11 CONCERNS ABOUT A SHOOTING GALLERY
12 RECENTLY. GIFT AND NOVELTY SHOPS,
13 TAVERNS, CLUBS, AMUSEMENT PARKS, PIERS,
14 ARCADES, MINIATURE GOLF, DRIVING
15 RANGES, THESE ARE THE EXPRESSLY
16 PERMITTED USES IN THIS DISTRICT.
17 BOARDWALK, BATH-HOUSES, AND
18 SIGHT-SEEING DEPOTS. SO, CLEARLY MS.
19 MINCEY'S DETERMINATION WAS NOT ANY OF
20 THOSE THINGS EXCEPT IT WAS CONSISTENT
21 WITH A SIGHT-SEEING DEPOT, BUT I SUBMIT
22 TO YOU THAT IT'S NOT APPROPRIATE TO PUT
23 A HELIPORT AND HELICOPTER ACTIVITY IN
24 CLOSE PROXIMATELY TO AN AMUSEMENT PARK,
25 TO ROLLER COASTERS, WHICH ARE HIGH IN

1 NATURE. FERRIS WHEELS, WHICH ARE HIGH
2 IN NATURE. WATER SLIDES, WHICH ARE
3 HIGH IN NATURE. I SUBMIT TO YOU, IT'S
4 NOT COMPATIBLE WITH -- THAT USE IS NOT
5 COMPATIBLE WITH THE OTHER USES IN THE
6 AC DISTRICT. IF IT WERE COMPATIBLE,
7 YOU WOULD NOT HAVE THE OPPOSITION THAT
8 IS HERE TONIGHT THAT HAS BEEN
9 EXPRESSED. NOW, WE HAVE ASKED SEVERAL
10 OF THOSE AFFECTED TO TRY TO CONDENSE
11 THEIR NOTES AND THEIR THOUGHTS TO COME
12 AND TELL YOU HOW IT'S AFFECTED THEIR
13 LIVES. THEY'RE NOT ALL WITHIN THIS
14 PLANTATION POINTE NEIGHBORHOOD. AND
15 SO, WE'VE ASKED FOR THEM NOT TO BRING
16 UP THAT INFORMATION. SO, I'M GOING TO
17 ASK MR. HINDE IF NOW IS THE APPROPRIATE
18 TIME. BUT, MR. CHAIRMAN, IF YOU PREFER
19 FOR ME TO ANSWER QUESTIONS I WILL.
20 MR. HANNA: YEAH. I THINK THERE ARE A
21 COUPLE THINGS WE WOULD LIKE TO ADDRESS
22 WITH YOU FIRST AND THEN WE CAN GO THAT
23 ROUTE. BELIEVE ME I UNDERSTAND. I'M
24 LOOKING FOR SOMETHING TO HANG MY HAT
25 ON. I'M LOOKING FOR SOMETHING. BUT

1 YOU TALK ABOUT THE DEPOT NOT BEING
2 MENTIONED IN AIR TRAVEL, BUT I'M
3 LOOKING IN WHAT YOU JUST GAVE ME AND IT
4 TALKS ABOUT UNDER PAGE 1, "DEPOT."
5 IT'S A NOUN. "IT'S A STATION WHERE
6 TRANSPORT VEHICLES ARE LOADED OR
7 UNLOADING PASSENGERS OR GOODS." IT'S
8 GOT TERMINAL. IT'S GOT AIR TERMINALS,
9 AIRPORT. A TERMINAL THAT SERVICES AIR
10 TRAVELERS OR AIR FLIGHT. IT THEN GOES
11 OVER AND TALKS ABOUT HOW DEPOT IS
12 MENTIONED IN BUS DEPOTS, BUS STATIONS,
13 BUS TERMINALS, AIRPORT TERMINALS,
14 RAILROAD STATIONS, RAILROAD TERMINALS.
15 I THINK FOR YOU TO SAY DEPOT COULD NOT
16 MEAN -- HAVE ANYTHING TO DO WITH AIR IS
17 NOT ENTIRELY TRUE. AND AGAIN, THE
18 QUESTION BEFORE US IS BASED ON WHAT SHE
19 HAD BEFORE HER. HOW DID SHE ERR IN HER
20 JUDGMENT? IF NOT HERE, WHERE? IF SHE
21 MADE A MISTAKE, THEN THERE OBVIOUSLY IS
22 AN OPTION AND SHE SHOULD HAVE PUT IT
23 HERE OR THERE WOULDN'T BE A MISTAKE.
24 MR. MOSS: WELL, CLEARLY IN PA1, ONE
25 OPTION WOULD HAVE BEEN, "NO, YOU CAN'T

1 PUT IT HERE BECAUSE IT'S NOT CONSISTENT
2 WITH AC. YOU ARE GOING TO HAVE TO GO
3 FIND A PLACE WHERE YOU CAN HAVE ZONED
4 APPROPRIATELY AND ONE OPTION IS PA1."
5 BACK IN 1987, IT'S NOT A RELATIVE
6 INQUIRY. A RELATIVE INQUIRY IS WHAT
7 THIS OPERATOR SHOULD HAVE BEEN TOLD AT
8 THE TIME HE SUBMITTED HIS APPLICATION.
9 AND PA1 IS THERE. AC2 IS THERE. THE
10 ZONING APPLICATION IS IN 2010. THERE
11 ARE OPTIONS, BUT...

12 MR. HANNA: AC2? REALLY?

13 MR. MOSS: PM2. I'M SORRY. READING
14 FROM THE PUBLIC RECORD. YOU KNOW,
15 AIRPORTS HAVE BIG PARKING LOTS AND LOTS
16 OF CARS AND THEY HAVE LOTS OF PEOPLE
17 COMING IN AND OUT. AND I SUBMIT TO YOU
18 THAT THESE ARE THE USES THE DEPOT IS
19 REFERRING TO. THIS IS NOT A
20 TRANSPORTATION COMPANY BECAUSE IF IT
21 WAS, IT WOULDN'T BE THE APPROPRIATE
22 PLACE FOR IT. YOU KNOW, THE CASINO
23 BOAT, WE CALL THEM TOURS OR CRUISES TO
24 NOWHERE, OKAY. THEY ARE LEAVING A
25 DESTINATION AND COMING BACK TO THE SAME

1 DESTINATION. THIS ISN'T A
2 TRANSPORTATION COMPANY. IT WASN'T
3 ASKED TO BE A TRANSPORTATION COMPANY.
4 THEY ARE NOT PICKING UP PASSENGERS AT
5 ONE PLACE AND DROPPING THEM OFF AT
6 ANOTHER, AT LEAST, THAT'S NOT WHAT THEY
7 ARE REPRESENTED. THIS IS A
8 SIGHT-SEEING DEPOT. SO THIS ISN'T AN
9 AIRPORT.

10 MR. HANNA: BUT ISN'T THAT SPECIFICALLY
11 ADDRESSED IN THE -- IT SPECIFICALLY
12 MENTIONS A SIGHT-SEEING DEPOT.

13 MR. MOSS: THAT IS. I WAS DEBATING
14 WITH THE ISSUE OF DEPOT IN THE CONTEXT
15 OF AN AIRPORT. THERE'S A WHOLE
16 DIFFERENT FUNCTION THERE FOR VEHICULAR
17 TRAVEL. THIS IS NOT TRAVEL. THIS
18 OPERATOR IS NOT IN THE TRAVEL BUSINESS.
19 SO, I SUBMIT TO YOU, WITH ALL DUE
20 RESPECT, I DON'T BELIEVE IT'S A DEPOT.
21 AGAIN, DID MS. MINCEY KNOW THAT? DID
22 SHE HAVE THAT AVAILABLE TO HER? I
23 DON'T KNOW. HAD SHE HAD THAT AVAILABLE
24 TO HER, WOULD THAT HAVE BEEN A MISTAKE
25 FOR HER TO MAKE THAT DECISION? MAYBE

1 NOT, BUT WE'RE HERE BEFORE YOU BECAUSE
2 IT'S YOUR ROLE TO TELL HER IF SHE ERRED
3 OR NOT, SO THAT SHE WILL KNOW NEXT TIME
4 AND EVERYBODY WILL KNOW NEXT TIME. I
5 SUBMIT TO YOU -- I UNDERSTAND MS.
6 CARTER'S QUESTION IF NOT HERE, WHERE?
7 RESPECTFULLY, THAT'S NOT WHAT Y'ALL ARE
8 CHARGED WITH ANSWERING. IF YOU KNOW
9 IT, FINE, BUT IF YOU DON'T KNOW IT, IT
10 DOESN'T MEAN THAT MS. MINCEY'S
11 DETERMINATION COULD BE WRONG AND YOU
12 STILL DON'T KNOW WHERE THE APPROPRIATE
13 PLACE IS. THAT'S A LEGISLATIVE
14 FUNCTION. IF YOU KNOW IT, YOU KNOW IT
15 AND YOU CAN TELL US IF YOU DON'T KNOW
16 IT. THEY HAVE A RENDERING AND THAT'S
17 COUNTY COUNCIL. WE CAN GO TO THE
18 PLANNING COMMISSION STAFF. DOES IT ALL
19 THE TIME. THEY PROPOSE AN ORDINANCE
20 AND THERE IS AN ISSUE PLANNING
21 COMMISSION AND THEY CAN MAKE A
22 RECOMMENDATION TO COUNCIL AND IT'S A
23 LEGISLATIVE FUNCTION. AND SO, ALL IS
24 NOT LOST IF Y'ALL FIND THAT YOU MADE A
25 MISTAKE. WHICH IS WHAT I BELIEVE

1 HAPPENED.

2 MR. HANNA: ANY QUESTIONS OF MR. MOSS
3 FROM ANY MEMBERS OF THE BOARD AT THIS
4 TIME? THANK YOU, MR. MOSS.

5 MR. MOSS: I WILL ASK MR. HINDE TO COME
6 UP.

7 MR. HANNA: SURE. MR. HINDE, WELCOME
8 BACK AND I APOLOGIZE. YOU ARE STILL
9 UNDER OATH, BUT COULD I GET YOU TO
10 STATE YOUR NAME AND ADDRESS FOR THE
11 RECORD. I SHOULD HAVE DONE THAT
12 ORIGINALLY AND I APOLOGIZE.

13 **RICHARD HINDE**, HAVING BEEN FIRST DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 MR. HINDE: MY NAME IS RICHARD HINDE.
16 I LIVE AT 1541 BROOKGREEN DRIVE, MYRTLE
17 BEACH 29577. I GO BY RICK. THIS IS MY
18 FAMILY; MY WIFE, MY ELDEST DAUGHTER,
19 RILEY, MY MIDDLE CHILD, MADISON, AND MY
20 SON (INAUDIBLE). IF IT'S OKAY WITH
21 YOU, I WOULD LIKE TO PASS OUT SOME
22 INFORMATION THAT I DIDN'T GET IN THE
23 BOOK. SO, IF THEY COULD PASS IT OUT TO
24 EVERYBODY, IT'S GOT SOME SOUND
25 INFORMATION IN IT. YOU KNOW, WE HAD

1 THE POLICE OUT SEVERAL TIMES...

2 MR. BAROODY: MR. CHAIRMAN, I'VE NOT

3 YET HAD THE OPPORTUNITY TO SEE WHAT'S

4 INSIDE THE BOOK AND AGAIN...

5 MR. HANNA: WE ARE GOING TO LOOK AT IT.

6 YOUR OBJECTION IS DULY NOTED.

7 MR. BAROODY: THANK YOU.

8 MR. HINDE: ANYWAYS, EVERY TIME WE CALL

9 THE POLICE, WE WOULD HAVE THEM OUT AND

10 THEY WOULD HAVE A LITTLE HAND HELD OR

11 SOMETIMES THEY WOULDN'T HAVE ANY DEVICE

12 TO DO A TEST. ONE OF MY NEIGHBORS, WHO

13 HIS TEST IS IN THERE ON HIS BACK PORCH,

14 THERE'S PICTURES THERE. THE FIRST

15 PICTURE YOU WILL SEE IS IF YOU LOOK AT

16 MY COVERED PORCH. I BUILT THAT COVERED

17 PORCH. I BOUGHT THE HOUSE IN MARCH OF

18 LAST YEAR WHEN WE FIRST MOVED HERE IN

19 2005. WE DID NOT WANT TO JUMP INTO THE

20 MARKET BECAUSE WE SAW THE MARKET WAS

21 JUST A LITTLE BIT CRAZY. I'M A REAL

22 ESTATE BROKER AND HAVE BEEN ALL MY LIFE

23 SINCE I WAS 18 YEARS OLD. SO ANYWAYS,

24 BACK TO THE TEST. THIS DEVICE WAS

25 BOUGHT BY BILL CHUBBER, A NEIGHBOR TWO

1 DOORS DOWN AND IT DOES AN AUTOMATED
2 READING AND YOU CAN DETERMINE WHETHER
3 YOU WANT IT TO 1 SECOND, 2 SECONDS,
4 3 SECONDS, 4 SECONDS, ANYWAY IN THE
5 TEST THAT I CHOSE. WE DID IT EVERY
6 FIVE SECONDS. YOU CAN SEE THE GRAPH
7 KIND OF SHOWS YOU EVERYTHING ABOUT THE
8 TEST IN THE NUMBER OF RECORDS THERE
9 WERE. THE NUMBER OF RECORDS IS BY 5
10 SECONDS. THERE'S FOUR DIFFERENT TESTS.
11 TWO OF THEM WERE AT MY LOCATION WITH A
12 PICTURE OF WHERE I TOOK IT FROM A
13 COVERED PORCH. ONE IS FROM BILL
14 CHUBBER, WHO HE DID IT ON HIS
15 NON-COVERED PORCH ON HIS PROPERTY. AND
16 ONE IS FROM A MYRTLE BEACH RESIDENT BOB
17 SUREY, AND HIS TEST IS IN THERE ALSO.
18 AND THEY ARE WAY ABOVE -- THERE IS NO
19 HUMAN INPUT. THAT IS ALL DATA TAKEN
20 RIGHT FROM THIS MACHINE INTO MY
21 COMPUTER.
22 MR. HANNA: JUST KICKING IT UP. I
23 THINK WE UNDERSTAND THAT IT'S A
24 NUISANCE AND IT MAKES NOISE.
25 MR. HINDE: AND HERE'S MY STORY AND I'M

1 GOING TO SIT DOWN. WE BOUGHT THE HOUSE
2 ON MARCH 17TH OF LAST YEAR -- THE YEAR
3 BEFORE. WE WERE REALLY HAPPY TO BE IN
4 THAT NEIGHBORHOOD. IT'S A GREAT
5 NEIGHBORHOOD. WE WANTED TO LIVE THERE
6 WHEN WE FIRST MOVED HERE IN '05. WE
7 DIDN'T WANT TO PAY THE PRICES THAT WERE
8 GOING ON AT THAT TIME. WE ARE PROUD
9 PARENTS OF THREE KIDS. WE WANT THEM TO
10 PLAY OUTSIDE. WE WANT THEM TO ENJOY
11 THE POOL. WE WANT THEM TO ENJOY THE
12 COVERED PORCH THAT I BUILT. WE CAN'T
13 DO IT. I CAN'T OPEN MY WINDOWS. I
14 HAVE A LITTLE SPOTLIGHT SPA THAT FLOWS
15 OVER TO THE POOL. I CAN'T OPEN MY
16 WINDOWS AND ENJOY THAT BECAUSE OF THE
17 CONSTANT NOISE OF HELICOPTERS. I MEAN,
18 MY KIDS DON'T WANT TO BE OUT THERE.
19 WHEN THEY COME RIGHT OVER -- THEY WERE
20 FLYING RIGHT ON OUR TREE LINE AND THE
21 REASON I SUBMIT TO YOU IS THAT WHEN
22 THEY CHANGED THEIR FLIGHT PATTERN IS
23 BECAUSE THEY COULDN'T PASS THE DECIMAL
24 READING TEST. I HAD DAVID ANDERSON,
25 DON ANDERSON, I DON'T KNOW HIS FIRST

1 NAME, BUT HE WAS AN EX-FAA PERSON COME
2 IN MY YARD AND DO DECIMAL READING
3 TESTS. WHAT HE SAID PRIOR IS NOT TRUE.
4 I SAW IT GO FROM 74 TO 75. HE KNEW
5 THEY COULDN'T PASS SO THEY CHANGED
6 THEIR DIRECTION. HE TOLD ME IT WASN'T
7 SAFE. MR. RICK CALLED ME ONE DAY AND
8 SAID -- CALLED EVERYBODY IN THE
9 NEIGHBORHOOD. HE WAS SAYING HE WAS
10 TRYING TO BE A GOOD NEIGHBOR. I SAID
11 TO HIM, "WHY CAN'T YOU TAKE OFF FROM
12 THE OTHER DIRECTION?" HE SAID, "I
13 CAN'T BECAUSE IT'S A SAFETY CONCERN."
14 AND HE SAID, "WE HAVE TO TAKE OFF INTO
15 THE WIND." AND SO RIGHT NOW, THEY ARE
16 TAKING OFF AGAINST THE WIND AND
17 FLIPPING THEIR HELICOPTER 180 DEGREES.
18 IT'S AN ACCIDENT WAITING TO HAPPEN. I
19 KNEW THAT THE PROPERTY BEHIND MY HOME
20 WAS ZONED AC. I NEVER IN A MILLION
21 YEARS AFTER READING -- I READ IT BEFORE
22 I BOUGHT THE HOUSE. I REALIZED WHAT
23 POTENTIALLY COULD BE BACK THERE. I
24 EVEN INTERPRETED FROM THAT ORDINANCE
25 THAT IT COULD BE HELICOPTER BUSINESS.

1 I AM VERY CONCERNED ABOUT OUR REAL
2 ESTATE VALUES NOT TO MENTION WE DON'T
3 HAVE A QUIET ENJOYMENT. IN THAT
4 HANDOUT OF INFORMATION WHICH WE TOOK A
5 LOT OF TIME TO PUT TOGETHER, A LOT OF
6 NEIGHBORS HAVE PUT IN A LOT OF EFFORT.
7 THERE IS A STUDY BY THE FAA THAT SHOWS
8 THE EFFECTS OF VALUES OF PROPERTIES BY
9 AN AIRPORT. NOW, THAT'S PEOPLE WHO
10 KNEW THEY WERE BUYING A HOME NEAR A
11 AIRPORT. THE HIGHER THE VALUE OF A
12 HOME, THE HIGHER THE IMPACT. THE STUDY
13 GOES UP TO 24, 25 PERCENT. I THINK
14 IT'S MORE LIKE 40 PERCENT DEDUCTION AND
15 VALUE OF OUR PROPERTIES. THAT'S ALL I
16 HAVE TO SAY. I REALLY APPRECIATE YOU
17 GUYS. I ASSUMING YOU'RE VOLUNTEERS.
18 AND I THANK YOU FOR YOUR TIME.
19 MR. HANNA: THANK YOU, MR. HINDE. ANY
20 QUESTIONS OF MR. HINDE?
21 MR. BEVERLY: DOES THE HELICOPTER TOUR
22 OPERATE IN THE FALL AND WINTER?
23 MR. HINDE: WELL, I DON'T KNOW. I'LL
24 FIND OUT. I GUESS, BUT I THINK HE
25 PLANS ON STAYING OPEN, BUT I JUST DON'T

1 THINK THAT HE'S GOING TO HAVE QUITE THE
2 OPERATION THAT HE HAS.

3 MR. PARKER: THIS IS CHINESE TO ME.
4 BASICALLY IS THERE A STANDARD OR A
5 BASELINE WITH THESE READINGS THAT YOU
6 HAVE? WHAT IS NORMAL WITHOUT THE
7 HELICOPTER?

8 MR. HINDE: I PUT THAT PARTICULAR TEST
9 -- I DON'T KNOW WHY THE MACHINE DOES
10 IT, BUT I QUEUED IT TO DO BETWEEN 60
11 DB'S AND A 110 DB'S. BUT IT PICKED UP
12 IN IT JUST -- I'M NOT SURE WHAT YOU'RE
13 ASKING ME WHEN YOU ASKING ME "BASELINE"
14 TEST.

15 MR. PARKER: WHAT I'M ASKING YOU IS,
16 BASICALLY WITHOUT A HELICOPTER, WHAT AM
17 I READING HERE? THIS DOESN'T REALLY
18 TELL ME ANYTHING. WHAT WOULD THE
19 NORMAL ONE WITH BE? 50 TO 55 SHOULD BE
20 THIS NUMBER?

21 MR. HINDE: WELL, IF WE DIDN'T HAVE THE
22 NOISE FROM THE HELICOPTER, I ASSUME,
23 THAT'S CORRECT, BUT I WOULD SUGGEST
24 THAT IN THE QUIET OF NIGHT MY DECIMAL
25 READING TEST WHEN HE'S NOT THERE IS

1 PROBABLY SOMEWHERE AROUND 40 OR 45, BUT
2 I DON'T KNOW THAT.
3 MR. PARKER: THAT'S MY POINT. I DON'T
4 HAVE A CLUE WHAT THESE NUMBERS MEAN.
5 MR. HINDE: THAT'S A GOOD QUESTION. I
6 DIDN'T GET THOSE IN THERE, BUT I WAS
7 PRINTING TODAY LIKE CRAZY.
8 MR. PARKER: IT'S A LOT OF INFORMATION.
9 MR. HANNA: ANYBODY LIKE TO ADDRESS MR.
10 PARKER'S QUESTION?
11 MR. MOSS: MR. PARKER, YOUR QUESTION IS
12 A VERY LEGITIMATE ONE AND HERE ARE THE
13 GUIDE POSTS I THINK. I WASN'T INVOLVED
14 IN THIS, BUT MY CLIENT WAS TRYING TO
15 OBTAIN UNDER THE COUNTY NOISE ORDINANCE
16 THE PARAMETERS. FIRST OFF, YOU DON'T
17 HAVE TO HAVE A DECIBEL READING FOR THE
18 COUNTY NOISE ORDINANCE, OKAY. BUT
19 THERE ARE A COUPLE PLACES IN
20 SUB-SECTION C THAT IF YOU GET TO THIS
21 LEVEL, YOU ARE BEING BOTHERED. IN SOME
22 ZONING DISTRICTS THAT IS 60 DB'S AND
23 SOME IT'S 70 DB'S. WHEN YOU USE
24 COMMERCIAL, IT'S 70 DB'S. AND SO,
25 THAT'S WHAT THEY'RE TRYING TO OBTAIN,

1 WE HAVE A SITUATION HERE WHERE THERE
2 ARE NUMEROUS INSTANCES WHERE WE
3 EXCEEDED THAT 70 DB RANGE. SO, WHEN
4 MS. CARTER TOLD YOU THAT THE COUNTY
5 PUTS ONE OUT IN THE VIOLATION
6 ORDINANCE, I MEAN, YOU HAVE TO RESPECT
7 THAT FOR WHAT IT IS. THAT KIND OF WAS
8 A VIOLATION WHEN IT WAS THERE, BUT NOT
9 THERE FULL-TIME NOR DO WE EXPECT THEM
10 TO BE. AND SO MR. HINDE HAS SET UP
11 THIS DEVICE TO RECORD, AT THIS POINT,
12 THE KIND OF NOISES HE'S BEING EXPOSED
13 TO AND ALSO HIS NEIGHBORS ON A
14 CONTINUOUS BASIS AND PROBABLY THERE
15 SHOULD HAVE BEEN A BASELINE...
16 MR. PARKER: AND THAT'S WHERE THE
17 ELEVATIONS ARE COMING FROM WHEN THE
18 CHOPPER COMES IN AND OUT, RIGHT?
19 MR. MOSS: THAT IS WHEN HE MANAGED TO
20 TAKE THEM. THAT WAS HIS TASK. IF YOU
21 WOULD LIKE TO ASK HIM SPECIFICALLY, YOU
22 PROBABLY SHOULD DO THAT BECAUSE I DON'T
23 WANT TO TESTIFY FOR HIM. THAT WAS WHAT
24 HIS TASK WAS. AND WITH THAT, WE HAVE
25 SOME OTHER WITNESSES WHO WOULD LIKE TO

1 COME UP AND SHARE THEIR OBSERVATIONS.
2 FIRST WE HAVE JONATHAN...

3 MR. HINDE: LESLIE ANDERSON IS FIRST.
4 **LESLIE ANDERSON**, HAVING BEEN FIRST DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 MY NAME IS LESLIE ANDERSON. WE LIVE AT
7 1527 BROOKGREEN DRIVE AND WE'VE LIVED
8 IN PLANATION POINTE SINCE MY HUSBAND
9 AND I WERE IN MIDDLE SCHOOL, THE LATE
10 '80'S. SO, YEAH, IT WAS THERE IN THE
11 '80'S. WE GREW UP THERE. WE HAVE
12 ALWAYS CONSIDERED OUR NEIGHBORHOOD A
13 PERFECT PLACE TO RAISE A FAMILY. SO,
14 TONIGHT I WANT TO SPEAK ON BEHALF OF
15 ALL THE FAMILIES THAT ARE AFFECTED BY
16 THIS. I KNOW IT'S NOT -- MOST PEOPLE
17 WORK REALLY HARD TO MAKE THEIR HOMES
18 COMFORTABLE, PLEASING, AND A SAFE
19 HEAVEN FROM THE OUTSIDE WORLD. HOME IS
20 ONE PLACE WE CAN ALL GO TO GET AWAY
21 FROM THE HUSTLE AND BUSTLE. THE ONE
22 PLACE WHERE YOU HAVE TOTAL CONTROL OVER
23 OUTSIDE INFLUENCES. OUR HOMES ARE OUR
24 REFUGE, OUR SANCTUARY. THE CONSTANT,
25 UNBEARABLE AT TIMES, ALMOST MADDING

1 NOISE FROM THE HELICOPTERS HAS VIOLATED
2 THE SANCTITY OF OUR HOMES. WE HAVE NO
3 REFUGE. LIKE WE -- YOU CANNOT GET AWAY
4 FROM IT. THE SOUNDTRACK OF OUR LIVES
5 IS OVERSHADOWED BY THE CONSTANT DRONE
6 OF THESE LOW FLYING HELICOPTERS. ON
7 BUSY DAYS, WHICH SEEM LIKE MOST OF THIS
8 PAST SUMMER, THE NOISE PERSISTS FOR
9 ABOUT 14 HOURS EVERY DAY, EVEN ON
10 SUNDAYS. NO MATTER WHAT WE ARE DOING
11 IN THE PRIVACY OF OUR HOME, INSIDE WE
12 HEAR THE CONSTANT DRONE OF HELICOPTERS.
13 FAMILIES ON OUR STREET ROUTINELY HAVE
14 THEIR SLEEP INTERRUPTED. CHILDREN OF
15 MINE INCLUDED. I HAVE FOUR CHILDREN
16 WHO STRUGGLE TO GO TO SLEEP EVERY NIGHT
17 LISTENING TO THE NOISE. ONE OF MY
18 NEIGHBORS HAS BEEN FORCED TO RELOCATE
19 HIS MASTER BEDROOM FROM UPSTAIRS TO A
20 QUIETER FIRST FLOOR GUEST ROOM. OUR
21 MEAL TIMES AND THE PRECIOUS
22 CONVERSATION THAT COMES WITH THEM IS
23 ROUTINELY INTERRUPTED BY THE NOISE OF
24 HELICOPTERS INDOORS. AND IT IS NEARLY
25 IMPOSSIBLE TO SIT OUT ON OUR PATIO AND

1 HAVE A MEAL. OUR CHILDREN CAN'T SIT
2 OUTSIDE IN THE AFTERNOONS AND DO THEIR
3 HOMEWORK BECAUSE YOU CAN'T CONCENTRATE.
4 PHONE CONVERSATIONS ARE INTERRUPTED BY
5 CONSTANT TAKE-OFFS AND LANDINGS. OUR
6 TVS HAVE TO BE TURNED UP LOUDER TO
7 COMPENSATE FOR THE NOISE. THE FAMILIES
8 IN OUR NEIGHBORHOOD ARE NO LONGER ABLE
9 TO SPEND QUALITY TIME IN THEIR YARDS.
10 ALL OUTDOOR ACTIVITIES LIKE GARDENING,
11 GRILLING OUT, SWIMMING. IF YOU WANTED
12 TO JUST RELAX IN THE HAMMOCK, IT'S
13 IMPOSSIBLE TO ENJOY. THE CONSTANT
14 NOISE, AND IT IS CONSTANT, FROM THE
15 HELICOPTERS DROWNS EVERYTHING ELSE OUT
16 AND HAS ROBBED US OF OUR RIGHT AS
17 CITIZENS TO THE QUIET ENJOYMENT OF OUR
18 HOMES. THE UNFORTUNATE AND
19 UNPRECEDENTED DECISION ON THE PART OF
20 COUNTY STAFF TO ALLOW AVIATION IN THIS
21 LOCATION HAS SHATTERED THE SANCTITY OF
22 OUR HOMES. IT HAS SHAKEN THE
23 FOUNDATION UPON WHICH WE BUILD OUR
24 LIVES AND HAS DISRUPTED AND ENDANGERED
25 THE SAFE AND THE PHYSICAL WELL-BEING OF

1 AN ENTIRE NEIGHBORHOOD. IT IS
2 EXTREMELY HARD FOR US TO RECONCILE THE
3 FACT THAT OUR SAFETY AND PEACE OF MIND
4 HAS BEEN COMPROMISED FOR THE SAKE OF
5 ONE MAN'S GAIN. UNFORTUNATELY, THIS IS
6 OUT OF OUR HANDS. WE HAD NO SAY GOING
7 INTO THIS AND WE -- IT'S TOTALLY UP TO
8 YOU GUYS, BUT AS THE MOTHER OF FOUR
9 YOUNG CHILDREN AND ON BEHALF OF ALL THE
10 FAMILIES AFFECTED, I URGE YOU TO DO THE
11 RIGHT THING. IMAGINE THIS IS YOUR
12 NEIGHBORHOOD. IT'S YOUR FAMILY AND
13 YOUR HOME. PLEASE MAKE THE RIGHT
14 DECISION FOR THESE FAMILIES SO ALL
15 ENCOMPASSING ARE AFFECTED BY THIS
16 SITUATION. IN THE WORDS OF ABRAHAM
17 LINCOLN, "WHENEVER THERE IS CONFLICT
18 BETWEEN HUMAN RIGHTS AND PROPERTY
19 RIGHTS, HUMAN RIGHTS MUST PREVAIL."
20 THANK YOU FOR YOUR TIME.
21 AUDIENCE: APPLAUSE.
22 MR. MOSS: MR. CHAIRMAN, JONATHAN WOULD
23 LIKE TO SPEAK TONIGHT.
24 MR. HANNA: I THINK EVERY MEMBER HERE
25 AGREES THAT IT IS A NUISANCE. I THINK

1 WE WILL STIPULATE THAT IF THERE IS A
2 MEMBER ON THE BOARD THAT DOESN'T AGREE
3 WITH THAT PLEASE SAY NOW, THAT WAY WE
4 WILL SAVE SOME TIME.

5 **JONATHAN MISEMER**, HAVING BEEN FIRST DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 MR. MISEMER: IT'S JONATHAN MISEMER,
8 1529 BROOKGREEN DRIVE, PLANTATION
9 POINTE. REALLY ALL -- WE REALLY CAN'T
10 BELIEVE WE'RE HERE TODAY. AND I'M
11 SORRY WE ARE HAVING TO BE HERE. I
12 APPRECIATE ALL THE SUPPORT THAT
13 PLANATION POINTE AND THE NEIGHBORHOOD
14 HAS BROUGHT. THIS IS RIDICULOUS. IT
15 BOGGLES MY MIND EVERY DAY THAT MY
16 FAMILY HAD TO HIRE AN ATTORNEY TO FIGHT
17 FOR SOMETHING THAT SHOULD HAVE NEVER
18 BEEN APPROVED TO BEGIN WITH. THE LOOK
19 ON THE FACES OF SOME OF THE
20 ADMINISTRATORS YOU CAN JUST TELL THAT
21 THEY FEEL BADLY. THEY FEEL BAD THAT
22 THEY MADE THAT ERROR. AND YOU KNOW, I
23 WOULD LOVE TO KNOW WHO WHISPERED IN THE
24 ADMINISTRATOR'S EAR SAYING, "MAKE THIS
25 HAPPEN." I MEAN, BECAUSE, HECK, EVEN

1 THE OWNER OF THE CHOPPER BUSINESS, I
2 MEAN, HE SURE DID A GREAT JOB SELLING
3 THIS THING. I MEAN, HE DID GREAT JOBS
4 SELLING THIS TO B&C TO HORRY COUNTY. I
5 MEAN, HE'S MISLED PEOPLE IN HIS PAST.
6 I GUESS THAT'S WHY THE FCC FILED
7 NUMEROUS CHARGES AGAINST HIM FOR
8 SECURITY FRAUD AND MISLEADING...
9 MR. BARODY: OBJECTION. THIS FALLS
10 FAR BEYOND THE SCOPE OF ANYTHING THAT
11 WE'RE HERE ABOUT TODAY.
12 MR. MISEMER: I'M JUST LETTING THEM
13 KNOW THAT HE HAS MISLEAD A LOT OF
14 PEOPLE AND HE IS MISLEADING HORRY
15 COUNTY. A COUPLE MORE SENTENCES IS ALL
16 I HAVE ON THAT ISSUE. HE SURE SOUNDS
17 LIKE A NICE GUY AND REALLY WANTS TO BE
18 A GOOD NEIGHBOR, YOU KNOW. I'M SURE HE
19 WAS LAUGHING THE WHOLE WAY TO HIS CAR
20 WHEN HE GOT THAT APPROVAL LETTER FROM
21 RENNIE. I TELL YOU SINCE MAY, THE
22 NEIGHBORS OF HORRY COUNTY AND THE CITY
23 OF MYRTLE BEACH HAD TO DEAL WITH A
24 CONSTANT NOISE ALL DAY LONG THAT THESE
25 CHOPPERS MAKE. JUST RECENTLY, I WAS AT

1 THE STOP LIGHT AT 10TH AVENUE AND 17
2 BY-PASS GOING NORTH ONTO 29TH AVENUE.
3 BY THE TIME I GOT FROM 10TH AVENUE TO
4 29 AVENUE WITH MY DAUGHTER, I ALMOST --
5 TWO VEHICLES ALMOST COLLIDED AGAINST ME
6 BECAUSE THEY WERE SITTING THERE MORE
7 FOCUSED ON LOOKING AT THE CHOPPER
8 INSTEAD OF FOCUSING ON THE ROAD. IT'S
9 RIDICULOUS.
10 AUDIENCE: (CLAPPING.)
11 MR. MISEMER: WE HAVE ALL HAD IT 5
12 AGONIZING MONTHS NOW SINCE THIS
13 BUSINESS WAS ALLOWED TO OPEN. OUR
14 QUALITY OF LIVES, THE ENJOYMENT OF OUR
15 LAND, AND THE VALUES OF OUR HOMES HAVE
16 ALL BEEN SEVERELY DAMAGED BECAUSE OF
17 THE POOR JUDGMENT AND DECISION MAKING
18 THAT WENT INTO APPROVING THIS HELIPORT.
19 I THINK EVERYONE IN THIS BUILDING
20 EXCEPT FOR THE CHOPPER BUSINESS OWNERS,
21 I GUESS KNOWS THAT THIS SHOULD HAVE
22 NEVER HAPPENED. I'M EMBARRASSED THAT
23 OUR COUNTY AND IT'S ADMINISTRATORS
24 ALLOWED THIS TO HAPPEN AND I HOPE AND
25 PRAY THAT OUR MEETING TONIGHT BRINGS

1 CLOSURE TO THIS BUSINESS FOR THE SAKE
2 OF ALL THE CITIZENS FOR HORRY COUNTY,
3 CITY OF MYRTLE BEACH, AND THE TOURIST
4 THAT WE CHERISH TO KEEP SAFE.

5 MS. CREECH: I DON'T REALLY HAVE A
6 QUESTION AND I WILL TELL YOU I HAVE
7 BEEN WHERE YOU ARE ADDRESSING THIS
8 BOARD IN MY LIFE AND COUNTY COUNCIL AND
9 HAVE BEEN AS UPSET AS YOU ARE. BUT LET
10 ME SAY THIS, IT DOES NOT HELP YOUR CASE
11 -- WE HAVE WORKED WITH OUR
12 ADMINISTRATOR AND OUR STAFF FOR MANY,
13 MANY YEARS. NO ONE WHISPERED IN THEIR
14 EAR AND GOT THEM TO DO THIS.

15 MR. MISEMER: WE HOPE NOT.

16 MS. CREECH: I HONESTLY BELIEVE THAT
17 THEY, IN THEIR MIND, DID THE BEST THEY
18 COULD. WHETHER I AGREE WITH THEM OR
19 NOT, IT MAY BE SOMETHING DIFFERENT, BUT
20 I DON'T THINK THAT'S PROPER TO DO SO.
21 THANK YOU.

22 MR. HANNA: THANK YOU, MS. CREECH. ANY
23 OTHER QUESTIONS.

24 MR. MOSS: MR. CHAIRMAN, I WILL TELL
25 YOU THAT I PREPARED MY CLIENT THAT THE

1 ONE THING THAT MR. MISEMER ASKED,
2 EXPECTED OR HOPED OR WISHED WOULD
3 HAPPEN CANNOT HAPPEN AND WILL NOT
4 HAPPEN TONIGHT REGARDLESS OF THIS
5 BOARDS' DECISION. WE REALIZE THE
6 OPERATION OF THIS BUSINESS WILL NOT BE
7 SHUT DOWN BY THIS BOARD. WE KNOW THAT
8 REGARDLESS OF THIS BOARDS' DECISION, WE
9 ARE LIKELY GOING TO BE ACROSS THE
10 ATRIUM IN CIRCUIT COURT DURING THAT
11 ACTION. HE IS GOING TO OPERATE AND MY
12 CLIENT, HE UNDERSTANDS THAT. I
13 PREPARED HIM FOR THAT AND WE DISCUSSED
14 THAT. YOU KNOW, ONE OF THE THINGS I
15 MENTIONED TO YOU WAS PROPERTY VALUES
16 AND ZONING. AND THE NEXT PERSON THAT
17 IS GOING TO SPEAK IS MR. MARK LEWIS AND
18 I BELIEVE HE CAN TELL YOU IT'S REAL.
19 AND HE CAN SPEAK TO THAT VERY SHORT
20 ISSUE AND THE CONSEQUENCES.

21 **MARK LEWIS**, HAVING BEEN FIRST DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 MR. LEWIS: MARK LEWIS, 3992 LONG
24 WILLOW DRIVE, PLANTATION POINTE, MYRTLE
25 BEACH.

1 MR. HANNA: THANK YOU, MR. LEWIS. I
2 CERTAINLY UNDERSTAND THAT YOU HAVE AN
3 EXCELLENT REPUTATION. HOW DO THE
4 PROPERTY VALUES PLAY INTO WHETHER OR
5 NOT THE ZONING ADMINISTRATOR MADE AN
6 ACCURATE DECISION BASED ON WHAT SHE HAD
7 TO WORK WITH?

8 MR. LEWIS: I'M JUST HERE TO GIVE --
9 I'M A REAL ESTATE AGENT AND HAVE BEEN
10 FOR 16 YEARS HERE IN MYRTLE BEACH AND
11 HAVE LIVED HERE FOR 32 YEARS. I'M JUST
12 HERE TO GIVE REAL WORLD EXPERIENCE.
13 THIS HELIPORT HAS DIRECTLY COST ME A
14 SALE. I HAVE AN E-MAIL HERE FROM A
15 CLIENT THAT I HAVE BEEN WORKING WITH
16 SINCE MARCH OF 2012, SPECIFICALLY
17 LOOKING IN CENTRAL MYRTLE BEACH,
18 PLANTATION POINTE, PINE LAKES AREA. HE
19 IS VERY SPECIFIC HE IS GOING TO BUILD A
20 HOUSE AND HE WORKS FOR AN RENOWNED
21 BUILDER IN THIS AREA AND I HAVE AN
22 E-MAIL DATED TUESDAY, MAY 29TH, 2012.
23 HE WAS LOOKING AT LOT 63 IN PLANTATION
24 POINTE, WHICH IS A 9/10TH OF AN ACRE
25 LOT. IT DIRECTLY ABUTS THE BERM AND

1 THE HELICOPTER TAKE-OFF RIGHT BEHIND IT
2 AS WELL. ASKING \$69,900.00 IS A
3 PRUDENTIAL BURROUGHS & CHAPIN OWNED
4 LOT. IT'S ONE OF THE LAST LOTS THAT
5 THEY HAD. HE WAS INTERESTED AND WE
6 WERE GETTING READY TO SUBMIT AN OFFER
7 ON THAT PROPERTY RIGHT AROUND THE THIRD
8 WEEK OF MAY. THAT'S WHEN WE LEARNED
9 THAT THERE WAS A RUMOR THAT THERE WAS A
10 HELICOPTER BUSINESS GOING TO BE
11 STARTING THERE. WE WERE LOOKING AT THE
12 BROADWAY AT THE BEACH WEBSITE AND IT
13 HAD THE HELICOPTER ADVENTURES LOGO
14 PLACED OVER THERE, WHICH, OF COURSE, I
15 HAD TO INFORM HIM. I CAN'T ALLOW A
16 CLIENT TO SPEND \$70,000.00 ON A LOT AND
17 \$400,000.00 TO BUILD A HOUSE AND FIND
18 OUT THAT HE MIGHT HAVE A POTENTIAL
19 NUISANCE BEHIND HIM. SO, I DISCLOSED
20 TO HIM THAT THERE WAS A LIKELIHOOD THAT
21 A HELICOPTER BUSINESS IS GOING TO BE
22 TAKING PLACE THERE. AFTER A FEW
23 E-MAILS HERE, HIS FINAL E-MAIL TO ME AT
24 5:01 P.M. ON MAY 29TH, 2012 IT SAYS,
25 "PLEASE CONTINUE TO LOOK WITH ALL THE

1 SAME PARAMETERS AS BEFORE, FOR NOW.
2 YOU CAN TELL THE AGENT..." MEANING THE
3 LISTING AGENT OF PRUDENTIAL LOT, "THAT
4 I AM REMOVING INTEREST IN LOT 63
5 BECAUSE THE HELICOPTER PAD." AND HE
6 HAS STILL NOT PURCHASED HIS PROPERTY
7 AND I DON'T KNOW IF WE WILL BE ABLE TO
8 FIND HIM ONE BECAUSE HE HAS VERY
9 SPECIFIC NEEDS THAT, THAT LOT WAS LARGE
10 ENOUGH TO FILL. SO, WHEN EVERYBODY
11 SAYS, "WILL GET USED TO IT OR IT'S JUST
12 A NUISANCE." IT'S NOT A NUISANCE TO
13 ME. HE TOOK \$3,500.00 OUT OF MY
14 POCKET. AND THAT'S WHAT I'M HERE
15 STATING.
16 MR. HANNA: THANK YOU, MR. LEWIS. ANY
17 QUESTIONS?
18 AUDIENCE: (CLAPPING.)
19 MR. HANNA: MR. MOSS, DO WE HAVE
20 ANYBODY THAT'S GOING TO ADDRESS THE
21 QUESTION? I THINK WE UNDERSTAND IT'S A
22 NUISANCE. NOBODY WANTS IT. I NEED
23 SOMEBODY TO ADDRESS HOW SHE WAS
24 INCORRECT IN HER DECISION.
25 MR. MOSS: WELL, RESPECTFULLY, I THINK

1 HER DECISION DEALS WITH THE
2 COMPATIBILITY OF NEIGHBORING LAND USES
3 AND I THINK THAT IS WHAT THESE
4 RESIDENTS ARE TRYING TO TELL YOU.
5 MR. HANNA: OKAY. AND I THINK WE HAVE
6 STIPULATED TO THAT.
7 MR. MOSS: WELL, NOT THAT IT'S A
8 NUISANCE. HE HASN'T STIPULATED TO
9 THAT.
10 MR. BEVERLY: IS THAT NOT COUNTY
11 COUNCIL'S JOB?
12 MR. HANNA: I THINK THAT WAS ADDRESSED
13 BY MS. CARTER WHEN THEY ZONED IT THAT.
14 MR. MOSS: IT IS COUNTY COUNCIL'S JOB
15 TO SET POLICIES AND THEY HAVE DONE
16 THAT. THEY'VE ADOPTED AND CLASSIFIED
17 PROPERTIES OF PARTICULAR ZONING
18 ORDINANCES FOR THIS DISTRICT. THAT IS
19 COUNTY COUNCIL'S JOB. AND THEY HAVE
20 DONE THAT, BUT IN THIS CONTEXT,
21 SOMEBODY HAS ALWAYS GOT TO INTERRUPT
22 THAT THING IN THIS CONTEXT. MS. MINCEY
23 HAD TO. UNFORTUNATELY HAD THE
24 RESPONSIBILITY OF MAKING THE DECISION.
25 AND THE COMPATIBILITY OF THE USES

1 PROPOSED TO HER WITH THE ZONING
2 DISTRICT IN THE SURROUNDING AREAS ARE
3 WHAT'S IN QUESTION. AND THAT IS VERY
4 MUCH A PART OF THIS APPEAL, IN MY
5 OPINION, AS A DEFINITION AND THAT'S
6 WHAT THESE SYSTEMS ARE TRYING TO DO.
7 NOW, THERE ARE FOUR OTHER PERSONS THAT
8 I HAVEN'T IDENTIFIED BY MR. HINDE THAT
9 WANTED TO SPEAK. SOME OF THEM AREN'T
10 EVEN IN PLANTATION POINTE.
11 MR. HANNA: ARE THEY GOING TO ADDRESS
12 THE ISSUES?
13 MR. MOSS: THEY WERE ALL ASK TO ADDRESS
14 NEW ISSUES AND HOW IT AFFECTED THEM
15 DIFFERENTLY, AND THAT'S WHAT THEY HAVE
16 TRIED TO DO. SO, YES, THEY ARE GOING
17 TO ADDRESS NEW ISSUES. ARE THEY GOING
18 TO ANSWER SPECIFIC QUESTIONS FOR YOU,
19 I'M NOT CERTAIN.
20 MR. HANNA: WE'LL CONTINUE DOWN THIS
21 ROAD AND SEE HOW -- WHO IS YOUR NEXT
22 PARTY?
23 MR. MOSS: MR. BOB ZURCHER.
24 MR. HANNA: MR. ZURCHER, IS GOING TO
25 ADDRESS FLIGHT PATTERNS AND THINGS LIKE

1 THAT. THAT'S THE ONLY...

2 AUDIENCE: WHERE DO YOU WANT US TO GO?

3 YOU NEED TO TELL US WHERE WE ARE

4 SUPPOSED TO GO...

5 MR. HANNA: SIR, YOU'RE WELCOME TO

6 LEAVE ANY TIME YOU WANT. THAT'S

7 ENOUGH.

8 MR. MOSS: MR. CHAIRMAN, I REALIZE THE

9 DIFFICULTY HERE THAT Y'ALL HAVE AN

10 AGENDA TONIGHT BEYOND US AND I DO

11 RESPECT THAT. AND I HAVE BEEN IN

12 ENOUGH OF THESE MEETINGS TO UNDERSTAND

13 HOW TAXING THAT CAN BE, BUT I'VE TAKEN

14 300 PEOPLE WHO HAD SOMETHING THEY

15 WANTED TO VOICE AND WE HAVE CONDENSED

16 IT DOWN TO ABOUT 7 OR 8...

17 MR. HANNA: AGAIN, I WANT TO HEAR

18 SPECIFICS TO THIS. WE UNDERSTAND IT'S

19 A NUISANCE. I WOULDN'T WANT THEM NEXT

20 TO MY HOUSE. BUT HOW DID SHE ERR IN

21 HER JUDGMENT?

22 AUDIENCE: I JUST HAVE ONE QUESTION.

23 MR. HANNA: MA'AM, YOU WILL JUST HAVE

24 TO SIT DOWN AND YOU CAN ASK YOUR

25 QUESTION, OKAY. I PROMISE YOU I WILL

1 GET TO YOU NOW THAT YOU HAVE STOOD UP.
2 MR. MOSS: I'M NOT SURE HOW SHE ERRED
3 IS EVEN RELEVANT. THE QUESTION IS, DID
4 SHE ERR?
5 MR. HANNA: OKAY. I MISSPOKE. HOW
6 DID...
7 MR. MOSS: WHEN YOU REALLY GET DOWN TO
8 IT, THERE IS NOT ANOTHER WAY AROUND IT.
9 YOU GUYS HAVE TO DECIDE EITHER TO DO
10 NOTHING, IN WHICH CASE HER ACTION
11 STANDS OR TO MAKE SOMEONE MAKE A MOTION
12 THAT THERE WAS AN ERROR MADE, AND A
13 SECOND, AND THEN A VOTE.
14 MR. HANNA: HERE'S WHAT I WANT TO DO,
15 OKAY. I'M GOING TO HEAR FROM THIS
16 LADY. SHE'S GOT A QUESTION AND I'M
17 GOING TO HEAR FROM HER AND TWO MORE
18 PEOPLE ON YOUR SIDE. YOU DECIDE WHICH
19 TWO PEOPLE YOU THINK THE BOARD SHOULD
20 HEAR FROM. IS THAT FAIR ENOUGH? IT
21 MAY NOT BE. I MEAN, IT'S LIKE YOU
22 SAID, YOU'RE GOING TO THE OTHER SIDE OF
23 THE ATRIUM ANYWAY. YOU'VE ALREADY TOLD
24 US THAT. MA'AM, IF YOU WILL COME BACK
25 FORWARD.

1 MR. BAROODY: MR. CHAIRMAN, MAY I JUST
2 MENTION ONE POINT TO THE BOARD BEFORE
3 THEY SPEAK? VERY BRIEFLY, IS MR. HINDE
4 IN THIS ACTION THE ONLY APPELLANT?
5 THERE ARE NO OTHERS TO THE EXTENT OF A
6 NUMBER OF THEM COMING FORWARD IS
7 REPETITIVE. AND SO, I JUST WANT TO
8 REMIND THE BOARD THAT HE IS THE ONLY
9 APPELLANT.
10 MR. HANNA: WE UNDERSTAND THAT. THANK
11 YOU.

12 **ANN MARIE CATERINA**, HAVING BEEN FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 MRS. CATERINA: ANNE MARIE CAT AT 1533
15 BROOKGREEN DRIVE. WHEN I LOOKED AT THE
16 U.S. -- YOU ASKED ME A QUESTION. HOW
17 DID SHE MAKE A MISTAKE? WELL, WHEN I
18 LOOKED AT EVERYTHING UNDER PERMITTED
19 USES NOW, I PURCHASED A LOT THERE AND
20 BUILT A HOME. EVERYTHING THAT'S STATED
21 HERE IS LEADING YOU DOWN A CERTAIN
22 PATH. IT'S NOT LIMITED TO, BUT IT
23 LISTS; THEATERS, BILLIARD HALLS, POOL
24 HALLS, BOWLING ALLEYS, WATER SLIDES,
25 ETC., ETC., ETC., SIGHT-SEEING DEPOTS.

1 IT IS TAKING YOU DOWN A ROAD -- GIVING
2 YOU EXAMPLES OF WHAT COULD GO THERE.
3 EVERYTHING IS ON THE GROUND THAT IS
4 LISTED THERE. THERE ISN'T ONE THING,
5 AND I UNDERSTOOD THIS WHEN I PURCHASED
6 THE LOT, HOW WOULD I HAVE KNOWN? HOW
7 WOULD I HAVE KNOWN THAT THIS WAS GOING
8 TO POSSIBLY HAPPEN? EVERYTHING THAT
9 THIS SAYS IS ALL COMMON KNOWLEDGE AND
10 BLAH-BLAH-BLAH. WELL, HOW ARE THE
11 PEOPLE SUPPOSED TO KNOW? HOW WOULD THE
12 PUBLIC KNOW BECAUSE ALL THOSE THINGS
13 ARE TAKING YOU -- YOU SEE WHAT I'M
14 SAYING?
15 MR. HANNA: I SEE EXACTLY WHAT YOU ARE
16 SAYING.
17 MRS. CAT: THIS IS THE PATH.
18 MR. HANNA: AND YOU ARE ADDRESSING THE
19 QUESTION.
20 MRS. CAT: THIS WAS THE GREAT PLAN.
21 NOT A HELIPORT OR A HELICOPTER TOURING
22 FACILITY THEN BECAME THE JARGON, BUT IT
23 WAS THE JARGON UP UNTIL FAA STEPPED IN
24 AND THEN IT'S HELIPORT. AND AGAIN, HOW
25 ARE PEOPLE SUPPOSED TO KNOW? HOW WOULD

1 YOU HAVE KNOWN? . HOW WOULD ANYBODY HAVE
2 KNOWN? I WOULD KNOW BY READING THIS
3 AND I CERTAINLY DON'T HAVE PRIVY TO
4 THEIR BRAINS, YOU KNOW, OR WHAT THEY
5 ARE THINKING. SO, WOULD ANYBODY HAVE
6 BUILT A HOME THERE? WOULD ANYBODY HAVE
7 BOUGHT A LOT AND BUILT A HOME THERE?
8 NO. WE COULDN'T HAVE KNOWN. THAT'S
9 WHY WE NEED YOUR HELP. IT FEELS LIKE A
10 TOTAL TRESPASS, YOU KNOW. IT'S GOING
11 TO BE REPETITIVE SO I DON'T WANT TO BE
12 REPETITIVE. IT IS A VIOLATION AND
13 BOUNDARIES HAVE BEEN CROSSED. AND
14 AGAIN, IT'S AN INTERPRETATION.
15 SOMEONE'S INTERPRETATION OR PEOPLE'S
16 INTERPRETATION, BUT NO ONE WOULD HAVE
17 IMAGINED A HELIPORT. THANK YOU.
18 MR. HANNA: THANK YOU, MA'AM.
19 WE ARE GOING T RECESS FOR 5 MINUTES.
20 (RECESS TAKEN.)
21 MR. MOSS: MR. CHAIRMAN, WE HAVE
22 ANOTHER GENTLEMAN THAT MY CLIENT WOULD
23 LIKE YOU TO HEAR FROM MR. BERRY, IS HE
24 GOING TO BE 2 OR 1.
25 MR. HANNA: WE'LL TAKE 2. I APPRECIATE

1 YOU TRYING TO CUT, BUT WE'LL HEAR FROM
2 BOTH OF THEM.

3 **TRAVIS BERRY**, HAVING BEEN FIRST DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 MR. BERRY: TRAVIS BERRY. MY WIFE AND
6 TWO DAUGHTERS AND I LIVE AT 1561
7 BROOKGREEN DRIVE. REAL QUICK, THE
8 FIRST THING I WANTED TO DO IS APOLOGIZE
9 FOR THE NOISE. THOSE ARE MY KIDS READY
10 TO GET OUT OF HERE TOO, 2 AND 5.

11 MR. HANNA: LUCKY MAN.

12 MR. BERRY: THE FIRST THING I WOULD
13 LIKE TO SAY IS THAT I DON'T THINK THERE
14 WAS AN INTENTIONAL VIOLATION BY ANYBODY
15 ON COUNTY COUNCIL OR BY ANYBODY ON THE
16 COUNTY STAFF TO TRY TO HURT ANYBODY IN
17 PLANTATION POINTE OR ANYBODY IN THE
18 NEIGHBORHOODS IN HORRY COUNTY.

19 HOWEVER, THAT DOESN'T CHANGE THE FACT
20 THAT THAT'S THE RESULT. SO, THE
21 QUESTION -- I THINK YOUR QUESTION, MR.
22 CHAIRMAN, YOU ASKED US TO ADDRESS IS
23 WAS THERE A MISTAKE MADE. AND I THINK
24 ABSOLUTELY. I THINK IF ANYBODY WOULD
25 HAVE KNOWN ANYBODY ON THE COUNTY STAFF,

1 THEY WOULD HAVE KNOWN OF THE IMPACT
2 THAT IT'S HAD. I THINK THERE'S NO
3 DOUBT IN MY MIND THAT PEOPLE WOULD HAVE
4 COME TOGETHER IN COMMON SENSE KNOWING
5 THAT SOMEBODY ELSE MENTIONED 20/20.
6 HINDSIGHT IS 20/20, RIGHT? AND IN
7 HINDSIGHT, I THINK SOMEBODY WOULD HAVE
8 SAID, "HOLY COW, WHAT'S HAPPENED HERE?
9 THIS ISN'T THE RIGHT PLACE FOR THIS
10 BUSINESS." AND REALLY WHAT I WANTED TO
11 DO REALLY QUICKLY, AND I WILL BE BRIEF,
12 IS TO GIVE YOU ALL IMPACT AND AN IDEA
13 OF THE IMPACT. I WANT TO FIRST SAY
14 THAT LIKE PROBABLY MANY FOLKS IN THIS
15 ROOM I MAKE MY LIVING WITH ALL THE
16 TOURISTS THAT COME TO MYRTLE BEACH, AND
17 WE LOVE IT HERE. IT'S OUR THIRD HOUSE
18 IN PLANTATION POINTE AND WE'RE
19 APPRECIATIVE OF ANY NEW BUSINESS THAT
20 STARTS THAT ADDS THINGS TO DO FOR OUR
21 TOURISTS AND BRINGS THEM BACK. I WOULD
22 SAY WITH ONE CAVEAT AND THAT IS, NOT
23 WHEN IT GROSSLY IMPACTS THE RESIDENTS
24 AS THIS BUSINESS HAS. I'M SURE THERE'S
25 A PLACE FOR THIS BUSINESS, BUT IT'S NOT

—MABRY COURT REPORTING—

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1 WHERE IT'S LOCATED TODAY. VERY QUICKLY
2 ON THE IMPACT. YOU KNOW, I'VE TALKED
3 TO A LOT OF PEOPLE AROUND TOWN AND
4 FORTUNATELY OR UNFORTUNATELY, MY WIFE
5 WAS HOME WHEN WMBF CAME BY INTERVIEWING
6 HER ON ONE OF THOSE FIRST DAYS SHE WAS
7 INTERVIEWED AND OUR DAUGHTER HAD JUST
8 TURNED 2 AND SHE WAS STARTING TO SPEAK
9 AND SHE WAS WORKING ON HOW TO SAY
10 HELICOPTER BECAUSE THAT'S WHAT SHE WAS
11 HEARING. AND SO, AS EVERYBODY SAW MY
12 WIFE, AND I KNOW A FEW FOLKS AROUND
13 TOWN, I GET A LOT OF QUESTIONS ABOUT
14 THAT. BUT, HEY, I'M A BUSY PERSON LIKE
15 MOST OF YOU ARE, AND AGAIN, I
16 APPRECIATE YOU VOLUNTEERING YOUR TIME
17 FOR THIS COMMUNITY. NORMALLY, FOR ME
18 TO FOCUS ON MY DAILY ACTIVITY, I DON'T
19 PAY A LOT OF ATTENTION TO WHAT'S GOING
20 ON, BUT AS I HAVE TOLD PEOPLE THE
21 STORY, MY FRIENDS AND STUFF THAT DON'T
22 LIVE NECESSARILY IN THE LANDING ZONE,
23 IF YOU WILL, IT'S BEEN AMAZING FOR ME.
24 I HAD TALKED TO THEM FOR A FEW MINUTES
25 TO REALLY GET THEM TO SEE. TO GIVE YOU

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1 A LITTLE BIT OF PROSPECTIVE WHEN THIS
2 IS THE LOUDEST, IS IT DOES GO ON FOR
3 14 HOURS A DAY AS MRS. ANDERSON
4 MENTIONED, BUT WHEN WE'RE TRYING TO SIT
5 DOWN FOR DINNER FROM 5:00 TO 9:00 OR
6 5:00 TO 10:00 OR SOMETIMES ON THE
7 WEEKEND UNTIL 11:00 AT NIGHT. WHEN WE
8 ARE STARTING TO PUT THOSE YOUNG GIRLS
9 TO BED. I CAN TELL YOU THE ONLY THING
10 THAT REALLY HITS HOME FOR ME, WHEN I
11 FINALLY MAKE MY POINT TO SOME OF YOUR
12 FRIENDS IS, WHEN I WAS GROWING UP, YOU
13 KNOW, WHEN I GOT TO BE 10 OR WHATEVER,
14 OUR BEDTIME WAS 8:30. AND FOR THOSE OF
15 YOU WHO REMEMBER BACK IN THE '70'S AND
16 '80'S THE SHOWS THAT WERE ON. AT
17 8 O'CLOCK MASH CAME ON, RIGHT?
18 EVERYBODY REMEMBERS M*A*S*H. YOU HAVE
19 THAT ZONING WHEN AT THE BEGINNING OF
20 THE SHOW EVERY TIME YOU HAVE
21 HELICOPTERS THAT ARE LANDING, RIGHT?
22 WHEN THEY ARE BRINGING IN ALL THE
23 WOUNDED AND THE DOCTORS ARE RUNNING FOR
24 THE HELICOPTERS AND I CAN TELL YOU
25 THIS, THAT'S WHAT IT'S LIKE, ALL DAY

1 EVERY DAY WHEN THEY ARE RUNNING. THE
2 INTENSITY IS THE MOST WHEN THEY ARE
3 TAKING OFF AND LANDING AND WE ARE THERE
4 IMPACTING IT. I'M NOT GOING TO GO INTO
5 THE NOISE AGAIN, BUT AGAIN, I FEEL LIKE
6 HOW WAS THE MISTAKE MADE? WAS THERE A
7 MISTAKE MADE? I SAY ABSOLUTELY BECAUSE
8 NOBODY CONSIDERED THE IMPACT. I HEARD
9 ONE OF THE POSSIBLE USES WAS A FIRING
10 RANGE. I WOULD HOPE WE COULD GO AHEAD
11 AND VOTE ON THAT RIGHT NOW, AND SAY
12 THAT WASN'T HAPPENING. WE DON'T WANT
13 ANYBODY FIRING BULLETS IN THE
14 NEIGHBORHOOD JUST LIKE WE DON'T WANT
15 ANY HELICOPTERS TAKING OFF. THAT WOULD
16 BE MY INPUT.

17 MR. HANNA: THANK YOU. ANY QUESTIONS
18 FOR MR. BERRY?

19 AUDIENCE: (CLAPPING.)

20 MR. MOSS: MR. CHAIRMAN, THE LAST
21 WITNESS THAT MR. HINDE WOULD ASK YOU TO
22 HEAR FROM IS MR. TOM NEWVEARTIA. AND I
23 BELIEVE HE WILL BE BRIEF BASED ON MY
24 CONVERSATION DURING THE BREAK.

25 **TOM NEWVEARTIA**, HAVING BEEN FIRST DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 NAME IS TOM NEWVEARTIA. I LIVE AT 2802
3 OLD BRYAN DRIVE IN PLANTATION POINTE.
4 MOST OF WHAT I WAS GOING TO TALK ABOUT
5 TODAY HAD TO DO WITH NOISE POLLUTIONS.
6 SO, I WILL BYPASS ALL OF THAT. THERE
7 IS ONE POINT THAT I WOULD LIKE TO MAKE.
8 I AGREE WITH MY NEIGHBOR WHO MENTIONED
9 ALL THE DIFFERENT SPECIFIED USES UNDER
10 712.1 AND I ALSO AGREED THAT IT'S
11 IMPOSSIBLE TO MENTION ALL OF THE USES,
12 BUT I DO THINK THE COMMISSIONER MADE A
13 MISTAKE NOT CONSIDERING -- WELL, I
14 DON'T BELIEVE SHE CONSIDERED ARTICLE
15 712.5, WHICH DISCUSSES SPECIAL
16 EXEMPTIONS FOR BUSINESSES WHICH MAY
17 HAVE, IN THE WORDS OF THE CODE,
18 POTENTIAL NEGATIVE IMPACT ON THE
19 COMMUNITY AND MUST BE IN SUBSTANTIAL
20 HARMONY WITH THE AREA IN WHICH IT IS TO
21 BE LOCATED. I THINK THAT A HELICOPTER
22 OPERATION IS WAY TOO IMPLICIT TO FORCE
23 THAT INTO SIGHT-SEEING DEPOT WHEN YOU
24 HAVE THIS ARTICLE WHICH I THINK THE
25 HELICOPTER OPERATION CERTAINLY

1 QUALIFIES AS HAVING A POTENTIAL
2 NEGATIVE IMPACT IN THE COMMUNITY AND
3 CERTAINLY MAY HAVE TO BE WITH THE
4 TALLER HARMONY IN THE AREA IN WHICH IT
5 IS COMING TO. THAT'S ALL I HAVE TO
6 SAY.

7 AUDIENCE: (CLAPPING.)

8 MR. MOSS: MR. CHAIRMAN, I THINK TOM'S
9 RIGHT. I THINK HE'S RIGHT AND HE'S NOT
10 RIGHT. THIS PROBABLY SHOULD BE THE
11 KIND OF USES THAT'S CONSIDERED IN
12 SPECIAL EXEMPTIONS, BUT IT'S NOT ONE
13 THAT SPECIAL EXEMPTION HAS LISTED IN
14 THE CODE FOR WHICH YOU CAN CONSIDER.
15 BUT, BOY, IT WOULD BE GREAT IF IT WERE.
16 THAT BRINGS ME TO ONE OF MY NEXT
17 POINTS. YOU ASKED ME HOW THE ZONING
18 ADMINISTRATOR ERRED AND I THOUGHT ABOUT
19 THAT -- ABOUT THE -- NOT SPECIAL
20 EXEMPTIONS BECAUSE I DON'T THINK IT
21 COMES IN SPECIAL EXEMPTIONS. IT'S NOT
22 LISTED, BUT SHE DENIED IT. SHE SAID,
23 "NO, IT'S NOT A COMPATIBLE USE." AND
24 IF THE OPERATOR CHOOSE TO APPEAL IT,
25 WHAT WOULD'VE HAPPENED? IT WOULD'VE

1 BEEN A PUBLIC NOTICE. THERE WOULD HAVE
2 BEEN SIGNS PUT UP JUST LIKE THERE ARE
3 HERE. THERE WOULD HAVE BEEN SIGNS
4 POSTED. THERE WOULD HAVE BEEN
5 ADVERTISING. WE WOULD COME BEFORE YOU
6 BEFORE THE USE WAS ESTABLISHED AND
7 BEFORE THE RESIDENTS WERE SO
8 SUFFICIENTLY AND NEGATIVELY IMPACTED.
9 MAYBE THAT'S THE WAY, MAYBE IF IT'S NOT
10 AN EXPRESSLY PERMITTED USE, IT OUGHT TO
11 BE DENIED AND BROUGHT TO YOU SO THAT
12 YOU CAN MAKE THE DECISION MAYBE THAT'S
13 THE ANSWER TO YOUR QUESTION. I WOULD
14 LEAVE THAT THOUGHT WITH YOU. THE OTHER
15 THING I WOULD LIKE TO LEAVE WITH YOU IS
16 I HOPE WHEN I MENTIONED EARLIER THAT
17 THIS IS PROBABLY GOING TO GO ACROSS THE
18 ATRIUM, I HOPE NOBODY TOOK OFFENCE TO
19 THAT BECAUSE I CERTAINLY DIDN'T MEAN
20 IT. IT WASN'T A THREAT. IT WASN'T A
21 PROMISE. IT WAS JUST THE FACT. THE
22 FACT IS WE ALL HAVE A LIMITED ROLE
23 HERE. YOURS IS THE ROLE OF THIS
24 APPEAL. AND IF YOU DECIDE THAT THE
25 ZONING ADMINISTRATOR ERRED, WE HAVE AN

1 OPERATOR WHO HAS INVESTED A TREMENDOUS
2 AMOUNT OF TIME, EFFORT, AND MONEY AND
3 HE FEELS LIKE HE'S BEEN COMPROMISED OR
4 THREATENED SOMEHOW BY THE COUNTY'S
5 ACTION. NO DOUBT, HE WILL TAKE THAT
6 ACROSS THE ATRIUM. OKAY. IF YOU
7 DECIDE THAT THE ZONING ADMINISTRATOR
8 WAS CORRECT AND AFFIRM HER DECISION,
9 THEN YOU HAVE THE RESIDENTS HERE WHO
10 ARE GOING TO GO ACROSS THE ATRIUM AND
11 EXPRESS TO THE COURT THAT THEY THINK
12 THAT'S NOT A PROPER DECISION. SO, WHAT
13 I SAY MAY BE AROUSING, BUT IT CERTAINLY
14 DIDN'T MEAN TO INTIMIDATE ANYBODY
15 BECAUSE THAT'S NOT MY WAY. BUT HERE'S
16 THE THING, MAYBE YOUR DECISION IS NOT
17 SO MUCH ABOUT THIS CASE, BUT ABOUT THE
18 NEXT ONE. BECAUSE IF YOU DECIDED IN
19 THIS CASE THE ZONING ADMINISTRATOR MADE
20 AN ERROR, THEN SHE WILL KNOW WHAT TO DO
21 THE NEXT TIME SOMEBODY COMES IN AND
22 ASKS HER THIS. AND SO MAYBE IT'S THE
23 NEXT CASE THAT YOU'RE TRYING TO KEEP
24 FROM GOING ACROSS THE ATRIUM, NOT THIS
25 ONE. I DON'T THINK YOU CAN KEEP THIS

1 ONE FROM GOING OVER THERE BECAUSE THE
2 STAKES ARE SO HIGH. I WANTED TO
3 EXPLAIN THAT AND I CERTAINLY DON'T WANT
4 ANYBODY TAKING ANY OFFENCE. IF YOU
5 REMEMBER, I TOLD YOU EARLIER THAT I
6 TRIED TO GO FIND SOME -- I DID FIND A
7 CASE AND I THINK THE CASE IS TERRIBLY
8 RELEVANT. I WOULD LIKE TO QUOTE TO YOU
9 THE WORDS OF JUSTICE SAUNDERS OF THE
10 SUPREME COURT OF SOUTH CAROLINA AND I
11 THINK AT THE TIME HE WAS CHIEF JUSTICE.
12 THIS IS JUST THE STANDARDS. "IT IS NOT
13 UNREASONABLE FOR A PROPERTY OWNER NOT
14 TO WANT A HELICOPTER CONSTANTLY TAKING
15 OFF AND LANDING NEAR HIS OR HER
16 PROPERTY. THE CONCLUSION IS NOT ONLY A
17 MATTER OF COMMON SENSE, BUT IS
18 SUPPORTED BY THE RECORD." IN THIS
19 CASE, "TOO NEAR BY HOME OWNERS
20 TESTIFIED THAT AS OFTEN AS EVERY 15
21 MINUTES THE DEFENDANT'S HELICOPTERS
22 CAUSE VIOLET VIBRATIONS WITHIN THEIR
23 HOMES AND NOISE LEVELS WE'VE SEEN
24 INTERFERE WITH CONVERSATIONS." AND
25 THAT'S THE CHIEF JUSTICE OF THE SUPREME

1 COURT. NOW, THE CASE WASN'T A ZONING
2 CASE IN THIS CONTEXT, BUT THIS IS WHY
3 IT'S RELEVANT. GUESS WHERE IT WAS?
4 IT'S THE CASE OF MYRTLE BEACH FARMS
5 VERSUS HERSHEY AND THE CASE THAT'S ON
6 THE HELICOPTER TOUR FACILITY LOCATED ON
7 2.76 ACRES OF LANDS ON THE FRONTAGE
8 ROAD NEAR THE INTERSECTION OF 10TH
9 AVENUE NORTH AND HIGHWAY 17 HIGHWAY.
10 IT'S THE SAME AREA. NOW, THIS CASE IS
11 OUT OF THE '80'S. SO, AT THE TIME
12 MYRTLE BEACH FARMS WAS TRYING TO SHUT
13 DOWN A OPERATION THAT WAS ESTABLISHED
14 BY A TENANT THAT THEY HAD LEASED TO
15 BECAUSE IT DIDN'T MEET MYRTLE BEACH
16 FARMS ESTIMATION, THE RESTRICTED
17 COVENANTS THAT GO ON THE PROPERTY.
18 THIS WAS NOT A ZONING CASE, BUT A
19 RESTRICTED COVENANTS CASE, BUT IT'S THE
20 SAME NEIGHBORHOOD. I JUST THOUGHT THAT
21 WAS SO CONFUSING WHEN I FOUND IT I
22 WANTED TO BRING IT TO YOUR ATTENTION.
23 TO THOSE OF YOU WHO WOULD LIKE TO KNOW
24 THE SITE, FOR THE RECORD, ALSO IT'S 304
25 SOUTH CAROLINA 94 AND 401 SOUTHEAST

1 SECTION OF 196. SO, YOUR POWER -- ONE
2 OF YOUR LISTED DUTIES IS TO HEAR AND
3 DECIDE APPEALS WHERE IT HAS BEEN
4 ALLEGED THAT THE ZONING ADMINISTRATOR
5 ERRED. WE BROUGHT THAT TO YOU TODAY.
6 NO DOUBT YOU ARE GOING TO HEAR FROM THE
7 OPERATOR LOTS OF DOLLARS AND TIME AND
8 EFFORT HAVE BEEN EXPENDED. A GREAT
9 LOST, \$3 MILLION WORTH, IS WHAT WAS
10 SERVED IN THE APPLICATION. THAT'S NOT
11 SOMETHING FOR YOU. THE FACT OF THE
12 MATTER IS MOST OF THE \$3 MILLION IS THE
13 HELICOPTER THEMSELVES, WHICH BY
14 DEFINITION ARE TRANSPORTABLE. WE'VE
15 GOT MOBILE OFFICE BUILDINGS IN THE
16 PHOTOS. THEY'RE TRANSPORTABLE. THAT'S
17 NOT REAL, BUT EVEN IF IT WAS REAL, IT
18 SHOULDN'T AFFECT YOUR DECISION. YOU'RE
19 PROBABLY GOING TO BE PRESENTED WITH A
20 TESTIMONY OF WHAT HE DID AND THE WAY
21 IT'S FUNDAMENTALLY IT IS UNFAIR. I
22 HAVE BEEN THERE. I HAVE REPRESENTED
23 DEVELOPERS. I KNOW HOW THE PROCESS
24 WORKS. I'VE COME OVER HERE AND DONE
25 EXACTLY WHAT HE DID, SEEK ZONING BEFORE

1 YOU GO FORWARD AND SPEND MONEY. AND
2 I'VE BEEN ON THE OTHER END OF IT AND
3 I'VE SEEN MS. CARTER TAKE A VERY
4 DIFFERENT ATTITUDE WITH MY CASE AND MY
5 CLIENTS SPENT LOTS OF MONEY AND WERE
6 UPSET BECAUSE A DECISION WAS MADE. SO,
7 THAT'S NOT REALLY RELEVANT. YOU MIGHT
8 GET COUNTY COUNCIL TO PROPOSE A NEW
9 ORDINANCE OR THE PLANNING COMMISSION SO
10 THIS WON'T HAPPEN AGAIN. AND THAT'S
11 NOT -- IT MIGHT BE RELEVANT, BUT IT
12 DOESN'T HELP ME. WHAT YOU GUYS HAVE TO
13 DECIDE IS WHETHER OR NOT YOU BELIEVE AN
14 ERROR WAS MADE, IF YOU BELIEVE ONE WAS
15 MADE. IF YOU BELIEVE ONE WAS MADE,
16 PERHAPS THIS KIND OF THING WON'T HAPPEN
17 AGAIN. PERHAPS THE USE WILL BE DENIED
18 AND THIS QUESTION WON'T COME TO YOU IN
19 AN APPEAL POSTURE OR AT A PUBLIC
20 HEARING. AND THAT IS, RESPECTFULLY,
21 WHAT MR. HINDE IS ASKING YOU TO DO.
22 THIS TIME THERE WAS A MISTAKE MADE. WE
23 ARE NOT GOING TO STOP THIS FROM GOING
24 ACROSS THE ATRIUM EITHER WAY, BUT WE
25 MIGHT THE NEXT ONE.

1 MR. HANNA: THANK YOU, MR. MOSS. MS.
2 CARTER.

3 MR. CARTER: JUST BRIEFLY, I WANTED TO
4 ADDRESS ONE OF MR. MOSS' POINTS. THE
5 LAST POINT HE MADE, WHICH HE SEEMED TO
6 BE SAYING WHEN SOMEONE COMES IN AND
7 SEEKS ZONING COMPLIANCE THAT MS.
8 MINCEY, IF NOT SPECIFICALLY IN THE
9 ORDINANCE, SHOULD DECLINE TO MAKE A
10 DECISION AND BRING THOSE DECISIONS TO
11 THE ZONING BOARD. I CAN TELL YOU THAT
12 THIS BOARD WOULD BE MEETING ALMOST
13 EVERY DAY OF THE WEEK BECAUSE WE GET
14 THOSE ALL THE TIME. LIKE I SAID, THE
15 BUSINESS LICENSE DEPARTMENT RECOGNIZES
16 ABOUT 450 DIFFERENT TYPES OF BUSINESSES
17 AND THERE IS NO WAY TO LIST ALL OTHERS
18 IN EVERY ZONING DISTRICT IN WHICH THEY
19 WOULD BE ALLOWED. WE HAVE TO RELY ON
20 THE BROADER USE CATEGORIES AND I WOULD
21 ALSO POINT OUT THAT SECTION 1309 OF THE
22 ZONING ORDINANCE SPECIFICALLY STATES,
23 "IT IS THE INTENTION OF THIS ORDINANCE
24 THAT ALL QUESTIONS ARISING IN
25 CONNECTION WITH THE ENFORCEMENT OF THE

1 ORDINANCE SHOULD BE PRESENTED FIRST TO
2 THE ZONING ADMINISTRATOR. AND THEN
3 SUCH QUESTIONS SHALL BE PRESENTED TO
4 THE ZONING BOARD OF APPEALS ONLY ON
5 APPEAL OF THE DECISION OF THE ZONING
6 ADMINISTRATOR." MS. MINCEY DOESN'T
7 HAVE THE OPTION OF NOT MAKING A
8 DECISION. SHE HAS TO MAKE A DECISION.
9 IF PEOPLE ARE AGGRIEVED BY IT THEN THEY
10 CAN COME TO THIS BOARD, YOU KNOW. IN A
11 SINGLE WEEK I REMEMBER BEING ASKED
12 ZONING QUESTIONS ABOUT CALL CENTER.
13 WHAT ZONING DISTRICT WOULD A CALL
14 CENTER BE IN? GUESS WHAT, CALL CENTER
15 IS NOT LISTED IN ANY ONE OF THE ZONING
16 ORDINANCES. I WAS ASKED ABOUT AUCTION
17 HOUSES. GUESS WHAT? AUCTION HOUSE IS
18 NOT LISTED ANYWHERE IN THE ZONING
19 ORDINANCE. I MEAN, IT HAPPENS ALL THE
20 TIME EVERY DAY ALL DAY LONG. AND WE
21 DO, I THINK, DO AN OUTSTANDING JOB. I
22 THINK MS. MINCEY DOES AN OUTSTANDING
23 JOB IN APPLYING THE ZONING ORDINANCE.
24 I ALSO WANTED TO MENTION THAT IF COUNTY
25 COUNCIL PASSES AN ORDINANCE TO ADDRESS

1 THIS SITUATION OR ANY SITUATION IN THE
2 ZONING ORDINANCE, IT'S NOT GOING TO
3 HAVE ANY EFFECT WHATSOEVER ON
4 DEVELOPMENT PREMIUM PROPERTY. I KNOW
5 SOMEONE SAID COULDN'T WE HAVE GONE TO
6 COUNTY COUNCIL AND SAID, "THERE'S
7 NOTHING IN THE ORDINANCE. WHAT DO WE
8 DO?" WE DON'T HAVE THAT OPTION EITHER
9 BECAUSE THE ORDINANCE IS LOCKED IN
10 PLACE BECAUSE OF THE DEVELOPMENT
11 AGREEMENT AND IT VERY CLEARLY STATES,
12 "THAT THIS DOCUMENT AND THE ORDINANCES
13 IN PLACE ON THE DATE THAT IT WAS SIGNED
14 SHALL GOVERNOR ALL ASPECTS OF LAND
15 DEVELOPMENT FOR THE PROPERTIES THAT ARE
16 INCLUDED WITHIN IT." SO, BASICALLY IF
17 WE DON'T -- THESE FOLKS WHAT WE TOLD
18 EVERYBODY ELSE. YOU'LL HAVE TO FIND
19 AMUSEMENT/COMMERCIAL PROPERTY OR GET
20 RE-ZONED. THEIR ONLY OPTION FOR
21 RE-ZONING ARE THESE DISTRICTS. I MEAN,
22 THIS ORDINANCE IS THE ORDINANCE
23 APPLICABLE TO THESE PROPERTIES. I KNOW
24 KEN MOSS HAD MENTIONED THE PA1 DISTRICT
25 AND THE AM2. WELL, AM2 IS JUST THE NEW

1 VERSION OF THE AMUSEMENT/COMMERCIAL AC.
2 WE SLID AMUSEMENT/COMMERCIAL INTO TWO
3 DISTRICTS, AM1 AND AM2. INSTEAD OF
4 HAVING INDOOR AMUSEMENTS AND OUTDOOR
5 AMUSEMENTS IN ONE CATEGORY AC, WE SAID
6 INDOOR AMUSEMENTS WILL BE IN AM1 AND
7 OUTDOOR AMUSEMENTS WILL BE IN AM2. AND
8 THEN PA1 IS ONE OF THOSE NEW DISTRICTS
9 THAT CAME INTO AFFECT IN 2005. IT
10 DOESN'T MENTION HELIO-PADS, HELIPORTS,
11 HELICOPTER TOURING FACILITIES EITHER,
12 BUT WHEN WE HAVE SOMEBODY COME IN
13 SEEKING TO RE-ZONE BECAUSE HE COULDN'T
14 FINE ANY AC PROPERTY AVAILABLE IN 2010,
15 WE TOLD HIM HE COULD CHOOSE EITHER FROM
16 THE OUTDOOR AMUSEMENT, THE NEW ONE, OR
17 HE COULD EITHER CHOOSE THE NEW PA1.
18 THAT OPTION WOULD NOT BE AVAILABLE TO
19 THESE FOLKS WITH REGARD TO THIS
20 PROPERTY. IF WE TELL THEM, "YOU HAVE
21 TO RE-ZONE. IT'S NOT ALLOWED IN
22 AMUSEMENT/COMMERCIAL." THEY WOULD HAVE
23 TO PICK ONE OF THESE DISTRICTS RIGHT
24 HERE TO RE-ZONE TO. SO, I ASK YOU, IF
25 WE DON'T ALLOW THEM IN AMUSEMENT/

1 COMMERCIAL, WHAT SHOULD THEY RE-ZONE TO
2 HERE IN ORDER TO HAVE THIS USE? AND
3 THAT'S THE QUESTION THAT WE ARE FACED
4 WITH. SO, I WOULD SAY I THINK MS.
5 MINCEY MADE THE BEST POSSIBLE DECISION.
6 I THINK THAT SHE USED THE TOOLS THAT
7 SHE HAD IN FRONT OF HER, YOU KNOW. THE
8 DEVELOPMENT AGREEMENT IS A DOCUMENT
9 THAT COUNTY COUNCIL AGREED TO. WE HAVE
10 BURROUGHS & CHAPIN PROPERTIES SCATTERED
11 UP AND DOWN THE GRAND STRAND, BUT WE
12 ALSO HAVE A DEVELOPMENT AGREEMENT IN
13 CAROLINA FOREST AND THE SAME RULES
14 APPLY THERE, IF THE PROPERTY IS
15 UNDEVELOPED. SO, I JUST WANTED TO
16 BRIEFLY ADDRESS THOSE POINTS. THANK
17 YOU.

18 MR. HANNA: THANK YOU, MS. CARTER. MR.
19 BARODY.

20 MR. BARODY: THANK YOU, MR. CHAIRMAN.
21 MEMBERS OF THE BOARD. Y'ALL ARE FACED
22 WITH A VERY, VERY DIFFICULT QUESTION
23 TONIGHT. I UNDERSTAND FROM WHERE
24 YOU'RE SEATING IT'S DIFFICULT, YEAH.
25 YOU HAVE A ROOM FULL OF PEOPLE HERE

1 TONIGHT WHO FEEL LIKE THEY ARE
2 AGGRIEVED BY A PARTICULAR PROPERTY
3 OWNER. AND YOU AS A MEMBER FOR PUBLIC
4 BODIES CERTAINLY FEEL OBLIGATED TO DO
5 SOMETHING ABOUT IT. MR. LEBIEDZ, AT
6 THE OUTSET, YOU STARTED WITH A PRAYER.
7 AND IN THAT PRAYER YOU ASK THAT THIS
8 BOARD BE VESTED WITH THE POWER AND
9 GUIDANCE TO MAKE THE RIGHT DECISION.
10 AND THE RIGHT DECISION TONIGHT IS NOT A
11 DECISION THAT'S BASED UPON THE WILL OF
12 THE 100 PEOPLE THAT ARE IN HERE
13 TONIGHT, UPON WHAT I SAY, OR ON WHAT
14 ANYONE ELSE SAYS. IT'S BASED PURELY
15 UPON REVIEW OF WHAT THE ZONING
16 ADMINISTRATOR, MS. MINCEY, DID IN
17 REGARD TO WHAT WAS PRESENT BEFORE HER
18 AT THE TIME AND WHAT THE LAW
19 SPECIFICALLY STATES. AND IF YOU LOOK
20 AT IT FROM THAT POINT OF VIEW AND THAT
21 POINT OF VIEW ONLY, THERE IS BUT ONE
22 DECISION THAT YOU CAN COME TO TONIGHT
23 AND THAT IS THAT THE ZONING
24 ADMINISTRATOR, IN FACT, MADE THE RIGHT
25 DECISION. A WRONG DECISION TONIGHT, A

1 DECISION WITH IMPROPER GUIDANCE WOULD
2 BE THE ONE THAT WOULD ALLOW YOU TO MAKE
3 -- TO OVERLOOK WHAT THE ZONING
4 ADMINISTRATOR DID BASED UPON FACTS,
5 BASED UPON TESTIMONY, BASED UPON
6 ACCOUNTS, BASED UPON NOISE. NONE OF
7 WHICH WAS BEFORE MS. MINCEY AT THE
8 TIME. NONE OF WHICH WAS RELEVANT AT
9 THAT TIME NOR IS IT TODAY. THIS IS NOT
10 A HEARING TO DETERMINE WHETHER OR NOT
11 THE NOISE ELICITED FROM THE HELICOPTER
12 TOURS AT THIS SITE IS WITHIN THE
13 ORDINANCE OR OUTSIDE THE ORDINANCE.
14 THAT IS NOT THE ISSUE BEFORE ALL OF YOU
15 MEMBERS OF THE BOARD TONIGHT. THE
16 ISSUE TONIGHT IS NOT WHETHER OR NOT THE
17 HELICOPTER TOUR OPERATION IS A SAFE
18 OPERATION, BUT RATHER YOUR DECISION
19 HERE TONIGHT HAS TO BE BASED STRICTLY
20 UPON THE VERY NARROW ONE OF WHETHER OR
21 NOT THIS PARTICULAR PROPERTY ALLOWS IT
22 TO BE USED AS A HELICOPTER TOUR
23 FACILITY. THE ANSWER TO THAT QUESTION
24 I BELIEVE IS, YES. LET ME JUST START
25 VERY BRIEFLY BY INTRODUCING YOU TO MY

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1 CLIENT WHO IS HELICOPTER ADVENTURES.
2 HE HAS SAT HERE BACK TO MY RIGHT.
3 Y'ALL HAVE SEEN HIM BEFORE ON
4 TELEVISION AND OTHERWISE. HIS NAME IS
5 FREDDIE RICK. HE IS HERE WITH HIS
6 WIFE, MISSY RICK. MR. RICK HAS SET
7 FORTH IN THE RECORD BEFORE YOU IN THE
8 AFFIDAVIT THAT I HAVE GIVEN TO YOU
9 EXACTLY WHAT WAS HAS HERE TONIGHT MANY
10 YEARS AGO, WHICH IS AN HELICOPTER TOUR
11 FACILITY. HE WANTED TO HAVE A SPOT IN
12 CLOSE PROXIMITY TO PEOPLE TO OPERATE A
13 BUSINESS WHO WOULD USE HIS HELICOPTERS
14 AND BE ABLE TO GO ON THE TOURS WITHIN
15 THE MYRTLE BEACH AREA, AND QUITE
16 FRANKLY, MAKE MONEY AS OTHER
17 BUSINESSMEN DO. AS I HAVE NOTED WITHIN
18 THE AFFIDAVIT, THAT'S IN THE RECORD.
19 HE ORIGINALLY DID NOT LOOK FOR THIS
20 PARTICULAR PIECE OF PROPERTY. HE ORIG-
21 INIALLY LOOKED FOR OTHER PIECES OF
22 PROPERTY. HE WANTED TO BE WHERE MOST
23 PEOPLE WANT TO BE ON THE BEACH WHICH IS
24 CLOSE TO THE BEACH ITSELF. THAT'S THE
25 MAIN ATTRACTION THAT WE HAVE. THERE

1 WERE NO AVAILABLE PROPERTIES AT THAT
2 TIME FOR HIM TO PLACE A FACILITY SUCH
3 AS THIS. SO HE HIRED A REAL ESTATE
4 AGENT. THAT REAL ESTATE AGENT HELPED
5 HIM LOCATE ANOTHER PIECE OF PROPERTY
6 THAT WOULD POTENTIALLY BE WITHIN CLOSE
7 PROXIMITY OF A LARGE HUB OF PEOPLE,
8 LIKE BROADWAY AT THE BEACH. AND THEY
9 FOUND ONE IN THE PIECE OF PROPERTY THAT
10 IS THE SUBJECT HERE TONIGHT PRIMARILY
11 BECAUSE IT IS ZONED AMUSEMENT/
12 COMMERCIAL. AGAIN, BECAUSE IT WAS
13 ZONED AMUSEMENT/COMMERCIAL AND IN TURN
14 WILL ALLOW THIS USE, UNLIKE ANY OTHER
15 PIECES OF PROPERTY WHICH WOULD NOT
16 ALLOW THIS USE. MR. RICK OPERATES A
17 SIGHT-SEEING TOUR BUSINESS. HE
18 OPERATES A HELICOPTER SIGHT-SEEING TOUR
19 BUSINESS THAT ALLOWS CUSTOMERS TO GO ON
20 ONE OF, I BELIEVE, SEVERAL DIFFERENT
21 TOURS. YOU CAN GO IN THE BROADWAY TOUR
22 AND SEE THE BEACH. YOU CAN GO ON THE
23 PINES LAKES TOUR AND SEE THE GOLF
24 COURSE. YOU CAN GO ON THE GRANDE DUNES
25 TOUR AND SEE THE GRANDE DUNES IF YOU

1 WANT TO. AGAIN, EVERYTHING THAT HE HAS
2 IN HIS BUSINESS IS INTERRELATED TO THE
3 OPERATIONS AT BROADWAY AT THE BEACH.
4 THERE IS A SHUTTLE VAN THERE. THERE
5 ARE KIOSKS THERE THAT TAKE THEM TO HIS
6 PLACE OF BUSINESS. WHEN HE WAS
7 LOCATING THIS PIECE OF PROPERTY IT
8 WASN'T JUST ABOUT THE BUSINESS -- OF
9 COURSE, IT WAS ABOUT THE BUSINESS
10 ASPECT, AS THEY ALL ARE. BUT ONCE HE
11 FOUND THE PROPERTY, HE DIDN'T JUST
12 IMMEDIATELY BREAK GROUND. HE DID WHAT
13 EVERY OTHER PRUDENT BUSINESS PERSON
14 WOULD DO AND HE UNDERTOOK TO DO
15 EVERYTHING JUST RIGHT, JUST RIGHT. HE
16 HIRED EARTH WORKS TO OBTAIN A
17 CERTIFICATE OF THE ZONING COMPLIANCE,
18 WHICH HE DID IN NOVEMBER OF 2011, 10
19 MONTHS AGO. HE THEN SUBSEQUENTLY TO
20 THAT UNDERTOOK TO OBTAIN COMPLIANCE
21 FROM THE FAA, WHICH HE DID. AFTER THAT
22 HE UNDERTOOK TO OBTAIN A STORM WATER
23 PERMIT FROM THE COUNTY, WHICH HE DID.
24 WE COULD GO DOWN THE LIST. I BELIEVE
25 THE LIST IS AS SET FORTH IN THE

1 MATERIALS PRESENTED BY MRS. CARTER.
2 EVERY LOOP, VERY HOOP, VERY STEP THAT A
3 BUSINESS OWNER IS SUPPOSED TO TAKE, HE
4 DID. EVERY SINGLE ONE. THERE IS NOT
5 ONE -- THERE IS NOTHING IN THIS RECORD
6 NOR IS THERE ANY OTHER TESTIMONY
7 SHOWING THAT HE DID ANYTHING WRONG. I
8 WAS PRESENT BEFORE THE COMMITTEE THAT
9 COUNCILMAN BRENT SCHULZ HOSTED A COUPLE
10 MONTHS AGO AND I BELIEVE HE SAID THE
11 EXACT SAME THING BEFORE THE PUBLIC
12 BODY. THAT MR. RICK DID EVERYTHING
13 RIGHT. DID EVERYTHING THAT WAS
14 EXPECTED OF HIM. IN RELIANCE UPON THE
15 ZONING DETERMINATION THAT WAS ISSUED BY
16 MS. MINCEY AND RELIANCE UPON THE FAA
17 COMPLIANCE CERTIFICATE, WHICH SHE
18 OBTAINED FROM THEM ONLY THEN. ONLY
19 THEN, DID HE UNDERTAKE TO THEN APPLY
20 FOR HIS BUILDING PERMITS OR HIS
21 BUSINESS LICENSES AND TO ACTUALLY BREAK
22 GROUND AND MAKE THE INVESTMENTS THAT HE
23 DID. WHICH DID, IN FACT, EXCEED
24 \$3 MILLION. TODAY THAT POINT IS SET
25 FORTH IN MR. RICK'S AFFIDAVIT, WHICH

1 I'VE SUBMITTED INTO THE RECORD. AGAIN,
2 ONLY AFTER THESE ASSURANCES THAT HE WAS
3 GIVEN FROM THE COUNTY, FROM THE CITY,
4 DID HE DO SO AND DID HE PROCEED FORTH.
5 NOW, THERE'S BEEN A NUMBER OF ISSUES
6 RAISED TONIGHT WITH RESPECT TO NOISE.
7 I OBVIOUSLY NOTED MY OBJECTION BEFORE
8 THE CHAIRMAN AND BEFORE THIS BOARD THAT
9 THE NOISE IS IRRELEVANT.
10 AUDIENCE: (DIFFERENT OUTBURSTS.)
11 MR. BAROODY: BUT FOR PURPOSES OF
12 TONIGHT, THE NOISE IS, IN FACT,
13 RELEVANT. HOWEVER, LET ME ADDRESS THAT
14 IN ONE RESPECT. SECTION 712 OF THE
15 HORRY COUNTY ORDINANCE, WHICH IS
16 AMUSEMENT/COMMERCIAL DISTRICT AC ZONED
17 DISTRICT, WHICH IS IN PLACE, LISTS A
18 NUMBER OF PERMITTED USES, ONE OF WHICH
19 IS SIGHT-SEEING DEPOTS, WHICH IS
20 EXACTLY WHAT WE ARE HERE TONIGHT FOR.
21 WHAT DOES SIGHT-SEEING DEPOT MEAN? DID
22 SHE GET IT RIGHT OR DID SHE GET IT
23 WRONG? WITHIN THAT SAME DEFINITION YOU
24 ALSO HAVE SHOOTING GALLERIES, THEATERS,
25 AND A NUMBER OF OTHER -- CLUBS IS

1 ANOTHER, AMUSEMENT PARKS IS ANOTHER. I
2 SUBMIT TO EVERY MEMBER OF THIS BOARD
3 TONIGHT THAT IT'S NOT THE FACT THAT
4 THERE ARE HELICOPTERS FLYING OVER.
5 IT'S THE FACT THAT THEY -- THE
6 HOMEOWNERS AND OTHERS WHO HAVE SIGNED
7 THE PETITION BELIEVE THAT THE NOISE
8 ELICITED FROM THOSE HELICOPTERS IS A
9 NUISANCE TO THEM, AND THEREFORE, THEY
10 WANT THIS FACILITY CLOSED. IN THE
11 EVENT THAT MR. RICK OPENED UP A
12 SHOOTING GALLERY AN OUTDOOR THEATER
13 THAT HOSTED BANDS, A CLUB THAT WAS
14 OPENED UP LATE INTO THE HOURS OF THE
15 NIGHT, ALL OF WHICH WOULD AFFECT MR.
16 BERRY'S CHILDREN AND A NUMBER OF OTHER
17 FAMILIES WITHIN THE NEIGHBORHOOD, WE
18 WOULD BE HERE TONIGHT ABOUT THE EXACT
19 SAME ISSUE. AND AGAIN, THAT'S WHERE I
20 GOT BACK TO WHAT I STATED AT THE VERY
21 OUTSET. IN ORDER TO MAKE THE RIGHT
22 DECISION, WE CANNOT ALLOW THAT DECISION
23 TO BE MADE BASED UPON THE NOISE. IT
24 HAS TO BE BASED UPON THE REVIEW OF THE
25 ZONING ORDINANCE AND THE DETERMINATION

1 AS TO WHAT THE ZONING ADMINISTRATOR DID
2 AT THE TIME, WHETHER SHE DID IT RIGHT
3 OR NOT. NOW, MS. MINCEY, AS I
4 UNDERSTAND, HAS BEEN WITH THE COUNTY
5 FOR 24 YEARS. WITHIN THOSE 24 YEARS,
6 SHE HAS BEEN IN THE PLANNING AND ZONING
7 DEPARTMENT FOR, I BELIEVE, 10 TO
8 12 YEARS, IS THAT RIGHT?
9 MS. MINCEY: SINCE 1988.
10 MR. BAROODY: THANK YOU. SINCE 1988
11 SHE HAS BEEN IN THE COUNTY'S PLANNING
12 AND ZONING DEPARTMENT IN THE INTEREST
13 OF CONTINUITY AND UNIFORMITY IN THE
14 INTERPRETATION OF THESE ORDINANCES LIKE
15 AC, WHICH HAS BEEN IN EXISTENCE SINCE
16 1987. I BELIEVE THAT THERE NEEDS TO BE
17 A SUBSTANTIAL AMOUNT OF DEFERENCE GIVEN
18 TO OUR ZONING ADMINISTRATOR TO MAKE
19 THOSE IMPORTANT DECISIONS BECAUSE IF WE
20 WERE TO ENTRUST IT TO ANYONE ELSE WE
21 WOULD LOSE THAT UNIFORMITY. WE WOULD
22 LOSE THAT CONTINUITY THAT ONLY SOMEONE
23 IN THAT OFFICE FOR THAT LENGTH OF TIME
24 CAN GIVE TO THIS COUNTY AND TO THE
25 PUBLIC. NOW, AC ZONING, WHICH AGAIN

1 HAS BEEN IN EXISTENCE SINCE 1987,
2 INCLUDES "SIGHT-SEEING DEPOTS." THE
3 DEFINITION OF THE WORD 'DEPOT' HAS BEEN
4 SUBMITTED TO YOU TONIGHT BY MR. MOSS.
5 MR. HANNA, THE CHAIRMAN, HAS READ TO
6 YOU THAT DEPOT INCLUDES THE EQUIPMENT
7 AND TRANSPORTATION EQUIPMENT NECESSARY
8 TO OPERATE TRANSPORTATION SITES; BUSES,
9 AIRCRAFT, CARS. ALL OF THAT IS
10 INCLUDED WITHIN THE DEFINITION OF
11 DEPOT, BUT WHAT ABOUT SIGHT-SEEING?
12 SIGHT-SEEING IS DEFINED VERY, VERY
13 CONCISELY AS THE ACT OF VISITING AND
14 SEEING PLACES AND THINGS OF INTEREST.
15 LET ME ALSO NOTE THAT THE HORRY COUNTY
16 ZONING ORDINANCE, SPECIFICALLY SECTION
17 400 STATES THAT, "THE ZONING
18 ADMINISTRATOR IS TO GIVE A COMMON
19 DICTIONARY DEFINITIONS OF WORDS." SO
20 AGAIN, WE'RE NOT LOOKING AT BLACKS LAW
21 DICTIONARY, WE'RE NOT LOOKING AT
22 ANYTHING OTHER THAN WHAT EACH OF YOU
23 LADIES AND GENTLEMEN WOULD LOOK AT IF
24 FACED WITH THE SAME DETERMINATION THAT
25 MS. MINCEY HAD TO MAKE THAT DAY, WHICH

1 WILL BE WHAT IS THE COMMON DICTIONARY
2 DEFINITION OF "SIGHT-SEEING AND OF
3 DEPOT." SHE MADE THAT DETERMINATION
4 AND ACCORDING TO THE OXFORD DICTIONARY
5 WITH RESPECT TO DEPOT. IT'S A PLACE
6 WHERE VEHICLES ARE KEPT AND MAINTAINED.
7 NOW, WE'VE STATED THAT A SIGHT-SEEING
8 TOUR FACILITY IS BEING OPERATED THERE.
9 WELL, A SIGHT-SEEING TOUR, WHETHER IT
10 IS BY BUS, BY HELICOPTER OR BY PLANE OR
11 BY CAR, OR BY THE LONG JEEPS THAT I
12 BELIEVE WE WERE IN HERE ABOUT A COUPLE
13 YEARS AGO. ALL OF THOSE HAVE TO
14 ORIGINATE FROM SOMEPLACE. AND THEY
15 ORIGINATE FROM THE DEPOT. SIGHT-SEEING
16 DEPOTS MUST HAVE A PLACE TO KEEP THE
17 EQUIPMENT THAT THEY GIVE TO THE PUBLIC
18 TO MAKE THE TOURS. HELICOPTERS
19 ORIGINATE HERE AND THEY TERMINATE HERE.
20 A SIGHT-SEEING TOUR ORIGINATES AND
21 TERMINATES AT A SIGHT-SEEING DEPOT.
22 NOW, LET ME ADDRESS ONE OF THE ISSUES
23 THAT WAS PRAISED BY BOTH MS. CARTER AND
24 WAS ALSO PRAISED BY MR. MOSS BRIEFLY.
25 MRS. CARTER STATED, "IF NOT AC, THEN

1 WHAT?" THAT QUESTION HAS NOT BEEN
2 ANSWERED TONIGHT. IT HAS NOT BEEN
3 ANSWERED TONIGHT. IF ANYTHING, WHAT
4 MS. CARTER TESTIFIED OR STATED A MOMENT
5 AGO BEFORE THE BOARD IS THAT IF
6 ANYTHING, IT WOULD BE THE AM1 I
7 BELIEVE...
8 MS. CARTER: AM2.
9 MR. BAROODY: AM2, WHICH IS IDENTICAL
10 TO THE AC, WHICH WAS NOT AVAILABLE IN
11 THIS CASE. SO, YOU CAN'T SAY, WELL,
12 THE ZONING ADMINISTRATOR SHOULD HAVE
13 LOOKED FOR AM2. IT WAS NOT THERE. AC
14 WAS ALL THAT WAS THERE. AND WITH
15 RESPECT TO THE CONTINUITY AND THE
16 UNIFORMITY ARGUMENT THAT I MADE A
17 MOMENT AGO, BACK IN 2010, WHEN MR.
18 DAVID HAIRR, WHO WAS SEEKING TO OPERATE
19 A HELICOPTER TOUR FACILITY BACK THEN,
20 WHEN HE SOUGHT TO HAVE A PIECE OF
21 PROPERTY RE-ZONED, I BELIEVE MS. CARTER
22 STATED HE WANTED TO HAVE IT RE-ZONED TO
23 EITHER THAT OR TO AC AND THAT EVERYONE
24 IN THE OFFICE UNDERSTOOD THAT. SO,
25 AGAIN, FOR CONTINUITY AND UNIFORMITY

1 PURPOSES, I THINK WE HAVE GOT TO LOOK
2 AT THAT AND THAT'S GOT TO BE GIVEN SOME
3 WEIGHT, AS WELL. NOW, MR. BEVERLY, YOU
4 ASKED A GOOD QUESTION EARLIER AND THAT
5 QUESTION WAS, I BELIEVE, OF MR. MOSS OR
6 MR. HINDE AND IT WAS, "WHEN WAS
7 PLANTATION POINT DEVELOPED?" AND I CAN
8 DEFER TO MORE ASTUTE MINDS SUCH AS MR.
9 COX AND MR. GUARD, BUT I THINK THAT
10 EVERYONE IN THE ROOM WOULD AGREE THAT
11 PLANTATION POINTE WAS ORIG INIALLY
12 DEVELOPED COMMENSURATE WITH MYRTLEWOOD
13 GOLF COURSE. THAT WAS DONE BACK IN THE
14 LATE '60'S, I BELIEVE, AND THE EARLY
15 '70'S. SO, YES, PART OF PLANTATION
16 POINTE NEIGHBORHOOD EXISTED PRIOR TO
17 THE INACTION OF THE ZONING ORDINANCE IN
18 1987 WITH HORRY COUNTY, BUT THAT'S NOT
19 THE ISSUE TONIGHT. THE ISSUE IS MR.
20 HINDE WHO IS THE PETITIONER HERE. MR.
21 HINDE PURCHASES HIS PROPERTY IN 2012.
22 THE PHASE IN WHICH MR. HINDE'S PROPERTY
23 IS LOCATED WAS DEVELOPED UNTIL
24 APPROXIMATELY 5 OR SO YEARS AGO, EASILY
25 AFTER THE ESTABLISHMENT OF AN AC ZONE.

1 AND ONE ADDITIONAL POINT THAT I WANT TO
2 MENTION TO ALL MEMBERS OF THE BOARD
3 THAT MS. CARTER BROUGHT UP. MS. CARTER
4 STATED THAT, AGAIN, IF YOU LOOK AT THE
5 ARGUMENT RAISED BY THE OTHER SIDE THAT
6 THIS IS AN AIRPORT OR THIS IS A
7 HELIPORT AND IT SHOULD BE ZONED AS AN
8 AIRPORT. WELL, WHAT OPTIONS DO YOU
9 HAVE THERE? AFA AND CFA OF WHICH
10 80 PERCENT OF HORRY COUNTY IS
11 COMPRISED, 80 PERCENT. AGAIN, THE AC
12 ZONE WITH IT'S 11 PROPERTIES WITHIN THE
13 COUNTY WAS THERE SPECIFICALLY TO
14 ADDRESS THESE KINDS ON USES, NOT THOSE
15 THAT EXIST WITHIN 80 PERCENT OF THE
16 COUNTY. NOW, I WANT TO SAY ONE MORE
17 THING PRIOR TO ASKING MR. RICK TO COME
18 TO THE STAND AND ADDRESS YOU ALL
19 INDIVIDUALLY. AND THAT IS THIS, MR.
20 MOSS MENTIONED TO EACH OF YOU EARLIER
21 THAT -- AND YOU ALSO HEARD THIS, I
22 BELIEVE, FROM MRS. ANDERSON WHO
23 ADDRESSED YOU ALL THAT THERE IS NO
24 OTHER MEANS OF RECOURSE FOR THEM THAT
25 THIS IS IT. THIS IS THE END OF THE

1 ROAD. THAT IS NOT TRUE. THERE ARE
2 OTHER REMEDIES AVAILABLE FOR ANY
3 AGGRIEVED HOMEOWNER IN THIS ROOM BEYOND
4 WHAT WE ARE DOING TONIGHT. THAT NEEDS
5 TO BE MADE PERFECTLY CLEAR AND
6 UNDERSTOOD TO ANYONE. THERE ARE OTHER
7 REMEDIES AVAILABLE TO THEM, BUT ON THE
8 OTHER HAND, THERE IS NO OTHER REMEDIES,
9 ZERO AVAILABLE TO THE AGGRIEVED
10 PROPERTY OWNER WHO DID EVERYTHING RIGHT
11 IN THIS CASE. WHO IS MR. RICK? IN THE
12 EVENT THAT THIS BOARD TONIGHT RULES
13 THAT MS. MINCEY MADE THE WRONG
14 DECISION, HE HAS NOWHERE TO GO. THE
15 ONLY MEANS OF RECOURSE HE WILL HAVE AT
16 THAT POINT IN TIME WILL BE A DIRECT
17 APPEAL TO THE CIRCUIT COURT AS MR. MOSS
18 NOTED ACROSS THE HALL. SO, PLEASE DO
19 TAKE THAT INTO CONSIDERATION IN THE
20 COURSE OF YOUR DELIBERATIONS I WOULD
21 ASK OF YOU. AT THIS POINT IN TIME, I
22 WOULD LIKE TO HAVE FREDDIE RICK, THE
23 OWNER OF HELICOPTER ADVENTURES, COME
24 AND ADDRESS YOU ALL.

25 **FREDDIE RICK**, HAVING BEEN FIRST DULY SWORN, TESTIFIED

MABRY COURT REPORTING

PEPPER M. MCCARTHY (843) 957-7653

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1 AS FOLLOWS:

2 MR. RICK: MY NAME IS FREDDIE RICK, II,
3 I CURRENTLY LIVE AT 2709 SOUTH OCEAN
4 BOULEVARD IN MYRTLE BEACH. THERE'S
5 PROBABLY NOT A LOT OF COMMONALITIES
6 THAT I HAVE WITH THE HOMEOWNERS HERE IN
7 THE ROOM, BUT THERE'S ONE HUGE ONE
8 RIGHT NOW, AND THAT IS A FEELING OF
9 FRUSTRATION. THEY'RE FRUSTRATED
10 BECAUSE THEY FEEL LIKE THEIR RIGHTS
11 HAVE BEEN VIOLATED. SOMEBODY HAS
12 ENCROACHED IN ON THEIR HOME AND THEY
13 CAN'T DO ANYTHING ABOUT IT. AND WHAT I
14 TRIED TO DO AS AN INDIVIDUAL IS STEP
15 OUT OF THE SITUATION AND LOOK AT IT
16 FROM A THIRD PARTY PERSPECTIVE BECAUSE
17 WHEN YOU ARE INVOLVED WITH THE
18 SITUATION AND YOU'VE GOT ALL THE
19 EMOTIONS THAT ARE RUNNING UP INSIDE YOU
20 IT'S HARD TO MAKE A DECISION WITHOUT
21 THOSE EMOTIONS AFFECTING IT. SO, I
22 HAVE 3 KIDS. I'VE GOT 5 GRANDCHILDREN
23 AND I WOULD BE HAPPY IF MY 2 YEAR OLD
24 HAD SAID, "HELICOPTER" JUST BECAUSE I
25 THINK THAT'S PRETTY EXCITING AS A 2

1 YEAR OLD. I CAN TELL YOU AS A BUSINESS
2 OWNER, I'M FRUSTRATED BECAUSE I'VE DONE
3 EVERYTHING RIGHT. NOBODY HAS ACCUSED
4 ME OF DOING ANYTHING WRONG. AS A
5 MATTER OF FACT, I TRULY BELIEVE IF
6 THERE WAS ANYWAY TO SHUT ME DOWN,
7 MEANING THE NOISE, MEANING THE SAFETY
8 OF NOT RUNNING A SAFE HELICOPTER
9 SIGHT-SEEING TOUR OPERATION, WE
10 WOULDN'T BE HERE HAVING THIS
11 CONVERSATION. BECAUSE GOD KNOWS THEY
12 HAVE TRIED EVERY WAY POSSIBLE TO DO
13 THAT, BUT IT'S NOT THEIR
14 RESPONSIBILITY. THEY ARE NOT QUALIFIED
15 TO SAY WHETHER THIS IS A SAFE
16 HELICOPTER SIGHT-SEEING TOUR OPERATION,
17 THAT'S THE FAA. I HADN'T WHISPERED IN
18 ANYBODY'S EAR. I HAVE DONE WHAT I WAS
19 SUPPOSED TO DO AS A FUTURE BUSINESS
20 OWNER IN MYRTLE BEACH, WHEN I LOOKED AT
21 DOING SOMETHING. I AM NOT NEW TO THE
22 BUSINESS WORLD AND MYRTLE BEACH IS NOT
23 NEW TO THE HELICOPTER WORLD. THERE'S
24 OVER 25,000 FLIGHTS A YEAR THAT HAPPEN
25 EVERY SINGLE YEAR HERE IN THE CITY OF

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1 MYRTLE BEACH THAT HELICOPTER ADVENTURES
2 HAS NOTHING TO DO WITH. FLIGHTS THAT
3 FLY DIRECTLY OVER PLANTATION POINTE
4 HAVE FOR YEARS. THAT IS DOCUMENTED
5 THAT THE DECIMAL LEVEL, THE NOISE
6 LEVEL, PRODUCED FROM THOSE HELICOPTERS
7 FLYING OVER THAT SUBDIVISION FOR YEARS
8 PRODUCED MORE NOISE THAN ANY OF OUR
9 HELICOPTERS AT OUR FACILITY AND THAT'S
10 DOCUMENTED. NOW, THAT FRUSTRATION
11 COMES FROM A BUSINESS OWNER AND WHAT IS
12 A BUSINESS OWNER TO DO OTHER THAN PUT
13 THE FAITH IN THE INDIVIDUALS AT THE
14 COUNTY, THE CITY, TO LOCATE PROSPECTIVE
15 LOCATIONS. THAT'S WHAT THEY TELL YOU.
16 WHAT THEY PUT IN WRITING YOU CAN TAKE
17 TO THE BANK, YOU CAN BET ON, YOU CAN
18 INVEST IN, YOU CAN PUT YOUR HARD EARNED
19 MONEY UP. IT WAS MENTIONED EARLY BY
20 MR. MOSS THAT IT WASN'T RELEVANT THE
21 MONEY THAT I INVESTED. WELL, I DON'T
22 KNOW ABOUT YOU AND WHERE YOU GET YOUR
23 MONEY, BUT I'VE WORKED EXTREMELY HARD
24 FOR WHAT I'VE GOT IN MY LIFE AND
25 ANYBODY THAT TELLS ME THAT MY HARD

1 EARNED MONEY IS NOT SOMETHING THAT'S
2 RELEVANT, I WOULD SAY I DIFFER STRONGLY
3 IN THAT OPINION. YOU SEE, I PUT THE
4 FAITH AND CONFIDENCE IN WHAT THE COUNTY
5 AND CITY TOLD ME TO DO. WHEN THE
6 COUNTY TOLD ME IT WAS OKAY AND I GOT
7 EVERYTHING PROPERLY DONE AND I GOT IT
8 STAMPED, THEN THE CITY WANTED ME TO
9 MOVE MY PARKING LOT FROM WHERE IT WAS
10 INTO A CITY PIECE OF PROPERTY. IT COST
11 ME MORE TIME, ENERGY, MONEY AND EFFORT,
12 BUT I DID IT BECAUSE I WANTED TO BE A
13 GOOD TEAM PLAYER. AND I WILL TELL YOU
14 I'M NOT WANTING TO BE HERE. I DIDN'T
15 COME DOWN HERE TO DRESS IN A SUIT. I
16 MEAN, YOU DON'T THINK ABOUT COMING TO
17 MYRTLE BEACH TO DRESS IN A SUIT. YOU
18 COME DOWN HERE WITH FLIP-FLOPS AND
19 SHORTS AND TO HAVE A GOOD TIME. AND
20 THAT'S WHAT THE HELICOPTER BUSINESS WAS
21 SUPPOSED TO BE WAS A GOOD TIME FOR
22 KIDS. AND I CAN TELL YOU THAT WE'VE
23 HAD HUNDREDS, THOUSANDS OF FOLKS NOW
24 THAT HAVE COME THROUGH THE FACILITY
25 THAT ABSOLUTELY LOVE HELICOPTER RIDES.

1 THEY SAY IT'S ONE OF THE BEST VALUES IN
2 MYRTLE BEACH, BUT BE VERY CLEAR THAT IF
3 HELICOPTER SOLUTIONS, HELICOPTER
4 ADVENTURES GOES AWAY, THE HELICOPTER
5 BUSINESS IS NOT GOING TO. AND I TRIED
6 TO GO TO THE AIRPORTS. AND I HAVE A
7 LEASE WITH THE CURRENT NORTH MYRTLE
8 BEACH AIRPORT AND IN MY LEASE IT
9 PROHIBITS ME FROM DOING HELICOPTER
10 OPERATIONS AND TOURS, SIGHT-SEEING
11 TOURS. CAN'T DO IT. THERE IS ALREADY
12 SOMEBODY THERE. WELL, THAT'S TO ME A
13 MONOPOLY. I DON'T KNOW WHAT YOU CALL
14 IT. SO, I AM EXTREMELY FRUSTRATED AS
15 THE INDIVIDUALS WHO ARE HOMEOWNERS A
16 QUARTER OF A MILE AWAY. YOU SEE, I
17 LIVE A HALF A MILE AWAY FROM THE
18 AIRPORT AND I SEE THE HELICOPTERS GO
19 EVERY DAY FROM THE OTHER COMPANY AND
20 HAVE FOR YEARS. SO, I UNDERSTAND THE
21 SITUATION. I TOOK THE DECIMAL METER
22 OUT AND READ IT ON MY BALCONY OUTSIDE
23 AS THEY FLY BY. I AGAIN, SAY WHAT MR.
24 BAROODY SAID EARLIER, WE ARE NOT HERE
25 TO TALK ABOUT HELICOPTERS, WE'RE HERE

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1 TALK ABOUT NOISE. AND THE REALITY IS
2 ANY OF THE THINGS THAT HE MENTIONED,
3 YOU DON'T THINK IF YOU PUT AN AMUSEMENT
4 PARK THERE YOU ARE GOING TO HAVE NOISE?
5 I MEAN, THE FACT IS WE ARE TALKING
6 ABOUT HIGH 50'S LOW 60'S IN THE DISMAL
7 READINGS ON OUR HELICOPTERS, NEVER
8 ABOVE 70'S AND SET US DOWN IF THAT IS
9 THE CASE. BUT THE DAY THEY PRESENTED
10 THE STUFF IN YOUR MANUALS WE FLEW 24
11 FLIGHTS. NOW, WE DOCUMENTED A WHOLE
12 BUNCH OF OTHER FLIGHTS THAT WENT OVER
13 THE NEIGHBORHOOD THAT HAD NOTHING TO DO
14 WITH OUR HELICOPTERS, BUT, MY GOD,
15 EVERY HELICOPTER IN THE AREA OF MYRTLE
16 BEACH HAS GOT TO BE US, ESPECIALLY IF
17 IT'S MAKING NOISE. AND THAT'S JUST
18 SIMPLY NOT THE FACT. THAT'S JUST
19 SIMPLY INCORRECT AND NOT TRUE. SO,
20 I'LL TELL YOU AS THE BOARD,
21 RESPECTFULLY, I WILL TAKE UP AND GO
22 HOME IF SOMEBODY GIVES ME THE MONEY
23 BACK THAT I HAVE PUT IN. I AIN'T
24 TALKING ABOUT MY EFFORT, MY ENERGY, MY
25 TIME. I DIDN'T COME HERE FOR A FIGHT.

1 I DIDN'T COME HERE TO BE LOOKED AT AS
2 AN ENEMY. TALKED ABOUT BEHIND MY BACK,
3 MADE FUN OF, THAT'S NOT WHAT I CAME
4 HERE FOR. I CAME HERE TO HAVE SOME FUN
5 AND TO GIVE SOME FUN TO OTHER
6 INDIVIDUALS. WHEN I TOOK A HELICOPTER
7 RIDE WHEN I WAS A LITTLE SMALL KID, IT
8 MADE A IMPRINT IN MY MIND. HOW I LOVED
9 IT AND I WANTED TO PROVIDE THAT TO
10 OTHER KIDS. WHEN I JOINED THE MARINE
11 CORPS I RODE IN THE BACK WITH THE
12 MARINES A LOT. AND I HAVE ALWAYS
13 ENJOYED THAT AND THERE'S NUMEROUS
14 INDIVIDUALS THAT I CAN TELL YOU THAT
15 HAVE THE SAME FEELING WHEN THEY GET OFF
16 THE GROUND IN A HELICOPTER. I
17 APOLOGIZE TO THE BOARD FOR BEING HERE
18 TONIGHT AND HAVING TO HEAR THIS. I
19 APOLOGIZED TO THE MEMBERS OF THE
20 COMMUNITY THAT ARE UPSET ABOUT THE
21 NOISE. I DID EVERYTHING I KNEW TO DO
22 AS AN INDIVIDUAL BEFORE I MADE A
23 SUBSTANTIAL INVESTMENT AND I BELIEVE \$3
24 MILLION IN EVERYBODY'S MIND IS A
25 SUBSTANTIAL INVESTMENT. AS A BUSINESS

1 OWNER THAT'S LOOKING AT MYRTLE BEACH
2 AND YOU DON'T UPHOLD THE INDIVIDUALS
3 THAT MAKE THESE TYPE OF DECISIONS, WHAT
4 SIGNAL ARE YOU SENDING TO THE FUTURE
5 BUSINESS OWNERS THAT ARE COMING IN?
6 WHAT CONFIDENCE, WHAT GUARANTEE ARE YOU
7 GIVING THEM THAT THEY ARE NOT GOING TO
8 BE RIGHT HERE IN THE SAME SITUATION
9 WITH THE SAME PARTICULAR PROPERTY X A
10 NUMBER OF YEARS FROM NOW WHEN THERE'S A
11 WHAT; A GUN RANGE, A THEATER, AN
12 AMUSEMENT PARK. IT'S ALREADY GOT A
13 BERM. IT'S ALREADY GOT TREES. THERE'S
14 ALREADY A NOISE ABATEMENT PROGRAM PUT
15 IN PLACE FOR THAT SPECIFIC PIECE OF
16 PROPERTY FOR NASCAR SPEED PARK. AND WE
17 ARE TALKING ABOUT PEOPLE OF MEANS HERE.
18 WE ARE NOT TALKING ABOUT A HOUSE OF
19 \$50,000. WE ARE TALKING ABOUT
20 SIGNIFICANT INVESTMENT IN THESE
21 PEOPLE'S HOMES, WHICH I AGREE IS THEIR
22 SANCTUARY. WHICH IS RIGHT NEXT TO A
23 SEWER TREATMENT PLANT. AND ON CERTAIN
24 DAYS OF THE WEEK YOU CAN'T STAND
25 OUTSIDE IF THE WIND IS BLOWING IN THE

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1 OPPOSITE DIRECTION. IF I HAD A
2 BARBECUE PIT, I WOULD BE AFRAID IT
3 WOULD BLOW UP.
4 MR. HANNA: MR. RICK, I'M GOING TO ASK
5 YOU TO KIND OF RAP IT UP.
6 MR. RICK: SO THE REALITY IS IT'S
7 FRUSTRATION, THAT'S WHAT YOU HEAR.
8 THAT'S WHAT YOU HEAR FROM OTHER
9 MEMBERS. I DON'T KNOW WHAT TO DO. I
10 DON'T THINK THEY KNOW WHAT TO DO. I
11 THINK I'VE DONE EVERYTHING I POSSIBLY
12 COULD DO RIGHT AS AN INDIVIDUAL, AS A
13 BUSINESS OWNER, AND AS A INDIVIDUAL
14 THAT'S TRULY LOOKING TO TRY TO BE A
15 GOOD NEIGHBOR. WE'VE CHANGED OUR
16 ROUTES 180 DEGREES. WE'VE FLOWN IN THE
17 OTHER DIRECTION. THERE'S BEEN DISMAL
18 READINGS THAT HAVE NOT SUCCEEDED THE
19 LIMITS. I DON'T KNOW ANYTHING ELSE TO
20 DO. IF I COULD CLOSE UP AND GO HOME I
21 WOULD.
22 AUDIENCE: YES, YES. (CLAPPING.)
23 MR. RICK: AND ALL THE FOLKS THAT ARE
24 CLAPPING RIGHT NOW, THEY WON'T INVEST A
25 PENNY TO MAKE SURE THAT I'M GETTING MY

1 MONEY BACK IF THEY WERE IN THE SAME
2 POSITION AS ME RIGHT NOW. THEY'LL JUST
3 CLAP, BUT THEY WILL SPEND MONEY GOING
4 TO COURT. YOU SEE IF THEY WERE IN MY
5 SHOES AND A LOT OF THOSE FOLKS ARE
6 BUSINESS OWNERS, IF THEY WERE RIGHT
7 HERE, THEY WOULD FEEL THE EXACT SAME
8 WAY THAT I DO.

9 MR. HANNA: I UNDERSTAND YOUR
10 FRUSTRATION. I THINK WE ALL DO. I
11 THINK WE UNDERSTAND THEIR FRUSTRATION.
12 BUT GETTING BACK TO THE QUESTION AT
13 HAND. I'VE LET YOU AIR SOME OF YOUR
14 FRUSTRATIONS AND YOU'VE GOTTEN OFF THE
15 TYPIC AND I WANT TO TRY TO BRING YOU
16 BACK IN.

17 MR. RICK: ALL I'M SAYING IS GIVE ME A
18 WAY TO BE HOME. GIVE ME A WAY TO GET
19 MY MONEY BACK OR LEAVE ME ALONE. THANK
20 YOU.

21 MR. HANNA: SURE, I UNDERSTAND. THANK
22 YOU. DID YOU HAVE ANYBODY ELSE, MR.
23 BAROODY?

24 MR. BAROODY: MR. CHAIRMAN, I WOULD
25 LIKE TO SUBMIT TWO ITEMS IN ADDITION

1 INTO THE RECORD PLEASE. THE FIRST IS A
2 COPY OF PRINT OFF'S TAKEN ON JULY 31,
3 2012 AT HELICOPTER ADVENTURES OF
4 HELICOPTERS IN USE AND WHICH ONES WERE
5 IN USE, SUCH THAT TO THE EXTENT THAT
6 YOU'LL CONSIDER AT ALL IN YOUR
7 DETERMINATION THE MATERIALS SUBMITTED
8 BY MR. HINDE, WHICH ARE THE DECIMAL
9 READING LEVELS. YOU CAN COMPARE THEM
10 ON JULY 31ST TO THESE DOCUMENTS WHICH
11 WILL DEMONSTRATE CONCLUSIVELY THAT MANY
12 OF THE SPIKES THAT YOU SAW DURING THOSE
13 VARIOUS TIMES -- DURING THAT PERIOD OF
14 TIME WAS NOT CAUSED BY HELICOPTERS
15 OWNED BY HELICOPTER ADVENTURES DURING
16 THOSE TIME PERIODS. SO I WOULD LIKE TO
17 MARK THAT AS EXHIBIT 1 PLEASE.
18 DECIMAL READING FROM
19 HELICOPTER ADVENTURES
20 ADMITTED FOR IDENTIFICATION
21 AND INTRODUCED INTO THE
22 RECORD AS DEFENDANT'S EXHIBIT
23 1.
24 MR. BAROODY: HERE ARE 10 COPIES. I
25 HAVE HIGHLIGHTS ON CERTAIN DATES THAT

1 YOU CAN COMPARE THEM TO WITH THE
2 MATERIAL THAT WAS SUBMITTED BY MR.
3 HINDE. AND THE SECOND THING I WOULD
4 LIKE TO MENTION TO THE BOARD, WHICH IS
5 MORE ON POINT TO WHAT WE ARE HERE ABOUT
6 TONIGHT, IT IS ACTUALLY A MATERIAL THAT
7 WAS CONTAINED IN THE RECORD SUBMITTED
8 BY MR. HINDE IN HIS PACKAGE TO YOU ALL.
9 I DON'T KNOW IF Y'ALL HAVE HAD THE
10 OPPORTUNITY TO READ IT OR NOT, BUT IT
11 IS A STATE OF SOUTH CAROLINA DEPARTMENT
12 OF REVENUE ADVICE MEMORANDUM OF 1995.
13 AND THE QUESTION THAT WAS RAISED BY THE
14 DEPARTMENT OF REVENUE AT THAT POINT IN
15 TIME WAS THIS; ARE FEES PAID FOR
16 SIGHT-SEEING TOURS CONDUCTED BY
17 CARRIAGE, BUS, HELICOPTER, AIRPLANE,
18 TROLLY, BOAT, AND OTHERS SIMILAR MODES
19 SUBJECT TO THE ADMISSION TAX OPPOSED
20 UNDER CODE SECTION 12-21-24-20? THE
21 CONCLUSION WAS THE FEES PAID FOR
22 SIGHT-SEEING TOURS CONDUCTED BY
23 CARRIAGE, BUS, HELICOPTERS, AIRPLANE,
24 TROLLY, BOAT, AND OTHER SIMILAR MODES
25 ARE NOT SUBJECT TO THE ADMISSION TAX.

1 I THINK THAT WOULD GIVE Y'ALL SOME OF
2 THE INTERPRETIVE GUIDELINES WHICH IS
3 WHAT WE ARE ALL LOOKING FOR, A COMMON
4 DICTIONARY DEFINITION, BUT ALSO SOME
5 INTERPRETIVE GUIDELINES FROM THE SOUTH
6 CAROLINA DEPARTMENT OF REVENUE THAT
7 THEY CONSIDERED A SIGHT-SEEING TOUR
8 FACILITY TO NUMBER ONE, INCLUDE
9 HELICOPTERS, A SIGHT-SEEING TOUR
10 FACILITY AND IN SAME CATEGORY WITH THE
11 CHARLESTON CARRIAGE TOURS THAT YOU'D
12 SEE, AND OTHERWISE, THAT THEY ARE NOT
13 SUBJECT TO THE ADMISSION TAX. SO, I
14 WOULD LIKE TO ADMIT THIS AS EXHIBIT 2
15 INTO THE RECORD PLEASE.
16 MEMORANDUM FROM THE SOUTH
17 CAROLINA DEPARTMENT OF
18 REVENUE ADMITTED FOR
19 IDENTIFICATION AND INTRODUCED
20 INTO THE RECORD AS
21 DEFENDANT'S EXHIBIT 2.
22 MR. HANNA: CERTAINLY.
23 MR. BARODY: MR. CHAIRMAN, ONE MOMENT
24 PLEASE. MR. CHAIRMAN, I HAVE JUST ONE
25 -- WELL, I HAVE TWO -- ONE WITNESS WHO

1 IS GOING TO BE LESS THAN ONE MINUTE AND
2 HIS NAME IS COLONEL DAVID ANDERSON.

3 **COLONEL DAVID ANDERSON**, HAVING BEEN FIRST DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 COL. ANDERSON: DAVID ANDERSON, 3331
6 VALENTINE ESTATES ROAD, MYRTLE BEACH,
7 SOUTH CAROLINA.

8 MR. HANNA: WHAT WOULD YOU LIKE TO
9 SHARE, MR. ANDERSON?

10 COL. ANDERSON: WELL, I JUST WANTED TO
11 REITERATE THE FACT THAT MR. RICK, AND
12 FOR THAT MATTER MR. BASS, HAVE GONE
13 BEYOND THE NORMAL INDUSTRY STANDARD TO
14 MAINTAIN A SAFE AND EFFICIENT
15 OPERATION. IT IS A SAFE AND EFFICIENT
16 OPERATION. I'VE LOOKED AT IT
17 EXTENSIVELY OVER THE LAST SEVERAL
18 MONTHS. I JUST WANT TO MAKE THAT A
19 POINT OF RECORD.

20 MR. HANNA: THANK YOU, SIR.

21 MR. BARODY: MR. CHAIRMAN, WE HAVE NO
22 ADDITIONAL WITNESSES AT THIS TIME.

23 MR. BEVERLY: I HAVE A QUESTION.
24 WHO IS HE WITH? IS HE WITH THE FAA? I
25 DON'T KNOW WHAT HIS EXPERTISE IS.

1 MR. BAROODY: I'M SORRY. MR. BEVERLY,
2 HE IS DAVID ANDERSON AND HE IS A FAA
3 CONSULTANT. I WILL ALLOW HIM TO ANSWER
4 THAT FOR YOU.

5 COL. ANDERSON: I'M SORRY. ABOUT THAT
6 I WANTED TO BE BRIEF. WHAT IS
7 SPECIFICALLY YOUR QUESTION? I AM
8 RETIRED FROM THE FEDERAL AVIATION
9 COMMISSION.

10 MR. BEVERLY: YOU ARE A CONSULTANT NOW?
11 COL. ANDERSON: I AM A CONSULTANT.
12 THAT IS CORRECT. AND I AM THE
13 SUPERVISING INSPECTOR IN SOUTH
14 CAROLINA, THE OFFICE MANAGER IN FLIGHT
15 STANDARDS, WHICH IS THE REGULATOR
16 AVIATIONS SAFETY BRANCH OF THE FAA UP
17 IN MEMPHIS, TENNESSEE. I WAS OFFICE
18 MANAGER FOR THE FLIGHT STANDARDS
19 DISTRICT OFFICE IN SAN JUAN, PUERTO
20 RICO. I HAVE BEEN AN AVIATOR INCLUDING
21 HELICOPTERS FOR 48 YEARS. I'VE GOT
22 8,000 HOURS IN HELICOPTERS. MR. RICK
23 ASKED ME TO COME BY AND PARTICIPATE
24 WITH HIM WHEN HE ESTABLISHED A HELIPORT
25 SIGHT-SEEING FLIGHTS AND I LOOKED AT IT

1 FROM A SAFETY STANDPOINT.

2 MR. BEVERLY: THANK YOU.

3 MR. LEBIEDZ: I HAVE ONE QUESTION FOR
4 COL. ANDERSON. ARE YOU A PAID
5 CONSULTANT?

6 COL. ANDERSON: YES, SIR, I AM.

7 MR. LEBIEDZ: HOW MANY HELICOPTERS ARE
8 WE TALKING ABOUT THAT HE OWES?

9 COL. ANDERSON: HOW MANY HELICOPTERS
10 ARE WE TALKING ABOUT WHERE?

11 MR. LEBIEDZ: THAT HE OWES?

12 COL. ANDERSON: THERE ARE 4 IN
13 OPERATION AT THIS PARTICULAR LOCATION.

14 MR. LEBIEDZ: AND ALL 4 ARE IN
15 OPERATION?

16 COL. ANDERSON: YES, SIR.

17 MR. BARODY: I KNOW Y'ALL HAVE HEARD
18 ENOUGH. I JUST WANT TO STATE ONE
19 ADDITIONAL THING IN CONCLUSION AND THIS
20 GOES BACK TO WHAT THE LAST WITNESS SAID
21 ON BEHALF OF MR. HINDE. I FORGET THE
22 LADY'S NAME, BUT SHE RAISED AN ISSUE
23 ABOUT, "HOW ARE WE SUPPOSED TO KNOW?
24 HOW ARE WE SUPPOSED TO KNOW?" WELL,
25 THE ONLY WAY THAT YOU CAN KNOW IS TO DO

1 WHAT MR. HINDE DID AND LOOK AND SEE
2 WHAT THE AC ZONING PERMITS ARE OR WHAT
3 IT DOESN'T PERMIT. I, FOR ONE, LIVE IN
4 MURRELL'S INLET AND WE LIVE PRETTY
5 CLOSE TO WHERE ALL THE RESTAURANTS, AND
6 SO FORTH ARE ON THE WATER. EVERY
7 NIGHT, EVERY SINGLE NIGHT, I GOT TO
8 LISTEN TO ALL THE MUSIC AT BARS,
9 ESPECIALLY DURING THIS TIME OF YEAR
10 BECAUSE IT JUST FLOWS RIGHT THROUGH AND
11 RIGHT TO WHERE OUR HOUSE IS. I
12 UNDERSTAND THAT, BUT AT THE SAME TIME
13 IT WAS WHERE WE CHOSE TO LIVE AT THAT
14 POINT IN TIME. AND WHERE WE CHOSE TO
15 LIVE WAS, UNFORTUNATELY, WITHIN CLOSE
16 PROXIMITY OF THAT AREA. THE AC ZONE,
17 LIKE MANY OTHERS HAS, UNFORTUNATELY,
18 FOR THE RESIDENCES OF PLANTATION POINTE
19 AND OTHERWISE, HAS RESIDENTIAL AREAS
20 LOCATED IN VERY, VERY CLOSE PROXIMITY
21 TO WHAT ARE CLEARLY AMUSEMENT/
22 COMMERCIAL USES, SUCH AS THE NASCAR
23 SPEED PARK, WHICH HAS A LARGE BERM FOR
24 NOISE ABATEMENT IN PLACE ALREADY.
25 MYRTLEWOOD GOLF COURSE, WHICH I BELIEVE

1 WAS ORIGINALLY IN THE AC ZONE. IN
2 ADDITION TO THAT, MYRTLE WAVES. THERE
3 ARE A NUMBER OF OTHER PERMITTED USES
4 WITHIN THE AC ZONE THAT ARE IN CLOSE
5 PROXIMITY TO THIS AREA. SO THE POINT
6 THAT I'M TRYING TO MAKE IS THIS, TO
7 THINK THAT BY LIVING IN THAT AREA YOU
8 WILL FOREVER AND EVER BE FREE FROM ANY
9 AND ALL NOISE, FROM ANY AND ALL KIND OF
10 AMUSEMENT ACTIVITIES, WHICH YOU MIGHT
11 BELIEVE ARE OBNOXIOUS AND ARE
12 UNPLEASANT, IS JUST NOT GOING TO BE
13 THERE. AND I WOULD ASK THAT YOU AGAIN
14 CONSIDER THAT FACTOR AMONGST THE OTHERS
15 THAT WE HAVE RAISED WITH Y'ALL TONIGHT.
16 WITH THAT WE CONCLUDE AND WE THANK YOU
17 FOR Y'ALL'S TIME.

18 MR. HANNA: THANK YOU, MR. BAROODY.
19 ANY DISCUSSION AMONGST THE BOARD? MR.
20 IVES.

21 MR. IVES: MR. CHAIRMAN, THERE IS ONE
22 PART THAT I WOULD LIKE TO PASS ON
23 BECAUSE I THINK IT'S ONE OF THE
24 KEYWORDS THAT APPLIES HERE AND THAT IS
25 THE TERM, 'AMUSEMENT.' THE ZONE THAT

1 WAS APPROVED FOR THIS ACTIVITY IS AN
2 AMUSEMENT ZONE. ALSO AM1 AND AM2 ARE
3 AMUSEMENT ZONES. I THINK THEY ARE
4 CALLED AVIATION AND AMUSEMENT IS
5 UNDER-WHELMING AND DOESN'T DO JUSTICE
6 TO AVIATION. THE SAFETY CONSIDERATIONS
7 THAT ARE APPLICANTS FOR THE HELICOPTER
8 OPERATION IS SOMEONE WHO HAS
9 SUBSTANTIAL EXPERIENCE AS AN FAA
10 INVESTIGATOR. SO, THEY ARE
11 ACKNOWLEDGING THE SAFETY CONSIDERATIONS
12 THAT ARE REQUIRED HERE. AND IT'S FAR
13 IN EXCESS OF ANY RIDE IN ANY AMUSEMENT
14 PARK. AND I THINK THAT IT'S
15 UNDER-WHELMING TO CONSIDER IT
16 AMUSEMENT, AND I THINK IN MY HUMBLE
17 OPINION, THE ZONE ADMINISTRATOR DID ERR
18 BECAUSE IT IS NOT SIMPLY AMUSEMENT/
19 COMMERCIAL...
20 AUDIENCE: (CLAPPING AND MAKING NOISE.)
21 MR. HANNA: ANY OTHER QUESTIONS? MS.
22 CREECH.
23 MS. CREECH: YES. I WOULD LIKE TO SAY
24 THAT, UNFORTUNATELY, OUR STAFF DOESN'T
25 HAVE THE SAME LUXURY WE HAVE. THEY

1 DON'T GET TO SEE THIS AFTER EVERYONE
2 HAS HAD THEIR SAY AND THEY DON'T GET TO
3 SEE WHAT HAPPENS BECAUSE OF A RESULT OF
4 WHAT HAPPENED. I UNDERSTAND WHERE THEY
5 CAME FROM AND I DON'T HAVE ANY
6 CRITICISM IN THE DECISION THAT WAS MADE
7 FROM EACH DIFFERENT PERSONS'
8 INTERPRETATION. HAVING GONE TO MANY
9 MEETINGS, I REMEMBER BEING IN THE
10 MEETING WHERE A LOT OF THESE ZONES HAVE
11 BEEN RETIRED AND THEY WERE RETIRED
12 BECAUSE OF THE OBNOXIOUS HARDSHIP THAT
13 WAS VISITED UPON THE PUBLIC. THIS WAS
14 NOT WRITTEN OUT AS A USE IN THIS AREA
15 AND I THINK OUR BOARD IS GIVEN A LITTLE
16 BIT MORE LEEWAY IN OUR INTERPRETATION
17 OF WHAT WE'RE LOOKING AT THAN THE STAFF
18 DOES. AT TIMES I THINK THEY HAVE A
19 HARDER JOB THAN WE DO AT TIMES. AND I
20 WOULD LIKE TO SAY THAT EVERYTHING THAT
21 COMES BEFORE US, WHETHER IT'S A SPECIAL
22 EXEMPTION, A VARIANCE, OR WHETHER OR
23 NOT TO OVERTURN THE ZONING
24 ADMINISTRATOR'S DECISION, SOMETIMES WE
25 HAVE, SOMETIMES WE HAVE NOT. AND I

1 THINK THAT ALL GOES BACK TO EACH
2 INDIVIDUAL'S INTERPRETATION. BUT I
3 THINK ALL OF YOUR SPECIAL EXEMPTIONS,
4 VARIANCES AND OVER-TURNINGS HAVING TO
5 DO WITH A HARDSHIP, I THINK THEIR USE
6 -- I AGREE WITH MR. IVES, AND I BELIEVE
7 THAT THE BOARD IS HERE TO TAKE INTO
8 CONSIDERATION ALL OF THESE THINGS AND I
9 THINK AS A BOARD THAT IS OUR JOB. SO,
10 I AGREE WITH MR. IVES. I CAN'T SUPPORT
11 LEAVING THIS AS IT STANDS.

12 MR. HANNA: THANK YOU, MS. CREECH. I
13 JUST WOULD LIKE TO SAY I CERTAINLY FEEL
14 BAD FOR ALL PARTIES INVOLVED HERE
15 BECAUSE THERE IS NOT GOING TO BE A
16 WINNER NO MATTER WHAT HAPPENS. THERE
17 IS NO WINNER. I'VE GOT FRIENDS AND
18 FAMILY THAT LIVE IN THIS COMMUNITY OF
19 PLANTATION POINTE. HOPEFULLY, THEY
20 WILL STILL BE MY FRIENDS IN LOOKING AT
21 THE FACTS, AND WHAT MS. MINCEY HAD AT
22 HER DISPOSAL. I CANNOT FIND ANYTHING
23 TO HANG MY HAT ON IN THAT SHE MADE A
24 POOR DECISION BASED ON WHAT SHE HAD TO
25 WORK WITH. IF I WERE A RESIDENT THAT

1 LIVED THERE, OBVIOUSLY I WOULD BE
2 STANDING WHERE YOU ARE STANDING AND I
3 WOULD BE DOING EXACTLY WHAT YOU'RE
4 DOING. AND I DO COMMEND YOU FOR THAT.
5 IF THERE IS NO OTHER DISCUSSION, CHAIR
6 WILL ENTERTAIN A MOTION TO REVERSE THE
7 DETERMINATION OF THE ZONING
8 ADMINISTRATOR.

9 MS. CREECH: I MAKE A MOTION TO REVERSE
10 THE DETERMINATION OF THE ZONING
11 ADMINISTRATOR IN THIS CASE.

12 MR. HANNA: I'VE GOT A MOTION. DO I
13 HAVE A SECOND?

14 MR. LEBIEDZ: SECOND.

15 MR. HANNA: STARTING WITH MR. IVES, A
16 VOTE OF YES WOULD PASS THE MOTION TO
17 REVERSE THE DETERMINATION OF THE ZONING
18 ADMINISTRATOR DECISION.

19 MR. IVES: YES.

20 MR. KEELAN: YES.

21 MR. PARKER: NO.

22 MS. CREECH: YES.

23 MR. LEBIEDZ: YES.

24 MR. BEVERLY: NO.

25 MR. HANNA: NO. THE MOTION TO REVERSE

1 THE DETERMINE OF THE ZONING
2 ADMINISTRATOR PASSED WITH 4 VOTES. YOU
3 FEEL FREE TO LEAVE AT THIS TIME.
4 AGAIN, THANK YOU FOR YOUR PETITION.
5 MR. LEBIEDZ: MR. CHAIRMAN, CAN WE TAKE
6 A 5 MINUTE BREAK?
7 MR. HANNA: YES.
8 DEFINITION OF DEPOT ADMITTED
9 FOR IDENTIFICATION AND
10 INTRODUCED INTO THE RECORD AS
11 PLAINTIFF'S EXHIBIT 1.
12 WIKIPEDIA'S DEFINITION OF
13 DEPOT ADMITTED FOR
14 IDENTIFICATION AND INTRODUCED
15 INTO THE RECORD AS
16 PLAINTIFF'S EXHIBIT 2.
17 COURT OF APPEALS PAPERS IN
18 SOUTH CAROLINA ADMITTED FOR
19 IDENTIFICATION AND INTRODUCED
20 INTO THE RECORD AS
21 PLAINTIFF'S EXHIBIT 3.
22 **MR. HINDE'S NOTEBOOK**
23 **IDENTIFIED FOR THE RECORD.**
24 (RECESS TAKEN.)
25

1 SOUTH CAROLINA,

2 **CERTIFICATE**

3 Horry COUNTY.

4 I, PEPPER M. MCCARTHY, A NOTARY PUBLIC AND
5 VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH
6 CAROLINA DO HEREBY CERTIFY THAT THIS WITNESSES
7 WERE DULY SWORN PRIOR TO THE TAKING OF THEIR
8 TESTIMONY AT THE BOARD OF APPEALS AND THAT THE
9 FOREGOING (ONE HUNDRED AND FIFTY-TWO) (152) PAGES
10 CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE
11 EVIDENCE AS GIVEN BY SAID WITNESSES AND AS TAKEN
12 DOWN AND TRANSCRIBED BY ME. I FURTHER CERTIFY
13 THAT THE PERSONS WERE PRESENT.

14 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR
15 NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS
16 ACTION NOR AM I INTERESTED EITHER DIRECTLY OR
17 INDIRECTLY IN THE RESULTS THEREOF.

18 I FURTHER CERTIFY THAT I AM NOT RELATED BY
19 BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS
20 ACTION.

21 THIS THE 28TH, DAY OF SEPTEMBER, 2012.

22 _____
23 PEPPER M. MCCARTHY,
24 VERBATIM REPORTER AND
NOTARY PUBLIC

25 MY COMISSION EXPIRES:
FEBRUARY 2, 2022

MABRY COURT REPORTING

PEPPER M. MCCARTHY (843) 957-7653

PEPPERMCCARTHY@SC.RR.COM

PLAINTIFF'S EXHIBIT
 # 1
 9.10.12
 PAGA

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depot (noun)

1. A railroad or bus station.
2. A warehouse or storehouse.
3.
 - a. A storage installation for military equipment and supplies.
 - b. A station for assembling military recruits and forwarding them to active units.

[French dépôt, from Old French deposit, from Latin depositum, something deposited, from neuter past participle of depōnere, to put down, deposit; see depose.]

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depot (US and Canadian) 'dipɒt'
 n
 1. (Business / Commerce) a storehouse or warehouse
 2. (Military) Military
 a. a store for supplies
 b. a training and holding centre for recruits and replacements
 3. (Transport / Railways) *Oldly Brit* a building used for the storage and servicing of horses or railway engines
 4. (Transport / Railways) US and Canadian
 a. a bus or railway station
 b. (as modifier) a depot manager
 adj
 (Medicine / Pharmacology) (of a drug or drug dose) designed for gradual release from the site of an infection so as to act over a long period
[from French dépôt, from Latin depositum a deposit, trust]

Other English Dictionaries: Concise and Unabridged © HarperCollins Publishers 1994, 1994, 1994, 2000, 2005

1. supply—An activity for the receipt, classification, storage, accounting, issue, maintenance, procurement, manufacture, assembly, research, salvage, or disposal of material.
2. personnel—An activity for the reception, processing, training, assignment, and forwarding of personnel replacements.

Dictionary of Military and Associated Terms. US Department of Defense 2005.

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Charity
Feed a hungry child - don't miss school feeding program

don't miss TODAY's from AT&T

Thesaurus Legend: [Synonyms] [Related Words] [Antonyms]

Noun 1. depot - station where transport vehicles load or unload passengers or goods

Related words

air terminal, airport terminal - a terminal that serves air travelers or air freight

bus station, bus stop, bus terminal, coach station - a terminal that serves bus passengers

railroad - the positively charged terminal of a vehicle cell or storage battery that supplies current

railroad station, railroad terminal, railway station, train depot, train station - terminal where trains load or unload passengers or goods

station - a facility equipped with special equipment and personnel for a particular purpose; "he started looking for a gas station"; "the train pulled into the station"

subway station - a terminal where subways load and unload passengers

transportation, transportation system, transit - a facility consisting of the means and equipment necessary for the movement of passengers or goods

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Depot

From Wikipedia, the free encyclopedia

Depot (/ˈdɛpoʊ/ *DEP-oh* or /ˈdiːpoʊ/ *DEE-poh*) is from the French *dépôt* which means a deposit (as in geology or banking) or a storehouse. In English, depot can mean any one of a number of things, with minor variances between the different English speaking countries:

Transport

- Train station
- Bus station
- Bus garage, where buses are stored when not in use
- Motive power depot, where trains and trams are stored when not in use
- Transport hub for freight
- Oil depot
- Propellant depot, which supplies fuel to spacecraft
- Castaway depot, contains stores and survival gear for victims of shipwrecks

Technology

- An application in the Radio Service Software
- The format for Hewlett-Packard's Software Distributor

Military

- Regimental depot, the headquarters and training grounds of a regiment
- Main Operating Base, an overseas base for the US military
- Logistics center

Other

- The Home Depot and Office Depot, a store
- Depot, Poland, a village
- Injection (medicine)/Depot injection
- RCMP Academy, Depot Division, in Saskatchewan, Canada
- Maxwell Street Depot in Chicago, United States
- "Depot" is a term used for providing details on the account held by one bank with another where it does not exist.

See also

- Depot Historic District (disambiguation)

Depot Rail vehicles maintenance space where mainly all operations are held.

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Categories: Disambiguation pages

-
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PLAINTIFF'S
EXHIBIT
#2 9.10.12

07/02/12

flightname	reservationid	GotOnCart	CartTime	Hr	Mn	Sec
Pine Lakes Adventure	4235	7/31/12 10:53	10:53:19	10	53	18
Boardwalk Adventure	4236	7/31/12 11:11	11:11:22	11	11	22
Boardwalk Adventure	4237	7/31/12 11:17	11:17:29	11	17	29
Boardwalk Adventure	4238	7/31/12 11:43	11:43:54	11	43	53
Boardwalk Adventure	4239	7/31/12 11:55	11:55:23	11	55	22
Boardwalk Adventure	4240	7/31/12 11:49	11:49:20	11	49	20
Pine Lakes Adventure	4241	7/31/12 12:05	12:05:56	12	5	55
Boardwalk Adventure	4242	7/31/12 12:14	12:14:04	12	14	3
Pine Lakes Adventure	4243	7/31/12 12:24	12:24:39	12	24	38
Boardwalk Adventure	4244	7/31/12 12:37	12:37:18	12	37	18
Fly4Fun Ride	4245	7/31/12 12:45	12:45:26	12	45	25
Boardwalk Adventure	4247	7/31/12 12:50	12:50:14	12	50	14
Boardwalk Adventure	4248	7/31/12 12:56	12:56:36	12	56	36
Fly4Fun Ride	4249	7/31/12 13:07	13:07:04	13	7	4
Fly4Fun Ride	4250	7/31/12 13:11	13:11:33	13	11	32
Fly4Fun Ride	4251	7/31/12 13:17	13:17:25	13	17	25
Grand Dunes Adventure	4252	7/31/12 13:34	13:34:04	13	34	3
Fly4Fun Ride	4253	7/31/12 13:46	13:46:37	13	46	37
Fly4Fun Ride	4254	7/31/12 13:46	13:46:27	13	46	26
Fly4Fun Ride	4255	7/31/12 13:50	13:50:46	13	50	46
Boardwalk Adventure	4256	7/31/12 13:54	13:54:20	13	54	19
Boardwalk Adventure	4257	7/31/12 13:55	13:55:53	13	55	53
Boardwalk Adventure	4258	7/31/12 14:00	14:00:49	14	0	49
Boardwalk Adventure	4259	7/31/12 14:13	14:13:05	14	13	4
Boardwalk Adventure	4260	7/31/12 14:39	14:39:32	14	39	32
Boardwalk Adventure	4261	7/31/12 14:51	14:51:46	14	51	46
Boardwalk Adventure	4262	7/31/12 14:43	14:43:16	14	43	16
Fly4Fun Ride	4263	7/31/12 15:05	15:05:04	15	5	4
Fly4Fun Ride	4264	7/31/12 15:33	15:33:36	15	33	36
Boardwalk Adventure	4265	7/31/12 15:38	15:38:01	15	38	0
Boardwalk Adventure	4266	7/31/12 15:43	15:43:08	15	43	8
Fly4Fun Ride	4267	7/31/12 16:16	16:16:47	16	16	47
Boardwalk Adventure	4268	7/31/12 16:54	16:54:38	16	54	37
Boardwalk Adventure	4269	7/31/12 17:20	17:20:59	17	20	59
Boardwalk Adventure	4270	7/31/12 17:34	17:34:41	17	34	41
Boardwalk Adventure	4271	7/31/12 17:39	17:39:03	17	39	3
Boardwalk Adventure	4272	7/31/12 17:43	17:43:06	17	43	5
Boardwalk Adventure	4273	7/31/12 17:55	17:55:39	17	55	39
Pine Lakes Adventure	4274	7/31/12 17:59	17:59:36	17	59	36
Pine Lakes Adventure	4275	7/31/12 18:09	18:09:01	18	9	0
Boardwalk Adventure	4276	7/31/12 18:16	18:16:12	18	16	11
Boardwalk Adventure	4277	7/31/12 18:20	18:20:47	18	20	47

**DEFENDANT'S
EXHIBIT**

#1 PMM
9.10.12

000190

flightname	reservationic	GotOnCart	CartTime	Hr	Mn	Sec
Boardwalk Adventure	4278	7/31/12 18:27	18:27:49	18	27	48
Boardwalk Adventure	4279	7/31/12 18:31	18:31:35	18	31	34
Boardwalk Adventure	4280	7/31/12 18:34	18:34:49	18	34	48
Boardwalk Adventure	4281	7/31/12 18:38	18:38:35	18	38	34
Boardwalk Adventure	4282	7/31/12 18:45	18:45:29	18	45	28
Boardwalk Adventure	4283	7/31/12 18:45	18:45:34	18	45	34
Fly4Fun Ride	4284	7/31/12 19:23	19:23:19	19	23	19
Pine Lakes Adventure	4285	7/31/12 19:28	19:28:16	19	28	15
Boardwalk Adventure	4286	7/31/12 19:28	19:28:23	19	28	22
Boardwalk Adventure	4287	7/31/12 19:33	19:33:33	19	33	33
Fly4Fun Ride	4288	7/31/12 19:45	19:45:43	19	45	42
Fly4Fun Ride	4289	7/31/12 19:50	19:50:17	19	50	16
Fly4Fun Ride	4290	7/31/12 19:45	19:45:02	19	45	1
Fly4Fun Ride	4291	7/31/12 19:50	19:50:25	19	50	24
Boardwalk Adventure	4292	7/31/12 19:57	19:57:26	19	57	25
Boardwalk Adventure	4293	7/31/12 20:09	20:09:29	20	9	29
Boardwalk Adventure	4294	7/31/12 20:17	20:17:12	20	17	12
Boardwalk Adventure	4295	7/31/12 20:25	20:25:42	20	25	41
Boardwalk Adventure	4296	7/31/12 20:32	20:32:39	20	32	39
Pine Lakes Adventure	4297	7/31/12 20:52	20:52:36	20	52	35
Pine Lakes Adventure	4298	7/31/12 20:52	20:52:36	20	52	36
Boardwalk Adventure	4299	7/31/12 21:00	21:00:03	21	0	2
Boardwalk Adventure	4300	7/31/12 21:12	21:12:19	21	12	19

State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC TECHNICAL ADVICE MEMORANDUM #95-2 (TAX)

TO: Marvin Davant, Assistant Administrator
Field Services Division

SUBJECT: Sight-Seeing Tours
(Admissions Tax)

DATE: October 18, 1995

SCOPE: This Technical Advice Memorandum is Policy's official advisory opinion of how laws administered by the Department of Revenue are to be applied to a specific issue or set of facts.

DEFENDANT'S
EXHIBIT

#2 PMM
9.10.12

Question:

Are fees paid for sight-seeing tours conducted by carriage, bus, helicopter, airplane, trolley, boat, and other similar modes subject to the admissions tax imposed under Code Section 12-21-2420?

Conclusion:

Fees paid for sight-seeing tours conducted by carriage, bus, helicopter, airplane, trolley, boat, and other similar modes are not subject to the admissions tax imposed under Code Section 12-21-2420.

Facts:

Tourist areas in South Carolina provide a variety of sight-seeing tours to our State's visitors. The mode of tour includes boats, buses, motorized trollies, helicopters, airplanes and horse drawn carriages. Generally, the visitor pays the tour business a set fee to take a specific area tour. The visitor may, for example, take a tour by air over the beach, a trolley ride to view museums and local landmarks, a bus ride to view churches, battle grounds, and historic homes, or a carriage tour of blooming gardens. Upon completion of the tour, the visitor is returned to his original place of departure.

Advice has been requested concerning the applicability of the admissions tax to these various sight-seeing tours.

Discussion:

Code Section 12-21-2420 imposes the admissions tax and reads, in part:

There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent...

* * *

The tax imposed by this section shall be paid by the person or persons paying such admission price and shall be collected and remitted to the South Carolina Department of Revenue and Taxation by the person or persons collecting such admission price...

It has been the longstanding policy of the Department of Revenue not to impose the admissions tax on fees paid solely for sight-seeing tours conducted by carriage, bus, helicopter, airplane, trolley, boat, and other similar modes. The rationale for this policy is twofold:

(1) Prior to 1981, the Department considered an excursion boat with a dance hall to be a place of amusement, but did not consider boat or other sight-seeing tours to be places of amusement. In March 1981, Attorney General Opinion No. 81-30 concluded that an excursion boat offering sight-seeing or fishing was a place of amusement. Later in 1981, the Legislature amended Code Section 12-21-2420 to exempt from the admissions tax "admissions to boats which charge a fee for pleasure fishing, excursion, sight-seeing and private charter." A result of this amendment was to confirm the Department's prior longstanding administrative policy of not taxing fees charged for sight-seeing tours.

(2) For years the Department's Audit Training Manual for Admissions Tax has stated that carriages, helicopter, or plane rides for touring or pleasure are not subject to the tax.¹

It is well settled that the construction of a statute by an agency charged with its administration will be accorded the most respectful consideration and will not be overturned absent compelling reason. Laurens County School Districts 55 & 56 v. Cox, 308 S.C. 171, 417 S.E. 560 (1992). Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 409 S.E. 2d 333 (1991); Dunton v. S.C. Bd. of Examiners of Optometry, 291 S.C. 221, 353 S.E. 2d 132 (1987).

¹It should be noted that the admissions tax applies to charges for admission to a carriage, bus, trolley, etc. when admission to the vehicle is for entertainment, dancing, or drinking in a social environment, and not solely for sight-seeing.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2012-CP-26-06987

2 COUNTY OF Horry

3
4
5 HELICOPTER SOLUTIONS, INC.,)
6 DBA HELICOPTER ADVENTURES,)

7
8 -vs-)

9 Horry County Board of Zoning)
10 APPEALS and RICHARD HINDE,)

11 Defendants)

12
13 December 11, 2012

14 B E F O R E:

15 HONORABLE LARRY B. HYMAN, JR.

16
17 A P P E A R A N C E S:

18 BENJAMIN A. BARODY, Esquire
19 Attorney for the Plaintiff

20 KENNETH R. MOSS, Esquire
21 EMMA RUTH BRITAIN, Esquire
22 Attorney for the Defendants

23 Henry P. Young
24 Court Reporter
25

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: What do we have? Mr. Baroody, I
3 think you're the moving party?

4 MR. BAROODY: Yes.

5 THE COURT: Refresh my memory, I remember
6 something about this case. This involves a
7 helicopter ride around Myrtle Beach, a city
8 ordinance granting that franchise or permit, is
9 that correct?

10 MR. BAROODY: Yes, Your Honor. I will bring
11 you up to speed if it please the Court. Your Honor
12 I represent Helicopter Solutions, Inc., which does
13 business as Helicopter Adventures. Helicopter
14 Adventures operates a helicopter sightseeing tour
15 facility just beside where NASCAR Speed Park is
16 located across the street from Broadway at the
17 Beach. Mr. Rickett and his wife Mitsy Rickett
18 behind me, they are the owners of Helicopter
19 Adventures. This is an appeal, Your Honor, of a
20 decision by the Horry County Board of Zoning
21 Appeals which made the determination in September
22 of this year that in November of 2011, a
23 determination by Rennie Mincey, the zoning
24 administrator who stated that Helicopter Ventures
25 may in fact operate a helicopter sightseeing tour

1 facility at the site.

2 THE COURT: Permitted activity.

3 MR. BAROODY: That's correct. Miss Mincey
4 decided in November, 2011, in her determination
5 that helicopter, that a helicopter sightseeing tour
6 facility was a permitted use within the amusement
7 commercial zone. That decision was subsequently
8 relied upon by Helicopter Adventure Tours in the
9 course of constructing its business, creating its
10 business, operating its business over the course of
11 the next six months.

12 It did in fact operate, it operated pursuant
13 to all applicable laws within the noise ordinances,
14 pursuant to all FAA guidelines. All this is in the
15 record, Your Honor, none of it is in dispute.

16 Then on June 22nd of this year, Your Honor,
17 Mr. Hinde who is a resident of the Plantation Point
18 Subdivision located behind the NASCAR Speed Park
19 and behind where Helicopter Adventure Tours is
20 located filed an appeal with the Horry County Board
21 of Zoning Appeals challenging Miss Mincey's
22 determination.

23 Your Honor, we had a hearing before the ZBA
24 in September. By a vote of four to three it was
25 determined at that point in time that Miss Mincey

1 made the wrong decision, that Janet Carter made the
2 wrong decision, that the County made the wrong
3 decision, and that brought us here today.

4 Your Honor, we were before you about a month
5 or two ago on a request for a supersedes which the
6 Court granted and so this brings us to the merits
7 of the appeal today and we assign error to the
8 Board of Zoning Appeals in three basic forms, the
9 first of which is by far the most significant for
10 policy considerations and every other
11 consideration, and that is that Mr. Hinde as a
12 third party was not a person who was agrieved by
13 that decision of Miss Mincey who had a right to
14 appeal it to the ZBA. In other words, he had no
15 standing.

16 Your Honor, if one were to look at the Horry
17 County zoning ordinance, and I think it is
18 relatively common knowledge that the primary issues
19 that go before a board of zoning appeals are
20 appeals by applicants and respondents for variance
21 requests, business license denials, construction
22 permit approvals or denials, and in turn if a party
23 to that application or to a variance request and so
24 forth is denied that request, then that person can
25 appeal it and the responding party would be the

1 county who denied it. And in that situation you're
2 always going to have the situation where an appeal
3 from that decision is with proper notice and so
4 forth.

5 In this case it is completely different
6 because in this case you don't have an appeal by an
7 applicant, you don't have an appeal by a
8 respondent. You have an appeal by a third party
9 who lives in the neighborhood, who seven months
10 after the determination being appealed was made,
11 after rights have vested with the property owner,
12 only after all those things have occurred, then
13 does the matter go before the Board of Zoning
14 Appeals.

15 THE COURT: What is the time limit?

16 MR. BAROODY: Your Honor, what the statute,
17 what the Horry County zoning ordinance says is that
18 an appeal is to be made within a reasonable time,
19 and that is our second basis for our argument, is
20 that Mr. Hinde's appeal in this limited set of
21 circumstances was not made within a reasonable time
22 because the rights had already vested for the
23 property owners. The county had already issued a
24 certificate of occupancy, had already issued a
25 business license, had already issued a storm water

1 permit, had already issued every single required
2 permit that the county required, the City of Myrtle
3 Beach required, the property owner got and
4 throughout that process at no point in time was
5 there ever any dispute or issue and so forth.

6 So, in other words, Your Honor, I think the
7 easiest thing that the Court can do today -- well,
8 I will get back to that in a moment. The third
9 point is actually to the merits of the actual
10 decision. We can get to that in a minute but
11 before we get there, Your Honor --

12 THE COURT: I'm at a loss again. The county
13 employee Miss Mincey and her office approved the
14 activity, is that correct?

15 MR. BAROODY: Yes, Your Honor.

16 THE COURT: And permits were issued?

17 MR. BAROODY: Correct, Your Honor.

18 THE COURT: But somehow then it comes before
19 the Zoning Board, is that correct?

20 MR. BAROODY: Yes, Your Honor. Let me better
21 explain that process. In November of 2010, well
22 over a year ago, Mr. Rickett at that point in time
23 was looking to create a helicopter sightseeing tour
24 business. At that point in time, and again this is
25 all in the record before Your Honor, these are

1 findings of fact made by the ZBA. At that point in
2 time he looked for property. He hired Earth Works,
3 a local engineering firm, to find a piece of
4 property that would allow for the use.

5 Through Earth Works they contacted the county
6 and the zoning administrator Miss Mincey. Miss
7 Mincey told them at that point in time through a
8 letter that a helicopter sightseeing tour facility
9 is a permitted use within the amusement commercial
10 zoning and the piece of property where it is
11 located now is in the AC zone. She said everything
12 looks good.

13 When she made that determination, at that
14 point in time that permitting process began. I've
15 got a time line that is in the record, I can show
16 Your Honor, but the first thing that occurred was
17 there was an application for a building permit.
18 The plans and so forth were submitted to the
19 county, the county revised those plans and then
20 ultimately the county issued a final building
21 permit to allow the building to go forward did.
22 They issued a business license, a storm water
23 permit, certificate of zoning compliance, the whole
24 nine yards, the whole gamut, everything was done
25 and was done just right.

1 So all that was done in reliance upon what
2 the zoning administrator did. Only after all of
3 those things occurred and only after he began and
4 commenced operations, after the license was issued
5 and the CO was issued on May 25th of this year,
6 only almost a month after that then was an appeal
7 by a homeowner made to the Zoning Board of Appeals.

8 Your Honor, going back to the first point,
9 the first argument I have, which that is that

10 THE COURT: The Zoning Board of Appeals voted
11 to overturn that?

12 MR. BAROODY: Correct, by a vote of four to
13 three the Zoning Board of Appeals voted to overturn
14 the decision of Miss Mincey.

15 THE COURT: All right.

16 MR. BAROODY: The first and primary argument,
17 the problem with that, Your Honor, is that it, that
18 it creates such a difficult task for the county,
19 for the Planning and Zoning Department in Horry
20 County because in the event that any decision that
21 is made by the county, by the Planning and Zoning
22 for determination, that does not require your
23 typical public notice that would come through a
24 rezone, something of that nature. In the event
25 that a zoning administrator is charged with making

1 discretionary decisions like she was here, then it
2 leaves open for indefinite period of time any
3 homeowner anywhere around town to challenge it and
4 that creates an undue burden upon the county in
5 having to deal with these things after the fact.
6 The county zoning ordinance specifically says that
7 these matters are to be dealt with by the zoning
8 administrators and, Your Honor, the record on
9 appeal is replete with testimony from Janet Carter
10 who is the veteran Planning and Zoning
11 administrator of Horry County.

12 THE COURT: I know Miss Carter.

13 MR. BARODY: Your Honor, Miss Carter
14 testified before the Board of Zoning Appeals, as
15 did Miss Mincey, and said that you cannot, one
16 cannot craft a zoning ordinance that lists every
17 specific permitted use, one cannot do that. And
18 so, for example, she mentioned an auction house, it
19 is not mentioned anywhere in the zoning ordinance,
20 so in turn zoning administrators like Miss Mincey
21 have to look at the zones that are before them to
22 determine, well, if an auction house or if a
23 helicopter sightseeing tour facility is not
24 specifically listed in the zoning ordinance, well,
25 in what ordinance would it fit?

1 And in this case she looked to the amusement
2 commercial zone and, Your Honor, I will read to you
3 what it says. Section 7-12 of the Horry County
4 ordinances states the intent of the amusement
5 commercial district is to allow for the mixing of
6 certain specified land uses in the county where
7 both residential and limited business uses are
8 competing for land and accelerated transition is in
9 evidence.

10 And underneath that it has permitted uses.
11 Providing entertainment primarily as commercial
12 activity, including but not limited to theaters,
13 billiard halls, pool halls, bowling alleys, water
14 slides, skating rinks, dance halls, shooting
15 galleries, gift and novelty shops, taverns, clubs,
16 amusement parks, piers, arcades, miniture and par
17 three golf, driving ranges, boardwalks, bath houses
18 and sightseeing depots.

19 It was sightseeing depots that the county
20 relied upon in making its determination that a
21 helicopter sightseeing tour facility fit this use
22 because a sightseeing tour originates and
23 terminates at a depot of sightseeing, whether it is
24 by air, rail, bus, jeep, van, et cetera.

25 So, that was what she relied upon in making

1 her determination. The argument that the county
2 said was that, for example, that the amusement
3 commercial zone by way of example does not list a
4 NASCAR Speed Park, nowhere in what I just read to
5 the Court does it say a NASCAR Speed Park or a
6 driving amusement nor does it mention a race track.
7 However, both of those uses have been deemed to be
8 permitted uses within the amusement commercial
9 zone, the first of which being the NASCAR Speed
10 Park located on the parcel right beside where Mr.
11 Rickett's helicopter tour facility is located, the
12 second of which is --

13 THE COURT: Did Zoning base its decision on a
14 finding that the helicopter rides did not fit under
15 that zoning classification? Is that what they did,
16 or did they find some other reason?

17 MR. BAROODY: Your Honor, the reasoning is
18 not clear from the order or from the record. The
19 only reasoning that is specified in the order of
20 the Board is, this is a conclusion of law that we
21 take issue with, "The Board overturns the decision
22 of the zoning administrator, finding that a
23 helicopter tour facility is not a sightseeing depot
24 and is not consistent with the uses allowed in the
25 AC zoning districts." That is what the order says.

1 THE COURT: Isn't that what they are saying,
2 that it is not consistent with the uses permitted
3 under the zoning?

4 MR. BAROODY: That's correct, Your Honor.

5 THE COURT: All right.

6 MR. BAROODY: So . . .

7 THE COURT: So that is what we're talking
8 about, whether or not it is a permitted use?

9 MR. BAROODY: That's correct, Your Honor.

10 THE COURT: Okay, all right.

11 MR. BAROODY: So that's the issue on appeal
12 today, is that decision, is this a permitted use
13 under what I just read to the Court or not.

14 THE COURT: All right.

15 MR. BAROODY: And going back to it, the first
16 issue, the first exception to that is that a third
17 party, not the applicant for a building permit, not
18 the respondent who granted the building permit,
19 that person cannot be allowed to file an appeal of
20 such a determination because of the situation that
21 we're in now. In excess of three million dollars
22 was spent by the property owner in reliance upon
23 Miss Mincey's determination, in reliance upon what
24 Planning and Zoning allowed them to do for six
25 months in a row, granting four or five different

1 permits and so forth. After the fact a third party
2 to that process cannot be allowed to come in and
3 overturn it all on its head and cause undue damage
4 to Mr. Rickett and his business.

5 THE COURT: You know, a couple years ago I
6 issued an order in Georgetown League of Voters
7 versus Smith Land Company in which a third party
8 after DHEC had determined to take no action on a
9 wetlands issue brought a private action under the
10 Clean Water Act and I thought I was on solid
11 ground, there was no standing, and the Supreme
12 Court told me otherwise in no uncertain terms, so
13 I'm not sure about how our courts now look at these
14 private rights to enforce public policy.

15 MR. BAROODY: Your Honor --

16 THE COURT: I'm not so sure about the
17 standing issue but go ahead.

18 MR. BAROODY: Well, Your Honor, on the merits
19 of the appeal, the record is clear that what Mr.
20 Rickett in fact does operate is a helicopter
21 sightseeing tour facility. That statement is a
22 matter of fact, so the only question is as a matter
23 of law does a helicopter sightseeing tour facility
24 fit a permitted use within the amusement commercial
25 zone and what the zoning ordinance says is that

1 common dictionary definition of those words used in
2 the zoning ordinance shall be used as opposed to
3 Black's Law Dictionary or something else, and when
4 we went before the Board of Zoning Appeals Mr.
5 Hinde submitted to the Zoning Board the common
6 dictionary definition of depot, again sightseeing
7 depots is what we're talking about, and his
8 definition of depot which is in the record includes
9 airport terminals, terminals for an air, you know,
10 air, rail, bus and other kind of tours.

11 THE COURT: I understand.

12 MR. BAROODY: So, Your Honor, on the merits
13 of the case we contend that they erred as a matter
14 of law by misinterpreting the clear and plain
15 meaning of the statute at issue.

16 THE COURT: Has this facility been built?

17 MR. BAROODY: Yes, it has been, Your Honor.

18 THE COURT: All right, let me hear from Mr.
19 Moss. Mr. Moss, it is good to see you again.

20 ONE DEFENDANT: Good to see you, too, Your
21 Honor.

22 THE COURT: It always is. What magic do you
23 have for me today?

24 MR. MOSS: Well, I don't know about magic but
25 I have the statutes and I have court opinions and

1 they give us some guidance on how I think this
2 thing should be looked at. The standing issue, I
3 will take it first, there is to question under our
4 law Mr. Hinde had standing to file the appeal.
5 Title VI, Chapter 6-29, Section 800(B) provides
6 standing. I will read it for the record.
7 Subsection A of the statute provides the Board of
8 Zoning Appeals has the power to hear and decide
9 appeals where it is alleged there is an error in an
10 order, requirement, decision or determination made
11 by an administrative official.

12 THE COURT: I'm not going to find he didn't
13 have standing, you can just jump right over that.

14 MR. MOSS: Okay. Let's talk about the time
15 limit.

16 THE COURT: I'm going to find standing, okay?

17 MR. MOSS: Well, how about the time limits?

18 THE COURT: We can discuss that.

19 MR. MOSS: Now, under the statute, the same
20 section, it provides that the appeal must be taken
21 within a reasonable time as provided by the zoning
22 ordinance or rules of the court or both by filing
23 with the officer responsible --

24 THE COURT: Let me ask you this. I hate to
25 interrupt you but just let me sort of throw this

1 out to you. Since it says no specific time, a
2 reasonable period of time, I would suspect we
3 should look at these on a case by case basis.

4 MR. MOSS: I think you have to.

5 THE COURT: Pretty much case by case.

6 MR. MOSS: The next sentence --

7 THE COURT: Wouldn't it be appropriate, if
8 we're talking about whether it was reasonable time,
9 to look at the type, and I don't know, I don't know
10 what kind of construction was done, but the type of
11 construction, the length of time the construction
12 took and the expense of the construction prior to
13 the filing of an appeal, wouldn't those, wouldn't
14 the money they spent be appropriate whether or not
15 it was a permitted use, wouldn't it come into play
16 as to the reasonableness of the time?

17 MR. MOSS: It would, Your Honor, and
18 reasonableness --

19 THE COURT: How much money was spent, do you
20 know?

21 MR. MOSS: Well, it --

22 MR. BAROODY: Your Honor, in excess of three
23 million dollars.

24 THE COURT: Three million?

25 MR. BAROODY: Yes, sir.

1 MR. MOSS: Of course a majority of that was
2 the helicopters themselves..

3 THE COURT: How much construction? That is
4 what I meant.

5 MR. BAROODY: Your Honor, just a hair under a
6 million.

7 THE COURT: Okay, all right.

8 MR. MOSS: Your Honor, the next sentence of
9 the statute is very important, I think, to this
10 context. I read the part about reasonable period
11 of time. The next sentence says if no time limit
12 is provided, this is in the county's rules also,
13 the appeal must be taken within thirty days from
14 the date the appealing party has received actual
15 notice of the action for which the appeal is taken.

16 That is under 6-29-800(B). Now, that issue
17 was presented to the Board of Zoning Appeals and it
18 was litigated, in fact Attorney Baroody
19 cross-examined my client Mr. Hinde on the issue of
20 when he learned what he learned, and Miss Carter
21 who by the way is not only zoning administrator,
22 she is director of that group, Miss Carter actually
23 argued to the Board of Zoning Appeals there is such
24 a thing as constructive notice and Mr. Hinde should
25 have known something but that is not what the

1 statute says. The statute says actual notice, and
2 I provided that to the Board of Zoning Appeals and
3 they delivered on it, in fact they bifurcated the
4 case, they took the issue up first, was Mr. Hinde's
5 appeal timely, and they voted on that before they
6 heard the rest of the appeal because that would
7 dispose of the case if it wasn't timely.

8 They deliberated after Miss Carter's argument
9 and after mine, they voted unanimously seven to
10 zero that his appeal was filed timely based on when
11 he had actual notice, and I submit to you that is
12 likened to a finding of fact. Under 6-29-804,
13 Subsection A, it provides, this is Circuit Court
14 standard review, the findings of fact by the Board
15 of Appeals must be treated in the same manner as a
16 finding of fact by a jury and the Court may not
17 take additional evidence.

18 I submit to you that when he knew, had actual
19 notice and whether or not the appeal was timely,
20 there is a finding of fact has been decided after
21 cross-examination, so I think his appeal, he does
22 have standing, as the Court determined, the appeal
23 was certainly timely as determined by the Board of
24 Zoning Appeals, so I believe that issue, I have
25 some case law on it as well I will go through.

1 THE COURT: I'm familiar with the statute. .

2 MR. MOSS: It was a neighboring land owner
3 bringing a case, he went all the way to the Court
4 of Appeals. Of course he had standing, Your Honor
5 dealt with that. I don't think there is any
6 question that within thirty days of when he knew
7 what the county had done he filed an appeal, and
8 here is the problem with the process. There was
9 obviously a debate in Miss Mincey's mind as to
10 whether this proposed facility complied with
11 sightseeing tour in the statute. That is the only
12 thing relevant in this context.

13 I think it was agreed by everyone it didn't
14 fit any other use. Had she denied that and said,
15 "No, it doesn't comply with AC district," and the
16 operator wanted to push the issue he could have
17 appealed the decision at that point. Well, then
18 everybody would have had public notice the issue
19 was going to be decided by the county Board of
20 Zoning Appeals. Then the homeowners would have had
21 time to post notice, they would have had notice in
22 the mail, and then there would have been a decision
23 made in public.

24 But what happened was the reverse of that.
25 She gave a letter confirming it was consistent with

1 the, the use was consistent with a sightseeing
2 depot and then they went about the administrative
3 process of plan submissions and permitting and
4 these things for months. Nobody in the homeowner
5 association, certainly not Mr. Hinde, was given any
6 indication of that. When he learned something was
7 going on is when the helicopters started flying
8 over his house at a low altitude.

9 THE COURT: Mr. Moss, that is a little
10 inconsistent. There was construction going on.

11 MR. MOSS: Not really. They poured a pad for
12 a landing pad and put a fence up.

13 THE COURT: But it was a million dollars
14 worth. I don't know what is out there, but a
15 million dollars worth of construction --

16 MR. MOSS: The testimony of Mr. Hinde at the
17 hearing was --

18 THE COURT: Somebody should have noticed it.

19 MR. MOSS: It is behind the NASCAR Cafe, not
20 an area where people normally would travel because
21 there is no business back there.

22 SPECTATOR: They rolled in two trailers.

23 MR. MOSS: Our understanding, the initial
24 construction was the concrete landing pads, chain
25 link fences and mobile office trailers. I don't

1 know where a million dollars comes in. Maybe it
2 happened, I'm not saying it did or didn't, but that
3 is the nature of the construction that was there,
4 mobile office trailers, concrete pad and chain link
5 fences and hidden by the NASCAR Cafe from Highway
6 17. It is several hundred feet from Highway 17 so
7 I don't think it is reasonable to think Mr. Hinde
8 should have known just because construction was
9 going on on the neighboring property. But the
10 point is he testified, he told his story to the
11 Board of Zoning Appeals and they deliberated on it
12 and voted and made a finding and so I don't think
13 respectfully this Court --

14 THE COURT: Let's go on to their final
15 finding.

16 MR. MOSS: Well, their final finding --

17 THE COURT: That is what concerns me, I mean,
18 I look at the ordinance and I look at the permitted
19 uses and the character of those permitted uses, the
20 indication of a sightseeing depot, and that gives
21 me concern.

22 MR. MOSS: Well, the issue before the Zoning
23 Board of Appeals, the word depot is not defined
24 anywhere in the code and ordinances of Horry
25 County.

1 THE COURT: But it does have a common
2 meaning, though, doesn't it?

3 MR. MOSS: Well, it does.

4 THE COURT: And what would that common
5 meaning be?

6 MR. MOSS: The dictionary term, I submit to
7 you, of depot does not include an air traffic
8 facility, it includes ground transportation of
9 persons, ground transportation of materials, goods,
10 they do not include air traffic transportation.

11 THE COURT: Mr. Baroody says it does. I
12 don't have a dictionary with me.

13 MR. MOSS: Well, there were two dictionary
14 terms that were offered in the record before the
15 Board of Zoning Appeals and the first came from
16 Webster's definition and I will be happy to hand
17 you a copy of it. "Provide a place for storage of
18 goods or motor vehicles, a place for storage of
19 military supplies. Examples of depot include parts
20 stores, auto parts stores, storehouse,
21 depositories, storage, warehouse. Wickapedia
22 provides the definition of depot means a deposit or
23 a store house. Depot can mean a number of things,
24 train station, bus station, bus garage,
25 transportation hub for freight, oil depot. It

1 doesn't provide anything about air traffic.

2 Now, in one one of the synonyms it provides
3 for airports. Well, airports have ground
4 transportation, they have parking decks, they have
5 buses, they have taxis, et cetera. I think all the
6 definitions we have in the record deal with ground
7 transportation, movement of things on the ground.

8 It is also not a true statement that the
9 county doesn't have any zoning district in which
10 these facilities can be operated because we have
11 airport zoning. In fact there are helicopter
12 touring facilities in airport zones in Horry
13 County. Mr. Baroody is not right in his argument.
14 There are actually zoning classifications exactly
15 for this type traffic this operator is trying to
16 operate.

17 THE COURT: Where is that?

18 MR. MOSS: On airport property.

19 MR. BAROODY: Your Honor, I object to that.
20 That is not in the record, it is actually contrary
21 to the record. What Miss Carter testified to
22 clearly before the Board of Zoning Appeals, she
23 testified that the only zone within Horry County at
24 the time of this application that would possibly be
25 there to fit helicopter sightseeing tour facilities

1 or any other kind of sightseeing tour facility,
2 bus, trains or otherwise is amusement commercial,
3 period. In fact the record is complete, her
4 questions to the Board of Zoning Appeals saying,
5 "Ladies and gentlemen, if you're telling me that
6 what my staff did was wrong then tell us where it
7 should be," and none of them could answer the
8 question.

9 MR. MOSS: That did happen in the record,
10 there is a sightseeing facility on the Myrtle Beach
11 Airbase properties that operates every day.

12 THE COURT: Okay. The American Heritage
13 Dictionary which was not in the record underneath
14 but it is a dictionary, it also provides definition
15 of depot as a railroad or bus station, warehouse or
16 storehouse, a storage installation for military
17 equipment and supplies, a station for assembly of
18 military troops. Nothing in here about air traffic
19 at all.

20 Now, when the deliberations were made, if you
21 look in the record, right before the vote was taken
22 you will see that is exactly what was proposed.
23 Mr. Moss, it says sightseeing depot. What do you
24 think, when the county used that word depot, what
25 do you think they intended, what do you think the

1 meaning was? Wouldn't it reasonably be a place
2 where you would gather up and assemble people who
3 were coming for a sightseeing tour of some kind?

4 MR. MOSS: Excursion, if you will.

5 THE COURT: Excursion.

6 MR. MOSS: I think they contemplated ground
7 transportation, bus ride, jeep ride, .

8 THE COURT: Do they anywhere say that, do
9 they exclude air?

10 MR. MOSS: They clearly did not.

11 THE COURT: What if they had a skylift?

12 MR. MOSS: I don't know that would be
13 considered a depot.

14 THE COURT: All the people assembled there
15 and you take them up for a ride.

16 MR. MOSS: I don't know under the definition
17 of depot that would apply, it would be more of an
18 amusement ride, and amusement rides are allowed in
19 the amusement commercial district. But the point
20 is --

21 THE COURT: This may be an amusement.

22 MR. MOSS: Well, they deliberated on that and
23 it is not in their written order but it was in the
24 record.

25 THE COURT: Didn't along there some years

1 ago, didn't they have helicopter rides somewhere
2 along in there?

3 MR. MOSS: There was some that was started --

4 THE COURT: Way back.

5 MR. MOSS: -- a few blocks from where this
6 operation is, the Supreme Court determined under a
7 restrictive covenant case that the landowner which
8 was Myrtle Beach Farms, could restrict that. That
9 was also recited in the record of this case but
10 that really wasn't a zoning case, it was shut down
11 basically because it was a covenant case. I think
12 what is really important, to keep in mind what the
13 Court has told us about our standard of review, no
14 case says it better than Restaurant Row Associates
15 versus Horry County. This was Miss Brittain's case
16 and Mr. Hughes' case and there it was a zoning
17 case, had to do with the Zoning Board of Appeals'
18 decision, and I would like to read from the Court's
19 opinion what we're doing here:

20 It provides, the case cite is 516 Southeast
21 2d 442. As a matter of fact I would like to hand a
22 copy up, Your Honor. This case is clearly a zoning
23 case and it comes from the Board of Zoning Appeals.
24 However it, in this context it had to do with a
25 nonconforming use issue, but the standard of review

1 starts on page six of the opinion and it provides
2 in the lower portion highlighted, the lower portion
3 in the lefthand column, "In context of a zoning, a
4 decision of reviewing body, in this case Horry
5 County Board of Zoning Appeals, will not be
6 disturbed unless there is no evidence in the record
7 to support their decision. However, the decision
8 of municipal zoning board will be overturned if it
9 is arbitrary, capricious, has no reasonable
10 relation to lawful purpose or if the Court abuses
11 its discretion."

12 Now, our hearing was nearly three hours
13 before this Board and there were deliberations
14 first on the issue of timeliness of the appeal and
15 second on the merits. The vote was four to three
16 vote. This was not something that was an arbitrary
17 decision of this Board and it wasn't a capricious
18 decision of the Board. They heard the evidence,
19 our record is nearly twelve hundred pages long,
20 they have in the record some very important things,
21 they have studies from the United States Military,
22 they have studies from the EPA in the record before
23 them that provides helicopter noises in one part
24 very much more burdensome and much more annoying to
25 surrounding areas than any other kind of fixed wing

1 aircraft. That is what the military says, that was
2 their report, it's in the record.

3 The EPA has found that these kind of noises
4 have detrimental effect on children. There is an
5 expert report in the record, it provides that
6 children have a slower development of reading
7 skills as a result of these kind of noises, that is
8 in the record before this Board. They had the
9 dictionary terms in the record before the Board.

10 It wasn't a unanimous decision, it was four
11 to three and three members were decidedly not in
12 favor of my client's appeal, four were, fortunately
13 for him that night. I think under this standard on
14 the bottom of that page six it clearly cannot be
15 said it was an arbitrary or capricious decision or
16 had no reasonable relation to its lawful purpose.
17 It's lawful purpose was exactly Mr. Hinde's appeal
18 that what the zoning administrator did was wrong
19 and he brought it within the time frame that was
20 allowed under 6-29-800, so I don't know candidly
21 what power this Court has to change the findings of
22 fact.

23 Now, it goes on to the next page, it provides
24 the Court will not substitute its judgment for the
25 judgment of the Board, the Court may thoroughly

1 disagree with what the Board reached in its
2 decision, it may feel the decision of the Board was
3 a substantial, substandard piece of logic. The
4 Court will not set aside the Board's view of the
5 matter just to inject its own ideas.

6 So certainly I'm not quarreling with this
7 Court but I think it is important to highlight what
8 the standard is. This was not an arbitrary and
9 capricious decision by the Board.

10 If you look at another case, Hagler versus
11 Zoning Board of Appeals of Beaufort. This case
12 arguably is a case of construction of a statutory
13 provision. I would like to hand you this case at
14 this time, Your Honor. In this case it's more to
15 do with an appeal and not a variance claim or
16 decision by the zoning administrator.

17 I think what is so important about this case
18 is in this case what the Court is wrestling with is
19 the definition of terms, use and practice and that,
20 you would think that would be something more for
21 the Court to judicially construe what the
22 definition of terms were in the ordinance but in
23 this case the Circuit Court was reversed because
24 they felt that the Board of Zoning Appeals made a
25 mistake in their definitions. They stated the

1 Court shouldn't use Black's Law Dictionary. I
2 thought that was interesting but it also says, you
3 know, to rely upon dictionary terms solely.

4 It also provides in this opinion, still on
5 the sixth page, it resets the standard.

6 Maybe a sightseeing depot is a use and maybe
7 supplying a helicopter is a practice, but it
8 certainly can be a depot using land transportation,
9 this was a furniture case, the gentleman wanted to
10 have outdoor display of furniture as opposed to
11 indoor, he actually wanted to have both and the
12 zoning administrator found that your outdoor
13 display is not a non-conforming use because it's a
14 practice, not a use.

15 THE COURT: Mr. Moss, here the thing that
16 really concerns me is you seem to be telling me
17 that we'll take the same people, assemble them at
18 the same location, take them to exactly, to see
19 exactly the same thing in Myrtle Beach, take them
20 to the same beaches and hotels and whatever but if
21 I do it with a car or a bus it's fine but if I take
22 them by helicopter it's not.

23 MR. MOSS: That is exactly what I'm telling
24 you because the helicopter traffic is more
25 burdensome to the neighbors and the community than

1 are the buses and the cars, and we expect to have
2 those, we expect to have the traffic on the ground
3 transportation, that's there, it is designed for
4 that, the roadway is designed for that, there are
5 stop signs at intersections.

6 THE COURT: Has the county passed any
7 ordinances making helicopters, saying you can't use
8 them? You said you could fly a helicopter out of
9 the airport, right?

10 MR. MOSS: That's right.

11 THE COURT: For sightseeing purposes?

12 MR. MOSS: And there is --

13 THE COURT: Wouldn't you have the same noise
14 in that use if you are flying over Myrtle Beach,
15 that you have with this one, it would be the same
16 thing?

17 MR. MOSS: Well, the one that is over by the
18 air base is on the end of the air base closest to
19 the ocean and it is on the airport and --

20 THE COURT: It flies over Myrtle Beach,
21 doesn't it?

22 MR. MOSS: Yes. The problem we have got here
23 for these homeowners is by the time these
24 helicopters take off they don't reach sufficient
25 altitude when they cross this homeowners

1 association's properties such that the noise is
2 less burdensome, and I want to be careful, it is
3 not on the record but I know something about this
4 as a pilot, and --

5 MR. BAROODY: Your Honor --

6 MR. MOSS: That is what was argued about, is
7 the low altitude of these helicopters.

8 THE COURT: I remember that from the last
9 hearing.

10 MR. MOSS: That low altitude is in the
11 proximity of the helipad, to these home
12 association, to Mr. Hinde's home. In the record
13 before you, underline record, there were numerous
14 readings, decibel noises that were taken by Mr.
15 Hinde and submitted to this Board. There are
16 numerous police reports referred to in this record
17 where people made complaints about noise, there are
18 investigative efforts in the record where the
19 police have come out. At the time they came out
20 the decibel readings didn't go over the noise
21 ordinance but, you know, the police aren't there 24
22 hours a day, seven days a week. There are over 300
23 people --

24 THE COURT: Wouldn't that be the same if it
25 took off at the airport, I mean, if it wasn't

1 flying high enough and crossed Myrtle Beach?

2 MR. MOSS: If that's the case, yes, and they
3 would make a complaint to the FAA, which they did
4 in this case, and the FAA in this case found it was
5 in compliance with their rules and regulations for
6 taking of and landing, to answer your question,
7 yes, but if it wasn't right nextdoor it wouldn't be
8 flying over his house so many times, so

9 THE COURT: All right. Let's hear from Mrs.
10 Barody.

11 MR. BARODY: Your Honor, we're not here
12 today or in front of the Board of Zoning Appeals to
13 try this, and quite frankly I believe that that was
14 the reason why those four members of the Board of
15 Zoning Appeals made the vote that they made, was
16 because of the fact there were a hundred members
17 from the neighborhood in the room that night
18 complaining about noise and so forth. They didn't
19 make the decision based upon the record before them
20 and what we're asking Your Honor to do is just
21 merely to interpret a zoning determination that was
22 made by Miss Mincey, whether she did it right or
23 wrong.

24 THE COURT: How can I do that? How can I
25 make findings contrary to the Zoning Board at this

1 juncture?

2 MR. BAROODY: Your Honor, because the statute
3 says, bear with me one moment, Your Honor, because
4 the standard of review by statute states that in
5 reviewing the questions presented by the appeal the
6 Court shall determine only whether the decision of
7 the Board is correct as a matter of law.

8 We are not disputing any finding of fact in
9 the order of the Board of Zoning Appeals, and there
10 are 21 of them. Quite frankly they all, I believe,
11 favor every position taken by my client in this
12 case. The only thing at issue here, Your Honor,
13 the one conclusion of law that I read to the Court
14 earlier, that they interpret the Horry County
15 ordinance not to permit the use that Mr. Rickett
16 has made upon this piece of property, so that is an
17 issue of law and not fact.

18 Your Honor, I've got a case also, which is
19 Wyndham Enterprises, LLC, versus the City of North
20 Augusta, which was, that I would like Your Honor to
21 read. I apologize I only have one copy with me,
22 but what that case was, it was a request for a
23 special exemption by a fireworks owner to operate,
24 to operate a fireworks business in the county for
25 like a twelve day period and it was denied, it was

1 appealed to the Board of Zoning Appeals, it was
2 denied again. The Court of Appeals ultimately
3 reversed it, substituting its basic judgment for
4 that of the Board of Zoning Appeals, saying, "You
5 just misinterpreted what the statute said." So,
6 there is a case that allows Your Honor in this set
7 of circumstances to do exactly what we're asking
8 Your Honor to do.

9 Your Honor, if I may, just to get back to
10 that point and get away from the noise issues and
11 the safety issues, but just on that point real
12 quick, Your Honor, there is no dispute that Mr.
13 Rickett is in compliance with the Horry County
14 noise ordinance. Complaints were made by Mr. Hinde
15 and others, code enforcement went out, they checked
16 the decibel readings, and all the decibel readings
17 were within the Horry County noise ordinance. That
18 is not an issue.

19 We had testimony from the FAA consultant
20 before the Board, before the Board of Appeals, who
21 testified that he inspected it, it is safe and for
22 use as intended. Mr. Hinde made complaints to the
23 FAA, the FAA came out four different times and
24 looked at it, inspected it and said this is a safe
25 operation. So, those issues are not, are not

1 issues at all nor should they sway this Court or
2 the Board of Zoning Appeals one way or the other.

3 Getting back on point, Your Honor, let me
4 just read you an excerpt directly from the record.
5 This is the testimony of Janet Carter, this is in
6 the record at page 31 of the transcript. "The
7 decision that Rennie Mincey rendered in the
8 November, 2011 letter was not a new decision. We
9 have been telling people in the Planning and Zoning
10 department for as long as I have been here or as
11 long as she's been there that the only district you
12 can have helicopter tours in would be amusement
13 commercial. This is some of the reasoning for that
14 and I will say that decision was made long before I
15 came to work here. Miss Mincey has been here 23
16 years, I think we have had zoning for 24 but she's
17 been in Planning and Zoning for 23. Like I say, as
18 far back as any of us knows, the answer to anyone
19 asking about having helicopter tours or any type of
20 sightseeing tours, whether by land or water or
21 whether by air was that you had to locate them in
22 the amusement commercial zone district."

23 So, Your Honor, this is not a new and novel
24 matter before the Court. I think this was done in
25 2010, she went on to testify about a request by a

1 gentleman named David Girrard in 2010 and at that
2 point in time two years ago they told Mr. Girrard,
3 "You have to find a piece of property zoned
4 amusement commercial if that's what you want to
5 do."

6 Miss Carter went on to state, "Amusement
7 commercial has been considered one of our most
8 intense zoning districts. Burroughs and Chapin
9 wanted to or talked about building a NASCAR, not
10 speed park but a real race track, I guess the
11 Darlington 500 deal, they rezoned hundreds of acres
12 between Conway and Aynor amusement commercial for
13 that purpose, that is what I was referring to
14 earlier, Your Honor. The Planning Commission and
15 County Council knew they were rezoning it, knew
16 what they were rezoning it for. You're not going
17 to see motor sports, race tracks specifically
18 listed in the amusement commercial zoning district
19 but that was the only tool in our tool box that
20 seemed to fit. Dirt bike tracks or even outdoor
21 firing ranges, amusement commercial is the only
22 district that we appoint them to. You've got to
23 find a piece of amusement commercial property, is
24 what everyone is told to do, or you will have to
25 rezone it.

1 Finally, the policy decision behind this,
2 too,, Your Honor, she goes on to state, "Actually
3 that has been a pretty effective deterrent to
4 having these obnoxious uses in close proximity to
5 residential as a general rule. The reason being
6 there are only eleven pieces of amusement
7 commercial property in Horry County and a lot of
8 them are clustered."

9 Going back to what Mr. Moss argued a moment
10 ago this should be at an airport, that issue was
11 litigated before the Board, too, and what Miss
12 Carter testified to is that 80 percent of Horry
13 County would allow for an airport use, whereas
14 amusement commercial only has eleven of these
15 parcels scattered about the county, so you can't
16 automatically allow a helicopter sightseeing tour
17 facility and so forth to operate on 80 percent of
18 the land within Horry County, it has got to be
19 restricted to these eleven clusters, is the way it
20 has always been.

21 They didn't do anything different here, Mr.
22 Rickett didn't try to slip in anything on anybody,
23 he did everything right, the county did everything
24 right and quite frankly I think that four members
25 of the Board of Zoning Appeals simply tried a

1 private nuisance case instead of doing what they
2 should have done, which was properly interpreting
3 sightseeing depots to include that for a helicopter
4 sightseeing depot.

5 THE COURT: Let me hear back, I apologize, I
6 don't want to open a can of worms but you referred
7 to this as having the nature of a private nuisance
8 cause of action. What did the Board say or did the
9 Board address the issue of standing?

10 MR. BAROODY: They did not, Your Honor. The
11 only --

12 THE COURT: Was it raised?

13 MR. BAROODY: The issue, yes, Your Honor, it
14 was raised by saying that property rights had
15 vested and after the fact of those rights vesting
16 only at that point in time did an aggrieved
17 homeowner as opposed to the applicant for building
18 permit or respondent being a party to this matter.

19 MR. MOSS: Respectfully, Your Honor --

20 THE COURT: I'm going to let you go back to
21 that, Mr. Moss.

22 MR. MOSS: Okay.

23 MR. BAROODY: Your Honor, that was raised as
24 a part of the timeliness issue, that the timeliness
25 issue that was litigated was based upon the fact

1 that this goes back to what the Court was asking
2 Mr. Moss about earlier. Mr. Hinde testified before
3 the Board of Zoning Appeals that on May 21st, on
4 May 21st that he was well aware of helicopter
5 activity at the site, he made FAA complaints at
6 that point in time. And so, and then Mr. Moss and
7 I got into the argument about, well, what is
8 reasonable, is it 30 days and so forth.

9 Between what was in the record from what Miss
10 Carter raised, what was in the record from what I
11 raised as to timeliness, I believe the standing
12 issue was made an issue but there is no specific
13 finding by the Board in this order as to that, as
14 to whether or not third party, not an applicant or
15 respondent for a permit, for example, has standing
16 to bring an action, they don't make that specific
17 finding in their order.

18 THE COURT: How about that, Mr. Moss, was it
19 even preserved?

20 MR. MOSS: Respectfully, I don't think it
21 was. The issue whether the appeal was filed timely
22 was litigated.

23 THE COURT: I understand that.

24 MR. MOSS: But as far as whether my client
25 had standing, I don't recall, and I haven't read

1 the record in preparation for today, that was
2 reserved or litigated. But more importantly the
3 statute says clearly that any party, any person who
4 is affected, let me get the language, 6-29-800(B),
5 appeals to the Board may be taken by any person
6 aggrieved or by any officer of the department or
7 the bureau.

8 So, we know under the statute that he had
9 standing. Furthermore, the Court of appeals in
10 Austin versus Board of Zoning Appeals, 606
11 Southeast 2d 209, in this case the actions of the
12 Board were upheld but the appeal was taken by a
13 neighboring property owner, it went to the Court of
14 Appeals, so it is not directly relevant on that
15 issue but it is evidence the Court of Appeals felt
16 like there was standing.

17 THE COURT: Miss Brittain, I better hear from
18 you. I always seem to ignore you, don't I?

19 MS. BRITTAIN: That's okay. I'm here on
20 behalf of the county. The county is supporting the
21 decision of its Board. Mr. Moss has pointed out a
22 number of the cases that I want to bring to your
23 attention about the standard of review. I know you
24 know it well from previous cases. In addition to
25 the cases that he has cited, if there is no

1 objection, I would like to provide you with a copy
2 of a case of Austin versus Board of Zoning Appeals.

3 THE COURT: Thank you.

4 MS. BRITTAIN: Thank you. And just
5 re-emphasize this is a decision of the Zoning Board
6 based on statutory authority vested in it. There
7 is great deference to that opinion under a number
8 of cases in our case law from both the Court of
9 Appeals and the Supreme Court..

10 On the standing issue, in addition to the
11 statutory provision of Code Section 6-29-800, there
12 is also a provision in 6-29-820 that a person that
13 may have a substantial interest in any decision of
14 the Board may appeal. Then it says a property owner
15 whose land is the subject of a decision, so there
16 is a distinction between a property owner and
17 someone else who has a substantial interest, and we
18 feel like that substantial interest would apply.

19 Your Honor brought up the case some time ago
20 on a parcel very close to the issue. Even though
21 that case is not controlling, I think there is some
22 language in it that is very interesting and perhaps
23 provides insight on the perspective of this case
24 from the county's, you know, viewpoint and from the
25 adjoining landowner. This was a deed restriction,

1 Myrtle Beach Farms was the Grantor, 304 South
2 Carolina 94, and it is a 1991 case. In a
3 concurring opinion by Justice Sanders who always
4 had a way, I think, of putting things into
5 perspective and usually in a way that was
6 entertaining and understandable he makes the
7 following comments. "There are a wide variety of
8 opinions regarding helicopters. That some men will
9 think they are among the loveliest creatures of
10 man, creations of mankind, other people think they
11 are noisy and dangerous. In other words, some
12 people like helicopters and some people don't. The
13 question is not what we the Court think about
14 helicopters. Rather, the question is whether," in
15 this case it was a Grantor who had the restriction,
16 "it is what they think about them."

17 We would submit in our case it is how the
18 Board of Zoning Appeals construed the ordinance
19 enacted by County Council in reviewing it. In this
20 case the only limitation on the grantor's right was
21 that the approval must not be, quote, unreasonably
22 withheld. Again, in our standard review we have
23 arbitrary, capricious or not reasonably related to
24 the ordinance.

25 It is not unreasonable for a property owner

1 not to want a helicopter constantly taking off and
2 landing near his or her property. This conclusion
3 is not only a matter of common sense, it is
4 supported by the record in this case. Two nearby
5 homeowners testified that as often as every fifteen
6 minutes the defendant's helicopter caused
7 vibrations within their home and noise levels
8 which interfered with their conversations.

9 Again, it is not a binding case on our
10 situation but I do think it is perceptive. We
11 would urge the Court on behalf of the County to
12 apply the standard of review which has long been
13 recognized by our Court of Appeals and affirm the
14 Zoning Board in this case.

15 THE COURT: All right. Thank you all.

16 Mr. Baroody, do you want to make a brief
17 reply? I saw you nodding your head.

18 MR. BAROODY: Your Honor, very briefly. I
19 just would request the Court again read the Wyndham
20 Enterprises case which in that case, despite, I
21 agree with the standard of review, the standard of
22 review says that your decision is to determine
23 whether or not what the Board did was correct or
24 not as a matter of law but the case also goes on to
25 state that a Board of Zoning Appeals is vested with

1 making a quasi judicial decision and in making a
2 quasi judicial decision must ascertain the
3 existence of facts, investigate the facts, hold
4 hearing, weigh evidence and must be supported by,
5 quote, competent, substantial and material
6 evidence.

7 In this particular case the question is one
8 of a matter of law, not a matter of fact. We don't
9 contest any facts in the record nor any findings of
10 facts by the order of the Board of Zoning Appeals.
11 We only contest their conclusion, and like the
12 Court of Appeals in this decision, we believe that
13 conclusion was simply wrong as a matter of law for
14 all the reasons set forth in the record.

15 Your Honor, everybody, everybody, in spite of
16 what Miss Brittain has stated representing her
17 client the Board of Zoning Appeals, Rennie Mincey,
18 the zoning administrator of 23 years, Janet Carter
19 who has been in Planning and Zoning for 24 years,
20 those, both of those people, both of those
21 administrators for the county with their experience
22 we believe made the right decision and that it was
23 in fact based upon law. For that reason we ask
24 that Your Honor overturn the Board of Zoning
25 Appeals.

1 Thank you, Your Honor.

2 THE COURT: I'm going to make a finding that
3 there is a standing in this matter, I will resolve
4 that issue right now. I want you both to submit
5 orders within the next ten days, or all three of
6 you submit orders within the next ten days and I
7 want you to emphasize in your order whether, or
8 your position on whether or not the determination
9 by inference or other way that this activity does
10 not fall within the permitted uses is a finding of
11 fact or conclusion of law. I want you to address
12 that, give me your positions on that. Submit
13 something.

14 Is ten days enough time, Mr. Moss?

15 MR. MOSS: I assume you want one draft from
16 Miss Brittain and myself both?

17 THE COURT: You may submit, she may submit,
18 or submit them together, it doesn't make any
19 difference. It sounds to me like you're about to
20 pawn it off on Miss Brittain.

21 MR. MOSS: I don't think she would let me.

22 MS. BRITTAIN: Could we just confer with our
23 clients and either submit a joint --

24 THE COURT: You can do it either way you
25 want. I'm just looking for a time. Do you need

1 ten days, two weeks? I will give you whatever you
2 need.

3 MR. MOSS: How about two weeks?

4 THE COURT: Two weeks, okay.

5 Mr. Barody, will that be sufficient time for
6 you; will two weeks be sufficient?

7 MR. BARODY: Your Honor, that will be plenty
8 sufficient. We would just ask the Court if Your
9 Honor would be so inclined to make a decision at
10 your earliest opportunity.

11 THE COURT: I certainly will.

12 MR. BARODY: Thank you, Your Honor.

13 THE COURT: I will. Get those to me, I will
14 move promptly on it.

15 Okay, thank you.

16 MR. BARODY: Thank you, Your Honor.

17 MS. BRITTAIN: Thank you, Your Honor.

18 THE COURT: If you all get it in to me
19 earlier I will rule on it.

20 MR. BARODY: Thanks.

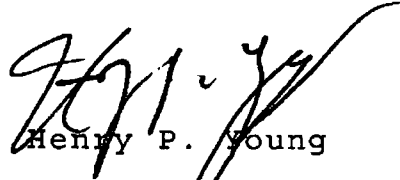
21 (Hearing Concluded)
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 11th day of December, 2012.

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

February 26, 2013


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2012-CP-26-06987

COUNTY OF Horry

HELICOPTER SOLUTIONS, INC.,)
DBA HELICOPTER ADVENTURES,)

-vs-

Horry COUNTY BOARD OF ZONING)
APPEALS and RICHARD HINDE,)
Defendants.)

February 13, 2013

B E F O R E:

HONORABLE LARRY B. HYMAN, JR.

A P P E A R A N C E S:

BENJAMIN A. BAROODY, Esquire
Attorney for the Plaintiff

KENNETH R. MOSS, Esquire
EMMA RUTH BRITTAIN, Esquire
Attorneys for the Defendants

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right, let's go back up and
3 hear Helicopter Solutions versus Hinde, et al, Miss
4 Brittain and Mr. Baroody and Mr. Moss.

5 MR. MOSS: Your Honor, we have two motions
6 before you.

7 THE COURT: I have a motion to reconsider.

8 MR. MOSS: Miss Brittain filed one and I
9 filed one.

10 THE COURT: Both motions to reconsider?

11 MR. MOSS: Yes. I'm not sure which one you
12 have. I have copies of both.

13 THE COURT: I have one filed by Mr. Hinde.

14 MR. MOSS: That would be the one I filed.
15 Miss Brittain also filed one on behalf of --

16 MS. BRITTAIN: We're here basically joining
17 in Mr. Moss' motion, Your Honor.

18 THE COURT: Okay.

19 All right, talk to me about what a depot is.

20 MR. MOSS: That is the issue in the case,
21 part of it. The points that we raised in the
22 motion for reconsideration are three in number, the
23 first two of which deal with the footnotes in your
24 order, essentially footnote four which is found in
25 your order, on page 5. I have a copy if you would

1 like me to hand it up.

2 The notes you put in your order on the fifth
3 page are the first two, refers to the first two,
4 there is language in there whether or not you make
5 a finding, those arguments are not before you, that
6 is a true statement. This case came before you, as
7 you recall, on appeal from the Board of Zoning
8 Administration.

9 THE COURT: Exactly.

10 MR. MOSS: So, I'm concerned that any
11 reference in the footnotes to those arguments could
12 lead to arguments of collateral estoppel or defense
13 of collateral estoppel and further in that footnote
14 you made a finding that the record is undisputed
15 that the business is applicable to the Horry County
16 noise ordinance.

17 THE COURT: I didn't cite any evidence
18 otherwise. I think it had been, the noise levels
19 had been, or tests had been conducted by the FAA,
20 the Horry County Police, Myrtle Beach and everyone,
21 had they not?

22 MR. MOSS: I don't think they had been that
23 broad but the more pointed issue of motion for
24 reconsideration is this. Those issues weren't
25 before you for a finding, for a ruling. The only

1 thing before you, for before the Court was an
2 appeal from the Zoning Administration, Board of
3 Zoning Appeals decision, so procedurally I don't
4 think there was a mechanism for these findings to
5 be made in a way that that is collaterally
6 esstopped. They simply weren't before the Court,
7 so this footnote gives me great pause and the basis
8 for the first two of our elements of the motion for
9 reconsideration. Frankly I don't think the
10 footnote is necessary to the order. If you read
11 this order without the footnote at all I don't
12 think it would change it.

13 THE COURT: Mr. Brittain or Mr. Baroody?

14 MR. BAROODY. Your Honor, may it please the
15 Court, at the appeal before the Board of Zoning
16 Appeals there was no evidence whatsoever put forth
17 by Mr. Hinde that there was noncompliance with any
18 of those laws, hence the findings set forth in
19 footnote four. We do concede whether or not a
20 sightseeing tour is a sightseeing depot, that this
21 issue is relevant but the fact of the matter is
22 that before the Board of Zoning Appeals there was a
23 myriad of evidence that was put up by both sides,
24 quite frankly, on the issue of whether or not there
25 was a violation of the noise ordinance, whether it

1 was annoying, so on and so forth, so there was no
2 finding made by the Board of Zoning Appeals that
3 they were in violation of anything, so we can't
4 concede that at this point.

5 THE COURT: All right.

6 Mr. Moss?

7 MR. MOSS: Well, alternatively there was no
8 finding by the Board of Zoning Appeals they were in
9 compliance and it is simply this, jurisdiction for
10 those findings was not before the Board of Zoning
11 Appeals, he never was before the Court, so the
12 concern that I had is --

13 THE COURT: Why is it not before the Board of
14 Zoning Appeals?

15 MR. MOSS: Because the matter was presented
16 to the Board of Zoning Appeals to appeal the
17 opinion whether helicopter sightseeing was used

18 THE COURT: Wasn't there a lot of testimony
19 concerning noise and things of that nature?

20 MR. MOSS: There was testimony about noise
21 and that is relevant information to their decision
22 whether or not it is a compatible use.

23 THE COURT: The Board of Zoning Appeals only
24 found it did not fit the allowed activities in the
25 zoned property, is that correct?

1 MR. MOSS: Specifically they said the board
2 overturned the decision of the zoning
3 administrators finding that the helicopter tour
4 facility is not a sightseeing depot and is not
5 consistent --

6 THE COURT: Isn't that what I just said?

7 MR. MOSS: Well, that is what you said, I
8 just quoted it, but the point is that is their
9 findings, so they made no findings from which this
10 Court would, in an appellate posture had the
11 jurisdiction to entertain whether there was a
12 nuisance or non nuisance. That hasn't been pled.
13 The footnote four, it does give us some concern, it
14 precludes Mr. Hinde from a private action or
15 precludes other homeowners from the defense of
16 collateral estoppel, from bringing a nuisance
17 action. I don't think it was something that was
18 needed in the order you issued.

19 THE COURT: All right, Mr. Moss, I'm going to
20 give you that, I'm going to take the second
21 sentence out of my order.,

22 MR. MOSS: Out of the footnote.

23 THE COURT: Out of the footnote, yes, which
24 takes that finding out. I don't think it affects
25 the order in any manner.

1 MR. MOSS: Thank you, Your Honor. As to the
2 issue of a nuisance, just to be clear, was there
3 any intention you had there would be any collateral
4 estoppel based on the order?

5 THE COURT: No.

6 MR. MOSS: That is our objection. The third
7 is to the ultimate issue and I wanted to bring to
8 the Court's attention one case that was handed up
9 among a myriad of cases but I think it is relevant
10 to this very issue, the case of Hinkler versus
11 Zoning Board of Appeals for the City of Beaufort,
12 and for the record it is 552 Southeast 2d 42. This
13 case arises out of an appeal from the Board of
14 Zoning Appeals from Beaufort. There was the
15 operator of a used furniture store, he had outdoor
16 displays with a lot of furniture. In 2001 or
17 thereabouts an ordinance was passed which
18 prohibited the outdoor display of merchandise
19 unless it was merchandise that you would use
20 outdoors like boats or automobiles or things of
21 that nature. Mr. Hinkler appealed that to the
22 Zoning Board of Appeals and he was found not to be
23 in conforming use. And there the Board of Zoning
24 Appeals said, "No, you didn't have a non conforming
25 use, what you had was a practice, your use was

1 retail furniture sales, your practice was to
2 display outdoors," so they created a different
3 distinction between use and practice. It went to
4 the Circuit Court and the Circuit Court reversed
5 that. Then the Court of Appeals looked at the
6 issue and they cited in there the whole litany of
7 cases that state the finding of facts of boards of
8 zoning appeals are like the findings of facts of a
9 jury.

10 Well, like this case, there was no definition
11 of the word use in the zoning ordinances for that
12 jurisdiction or in South Carolina law, and so the
13 Court of Appeals wrestled with that but the bottom
14 line is they found in this case the Circuit Court
15 erred by subplanting the Zoning Board finding of
16 fact that their outdoor display of indoor furniture
17 was not a conforming use. In other words, the
18 Board of Zoning Appeals did have authority to
19 differentiate between a practice and a use.

20 Now, if we go back to the order the Horry
21 County Board of Zoning Appeals issued, they found
22 that a helicopter tour facility is not a
23 sightseeing depot and is not consistent with the
24 uses allowed. Perhaps that is a practice as
25 opposed to a use just like in the other case the

1 Court of Appeals determined; where they determined
2 that the Circuit Court had subplanted its judgment
3 for that finding of fact by the Board of Zoning
4 Appeals. So, I really believe this order of the
5 lower board was a finding of fact and it was
6 drafted as a finding of fact and while sightseeing
7 depots are allowed, perhaps helicopter
8 implementation of a sightseeing facility is a
9 practice and not a use.

10 THE COURT: Mr. Baroody?

11 MR. BAROODY: Thank you, Your Honor. Your
12 Honor, first and foremost, the Hinkler case is
13 clearly distinguishable here. In that case the
14 court was talking about, particularly Judge
15 Anderson who wrote the opinion, he was talking
16 about an activity, what exactly is going on on the
17 streets of Beaufort. In this case we don't have
18 that. It is clear that the activities have already
19 been found as a finding of fact by the Board and
20 that is that we are in fact a sightseeing tour
21 facility by helicopter, such that the only issue
22 for the Court in this case, which we discussed at
23 length at the prior hearing, very simply is a
24 sightseeing tour facility a sightseeing depot? It
25 is our contention that clearly the answer to that

1 is yes.. What the other side, both the county and
2 Mr. Hinde are asking Your Honor to do, Your Honor,
3 is to read into, not just to read into, but to add
4 an additional word to the current Horry County
5 amusement/commercial zoning district which says not
6 just sightseeing depot, but sightseeing depot by
7 ground transportation. It does not say that and
8 so, Your Honor, not only are they asking you to do
9 that, they are also asking you to, by virtue of you
10 doing that, to do it retroactively and in so doing
11 basically take away our grandfather status.

12 Your Honor, the two cases that were actually
13 cited in the county's brief, I believe it was
14 mentioned in ours previously, are dead on point and
15 those two cases are, number one, the Charleston
16 versus Summers case, and number two, the Pawley's
17 Island case. Let me just go over one of them with
18 you real quick, Your Honor. In the Charleston
19 Recreation versus Summers case the issue was
20 basically, it is a South Carolina Supreme Court
21 case, not a Court of Appeals case, and in that case
22 it says, the basic question was is a public park a
23 permitted use in a zoning ordinance that allows for
24 municipal uses? Yes, for a municipal use. And the
25 issue was the permit by the land owner where he

1 requested a permit to build a public park in the
2 Isle of Palms, in the little downtown area down
3 there. It was initially denied, the Zoning Board
4 of Appeals upheld the denial, the Circuit Court
5 upheld the denial. It went to the Supreme Court
6 and the Supreme Court reversed.

7 The argument that was made by the Board of
8 Zoning Appeals was what was argued before Your
9 Honor last time, which was that a public park as a
10 matter of law is not a municipal use and the
11 Supreme Court said, "Absolutely not, that is not
12 right, we are construing an ordinance. The same
13 rulings of construction as to statutes and so forth
14 apply here and the issue is one of law and that is
15 a public park which is an established use. We know
16 what a public park is, just like everyone here
17 knows exactly what a helicopter sightseeing tour
18 facility is. We know what that is. The only
19 question is, is that a municipal use or not and
20 they said that they believed in that case that it
21 was and so they reversed everyone for that reason.

22 The second case is right on point, too, Your
23 Honor, the Pawleys Island versus Summers case which
24 is cited ad nauseam by Judge Anderson in his Court
25 of Appeals decision. That case arises out of

1 Pawleys Island, what happened in that case is a
2 homeowner who built a beach house in 1969, back
3 then, that had both the upstairs and downstairs
4 ground floor, Hurricane Hugo came twenty years
5 later and knocked out the complete bottom level.
6 He applied for a building permit in that case to
7 rebuild that bottom portion but Pawley's Island
8 zoning ordinance and what Georgetown County said
9 was that, "We're only going to allow you a permit
10 to rebuild in the event that the previously
11 destroyed property is not destroyed more than 50
12 percent." So in other words, there is a 50 percent
13 standard written into the ordinance. The homeowner
14 argued, this is just the bottom floor, it is clear
15 as a bell and there was no issue of fact as to
16 this, it was clear that the bottom floor
17 constituted less than 50 percent of the entire
18 house. Well, the zoning administrator who was to
19 enforce it at the time said, "No, I interpret the
20 ordinance to say that we look at not the entire
21 house to determine whether the 50 percent applies
22 or not, we only look at this bottom level, so in my
23 opinion as the zoning administrator I interpret the
24 ordinance to mean that. Permit denied."

25 It was appealed up to the Supreme Court and

1 the Supreme Court reversed it. And what the
2 Supreme Court said was that, it was Justice Waller
3 who did the opinion, very well written, short,
4 sweet and to the point, what it says there is, "We
5 define structure right here in the ordinance and it
6 says the whole thing, so clearly the zoning
7 administrator got it wrong, we're talking about the
8 entire structure, not just the half, therefore the
9 Zoning Board of Appeals is wrong." And you apply
10 those two cases to what we have here, Your Honor.

11 There is a finding of fact, two or three
12 points in the order of the Zoning Board of Appeals
13 and those findings of fact say that what we are is
14 a helicopter sightseeing tour facility, so the only
15 issue is, is a sightseeing tour facility a
16 sightseeing depot? It can be nothing else. The
17 other side has conceded in their briefs to the
18 Court, or rather in their proposed orders that if
19 it was a sightseeing tour operated by bus or by
20 some form of ground transportation that that would
21 be fine but they are saying because this one is
22 operated by a different means, helicopter, it is
23 not fine.

24 Your Honor, again, what they are requesting
25 the Court to do is to add to and change the

1 ordinance to make it say something that it does not
2 and, Your Honor, they are asking you to apply it
3 retroactively and for that reason we ask Your Honor
4 to uphold your previous decision based upon those
5 two case we mentioned.

6 THE COURT: Miss Brittain?

7 MISS BRITTAIN: Your Honor, the county joins
8 in Mr. Moss' argument.

9 THE COURT: Mr. Moss, any response?

10 MR. MOSS: Very briefly, Your Honor. The
11 case cited, Pawleys Island, the Court articulated
12 the standard of review there. That is where we
13 are, an area of law or finding of facts? None of
14 that is supported by any evidence.

15 THE COURT: I'm inclined to agree with the
16 position taken by Mr. Baroody, I think that is the
17 correct application of the law and I would
18 respectfully deny the motion for reconsideration.

19 Thank you, gentlemen.

20 MR. MOSS: Your Honor, if I may, may I
21 volunteer to prepare the order?

22 THE COURT: Yes, please.

23 MR. MOSS: Thank you, Your Honor.

24 MISS BRITTAIN: Thank you, Your Honor.

25 (Hearing Concluded)

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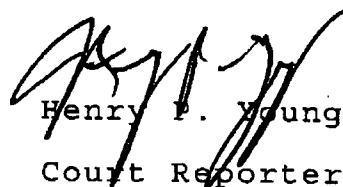
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 13th day of February 13, 2013.

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

May 18, 2013


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY) CIVIL ACTION NO. 2012-CP-26-6987

Helicopter Solutions, Inc. d/b/a Helicopter
 Adventures)

Appellant,)

v.)

Richard Hinde and Horry County Zoning
 Administrator,)

Respondents.)

PETITION FOR WRIT OF SUPERSEDEAS
 (PRIORITY MATTER)

FILED
 HORRY COUNTY
 2012 SEP 12 PM 4:32
 MELANIE HUGGINS-WARD
 CLERK OF COURT

Helicopter Solutions, Inc. d/b/a Helicopter Adventures (hereinafter "Petitioner") hereby petitions the resident or presiding Judge of the Fifteenth Judicial Circuit for a Writ of Supersedeas pursuant to Rule 65(f), SCRCP, S.C. Code Ann. § 6-29-820(A), and § 6-29-830(B) (Supp. 2010).

The facts and circumstances giving rise to this request for supersedeas are set forth in detail in that certain Notice of Appeal filed in this case commensurate herewith and which are set forth as follows:

1. Appellant is the owner of a leasehold interest in certain real property located in Horry County, South Carolina that is zoned Amusement Commercial (AC).
2. Appellant constructed a helicopter sight-seeing tour business upon the subject real property pursuant to a Certificate of Zoning Compliance issued by the Horry County Zoning Administrator dated November 22, 2011.
3. Appellant has made substantial financial investments in the subject real property in reliance upon the Certificate of Zoning Compliance and depends upon the continued operation of his business to generate income to run the business and employ its twenty-five (25) employees.

4. Appellant has operated a helicopter sight-seeing tour business upon the subject real property since May 25, 2012, the date upon which Horry County Code Enforcement issued Appellant a Certificate of Occupancy and Business License.
5. Appellant is operating in compliance with all federal, state, and municipal laws and ordinances.
6. On June 22, 2012, Richard Hinde, a resident of a subdivision located nearby the subject real property, filed an appeal to the Horry County Board of Zoning Appeals challenging the Zoning Administrator's Certificate of Zoning Compliance dated November 22, 2011.
7. On September 10, 2012, a hearing was held before the Horry County Board of Zoning Appeals. By a vote of 4-3, the Board ruled to reverse the determination of the Zoning Administrator. A copy of the Order is attached hereto as Exhibit A and is incorporated herein by reference.
8. On September 12, 2012, Horry County notified Petitioner that Petitioner's business was not in compliance with the Order of the Board and must cease and desist from operating a helicopter sight-seeing tour business upon the subject property. A copy of this notification is attached hereto as Exhibit B and incorporated herein by reference.
9. Petitioner has a substantial interest in the Order of the Board as it adversely affects his interest in the subject property and his ability to operate his business thereon.
10. Petitioner will suffer irreparable harm and damage if the Order of the Board and the action of the County to enforce the Order is allowed to occur.
11. The Order of the Board was arbitrary and contrary to law, as is set forth in the record and in Petitioner's Notice of Appeal.

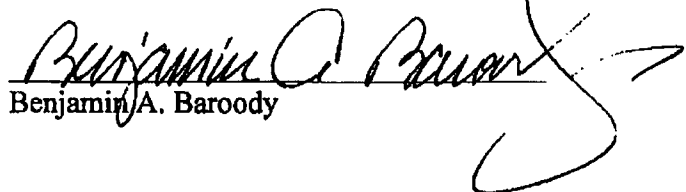
Pursuant to § 6-29-820(C), Petitioner hereby requests a Writ of Supersedeas that this Court order the status quo as it existed up this day be maintained during the pendency of this appeal, to include continued business operations at the subject real property site in compliance with the law. Without such relief, the Petitioner will suffer irreparable harm.

In the event the relief requested herein is denied, Petitioner requests either or both Respondents post a Bond with this Court in a sufficient amount to ensure that Petitioner will be compensated for any and all damages sustained up and until the subsequent reversal of the Order of the Board following a full and final hearing on the merits of Petitioner's Notice of Appeal.

Petitioner further requests a hearing on its Petition as soon as practicable and for costs and attorneys fees if and where applicable.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
843-448-2400
Attorneys for the Petitioner


Benjamin A. Baroody

Myrtle Beach, South Carolina

September 12, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

**BEFORE THE BOARD OF
ZONING APPEALS**
Case No.: 2012-07-008

In re: Richard Hinde)
))
_____)

ORDER OF THE BOARD

Hearing was held before this Board on September 10, 2012, pursuant to the request of the applicant for appeal of the Zoning Administrator's decision that a helicopter/sightseeing tour facility is allowed in the Amusement Commercial (AC) zoning district. The property in question is identified by TMS# 173-00-01-058 and is located at 1860 21st Avenue North in the Myrtle Beach area of Horry County. The affected business owner is Helicopter Solutions, Inc. d/b/a Helicopter Adventures.

Article XIV, Section 1402 of the Zoning Ordinance states, "[t]he concurring vote of a majority of the members present at a meeting of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator...." The applicant is appealing the Zoning Administrator's decision that a helicopter/sightseeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

The applicant, the affected business, and the zoning administrator were given the opportunity to offer witnesses and exhibits; cross-examine witnesses; and, to make argument for the record. A public hearing was held and all interested parties were invited to comment before the Board.

Pursuant to Section 1403 of the Zoning Ordinance, an appeal to the board may be filed by any person aggrieved or by any officer, department, board, or bureau of the county. Such appeal shall be filed within a reasonable time, as provided by the rules of the Board.

FINDINGS OF FACT

1. The property in issue is owned by Burroughs & Chapin, Inc. (B&C) and is located between the NASCAR Speed Park and the City of Myrtle Beach Wastewater Treatment facility off of Highway 17 By-pass and 21st Avenue North, Myrtle Beach.
2. The property is 46.17 acres and the business in issue, Helicopter Adventures, is located on approximately 5.47 acres of the parcel directly behind the NASCAR Speed Park parking lot.
3. The property is split zoned Amusement Commercial (AC) and Limited Industrial (LI). The business in issue is located within the AC portion of the property.
4. The landing pads are approximately 1350 ft. from the property line abutting residential property. The property is buffered by a large berm covered in fully grown trees.
9. A helicopter sight-seeing tour facility is not specifically referenced in any of the zoning districts, however the AC zoning district allows a variety of outdoor amusements and specifically lists sight-seeing depots.
13. On November 18, 2011, Steve Strickland, P.E. contacted Deputy Planning Director Carol Coleman via email about locating a helicopter sight-seeing tour facility on the above referenced property. Ms. Coleman advised that the zoning looked good.
14. On November 22, 2011, Zoning Administrator Rennie Mincey, wrote a letter to Mr. Strickland stating that a helicopter tour facility would be allowed in AC.
15. From November 21, 2011 through March 28, 2012, a series of site plan reviews and revisions were conducted by the Horry County Planning & Zoning, Code Enforcement, Engineering, and Stormwater Departments. A Stormwater Permit was issued on February 17, 2012, and final site plan construction approval granted on March 28, 2012.
16. On March 16, 2012, Helicopter Adventures submitted an application for a building permit and the permit was issued on April 10, 2012.
17. Since a portion of the property upon which a part of the business parking lot is located is within the city limits of the Myrtle Beach, a hearing before the City's Community Appearance Board (CAB) was required, advertised and held on May 3, 2012. The CAB granted approval.
19. A Certificate of Occupancy was issued by the Horry County Code Enforcement Department on May 25, 2012.
20. On June 22, 2012, the applicant filed this appeal requesting that the Board overturn the Zoning Administrator's decision and determine that such use is not an allowed use in the

Amusement Commercial (AC) district. This request was deferred at the August 13, 2012 Board hearing.

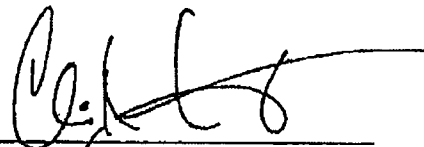
21. ZBA members observe and question whether a helicopter tour ride can be classified as an Amusement.

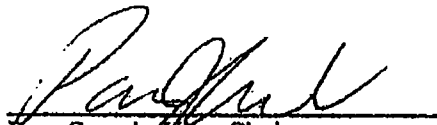
CONCLUSIONS OF LAW

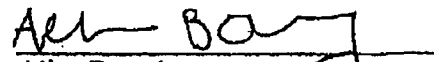
Based on the evidence presented, the Board finds that this appeal was filed within a reasonable time after the applicant knew or should have known of the November 22, 2011, decision by the Zoning Administrator. Although the plans and permits referenced above were maintained as records of the county and available for public inspection for months before the appeal was filed, the applicant had no reason to inquire and lacked actual knowledge of them.

The Board overturns the decision of the Zoning Administrator finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district. Therefore, the appeal is granted and the Zoning Administrator's decision is overturned.

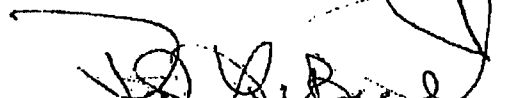
AND IT IS SO ORDERED, this 10th day of September, 2012.


Christopher Hanna, Chairman

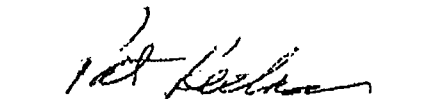

Pam Creech, Vice-Chairman

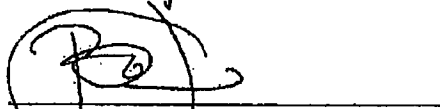

Allen Beverly


Hunter Platt

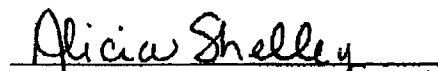

Pat Lebedz


Ace Parker


Pat Keelan


Bo Ives

ATTEST:


Alicia Shelley, Secretary

Baroody, Benjamin A

From: Carotti, Arrigo [CarottiA@HorryCounty.org]
Sent: Wednesday, September 12, 2012 11:11 AM
To: Baroody, Benjamin A
Subject: Helicopter Adventures

On Monday, September 10, 2012, the Zoning Board of Appeals (ZBA) met and considered an appeal of the Zoning Administrator's decision that a helicopter/sightseeing tour facility is allowed in the Amusement Commercial (AC) zoning district. The effected business owner is Helicopter Solutions, Inc. d/b/a Helicopter Adventures (Helicopter Adventures).

The ZBA, after hearing from the affected parties, and receiving other evidence, voted to overturn the determination of the Zoning Administrator, finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC Zoning District. The legal affect of this decision is that the operations being conducted by Helicopter Adventures are an impermissible use at the location at issue.

Horry County, as a result of this ruling, is compelled to take immediate action to enforce the decision of the ZBA, which includes the termination of such operations at the site, should an appeal of the ZBA's decision not be filed by Helicopter Adventures, together with an application for supersedeas.

Arrigo P. Carotti
County Attorney
Horry County
(843) 915-7412 (direct tele #)
(843) 915-6270 (fax)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2012CP206987
Helicopter Solutions, Inc. d/b/a Helicopter Adventures	)	
	)	
Appellant,	)	
	)	
v.	)	VERIFIED AMENDED PETITION FOR WRIT OF SUPERSEDEAS (PRIORITY MATTER)
	)	
Richard Hinde and Horry County Zoning Administrator,	)	
	)	
Respondents.	)	

Helicopter Solutions, Inc. d/b/a Helicopter Adventures (hereinafter "Petitioner") hereby petitions the resident or presiding Judge of the Fifteenth Judicial Circuit for a Writ of Supersedeas pursuant to Rule 225(c), SCACR, S.C. Code Ann. § 6-29-820(A), and § 6-29-830(B) (Supp. 2010).

The facts and circumstances giving rise to this request for supersedeas are set forth in detail in that certain Notice of Appeal filed in this case commensurate herewith and which are set forth as follows:

1. Appellant is the owner of a leasehold interest in certain real property located in Horry County, South Carolina that is zoned Amusement Commercial (AC).
2. Appellant constructed a helicopter sight-seeing tour business upon the subject real property pursuant to a Certificate of Zoning Compliance issued by the Horry County Zoning Administrator dated November 22, 2011.
3. Appellant has made substantial financial investments in the subject real property in reliance upon the Certificate of Zoning Compliance and depends upon the continued operation of his business to generate income to run the business and employ its twenty-five (25) employees.

4. Appellant has operated a helicopter sight-seeing tour business upon the subject real property since May 25, 2012, the date upon which Horry County Code Enforcement issued Appellant a Certificate of Occupancy and Business License.
5. Appellant is operating in compliance with all federal, state, and municipal laws and ordinances.
6. On June 22, 2012, Richard Hinde, a resident of a subdivision located nearby the subject real property, filed an appeal to the Horry County Board of Zoning Appeals challenging the Zoning Administrator's Certificate of Zoning Compliance dated November 22, 2011.
7. On September 10, 2012, a hearing was held before the Horry County Board of Zoning Appeals. By a vote of 4-3, the Board ruled to reverse the determination of the Zoning Administrator. A copy of the Order is attached hereto as Exhibit A and is incorporated herein by reference.
8. On September 12, 2012, Horry County notified Petitioner that Petitioner's business was not in compliance with the Order of the Board and must cease and desist from operating a helicopter sight-seeing tour business upon the subject property. A copy of this notification is attached hereto as Exhibit B and incorporated herein by reference.
9. Petitioner has a substantial interest in the Order of the Board as it adversely affects his interest in the subject property and his ability to operate his business thereon.
10. Petitioner will suffer irreparable harm and damage if the Order of the Board and the action of the County to enforce the Order is allowed to occur. Such damage will include, without limitation, the loss of improvements made upon the subject real property, diminution in the

value of the subject real property interest, lost business revenue, and damages resulting from the breach of various contractual obligations to third parties.

11. The status quo allows the business to continue operations pursuant to a valid business license and certificate of occupancy issued by Horry County and the City of Myrtle Beach. In the event the business is ordered to cease and desist from operating, whether in full or in part, the status quo will be varied, damages will be incurred, and Petitioner's appeal- which contests the Order of the Board- will be rendered moot.
12. The Order of the Board was arbitrary and contrary to law, as is set forth in the record and in Petitioner's Notice of Appeal.

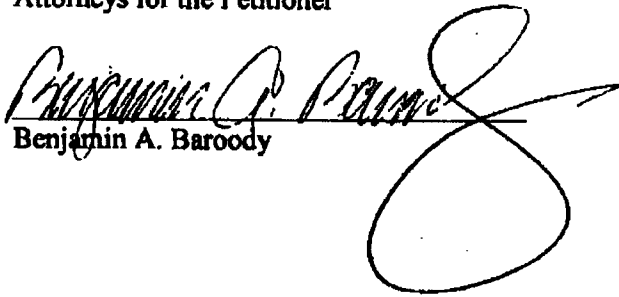
Pursuant to § 6-29-820© and Rule 225©, SCACR, Petitioner hereby requests a Writ of Supersedeas of the Order of the Board and temporarily reinstate the determination of the Zoning Administrator pending appeal, thereby maintaining the status quo as it existed from November 22, 2011 until the Order of the Board and which continues to exist as of the filing of this Petition, to include continued business operations at the subject real property site in compliance with the law. Without such relief, the Petitioner will suffer irreparable harm, damage, and Petitioner's Appeal will be rendered moot.

In the event the relief requested herein is denied, either in whole or in part, Petitioner requests either or both Respondents post a Bond with this Court in a sufficient amount to ensure that Petitioner will be compensated for any and all damages sustained up and until the subsequent reversal of the Order of the Board following a full and final hearing on the merits of Petitioner's Notice of Appeal. Petitioner estimates his total investments in the business exceed \$3,000,000.00, all of which will be lost in the event this Writ is denied.

Petitioner further requests a hearing on its Petition as soon as practicable and for costs and attorneys fees if and where applicable.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
843-448-2400
Attorneys for the Petitioner

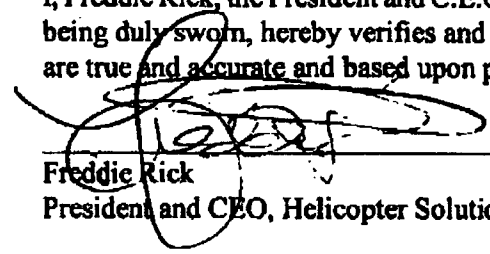

Benjamin A. Baroody

Myrtle Beach, South Carolina

September 17, 2012

VERIFICATION

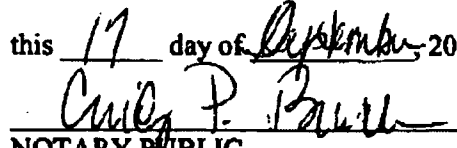
I, Freddie Rick, the President and C.E.O. of Helicopter Solutions, Inc. D/b/a Helicopter Adventures, being duly sworn, hereby verifies and affirms that the foregoing statements and allegations above are true and accurate and based upon personal knowledge


Freddie Rick
President and CEO, Helicopter Solutions, Inc.

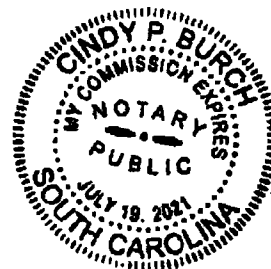
Date: 17 Sept 12

The foregoing instrument was verified,
sworn to and acknowledged before me

this 17 day of September, 2012.


NOTARY PUBLIC
FOR STATE OF SOUTH CAROLINA

My Commission Expires: July 19, 2021



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STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	FIFTEENTH JUDICIAL CIRCUIT
HORRY COUNTY	)	
	)	2012-CP-26-06987
Helicopter Solutions, Inc. d/b/a	)	
Helicopter Adventures,	)	
	)	NOTICE OF MOTION & MOTION
APPELLANT	)	SEEKING RECONSIDERATION OF
	)	ORDER (REVERSING ORDER OF HORRY
vs	)	COUNTY BOARD OF ZONING APPEALS)
	)	
Richard Hinde and Horry County	)	
Zoning Administrator ,	)	
	)	
RESPONDENTS.	)	

FILED
 HORRY COUNTY
 2013 JAN 28 AM 8:18
 MELANIE HUGGINS-WARD
 CLERK OF COURT

TO THE APPELLANT ABOVE NAMED, by and through its attorney of record Benjamin Baroody, Bellamy Rutenberg Copeland Epps Gravely & Bowers P.O. Box 357 Myrtle Beach, SC 29578.

TAKE NOTICE THAT ON THE TENTH DAY AFTER SERVICE HEREOF, or at such other time as the Court may schedule a hearing on this matter, the Respondent Richard Hinde will move before the Court for Reconsideration of the Court's Order dated January 16, 2013. The undersigned has prepared and caused to be filed this motion notwithstanding that the Court's Order of January 16, 2013 has not yet been served upon the undersigned pursuant to the South Carolina Rules of Civil Procedure.

The grounds for these Motions shall be such as the Court may allow at the hearing of these matters, and include but not be limited to the law of South Carolina, the Rules of Civil Procedure, and such oral argument as the Court may allow at the hearing of these matters, including but not limited to the following:

1. The Court erred in making any finding concerning the issue of whether or not Appellant's operations constituted a nuisance:

In footnote four (4) of the Court's Order, the Court made findings which could be interpreted so as to preclude under the doctrine of collateral estoppel the assertion by Respondents, or either of them, from asserting a claim and cause that Appellant's operations

constitute a nuisance. In as much as no cause of action asserting a nuisance was pled or tried, and no testimony concerning any nuisance was taken, Respondent Hinde asserts firmly that it would be inappropriate for the Court to make any finding on the record before it that could preclude the Respondents, or either of them, from seeking relief from the Court upon nuisance grounds.

2. **The Court erred in making any findings concerning the issue of whether or not Appellant's operations complied with all applicable laws, including the Horry County Noise Ordinance:**

In footnote four (4) of the Court's Order, the Court made findings which could be interpreted so as to preclude under the doctrine of collateral estoppel the assertion by Respondents, or either of them, from asserting a claim and cause that Appellant's operations violate any provisions of "applicable laws" and the "Horry County Noise Ordinance". In as much as no cause of action asserting noncompliance with "applicable laws" or the "Horry County Noise Ordinance" was pled or tried, and no relevant testimony taken, Respondent Hinde asserts firmly that it would be inappropriate for the Court to make any finding on the limited record before it that concerns whether or not Appellant's operations comply with "applicable laws, including the Horry County Noise Ordinance".

3. **The Court erred in making any finding that Horry County Zoning Ordinance 712 permits the use of a helicopter sightseeing tour facility:**

The Court erred in reversing the decision of the Board of Zoning Appeals ("BOZA"). The Circuit Court's standard of review was set forth clearly by the South Carolina Court of Appeals in Vulcan Materials Company et. al. v. Greenville County Board of Zoning Appeals et. al. 342 S.C. 480, 536 S.E.2d 892 (2000). There the Court of Appeals explained:

"In 1994, the Legislature enacted a new statutory scheme for local planning and zoning entities embodied in Title 6, Chapter 29, which replaced the existing scheme found in portions of Title 6, Chapter 7, and elsewhere. Act No. 355, § 2, 1994 S.C. Acts 4036, *amended by* Act No. 15, § 1, 1999 S.C. Acts 37. The new scheme

imposed a standard of review whereby "[t]he findings of fact by the [zoning] board of appeals shall be treated in the same manner as a finding of fact by a jury...." S.C.Code Ann. § 6-29-840 (Supp.1999). Local zoning programs could adopt **896 the new standard promulgated by § 6-29-840 any time prior to December 31, 1999, after which time its adoption became mandatory. *See* Act No. 355 ("On or after December 31, 1999, all local planning programs must be in conformity with the provisions of this act. Until December 31, 1999, this act is cumulative and may be implemented at any time¹"). Section 6-29-840 differs textually from its predecessor, which treated "[t]he findings of fact by the [zoning] board of appeals [as] final and conclusive on ... appeal." S.C.Code Ann. § 6-7-780 (1977) (repealed 1999).

*488 We have repeatedly held that the old statute, § 6-7-780, imposed an "any evidence" standard of review. "The factual findings of the [b]oard (of zoning appeals) must be affirmed ... if they are supported by *any evidence*...." *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 502, 455 S.E.2d 171, 172 (1995) (emphasis added); *accord* *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 366 S.E.2d 15 (Ct.App.1988); *Bailey v. Rutledge*, 291 S.C. 512, 354 S.E.2d 408 (Ct.App.1987). The new statute, § 6-27-840, is also very deferential to a board's findings of fact as it equates them to a jury's findings. "[T]he factual findings of the jury will not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports the jury's findings." *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992) (emphasis added) (citing *Townes Assoc's, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976)). The distinction, if any, between an "any evidence" and a "no evidence" standard is of little importance to the instant action as our decision, like that of the circuit court, is controlled by an issue of law.

[1] Under both the old and new statutes, this Court determines "whether the decision of the BOZA is correct as a matter of law." *Compare* § 6-7-780, with § 6-29-840; *see also* *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997) ("[T]he decision of the zoning board will not be upheld where it is based on errors of law, ... or where there is no legal evidence

to support it, or where the BOZA acts arbitrarily or unreasonably, ... or where, in general, the BOZA has abused its discretion.”) (quoting Hodge v. Pollock, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953)).

Only a year earlier the South Carolina Supreme Court, in Restaurant Row Associates v. Horry County 335 S.C. 209, 516 S.E.2d 442 (1999) explained that:

In the context of zoning, a decision of a reviewing body, in this case the Horry County Board of Adjustments and Zoning Appeals, will not be disturbed if there is evidence in the record to support its decision. Id.

*216 [5][6] A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. Peterson, 327 S.C. at 235, 489 S.E.2d at 632. However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the BOZA has abused its discretion. See id.; Knowles v. City of Aiken, 305 S.C. 219, 407 S.E.2d 639 (1991); Hodge v. Pollock, 223 S.C. 342, 75 S.E.2d 752 (1953); Gurganious v. City of Beaufort, 317 S.C. 481, 454 S.E.2d 912 (Ct.App.1995). This Court has summarized its standard of review in zoning appeals as follows:

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the BOZA. The court may not feel that the decision of the BOZA was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the BOZA reached its decision. It may feel that the decision of the BOZA was a substandard piece of logic and thinking. None the less, the court will not set aside the BOZA's view of the matter just to inject its own ideas into the picture of things.

Other notable decisions provided that while a reviewing court must treat the Board's factual findings as those of a jury and refrain from substituting its own judgment of those facts from that of the Board, a Court may reach a different conclusion of law. See Wyndham

Enterprises, LLC v. City of North Augusta, 2012 WL 3828237 (SC App. Op. No. 5030, filed September 5, 2012) (reversing a Board's denial of a special exception to sell fireworks, finding the Board's decision was not correct as a matter of law, was not supported by "competent, substantial, and material evidence," and was, instead, based upon "opinion and speculation testimony.").

The Court's inquiry and decision should have been limited to only whether the decision of the board is correct as a matter of law." S.C. Code Ann. 6-29-840(A) (Code of Laws 1976, as amended). South Carolina courts applying this standard of review have overturned Boards of Zoning Appeals when the Board's decision "is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." Wyndham, *infra*. Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact. Mikell v. County of Charleston, 386 SC 153, 158, 687 SE2d 326, 329 (2009). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.

There is clearly sufficient evidence in the record to support the BOZA's finding. On the other hand, if the determination by the BOZA that a helicopter touring facility is not a sight-seeing depot is a conclusion of law, then this Court could reach a different conclusion of law.

From the record and oral arguments, it is clear that if Appellant's business was operated by a ground mode of transportation, there would be no dispute about whether or not Appellant's business would be a permitted use within the AC zoning district. The record also establishes that the term "depot" is undefined in the Code of Ordinances of Horry County or in the

Comprehensive Plan adopted by Horry County. The term "depot" is not defined in the Code of Laws of South Carolina or in any asserted case opinion. In the record on appeal there were two dictionary definitions of the word "depot" provided to the BOZA. An additional definition from the American Heritage Dictionary was presented during oral argument.

Webster's Dictionary defines the word "depot" as:

- 1a. A place for storing goods or motor vehicles
- b. STORE, CACHE <a fat depot in the body>
- 2a. a place for storage of military supplies
- 2b. A place for the reception and forwarding of military replacements
- 3. Building for railroad or bus passengers or freight

The American Heritage Dictionary defines the word "depot," as:

- 1. A railroad or bus station.
- 2. A warehouse or storehouse.
- 3.a. A storage installation for military equipment and supplies.
- 3.b. A station for assembling military recruits and forwarding them to active units.

It is clear from the definitions contained in the record and the examples given that the term "depot" is a term that, when used in connection with transportation, is linked to ground modes of transportation such as by rail and by bus.

However, in Heilker v. Zoning Bd. of Appeals for the City of Beaufort, 346 S.C. 401, 552 SE2d 42 (2001), the Court of Appeals expressed its reluctance to rely upon either a dictionary or cases that have relied upon a dictionary as to the definition of a word. The Court based its refusal to adopt a dictionary definition upon what the Court there described the "persuasive commentary" set forth in a law review article. Regarding common-usage dictionaries, Thumma and Kirchmeier state:

***410 [A court cannot] definitively rely on [common-usage] dictionaries as an end point in defining a word. A descriptive dictionary sets forth definitions showing what a word may mean generally, not what a word does mean in context.**

Accordingly, although a descriptive dictionary may set forth possible alternative definitions for a term, it cannot provide the definitive definition for what that term actually means in a specific context. Differing definitions for a word in different dictionaries and alternative definitions of a word in the same dictionary would further confound an attempt to use a descriptive dictionary as an end point in defining a word.

47 Buff. L.Rev. at 293 (emphasis added).

In Heilker, the Court of Appeals reversed the Circuit Court and clearly established the Zoning Board of Appeals' interpretation of the words "use" as opposed to "practice" was a finding of fact. There the Court stated:

In Stanton v. Town of Pawleys Island, 317 S.C. 498, 455 S.E.2d 171 (1995), a homeowner sought a building permit to *411 repair the ground level of his oceanfront home, which was destroyed by Hurricane Hugo. The building inspector, applying the town's "Flood Damage Prevention Ordinance," denied the homeowner's request. This ordinance, enacted after the home's original erection, prohibited the construction of any ground level living quarters in the area where the home was situated. The town's zoning codes, however, permitted the rebuilding of nonconforming "uses," provided the structure requiring reconstruction was not more than 50% percent destroyed. The lower level in Stanton was completely destroyed; nevertheless, reviewed as a whole, the homeowner's entire structure was more than 50% intact.

The building inspector found the lower level, in and of itself, constituted a "separate use" from the rest of the house. Id. at 501, 455 S.E.2d at 172 (emphasis added). Therefore, although the entire house was not destroyed by more than 50%, the complete destruction of the lower level rendered it ineligible for reconstruction. The homeowner appealed to the town's zoning board, which upheld the permit denial. The Circuit Court affirmed.

The dispute reached the Supreme Court. Whether the town zoning board erred in concluding the homeowner's lower level was a separate "use" was the main issue before the Court. The Court articulated its standard of review:

The factual findings of the Board must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law.

Id. at 502, 455 S.E.2d at 172 (citation omitted) (emphasis added).

This Court reads *Stanton* to mean that in South Carolina, a zoning board determination regarding whether a particular activity **48 or purpose constitutes a "use" of property is a finding of fact.

BOZA, in its factual findings, observed and questioned "whether a helicopter tour ride can be classified as an Amusement (Finding No. 21, or 12 as corrected herein and above)." In its conclusions of law, the Board overturned the decision of the Zoning Administrator, finding that "a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district."

In considering the issue of legislative intent, it should be noted that a helicopter sight-seeing or tour operation is not defined in Article VII of the Horry County Zoning Ordinance pertaining to "Definitions," nor is it defined in Section 712, Article VII of the Horry County Zoning Code governing "Amusement Commercial District." Accordingly, the Court should look to the language of the Ordinance, including the County Council's expression of intent, and the provisions of the Ordinance as a whole.

The County Council's expressed intent, set forth in Article VII, Section 712 of the Ordinance, is as follows:

The intent of the Amusement Commercial District is to allow for the mixing of

certain specified land uses in the county where both residential and limited business uses are competing for land and accelerated transition is in evidence.

The Ordinance continues, defining the following permitted uses:

(A) Establishments providing entertainment primarily as a commercial activity, including but not limited to theaters, billiard halls, pool halls, bowling alleys, water slides, skating rinks, dance halls, shooting galleries, gift and novelty shops, taverns, clubs, amusement parks, piers, arcades, miniature and par-three golf, driving ranges, boardwalks, bathhouses and sight-seeing depots.

The Ordinance also provides a definition of hotels, motels, tourist homes and eating establishments allowed in the AC district, along with accessory uses to these permitted uses. Section 712 of the Ordinance also provides detailed requirements for certain types of game machines including a limitation on the number of machines per structure and restriction of location of such game machines. Additionally, certain publicly owned buildings, facilities or lands may be approved as conditional uses by the Planning Commission.

Appellant contends that its business, consisting of providing helicopter rides by multiple helicopters from a landing pad located within the AC district approximately 1350 feet from the property line abutting the Plantation Point residential development, is a "sight-seeing depot" within the meaning of Section 712.1(A). The phrase "sight-seeing depot" is not defined in Article IV of the Zoning Ordinance which contains definitions to be used in construction of the Ordinance. The Ordinance provides that words that are not defined in Section 400 are to be given their "customary dictionary definition." Horry County Zoning Ord., Article IV, Section 400.

The record is replete with evidence from residents of the Plantation Point neighborhood that the Appellant's helicopter tour operations, consisting of noisy helicopter take-offs and

landings from morning through evening hours, create noise and disturb daily residential activities. The record evidence consists of testimony, petitions and complaints from homeowners expressing frustration and concerns that the helicopter operations interfere with their enjoyment of normal family and residential activities such as relaxing on their porches, grilling outside, enjoying activities in their yards, and interfering with the ability of young children to go to sleep at night at their normal bedtime hours, as well as diminishing the market value and marketability of their homes. The record included well over three hundred (300) residents who have signed a petition to join in Respondent Hinde's challenge of the Zoning Administrator's decision. (See Record on Appeal Pages 448-549)

The record includes a copy of a report undertaken by the Federal Aviation Administration (hereinafter "FAA") entitled "The Effect Of Airport Noise On Housing Values: A Summary Report". (See Record on Appeal Pages 557-604) The report reveals that the impact upon housing values by the location of nearby airports is more pronounced in higher-priced neighborhoods than in neighborhoods where housing is relatively less expensive. (See Record on Appeal Page 596) From the location of the subject property and the Court's general knowledge of the area, the Court is persuaded that Respondent Hinde lives in a "higher-priced" neighborhood.

The record included a copy of a report from a study undertaken by the Environmental Protection Agency (hereinafter "EPA"). (See Record on Appeal Pages 605-618) The report evidences that the EPA has determined that excess noise levels associated with airports can cause significant and detrimental effects upon children's reading abilities and cognitive development.

The record also included a copy of a "Report To Congress entitled "Nonmilitary Helicopter Urban Noise Study". (See Record on Appeal Pages 619 - 689) From the report it is evidenced that the federal government has determined that helicopter noise is far more offensive

and annoying than fixed wing aircraft and that it was recommended that excursions be grouped in order to minimize the number of flight disturbances in a day. Here, Appellant's business model requires all day operations and even into the night.

In any debate about the purpose of zoning it could not be disputed that preservation of property values and insuring compatibility of land uses are among the objectives of zoning. In reviewing the language pertaining to the AC district as a whole, the Court should be guided by the examples of permitted uses described in Section 712.1 as evidencing an intention to allow commercial amusements compatible with residential development. The Court's decision in Charleston County Parks and Recreation Com'n. v. Somers, 319 S.C. 153, 459 S.E.2d 841 (1995) is instructive in this matter; in the Charleston case, the Court reviewed the specifically permitted uses and considered whether the proposed municipal use was one that would be "repugnant" to the intent of the statute. In applying a similar analysis as guidance herein, it should be noted that the record testimony establishes that the operation of a landing pad for daily, numerous helicopter take-offs and landings in the vicinity of an established residential neighborhood is not a proper "mix of residential and limited business uses." Consideration of the intent and language of the Ordinance as a whole also firmly supports the determination of the BOZA. Neither helicopter landings and take-offs nor any other aeronautical activity is specifically mentioned in the Ordinance as an allowed use. Moreover, the term "depot," in its normal and ordinary use, refers to ground transportation, such as train, bus, or trucking.

Based on the above, Respondent Hinde firmly asserts that BOZA acted within its discretion in reversing the Zoning Administrator's decision and finding that a helicopter tour facility is not a "sight-seeing depot" within the meaning of the zoning ordinance and is a use not consistent with the uses allowed in the AC zoning district. It cannot be found on this record that the

decision of the BOZA was arbitrary, capricious, had no reasonable relation to a lawful purpose, or that the BOZA had abused its discretion.

ACCORDINGLY and for the foregoing reasons, the Respondent Hinde respectfully moves the Court for Reconsideration of its Order dated January 16, 2013.

Respectfully submitted.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Plaintiff



Kenneth R. Moss, S.C. Bar No. 15520

1180 Highway 17 North, Suite 2

P.O. Box 250

Little River, SC 29566

email: kennethmoss@wwpemlaw.com

Tel: (843) 281 9901 Fax: (843) 281 9903

Dated: January 27, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-26-6987

Helicopter Solutions, Inc., d/b/a)
Helicopter Adventures,)

Appellant,)

vs.)

Richard Hinde and Horry County)
Zoning Administrator,)

Respondents)

**RESPONDENT HORRY COUNTY'S
NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND ORDER
PURSUANT TO RULE 59(e) SCRPC**

TO: APPELLANT AND ITS ATTORNEY, BENJAMIN BAROODY, ESQUIRE

YOU WILL PLEASE TAKE NOTICE, that the Respondent, Horry County Zoning Administrator (more correctly identified as "Horry County Board of Zoning Appeals"), by and through its undersigned attorneys, hereby joins in the Respondent Richard Hinde's Notice of Motion and Motion Seeking Reconsideration of Order (Reversing Order of Horry County Board of Zoning Appeals) 6), pursuant to Rule 59(e), SCRPC.

The grounds set forth in Respondent Richard Hinde's Motion are as follows:

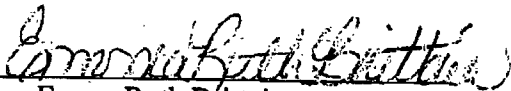
1. The Court erred in making any finding concerning the issue of whether or not Appellant's operations constituted a nuisance.
2. The Court erred in making any findings concerning the issue of whether or not Appellant's operations complied with all applicable laws, including the Horry County Noise Ordinance.
3. The Court erred in making any finding that Horry County Zoning Ordinance 712 permits the use of a helicopter sightseeing tour facility.

2013 JAN 28 PM 4:20
CLERK OF COURT
HORRY COUNTY

Accordingly, the Respondent, Horry County Zoning Administrator (more correctly identified as "Horry County Board of Zoning Appeals"), respectfully moves the Court for Reconsideration of its Order dated January 16, 2013, based on the grounds set forth herein and as further set forth in the Motion of Respondent Hinde in this matter.

Respectfully submitted,

THOMAS & BRITTAIN, P.A.

By: 

Emma Ruth Brittain

S.C. Bar #5298

Post Office Box 1290

Myrtle Beach, South Carolina 29578

Phone: (843) 692-2628

Fax: (843) 692-0928

Attorneys for the Respondent

Horry County Zoning Administrator

January 28, 2013
Myrtle Beach, South Carolina

500 ft.

AP-6-12-10452

BOARD OF ZONING APPEALS APPLICATIONRequest # 2012-07-008Date Filed 6-22-12

1. Complete the application in its entirety (incomplete applications will not be processed);
2. If a setback or dimensional variance is requested, an accurate, legible plot plan prepared by a registered architect, engineer, or surveyor, showing property dimensions and locations of all existing and proposed structures must be provided;
3. The property owner(s) as listed on the current tax records at the time of submittal must sign this application. In addition, if the property is located within a subdivision with a legal and active Home Owners Association (HOA), approval of the HOA must be provided with the application.

APPLICANT: (May be Property Owner or Designated Agent)

Richard HindeTYPE OF REQUEST (Circle One) Variance Appeal of the Zoning Admin Special Exception/ ReconsiderationPROPERTY ADDRESS: 1860 21st Avenue North, MB, SC 29577Tax Map No. 173-100-10-58 Zoning District: Ac Subdivision: _____ Acreage: _____DESCRIPTION OF REQUEST: Appealing Zoning Administrator decision on
perm. issued
(Complete if a Variance) Required Front Setback: _____ Requested Front Setback: _____

Required Side Setback: _____

Requested Side Setback: _____

Required Rear Setback: _____

Requested Rear Setback: _____

Are There Restrictive Covenants on This Property That Prohibit or Conflict With This Request? Y (N)PROPERTY OWNER(S) NAME (S) Richard HindeAddress: 1541 Brookgreen Dr., MB, SC 29577Telephone: 421-5554 (Work) 448-4874 (Home) Rick.hinde@gmail.com (E-mail)Richard Hinde

PROPERTY OWNER(S) SIGNATURE (If I.L.C. or Corp Please Provide Authorization) DATE

DESIGNATION OF AGENT (If the Property Owner Wishes To Appoint an Agent to Represent Him or Herself)

Agents Name: _____

Address: _____

Telephone: _____ (Work) _____ (Home) _____ (E-mail)

I hereby appoint the person(s) listed above as agent to act on my behalf for the purpose of filing such application for a variance as he/she shall deem necessary and proper.

PROPERTY OWNER(S) SIGNATURE

DATE

PLANNING AND ZONING DEPARTMENT USE ONLY

Have Survey:	Y	<u>N</u>	Property Owner (s) Have Signed:	Y	N
Have Business License (If Applicable)	Y	N	Have HOA Approval (If Applicable)	Y	N
Business ID#	_____		Business License Permit #	_____	

Signature of Zoning Administrator/Assistant Z.A./Deputy Planning Director

Date

6-22-12

241

To the Director of Zoning and the Zoning Board of Appeals:

A decision was made by the zoning administrator to allow a helipad in a zone that is Amusement Commercial because there is not another area for them to be zoned. A Helipad should have never been approved, and is causing anxiety and frustration to those people that live around it. The noise is a constant nuisance and goes from 8:30am until 10:30pm. Additionally, this will also reduce real estate values even more. It also has to be affecting the businesses that it surrounds. Helicopters are a nuisance and a safety concern.

Even though the Director of Zoning said there was no other area to put the helipad than in an AC zone. We feel that this decision was really made because the AC zone says sight seeing depots are allowed. We argue that Helipads aren't sight seeing depot. Sight seeing depots are for bus or train transfers, not helicopters. The origin of the word "depot" came from the French in 1795 to mean "warehouse or store house". In 1842, Americans used the word "depot" to refer to "railroad or bus". Again, not helicopters.

The ability of helicopters to go in any direction with the noise levels and invasion of privacy requires strict controls. In order to build an airport there a strict controls. We basically now have an airport in our backyard. Airports routinely pay property owners when they add a runway because they reduce property values. On Brookgreen Drive, we have over 50 homes. The average price being conservative is \$500,000. So, the home value is \$25,000,000 on just one street. Now reduce the values by 40% which means we just lost \$10,000,000 on one street.

Additionally, the concern for safety is huge. They are flying over dense area at low altitudes. I'm not sure how a life guard at Myrtle Waves can hear a screaming kid with a Helicopter flies over.

It is hard for us to believe that one person can make such a large decision that impacts so many. It has large legal implications. We have also been told that this appeal process goes back to the people that made the decision. They will determine if it goes to the Board of Zoning appeals. This process does not seem fair since we are questioning the decision made by the administrator. We realize that this appeal process is typically for those denied permits. However, we are asking that you revisit what was approved and let us appeal to the Zoning Board of Appeals, and make the right decision.

Rick Hinde

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

**BEFORE THE BOARD OF
 ZONING APPEALS**
 Case No.: 2012-07-008

In re: Richard Hinde)
)
)

ORDER OF THE BOARD

Hearing was held before this Board on September 10, 2012, pursuant to the request of the applicant for appeal of the Zoning Administrator's decision that a helicopter/sightseeing tour facility is allowed in the Amusement Commercial (AC) zoning district. The property in question is identified by TMS# 173-00-01-058 and is located at 1860 21st Avenue North in the Myrtle Beach area of Horry County. The affected business owner is Helicopter Solutions, Inc. d/b/a Helicopter Adventures.

Article XIV, Section 1402 of the Zoning Ordinance states, "[t]he concurring vote of a majority of the members present at a meeting of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator...." The applicant is appealing the Zoning Administrator's decision that a helicopter/sightseeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

The applicant, the affected business, and the zoning administrator were given the opportunity to offer witnesses and exhibits; cross-examine witnesses; and, to make argument for the record. A public hearing was held and all interested parties were invited to comment before the Board.

Pursuant to Section 1403 of the Zoning Ordinance, an appeal to the board may be filed by any person aggrieved or by any officer, department, board, or bureau of the county. Such appeal shall be filed within a reasonable time, as provided by the rules of the Board.

FINDINGS OF FACT

1. The property in issue is owned by Burroughs & Chapin, Inc. (B&C) and is located between the NASCAR Speed Park and the City of Myrtle Beach Wastewater Treatment facility off of Highway 17 By-pass and 21st Avenue North, Myrtle Beach.
2. The property is 46.17 acres and the business in issue, Helicopter Adventures, is located on approximately 5.47 acres of the parcel directly behind the NASCAR Speed Park parking lot.
3. The property is split zoned Amusement Commercial (AC) and Limited Industrial (LI). The business in issue is located within the AC portion of the property.
4. The landing pads are approximately 1350 ft. from the property line abutting residential property. The property is buffered by a large berm covered in fully grown trees.
9. A helicopter sight-seeing tour facility is not specifically referenced in any of the zoning districts, however the AC zoning district allows a variety of outdoor amusements and specifically lists sight-seeing depots.
13. On November 18, 2011, Steve Strickland, P.E. contacted Deputy Planning Director Carol Coleman via email about locating a helicopter sight-seeing tour facility on the above referenced property. Ms. Coleman advised that the zoning looked good.
14. On November 22, 2011, Zoning Administrator Rennie Mincey, wrote a letter to Mr. Strickland stating that a helicopter tour facility would be allowed in AC.
15. From November 21, 2011 through March 28, 2012, a series of site plan reviews and revisions were conducted by the Horry County Planning & Zoning, Code Enforcement, Engineering, and Stormwater Departments. A Stormwater Permit was issued on February 17, 2012, and final site plan construction approval granted on March 28, 2012.
16. On March 16, 2012, Helicopter Adventures submitted an application for a building permit and the permit was issued on April 10, 2012.
17. Since a portion of the property upon which a part of the business parking lot is located is within the city limits of the Myrtle Beach, a hearing before the City's Community Appearance Board (CAB) was required, advertised and held on May 3, 2012. The CAB granted approval.
19. A Certificate of Occupancy was issued by the Horry County Code Enforcement Department on May 25, 2012.
20. On June 22, 2012, the applicant filed this appeal requesting that the Board overturn the Zoning Administrator's decision and determine that such use is not an allowed use in the

Amusement Commercial (AC) district. This request was deferred at the August 13, 2012 Board hearing.

21. ZBA members observe and question whether a helicopter tour ride can be classified as an Amusement.

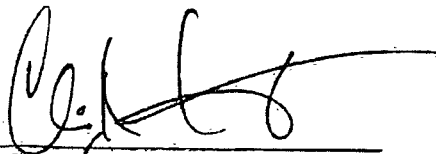
CONCLUSIONS OF LAW

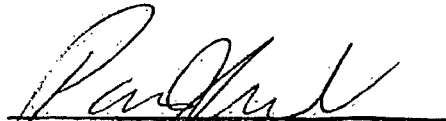
Based on the evidence presented, the Board finds that this appeal was filed within a reasonable time after the applicant knew or should have known of the November 22, 2011, decision by the Zoning Administrator. Although the plans and permits referenced above were maintained as records of the county and available for public inspection for months before the appeal was filed, the applicant had no reason to inquire and lacked actual knowledge of them.

The Board overturns the decision of the Zoning Administrator finding that a helicopter tour facility is not a sight-seeing depot and is not consistent with the uses allowed in the AC zoning district. Therefore, the appeal is granted and the Zoning Administrator's decision is overturned.

AND IT IS SO ORDERED, this 10th day of September, 2012.

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Christopher Hanna, Chairman

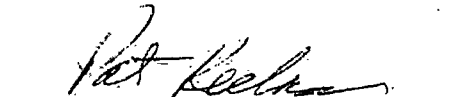

Pam Creech, Vice-Chairman


Allen Beverly


Hunter Platt

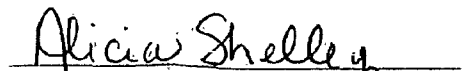

Pat Lebedz


Ace Parker


Pat Keelan


Bo Ives

ATTEST:


Alicia Shelley, Secretary

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*Previously Deferred***STAFF REVIEW APPEAL CASE # 2012-07-008**

Applicant: Richard Hinde
TMS #: 173-00-01-058
Location: 1860 21st Avenue North, Myrtle Beach
Zoned: Amusement Commercial (AC)

Request: The applicant is appealing the Zoning Administrator's decision that a helicopter sight-seeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district.

Issue Before the Board

The issue before the Board is whether or not the Zoning Administrator has correctly interpreted the Zoning Ordinance by confirming that a helicopter sight-seeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district.

Background/Site Conditions

The property in issue is owned by Burroughs & Chapin, Inc. (B&C) and is located between the Nascar Speed Park and the City of Myrtle Beach Wastewater Treatment facility off of Highway 17 By-pass and 21st Avenue North, Myrtle Beach. The property is 46.17 acres and the business in issue is located on approximately 5.47 acres of the parcel directly behind the Nascar Speed Park parking lot. The landing pads are approximately 1350 ft. from the property line abutting residential property. The property is buffered by a large berm covered in fully grown trees. The property is split zoned Amusement Commercial (AC) and Limited Industrial (LI). The business in issue is located within the AC portion of the property.

The parcel is included in the Development Agreement (Agreement) the County signed with B&C in December 2000. Pursuant to the terms of that Agreement, the Zoning Ordinance applicable to all property covered by the Agreement is the Ordinance in effect at the time of signing December 5, 2000. At that time, the following commercial and industrial zoning districts were in effect in the County:

Agricultural/Residential/Commercial
 Limited Forest Agriculture (LFA)
 Forest Agriculture (FA)
 Commercial Forest Agriculture (CFA)

Commercial/Office/Residential
 Resort Commercial (RC)
 Neighborhood Commercial (NC)
 Community Commercial (CC)
 Highway Commercial (HC)
 Office/Professional/Institutional (OPI)

Indoor & Outdoor Commercial Amusements
 Amusement Commercial (AC)

Industrial
 Limited Industrial (LI)
 Heavy Industrial (HI)

For licensing purposes, there are hundreds of business types. The Zoning Ordinance lists some business types specifically, often as examples of the types of uses allowed in a district. It often uses the "including but not limited to" wording. However, it isn't possible to list every business type in every district in which it is allowed. Therefore, staff must determine which business types are allowed uses in which districts whenever the question is presented. Staff makes this determination based on the plain wording of the ordinance, the types of businesses specifically listed, the compatibility of the use with other uses in the district, and the way the ordinance has been previously applied.

A helicopter sight-seeing tour facility is not specifically referenced in any of the zoning districts, although the AC district does specifically list "sight-seeing depots." Helicopter sight-seeing tour facilities function as outdoor amusements. Historically, outdoor amusement uses that may create noise, such as outdoor gun ranges and outdoor motor sports facilities have been limited to the AC district. Years ago, this was determined to be the appropriate zoning district for these use types because it was the only commercial district that allows outdoor amusements and does not allow residential uses. Further, there are a very limited number of properties in the County zoned AC. Therefore, anyone desiring to establish a use of this type has been told they would either have to procure one of the few properties already zoned for it or initiate a rezoning action that requires public notice and County Council approval. Thus, the AC zoning district historically has been regarded as one of the most intense zoning districts and commercial sight-seeing uses by land, water or air; and, other outdoor amusement commercial uses have been limited to this district.

Proposed Order/Conditions

Pursuant to Section 1402 of the Zoning Ordinance, "[t]he concurring vote of a majority of the members present at a meeting of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator..." Therefore, the Chairman should ask the Board if there is a motion to reverse the determination of the Zoning Administrator in this case. Unless such a motion is made, seconded and concurred upon by a majority of the members present, the determination will stand.

Project Timeline

11/22/2011	Initial Meeting to Discuss Submittal
	Zoning Verification/Determination Issued
11/21/2011 – 2/9/2012	Series of Plan Revisions
2/9/2012	Site Construction Plans Approved
2/17/2012	Stormwater Permit Issued
2/28/2012	Final Site Construction Plans Approved
3/6/2012	Revised Plans Submitted
3/16/2012	Building Permit Application Received
3/28/2012	Final Revised Site Construction Plans Approved
4/10/2012	Building Permit Issued
5/3/2012	Approval by City of Myrtle Beach CAB
5/25/2012	Certificate of Occupancy Issued



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Request by
Richard Hinde
TMS # 173-00-01-058

Variance Request
Location Map

2012-07-008

COUNTY

COUNTY

MYRTLE BEACH

000016

MYRTLE BEACH

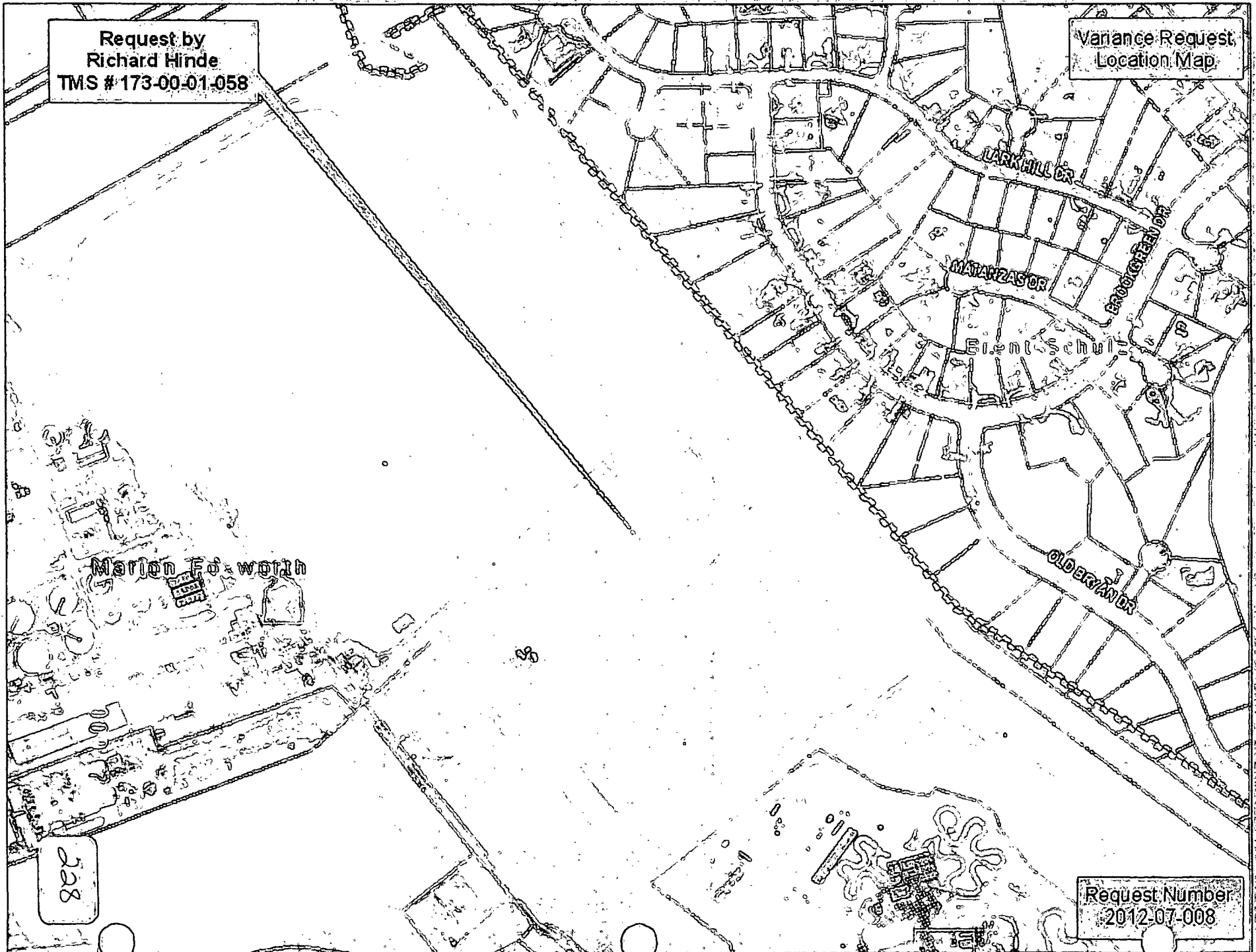
Request Number
2012-07-008

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Request by
Richard Hinde
TMS # 173-00-01-058

Variance Request
Location Map



Request Number
2012-07-008

000294

008 Entrance

000295

209

PUBLIC
HEARING
OF

008 Site

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008 Site

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008 Site

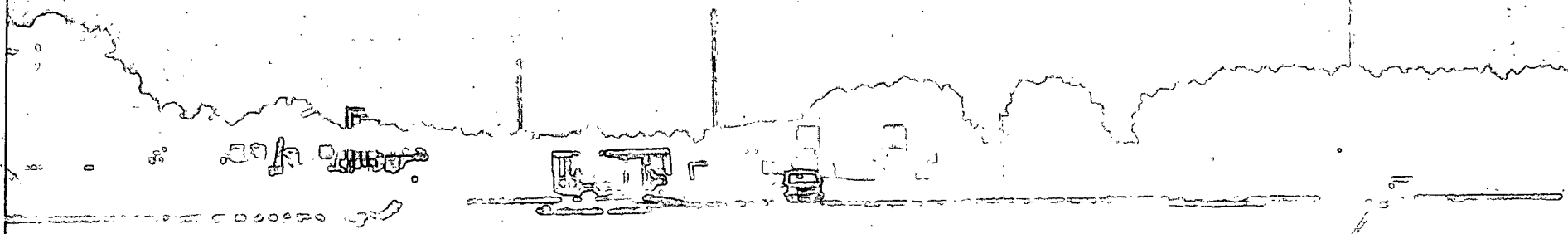


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008 Right side



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008 Neighbor to the right

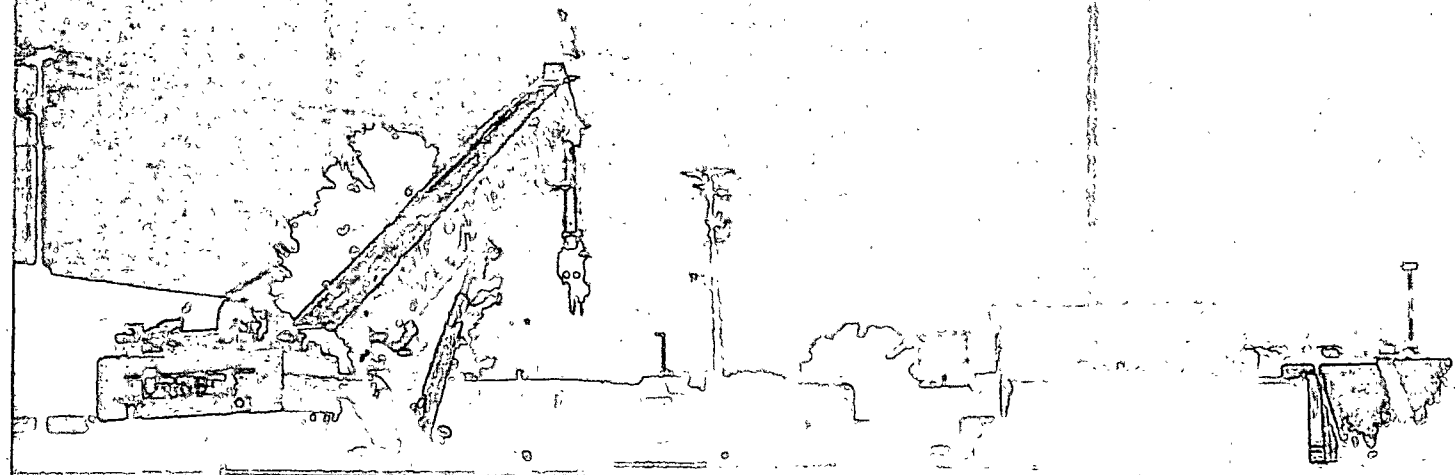


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008 NEIGHBOR TO AIR STG



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008 21st Ave N looking east

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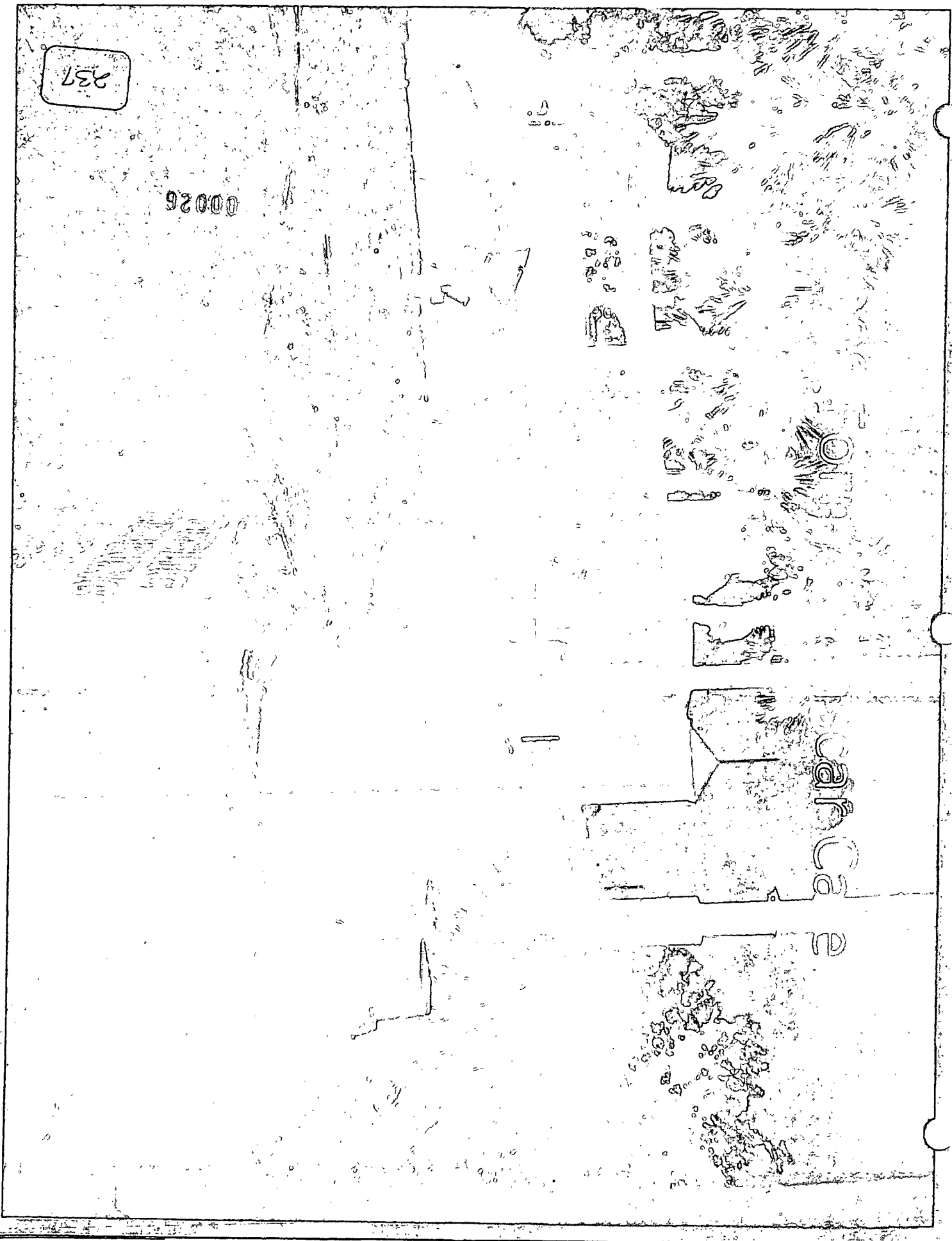
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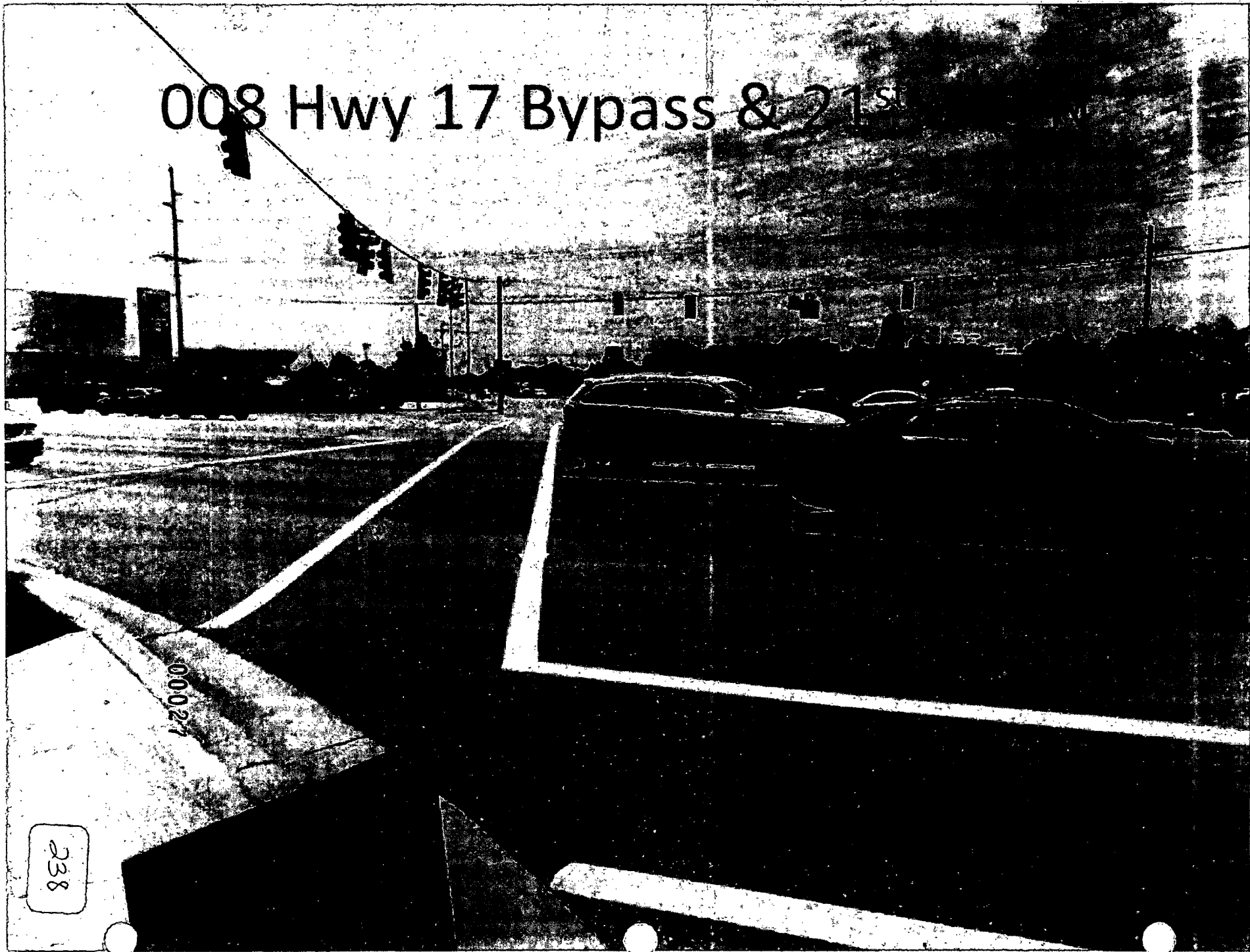
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008 Hwy 17 Bypass & 21st St



000304

Bypass

008 21st Ave N at L

00028

239

500 ft.

AP-6-12-10452

BOARD OF ZONING APPEALS APPLICATIONRequest # 2012-07-008Date Filed 6-22-12

1. Complete the application in its entirety (incomplete applications will not be processed);
2. If a setback or dimensional variance is requested, an accurate, legible plot plan prepared by a registered architect, engineer, or surveyor, showing property dimensions and locations of all existing and proposed structures must be provided;
3. The property owner(s) as listed on the current tax records at the time of submittal must sign this application. In addition, if the property is located within a subdivision with a legal and active Home Owners Association (HOA), approval of the HOA must be provided with the application.

APPLICANT: (May be Property Owner or Designated Agent) Richard HindeTYPE OF REQUEST (Circle One) Variance Appeal of the Zoning Admin Special Exception/ ReconsiderationPROPERTY ADDRESS: 1860 21st Avenue North, MB, SC 29577Tax Map No. 173-00010-58 Zoning District: AC Subdivision: _____ Acreage: _____DESCRIPTION OF REQUEST: Appealing Zoning Administrator decision on permit issued.

(Complete if a Variance) Required Front Setback: _____ Requested Front Setback: _____

Required Side Setback: _____ Requested Side Setback: _____

Required Rear Setback: _____ Requested Rear Setback: _____

Are There Restrictive Covenants on This Property That Prohibit or Conflict With This Request? Y ☒ NPROPERTY OWNER(S) NAME (S) Richard HindeAddress: 1541 Brookgreen Dr., MB, SC 29577Telephone: 421-5554 (Work) 448-4874 (Home) Rick.hinde@gmail.com (E-mail)Richard Hinde

PROPERTY OWNER(S) SIGNATURE (If LLC or Corp Please Provide Authorization) DATE

DESIGNATION OF AGENT (If the Property Owner Wishes To Appoint an Agent to Represent Him or Herself)

Agents Name: _____

Address: _____

Telephone: _____ (Work) _____ (Home) _____ (E-mail)

I hereby appoint the person(s) listed above as agent to act on my behalf for the purpose of filing such application for a variance as he/she shall deem necessary and proper.

PROPERTY OWNER(S) SIGNATURE

DATE

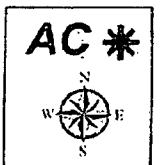
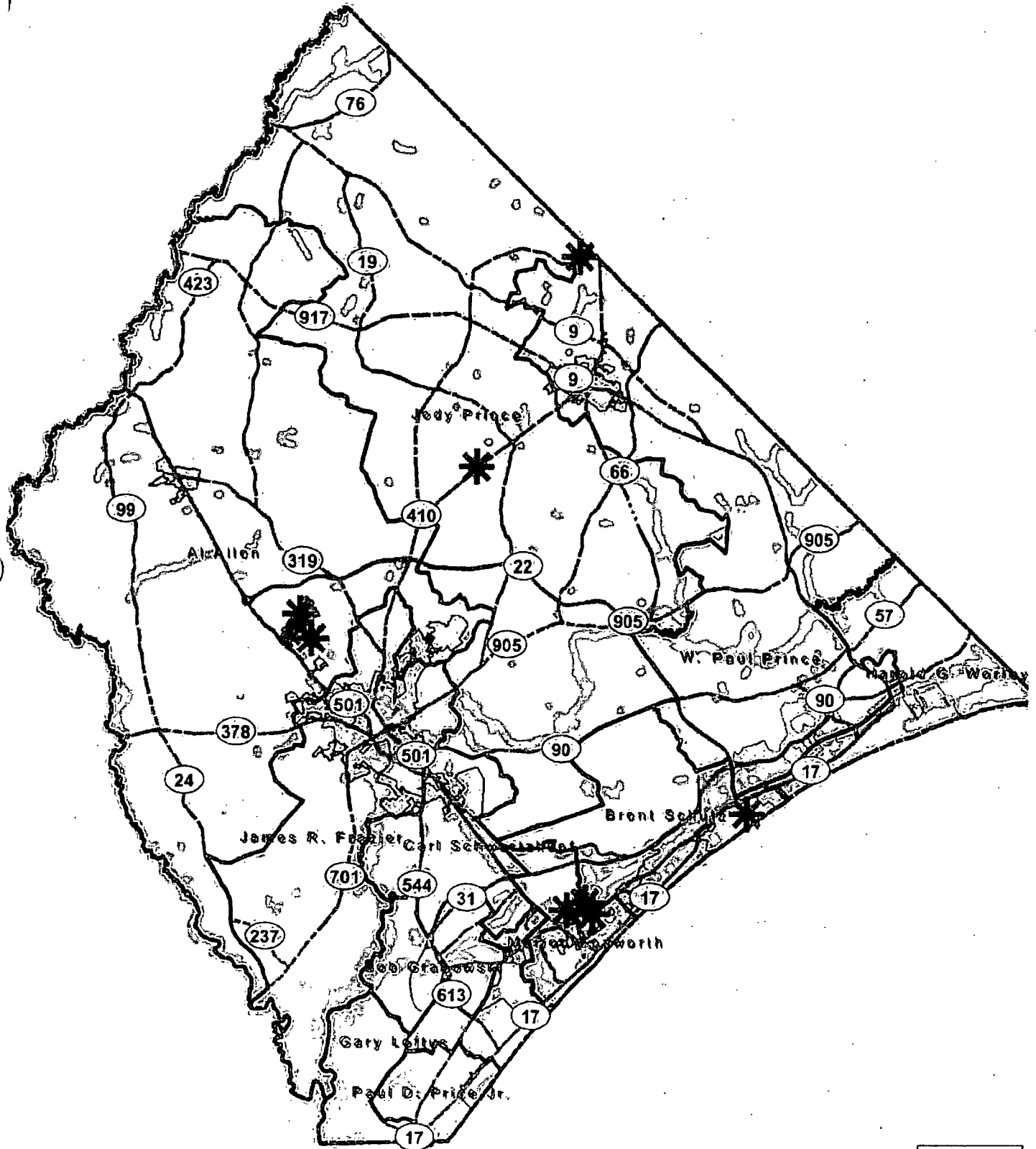
PLANNING AND ZONING DEPARTMENT USE ONLY

Have Survey:	Y ☒ N	Property Owner (s) Have Signed:	Y ☒ N
Have Business License (If Applicable)	Y ☒ N	Have HOA Approval (If Applicable)	Y ☒ N
Business ID#	_____	Business License Permit #	_____

Signature of Zoning Administrator/Assistant Z.A./Deputy Planning Director Sam ThompsonDate 6-22-12

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Owner	Area Sq ft	Land Use
AC Zoning		
1730004080 CHAPIN CO	45003.6361	2010 Aerial - Gas Station (closed)
300001012 COASTAL CAROLINA LAND BANK LLC	857351.0414	2010 Aerial - Vacant with a road
1730001079 MYRTLE BEACH FARMS COMPANY INC	2431660.462	2010 Aerial - Trees
1730001058 BURROUGHS & CHAPIN COMPANY INC ETAL	1828257.701	2010 Aerial - Vacant Cleared
700001028 COX LAND HOLDING COMPANY LLC	3427300.063	2010 Aerial - Dirt Tracks
700001097		2010 Aerial - Lake
700001142		2010 Aerial - Trees
1550001051 MYRTLE BEACH LEASING CO NO 2 LLC	585879.8831	2010 Aerial - RV Storage
1090001112 BURROUGHS & CHAPIN COMPANY INC	2921600.286	2010 Aerial - Trees with some cleared
1090002099 CANNON DOLLIE LEE		2010 Aerial - Vacant residential lot
1090001112 BURROUGHS & CHAPIN COMPANY INC	53460303.52	
Total Square Feet	65557356.59	
Total Acres	1504.893721	

East of River	4890801.682
	112.2773573

490001367 HARRY	1525685.604	2010 Aerial - cleared with a road
	458424.0581	2010 Aerial - Golf Course park
Total Square Feet	2029470.251	
Total Acres	46.59022614	

PA1 Zoning

1780002296 SLF IV/SBITCYPRESS PLANTATION LLC	1088.7	2010 Aerial
1780002295 Horry County	179101.7276	2010 Aerial
Total Square Feet	1265944.428	
Total Acres	29.06208511	
East of River	29.06208511	

00045

which they shall be located, are set forth in Article X.

712. Amusement Commercial District (AC).

Intent: The intent of the Amusement Commercial District is to allow for the mixing of certain specified land uses in the county where both residential and limited business uses are competing for land and accelerated transition is in evidence.

712.1 Permitted Uses:

- (A) Establishments providing entertainment primarily as a commercial activity, including but not limited to theaters, billiard halls, pool halls, bowling alleys, water slides, skating rinks, dance halls, shooting galleries, gift and novelty shops, taverns, clubs, amusement parks, piers, arcades, miniature and par-three golf, driving ranges, boardwalks, bath houses, and sight-seeing depots.
- (B) Hotels, motels, tourist homes, and eating establishments provided:
 1. Minimum lot area: 25,000 square feet or 1,000 square feet per accommodation for one- or two-story structures and 700 square feet per accommodation for three (3) or more story structures, whichever is greater.
 2. Maximum building height: Unlimited provided that parking standards and other regulatory requirements are met.

- (C) Accessory uses.

712.2 Other Requirements:

- (A) All uses shall conform to the standards for area, yard, and height requirements set forth in Article VIII.
- (B) Signs permitted in this district, including the conditions under which they may be located, are set forth in Article X.

712.3 Requirements regarding certain types of game machines: In those instances where there exist machines of the payout type, or an in-line pin game, or a video game with free-play features operated by a slot wherein is deposited any coin or thing of value (except machines of the non-payout pin table type with levers or "flippers" operated by the player by which the course of the ball can be altered or changed), the following criteria shall additionally apply:

- (A) The said premises shall be limited to five (5) machines per structure enclosed by exterior walls as defined by the Standard Building Code; and
- (B) Anything with more than five (5) machines within a structure enclosed by exterior walls as defined by the Standard Building Code shall be considered a video

arcade establishment and must meet the following spacing requirements:

- (1) One thousand (1,000) feet from a residentially zoned district or residential structure;
 - (2) Five hundred (500) feet from a church, cemetery, place of worship, daycare center, public or private elementary or secondary education school.
 - (3) One thousand (1,000) feet from another video gaming arcade.
 - (4) Measurements of distance separations shall be in a straight line from the closest points of the building(s) [in] which the gaming machines are located.
- (C) The right to maintain a legal nonconforming establishment covered by subsection (B) of this section shall terminate three (3) years after the effective date of this ordinance [section].

(Ord. No. 37-97, § 3, 4-1-97)

712.4 Conditional Uses:

- (A) Publicly owned buildings, facilities, or lands, provided that the location of these uses shall first be reviewed and approved by the Planning Commission.
- (B) Public utility substations or sub-installations, including water towers, provided that:
 1. The requirements of section 516 are met;
 2. There is neither office nor commercial operation nor storage of vehicles or equipment on the premises;
 3. Location of these facilities shall be reviewed and approved by the Planning Commission.

(Ord. No. 137-97, § 9; 12-2-97)

713. Office/Professional/Institutional District (OPI).

Intent. It is the intent of the Office/Professional/Institutional District to provide areas for the development of administrative and professional office space in locations served by primary access, yet inappropriate for commercial development because of close proximity to residential areas.

713.1 Permitted Uses:

- (A) Professional, administrative and general business offices;
- (B) Medical and dental clinics and laboratories, excluding outpatient treatment clinics

ARTICLE IV. DEFINITIONS

400. Interpretation of certain terms or words.

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein are defined as follows: Words used in the present tense include the future tense. Words used in the singular include the plural, and words used [in] the plural include the singular. The word "shall" is mandatory. The word "lot" includes the words plot or parcel. The word "building" includes the word structure. The word "person" includes a firm, association, organization, partnership, trust company, or corporation as well as an individual. The words "used" or "occupied" as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied. The words "map" or "zoning map" shall mean the Official Zoning Map of Horry County, South Carolina.

401. Access.

The right to cross public and private property, for purposes of ingress and egress.

401.5. Accessory use.

A use of land or of a building, or portion thereof, which is customarily incidental and subordinate to the principal use of the land or building. Accessory uses must be located on the same lot with the principal use.

(Ord. No. 67-88, 4-18-89)

Editor's note--Provisions added by Ord. No. 67-88, adopted April 18, 1989, as § 402 hereof have been redesignated by the editor as § 401.5 in order to avoid duplication of section numbers.

402. Administrative officer.

The local official (i.e., zoning administrator) responsible for granting permits as required by this ordinance.

403. Reserved.

Editor's note--Ord. No. 51-99, § 4, adopted Dec. 7, 1999, repealed § 403, which pertained to the definition of advertising, and derived from Ord. No. 23-87, adopted Oct. 20, 1987.

404. Alley.

A minor street, twenty (20) feet or less in width, used for service access to the back or

which they shall be located, are set forth in Article X.

712. Amusement Commercial District (AC).

Intent: The intent of the Amusement Commercial District is to allow for the mixing of certain specified land uses in the county where both residential and limited business uses are competing for land and accelerated transition is in evidence.

712.1 Permitted Uses:

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 - (3) One thousand (1,000) feet from another video gaming arcade.
 - (4) Measurements of distance separations shall be in a straight line from the closest points of the building(s) [in] which the gaming machines are located.
- (C) The right to maintain a legal nonconforming establishment covered by subsection (B) of this section shall terminate three (3) years after the effective date of this ordinance [section].

(Ord. No. 37-97, § 3, 4-1-97)

712.4 Conditional Uses:

- (A) Publicly owned buildings, facilities, or lands, provided that the location of these uses shall first be reviewed and approved by the Planning Commission.
- (B) Public utility substations or sub-installations, including water towers, provided that:
 1. The requirements of section 516 are met;
 2. There is neither office nor commercial operation nor storage of vehicles or equipment on the premises;
 3. Location of these facilities shall be reviewed and approved by the Planning Commission.

(Ord. No. 137-97, § 9, 12-2-97)

713. Office/Professional/Institutional District (OPI).

Intent. It is the intent of the Office/Professional/Institutional District to provide areas for the development of administrative and professional office space in locations served by primary access, yet inappropriate for commercial development because of close proximity to residential areas.

713.1 Permitted Uses:

- (A) Professional, administrative and general business offices;
- (B) Medical and dental clinics and laboratories, excluding outpatient treatment clinics

than 8.5" X 11");

- g. Map of primary sewer distribution lines within the project (no smaller than 8.5" X 11");
- h. A table summarizing the use types and their dimensional requirements and any special provision (i.e. density transfers, parking modifications, alternative roadway designs, etc.) which will occur within the project.

721.7 Land Development within Planned Development Districts. Upon County Council approval to establish the Planned Development District, applications for land development shall be permitted. Land development within the district shall conform with the approved conceptual plan and written narrative and shall be reviewed by the Planning Commission utilizing the procedures established in the Horry County Code of Ordinances, Chapter 18 (Subdivision Development Regulations).

721.8 Recording of the PDD plan and narrative upon County Council approval. Once a PDD is approved by County Council, the two (2) copies of the approved conceptual plan and written narrative shall be presented to the Planning Department, within ten (10) days, for recording in the Office of the Register of Deeds.

(Ord. No. 186-99, § 1, 12-21-99; Ord. No. 28-00, §§ 1-4, 4-18-00)

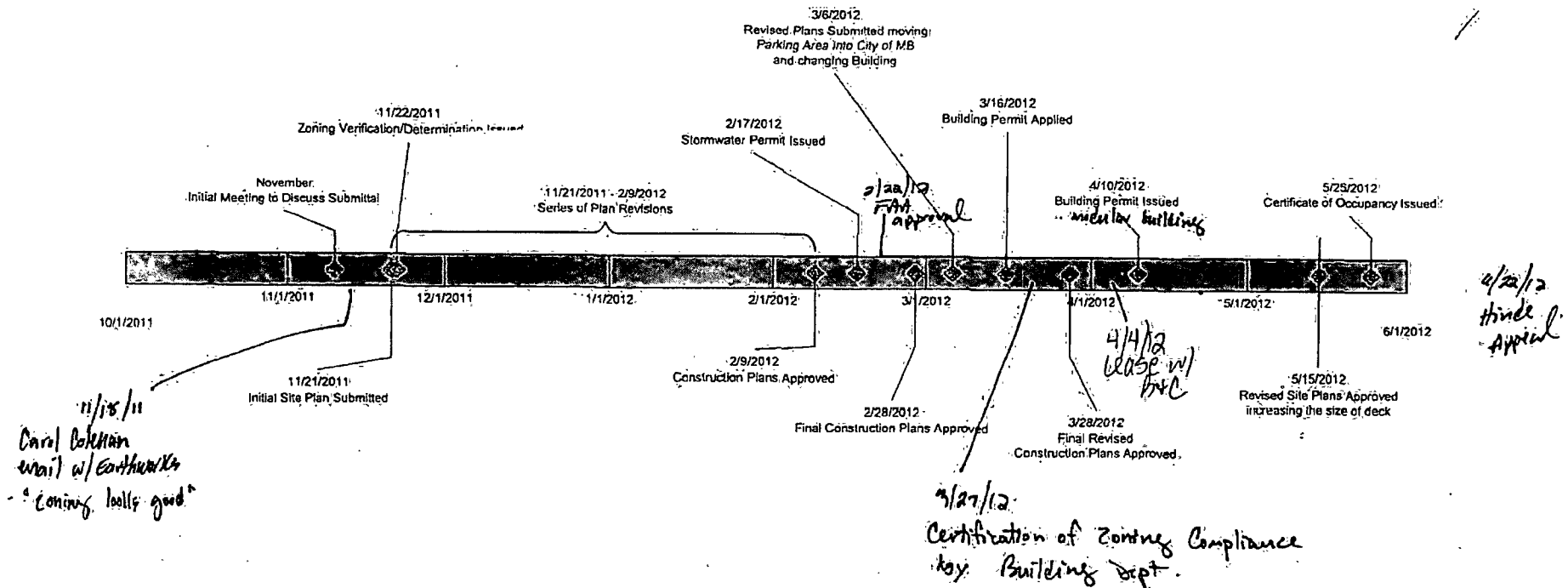
722. Airport Environs District (AE).

Intent. The purpose of the Airport Environs District is to promote and protect the general health and welfare of persons who live, work, or travel in the vicinity of Horry County's major airport installations, in addition to preventing the impairment of the airports and protecting the public investments therein. It is the intent of this district to guide, control, and regulate future growth and development in designated areas around these airports by promoting orderly and appropriate uses of land within these areas.

722.1 Location. Airport Environs Districts shall be established in designated areas around the following airports: Myrtle Beach Air Force Base, Grand Strand Airport, Conway-Horry County Airport, and Loris Twin City Airport. Lands within these Airport Environs Districts are designated by a zone number which corresponds to appropriate restrictions within that particular zone related to height, electrical interference, illumination, or other interferences. Specific restrictions and regulations may be found in the Airport Safety Zoning Ordinances for the individual airports.

722.2 Supplemental Restrictions. Inasmuch as the Airport Environs Districts provide supplemental regulations for those areas within the individual districts, these regulations shall not provide relief from the requirements for the traditional zoning districts over which the AED boundaries are imposed. The regulations related to minimum lot areas, setbacks, use restrictions, etc., shall remain in effect.

Helicopter Solutions Timeline



00238

000315

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)
)
)**AFFIDAVIT OF FREDDIE RICK**
President, Helicopter Solutions, Inc.,
d/b/a Helicopter Adventures

The Affiant, Freddie Rick, being duly sworn, hereby swears to the truth of the foregoing testimony:

1. I am Freddie Rick. My wife, Mitzi Rick, and I are the sole shareholders of Helicopter Solutions, Inc., which does business in Horry County, South Carolina as Helicopter Adventures. I am the President of the corporation. All testimony herein is based upon personal knowledge.
2. I am a citizen and permanent resident of West Virginia. I am a temporary resident of Myrtle Beach, South Carolina. My wife and I have vacationed in Myrtle Beach for nearly twelve years. We have owned residential real property in Myrtle Beach for nearly five years.
3. In 2008, I entered the helicopter business, realizing a boyhood dream of operating a helicopter. I began by owning one helicopter for use by clients in patrolling pipelines, locating sites for cell tower construction, and other related commercial work.
4. I incorporated this business as Helicopter Solutions Inc., which continues in business today in West Virginia for business and commercial. SEE EXHIBIT A.
5. As my family vacationed in Myrtle Beach, I would often take my grandson to Huffman Helicopters to ride inside a helicopter and tour the Myrtle Beach area.
6. In or around the summer of 2009, I began to investigate the possibility of opening a helicopter tour business in Myrtle Beach. This investigation was based upon my personal love of helicopters, the success I saw in the helicopter business in West Virginia and Myrtle Beach, and the apparent demand for helicopter amusement in the Myrtle Beach market, which only maintained one operator.
7. I initially contacted both the Myrtle Beach and North Myrtle Beach airports to determine whether either would allow such a business to be conducted upon those sites. I was informed that neither airport would allow such a business to be located upon their sites.
8. In or around the summer of 2010, I sought to determine whether any private property located in Myrtle Beach was available to serve as a site for a helicopter tour business. I hired Lisa Belcher, a local real estate agent, to assist me in locating such a site.
9. After many months of searching for property, Ms. Belcher ultimately discovered the current site upon which the business operates, which is owned by Burroughs & Chapin. Thereafter, I began meeting with representatives of Burroughs and Chapin to discuss a general business plan.

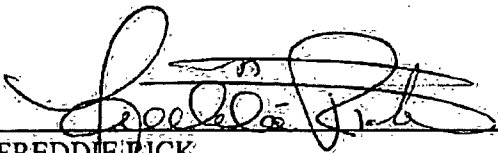
10. By the late summer and early fall of 2011, I had made no financial commitments regarding the business venture as I sought assurance that such a business venture was feasible. First and foremost, I undertook to determine whether the FAA would approve the site for a helicopter sight-seeing tour facility and whether such a facility would comply with applicable zoning requirements.
11. To these ends, I hired AVN Solutions, LLC to assist me in applying for FAA approval of the site and The Earthworks Company to determine, whether the subject site was suitable for a helicopter sight-seeing tour facility.
12. Earthworks thereafter met with members of the Horry County Planning and Zoning Department regarding zoning compliance. At all times, Earthworks and I made clear that I intended to use the property as a helicopter tour business.
13. On November 18, 2011, Carol Coleman notified Earthworks that "zoning looks good" at the site. SEE EXHIBIT B. Based upon this preliminary opinion, I instructed Earthworks to finalize and submit an Initial Site Plan to the County on November 21, 2011.
14. On November 22, 2011, Renee Mincey, the Zoning Administrator, issued her determination that "a helicopter tour facility is a permitted use in the AC zoning district...." SEE EXHIBIT C.
15. In reliance upon this determination, I undertook to obtain approval of a site plan for the business in furtherance of obtaining a building permit and a storm water permit while I awaited approval from the FAA.
16. On February 22, 2012, the FAA approved the site for operation as a Helicopter Tour facility. SEE EXHIBIT D. With approvals from the FAA, the Zoning Administrator and a storm water permit, I had obtained all requisite and necessary approvals in order to proceed forward in implementing my business plan.
17. I soon learned that a portion of the parking lot planned for construction was upon property within the City of Myrtle Beach. In turn, I, through Earthworks, began due diligence efforts with the City of Myrtle Beach, inclusive of submission of plans for the parking lot and application for water and sewer permitting in March.
18. On March 27, 2012, Horry County issued a Certification of Zoning Compliance in connection with my application for a building permit submitted March 16, 2012.
19. In reliance upon the foregoing approvals and authorizations, I proceeded to make various additional financial investments into the business, including, but not limited to:
 - a. Signing a contract with Next Media for billboard advertisement, which advertisements began running April 2, 2012;

- b. Commencing construction of the building pads, parking lot, and modular office building;
 - c. Signing a land lease with Burroughs & Chapin Company;
 - d. Signing a kiosk lease with Burroughs & Chapin Company;
 - e. Signing a marketing agreement with Burroughs & Chapin Company;
 - f. Purchasing four helicopters;
 - g. Leasing a fifth helicopter;
 - h. Hiring and training pilots to operate the helicopters; and
 - i. Signing a marketing and public relations contract with Lesnik Himmelsbach Wilson Earl, an advertising and publication firm.
20. In further reliance upon the foregoing approvals and assurances from the County and City administrations, in April I applied for business licenses with the City of Myrtle Beach and Horry County.
21. At all times during this process, my business plan was open and obvious to the public at large. Billboard signs advertising **"Helicopter Adventures coming this Summer to Broadway at the Beach"** were located across from the site and began running April 2, 2012; My application for a business license with the City of Myrtle Beach dated April 3, 2012 stated the business consisted of **"Local Air Transportation,"** helicopter activity was present at the site beginning in August of 2011, becoming more active the closer the time came to the business opening; and I was training helicopter pilots at the site, inclusive of departing from and landing upon the site, on May 12, 2012.
22. In addition, the City of Myrtle Beach required me to submit my construction plans for a paved parking lot and fence to the City's Architectural Review Board. I submitted my application to the Board on April 18, 2012. The City scheduled a hearing on my application for May 3, 2012 and provided public notice of the hearing via internet posting, email, and Friday FAX/Media Advisory on April 27, 2012. Minutes of the CAB meeting were posted on the internet on May 3, 2012.
23. On May 21, 2012, I received an email from Ricky Washington, the air flight controller of the Myrtle Beach Airport, notifying me that he had received noise complaints regarding the helicopters operating upon the site, including one from Mr. Richard Hinde. SEE EXHIBIT E.
24. On May 24, 2012, I held a press conference at Broadway at the Beach to notify all media and the public that Helicopter Adventures would be opening for business that weekend.
25. On May 25, 2012, Horry County issued a Business License and Certificate of Occupancy, allowing me to open for business in spite of the noise complaints it had received from various citizens. The City of Myrtle Beach subsequently approved each of my applications for business licenses.

26. Since opening for business, no helicopter tour flight route flies over the Plantation Pointe subdivision, and all decibel readings of the helicopters have met or exceeded the standards set forth in the Horry County Noise Ordinance.
27. Since receiving complaints from residents of the Plantation Pointe subdivision, representatives of Horry County have requested my participation in various meetings to take steps to reduce the effect of noise upon residents of the subdivision. I have attended and participated in every meeting. I also attended and participated in the meeting of the Horry County Council Public Safety Committee.
28. At each meeting, I have offered to discuss any suggested solutions of the residents of the subdivision and others. However, I have been told on more than one occasion that no solution short of closing my business was an acceptable resolution. Such a statement was made by Mr. Hinde and Ms. Anderson directly to me.
29. In spite of the lack of willingness to discuss solutions, I requested my FAA consultant to take steps to recommend noise abatement procedures and to evaluate the safety of Helicopter Adventures. I implemented all of his suggested noise abatement and safety procedures, which are set forth in detail in his report of June 19, 2012.
30. In reliance upon the zoning determination made by the Horry County Zoning Administrator, I estimate I made investments in excess of \$3,000,000.00, which includes, but is not limited to, closing the lease agreement, engineering and construction costs, marketing, and equipment costs.
31. In the event the Board of Zoning Appeals determines that Ms. Mincey's determination of nine (9) months ago was in error, my wife and I will be severely damaged and suffer irreparable harm, and the jobs of my twenty-four (24) employees will be lost if prohibited from operating.

FURTHER AFFIANT SAYETH NAUGHT.

DATE: 8/1/2012


FREDDIE WICK

The foregoing instrument was verified,
sworn to and acknowledged before me

this 1st day of August, 2012.


NOTARY PUBLIC
FOR STATE OF SOUTH CAROLINA

My Commission Expires: 12-28-14

SECRETARY OF STATE

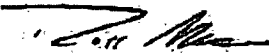


CORPORATE CHARTER

I, ROSS MILLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that HELICOPTER SOLUTIONS, INC., did on March 17, 2011, file in this office the original Articles of Incorporation; that said Articles of Incorporation are now on file and of record in the office of the Secretary of State of the State of Nevada, and further, that said Articles contain all the provisions required by the law of said State of Nevada.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on March 17, 2011.


ROSS MILLER
Secretary of State

Certified By: Electronic Filing
Certificate Number: C20110317-0733
You may verify this certificate
online at <http://www.nvsos.gov/>

Re: Sketch Plan

Page 1 of 3

Coleman, Carol

From: Steve Strickland [sstrickland@earthworksgroup.com]
Sent: Friday, November 18, 2011 11:27 AM
To: Coleman, Carol; Schwerd, David; Freddie@HelicopterSolutions.com
Cc: Alan Wood
Subject: Re: Sketch Plan

Can we meet monday or tuesday with David and also someone with Business licensing to fill out any applications necessary. Based on your review, what else is required to obtain the Zoning Compliance Certificate. We would like to have all entitlements in our hand asap

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

From: Coleman, Carol <ColemanC@HorryCounty.org>
To: Steve Strickland
Sent: Fri Nov 18 11:18:44 2011
Subject: RE: Sketch Plan

Steve,

The zoning looks good, and the airport issues will be taken care of with the FAA applications. I would suggest submitting a commercial sketch plan so that any access (required improvements) issues may be addressed prior to submittal.

I will be away next week for the holiday, but feel free to call David Schwerd at 915.7896 in my absence.

Thank you,

Carol

From: Steve Strickland [mailto:sstrickland@earthworksgroup.com]
Sent: Friday, November 18, 2011 10:33 AM
To: Coleman, Carol
Subject: FW: Sketch Plan

Steven G. Strickland, PE, LFED AP
 The EARTHWORKS Group, Inc.
 11655 Highway 707, PO Box 201
 Murrells Inlet, SC 29576
 843-651-7900 Fax 843-651-7903

00245

5/31/2012

EXHIBIT B

PLANNING & ZONING DEPT
1381 1st Avenue Room 1 D 09
Cedarway, SC 29526



Phone: (843) 915-6340
Fax: (843) 915-6340

November 22, 2011

Steven G. Strickland, PE, LEED AP
The Earthworks Group
11655 Highway 707
P. O. Box 201
Murrells Inlet, SC 29576

Re: Zoning Confirmation
TMS# 173-00-01-058

Dear Mr. Strickland:

This is to confirm that the property identified by tax map number 173-00-01-058 is currently zoned Amusement Commercial (AC) on the Horry County Zoning Maps. As per Article VII, Section 712.1, a helicopter tour facility is a permitted use in the AC zoning district provided all applicable county requirements are met and the required permits are obtained.

Please be aware that a Certificate of Zoning Compliance is issued in conjunction with a building permit and compliance is determined in accordance with the zoning regulations in effect at that time.

If I may be of further assistance, please advise.

Sincerely,

Rennie Mincey
Rennie Mincey
Zoning Administrator

00246



U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
Atlanta Airports District Office

1701 Columbia Avenue
Campus Building, Suite 2-260
College Park, Georgia 30337

February 22, 2012

Mr. Freddie Rick, CEO
Helicopter Solutions, Inc.
51 Barkwood Avenue
Davin, WV 26617

Dear Mr. Rick:

RE: Aeronautical Study 2011-ASO-2070-NRA
Helicopter Adventures, Myrtle Beach, South Carolina

We reviewed the Federal Aviation Administration (FAA) Form 7480-1, Notice of Landing Area Proposal, dated December 14, 2011.

We have determined that the proposed private use landing area, to be located at latitude 33°43'12"N., longitude 78°53'41"W., (NAD 83) at Myrtle Beach, South Carolina, will not adversely affect the safe and efficient use of the navigable airspace by aircraft, provided the following conditions are met during construction and a final inspection is completed by the FAA:

- a. All operations are conducted in VFR weather conditions, and
- b. The landing area is limited to private use.
- c. The takeoff/landing area is appropriately marked, including a wind indicator.
- d. No night helicopter operations are conducted unless the takeoff/landing area and wind indicator remain lighted and we recommend a heliport identification beacon is installed.
- e. Unauthorized persons are restrained from access to the takeoff/landing area during helicopter flight operations by use of a non-obstructing safety barrier.
- f. Fire protection is provided in accordance with the National Fire Protection Association 418, local fire code and Advisory Circular (AC) 150/5390-2B, Heliport Design Guide.
- g. The proponent refers to AC 150/5390-2B, in establishing an acceptable level of safety for helicopter operations at this heliport.
- h. The helicopter operational procedures are distributed to heliport users.

We recommend that:

- a. After completion of construction of the heliport, the FAA, Flight Standards is notified within 15 days to complete a final inspection prior to operations/use.
- b. The proponent will re-examine obstacles in the vicinity of the approach/departure paths on an annual basis in accordance with AC 150/5390-2B, paragraph 404.d. Any new obstacles noted will be forwarded to the Airports District Office, Flight Standards District Office or Regional Flight Standards Division.
- c. A Letter of Agreement between Myrtle Beach International Airport and the heliport proponent is completed and all operators of the heliport are informed and operate in accordance with the requirements for communication while operating within the Myrtle Beach Class D airspace.

We understand this heliport will remain private use only and that no Instrument Flight Rule (IFR) procedures are anticipated. Should you ever desire instrument flight procedures, the landing area must meet heliport design criteria and once met, you should request IFR procedures 24-36 months before requested charting date(s). We strongly recommend you contact Myrtle Beach International Airport approach control to become familiar with their operations and to ensure that air traffic control (ATC) has a thorough briefing on requested.

Operations. The proposed location is within 12 nautical miles of three public use airports, all airports flying daily IFR operations. Also, the proposed location underlies the Myrtle Beach Class C airspace.

The void date of this determination is February 22, 2014. If the landing area is not completed by the void date, this determination will expire unless you have requested an extension, revision, or earlier termination. Please return the enclosed FAA Form 5010-5 (Airport Master Record) to this office. Guidelines for completing form 5010-5 can be found in the enclosed Advisory Circular 150/5200-35, "Submitting The Airport Master Record In Order To Activate A New Airport".

When the processing of the FAA Form 5010-5 is completed, your landing area will have a site number and a permanent location identifier. You may indicate in the remarks section on the enclosed 5010-5 as to whether or not you would like to have your landing area shown on aeronautical charts. Charting also depends on the amount of "clutter" already on the charts near your site.

You may contact the Atlanta Flight Standards Division Office (404) 305-6108, for further site review upon completion of all construction. Please refer to study number 2011-ASO-2070-NRA when contacting the Flight Standards Division.

This determination does not mean that the FAA approves the physical development involved with your proposed landing area. Our determination is limited to the safe and efficient use of airspace by aircraft. Our review considered the effect the proposal would have on the following:

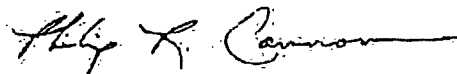
- Existing or contemplated traffic patterns of neighboring airports,
- Existing, navigable airspace and projected programs of the FAA, and
- Existing or proposed manmade objects on file with the FAA and natural objects.

This determination does not preempt or waive any ordinance, law, or regulation of any other governmental body or agency.

The FAA cannot prevent the construction of any object. Therefore, it is conceivable that your facility could be adversely affected by an object being constructed nearby unless you are protected through such means as local ordinances and/or acquisition of property rights.

Please let us know if you have any questions concerning this determination or if you need technical assistance in airport matters.

Sincerely,



Phillip R. Cannon
Manager, Airport Programs

Enclosures

cc: _____
Myrtle Beach ATCT- Manager, Ricky Washington
SC Department of Commerce- Division of Aeronautics

00248

Freddie Rick (Bettertrades)

From: Rickey.Washington@faa.gov
 Sent: Thursday, May 24, 2012 3:11 PM
 To: Freddie Rick (Helicopter Solutions)
 Subject: Fw: noise complaints on Helicopters Solution

FYI

Ricardo "Ricky" Washington
 Myrtle Beach ATCT, ATM
 office: 843-238-3008
 fax: 843-238-3026

--- Forwarded by Rickey Washington/ASO/FAA on 05/24/2012 03:09 PM ---
 From: "Marlowe, Mike" <MarloweM@HenryCounty.org>
 To: Rickey.Washington/ASO/FAA@FAA
 Date: 05/24/2012 02:33 PM
 Subject: noise complaints on Helicopters Solution

Hey Ricky, here's some more:

Leslie Anderson
 1527 Brookgreen Dr.
 MBSC 29577
 843-445-7654

> Spoke with AT 10:50 Am. 6/5/12

James Brophy
 843-448-0353

NO ANSWER 6/5/12 11:15 AM

Karen Repasky
 Brookgreen Drive
 MBSC 29577
 843-213-1544

NO ANSWER 6/5/12 11:15 AM

Steve Starnes
 1569 Brookgreen Dr.
 MBSC 29577
 843-267-2695

NO ANSWER 6/5/12 11:20 AM

Ginger Allen
 3894 Waterford Drive
 MBSC 29577
 843-448-3636

NO ANSWER 6/5/12 11:21 AM

B. Michael Marlowe
 General Aviation Manager

00249

5/21/12

Ricky,

I have received two noise complaints today on the new helicopter operation near Broadway at the Beach. Mike La Pier asked me to forward them to you. The information on the first complaint is at the bottom of this email. The second complaint I just received is from Mr. Jonathan Messimer of 1549 Brookgreen Drive, Myrtle Beach, SC 29577 phone: 843-213-3585. Both Mr. Messimer and Hinde live in the Plantation Point residential area.

Mr. Richard Hinde
1541 Brookgreen Drive (Plantation Point)
Myrtle Beach, SC 29577
843-448-4874 home
843-421-5554 cell

Spoke with Hinde
6/5/2012

AT 1030 AM

5/22/12

Ricky,

I am passing along another noise complaint on the new helicopter operator near 21st avenue north, Myrtle Beach. Here is information:

Ms. Lisa Fanning
1580 Brookgreen Drive
Myrtle Beach, SC 29577
843-448-3277

Spoke
with Hinde
on 6/5/2012
10:40am

843-238-2994 - (TRACON/RADAR ROOM)

Spoke with me Dumont as well on
6/5/2012 at 10am

#15

00250

AFFIDAVIT OF DAVID ANDERSON

STATE OF SOUTH CAROLINA)
)
)
)
)
)
 COUNTY OF HORRY)

AFFIDAVIT OF DAVID ANDERSON
FAA Supervising Inspector, Flight Operations (Ret.)
Colonel, USA (Ret.)
Owner/Sole Member, Aviation Solutions, LLC

The Affiant, David Anderson, being duly sworn, hereby swears to the truth of the foregoing testimony:

1. I am David Anderson. I am an aviation consultant and the sole member of Aviation Solutions, LLC. I am a citizen and resident of Columbia, South Carolina. I have personal knowledge of the general aviation of the Myrtle Beach area and of the operations of Helicopter Adventures. All testimony herein is based upon personal knowledge.
2. I served in the United States Army from 1964 until my retirement in November of 2004. During my career, I accrued substantial experience and qualifications in the operation of both airplanes and helicopters, serving as a Pilot, Flight Instructor, and Flight Examiner.
3. I was employed by the Federal Aviation Administration ("FAA") from April of 1984 until my retirement on December 31, 2004. During this career, I accrued substantial experience and qualifications in FAA standards and compliance, including those pertaining to general flight operations, flight safety, pilot training and qualification, and airworthiness of aircraft, including helicopters. By the time of my retirement, I was the Supervising Inspector of the FAA's South Carolina Flight Standards District Office.
4. In January of 2005, I incorporated AVN Solutions, LLC, as an aviation consulting business. The consulting services I provide through this business includes general aviation consultation, accident investigation, pilot and company operating certificates, and the processing of various FAA applications necessary to operate aircraft, including helicopters. I remain in business today, and my clients include both Helicopter Solutions, Inc. d/b/a Helicopter Adventures and Huffman Helicopters.
5. All of my aviation credentials which qualify me to render opinions regarding the operations of Helicopter Adventures are set forth in the following attachments to this Affidavit, which are complete, true, and accurate, and incorporated herein by reference:
 - A. David Anderson Biographical Summary and Technical Qualifications
 - B. Personal History
 - C. Training/ Skills and Knowledge/ Qualifications
 - D. David Anderson- Awards
6. I have been qualified as an expert in the fields of aviation safety, flight operations, and Federal Aviation Regulation ("FAR") compliance in the Courts of South Carolina, New

Jersey, Kentucky, and Texas. A complete list of all case participation and publications is attached hereto as EXHIBIT E, which is incorporated herein by reference.

On September 16, 2011, I, on behalf of AVN Solutions, LLC, was retained by Helicopter Solutions, Inc. d/b/a Helicopter Adventures to help ensure FAA approval of its current site for a helicopter sight-seeing tour facility.

8. Helicopter Adventures has always been and continues to be authorized to operate a helicopter sight-seeing tour facility by the FAA pursuant to FAR Part 91. This authorization allows an operator to depart from and land a helicopter upon the current site, and to operate sight-seeing tours within a twenty-five (25) mile radius from the original point of departure.

Helicopter Adventures obtained FAA approval to operate a helicopter sight-seeing tour facility at its current site on February 22, 2012. A complete, true, and accurate copy of the FAA approval letter is attached hereto as EXHIBIT F.

10. I am familiar with and have personal knowledge of the noise complaints voiced by residents of the Plantation Point subdivision. In response to these complaints, I worked with Helicopter Adventures to implement available procedures to abate noise, including the changing of the helicopter tour flight paths and landing/take-off procedures.
11. I thereafter conducted noise decibel reading tests at various sites inside and nearby the subdivision, the latest of which was conducted June 14, 2012. A true, accurate, and complete copy of my findings from the June 14, 2012 test, dated June 19, 2012, is attached hereto as EXHIBIT G and incorporated herein by reference.
12. I am also very familiar with some of the safety concerns raised by members of the public and members of the Horry County Council's Public Safety Committee concerning Helicopter Adventures. I attended the meeting of this subcommittee. In response to these concerns, I evaluated the safety of the operations of Helicopter Adventures during the period of June 11, 2012 and June 19, 2012.
13. Following my evaluation, I determined that the flight operations and pilot qualifications were in compliance with the FAR and met or exceeded standard industry practices for the conduct of helicopter operations.
14. In an effort to further exceed both FAR and standard industry practices, I worked with Helicopter Adventures to implement additional procedures to maximize the safety of the operations of Helicopter Adventures. A true, accurate, and complete copy of my report regarding the safety of Helicopter Adventures is attached hereto as EXHIBIT H and incorporated herein by reference.
15. Based upon my knowledge and experience in aviation-related activities, my familiarity with the Myrtle Beach area, and my knowledge of the operations of Helicopter Adventures, it is my opinion that Helicopter Adventures is a safe and efficient operation.

FURTHER AFFIANT SAYETH NAUGHT.

DATE: July 27, 2012 David Anderson
DAVID ANDERSON

The foregoing instrument was verified;
sworn to and acknowledged before me.

this 27th day of July, 2012.

Tasha M. Givens
NOTARY PUBLIC
FOR STATE OF SOUTH CAROLINA

My Commission Expires: 3-16-2017

000331

Exhibit A

00255

DAVID ANDERSON: BIOGRAPHICAL SUMMARY and TECHNICAL QUALIFICATIONS

Airline Transport Pilot, Airplane Single and Multiengine Land, Airplane Single Engine Sea, Rotorcraft-Helicopter, Instrument Airplane and Helicopter, Certified Flight Instructor – Airplane Single and Multiengine/Rotorcraft-Helicopter/ Instruments Airplane and Helicopter.

Current:

AVNSolutions, LLC – Aviation Services: Aviation Consultant regarding matters pertaining to the original certification and maintaining of FAR Part 133, 121, 135, 137 Operating Certificates, Accident Investigations, and FAA Enforcement Actions.

FAA Designated Pilot Examiner (DPE) for South Carolina conducting flight evaluations in Airplanes – Single and Multiengine Land, Rotorcraft-Helicopter, Instrument Airplane and Helicopter and Certified Flight Instructors for the purpose of issuing Federal Aviation Administration (FAA) pilot certificates.

Previous Employment:

Employed by the FAA Flight Standards Division in April 1984. Retired December 31, 2004. Final assignment was as the Supervising Inspector, South Carolina Flight Standards District Office. This assignment included the supervision of 17 employees including administrative personnel, FAA Airworthiness, Operations and Avionics Safety Inspectors. Training and qualifications include qualification in both Flight Operations and Airworthiness disciplines.

FAA Assignments Included:

Executive assignment as the Manager of the San Juan, Puerto Rico Flight Standards District Office
 Executive assignment as the Certification Project Manager Georgia Flight Standards District Office
 Executive assignment as the Manager of the Nashville Flight Standards District Office
 Supervisor, S.C. Flight Standards District Office
 Certification Project Manager Initial start-up for FAR Part 121 Air Carrier – Air South Airlines
 FAA Principal Operations Safety Inspector
 National Aviation Safety Inspection Program Team Leader
 FAA Accident Prevention Program Manager
 Aviation Operations Safety Inspector and Accident Investigator
 FAA National Resource Evaluation Pilot in the SA-227 and IA-Jet

Additional History of Employment and Achievements:

Federal Employment as Standardization Instructor Pilot, U. S. Army
 U.S. Army Pilot, Fixed and Rotary Wing/Flight Instructor/US. Army Instrument Flight Examiner
 Aviation Safety Officer
 Designated FAA Pilot Examiner
 Two combat tours in Vietnam as a Helicopter Pilot.
 Corporate Pilot – Airplanes and Helicopters
 FAR Part 141 Assistant Chief Pilot
 International and Domestic Flight Experience as a Pilot in Command
 Thirty-nine (39) years of government service
 46 years as a qualified pilot with in excess of 16,000 flight hours
 Secret Security Clearance validated 2002
 Current U.S. Passport

U.S. Military Decorations/Badges: If Requested**Education:**

Georgia State University, Masters Program
 University of Tampa, Tampa, Florida, Bachelor of Science Business Management
 Dentsville High School, Columbia, South Carolina

Awards: If Requested

Schools and Training: See Attached Training History

000333

Exhibit B

00257

Personal History:

Date of Birth: 10 November 1944

Home Address: 331. Ballentine Estates Road, Irmo, South Carolina 29063

Home Phone: (803) 781-6082 Office Phone: (803) 233-4075, Mobile Phone: (803) 622-8408.

- 1964 Entered U. S. Army flight-training program.
- 1965 Departed for one-year combat tour in Vietnam as a US Army helicopter pilot.
- 1966 15-month stateside tour of duty was followed by another one year Vietnam assignment.
- 1975 Completed over ten years of active military duty as a commissioned officer. Returned to South Carolina to pursue a civilian career in aviation. Experience as flight Operations Officer in a combat Aviation Battalion, Personnel Officer, and Logistician. Command assignments included a Headquarters Company, Fort Rucker, AL, and Infantry Rifle Company in the 82d Airborne Division, Fort Bragg, NC. Staff assignments include Deputy Chief of Staff for Operations and Intelligence. Assignments included logistician, personnel officer and flight operations officer, army flight instructor, standardization flight instructor and instrument flight examiner. Extensive domestic and international flight experience to Central and South America, Mexico and the Caribbean. Retired as a Colonel from the South Carolina National Guard and U.S. Army on November 10, 2004 after 40 years of military service.
- 1884 Joined the Federal Aviation Administration Flight Standards Division.
- 2004 Retired from the Federal Aviation Administration.

Professional Memberships:

South Carolina American Legion
 South Carolina National Guard Association
 South Carolina Airports Association
 National Association of the National Guard
 Celebrate Freedom Foundation.

000335

Exhibit C

00259

TRAINING/SKILLS AND KNOWLEDGE/QUALIFICATIONS

DAVID ANDERSON

as of December 2011

03/11 FAA Designated Pilot Examiner Standardization Recurrent
03/09 FAA Designated Pilot Examiner Standardization Recurrent
03/08 FAA Designated Pilot Examiner Standardization Recurrent
03/07 FAA Designated Pilot Examiner Standardization Recurrent
03/06 FAA Designated Pilot Examiner Standardization Recurrent
03/05 FAA Designated Pilot Examiner Standardization Recurrent
03/03 #12063-Crew Resource Management Recurrent
03/03 FAA Designated Pilot Examiner Standardization Recurrent
12/02 #27017-(CBI/WEB) Labor Distribution Reporting (LDR) FAA
11/02 #97342-Annual Training on "Standards of Ethical Conduct" FAA
12/01 Annual FAA Recurrent Aircraft Qualification BE-90
12/01 #97342-Annual Training on "Standards of Ethical Conduct" FAA
07/01 #12062-Crew Resource Management (Initial) FAA
06/01 #01262-Set Goals, Manage Performance and Reward Contribution in AVR
05/01 #12028-Automated Airman Certification and Rating Application FAA
03/01 FAA Designated Pilot Examiner Standardization Recurrent
09/00 U.S. Army Instrument Examiner Recurrent
08/00 #28562-SPAS Enhancement Training FAA
03/00 #97499-PFS Overview for Partnerships FAA
03/99 FAA Designated Pilot Examiner Standardization Recurrent
11/99 SA-227 Recurrent-Flight Safety
12/98 #97342-Annual Training on "Standards of Ethical Conduct" FAA
11/98 #28555-Safety Performance Analysis System (SPAS) FAA
10/98 #01205-Labor Management Relations (LMR) FAA
07/98 #97429-Management of the Potential for Violence in Workplace FAA

00260

05/98 #22601-Inspection/Surveillance of Foreign/Domestic Repair Stations FAA
 11/98 Annual FAA Recurrent Aircraft Qualification BE-90
 12/97 #97342-Annual Training "Standards of Ethical Conduct" FAA
 11/97 #28135-Swearingen SA-226/227 Recurrent FAA - Flight Safety
 11/97 #01211-Leadership Development Program, Phase II FAA
 09/97 SA-227 Recurrent Training - Flight Safety
 03/97 FAA Designated Pilot Examiner Standardization Recurrent
 03/96 BE-200 Flight Safety Aircrew Qualification Course - U. S. Army
 05/96 #96013-Leadership Development Program, Phase II FAA
 11/96 SA-227 Instructor Pilot Qualification Course
 12/96 #97342-Annual Training "Standards of Ethical Conduct" FAA
 12/96 #0000-Handling Employee Discipline & Performance Mistakes FAA
 11/96 #28135-Swearingen SA-226/227 Recurrent FAA
 05/96 #01210-Leadership Development Program, Phase I FAA
 02/96 #97342-Annual Training "Standards of Ethical Conduct" FAA
 10/95 #28135-Swearingen SA-226/227 Recurrent FAA - Flight Safety
 09/95 U. S. Army Aviation Safety Officer Course
 08/95 FAA Annual Aircraft Recurrent Qualification BE-90
 07/95 #0000-How to Handle People with Tact & Skill FAA
 06/95 #97342-Annual Training "Standards of Ethical Conduct" FAA
 04/95 #28135-Swearingen SA-226/227 Recurrent FAA - Flight Safety
 03/95 AJT, Inc. Airborne Weather Radar - Archie Trammell
 03/95 FAA Designated Pilot Examiner Standardization Recurrent
 11/94 Beginning Word for Windows - ExecuTrain
 10/94 #00541-Bloodborne Pathogens Awareness Training FAA
 09/94 Annual FAA Qualification BE-90
 07/94 #28165-Helicopter Recurrent FAA
 04/94 #05595-(CBI) Student Orientation FAA

00261

03/94 #97243-Understanding and Valuing Diversity FAA

02/94 #21418-FSAS for Managers, Supervisors and Staff Analysts FAA

02/94 #24026-(CBI) Operations Specifications FAA

02/94 #21406-Inspector Cockpit En Route Inspection FAA

12/93 FAA Annual Aircraft Recurrent Qualification BE-90

09/93 #28056-Initial Seaplane Rating FAA

08/93 #01308-(CBI) Occupational Safety for Management Inspectors FAA

08/93 #97250-Workforce Development FAA

05/93 Annual FAA Qualification BE-90

05/93 Managing Multiple Projects, Objectives and Deadlines

04/93 #24025-(CBI) PTRS and VIS Recurrent FAA

04/93 FAA Operations Specifications Subsystem

03/93 #0000-Voluntary Disclosure Computer Based Instruction FAA

03/93 #28114-Jet Commander 1124 Recurrent Qualification – SimuFlite

03/93 FAA Designated Pilot Examiner Standardization Recurrent

12/92 #24025-(CBI) PTRS and VIS FAA

12/92 Annual FAA Qualification BE-90

12/92 #24026-(CBI) Operations Specifications FAA

12/92 Office of Personnel Management Strategic Planning: Mentoring/Goal Setting

04/92 #28175-Cessna 650, Citation III Pilot Recurrent Qualification FAA

03/92 FAA Designated Pilot Examiner Standardization Recurrent

02/92 #00007-Rotorcraft Safety and Accident Investigation Part 3: FAA

12/91 Annual FAA Qualification BE-90

08/91 #22600-Evaluation of Aviation Management Systems FAA

04/91 #28151-Jet Commander 1124 Initial Qualification FAA – SimuFlite

03/91 FAA Designated Pilot Examiner Standardization Recurrent

02/91 Annual FAA Qualification as an FAA Flight Standards Check Pilot – BE-90

10/90 #00002-Aircraft Accident Investigation Part 2: Techniques & Procedures FAA

08/90 Compliance for the 90's FAA
 07/90 Department of Defense National Security Course Washington, DC
 04/90 Annual FAA Qualification BE-90
 03/90 Situational Leadership Management Refresher/Update FAA
 11/89 #28135-Swearingen SA226/227 Recurrent FAA - Flight Safety
 09/89 #28174-Cessna 650 Citation III Pilot Initial Qualification FAA - Flight Safety/Comair
 03/89 FAA Designated Pilot Examiner Standardization Recurrent
 02/89 # 28165-Helicopter Recurrent Qualification FAA
 04/88 #21202-Inspector Pilot Turbojet Evaluation FAA - NA-265
 11/87 FAA Designated Pilot Examiner Standardization Recurrent
 10/87 #97153-Situational Leadership Management Seminar FAA
 10/87 #28055-Swearingen-Metroliner SA226/227 Initial Qualification FAA - Flight Safety
 06/87 Inspector Qualification-Initial Issue Flight Instructor Course FAA
 04/87 #00001-Aircraft Accident Investigation Part 1: FAA
 04/87 FAA Flight Instructor Refresher Certification Course FAA
 03/87 FAA Designated Pilot Examiner Standardization Course Recurrent
 02/87 Night Vision Device-Helicopter Qualification Course U.S. Army
 08/86 Initial FAA Qualification BE-90
 02/86 #22100-Air Taxi Operations Certification and Inspection FAA
 12/85 #12020-Compliance and Enforcement FAA
 11/85 #05571-Enforcement Information System FAA
 09/85 FAA Currency/Qualification PA-31
 06/85 Command General Staff College U.S. Army
 06/85 FAA Qualification BE-65
 05/85 FAA Designated Pilot Examiner Standardization Course Recurrent
 02/85 #20700-General Aviation Operations Indoctrination FAA - PA 31 Qualifications-
 06/84 FAA Qualification CE-414/BE-200

05/84 Beech Aircraft Corporation King Air 200 Pilot Ground School
11/83 FAA Designated Pilot Examiner Standardization Course Recurrent
05/83 U. S. Air Force Physiological Training Course U.S. Air Force
01/82 U. S. Army Aviation Safety Officers Course U. S. Army Aviation School
04/81 Initial FAA Designated Pilot Examiner Course
10/78 U. S. Army Instrument Examiners Course U. S. Army Aviation School
05/77 U. S. Army Flight Instructor Training U. S. Army Aviation School
11/71 U. S. Army Airborne Qualification U. S. Army Infantry School
03/71 U. S. Army Advanced Infantry Officers Course U. S. Army Infantry School
01/71 U. S. Army Ranger Qualification U. S. Army Infantry School
05/69 Method of Instruction U. S. Army Aviation School
10/67 Officers Basic Course U. S. Army Infantry School
09/65 Initial Aviation/Pilot Qualification U. S. Army Aviation School

000341

Exhibit D

00265

DAVID ANDERSON - AWARDS**U.S. Military Decorations/Badges:**

Bronze Star Medal with One Oak Leaf Cluster
 Meritorious Service Medal with Two Oak Leaf Clusters
 Air Medal with Twenty-Four Oak Leaf Clusters
 Army Commendation Medal with Five Oak Leaf Clusters
 Army Achievement Medal
 Good Conduct Medal (Army)
 Army Reserve Components Achievement Medal with One Silver Oak Leaf Cluster and
 Two Bronze Oak Leaf Clusters
 National Defense Service Medal
 Vietnam Service Medal
 Humanitarian Service Medal
 Armed Forces Service Medal with Silver Hourglass and M Device
 Army Service Ribbon
 Army Reserve Components Overseas Training Ribbon
 Combat Infantryman Badge
 Expert Infantryman Badge
 Parachutist Badge
 Ranger Tab
 Master Army Aviator Badge
 Republic of Vietnam Gallantry Cross Unit Citation with Palm
 Republic of Vietnam Campaign Medal
 South Carolina Active State Service Medal (10 years)
 South Carolina Guardsman Retirement Medal

U. S. Government Service Awards and Recognition:

Superior Accomplishment Award	August 18, 2004
Superior Accomplishment Award	August 17, 2004
Star Quality Award	January 24, 2003
Superior Accomplishment Award	August 1, 2002
Employee Recognition Award	September 28, 2001
Letter of Appreciation	August 10, 2000
Certificate of Achievement	August 30, 1999
On-The-Spot-Award	March 26, 1998
Special Achievement Award	July 28, 1991
Superior Accomplishment Award	March 11, 1991
Exceptional Performance Rating	October 26, 1982
Outstanding Performance Rating	July 22, 1981
Outstanding Performance Rating	April 30, 1979

000343

Exhibit E

00267

David Anderson, Aviation Consultant, AVNSolutions, LLC

Case Participation/Publications and Testimony Chronology as of November 2012

2012	Deposition for Plaintiff	Kershaw County Court of Common Pleas. Case No. 2012-CP-28-063. Camden Jet Center, Inc., Plaintiff v. Kershaw County and Ronald W. Prestage, defendants.
2009	Deposition for Defendant	General Court of Justice Civil Superior Court Division File No. 08 CVS 005423; State of North Carolina, County of Durham; Eric Dallin-Plaintiff vs. North State Aviation, LLC, Darrell Westmoreland, Stephanie Westmoreland, and Roger D. Eckenrodt-Defendants.
2008	Court Testimony for Defendant	Court of Common Pleas, State of South Carolina, County of Spartanburg, CA: No. 2006-CP-42-3337. Greenville Airport Commission, Plaintiff vs. Gregory Bruns, Defendant. Haynsworth, Sinkler, Boyd, PA., Columbia, South Carolina.
2008	Deposition for Defendant	Superior Court of New Jersey Law Division - Essex County. Docket No. L-7390-00 and L-8568-03. James T. Kelly, Jr. and Roseanne Kelly, Plaintiffs vs. Helicopter Services & Instructions, Defendant. Stevens & Lee, ESQS. Princeton, New Jersey.
2007	Expert Opinion and Deposition for Defendants	State of South Carolina, County of Dorchester, Court of Common Pleas, Case No. 2004-CP-18-555. Jedburg Airport Group, LLC, Plaintiffs vs. Ken and Gail Litchfield, Defendants. Nexsen & Pruet, Charleston, South Carolina
2007	Expert Opinion and Deposition for Defendant	State of South Carolina, County of Greenville Court of Common Pleas, C.A. NO: 2006-CP-23-4300. Greenville County Airport Commission, Plaintiff vs. Gregory Bruns, Defendant. Haynsworth, Sinkler, Boyd, PA., Columbia, South Carolina.
2006	Expert Opinion for Plaintiffs	District Court, City and County of Denver, Colorado Civil Aviation Training Solutions, Inc. a Florida Corporation, Plaintiffs vs. City and County of Denver, Colorado, Defendants Holland & Hart, LLP-Denver, Colorado
2006	Expert Opinion Defendant	Superior Court of New Jersey Law Division -

Essex County. Docket No. L-7390-00 and L-8568-03. James T. Kelly, Jr. and Roseanne Kelly, Plaintiffs vs. Helicopter Services & Instructions, Defendant. Stevens & Lee, ESQS. Princeton, New Jersey.

2006	Expert Opinion and Deposition for Defendants	U.S. District Court, Eastern District of Kentucky, London Division. Todd Zetter, et al., Plaintiffs vs. Griffith Aviation, Inc., et al., Defendants. Civil Action No. 6:03-218-DCR. Kern & Wooley, LLP- Hartford, Connecticut
2006	Expert Opinion for Defendants	U.S. District Court, Northern District of Texas, Ft. Worth Division. Brown Financial Services, LLC, Defendants vs. Robert Delwin Fry, Deceased, et.al. Jean Randolph, and Amy Silvey, Plaintiffs. Civil Action No. 4:06-CV-155-Y. Kern and Wooley, LLP, Dallas, Texas
2004	FAA Witness. National Transportation Safety Board - Hearing.	FAA vs. Richard McLaren
2004	FAA Witness. National Transportation Safety Board - Hearing.	FAA vs. Richard Petak
2003	FAA Witness. National Transportation Safety Board - Hearing.	FAA vs. Carolyn Pilaar
2001	FAA Witness. National Transportation Safety Board - Hearing.	FAA vs. Bielstein
2000	FAA Witness. National Transportation Safety Board - Hearing.	FAA vs. Brader
2000	FAA Witness. National Transportation Safety Board - Hearing.	FAA vs. William Smith

Publications:

FAA Order 8700.1, 02-27-1997 Chapter 45: Issue a Certificate of Waiver or Authorization, Section 91.311 (Banner Towing)

FAA Order 8700.1, 10-01-1990 Chapter 46: Surveillance of a Banner Towing Operator.

000346

Exhibit F

00270



U.S. Department
of Transportation
Federal Aviation
Administration

Federal Aviation Administration
Atlanta Airports District Office

1701 Columbia Avenue
Campus Building, Suite 2-260
College Park, Georgia 30337

February 22, 2012

Mr. Freddie Rick, CEO
Helicopter Solutions, Inc.
51 Barkwood Avenue
Davin, WV 25617

Dear Mr. Rick:

RE: Aeronautical Study 2011-ASO-2070-NRA
Helicopter Adventures, Myrtle Beach, South Carolina

We reviewed the Federal Aviation Administration (FAA) Form 7480-1, Notice of Landing Area Proposal, dated December 14, 2011.

We have determined that the proposed private use landing area, to be located at latitude 33°43'12"N., longitude 78°53'41"W., (NAD 83) at Myrtle Beach, South Carolina, will not adversely affect the safe and efficient use of the navigable airspace by aircraft, provided the following conditions are met during construction and a final inspection is completed by the FAA:

- a. All operations are conducted in VFR weather conditions, and
- b. The landing area is limited to private use.
- c. The takeoff/landing area is appropriately marked, including a wind indicator.
- d. No night helicopter operations are conducted unless the takeoff/landing area and wind indicator remain lighted and we recommend a heliport identification beacon is installed.
- e. Unauthorized persons are restrained from access to the takeoff/landing area during helicopter flight operations by use of a non-obstructing safety barrier.
- f. Fire protection is provided in accordance with the National Fire Protection Association 418, local fire code and Advisory Circular (AC) 150/5390-2B, Heliport Design Guide.
- g. The proponent refers to AC 150/5390-2B, in establishing an acceptable level of safety for helicopter operations at this heliport.
- h. The helicopter operational procedures are distributed to heliport users.

We recommend that:

- a. After completion of construction of the heliport, the FAA, Flight Standards is notified within 15 days to complete a final inspection prior to operations/use.
- b. The proponent will re-examine obstacles in the vicinity of the approach/departure paths on an annual basis in accordance with AC 150/5390-2B, paragraph 404.d. Any new obstacles noted will be forwarded to the Airports District Office, Flight Standards District Office or Regional Flight Standards Division.
- c. A Letter of Agreement between Myrtle Beach International Airport and the heliport proponent is completed and all operators of the heliport are informed and operate in accordance with the requirements for communication while operating within the Myrtle Beach Class D airspace.

We understand this heliport will remain private use only and that no Instrument Flight Rule (IFR) procedures are anticipated. Should you ever desire instrument flight procedures, the landing area must meet heliport design criteria and once met, you should request IFR procedures 24-36 months before requested charting date(s). We strongly recommend you contact Myrtle Beach International Airport approach control to become familiar with their operations and to ensure that air traffic control (ATC) has a thorough briefing on requested

Operations. The proposed location is within 12 nautical miles of three public use airports, all airports flying daily IFR operations. Also, the proposed location underlies the Myrtle Beach Class C airspace.

The void date of this determination is February 22, 2014. If the landing area is not completed by the void date, this determination will expire unless you have requested an extension, revision, or earlier termination. Please return the enclosed FAA Form 5010-5 (Airport Master Record) to this office. Guidelines for completing form 5010-5 can be found in the enclosed Advisory Circular 150/5200-35, "Submitting The Airport Master Record In Order To Activate A New Airport".

When the processing of the FAA Form 5010-5 is completed, your landing area will have a site number and a permanent location identifier. You may indicate in the remarks section on the enclosed 5010-5 as to whether or not you would like to have your landing area shown on aeronautical charts. Charting also depends on the amount of "clutter" already on the charts near your site.

You may contact the Atlanta Flight Standards Division Office (404) 305-6108, for further site review upon completion of all construction. Please refer to study number 2011-ASO-2070-NRA when contacting the Flight Standards Division.

This determination does not mean that the FAA approves the physical development involved with your proposed landing area. Our determination is limited to the safe and efficient use of airspace by aircraft. Our review considered the effect the proposal would have on the following:

- Existing or contemplated traffic patterns of neighboring airports,
- Existing, navigable airspace and projected programs of the FAA; and
- Existing or proposed manmade objects on file with the FAA and natural objects.

This determination does not preempt or waive any ordinance, law, or regulation of any other governmental body or agency.

The FAA cannot prevent the construction of any object. Therefore, it is conceivable that your facility could be adversely affected by an object being constructed nearby unless you are protected through such means as local ordinances and/or acquisition of property rights.

Please let us know if you have any questions concerning this determination or if you need technical assistance in airport matters.

Sincerely,



Phillip R. Cannon
Manager, Airport Programs

Enclosures

cc:
Myrtle Beach ATCT- Manager, Ricky Washington
SC Department of Commerce- Division of Aeronautics

000349

Exhibit G

00273



AVNSOLUTIONS, LLC

431 Western Lane
Irmo, SC 29063
Tel (803) 233-4075
Mobile (803) 622-8408

JUNE 19, 2012

SITE SURVEY OF HELICOPTER NOISE, MYRTLE BEACH, SOUTH CAROLINA

START TIME: 1230 HOURS

DATE: JUNE 14, 2012

END TIME: 15400 HOURS

LOCATION: PLANTATION POINT SUBDIVISION

WEATHER: SKY CLEAR/WIND FROM 360 DEGREES @ 7 KNOTS

EQUIPMENT: RADIO SHACK DIGITAL SOUND LEVEL METER MODEL 3300099

EXTECH INSTRUMENTS DIGITAL SOUND LEVEL METER MODEL 407730

SURVEY SITE	NUMBER OF AIRCRAFT OPERATING	MAX RECORDED db
Cul-de-sac	ONE	49 IN AND OUT ROUTE 1
LARK HILL DRIVE	THREE	42 AT PAD AT 100% RPM
@ HIGH SOCIETY COURT		57 ON DEPARTURE ROUTE 1
		54 ON DEPARTURE ROUTE 1
		55 ON DEPARTURE ROUTE 1
		48 ON LANDING ROUTE 1
		47 ON LANDING ROUTE 1
		45 ON LANDING ROUTE 1
		47 ON DEPARTURE ROUTE 2
		49 ON DEPARTURE ROUTE 2
		53 ON DEPARTURE ROUTE 2
		44 ON LANDING ROUTE 2
		45 ON LANDING ROUTE 2
		43 ON LANDING ROUTE 2
POWER LINE	ONE	42 IN AND OUT ROUTE 2
@ OLD BRYAN DRIVE		ENROUTE - 62
		LANDING - 55 ROUTE 2
	THREE	49 AT PAD AT 100% RPM

63 ON DEPARTURE ROUTE 2
ENROUTE - 63
LANDING - 51 ROUTE 2

OLD BRYAN DRIVE THREE
@ TIP TOP COURT
TWO HOUSES

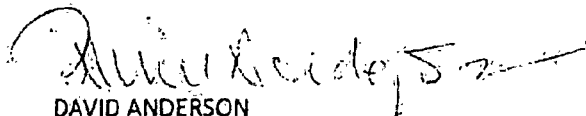
63 ON DEPARTURE ROUTE 2
51 ON LANDING ROUTE 2

OLD BRYAN DRIVE THREE
SINGLE HOUSE

DEPARTURE - 51 ROUTE 2
ENROUTE - 62
LANDING - 51 ROUTE 2

THE SURVEY WAS CONCLUDED AT 1500 HOURS ON JUNE 14, 2012.

NOTE: AT NO TIME DURING THE CONDUCT OF THE SURVEY DID A "HELICOPTER ADVENTURES" AIRCRAFT
OVERFLY THE PLANTATION POINT SUBDIVISION.


DAVID ANDERSON
FAA FLIGHT STANDARDS
AVIATION SAFETY INSPECTOR, RETIRED
AVNSOLUTIONS, LLC

000352

Exhibit H

00276



AVNSOLUTIONS, LLC

431 Western Lane
 Irmo, South Carolina 29063
 Cell (803)622-8408
 Tel (803)233-4075
avnsolutions@yahoo.com

Report of Findings

June 22, 2012

Helicopter Adventures, Myrtle Beach, South Carolina

A comprehensive evaluation of the aircraft (helicopter tour) operations of Helicopter Adventures located at 1860 21st Avenue North, Myrtle Beach, South Carolina 29577 was conducted during the period from June 11, 2012 through June 19, 2012.

An initial review of flight operations and pilot qualifications indicated compliance with the current Federal Aviation Regulation (FAR), and standard industry practices for the conduct of helicopter operations.

Further evaluations and in-depth testing of helicopter operations and pilots were conducted in order to maximize and exceed current safety standards established by the FAA:

- Prior Federal Aviation Administration (FAA) Flight Standards District Office (FSDO) evaluations of the helipad operation were reviewed. Each of these prior evaluations by FAA Safety Inspectors was found to be satisfactory.
- Pilot records and logbooks were examined to determine adequacy of recent training and evaluations for all pilots. This training had been provided by an independent contractor, Mr. William Riley a FAA Designated Pilot Examiner (DPE) from Atlanta, Georgia. Mr. Riley conducted a FAR Bi-Annual Flight Review of all pilots and subsequently certified each pilot log book indicating satisfactory completion of the evaluation.
- Pilot certificates and medical certificates were examined and found to be in order.
- New routes into and out of the landing area were evaluated for safety of operation and compliance with the FAR.
- An "aiming point" was established to assist pilots during landing.
- Additional marking of wires was approved.
- Additional fire extinguishers were approved for the helipad area.
- Maximum wind velocity and direction were established for operation of the new routes.
- Additional obstruction lights were approved.

00277

- Aircraft engine power limitations, forced landing areas, and procedures for the conduct of landing and take-off were approved.
- Aircraft refueling procedures were evaluated for safety. Enhanced communications between the pilot and fuel personnel, fire extinguisher availability, and the grounding of both the aircraft and fuel truck were approved.
- The wearing of hats was banned for the flight line during helicopter operations.
- A Safety Officer was appointed.

During the above referenced period an additional evaluation of pilots was conducted by Mr. David Anderson, FAA DPE. These evaluations consisted of flying with each pilot to determine:

- Pilot knowledge and skill regarding the new landing and take-off procedures for the helipad.

Based upon pilot flight evaluations it was determined that each pilot was very conservative during flight operations, aware of noise related issues, aircraft power applications, and each demonstrated an overall safety awareness of helicopter operations during take-off, enroute, and landing:

If any additional information is required regarding this report, do not hesitate to contact me.

Respectfully submitted,



David Anderson
FAA Safety Inspector (Operations) Retired

PROPERTY INFORMATION

Applicant	David Harrar	Rezoning Request #	10-02-007
Tax Map (TMS) #	172-00-05-232	County Council District #	Loftus
Site Location	Corner of Claypond Rd & George Bishop Parkway	Staff Recommendation	Disapproval
Property Owner Contact	David Harrar (766) 948-4782	PC Recommendation	Approval 6/2
		Size (in acres) of Request	1.0

Date Advertised: 2/7/10

Date Posted: 2/9/10

Property Owner Notified: 24

Data Modification Number: 2/12/10

Report Date: 2/6/10 BY: VR

ZONING DISTRICTS

Current Zoning	HC
Proposed Zoning	PA1
Proposed Use	Helicopter Tour Ride Operation

LOCATION INFORMATION

Flood and Wetland Information	Zone X	HC	HC	HC
Public Health & Safety (EMS/mg) in miles radius	3.6 / 3	HC	Subject Property	PDD
Utilities	GSWSA	HC	HC/PDD	PDD
Character of the Area	Undeveloped, wooded lot adjacent, commercial, Freestyle Music Park			

ADJACENT PROPERTIES

COMMENTS

Comprehensive Plan District: Urban Community

Is this plan consistent with the Land Use Plan?

Discussion: The applicant proposes to rezone this parcel from HC to PA1 to accommodate a helicopter tour ride operation. Currently the site is vacant. The parcel is located directly under the approach zone of the airport and is subject to the Airport Environs Overlay. The site is directly across from the Freestyle Music Park roller coaster ride. Other adjacent parcels consist of trade shop uses and similar commercial uses found in the HC zoning designation. George Bishop Parkway and Claypond Drive are both paved access to the site. The intersection is very heavily traveled and adequate parking will be required under the Horry County Parking Standards. The Eirvision 2025 Comprehensive Plan indicates this parcel is located in an Urban Community that supports suburban and urban development patterns often found within incorporated cities. The applicant was not present at the February PC workshop and the case was therefore deferred.

Public Comment: There was no public input. The applicant, David Harrar, explained the request.

Environment Assessment and Open Space?

TRANSPORTATION INFORMATION

Daily Trips based on existing use / Max Daily Trips based on current zoning	0 / 576	Existing Road Conditions	George Bishop Pkwy, paved, 5 lane
Projected Daily Trips based on proposed use / Max Daily Trips based on proposed zoning	75 / 75	Traffic Volume (2008, in AADT) % Road Capacity	Hwy 501 (163) 67,000/23,600 = 165% (7.1% decrease)
Proposed Improvements	None		

DIMENSIONAL STANDARDS

	Requested	Current	Adjacent	Adjacent	Adjacent	Adjacent
	PA 1	HC	HC	PDD		
Min. Lot Size (in square feet)	21,780	10,000	10,000	N/A		
Front Setback	50 feet	50 feet	50 feet	25 feet		
Side Setback	10 feet	10 feet	10 feet	25 feet		
Rear Setback	15 feet	15 feet	15 feet	25 feet		
Bldg. Height	36 feet/ 1/2 acre	120 feet	120 feet	175 feet		

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

Ordinance No. _____

AN ORDINANCE TO APPROVE THE REQUEST TO AMEND THE OFFICIAL ZONING MAPS FOR HORRY COUNTY, SOUTH CAROLINA, SO AS TO REZONE TMS #172-00-05-232 FROM HIGHWAY COMMERCIAL (HC) TO PASSENGER & PRODUCT TRANSPORTATION (PA 1).

WHEREAS, Ordinance Number 1-87 authorizes Horry County Council to periodically amend the Official Zoning Maps for Horry County; and,

WHEREAS, a request has been filed to amend the maps for the above mentioned parcel of land; and

WHEREAS, Horry County Council finds that the present Highway Commercial (HC) is not appropriate for the above mentioned parcel(s) of land; and

WHEREAS, Horry County Council finds that the request to rezone the property from Highway Commercial (HC) to Passenger & Product Transportation (PA 1) is in compliance with the Comprehensive Plan and the good of the public welfare and is a reasonable request;

NOW THEREFORE by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

1) Amendment of Official Zoning Maps of Horry County:

Parcel(s) of land identified by TMS #172-00-05-232 currently zoned Highway Commercial (HC) is herewith rezoned to Product & Passenger Transportation (PA 1).

2) Severability: If a Section, Sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

3) Conflict with Preceding Ordinances: If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

4) Effective Date: This Ordinance shall become effective on Third Reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this _____ day of _____, 2010.

PREVIOUSLY DEFERRED Rezoning Review Sheet



PROPERTY INFORMATION

Applicant	David Harrar for Hashem Properties LLC	Rezoning Request #	10-08-004
Tax Map (TMS) #	172-00-05-230	County Council District #	Lofus
Site Location	George Bishop Parkway	Staff Recommendation	
Property Owner Contact	David Harrar (843) 448-4909	PC Recommendation	
		Size (in acres) of Request	1.0

ZONING DISTRICTS

Current Zoning	HC
Proposed Zoning	AM 2
Proposed Use	Helicopter Tour Ride Operation

LOCATION INFORMATION

Flood and Wetland Information	Zone X	HC	HC	HC
Public Health & Safety (EMS/fire) in miles radius	3.5 / 3	HC	Subject Property	PDD
Utilities	GSWSA	HC	HC / PDD	PDD
Character of the Area	Undeveloped lot, commercial uses and Freestyle Music Park across George Bishop Parkway			

ADJACENT PROPERTIES

COMMENTS

Comprehensive Plan District: Urban Community

Is this plan consistent with the Land Use Plan?

Discussion: The applicant proposes to rezone this parcel from Highway Commercial to Outdoor Amusement Commercial (AM2) to accommodate a helicopter tour ride operation. Currently the site is vacant. The parcel is located directly under the approach zone of the airport and is subject to the Airport Environs Overlay. The site is directly across from the Freestyle Music Park roller coaster ride. Other adjacent parcels consist of trade shop uses and similar commercial uses found in the HC zoning designation. George Bishop Parkway provides paved accesses to the site, although the applicant owns the adjacent parcel and may access the site from Claypond Road as well. The intersection at George Bishop Pkwy and Claypond Rd is very heavily traveled and adequate parking will be required under the Horry County Parking Standards. The Envision 2025 Comprehensive Plan indicates this parcel is located in an Urban Community that supports suburban and urban development patterns often found within incorporated cities. The applicant requested a deferral prior to the June PC workshop.

Public Comment:

Environment Assessment and Open Space?

TRANSPORTATION INFORMATION

Daily Trips based on existing use / Max Daily Trips based on current zoning	0 / 576	Existing Road Conditions	George Bishop Pkwy, paved; 5 lanes
Projected Daily Trips based on proposed use / Max Daily Trips based on proposed zoning	75 / 75	Traffic Volume (2008, in AADT) % Road Capacity (07-'08 % of change)	Hwy 501 (183) 87,000/33,600 = 199 % (1% decrease)
Proposed Improvements	None		

DIMENSIONAL STANDARDS

	Requested	Current	Adjacent	Adjacent	Adjacent	Adjacent
	PA 1	HC	HC	PDD		
Min. Lot Size (in square feet)	21,780	10,000	10,000	N/A		
Front Setback	50 feet	50 feet	50 feet	25 feet		
Side Setback	10 feet	10 feet	10 feet	25 feet		
Rear Setback	15 feet	15 feet	15 feet	25 feet		
Bldg. Height	36 ft per 1/2 acre	120 feet	120 feet	175 feet		

Date Advertised: 6/8/10

Date Posted: 6/8/10

Property Owner Notified: 19

Date Notification Mailed: 6/11/10

Report Date: 6/7/10 BY: VB

00386

41

PREVIOUSLY DEFERRED Rezoning Review Sheet



PROPERTY INFORMATION

Applicant	David Harrar for Hashem Properties LLC	Rezoning Request #	10-08-004
Tax Map (TMS) #	172-00-05-230	County Council District #	Loftis
Site Location	George Bishop Parkway	Staff Recommendation	
Property Owner Contact	David Harrar (843) 448-4908	PC Recommendation	
		Size (in acres) of Request	1.0

Date Advertised: 6/5/10

Date Posted: 6/4/10

Property Owner Notified: 18

Date Notification Mailed: 6/1/10

Report Date: 6/7/10 BY: VB

ZONING DISTRICTS

Current Zoning	HC
Proposed Zoning	AM 2
Proposed Use	Helicopter Tour Ride Operation

LOCATION INFORMATION

Flood and Wetland Information	Zone X	HC	HC	HC
Public Health & Safety (EMS/fire) in miles radius	3.5 / 3	HC	Subject Property	PDD
Utilities	GSWSA	HC	HC / PDD	PDD
Character of the Area	Undeveloped lot, commercial uses and Freestyle Music Park across George Bishop Parkway			

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Public Comment:

Environment Assessment and Open Space?

TRANSPORTATION INFORMATION

Daily Trips based on existing use / Max Daily Trips based on current zoning	0 / 576	Existing Road Conditions	George Bishop Pkwy, paved, 5 lanes
Projected Daily Trips based on proposed use / Max Daily Trips based on proposed zoning	75 / 75	Traffic Volume (2008, in AADT) % Road Capacity: (*07-'08 % of change)	Hwy 501 (163) 67,000/33,600 = 199 % (1% decrease)
Proposed Improvements	None		

DIMENSIONAL STANDARDS

	Requested	Current	Adjacent	Adjacent	Adjacent	Adjacent
	AM 2	HC	HC	PDD		
Min. Lot Size (in square feet)	21,780	10,000	10,000	N/A		
Front Setback	50 feet	50 feet	50 feet	25 feet		
Side Setback	10 feet	10 feet	10 feet	25 feet		
Rear Setback	15 feet	15 feet	15 feet	25 feet		00387
Bldg. Height	36 ft per 1/2 acre	120 feet	120 feet	175 feet		



**HORRY COUNTY
PLANNING COMMISSION WORKSHOP
REVISED AGENDA
June 25, 2012 - 3:00 PM**

- I. Call to Order**
- II. New Business**
- A. Street Names 6**
- B. Design Modification - To allow TMS #084-00-03-072 to have two shared private drives along the same roadway frontage 7-9**
- C. Rezoning Requests**
- 1. ~~WITHDRAWN - PREVIOUSLY DEFERRED 2ND~~ - #12-04-004 - William C. Stackhouse, agent for Finklea High Loris Training School Alumni Association - 25.28 acres identified by TMS #037-00-01-068 from FA to RE3 and located at 3501 Hwy 917 in Loris (Council Member J. Prince) 10-11**
 - 2. #12-06-001 - Derrick & Audrey Griffin - 1.05 acres identified by TMS #096-00-01-265 from CFA to MSF10 and located at the intersection of Hwy 701 N and Accomp Drive in Conway (Council Member Frazier) 12-13**
 - 3. #12-06-002 - Belky Diaz Gascot, agent for Ramonita Gascot Saez - 0.69 acre identified by TMS #190-00-02-221 from SF10 to MSF10 and located at the intersection of Freewoods Road and Emma Gause Place (Council Member Loftus) 14-15**
 - 4. #12-06-003 - Harold Wiegel, agent for Myrtle Beach Adventure Property LLC - 0.21 acres identified by TMS #131-03-08-004 from SF10 to RE4 and located at 1612 Edgewood Dr in Little River (Council Member Worley) 16-17**
 - 5. #12-06-004 - Sam Ward & Gena Jones, agent for Dalton Billy & Shelve Jean Ward - 1.0 acre (portion) identified by TMS #108-00-03-010 (portion) from CFA to RE4 and located approximately 7 miles west of Conway on the south side of Hwy 501 and adjacent to 5109 Hwy 501 West (Council Member Allen) 18-19**
 - 6. #12-06-005 - Sadie Parmley - 1.4 acres identified by TMS #191-00-01-014 from HC to MSF10 and located at 2184 Glenns Bay Road in Surfside (Council Member Price) 20-21**

**D. Discussion****Public Hearing to be held Next Week**

1. An ordinance to amend Appendix B Zoning, Article VII, Section 723.3(E), to correct a scrivener's error by re-inserting subsections (4) and (5)
.....23-25

Discussion Only

-  2. An ordinance to amend the Horry County Zoning Ordinance regarding aviation-related uses.
3. Chairman Wilfong – Firearm Training Facilities

III. Adjourn

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

ORDINANCE NO. _____

AN ORDINANCE TO AMEND APPENDIX B, ZONING ORDINANCE OF THE HORRY COUNTY CODE OF ORDINANCES PERTAINING TO AIRPORT ENVIRONS.

WHEREAS, airports and other associated air travel is important to the economic success of Horry County; and,

WHEREAS, there are many possible negative impacts related to the location of these types of facilities; and,

WHEREAS, there is a need for the regulation of these facilities to protect, preserve, and promote the health, safety, and welfare of all citizens of the County while balancing the need for air travel; and,

WHEREAS, it is the intent of the County Council to establish and provide for a suitable location for these types of facilities.

NOW THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

1. Amendment of Appendix B, Zoning Ordinance, Article IV. Article IV of the Zoning Ordinance is hereby amended to add the following definitions:

436.5 Heliport.

A heliport (used privately or commercially) is an identifiable area on land, water, or a structure, including any buildings or facilities thereon, used or intended to be used for the landing and take-off of helicopters or other tilt rotor aircraft.

445.5 Noncommercial Airfields

A noncommercial airfield is a limited airport in that scheduled or unscheduled paid passenger service is not allowed.

445.6 Noncommercial Heliport

A noncommercial heliport is limited in that scheduled or unscheduled paid passenger service is not allowed, except in emergency situations.

2. Amendment of Appendix B, Zoning Ordinance, Article VII, Section 702.2. Section 702.2 of the Zoning Ordinance is hereby amended as follows:

(E) ~~Noncommercial Airfields and Heliports together with subordinate uses and radio and/or television station and transmission towers~~ provided that such use complies with any adopted standards for communication towers.

1. Airpark hangars, subject to Article XII, Section 1206.

3. Amendment of Appendix B, Zoning Ordinance, Article VII, Section 703.2. Section 703.2 of the Zoning Ordinance is hereby amended as follows:

Zoning Districts	Min. area in square feet	Min. area in acreage	Front	Sides	Rear	Corner	Max height of structure
AE - Airport Environs District	N/A	50	25 ⁵	10 ⁵	15 ⁵	15 ⁵	35

6. Amendment of Appendix B, Zoning Ordinance, Article XV Amendments.

Amend Article XV Amendments to create a new section 1501.4 Submission criteria for the Airports Environs District.

1501.4 Submission criteria for the Airports Environs District

- A. Any request to establish an Airports Environs district (AE) shall follow the procedures set forth below. In presenting requests for rezoning, the applicant must submit a sketch plan that presents a general idea of how the tract of land will be developed. The sketch plan shall contain the following data:
1. Adjacent property owners and land uses;
 2. Proposed rights-of-way and lot layout;
 3. Adjacent driveway, roadway, and curb-cut locations;
 4. Table summarizing project acreage, density, number of lots, minimum lot area in square feet, and minimum lot dimensions;
 5. North arrow, written and graphic scales, and a location map showing the relationship between the proposed land development and the surrounding area;
 6. Tract boundaries and total land area; and
 7. Noise Assessment

Janet Carter explained the Development Agreement between Horry County and Burroughs and Chapin. Ms. Carter explained that of the districts available, Amusement Commercial (AC) is the only district that could even arguably be appropriate for a helicopter sight-seeing tour. She asked the Board that if the helicopter tours are not allowed in AC to tell staff where they are allowed.

There was some discussion regarding when Plantation Point was developed.

Ken Moss further explained the appeal. He stated that the Zoning Administrator's letter said that a sightseeing depot was allowed. There was discussion as to what is the definition of a depot. Mr. Moss handed up a page including definitions of depot. He went on to say that over 300 people were against this decision.

Rick Hinde explained his appeal. He then passed out books that contained a noise study and there was some discussion. He states that the noise has disrupted their quality of life and that the real estate values have dropped in Plantation Point.

Christopher Hanna swore in Leslie Anderson, Plantation Point resident who opposes Helicopter Adventures. She is concerned with the noise and safety.

Christopher Hanna swore in Jonathon Messimer, Plantation Point resident who opposes Helicopter Adventures.

Christopher Hanna swore in Mark Loomis, Plantation Point resident and real estate agent who opposes Helicopter Adventures. He states that the property values have dropped and that the heliport caused him to lose a sale.

Christopher Hanna swore in Ann Marie Ketcher, Plantation Point resident who opposes Helicopter Adventures. She discussed the permitted uses in AC and states that they are all on the ground, nothing in the air.

Christopher Hanna called a 5 minute break. The meeting reconvened at approximately 7:25 p.m.

Christopher Hanna swore in Travis Bary. Mr. Bary stated that there was a mistake made and had the staff known what the outcome would have been that this would have not happened.

Christopher Hanna swore in Tom Navarria. He opposed Helicopter Adventures.

Kenneth Moss closed by saying that the Zoning Administrator erred and had there been a public hearing the residents would have known before hand.

Janet Carter closed by saying that she thought that Mrs. Mincey made the best possible decision that she could with the tools she had. She once again stated that if AC is not the correct zoning district to tell staff which one is.

Benjamin Baroody stated that the right decision is not the will of the people opposed but should be based on what the Zoning Administrator did. He stated that the helicopter business did everything right. He says that the noise is irrelevant for the purposes of tonight. He stated that a sightseeing depot is equipment and transportation sites whether it bus, air or water where vehicles are kept and maintained. Sightseeing is the act of seeing things of interest. He also

CERTIFICATE OF COUNSEL

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

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

A handwritten signature in black ink, appearing to read "K R Moss", is written over a horizontal line.

Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901, ext. 103

Email: kennethmoss@wwpemlaw.com

North Myrtle Beach, South Carolina
December 17, 2013

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2012-CP-26-06987

Appellate Case No. 2013-000971

RECEIVED

DEC 13 2013

SC Court of Appeals

Helicopter Solutions, Inc.
d/b/a Helicopter Adventures *Respondent,*

v.

Richard Hinde and Horry County Zoning Administrator, ... *Defendants,*
of whom Richard Hinde is *Appellant.*

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

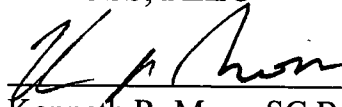
David B. Miller, Esq.
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Attorney for Respondent Helicopter Solutions, Inc.

– and –

Emma Ruth Brittain, Esq.
Thomas & Brittain, P.A.
P.O. Box 1290
Myrtle Beach, SC 29578
Tel: 843/692-2628 Fax: 843/692-0928
erbrittain@myrlaw.com
Attorney for Defendant Horry County Zoning Administrator

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



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North Myrtle Beach, South Carolina
December 17, 2013