

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. Supreme Court

J. Michael Baxley
Circuit Court Judge

Case No. 2012-CP-26-9291

Opinion No. 5284 (S.C.Ct. App. filed January 23, 2015)

Fayrell Furr and Karole Jensen..... Petitioner

vs.

Horry County Zoning Board of Appeals..... Respondent

APPENDIX

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The South Carolina Court of Appeals

Fayrell Furr and Karole Jensen, Respondents,

v.

Horry County Zoning Board of Appeals, Appellant.

Appellate Case No. 2013-001188

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff

J.

Paul G. Shortz

J.

AKO

J.

Columbia, South Carolina

cc:

Emma Ruth Brittain, Esquire

Gene McCain Connell, Jr., Esquire

The Honorable J. Michael Baxley

FILED

January 23, 2015

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

Fayrell Furr and Karole Jensen, Respondents,

v.

Horry County Zoning Board of Appeals, Appellant.

Appellate Case No. 2013-001188

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Opinion No. 5284
Heard November 3, 2014 – Filed December 17, 2014

REVERSED

Emma Ruth Brittain, of Thomas & Brittain, P.A, of
Myrtle Beach, for Appellant.

Gene McCain Connell, Jr., of Kelaher Connell &
Connor, PC, of Surfside Beach, for Respondents.

KONDUROS, J.: The Horry County Zoning Board of Appeals (the Board) appeals the circuit court's order reversing the Board's decision finding a Mercy Care Hospice (MCH) facility could be built within the proposed area zoned Commercial Forest Agricultural (CFA). We reverse.

FACTS/PROCEDURAL BACKGROUND

MCH proposed to build a fourteen-bed hospice facility on twenty-two acres of land it owns in Horry County. The property is located immediately adjacent to a subdivision, Wildhorse, and closest to the home shared by Fayrell Furr and his wife, Karole Jensen (collectively Respondents). The area is zoned CFA. The MCH property has no direct access from the closest main road, Highway 90, necessitating that the entrance to the MCH facility be immediately inside the entrance to the subdivision.

The current zoning ordinances do not specifically permit or prohibit a hospice. However, after reviewing the matter, the Horry County Zoning Administrator determined a hospice would be a permitted use in the CFA zone as either group housing¹ or a nursing home.² Respondents appealed that decision to the Board.

At the appellate hearing before the Board, opponents of the MCH facility expressed concern over increased traffic in the area, and Jensen presented newspaper articles discussing Highway 90 as a dangerous road. Concerns over possible ambulance activity and helicopter transport were raised, as well as concerns over the environmental impact the facility may have. Furr argued a hospice is a hospital, a use prohibited in the CFA zone. He cited to section 44-7-130(12) of the South Carolina Code (2002), which defines "hospital" as

a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the

¹ The Horry County Code of Ordinances defines a Permanent Overnight Resident Group Care Home as "[a] facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care." Horry County, S.C., Ordinance 436.1.

² A Nursing Home is defined as "[a]n extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves." Horry County, S.C., Ordinance 447.1

direction of persons currently licensed to practice medicine, surgery, or osteopathy.

He further cited to subsections 44-71-20(3) and (4) of the South Carolina Code (2002), which define "hospice" and "hospice facility." The subsections provide:

(3) "Hospice" means a centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. Inpatient services include, but are not limited to, services provided by a hospice in a licensed hospice facility.

....

(4) "Hospice facility" means an institution, place, or building in which a licensed hospice provides room, board, and appropriate hospice services on a twenty-four-hour basis to individuals requiring hospice care pursuant to the orders of a physician.

Id.

Proponents of the MCH facility argued it would not constitute a hospital based on the types of activities that would take place there. Sara Jo Faucher, director of MCH, presented an affidavit from David Levitt, a healthcare consultant, who opined the MCH facility would not be a hospital. Levitt noted hospitals offer a much more intensive level of care, requiring significantly more resources, space, and personnel, and provide sophisticated diagnostic and surgical services, as well as emergency services. Faucher also presented a letter from J.T. Pegram, president of Pegram Associates, Inc., who was assisting with the MCH facility design, indicating the facility would be "essentially a nursing home that specializes in caring for the terminally ill." Additionally, Pegram indicated the design would be LEED (Leadership in Energy and Environmental Design) certified. Faucher also provided an anticipated traffic study indicating the MCH facility would generate

thirty-four additional trips per day by vehicles into Wildhorse as opposed to the property being used for residential development, which could produce 230 additional trips per day. Faucher indicated the MCH facility would not receive helicopter delivery of patients and any ambulance activity would be conducted without sirens.

Dr. Preston Strosnider, medical director of Conway Hospital and MCH board member, testified the MCH facility would be more akin to a nursing home and would not constitute a hospital. He testified nurses and certified nursing assistants would be on staff and doctors could make rounds but not on a daily basis. Dr. Strosnider indicated a physician would be available at all times just as a physician treating a hospice patient in the patient's home would be available if needed.

The Board upheld the Zoning Administrator's decision that the MCH facility would fall within the ordinances permitting group housing or nursing homes in a CFA zone and rejected the argument the MCH facility constituted a hospital. Respondents appealed the Board's decision to the circuit court.

The circuit court reversed the decision of the Board, concluding the Board's interpretation of the zoning ordinances was incorrect as a matter of law. The circuit court indicated "the level of care, including the provision of primary medical care if needed, required in a hospice facility is greater than that of both permanent overnight resident group care homes and nursing homes." The circuit court also concluded a hospice is like a hospital because only a hospice and a hospital require physicians to supervise the care and treatment of the patients and only a hospice and hospital require a physician's order for admission.³ Finally, the

³ Regulation 61-78.504(A),(B), and (C) of the South Carolina Code (2012) indicate a physician shall supervise the care and treatment of the patient while receiving hospice treatment/care/services, nursing care services shall be supervised by a staff registered nurse, and minimum staffing of a hospice facility shall consist of one registered nurse and one additional direct care staff member on duty at all times.

Regulation 61-17 § 605 of the South Carolina Code (2011) states a nursing home "facility shall have a medical director who is a physician who shall be responsible for implementation of policies and procedures that pertain to the care and treatment of the residents and the coordination of medical care in the facility." Regulation 61-17 § 606(A)(1) and (3) of the South Carolina Code (2011) further provide a

circuit court found the proposed location was not suitable for the MCH facility because of its proximity to Wildhorse. The Board's appeal followed.

LAW/ANALYSIS

The Board contends its determination that a hospice is a permissible use in a CFA zone is a determination that should be accorded deference by the circuit court. Respondents argue the Board's decision involved its interpretation of the Horry County zoning ordinances and, therefore, constitutes a question of law which the circuit court properly reversed. We find the Board's position to be persuasive.

The Supreme Court of South Carolina has summarized the 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 board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (quotation marks omitted).

"By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it. This [c]ourt will uphold the trial [court]'s decision unless it was based on an error of law or is not supported by the evidence." *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) (citation omitted). See S.C. Code Ann. § 6-29-840(A) (Supp. 2013) ("The findings of fact by the [zoning] board of appeals must be treated in the same manner as a finding of fact by the jury . . ."). "In reviewing questions presented on appeal, the court must determine only whether the decision of the board is

registered nurse shall serve as full-time director of nursing, and at least one registered nurse shall be in the facility or on call.

correct as a matter of law." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007). "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Id.* A zoning board's decision will be overturned if it is "arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Id.* The decisions of those charged with interpreting and applying zoning ordinances "should be given some consideration and not overruled without cogent reason therefore." *Id.* at 236, 642 S.E.2d at 568 (internal quotation marks omitted).

In *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct. App. 2001), Heilker argued having sidewalk sales at his furniture store was a nonconforming "use" that should be permitted to continue under new zoning ordinances. *Id.* at 403-04, 552 S.E.2d at 43-44. The Zoning Board determined the sidewalk sales were merely a "practice" attendant to Heilker's "use" of the premises as a furniture store. *Id.* at 405, 552 S.E.2d at 44. The circuit court reversed. *Id.* On review, the majority determined the inquiry of whether a proposed activity constituted "use" within the context of zoning was a question of fact and stated:

In zoning matters, this [c]ourt is obligated to apply the extremely narrow standard of review outlined in *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000). The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.

A "use" in the zoning context is "the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained." A determination by a zoning board that a particular purpose or activity does or does not constitute a "use" is a finding of fact.

In the case *sub judice*, we rule the [c]ircuit [c]ourt erred in supplanting the Zoning Board's finding of fact that Heilker's outdoor display of indoor merchandise was not a nonconforming "use."

Id. at 412, 552 S.E.2d at 48.

In this case, Horry County ordinances do not specifically permit or prohibit a hospice in a CFA zone. Therefore, the parties asked the Board to determine whether the MCH facility was more comparable to a nursing home or group housing, permitted uses, or a hospital, a prohibited use. That required a factual inquiry to discern the type of care, staffing, and activity that would be involved at the MCH facility along with consideration of the relevant ordinances. Based on that information and analysis, the Board determined the MCH facility fell within the permitted uses and approved construction in the CFA Zone. Consequently, we find the circuit court should have given deference to the Board's decision because its decision was based upon appropriate findings of fact which are supported by the record.

Levitt's affidavit opined hospitals offer a much more intensive level of care, requiring significantly more resources, space, and personnel, and provide sophisticated diagnostic and surgical services, as well as emergency services. Dr. Strosnider testified the MCH facility was more like a nursing home based on the type of care that would be provided and based on the type of staffing. Because evidence in the record supports the Board's conclusion, the circuit court's order is

REVERSED.

HUFF and SHORT, JJ., concur.

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

J. Michael Baxley
Circuit Court Judge

CASE NO. 2012-CP-26-9291

Fayrell Furr and Karole Jensen..... Respondents

vs.

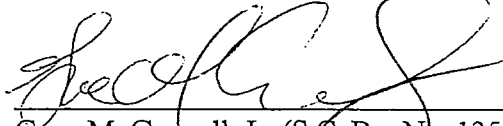
Horry County Zoning Board of Appeals..... Appellant

PETITION FOR REHEARING

The, Respondents, pursuant to Rule 221 of the South Carolina Appellate Court Rules, moves this Court for a rehearing of its Opinion filed December 17, 2014 and received by Respondents' attorney on December 18, 2014. The basis of this Petition for Rehearing is the attached Memorandum of Law.

Respectfully submitted,

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December 29, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley
Circuit Court Judge

CASE NO. 2012-CP-26-9291

Fayrell Furr and Karole Jensen..... Respondents

vs.

Horry County Zoning Board of Appeals..... Appellants

**MEMORANDUM OF LAW IN SUPPORT
OF PETITION FOR REHEARING**

On December 17, 2014, this Court issued its Opinion No. 5284 reversing the Circuit Court Order in this case. Respondents request reconsideration and rehearing pursuant to South Carolina law based on the following grounds:

I. GROUNDS FOR REHEARING

1. The Court of Appeals as a matter of law erred in failing to apply the statutory definitions for hospice, nursing home, permanent overnight resident group care home and hospital.
2. The Court of Appeals erred as a matter of law in holding that the interpretation of the Horry County Zoning Ordinance in this case was a question of fact and not one of law when the definition of hospice, hospital, permanent overnight resident group

care home and nursing home are all defined in this state by statute. See S.C. Code Ann. § 44-71-20 (3) and (4) (hospice); S.C. Code Ann. § 63-1-40 (group care home); S.C. Code Ann. § 44-7-130(12) (hospital); S.C. Code Ann. § 44-7-80 (nursing home).

3. The Court of Appeals erred as a matter of law in holding that the Horry County Zoning Ordinances allowed a hospice in the Commercial Forest Agricultural zone when the term was not defined in the ordinance.

4. The Court of Appeals erred as a matter of law in finding that a hospice was similar to a permanent overnight resident group care home or nursing home when those terms are defined by the South Carolina Code of Laws and are mutually exclusive of each other.

5. The Court of Appeals erred as a matter of law in holding that the Horry County Zoning Board's decision was legally correct when in fact it was not legally correct since hospice, hospital, permanent overnight resident group care home and nursing home are all defined in the statutes.

6. The Court of Appeals erred as a matter of law in affirming the decision of the Zoning Board.

7. The Court of Appeals erred as a matter of law in not applying South Carolina statutory law, specifically the definition of hospice pursuant to S.C. Code § 44-71-20 especially since the zoning rules and regulations were silent on the definition of the term hospice.

8. The Court of Appeals erred as a matter of law in not applying the definitions in the South Carolina Hospital Licensure Act, S.C. Code Ann. § 44-71-20(3) in determining

whether a hospice was appropriate pursuant to Horry County's Commercial Forest Agricultural zoning ordinance.

9. The Court of Appeals erred in not defining the term hospice, hospital, permanent overnight resident group care home and nursing home based on the plain and ordinary meaning in the statutes which define them.¹

10. The Court of Appeals decision is inconsistent with statutes enacted by legislature which define hospital, hospice, permanent overnight resident group care home and nursing home.

11. The Court of Appeals erred in applying *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct.App. 2001) because it has no application since the term "use" is not defined in the South Carolina Code of Laws while the term "hospice" (S.C. Code Ann. § 44-71-20 (3) and (4)), "hospital" (S.C. Code Ann. § 44-7-130 (12)) and "permanent overnight resident group care home" (S.C. Code Ann. § 63-1-40) are all defined in South Carolina. The error being each of these terms is mutually exclusive and based on the facts presented do not allow the Zoning Board of Appeals or this Court to find as a matter of law that a hospice is either a nursing home or a permanent overnight resident group care home.

12. The Court of Appeals erred in failing to construe the term hospital, hospice, nursing home and permanent overnight resident group care home consistent with South Carolina statutory law.²

¹ It could hardly be argued a hospice is a permanent overnight resident group care home. The definition under S.C. law is: "a staffed residence with a population fewer than twenty people who are in care apart from their parents, relatives or guardians on a full time basis."

² In that respect, this Court is given a broader and more independent review when the issue concerns construction of an ordinance. *Charleston County Parks and Recreation Comm. v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995).

II. APPLICABLE LAW

Respondents move the Court for reconsideration. Respondents respectfully take issue with the Court's analysis in this case. This Court's ruling is based on an error of law and is not supported by the law. In South Carolina the term hospice, hospital, permanent overnight resident group care home and nursing home are all statutorily defined. This case is not similar to *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct.App. 2001). In *Heilker*, this Court was called upon to define the term "use" which was not defined by statute in South Carolina. This case is different. The Horry County Zoning Board of Appeals rules and regulations do not define the term hospice, but do define nursing home or permanent overnight resident group care home. However, South Carolina's Code of Law does define each of these terms. In particular a hospice is defined as follows:

See S.C. Code Ann. § 44-71-20(3) and (4):

(3) "Hospice" means a centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through a written agreement. The inpatient services include, but are not limited to, services provided by hospice in a licensed hospice facility.

(4) "Hospice facility" means an institution, place or building in which a licensed hospice provides room, board and appropriate hospice services on a 24-hour basis to individuals requiring hospice care pursuant to the orders of a physician.

In this case, the Court reasons that because the Horry County Zoning Ordinances do not specifically permit or prohibit a hospice it is a factual question. In South Carolina this is

not a factual question but a question of law since hospice, hospital and group care home are all statutorily defined.³

Respondents believe that the Court erred in not applying the statutory definitions based on the plain language of those statutes. The Court need only review the definitions of hospice, hospice facility, nursing home and hospital to determine as a matter of law that a hospice facility or hospice is not a permanent overnight resident group care home or a nursing home since only a nursing home or a permanent overnight resident group care home are allowed in the CFA. It follows logically that a hospice is not allowed as a matter of law. As has been explained earlier, both the term hospice and hospital are found in the South Carolina Hospital Licensure Act. The terms permanent overnight resident group care home and nursing home are not found in that Act, but are statutorily defined.

In deciding how to apply the law in this case this Court and the Zoning Board need only review the language of the statutes which define hospice, hospital, permanent overnight resident group care home and nursing home. Those statutes must be harmonized in accordance with their general purpose. Once the legislature has made a choice there is no room for the courts to impose a different judgment based upon their own notions of public policy. See *South Carolina Farm Bureau Mutual Insurance Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App. 1989).

In this case, the Court is not faced with an undefined statutory term (such as use), but is in fact faced with terms of art which are statutorily defined. Hospice, hospital, nursing home and permanent overnight resident group care home are all defined in South Carolina

³ It goes without saying that a zoning ordinance may not have a definition different than one found in the South Carolina Code of Laws.

law. Thus, the Court must interpret those terms in accordance with the usual and ordinary customarily meaning defined in those statutes.

The Court must as a matter of law apply the statutory definitions of hospice, hospital, permanent overnight resident group care home and nursing home. Those terms have been clearly defined in South Carolina law. If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning. *Paschal v. State Election Commission*, 317 S.C. 434, 454, S.E.2d 890 (1995); *Cohen v. Allstate Insurance Company*, 351 S.C. 626, 631, 571 S.E.2d 715, 717 (Ct.App. 2002); see also *Brassell*, 326 S.C. at 561, 486 S.E.2d at 495 ("where the language of the statute is clear and explicit the Court cannot rewrite the statute and inject matters into it which are not in the legislature's language."). When the terms of a statute are clear the Court must apply those terms according to their literal meaning. *Cooper v. Moore*, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002); *Parsons v. Georgetown Steel*, 318 S.C. 63, 456 S.E.2d 366 (1995) (where the terms of a relevant statute are clear there is no room for construction).

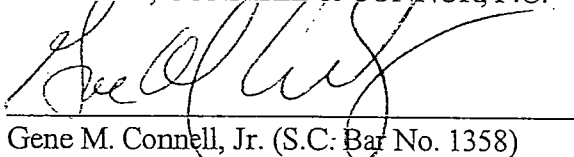
What the legislature says in the text of a statute is considered the best evidence of the legislative will or intent. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *Bayle v. S.C. Dept. of Transportation*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App. 2001).

In this case, the Court of Appeals erred as a matter of law in not applying the statutory definitions of hospice, hospital, nursing home and permanent overnight resident group care home. It follows that a hospice by definition can't be a nursing home nor can it be a permanent overnight resident group care home. Each of these definitions as defined by

the South Carolina legislature are mutually exclusive, and because the Horry County Zoning ordinances define the term nursing home or permanent overnight resident group care home, both of which are statutory defined as a matter of law, a hospice can be neither and as a result the circuit court was legally correct in ruling that a hospice could not be built in the Commercial Forest Agricultural zoning area. In sum, it is an error of law to hold that a hospice is a nursing home or permanent overnight resident group care home when the Legislature has specifically defined those terms as mutually exclusive under South Carolina law. Thus, Respondents request this Court reverse its ruling and affirm the circuit court.

Respectfully submitted,

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Horry County Zoning Board of Appeals..... Appellant

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

**BEFORE THE BOARD OF
 ZONING APPEALS**
 Case No.: 2012-10-003

In re: Fayrell Furr & Karole Jensen)
)
 _____)

ORDER OF THE BOARD

Hearing was held before this Board on November 5, 2012, pursuant to the request of the applicants for appeal of the Zoning Administrator's decision that a hospice facility is allowed in the Commercial Forest Agriculture (CFA) zoning district. The properties are identified by TMS# 140-00-01-031 and 140-00-01-052; and, are located at 3341 Wildhorse Drive in the Conway area of Horry County. 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 applicants are appealing the Zoning Administrator's decision that a hospice house is an allowed use in the Commercial Forest Agriculture (CFA) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

The applicants and the zoning administrator were given the opportunity to offer witnesses and exhibits and to make argument for the record. A public hearing was held and all interested parties were invited to comment before the Board.

Under the South Carolina Code of Laws 6-29-800 (B), an appeal may be requested provided the following requirements are met: Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the ... county. The appeal must taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided,

the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

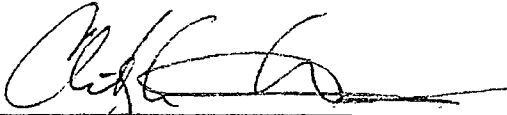
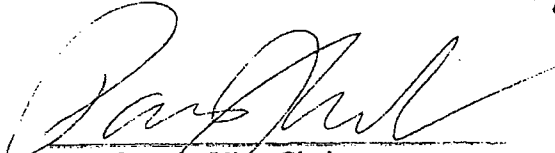
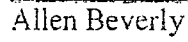
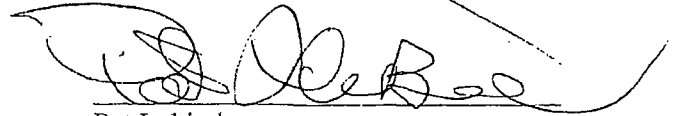
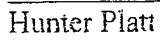
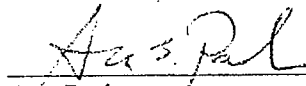
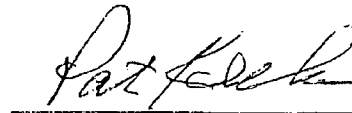
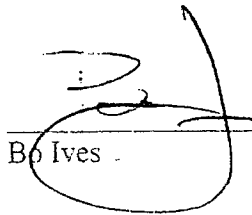
FINDINGS OF FACT

1. The properties are identified by TMS# 140-00-01-031 and 140-00-01-052; and, are located at 3341 Wildhorse Drive in the Conway area of Horry County. The properties are zoned Commercial Forest Agriculture (CFA).
2. The applicants are appealing the Zoning Administrator's decision that a hospice house is an allowed use in the CFA zoning district.
3. **Article IV, Section 436.1** defines "Permanent overnight resident group care homes" as "A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include half-way houses; recovery homes; and, homes for orphans, foster children, the elderly, battered children and women. **It could also include a specialized treatment facility providing less than primary health care.**"
4. **Article IV, Section 447.1** defines a "Nursing Home" as an "extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves."
5. **Article VII, Section 703. Commercial Forest/Agricultural (CFA)** [Section 703.2 states: "(N) Permanent overnight residential group care homes, nursing homes, provided that..." (continues with a list of conditional requirements).
6. The property in question is owned by Mercy Care and is located off Hwy 90. The property is zoned CFA and the proposed use of the site is a hospice house.
7. The applicants state that the proposed hospice house is a hospital and therefore should not be allowed.
8. The applicants are appealing the decision of the Zoning Administrator and are requesting the decision to be overturned by the Board.

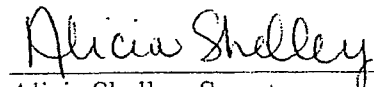
CONCLUSIONS OF LAW

The Board **upholds the interpretation of the Zoning Ordinance** by the Zoning Administrator as set forth in Horry County Code § 1404 (A) and S.C. Code Ann. §6-29-800. Therefore, **the appeal is denied and the decision stands.**

AND IT IS SO ORDERED, this 5th day of November, 2012.


Christopher Hanna, Chairman
Pam Creech, Vice-Chairman
Allen Beverly
Pat Lebedz
Hunter Platt
Ace Parker
Pat Keelan
Bo Ives

ATTEST:


Alicia Shelley, Secretary

TO THE CHAIRMAN OF THE HORRY COUNTY ZONING BOARD OF APPEALS:

I, Allen Beverly, member of the Horry County Zoning Board of Appeals, hereby recuse myself from Case Number 2012-10-003 at the November 5th, 2012, meeting of said Board for the following reason(s) under the South Carolina Ethics Act:

my wife works at Mercy Care Hospice
who is a party in the case.

I also hereby request that, pursuant to said Act, this statement be entered into the minutes of the above-referenced meeting to become part of the record thereof, and that my above-noted disqualification, including the reasons for it, be noted in said minutes.

Allen Beverly Jr.
 Member, Zoning Board of Appeals

11-5-12
 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Fayrell Furr and Karole Jensen,)
)
 Appellants,)
)
 v.)
)
 Horry County Zoning Board of)
 Appeals,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-26-9291

**ORDER REVERSING HORRY
 COUNTY ZONING BOARD OF
 APPEALS**

FILED
 HORRY COUNTY
 2013 MAY - 1 PM 2:03
 MELANIE HUGGINS-WARD
 CLERK OF COURT

I. INTRODUCTION

This matter came before the Court for a hearing on February 28, 2013 in Conway, South Carolina. The Appellants, Fayrell Furr and Karole Jensen, challenge a decision by the Horry County Zoning Board of Appeals (hereinafter "Zoning Board") affirming the Zoning Administrator's finding that a hospice facility was a permissive use in the Commercial Forest Agricultural ("CFA") Zoning District. For the reasons set forth below, the Court finds for the Appellants and reverses the decision of the Zoning Board.

II. FACTUAL AND PROCEDURAL BACKGROUND

Appellants reside in a home at 3740 Indigo Run, Conway, South Carolina, also known as the Wildhorse Subdivision. This subdivision of approximately forty homes borders the Waccamaw River and has an entrance off of South Carolina Highway 90. Mercy Hospice intends to build a fourteen bed inpatient hospice facility at 3341 Wildhorse Drive, Conway, South Carolina, with the entrance to Mercy Hospice located inside the Wildhorse Subdivision, as the proposed hospice site has no direct access to Highway 90. This proposed site for the facility is directly adjacent to

Appellants' property. Appellants have challenged the proposed facility on the basis that a hospice facility does not constitute a permissive use in the CFA Zoning District.

After their challenge was rejected by the Zoning Administrator, Appellants then appeared before the Horry County Zoning Board of Appeals on November 5, 2012 (Case No. 2012-10-003) for a hearing. The Board upheld the Zoning Administrator's opinion. In reaching its decision, recognizing that the zoning scheme for Horry County does not define nor mention "hospice facilities," the Zoning Board analogized a hospice facility to permanent overnight resident group care homes and nursing homes. The Zoning Board concluded that an inpatient hospice facility would fit the definition of a permanent overnight resident group care home or a nursing home, rendering the hospice facility a permissive use in the CFA Zoning District.

JMB
2 Thereafter, Appellants timely filed their appeal in this Court pursuant to S.C. Code Ann. § 6-29-830(a) and S.C. Code Ann. § 6-29-825, *et seq.* A required mediation was held without resolution between the parties on February 21, 2013. In their appeal, Appellants maintain that it was an error of law for the Zoning Administrator and the Zoning Board to analogize the hospice facility to a permanent overnight resident group care home or nursing home, and as a result, to conclude that such a facility constituted a permissive use within a CFA Zoning District.

III. STANDARD OF REVIEW

It is well established in South Carolina that circuit courts have appellate authority to review decisions of zoning boards. When reviewing the decisions of zoning boards, however, the Court must uphold factual findings made by the Board if there is any evidence in the record to support those findings. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000). In reviewing the legal issues raised by Appellants in this case, the Court may "determine only whether the decision of the Board is correct as a matter

of law.” *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004).

For the reasons set forth below, the Court finds for Appellants and reverses the decision of the Board, finding that the decision is based upon an error of law.

IV. DISCUSSION

Among various other permissive uses, the CFA Zoning District explicitly permits permanent overnight resident group care homes and nursing homes. See Horry Cnty. Zoning Ordinances, Art. VII, § 703.2. The Horry County Zoning Ordinances define the terms “permanent overnight resident group care home” and “nursing home” as follows:

Permanent overnight resident group care homes. A facility or dwelling unit housing persons unrelated by blood or marriage and operating a group family household. A Group Care Home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care. *Id.*, Art. IV, § 436.1.

Nursing home. An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. *Id.*, Art. IV, § 447.1.

As stated previously, there is no Horry County zoning ordinance that defines the term “hospice facility” or “hospice,” nor addresses whether it is allowed in a CFA Zoning District. Consequently, the Court deems it appropriate to look to the definitions of hospice as defined by the South Carolina General Assembly under Licensure of Hospitals and the Hospice Licensure Act:

(3) “**Hospice**” means a centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. The inpatient services include, but at not

limited to, services provided by hospice in a licensed hospice facility.¹

In reviewing the above definitions, the Court concludes that the term "hospice facility" cannot be properly analogized with either "permanent overnight resident group care home" or "nursing home." Specifically, the sophistication and level of care, including the provision of primary medical care if needed, required in a hospice facility is greater than that of both permanent overnight resident group care homes and nursing homes. A hospice facility provides supportive and palliative health care to patients at the end of their lives. In addition, a doctor's order is required for admission to a hospice facility in South Carolina. See S.C. Code Ann. § 44-71-20(4). Testimony provided by Dr. Preston Strosnider, Medical Director at Conway Medical Center, at the November 5, 2012 hearing before the Zoning Board also indicates that the services planned to be offered at the proposed hospice facility are much more substantial than what would be anticipated in a permanent overnight resident group care home or nursing home: nurses available for assistance; doctors making rounds; and medical staff available on a 24/7 basis. Patients at a hospice facility require more complex care including narcotic drug and pain therapies necessitating direct medical oversight. See Testimony of Dr. Preston Strosnider.

In contrast, there is no similar requirement that a patient obtain an order from a licensed physician before admission to a permanent overnight resident group care home or nursing home. Furthermore, the definitions outlined in the zoning ordinances envisage a lower level of care and treatment than that of a hospice facility. For example, individuals in a nursing home are there for convalescent or chronic care and not for specialized end of life care. Only a hospital and a hospice facility require physicians to supervise the care and treatment of the patients while an inpatient in those facilities. See S.C. Code Ann. R. 61-78.504.

¹ S.C. Code Ann. § 44-71-20(3).

The Court finds that the Zoning Board has impermissibly expanded the definitions within its zoning ordinances to permit the hospice facility in a CFA zone. This expanded definition is inconsistent with Horry County's own zoning scheme, which specifically contains zones for medical facilities. *See* Horry Cnty. Zoning Ordinances, Art. VII, §§ 740, 741. The analogies used by the Zoning Board to permit the hospice facility are not supported by state law. Finally, just by the common understanding of the purposes for which hospice facilities exist, it is clear that these operations are more akin to a medical facility than a group home or even a nursing home.

A zoning scheme is a plan of limitation. Thus, in the absence of a pre-existing specific definition for a hospice facility within the Horry County zoning regulations that contemplates and includes the medical operations permitted therein, and then specifically permits such a facility to be located within a CFA Zoning District, the Board cannot analogize among other non-related permissive uses in such a way as to expand the locations where a hospice facility may be located.

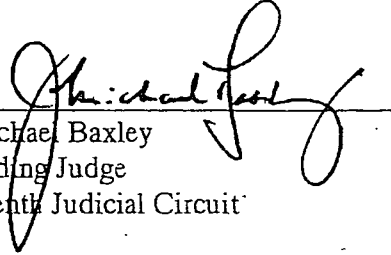
During the course of this appeal, the Court had the opportunity to view the proposed hospice site with counsel. While technically not an issue on appeal, the Court would be remiss in failing to comment that, while there seems to be an economic development push by County authorities to support the building of this hospice facility, the chosen location is not a good one, completely inconsistent with the current use of that location, which while zoned CFA, is clearly a residential neighborhood. More importantly, the proposed facility's lack direct access to Highway 90 is a significant impediment to the function of the proposed facility. The brick entrance columns and roads within the Wildhorse subdivision are narrow, and there is no plan or consensus to alter them. Lack of Highway 90 access is a substantial infrastructure deficiency that creates a

tremendous logistical problem for emergency responders. This is particularly true where multiple infirm residents are intended to live communally, and where the passage of seconds may make the difference in saving lives and property.

V. CONCLUSION

IT IS ORDERED that the decision of the Horry County Zoning Board of Appeals is reversed and that the Court finds as a matter of law, for the reasons stated above, that a hospice facility cannot be permitted in the Commercial Forest Agricultural ("CFA") Zoning District as such district is currently defined and promulgated within the Horry County zoning scheme.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge
Fifteenth Judicial Circuit

April 24, 2013

Hartsville, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-26-09291

FAYRELL FURR

HORRY COUNTY ZOING BOARD OF APPEALS

PLAINTIFF(S)

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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ 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: APPELANT'S MOTION TO STAY IS GRANTED FOR 30 DAYS FROM TODAY'S DATE.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

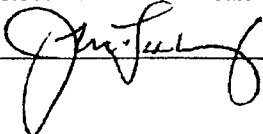
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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



Judge Code

2121

Date

2/5/13

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:

GENE M CONNELL

MARY RUTH BRITTAIN

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2012-CP-26-

Fayrell Furr and Karole Jensen)

Appellants,)

vs.)

Horry County Zoning Board of Appeals,)

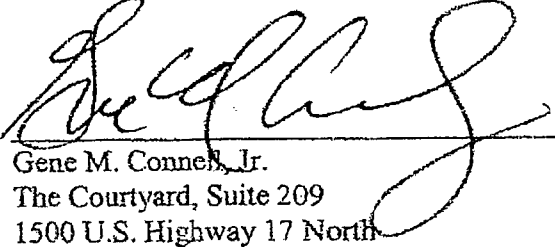
Respondent.)

NOTICE OF APPEAL

FILED
HORRY COUNTY
2012 DEC -3 AM 10:56
KELAHUE HIGGINS-WARD
CLERK OF COURT

The Appellants, Fayrell Furr and Karole Jensen, hereby appeal the decision of the Horry County Zoning Board of Appeals dated November 5, 2012 (Case No. 2012-10-003).

KELAHUE, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
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1500 U.S. Highway 17 North
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Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

November 30, 2012
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2012-CP-26-

Fayrell Furr and Karole Jensen)
)
 Appellants,)
)
 vs.)
)
 Horry County Zoning Board of Appeals,)
)
 Respondent.)

PETITION PURSUANT TO
S.C. CODE ANN. § 6-29-830(A)

FILED
HORRY COUNTY
2012 DEC -3 AM 10:56
JULIANE HUGHES-WARD
CLERK OF COURT

The Appellants, Fayrell Furr and Karole Jensen, give notice that they appeal and petition the ruling of the Horry County Zoning Board of Appeals dated November 5, 2012 (Case No. 2012-10-003) pursuant to S.C. Code Ann. § 6-29-840(A) and S.C. Code Ann. § 6-29-825. Further Appellants request a pre-litigation mediation pursuant to S.C. Code Ann. § 6-29-820. Also, pursuant to S.C. Code Ann. § 6-29-825, Appellants request at least one person be present from the Horry County Zoning Board of Appeals.

The Appellants appeal the ruling of the Horry County Zoning Board of Appeals on the following grounds:

1. The opinion finding a hospice is not a hospital is contrary to existing statutory and case law.
2. The opinion finding a hospice is an appropriate facility in a Commercial Forest Agriculture District (CFA) zoning district is contrary to existing statutory and case law.
3. The opinion finding a hospice is not primary health care is erroneous, the error being people go to hospice for medical care just like a hospital.
4. The opinion finding that a hospice is a permanent overnight resident group care home is erroneous in that a hospice is a hospital.

5. The Horry County Zoning Board of Appeals acted arbitrarily in finding a hospice was not a hospital.

6. The decision of the Horry County Zoning Board of Appeals is an abuse of discretion and error of law.

7. The decision of the Horry County Zoning Board of Appeals violates S.C. Code Ann. § 44-7-130 which defines hospital and which encompasses a hospice. See S.C. Code Title § 44-71-20.

8. The decision of the Horry County Zoning Board of Appeals violates S.C. DHEC regulation 61-16 which finds a hospice is a hospital.

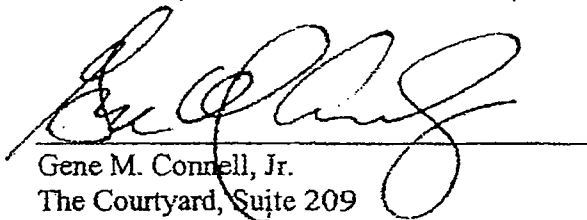
9. The decision of the Horry County Zoning Board of Appeals allowing a hospital/hospice with 24 hour medical care creates a nuisance *per se*.

10. The decision allowing the hospice to use Wild Horse Road, a residential street, is a traffic hazard as a matter of law.

11. The decision of the Horry County Zoning Board of Appeals is erroneous as a matter of law as a hospice is a hospital as defined in S.C. Code Ann. § 44-7-130 (12).

12. The decision of the Horry County Zoning Board of Appeals is erroneous in that the term hospice is not found in the zoning ordinance as per the testimony of the Zoning Administrator at the hearing.

KELAHER, CONNELL & CONNOR, P.C.

A handwritten signature in black ink, appearing to read "Gene M. Connell, Jr.", is written over a horizontal line.

Gene M. Connell, Jr.
The Courtyard, Suite 209
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Attorney for Appellants

November 30, 2012
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

In re: Fayrell Furr & Karole Jensen)
_____)

**BEFORE THE BOARD OF
ZONING APPEALS**
Case No.: 2012-10-003

ORDER OF THE BOARD

FILED
HORRY COUNTY
2012 DEC - 5 AM 10:56
MELANIE HUGHES-MAHAR
CLERK OF COURT

Hearing was held before this Board on November 5, 2012, pursuant to the request of the applicants for appeal of the Zoning Administrator's decision that a hospice facility is allowed in the Commercial Forest Agriculture (CFA) zoning district. The properties are identified by TMS# 140-00-01-031 and 140-00-01-052; and, are located at 3341 Wildhorse Drive in the Conway area of Horry County. 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 applicants are appealing the Zoning Administrator's decision that a hospice house is an allowed use in the Commercial Forest Agriculture (CFA) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

The applicants and the zoning administrator were given the opportunity to offer witnesses and exhibits and to make argument for the record. A public hearing was held and all interested parties were invited to comment before the Board.

Under the South Carolina Code of Laws 6-29-800 (B), an appeal may be requested provided the following requirements are met: Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the ... county. The appeal must taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided,

the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

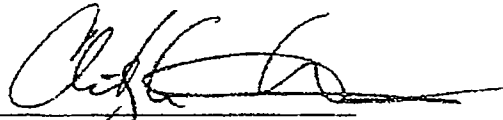
FINDINGS OF FACT

1. The properties are identified by TMS# 140-00-01-031 and 140-00-01-052; and, are located at 3341 Wildhorse Drive in the Conway area of Horry County. The properties are zoned Commercial Forest Agriculture (CFA).
2. The applicants are appealing the Zoning Administrator's decision that a hospice house is an allowed use in the CFA zoning district.
3. **Article IV, Section 436.1** defines "Permanent overnight resident group care homes" as "A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include half-way houses; recovery homes; and, homes for orphans, foster children, the elderly, battered children and women. **It could also include a specialized treatment facility providing less than primary health care.**"
4. **Article IV, Section 447.1** defines a "Nursing Home" as an "extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves."
5. **Article VII, Section 703. Commercial Forest/Agricultural (CFA)** [Section 703.2 states: "(N) Permanent overnight residential group care homes, nursing homes, provided that..." (continues with a list of conditional requirements).
6. The property in question is owned by Mercy Care and is located off Hwy 90. The property is zoned CFA and the proposed use of the site is a hospice house.
7. The applicants state that the proposed hospice house is a hospital and therefore should not be allowed.
8. The applicants are appealing the decision of the Zoning Administrator and are requesting the decision to be overturned by the Board.

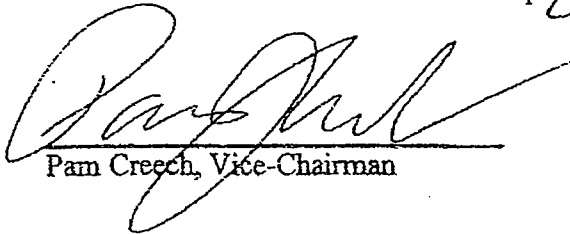
CONCLUSIONS OF LAW

The Board upholds the interpretation of the Zoning Ordinance by the Zoning Administrator as set forth in Horry County Code § 1404 (A) and S.C. Code Ann. §6-29-800. Therefore, the appeal is denied and the decision stands.

AND IT IS SO ORDERED, this 5th day of November, 2012.



Christopher Hanna, Chairman



Pam Creech, Vice-Chairman

Allen Beverly

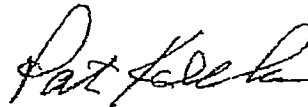


Pat Lebiecz

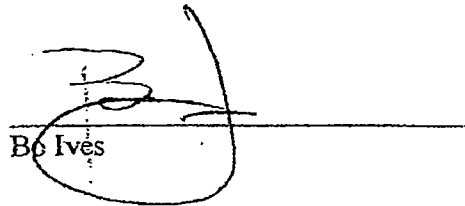
Hunter Platt



Ace Parker

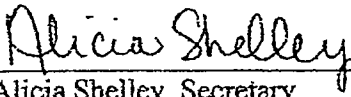


Pat Keelan



Bo Ives

ATTEST:



Alicia Shelley, Secretary

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO.: 2012-CP-26-09291

Fayrell Furr and Karole Jensen,
Appellants,

vs.

Horry County Zoning Board of
Appeals,
Respondent.

ANSWER OF THE RESPONDENT

FILED
HORRY COUNTY
2012 DEC 20 PM 2:33
MELANIE HUGGINS-WARD
CLERK OF COURT

This Respondent, Horry County Zoning Board of Appeals ("Horry County or this Respondent"), by way of return to the Notice of Appeal and Petition of the Appellants herein, would show unto this Honorable Court as follows.

FOR A FIRST DEFENSE

1. Each and every allegation of the Petition not admitted or explained herein are denied.
2. Respondent denies the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Petition.

FOR A SECOND DEFENSE

3. This Respondent realleges the allegations of Paragraphs 1 through 2 above as fully as if set forth herein verbatim.
4. Appellants' Notice of Appeal fails to state a claim upon which relief may be granted and therefore should be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE

5. This Respondent realleges the allegations of Paragraphs 1 through 4 above as fully as if set forth herein verbatim.

6. The Horry County Zoning Board of Appeals' decision in this matter should be affirmed because it is supported by the record evidence.

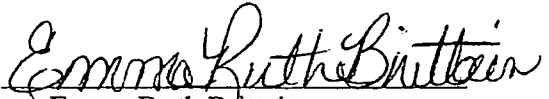
FOR A FOURTH DEFENSE

7. This Respondent realleges the allegations of Paragraphs 1 through 6 above as fully as if set forth herein verbatim.

8. The decision of the Horry County Zoning Board of Appeals in this matter should be affirmed because it is reasonably related to a lawful purpose, is not arbitrary or capricious, and the Board has not abused its discretion in its decision in this matter.

WHEREFORE, having fully answered the allegations of the Notice of Appeal and Petition herein, Respondent requests that judgment be entered in its favor affirming the November 5, 2012, Order of the Horry County Zoning Board of Appeals, a copy of which is attached hereto and for such other and further relief as may be just and proper.

THOMAS & BRITTAIN, P.A.

By: 
 Emma Ruth Brittain
 S.C. Bar #5298
 P.O. Box 1290
 Myrtle Beach, SC 29578
 Phone: (843) 692-2628
 Fax: (843) 692-0928
*Attorneys for the Defendant Horry
 County Zoning Board of Appeals*

December 19, 2012

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2012-CP-26-9291

Fayrell Furr and Karole Jensen)
)
Appellants,)

vs.)

Horry County Zoning Board of Appeals,)
)
Respondent.)

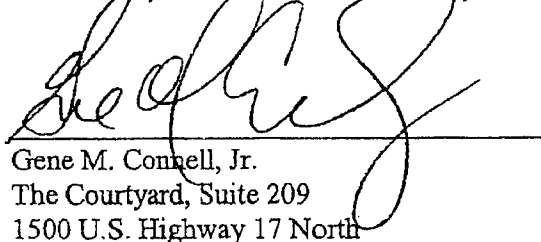
NOTICE OF MOTION AND
MOTION TO STAY

TO: THE RESPONDENT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned moves the Court for an Order staying the execution of the Order of the Horry County Zoning Board of Appeals pursuant to S.C. Code § 6-29-830(B).

WHEREFORE, Appellants request this Court issue its Order of Stay and for such other and further relief as this Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellants

December 6, 2012

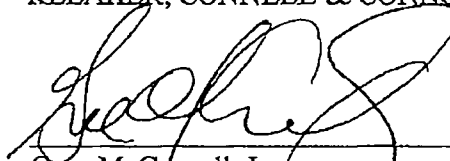
Surfside Beach, South Carolina

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- ___ A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- ___ B. Such consultation would serve no useful purpose, or could not be timely held; or
- ✓ ___ C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- ___ a. To Dismiss
- ___ b. For Summary Judgment
- ___ c. For New Trial
- ___ d. For Judgment NOV

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
 The Courtyard, Suite 209
 1500 U.S. Highway 17 North
 Post Office Drawer 14547
 Surfside Beach, South Carolina 29587-4547
 (843) 238-5648 (phone)
 (843) 238-5050 (facsimile)
 gconnell@classactlaw.net
 Attorney for Appellants

December 6, 2012
 Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Fayrell Furr and Karole Jensen,

Appellant,

vs.

Horry County Zoning Board of Appeals,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-8652

NOTICE OF MOTION AND MOTION TO
INTERVENE**TO: GENE M. CONNELL, JR., ESQ., Attorney for Appell CD CONTENTS ant; and
EMMA RUTH BRITAIN, ESQ., Attorney for Respondent**

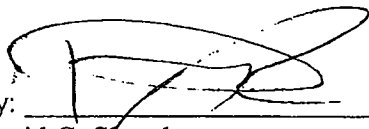
YOU WILL PLEASE take notice that the proposed Intervenor, Mercy Care, pursuant to Rule 24(a) of the South Carolina Rules of Civil Procedure, respectfully moves this Circuit Court for an Order permitting Mercy Care to intervene in this appellate proceeding as it claims an interest relating to the property and zoning issues which are the subject of this action and it is so situated that the disposition of this matter may, as a practical matter, impair or impede its ability to protect its interest. In addition, Mercy Care pursuant to Rule 24(b) of the South Carolina Rules of Civil Procedure, further respectfully moves this Circuit Court for an Order permitting it to intervene in this appellate proceeding in that the claims and interests of Mercy Care have common questions of law and fact in common with this matter.

The grounds for this Motion are that Horry County Zoning Board of Appeals ruled that Mercy Care's proposed construction of an inpatient hospice house is permitted under the Horry County Zoning Ordinance. Appellants filed this action seeking to overturn the decision of the Horry County Zoning Board of Appeals. As such, Mercy Care has an interest in this action as this Court will make a determination as to whether Horry County Zoning Board of Appeals'

decision is supported any evidence such that Mercy Care can construct its inpatient hospice house. In addition, Appellants filed a Motion to Stay which will prevent Horry County from issuing any construction permits to Mercy Care until this appeal is decided by this Honorable Court.

This motion will be supported by the pleadings in this case, the applicable law and any memorandum of law submitted to the Court.

Date: February 28, 2013

By: 
David C. Slough
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Telephone: (843) 213.5411
Fax (843) 213-5414

Attorneys for Mercy Care

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable J. Michael Baxley, Circuit Court Judge

Civil Action No.: 2012-CP-26-09291

RECEIVED
CLERK OF COURT
13 MAY 24 PM 1:28
HORRY COUNTY

Horry County Zoning Board of Appeals Appellant

vs.

Fayrell Furr and Karole Jensen Respondents

NOTICE OF APPEAL

Appellant Horry County Zoning Board of Appeals appeals the Order of the Honorable J. Michael Baxley, dated April 24, 2013. Appellant received written notice of entry of this Order on May 7, 2013. A copy of the Order is attached to this Notice as Exhibit A.

May 23, 2013

Other Counsel of Record:
Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587
Attorney for the Respondents

Respectfully submitted,



Emma Ruth Brittain
Thomas & Brittain, P.A.
Post Office Box 1290 (zip 29578)
1314 Professional Drive (zip 29577)
Myrtle Beach, South Carolina
Telephone: 843-692-2628
Fax: 843-692-0928
E-mail: erbrittain@myrlaw.com
Attorneys for the Appellant

EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Fayrell Furr and Karole Jensen,)

Appellants,)

v.)

Horry County Zoning Board of)
Appeals,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-26-9291

**ORDER REVERSING HORRY
COUNTY ZONING BOARD OF
APPEALS**FILED
HORRY COUNTY
2013 MAY -1 PM 2:03
MELANIE HUGGINS-WARD
CLERK OF COURT**I. INTRODUCTION**

This matter came before the Court for a hearing on February 28, 2013 in Conway, South Carolina. The Appellants, Fayrell Furr and Karole Jensen, challenge a decision by the Horry County Zoning Board of Appeals (hereinafter "Zoning Board") affirming the Zoning Administrator's finding that a hospice facility was a permissive use in the Commercial Forest Agricultural ("CFA") Zoning District. For the reasons set forth below, the Court finds for the Appellants and reverses the decision of the Zoning Board.

II. FACTUAL AND PROCEDURAL BACKGROUND

Appellants reside in a home at 3740 Indigo Run, Conway, South Carolina, also known as the Wildhorse Subdivision. This subdivision of approximately forty homes borders the Waccamaw River and has an entrance off of South Carolina Highway 90. Mercy Hospice intends to build a fourteen bed inpatient hospice facility at 3341 Wildhorse Drive, Conway, South Carolina, with the entrance to Mercy Hospice located inside the Wildhorse Subdivision, as the proposed hospice site has no direct access to Highway 90. This proposed site for the facility is directly adjacent to

Appellants' property. Appellants have challenged the proposed facility on the basis that a hospice facility does not constitute a permissive use in the CFA Zoning District.

After their challenge was rejected by the Zoning Administrator, Appellants then appeared before the Horry County Zoning Board of Appeals on November 5, 2012 (Case No. 2012-10-003) for a hearing. The Board upheld the Zoning Administrator's opinion. In reaching its decision, recognizing that the zoning scheme for Horry County does not define nor mention "hospice facilities," the Zoning Board analogized a hospice facility to permanent overnight resident group care homes and nursing homes. The Zoning Board concluded that an inpatient hospice facility would fit the definition of a permanent overnight resident group care home or a nursing home, rendering the hospice facility a permissive use in the CFA Zoning District.

gmb
2 Thereafter, Appellants timely filed their appeal in this Court pursuant to S.C. Code Ann. § 6-29-830(a) and S.C. Code Ann. § 6-29-825, *et seq.* A required mediation was held without resolution between the parties on February 21, 2013. In their appeal, Appellants maintain that it was an error of law for the Zoning Administrator and the Zoning Board to analogize the hospice facility to a permanent overnight resident group care home or nursing home, and as a result, to conclude that such a facility constituted a permissive use within a CFA Zoning District.

III. STANDARD OF REVIEW

It is well established in South Carolina that circuit courts have appellate authority to review decisions of zoning boards. When reviewing the decisions of zoning boards, however, the Court must uphold factual findings made by the Board if there is any evidence in the record to support those findings. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000). In reviewing the legal issues raised by Appellants in this case, the Court may "determine only whether the decision of the Board is correct as a matter

of law.” *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004).

For the reasons set forth below, the Court finds for Appellants and reverses the decision of the Board, finding that the decision is based upon an error of law.

IV. DISCUSSION

Among various other permissive uses, the CFA Zoning District explicitly permits permanent overnight resident group care homes and nursing homes. *See* Horry Cnty. Zoning Ordinances, Art. VII, § 703.2. The Horry County Zoning Ordinances define the terms “permanent overnight resident group care home” and “nursing home” as follows:

Permanent overnight resident group care homes. A facility or dwelling unit housing persons unrelated by blood or marriage and operating a group family household. A Group Care Home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care. *Id.*, Art. IV, § 436.1.

Nursing home. An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. *Id.*, Art. IV, § 447.1.

As stated previously, there is no Horry County zoning ordinance that defines the term “hospice facility” or “hospice,” nor addresses whether it is allowed in a CFA Zoning District. Consequently, the Court deems it appropriate to look to the definitions of hospice as defined by the South Carolina General Assembly under Licensure of Hospitals and the Hospice Licensure Act:

(3) “**Hospice**” means a centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. The inpatient services include, but at not

limited to, services provided by hospice in a licensed hospice facility.¹

In reviewing the above definitions, the Court concludes that the term "hospice facility" cannot be properly analogized with either "permanent overnight resident group care home" or "nursing home." Specifically, the sophistication and level of care, including the provision of primary medical care if needed, required in a hospice facility is greater than that of both permanent overnight resident group care homes and nursing homes. A hospice facility provides supportive and palliative health care to patients at the end of their lives. In addition, a doctor's order is required for admission to a hospice facility in South Carolina. See S.C. Code Ann. § 44-71-20(4). Testimony provided by Dr. Preston Strosnider, Medical Director at Conway Medical Center, at the November 5, 2012 hearing before the Zoning Board also indicates that the services planned to be offered at the proposed hospice facility are much more substantial than what would be anticipated in a permanent overnight resident group care home or nursing home: nurses available for assistance; doctors making rounds; and medical staff available on a 24/7 basis. Patients at a hospice facility require more complex care including narcotic drug and pain therapies necessitating direct medical oversight. See Testimony of Dr. Preston Strosnider.

In contrast, there is no similar requirement that a patient obtain an order from a licensed physician before admission to a permanent overnight resident group care home or nursing home. Furthermore, the definitions outlined in the zoning ordinances envisage a lower level of care and treatment than that of a hospice facility. For example, individuals in a nursing home are there for convalescent or chronic care and not for specialized end of life care. Only a hospital and a hospice facility require physicians to supervise the care and treatment of the patients while an inpatient in those facilities. See S.C. Code Ann. R. 61-78.504.

¹ S.C. Code Ann. § 44-71-20(3).

The Court finds that the Zoning Board has impermissibly expanded the definitions within its zoning ordinances to permit the hospice facility in a CFA zone. This expanded definition is inconsistent with Horry County's own zoning scheme, which specifically contains zones for medical facilities. See Horry Cnty. Zoning Ordinances, Art. VII, §§ 740, 741. The analogies used by the Zoning Board to permit the hospice facility are not supported by state law. Finally, just by the common understanding of the purposes for which hospice facilities exist, it is clear that these operations are more akin to a medical facility than a group home or even a nursing home.

A zoning scheme is a plan of limitation. Thus, in the absence of a pre-existing specific definition for a hospice facility within the Horry County zoning regulations that contemplates and includes the medical operations permitted therein, and then specifically permits such a facility to be located within a CFA Zoning District, the Board cannot analogize among other non-related permissive uses in such a way as to expand the locations where a hospice facility may be located.

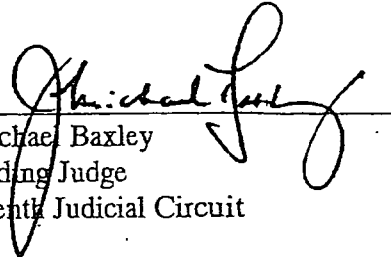
During the course of this appeal, the Court had the opportunity to view the proposed hospice site with counsel. While technically not an issue on appeal, the Court would be remiss in failing to comment that, while there seems to be an economic development push by County authorities to support the building of this hospice facility, the chosen location is not a good one, completely inconsistent with the current use of that location, which while zoned CFA, is clearly a residential neighborhood. More importantly, the proposed facility's lack direct access to Highway 90 is a significant impediment to the function of the proposed facility. The brick entrance columns and roads within the Wildhorse subdivision are narrow, and there is no plan or consensus to alter them. Lack of Highway 90 access is a substantial infrastructure deficiency that creates a

tremendous logistical problem for emergency responders. This is particularly true where multiple infirm residents are intended to live communally, and where the passage of seconds may make the difference in saving lives and property.

V. CONCLUSION

IT IS ORDERED that the decision of the Horry County Zoning Board of Appeals is reversed and that the Court finds as a matter of law, for the reasons stated above, that a hospice facility cannot be permitted in the Commercial Forest Agricultural ("CFA") Zoning District as such district is currently defined and promulgated within the Horry County zoning scheme.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge
Fifteenth Judicial Circuit

April 24, 2013

Hartsville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF HORRY) CIVIL ACTION NO.: 2012-CP-26-09291 _

Fayrell Furr and Karole Jensen)
)
 Plaintiffs,)
)
 vs.)
)
 Horry County Zoning Board of Appeals)
)
 Defendants.)
 _____)

**TRANSMITTAL OF CERTIFIED
RECORD ON APPEAL**

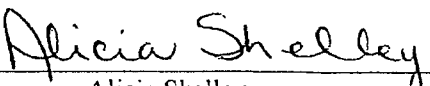
Horry County
 12 DEC -5 AM 8:03
 CLERK OF COURT

AFFIDAVIT OF ALICIA SHELLEY

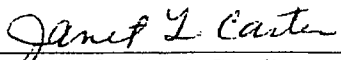
PERSONALLY APPEARED BEFORE ME, Alicia Shelley, who being duly sworn deposes and states as follows:

I serve as Secretary to the Horry County Board of Zoning Appeals (Board). I keep and maintain all records of the Board. I hereby certify that the documents attached hereto constitute the complete record of the Board in the above captioned case. I further certify that the attached copies are true and correct copies of those records.

FURTHER THE DEPONENT SAITH NOT.


 Alicia Shelley

Sworn to before me this 4th
 day of December, 2012


 Notary Public for South Carolina

My Commission Expires: Jan 15, 2013

**HORRY COUNTY
PLANNING & ZONING DEPARTMENT**

1301 Second Avenue
Conway, South Carolina 29526



(843) 915-5340
(843) 205-5340
FAX (843) 915-6340

November 6, 2012

Fayrell Furr and Karole Jensen
3740 Indigo Run
Conway, SC 29526

91 7199 9991 7032 0155 1264

Re: Case #2012-10-003

Dear Applicant(s):

This is to confirm that the Horry County Zoning Board of Appeals, at its regularly scheduled meeting on November 5, 2012 denied your request for a variance, special exception, reconsideration or appeal. The Board order pertaining to the request is attached.

Should you choose to appeal the Boards decision at the circuit court level, you have thirty (30) days from the date of this letter to file the appeal.

I hope the information provided is sufficient for your needs. If you need further assistance, please do not hesitate to call me at (843) 915-5340.

Sincerely,

Alicia Shelley
Board Secretary

Attachment

00001

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

**BEFORE THE BOARD OF
 ZONING APPEALS**
 Case No.: 2012-10-003

In re: Fayrell Furr & Karole Jensen)
)
 _____)

ORDER OF THE BOARD

Hearing was held before this Board on November 5, 2012, pursuant to the request of the applicants for appeal of the Zoning Administrator's decision that a hospice facility is allowed in the Commercial Forest Agriculture (CFA) zoning district. The properties are identified by TMS# 140-00-01-031 and 140-00-01-052; and, are located at 3341 Wildhorse Drive in the Conway area of Horry County. 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 applicants are appealing the Zoning Administrator's decision that a hospice house is an allowed use in the Commercial Forest Agriculture (CFA) zoning district and is asking the Board to reverse the determination of the Zoning Administrator.

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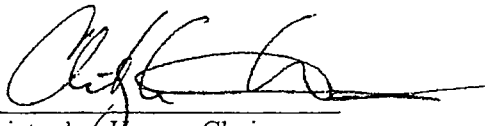
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6. The property in question is owned by Mercy Care and is located off Hwy 90. The property is zoned CFA and the proposed use of the site is a hospice house.
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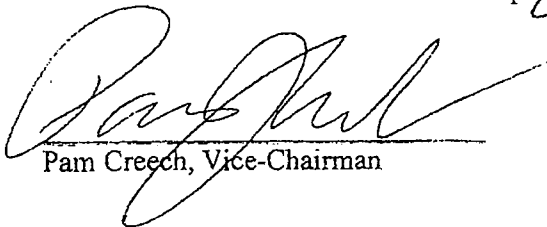
CONCLUSIONS OF LAW

The Board **upholds the interpretation of the Zoning Ordinance** by the Zoning Administrator as set forth in Horry County Code § 1404 (A) and S.C. Code Ann. §6-29-800. Therefore, **the appeal is denied and the decision stands.**

AND IT IS SO ORDERED, this 5th day of November, 2012.



Christopher Hanna, Chairman



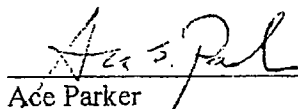
Pam Creech, Vice-Chairman

Allen Beverly

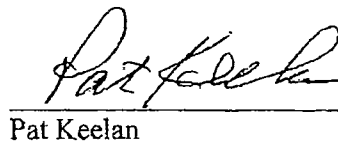


Pat Lebiecz

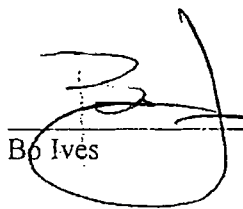
Hunter Platt



Ace Parker

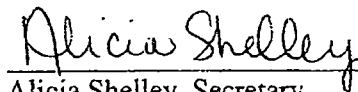


Pat Keelan



Bo Ives

ATTEST:



Alicia Shelley, Secretary

TO THE CHAIRMAN OF THE HORRY COUNTY ZONING BOARD OF APPEALS:

I, Allen Beverly, member of the Horry County Zoning Board of Appeals, hereby recuse myself from Case Number 2012-10-003 at the November 5th, 2012, meeting of said Board for the following reason(s) under the South Carolina Ethics Act:

my wife works at Mercy Care Hospice
who is a party in the case.

I also hereby request that, pursuant to said Act, this statement be entered into the minutes of the above-referenced meeting to become part of the record thereof, and that my above-noted disqualification, including the reasons for it, be noted in said minutes.

Allen Beverly Jr.
 Member, Zoning Board of Appeals

11-5-12
 Date

Case # 2012-10-003

00007

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STAFF REVIEW VARIANCE CASE # 2012-10-003

Applicant: Fayrell Furr and Karole Jensen
TMS #: 140-00-01-031 and 140-00-01-052
Location: 3341 Wildhorse Drive, Conway
Zoned: Commercial Forest Agriculture (CFA)

Request: The applicants are appealing the Zoning Administrator's decision that a Hospice House is an allowed use in the Commercial Forest Agriculture (CFA) 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 Hospice House is allowed in the Commercial Forest Agriculture (CFA) zoning district.

Article IV 436.1

Permanent overnight resident group care homes:

A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. **It could also include a specialized treatment facility providing less than primary health care.**

703. Commercial Forest/Agricultural (CFA)

Article VII, Section 703.2

(N) Permanent overnight residential group care homes, nursing homes, provided that;
 (continues with a list of conditional requirements)

Background/Site Conditions

The property in question is owned by Mercy Care and is located off of Highway 90. The property is zoned Commercial Forest Agriculture (CFA). The proposed use of the site is for a Hospice House.

On September 21, 2010, Resolution No. R-103-10 was approved by Horry County Council stating support for a proposed multi-phased hospice facility to be located on a parcel of land of approximately 22 acres off of Highway 90. On May 3, 2011, a letter was issued from the Planning and Zoning Department confirming that the proposed hospice house and the associated accessory buildings and structures are permitted uses provided that the conditional requirements are met. On July 30, 2012, commercial plans for Mercy Hospice House were submitted to Horry County and are currently under review for compliance and issuance of permit/s.

The applicants state that the proposed Hospice House is a hospital and are appealing the Zoning Administrator's interpretation of the Zoning Ordinance to allow the hospice house in the CFA zoning district.

Article VII, Section 703 of the Horry County Zoning Ordinance states that permanent overnight residential group care homes are allowed as a conditional use in the CFA zoning district. The zoning ordinance definition of a permanent overnight resident group care home includes a **specialized treatment facility providing less than primary health care.**

The state defines Hospice care and a Hospice facility as follows:

Hospice: A centrally administered, interdisciplinary healthcare program, which provides a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family or responsible party, including but not limited to home, outpatient and inpatient services provided directly or through written agreement. Inpatient services include, but are not limited to, services provided by a hospice in a licensed hospice facility.

Hospice Facility: An institution, place or building licensed by the Department to provide room, board, and appropriate hospice care on a 24-hour basis to individuals requiring such care pursuant to the orders of a physician.

It is the determination of the Zoning Administrator that the proposed Mercy Hospice House meets the definition of a permanent overnight group care home as defined in Article IV, Section 436.1 of the Horry County Zoning Ordinance and is a permitted use in the Commercial Forest Agriculture (CFA) zoning district provided certain specified conditions are met.

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.

FIGURE 6

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

RESOLUTION NO. R-103-10**A RESOLUTION IN SUPPORT OF MERCY CARE'S HOSPICE HOUSE PROJECT ON HWY 90.**

WHEREAS Mercy Care is embarking on a mission to build a hospice facility project in Horry County which will serve both Horry and Marion counties; and,

WHEREAS a hospice house is a multi-bed inpatient facility in which patients with 2 weeks left to live are cared for around the clock to make sure they are comfortable and pain free; and,

WHEREAS a parcel of land of approximately 22 acres has been identified off of Hwy 90, and negotiations have begun to purchase the land in order to build a multi-phased hospice facility with Phase One consisting of a 14 bed hospice house at around 30,000 square feet; and

WHEREAS a hospice house is staffed with various medical related employees and staff will consist of nurses, doctors, certified nursing assistants, chaplains, social workers, staff supervisors, as well as other support staff which may include food service, facilities maintenance personnel and site security; and,

WHEREAS wages for the majority of staff should be well above the average salaries for both Horry and Marion counties; and,

WHEREAS the services provided by Mercy Hospice serve the public interest and are greatly needed; and,

WHEREAS Mercy Hospice is applying for a grant through the USDA for Rural Development, and has requested a letter from Horry County Council signifying support for the project and the fact that the project will have no adverse impact on any other facilities.

NOW THEREFORE, Horry County Council believes that the project will have no adverse impact on any other facilities and hereby states its support for this project.

AND IT IS SO RESOLVED.

This 21st Day of September, 2010

00010

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Post Office Box 50640

Myrtle Beach, South Carolina 29579

Your Non-profit, Hometown Hospice

Rennie Mincey
 Horry County Planning & Zoning Dept.
 Government & Justice Center
 1301 Second Ave
 Conway, SC 29526

Re: Zoning Letter Request

We respectfully request a Zoning Letter for purposes of a Certificate of Need application for the two adjoining parcels referenced below that we are in the process of purchasing for our hospice house facility:

MS# 140-00-01-031 Hucks JC (19.48 Acres)

MS# 140-00-01-052 Hucks JC (1.60 Acres)

It is our understanding that at this time both parcels are zoned:

703. Commercial Forest/Agriculture (CFA)

It is also our understanding that at this time a hospice house and associated accessory buildings and structures are allowed in CFA as a conditional use 703.2 (N) provided that the zoning conditions are met. The project underwent a preliminary sketch zoning review last year and as per the below referenced section of the zoning code:

**703.2 Conditional Uses.* The following uses shall be permitted on a conditional basis in any Commercial Forest/Agricultural District:

(N) Permanent overnight residential group care homes, nursing homes, provided that:

* from Horry County Zoning Code

1-6 applicable conditions to be met.

The CON application requires:

"Evidence that the site will be (is) properly zoned for the proposed project."

If you concur with the above please indicate the zone of the two adjoining parcels as well as the allowed use for our hospice house project in the Zoning Letter.

Sincerely,

Tom Badurski, M.Ed
 Director of Special Projects
 Mercy Care

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**Planning & Zoning
Department**

1301 2nd Ave. Ste. 1D-09
Conway, SC 29526



Phone: 843-915-5340
843-205-5340

Fax: 843-915-6340

www.horrycounty.org

May 3, 2011

Mr. Tom Badurski, Director of Special Services
Mercy Care
P. O. Box 50640
Myrtle Beach, SC 29579

RE: TMS # 140-00-01-031 and 052

Dear Mr. Badurski:

Per the Horry County Official Zoning Maps, TMS# 140-00-01-031 and 052 is zoned Commercial Forest Agriculture (CFA). The CFA zoning district allows commercial and residential uses, such as detached single family site built, modular and manufactured housing. It also allows conditional uses such permanent overnight residential group care homes, nursing homes, and private educational facilities such as day cares, pre-schools or nurseries. Therefore, the proposed use of a hospice house and the associated accessory buildings and structures are permitted uses provided that the conditions are met.

At this time, the property is undeveloped. Development of the property will require review and approval by Horry County of the proposed development plans. At the time of review, staff will determine whether the proposed use is in compliance with the "Zoning Ordinance" and "Land Development Regulations".

Should you require additional information regarding the CFA zoning district, a complete copy of the Horry County Zoning Ordinance is available online via Municode.com. The zoning ordinance is "Appendix B". The CFA information is located in Article VII, Section 703; and the conditions are listed in Section 703.2 (N). If you have any difficulties accessing the regulations online at Municode.com, call and we will be glad to assist you.

If you have any questions in regard to this matter, please contact me at (843) 915-7891.

Sincerely,

Cynthia Thorpe
Senior Planner

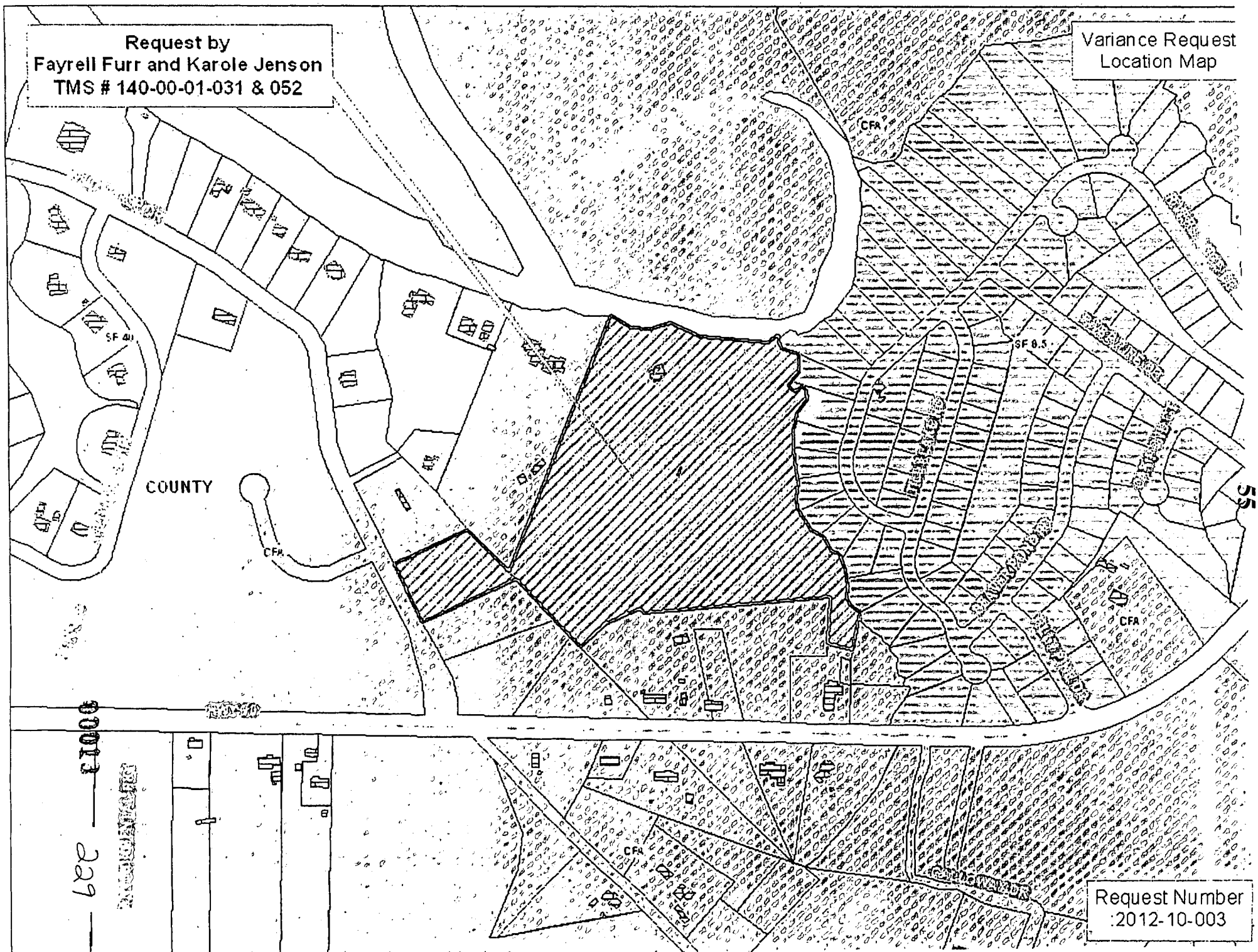
c: file

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Request by
Fayrell Furr and Karole Jenson
TMS # 140-00-01-031 & 052

Variance Request
Location Map



Request Number
2012-10-003

2012-10-003

2012-10-003

Request by
Fayrell Furr and Karole Jenson
TMS # 140-00-01-031 & 052

Variance Request
Location Map

003 Aerial

230

Request Number
:2012-10-003

003 Site



003 Neighbor



003 Wild Horse Dr facing Hwy 90



59

233

003 Wild Horse DK facing away from Hwy 90



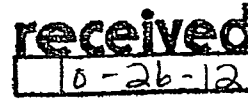
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Case 2012-10-003

Waccamaw River Farms, LLC
PO Box 1968
Murrells Inlet, South Carolina 29576

October 25, 2012



Horry County Planning & Zoning Department
Attention: Zoning Administrator
PO Box 1236
Conway, South Carolina 29526

Case Number: 2012-10-003
Property: 3341 Wildhorse Drive, Conway, South Carolina

To Whom It May Concern:

As the owner of the property (TMS 139-00-02-028) across the street from the above subject property, we have no objections to the Zoning Administrators decision to allow a Hospice House on this property as the zoning district allows.

Sincerely,

Ron Dendy, Manager
Waccamaw River Farms, LLC

00019

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Handout 7

Horry County
Zoning Board of Appeals
Exhibit # 2012-10-003
Received 11/2/12



Waccamaw RIVERKEEPER®
A Program of Winyah Rivers Foundation
c/o Coastal Carolina University
Center for Marine & Wetland Studies
P.O. Box 261954
(290 Allied Drive)
Conway, SC 29528-6054
843-349-4007, wrk@coastal.edu
www.winyahrivers.org



November 2, 2012

Franklin G. Daniels, J.D., L.L.M.
Nexsen Pruet, LLC
Attorneys and Counselors at Law
1101 Johnson Avenue
Suite 300
Myrtle Beach, SC 29577

Dear Mr. Daniels,

Re: Mercy Care Hospice's Proposed Site on Hwy 90 in Conway

I was advised by Mr. Tom Badurski with Mercy Care of an appeal in front of the Horry County Board of Zoning Appeals regarding the proposed siting for the Mercy Care Hospice off of Hwy 90 in Conway and the statements made regarding the potential for impacts on the Waccamaw River.

As a result of this appeal, I contacted Horry County Stormwater and Horry County Planning and Zoning to inquire about the current plans.

From these discussions, I learned the following regarding the proposed plans for the site:

- the infiltration system is designed to capture stormwater runoff up to a 10-yr storm;
- stormwater runoff from a 25-yr storm would be captured by the level pool spreader proposed in the current plan;
- the proposed design minimizes impervious area by limiting the capacity to 14 rooms and preserving much of the open/wooded space on the site;
- the current Tree Removal Plan includes required protections of live oak trees;
- the Tree Removal Plan also includes protection of other on-site trees and includes the maintenance of a buffer along the property line and along the wetland line.

Winyah Rivers Foundation is a 501(c)(3) not for profit organization.
We are a proud member of WATERKEEPER® Alliance.



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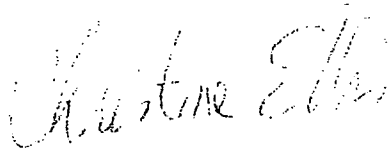
Therefore, I understand the following:

1. that the proposed design exceeds the minimum requirements for stormwater capture, incorporating some Low Impact Development techniques that includes infiltration of stormwater on site resulting in any pollutants being filtered and biologically processed on site;
2. that the proposed design exceeds the minimum requirements for tree protection and proposes to protect other species of trees in addition to live oak and maintain tree buffers along the property line and the wetland line.

The appeal also contains a statement about the potential for impact to the local beaver population. I am not aware of how this proposed project will impact the local beaver population but note that guidance regarding beaver management and control is available at the South Carolina Department of Natural Resources website (<http://www.dnr.sc.gov/wildlife/beaver/beaver.html>) and provides information for landowners on what they can do in South Carolina. In Horry County, flooding issues caused by beaver dams are handled through the Road and Drainage Hotline to determine appropriate steps to take.

Based on the information summarized above, I am supportive of the proposed plans that Mercy Care has for the property located off on Hwy 90 on the Waccamaw River, applaud them for incorporating Low Impact Development practices for infiltrating stormwater on site and for their tree protection plans, and do not believe that the proposed hospice facility will have a negative impact on the water quality of the Waccamaw River.

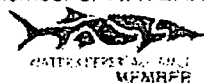
Sincerely,



Christine Ellis
Waccamaw RIVERKEEPER®
A Program of Winyah Rivers Foundation

Cc: Janet Carter, Planning Director, Horry County
Tom Garigen, Stormwater Manager

Winyah Rivers Foundation is a 501(c)(3) not for profit organization.
We are a proud member of WATERKEEPER® Alliance.



00021

Handout 7

Case #2012-10-003

447. Nursing Homes.

One licensed by the State of South Carolina.

447.1 Nursing home:

An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves

(Ord. No. 35-94, § 1, 5-17-94)

PLANNING & ZONING DEPT
1301 2nd Avenue Room 1D 09
Conway, SC 29526



Phone: (843) 915-5340
Fax: (843) 915-6341

October 18, 2012

Fayrell Furr and Karole Jensen
3740 Indigo Run
Conway, SC 29526

91 7199 9991 7032 0155 1462

Re: Case #2012-10-003

To Whom It May Concern:

The Horry County Zoning Board of Appeals will hold a public hearing on **Monday, November 5, 2012 at 5:30 p.m.** in the Horry County Government Complex, located at 1301 2nd Avenue, Multi-Purpose Room B, Conway, South Carolina. The purpose of the meeting is to consider your variance, special exception, reconsideration, or appeal request.

It is recommended that either the property owner(s) or authorized agent(s) representing the property owner(s) attend this meeting to explain the request and answer any questions from the Board.

If you cannot attend the meeting, please contact our office to make arrangements to defer or withdraw your request.

If you have any questions or concerns regarding the meeting, please contact me at 915-5340.

Sincerely,

Alicia Shelley
Board Secretary

00023

PLANNING & ZONING DEPARTMENT
1301 2nd Avenue Room 1 D 09
Conway, SC 29526



Phone: (843) 915-5340
Fax: (843) 915-6341

HORRY COUNTY BOARD OF ZONING APPEALS

October 18, 2012

TO THE PROPERTY OWNERS:

The Board of Appeals is acting upon variations or modifications of the Zoning Ordinance, or appeals from action taken by the Zoning Administrator, hears all such cases at public hearings at which neighboring property owners and other interested persons have a right to be heard.

If the appeal as stated below is thought by you to be objectionable, you will have an opportunity to fully express your objection.

If it is inconvenient to appear at the hearing, file your objection by letter to the address below:

Horry County Planning & Zoning Department
Attention: Zoning Administrator
P. O. Box 1236
Conway, SC 29526
(843) 915-5340

YOU ARE BY THIS LETTER NOTIFIED THAT THE MATTER STATED BELOW WILL BE HEARD AT A PUBLIC HEARING BY THE BOARD OF ZONING APPEALS

DATE OF HEARING:	November 5, 2012
TIME:	5:30 PM
CASE NUMBER:	2012-10-003
APPELLANT:	Fayrell Furr and Karole Jensen
PROPERTY AFFECTED:	3341 Wildhorse Drive, Conway
SUBJECT OF APPEAL:	The applicants are appealing the Zoning Administrator's decision that a Hospice House is allowed in the Commercial Forest Agriculture (CFA) zoning district.
LOCATION OF HEARING:	Horry County Government Complex located at 1301 2 nd Avenue, Conference Room 2C08-B, Conway, South Carolina

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2012-10-003
Fayrell Furr and Karole Jensen

1401901057 ANDERSON BROTHERS BANK	PO BOX 279	NORTH MYRTLE BEACH	SC	29597
1401901135 BARBIER DEANE	33 RAINBOW DR	LAKE ARIEL	NY	18436
1401901044 BELDEN TERRY ALEXANDER ETAL	2136 BEAR GRASS RD W	LONGS	SC	29568
1400004057 BELLAMY ELIZABETH H & THEODIS	3750 HIGHWAY 90	CONWAY	SC	29526
1250002005 BOULINEAU FRANK V III	PO BOX 3190	NORTH MYRTLE BEACH	SC	29582
1401901052 CABANAW MARY M	715 N MYRTLE DR	SURFSIDE BEACH	SC	29575
1401901151 D R HORTON INC	4073 BELLE TERRE BLVD	MYRTLE BEACH	SC	29579
1400001030 DAVIS EDNA ETAL	442 SCHUYLKILL AVE	READING	PA	19601
1400001029 DEAS ONETTAH ETAL	3735 HIGHWAY 90	CONWAY	SC	29526
1400001023 DUKE AARON ARTHUR JR	2040 GRAY OAKS DR	CONWAY	SC	29526
1401901159 EAMER JERRY L ETAL	644 BEAVER POND RD	CONWAY	SC	29526
1400001048 FURR O FAYRELL JR TRUSTEE	3740 INDIGO RUN	CONWAY	SC	29526
1400004002 GALLOWAY BETHEA	3704 HIGHWAY 90	CONWAY	SC	29526
1400004076 GALLOWAY CLARENCE SR	2201 HIGHWAY 90	CONWAY	SC	29526
1400001027 GALLOWAY DOCK L ETAL	3790 GALLOWAY DR	CONWAY	SC	29526
1400001026 GALLOWAY LOU HEIRS AT LAW	3704 HIGHWAY 90	CONWAY	SC	29526
1401901155 GIRARDIN TIMOTHY B & SHARON J	853 TILLY LAKE RD	CONWAY	SC	29526
1390003106 GORE LINDA B & SHERRILL MCKNIGHT	3825 JAMES PL	LITTLE RIVER	SC	29566
1400001038 HENDERSON JAMES D & LINDA R	3719 INDIGO RUN	CONWAY	SC	29526
1400004009 HIRSCH ETHEL M	5815 COUNTRY CLUB DR	MYRTLE BEACH	SC	29577
1520001032 HORRY COUNTY SOLID WASTE AUTH INC	PO BOX 1664	CONWAY	SC	29528
1401901157 HUBBE RAYMOND E JR ETAL	3714 LAMBSON RD	MIDDLE RIVER	MD	21220
1400001042 HUGHES ELLA & HOWARD	3735 HIGHWAY 90	CONWAY	SC	29526
1400004056 HUGHES MICHAEL & PAMELA	3764 HIGHWAY 90	CONWAY	SC	29526
1401901132 MENGULERTI VIRGINIA S ETAL	1035 YELLOW JASMINE DR	LONGS	SC	29568
1400001031 MERCY CARE	8216 DEVON CT	MYRTLE BEACH	SC	29572
1401901150 MILLER RONALD A ETAL	829 TILLY LAKE RD	CONWAY	SC	29526
1401901142 MORDINO JEFFREY J ETAL	41 CAMPVILLE RD	NORTHFIELD	CT	6778
1401901154 NYKAMP DWAYNE L JR & CYNTHIA T	201 WEST 4TH STREET	WALNUT COVE	NC	27052
1392101001 OSBORNE MELANIE S	1457 CONGRESS RD	EASTOVER	SC	29044
1400004108 PIERCE JANE	1088 MICHIGAN DR APT B	HARRISBURG	PA	17111
1400001053 PRYOR CECELIA ETAL	1806 MAPLE AVE	CONWAY	SC	29527
1401901049 RIVER'S EDGE PLANTATION LLC	402 66TH AVE N	MYRTLE BEACH	SC	29572
1401901056 RIVER'S EDGE PLANTATION POA INC	PO BOX 31178	MYRTLE BEACH	SC	29588

45

00025

2012-10-003

Fayrell Furr and Karole Jensen

1401901039 SFG-SC LLC	900 AUSTIN AVE STE 1101	WACO	TX	76701
1400001054 SMALLS MARY G	PO BOX 328	GEORGETOWN	SC	29442
1400004005 SMITH ALVIN C	3722 HIGHWAY 90	CONWAY	SC	29526
1400001033 SMITH SHIRLEY B	3722 HIGHWAY 90	CONWAY	SC	29526
1401901047 STATHOS SAM G ETAL	PO BOX 15669	SURFSIDE BEACH	SC	29587
1401901045 TIRONDOLA GUY	1239 STANDISH RD	TOMS RIVER	NJ	8753
1400001082 TRUEVINE MISSIONARY BAP CHURCH TR	3765 HIGHWAY 90	CONWAY	SC	29526
1400001051 TYLER ANNIE BELL	3301 WILDHORSE DR	CONWAY	SC	29526
1401901055 VROOMAN DEBORAH A TRUSTEE	902 HART STREET	CONWAY	SC	29526
1401901051 VUOTTO ARLENE & ANGELO	193 RIVERS EDGE DR	CONWAY	SC	29526
1390002028 WACCAMAW RIVER FARMS LLC	PO BOX 1968	MURRELLS INLET	SC	29576

00026

Horry County, South Carolina

Planning and Zoning Department

1301 2nd Avenue Ste. 1D-09

Conway, SC 29526

Telephone: 843-915-5340

RECEIPT

Invoice Number:	INV-9-12-343185
Invoice Date:	Thursday, September 20, 2012
Plan Case:	Appeals, AP-9-12-11734

Fee Name	Fee Type	Fee Amount
Appeal Application Fee	Fixed	\$200.00
Total Fees Due:		\$200.00

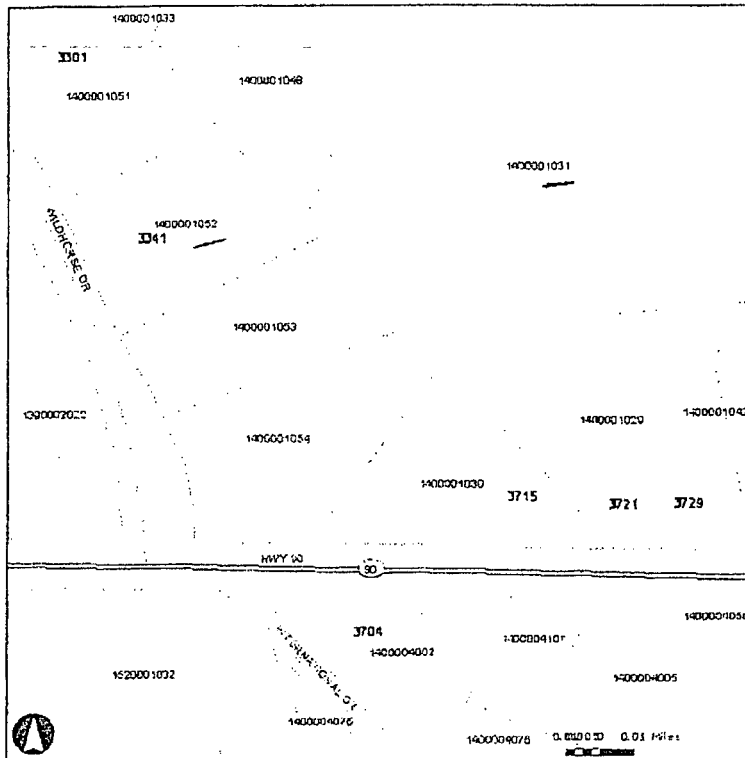
PAYMENTS

Date	Pay Type	Check Number	Amount Paid	Change	Memo
09/20/2012	Check	1608	\$200.00	\$0.00	Zoning appeals application TMS#140-00-01-031&052 for Fayrett and Karole Furr
			Total Paid:	\$200.00	

Total Due:	\$0.00

00027

Map



Parcels
 Limited Access Highway
 Highways
 Major Road

Roads
 Addresses
 Parcel Tie Lines
 TMS Numbers

Parcels
 County Boundary

1400001052 (1)

SHAPE.OBJECTID	TMS	PARCELTYPE	ONAME	MADD	CITY	STATE	Zip	DIST	LOT	CONDO	LABEL	MAPSUBBLOCK	PIN	FacilityID	RE_acres	RE_lots	DeedBook	DeedPage	SetDi
Polygon 684645	1400001052.2		MERCY CARE CT	8216	MYRTLE BEACH	SC	29572	100	TR	Null		3630803	36308030002	28929	1.6	0	3517	1401	5/2/20

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Applicant Submittal

00029

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9-20-12
BOARD OF ZONING APPEALS APPLICATION

Date Filed Sept. 19, 2012 Request # 2012-10-003 energov # AP-9-12-11734

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: (Property Owner or Designated Agent) Fayrell Furr & Kristi Jensen

PROPERTY ADDRESS: 3740 Indigo Rd, Wildhorse, Conway, SC

Tax Map No. 140 - 00 - 01 - 031 + Zoning District: CFA

Subdivision: Wildhorse 052 Acreage: 20

PROPERTY OWNER(S) NAME (S) Dr. Jody Prince Fayrell Furr

Address: 3740 Indigo Rd

Telephone: 843-626-7624 (Work) 843-432-4250 (Home) ffurr@remedialmedicalpractice.com (E-mail)

X O. Fayrell Furr

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 ☐
County Council District	<u>#10 Jody Prince</u>		
Business ID#	_____	Business License Permit #	_____

Pam Thompson
 Signature of Zoning Administrator/Assistant Z.A./Deputy Planning Director

DATE

00030

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APPEAL FROM DECISION OF THE ZONING ADMINISTRATOR

The Board of Zoning Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination by the Zoning Administrator.

Article(s) _____ Section(s) _____

To the best of your ability explain how the aforementioned applies to your request (may include attachments):

see attachment

Applicant/Agent hereby certifies that the information provided in this application is correct and there are no covenants or deed restrictions in place that would prohibit this request.

Applicant's Signature

(If in LLC or Corp. name please provide authorization to sign)

Date

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Horry County
Zoning Board of Appeals
Exhibit # 2012-18-003
Received 10/5/12

Horry County Zoning Board of Appeals

October 5, 2012

Karole K. Jensen
3740 Indigo Run
Wildhorse
Conway, South Carolina 29526
843-448-9294 Ofc/843-902-9950 Cell
karole@sccoast.net

SUPPLEMENTAL
OUTLINE OF ISSUES

- Issue #1: Increased Traffic
- Issue #2: A Hospital does not fit a residential neighborhood
- Issue #3: Problems created in neighborhood, community and overall quality of life
- Issue #4: Environmental impact, Waccamaw River issues
- Issue #5: Site an industrial dump
- Issue #6: Helicopter ambulance services contracted by Mercy Hospice should not be in a residential neighborhood.
- Issue #7: Certificate of Need has expired.
- Issue #8: Oaks and other protected trees on site.
- Issue #9: Location initially submitted appeared to be Highway 90, in fact, within Wildhorse Subdivision
- Issue #10: SC DHEC Audit of Mercy Hospice reflected problem with records, May, 2012.

Horry County Zoning Board of Appeals

September 19, 2012

Fayrell Furr, Jr., Esq.

3740 Indigo Run

Wildhorse

Conway, South Carolina 29526

843-626-7621 Ofc/843-283-7621 Cell

ffurr@scmedicalmalpractice.com

Issue #1: The subject property is zoned CFA which does not allow a hospital to be built. The Zoning Administrator ruled that a Hospice House is like a nursing home and is allowed under CFA. S C Code of Laws, Title 44-7-130 defines a hospital as:

12. "Hospital" means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.

Hospital may include residential treatment facilities for children and adolescents in need of mental health treatment, which are physically a part of a licensed psychiatric hospital. This definition does not include facilities which are licensed by the Department of Social Services.

Licensure of Hospice Programs, Title 44-71-20, is defined,

3. "Hospice" means a centrally administered, interdisciplinary health care program. This program must provide a continuum of medically supervised palliative and supportive care for terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. Inpatient services include, but are not limited to, services provided by a hospice in a licensed hospice facility.

Admission to a hospice program of care is based on the voluntary request of the hospice patient alone or in

conjunction with designated family members.

4. "Hospice facility" means an institution, place, or building in which a license hospice provides room, board, and appropriate hospice services on a 24-hour basis to individuals requiring hospice care pursuant to the orders of a physician.

See attached from S C Code of Laws.

Regulation No. 61-16, DHEC, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries states:

1. General Hospital: A 'general hospital' is a facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for diagnosis, treatment and care of such persons over a period exceeding 24 hours and provides medical and surgical care of acute illness, injury or infirmity and may provide obstetrical care, and in which all diagnosis, treatment or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the state of S C.

2. Specialized Hospital: A "Specialized Hospital" is a facility which has an organized medical staff, maintains and operates organized facilities and services to accommodate two or more nonrelated persons for the diagnoses, treatment and/or care of such persons over a period exceeding 24 hours and which provides a specialized service for one type of care, such as tuberculosis, maternity, orthopedics, pediatrics, E.E.N.T., etc. and in which all diagnosis, treatment or care are under the direction of persons currently licensed to practice medicine and surgery in the State of S C

3. Institutional General Infirmary: An "institutional general infirmary" is a facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents or inmates with illness, injury or infirmity for a period exceeding 24 hours for the diagnosis, treatment and care of such persons and which provides medical, surgical and professional medical care, and in which all diagnosis, treatment and care are performed under the direction of

persons currently licensed to practice medicine and surgery in the State of S C.

4. Chronic Hospital: A "chronic hospital" is a facility which has an organized medical staff and provides skilled nursing and other services in facilities designed and equipped for diagnosis and treatment over a period exceeding 24 hours of two or more nonrelated persons who have chronic diseases. This includes a minimum, diagnostic, x-ray services, minor surgery, clinical laboratory and rehabilitation services if the licensee does not already operate these services in a physically attached facility.

Merriman-Webster Dictionary defines Hospital as

1. A charitable institution for the needy, aged, infirm, or young; 2. An institution where the sick and injured are given medical or surgical care; and

Concise Encyclopedia defines it as

Institution for diagnosing and treating the sick or injured, housing them during treatment, examining patients, and managing childbirth. . .Hospitals may be public, or private (profit making or not for profit)

See attached definitions

Clearly, a "Hospice House" is by definition a form of a "hospital" not a "nursing home" Therefore, the Zoning Administrator is wrong to allow a hospital to be built in a CFA and the Zoning Board of Appeals should reverse the Zoning Administrator and disallow this hospital to be built. This facility is to admit patients from area hospitals that have two weeks or less to live.

Issue #2: The Zoning Administrator should be reversed because allowing a hospital/24 hour medical care facility to be built right next to a residential area will create a nuisance to all the homeowners in the area from the noise of ambulances, helicopter ambulances and fire trucks that always accompany the call for an ambulance. It also will create a traffic nightmare for the members of Wildhorse subdivision because the hospital has no access to Highway 90 and must use the entrance to Wildhorse for access to the hospital property.

Issue #3: Ordinance 703.2 (A) 9, Commercial Forest/Agricultural District (CFA) says

Ingress and egress of vehicle traffic shall not create a hazard for traffic on an adjacent street;

Clearly, there is a substantial hazard within this peaceful subdivision. Wildhorse Drive, cannot handle that traffic without substantial upgrades.

Issue #4: The Zoning Administrator should be reversed because allowing a hospital/24 hour medical care facility to be built right next to a residential area will create a nuisance to all the homeowners in the area from the noise of ambulances, helicopter ambulances and fire trucks that always accompany the call for an ambulance. It also will create a traffic nightmare for the members of Wildhorse subdivision because the hospital has no access to Highway 90 and must use the entrance to Wildhorse for access to the hospital property.

The brick gate entrance to Wildhorse Drive may not accommodate the commercial vehicles that come with the construction and operation of a Hospital/Medical Facility. There is only a 16' clearance to arrive and depart Wildhorse subdivision. The brick entrance is designed to allow two single lanes of traffic that merge about 250' plus into a small dual lane just beyond the Mercy Hospice Hospital entrance. This is a County Road, but a narrow one. The brick entrance has been in place over 30 years.

Commercial traffic for fire trucks that can service such a development, need to have at least 22 feet. This is not possible with the current entrance to Wildhorse subdivision. The existing entrance does not comply with commercial traffic required for the proposed Mercy Hospice Development.

Issue #5: Traffic. Increased traffic inside Wildhorse for the construction and operation of this Hospital that operates 24 hours/day dramatically diminishes the peacefulness and enjoyment of this well established, residential neighborhood.

and other federal programs as may exist or be enacted which provide for the construction of hospitals or related health facilities.

(10) "Health care facility" means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, methadone treatment facilities, tuberculosis hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, habilitation centers for mentally retarded persons or persons with related conditions, and any other facility for which Certificate of Need review is required by federal law.

(11) "Health service" means clinically related, diagnostic, treatment, or rehabilitative services and includes alcohol, drug abuse, and mental health services for which specific standards or criteria are prescribed in the State Health Plan.

(12) "Hospital" means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.

Hospital may include residential treatment facilities for children and adolescents in need of mental health treatment which are physically a part of a licensed psychiatric hospital. This definition does not include facilities which are licensed by the Department of Social Services.

(13) "Nursing home" means a facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty-four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing intermediate or skilled nursing care for persons who are not in need of hospital care.

(14) "Facility for chemically dependent or addicted persons" means a facility organized to provide outpatient or residential services to chemically dependent or addicted persons and their families based on an individual treatment plan including diagnostic treatment, individual and group counseling, family therapy, vocational and educational development counseling, and referral services.

(15) "Person" means an individual, a trust or estate, a partnership, a corporation including an association, joint stock company, insurance company, and a health maintenance organization, a state, a political subdivision, or an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State.

CHAPTER 71

Licensure of Hospice Programs

- SEC.
- 44-71-10. Short title.
- 44-71-20. Definitions.
- 44-71-30. License for operation of hospice.
- 44-71-40. Application for license.
- 44-71-50. Fees.
- 44-71-60. Regulations.
- 44-71-65. Hospice to comply with department regulations; not subject to nursing home or community residential care facility licensure and regulation.
- 44-71-70. Authority to issue, deny, suspend or revoke licenses.
- 44-71-80. Annual inspections.
- 44-71-90. Discrimination prohibited.
- 44-71-95. Hospice services by health care facility.
- 44-71-100. Rebates, kickbacks and fee-splitting prohibited.
- 44-71-110. Penalties.

§ 44-71-10. Short title.

This chapter may be cited as the "Hospice Licensure Act".

HISTORY: 1983 Act No. 13 § 1.

§ 44-71-20. Definitions.

As used in this chapter:

(1) "Board" means the South Carolina Board of Health and Environmental Control.

(2) "Department" means the South Carolina Department of Health and Environmental Control.

(3) "Hospice" means a centrally administered, interdisciplinary health care program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. Inpatient services include, but are not limited to, services provided by a hospice in a licensed hospice facility.

Admission to a hospice program of care is based on the voluntary request of the hospice patient alone or in conjunction with designated family members.

(4) "Hospice facility" means an institution, place, or building in which a licensed hospice provides room, board, and appropriate hospice services on a twenty-four hour basis to individuals requiring hospice care pursuant to the orders of a physician.

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LICENSURE OF HOSPICE PROGRAMS

§ 44-71-65

(5) "Licensee" means the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the hospice or hospice facility.

HISTORY: 1983 Act No. 13 § 2; 2000 Act No. 248, § 4.

§ 44-71-30. License for operation of hospice.

No person, private or public organization, political subdivision, or other governmental agency may establish, conduct, or maintain a hospice or represent itself as a hospice without first obtaining a license from the department. This license is effective for a twelve-month period following the date of issue and must prescribe by county the geographic area authorized to be served. A license issued under this chapter is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this chapter.

HISTORY: 1983 Act No. 13 § 3.

§ 44-71-40. Application for license.

A person desiring to obtain a license must file with the department an application on a form prescribed, prepared, and furnished by the department.

HISTORY: 1983 Act No. 13 § 4.

§ 44-71-50. Fees.

The department is authorized to establish reasonable fees to be used in the administration of the program.

HISTORY: 1983 Act No. 13 § 5.

§ 44-71-60. Regulations.

The department shall promulgate regulations which define needs, services, and standards for the care, treatment, health, safety, welfare, and comfort of patients and their families served by hospices and for the maintenance and operation of hospices, including hospice facilities, which will promote safe and adequate care and treatment of the patients and their families.

HISTORY: 1983 Act No. 13 § 6; 2000 Act No. 248, § 5.

§ 44-71-65. Hospice to comply with department regulations; not subject to nursing home or community residential care facility licensure and regulation.

Notwithstanding any other provision of law, a hospice facility must comply with the regulations promulgated by the department pursuant to

§ 44-71-65

HEALTH

this chapter and is not subject to regulations pertaining to the licensure and regulation of nursing homes or community residential care facilities.

HISTORY: 2000 Act No. 248, § 1.

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§ 44-71-70. Authority to issue, deny, suspend or revoke licenses.

The department is authorized to issue, deny, suspend, or revoke licenses in accordance with regulations promulgated pursuant to this section. Such regulations must include hearing procedures related to denial, suspension, or revocation of licenses.

HISTORY: 1983 Act No. 13 § 7.

§ 44-71-80. Annual inspections.

Each hospice for which a license has been issued must be inspected by an authorized representative of the department at least once a year for the purpose of ensuring that the provisions of this chapter are being followed.

HISTORY: 1983 Act No. 13 § 8.

§ 44-71-90. Discrimination prohibited.

Hospices must not discriminate based on age, sex, race, color, religion, or source of payment, location of patient, acceptance or provision of goods and services to patients of potential patients.

HISTORY: 1983 Act No. 13 § 9.

§ 44-71-95. Hospice services by health care facility.

Nothing in this chapter may be construed to prohibit a health care facility from providing hospice services through contractual arrangements with a licensed hospice operation.

HISTORY: 2000 Act No. 248, § 2.

§ 44-71-100. Rebates, kickbacks and fee-splitting prohibited.

Hospices may not participate in, or offer, or imply an offer to participate in the practice known generally as rebate, kickbacks, or fee-splitting arrangements.

HISTORY: 1983 Act No. 13 § 10.

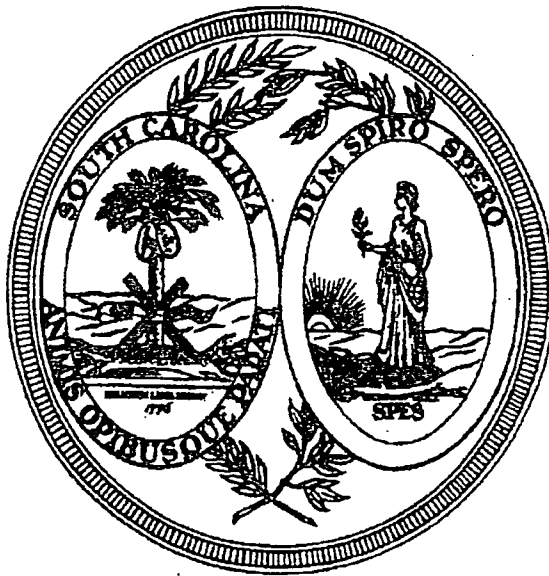
§ 44-71-110. Penalties.

Any person who violates the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be fined not to exceed five

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Regulation Number 61-16
Minimum Standards for Licensing Hospitals
and Institutional General Infirmaries



Promulgated by the Board of Health and Environmental Control

Administered by the Division of Health Licensing

Including Changes

Published in the *State Register*, Volume 16, Issue 4, April 24, 1992

Published in the *State Register*, Volume 26, Issue 4, April 26, 2002

This is a courtesy copy of Regulation R61-16

The official document is on record in the *State Register* and the S.C. Code Ann. (2002). This regulation is provided by DHEC for the convenience of the public. Every effort has been made to ensure its accuracy; however, it is not the official text. DHEC reserves the right to withdraw or correct this text if deviations from the official text as published in the *State Register* are found.

This copy was updated to correct or note typographical errors between
the *State Register* and the contents of this regulation on June 25, 2010.

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SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
REGULATION 61-16
MINIMUM STANDARDS FOR LICENSING HOSPITALS
AND INSTITUTIONAL GENERAL INFIRMARIES

PART I - ADMINISTRATION

CHAPTER 1 - DEFINITIONS AND INTERPRETATIONS

SECTION 101. DEFINITIONS:

For the purpose of these Standards, the following definitions shall apply:

A. The Department: The South Carolina Department of Health and Environmental Control.

B. Licensee: The "Licensee" is the individual with whom rests the ultimate responsibility for maintaining approved standards for the facility.

C. Patient: The term "patient" shall mean any individual who is being treated by a physician in a hospital.

D. Definition of Facilities: For administrative purposes, hospitals and institutional general infirmaries in S.C. which are subject to licensure laws as required by Section 44-7-310 [See Note] of the Code of Laws of South Carolina, of 1976, shall be defined and classified as follows:

[Note: This reference, as printed in the State Register, is incorrect. The correct reference is 44-7-260]

1. General Hospital: A "general hospital" is a facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment and care of such persons over a period exceeding 24 hours and provides medical and surgical care of acute illness, injury or infirmity and may provide obstetrical care, and in which all diagnoses, treatment or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of S.C.

2. Specialized Hospital: A "specialized hospital" is a facility which has an organized medical staff, maintains and operates organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment and/or care of such persons over a period exceeding 24 hours and which provides a specialized service for one type of care, such as tuberculosis, maternity, orthopedics, pediatrics, E.E.N.T., etc., and in which all diagnoses, treatment or care are under the direction of persons currently licensed to practice medicine and surgery in the State of S.C.

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3. Institutional General Infirmary: An "institutional general infirmary" is a facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents or inmates with illness, injury or infirmity for a period exceeding 24 hours for the diagnosis, treatment and care of such persons and which provides medical, surgical and professional nursing care, and in which all diagnoses, treatment and care are performed under the direction of persons currently licensed to practice medicine and surgery in the State of S.C.

4. Chronic Hospital: A "chronic hospital" is a facility which has an organized medical staff and provides skilled nursing and other services in facilities designed and equipped for diagnosis and treatment over a period exceeding 24 hours of two or more nonrelated persons who have chronic diseases. This includes, as a minimum, diagnostic x-ray services, minor surgery, clinical laboratory and rehabilitation services if the licensee does not already operate these services in a physically attached facility.

5. Public Health Centers: A "public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics and administrative offices operated in connection with such facilities.

6. Diagnostic and Treatment Centers: The term "diagnostic or treatment center" means a facility for the diagnosis and treatment of ambulatory patients (a) which is operated in connection with a hospital, or (b) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery within the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry within the State.

7. Rehabilitation Facilities: The term "rehabilitation facility" means a facility which is operated for the rehabilitation of disabled persons through an integrated program of: (a) medical evaluation services, and (b) psychological, social or vocational evaluation services, under competent professional supervision, and in the case of which, (c) the major portion of the required evaluation and services is furnished within the facility, and (d) either (1) the facility is operated in connection with a hospital, or (2) all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State of S.C.

8. Privately-Owned Educational Institutional Infirmary: The term "privately-owned educational institutional infirmary" within the scope of the Licensing Standards is defined as a privately owned college infirmary.

E. Designee: A physician, dentist, osteopath or podiatrist, who has staff privileges, selected by a prescriber to sign verbal orders for medication or treatment in the prescriber's absence.

F. Existing Facility: An "existing facility" is one which was in operation and/or one which began the construction or renovation of a building, for the purpose of operating the facility,

Merriam-Webster Dictionary

hos·pi·tal

noun, often attributive \ˈhäs-(,)pi-təl\

Definition of *HOSPITAL*

- 1: a charitable institution for the needy, aged, infirm, or young
- 2: an institution where the sick or injured are given medical or surgical care —usually used in British English without an article after a preposition
- 3: a repair shop for specified small objects <a clock *hospital*>

Origin of *HOSPITAL*

Middle English, from Anglo-French, from Medieval Latin *hospitale* hospice, guest house, from neuter of Latin *hospitalis* of a guest, from *hospit-*, *hospes*
First Known Use: 14th century

Rhymes with *HOSPITAL*

acquittal, a little, belittle, committal, Doolittle, in little, lickspittle, remittal, transmittal

hos·pi·tal

noun, often attrib \ˈhäs-,pit-əl\ (*Medical Dictionary*)

Medical Definition of *HOSPITAL*

- 1: a charitable institution for the needy, aged, infirm, or young
- 2a: an institution where the sick or injured are given medical or surgical care—when used in British English following a preposition, the article is usually omitted <came and saw me in *hospital*—Robert Graves>
- b: a place for the care and treatment of sick and injured animals

hospital

noun (*Concise Encyclopedia*)

Institution for diagnosing and treating the sick or injured, housing them during treatment, examining patients, and managing childbirth. Outpatients, who can leave after treatment, come in

for emergency care or are referred for services not available in a private doctor's office. Hospitals may be public (government-owned) or private (profit-making or not-for-profit); in most nations except the U.S., most are public. They may also be general, accepting all types of medical or surgical cases, or special (e.g., children's hospitals, mental hospitals), limiting service to a single type of patient or illness. However, general hospitals usually also have specialized departments, and special hospitals tend to become affiliated with general hospitals.

Horry County Zoning Board of Appeals

September 19, 2012

Karole K. Jensen
3740 Indigo Run
Wildhorse
Conway, South Carolina 29526
843-448-9294 Ofc/843-902-9950 Cell
karole@sccoast.net

This facility is to admit patients from area hospitals that have two weeks or less to live.

This expectation alone substantially increases the traffic (helicopters/ambulance/fire trucks etc).

In the Mercy Hospice certificate of need application, this hospital is to have 20,888 sq. ft with 5,000 sq. ft. for administration.

The following issues must be considered and addressed:

Issue #1: Increased traffic and danger to those traveling Highway 90 should be considered by the Appeals Review Board since Highway 90 has increasingly become more hazardous.

Attached is an article from the Sun News from several years ago, entitled, "Highway 90, Corridor of Death." (Figure 1) Since that time, more traffic has been added to Highway 90 and with that more wrecks and fatalities.

Attached is a summary brought from the S C Department of Transportation outlining wrecks on Highway 90 from 2008 until midyear of 2012. (Figure 2)

From these reports, I pulled wrecks and fatalities that occurred from the origination of Highway 90 at Business 501 in Conway to Highway 22 by identifying latitude and longitudes, along with intersections; and here is what the numbers show.

In addition, several weeks ago, there was a wreck near Altman Road and Highway 90 that tied up traffic in both directions for over 2 hours.

The increased commercial and industrial traffic should be considered when adding another commercial development to an already hazardous traffic condition.

Wildhorse Drive cannot handle that traffic without substantial upgrades.

Currently, Wildhorse Drive is a County Road; Wildhorse residents may want to evaluate transferring Wildhorse Drive to the subdivision.

This avenue could be pursued based upon the outcome at Myrtle Trace and Forest Lake Estates near Coastal Carolina University.

Issue #2: The Mercy Hospice Sketch Plan Review submitted to Horry County July 19, 2010 states that the proposed development includes a 14 bed facility, plus an additional 14 beds in Phase II. There's a notation on the application that it is for "Conditional Use - CFA" Attached to that are several sketches.

The sign Mercy Hospice erected on Highway 90 showed this two story, three section building. (Figure 3)

This hospital does not belong in our neighborhood. It should be near a hospital that is properly zoned.

As a matter of fact, a number of the hospices are adjacent to or a part of public hospitals in S C.

There may be some conflict with the letter from Cynthia Thorpe, Senior Planner at Horry County Planning and Zoning that CFA Zoning applies dated May 3, 2011

. . . It also allows conditional uses such (sic) permanent overnight residential group care homes, nursing homes, and private educational facilities such as day cares, pre-schools or nurseries. Therefore, the proposed use of a hospice house and the associated

accessory buildings and structures are permitted uses provided that the conditions are met.

Note that I did not receive a copy of this letter until after a meeting with the Horry Planning and Zoning; Councilman Jody Prince, Mercy Hospice representatives and members from Wildhorse and the local community on August 24, 2012 at the Horry County Planning Commission.

This particular meeting was held to have open discussion between the parties about this development. It was well attended and the issues thoroughly discussed.

We were not able to reach a resolution.

This was our first notification that staff approved this zoning; and we were clearly told by Ms. Janet Carter that staff 'would not' be changing their position.

Issue #3: Due to the expected increased level of noise, from construction until occupancy; the admitted increase in traffic within Wildhorse; environmental concerns on land and in the Waccamaw River; and danger to the protected trees; there should be a 'quiet zone' implemented from Tilley Swamp and throughout Wildhorse; and along Highway 90 where the church and farm animals need peace and quiet.

The brick gate entrance to Wildhorse Drive may not accommodate the commercial vehicles that come with the construction and operation of a Hospital/Medical Facility. Of the entrance and exit, being single lane, there is only a 16' clearance to arrive and depart Wildhorse subdivision. The entrance off of Highway 90 into Wildhorse is in three sections with the identifying horses in the middle section. This brick entrance is designed to allow two single lanes of traffic that merge about 250' plus into a small dual lane just beyond the Mercy Hospice Hospital entrance. This is a County Road, but a narrow one. The brick entrance has been in place over 30 years.

(See Figure 4 for picture of entrance.)

Issue #4: The Zoning Board of Appeals should also reverse

the Zoning Administrator because the hospital will be built on the banks of the Waccamaw River, creating the potential for pollution from storm water runoff from parking lots into the river and the potential for pollution of groundwater that provides water for the well used by the adjacent landowner, Fayrell Furr and Karole Jensen.

The Winyah Rivers Foundation is consistently concerned with negative environmental impacts, direct, indirect and cumulative on the Waccamaw River watershed; and are generally concerned with impacts on water quality and the functioning of natural waters and negative impacts on protected natural lands, including wetlands.

We oppose any road that will degrade water quality, impact on the quantity and quality of our wetlands, and/or harm the important conservation areas that serve as critical habitat for wildlife and offer significant ecological services such as maintaining water quality. As such, we advocate a policy of providing the highest level of protection for these critical areas. This is consistent with our mission 'to protect, preserve, monitor and revitalize the health of the lands and waters of the greater Winyah Bay watershed, focusing on local activism through the Waccamaw Riverkeeper Program.

Historically, a beaver dam exists just north of this property at the inlet from Tilley Lake and Tilley Swamp that flows into the Waccamaw River. There have been several beaver dams in the vicinity of the Mercy Hospice property. These beavers and the existing dam(s) could be impacted, that could adversely affect the natural benefits to the Waccamaw River at this point in the River and be carried downstream.

As of today's report, the Waccamaw River already has high volumes of bacteria, with five areas reflected dangerous levels, beginning at Sterrit Swamp, which is just several miles south (towards Conway) of this proposed commercial development.

In spite of this, Christine Ellis of Riverkeeper felt that Mercy Hospice/Hospital would not have an effect on the

Waccamaw River.

Simply put, the proposed paved roads and parking lots that will sit over 40 feet above the Waccamaw River at Tilley Swamp could certainly be a hazard to the Waccamaw River as well as those downhill, such as our property which draws water from a well positioned between the Mercy Hospice Hospital site and our house.

Issue #5: The site is an industrial dump. Mercy Hospice has removed most of the surface equipment, rusty barrels, paint, tires; nothing has been done, as far as we can tell, with the chemicals that leaked into the ground over the years.

It wasn't until after the public hearing for the certificate of need where there was testimony about asbestos being in the building located at this site, that Mercy Hospice tore down the building, exposes that asbestos.

DHEC stopped the removal for Mercy Hospice to get the appropriate permits.

In addition, the Bureau of Health Facilities and Services Development of DHEC; Certificate of Need Application Guidelines states:

...29. Environmental Hazard: The proposed facility should not be located on a site where environmental conditions would either create a health hazard or aggravate an existing health condition in individuals served by this facility.

Issue #6: The Certificate of Need application supplied to S C Department of Health & Environmental Control (known throughout as DHEC) shows an agreement and renewal of an agreement for services with Myrtle Beach Air LLC to provide helicopter ambulance service to Mercy Hospice.

This is a residential neighborhood and there is no zoning allowed for helicopters, ambulance or otherwise. Ambulance helicopters are allowed around hospital facilities. In emergency situations, helicopters certainly can land in or near roadways and other

places. However, there is no allowance or condition that helicopters should be in or near this Wildhorse subdivision and the community surrounding it.

Helicopter ambulances are larger than most, and some with jet/turbine engines. These helicopters would cause much more of a disturbance than those used for tours in Myrtle Beach.

See attached (Figure 5) portion of agreement, proof of insurance of Myrtle Beach Air LLC and the updated contract authorization executed by the Executive Director of Mercy Hospice and Ricky Gunter of Myrtle Beach Air, LLC (ambulance helicopters).

Issue #7: The Certificate of Need issued by DHEC has expired earlier this year.

Issue #8: There are numerous species of oaks on this site. There is one beautiful 200 year old oak near the proposed hospital.

The initial sketch provided by Solan Engineering on behalf of Mercy Care Hospital does not reflect any particular protection for this specific tree.

However, it does appear to have some protection with the most recent footprint.

However, upon consulting experts familiar with oak trees, often the trauma and disturbance of dirt at or the a tree like this can 'shock' it and sometimes, within a few years, it is dead.

Nothing has been submitted that additional protections will be afforded this and the other protected trees on this site, other than identifying them and marking them.

The on-paper treatment of how these trees will be taken care of and thrive in spite of all the clearing and construction is not spelled out.

Issue #9: When this Hospice House/Hospital was submitted to various agencies of Horry County, they placed themselves

squarely on Highway 90, indicating in words and deeds that this was a direct Highway 90 development. The Mercy Hospice submission to DHEC described the location as

**. . .21 acres of land at the corner of Highway 90
and Wildhorse Drive**

This was shown on plans, forms and a large sign that existed directly on Highway 90, as though they had an entrance at that point.

Based on this false information, numerous officials, departments and County Council indicated approval.

Mercy Hospice never has had any land directly on Highway 90; their only access is well within the entrance of Wildhorse on Wildhorse Drive.

A resolution was passed, at the behest of Ms. Janet Carter of the Horry County Planning and Zoning Commission, by Horry County Council supporting Mercy Care's facility was an actual limiting resolution in that it stated

Now, Therefore, Horry County Council believes that the project will have no adverse impact on any other facilities and hereby states its support for this project.

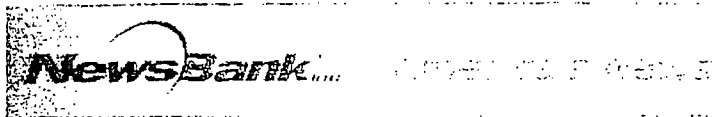
See Resolution R-1-3-10 dated September 21, 2010 attached (Figure 6).

Only with very recent submissions did Mercy Hospice finally indicate their entrance was well within residential Wildhorse subdivision.

Issue #10: Based upon DHEC inspection and an audit conducted May, 2012, Mercy Hospice was cited for failure on various administrative/records level. In addition, there were errors regarding several patients, omissions and other issues. Mercy Hospice failed to reply to the audit with corrective action.

APPENDIX

- Figure 1: Corridor of Death
- Figure 2: Accidents on Hwy 90
- Figure 3: Mercy Hospice sign sketch
- Figure 4: Wildhorse Entrance Pictures
- Figure 5: Myrtle Beach Air, Helicopter Contract
- Figure 6: County Council Resolution R-103-10



CORRIDOR OF DEATH

Sun News, The (Myrtle Beach, SC) - Wednesday, April 4, 2007

S.C. 90's transformation from quiet country highway to corridor of death provides a cautionary tale for other parts of Horry County vulnerable to rapid residential expansion. Unless County Council gives the traffic impacts of proposed development greater weight in development decisions, other country roads could become nightmarish for motorists.

This is especially unfair to the folks who live along those roads and have come to take light traffic for granted. Their quality of life is as important as landowners' development rights.

As The Sun News reported Sunday, the stretch of S.C. 90 between Conway and its junction with S.C. 22 remains the same width it was five or six years ago. But because a half dozen popular housing developments have sprung up along that stretch of S.C. 90 in the past few years, cars and trucks crowd that narrow band of pavement much of the day, making it a dangerous place to drive.

Toss in the increasing volume of trash trucks bound for the Horry County landfill and you get a bubbling stew of heavy traffic - with frustrated drivers taking chances that often result in accidents. The trash truck volume will grow heavier still once International Drive between S.C. 90 and River Oaks Drive is paved.

The 1 percent local option sales tax for roads that county voters approved in November will finance the International Drive project. But S.C. 90 is not on the sales-tax project list for widening and modernization. And the S.C. Department of Transportation has no money for improving that highway.

Meanwhile, new homes go up in the developments that feed onto the highway. Increasing residential development there and elsewhere generates more trash, further increasing trash-truck volume. The future for S.C. 90 is not bright.

There is a bitter irony in all this: Many of the new residents along the S.C. 90 corridor sought escape from crowded neighborhoods and roads between Carolina Forest and the beach. Because S.C. 22 provides a high-speed link to S.C. 31, Grissom Parkway and U.S. 17 Business, the S.C. 90 developments seem a less stressful alternative to life closer to the waterway and the ocean. Not any more.

This mess evolved because the county and state development rules ask too little of landowners and builders seeking to profit from vacant land. To be sure, the rules should show respect for property rights, allowing those who add value to vacant land to profit from doing so. The rules allow the county too little latitude to recover the costs of the negative impacts of development on roads, stormwater-control systems and other public infrastructure.

But that doesn't mean County Council should stand idly by as other Horry County country roads are transformed into corridors of death. S.C. 90 may be beyond redemption - at least until the state finds money to widen it. But the council can and should use the threat of moratoriums and other forms of leverage to require developers to address public impacts beyond their property lines. Those who object should be required to drive S.C. 90 daily until they come to their senses.

Section: MONOP

Page: A10

Record Number: 0704110932

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00054

2011 = 27

2012 = 22

Collisions Occurring Along SC-90 in Horry County, 2011 & 2012 Preliminary Data.

Report Number	Collision Location	Report Date	Base Intersecting Road
2011000362	SC-90	1/1/2011 17:10	HWY 17 S
2011000712	SC-90	1/5/2011 16:40	SIXTH AVE
2011002082	SC-90	1/9/2011 9:05	ROBERT EDGE PRKY
2011001069	SC-90	1/11/2011 9:21	BIG BARN DR
2011002313	SC-90	1/13/2011 13:25	FRENCH COLLINS RD
2011003235	SC-90	1/14/2011 20:24	VALLEY RD
2011002983	SC-90	1/18/2011 7:45	
11008209	SC-90	1/21/2011 12:45	
11008218	SC-90	1/22/2011 17:00	
2011004397	SC-90	1/24/2011 13:10	SEA MOUNTAIN HWY
11007322	SC-90	1/25/2011 7:30	BARNACLE LANE
11007325	SC-90	1/25/2011 13:20	
2011005883	SC-90	1/26/2011 8:45	
2011004391	SC-90	1/27/2011 12:30	PINT CIRCLE
2011004129	SC-90	1/27/2011 19:30	PINT CIR
2011004374	SC-90	1/29/2011 22:25	PRINCETON DR
2011004365	SC-90	1/31/2011 13:00	OLD ALTMAN RD
2011005879	SC-90	2/7/2011 14:25	SEA MOUNTAIN HWY
2011007505	SC-90	2/15/2011 12:05	PINT CIRCLE
2011007690	SC-90	2/16/2011 17:44	RED BLUFF RD
2011519548	SC-90	3/6/2011 11:40	BOMBING RANGE RD
2011009334	SC-90	3/12/2011 15:30	
2011012158	SC-90	3/21/2011 11:45	
2011513563	SC-90	3/24/2011 17:27	LEE ST
2011011447	SC-90	3/27/2011 1:20	LIVE OAK ROAD
2011513489	SC-90	3/28/2011 21:43	
2011513175	SC-90	4/4/2011 13:35	MT ZION RD
2011515200	SC-90	4/4/2011 21:30	
2011513643	SC-90	4/5/2011 7:07	
2011519420	SC-90	4/10/2011 22:45	OLD HWY 90
11037489	SC-90	4/21/2011 19:51	
2011520644	SC-90	4/26/2011 15:20	LIVE OAK RD
2011518690	SC-90	4/28/2011 13:55	QUAIL RIDGE BLVD
2011522956	SC-90	5/9/2011 19:55	LIVE OAK RD
2011521250	SC-90	5/11/2011 11:23	
2011533947	SC-90	5/13/2011 15:50	ST JOSEPH RD
2011528651	SC-90	5/18/2011 15:45	
2011522082	SC-90	5/20/2011 22:00	
2011525192	SC-90	5/25/2011 2:47	FOREST DR
2011524871	SC-90	5/26/2011 16:44	THREE OAK LN
2011528657	SC-90	5/29/2011 13:50	LIVE OAK RD
2011534398	SC-90	5/29/2011 19:30	RED BLUFF RD
2011533945	SC-90	6/1/2011 10:15	RED BLUFF RD
2011526481	SC-90	6/4/2011 13:53	SIXTH AVE

00055

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2011529066 SC-90	6/6/2011 20:00 EASTWOODS DR
2011533655 SC-90	6/13/2011 17:00 FIFTH AVE
2011527165 SC-90	6/16/2011 15:50 MEADOWOOD LN
2011533287 SC-90	6/19/2011 13:10 SIXTH AVE
2011531898 SC-90	6/21/2011 9:20 OLD REAVES FERRY RD
2011533703 SC-90	6/22/2011 16:40 SIXTH AVE
2011529599 SC-90	6/24/2011 0:50 OLD WAMPEE
2011534153 SC-90	7/5/2011 4:33 OLD REAVES FERRY RD
2011534353 SC-90	7/5/2011 19:01 GALLOWAY DR
2011533819 SC-90	7/9/2011 18:15 HENRY RD
2011534565 SC-90	7/13/2011 20:38 SEA MOUNTAIN HWY
2011534767 SC-90	7/14/2011 17:50
2011535373 SC-90	7/18/2011 18:16 SIXTH AVE
2011535639 SC-90	7/23/2011 21:15 PINT CIRCLE
2011538645 SC-90	7/24/2011 19:55 STILLWAGON LN
2011536135 SC-90	7/25/2011 9:10
2011545844 SC-90	8/2/2011 8:00 WHISPERING OAKS DR
2011550050 SC-90	8/15/2011 13:00 STRAWBERRY RD
2011546557 SC-90	8/18/2011 7:55
2011546067 SC-90	8/20/2011 10:25
2011551510 SC-90	8/21/2011 17:40 RED BLUFF RD
2011545744 SC-90	8/22/2011 4:43 ISSAC DR
2011553152 SC-90	8/25/2011 8:00 SEA MOUNTAIN HWY
2011550558 SC-90	8/25/2011 18:50 MT ZION RD
2011548416 SC-90	8/26/2011 17:30 BOMBING RANGE RD
2011549951 SC-90	8/31/2011 10:30 COATES ROAD
2011550064 SC-90	9/2/2011 21:20 WOODLAWN DR
2011551560 SC-90	9/5/2011 13:35
2011551849 SC-90	9/6/2011 5:16 WARD RD
2011553015 SC-90	9/10/2011 23:00
2011555599 SC-90	9/12/2011 18:07 LEES LANDING RD
2011554570 SC-90	9/12/2011 20:00 LEES LANDING CIRCLE
2011558212 SC-90	9/24/2011 13:00
2011557446 SC-90	9/24/2011 17:00 FIRETOWER ROAD
2011563209 SC-90	9/27/2011 10:50 SIXTH AVE
2011561739 SC-90	9/29/2011 17:05 CHESTNUT RUN RD
2011564822 SC-90	10/2/2011 11:50 TILLY SWAMP RD
2011561236 SC-90	10/4/2011 18:20
2011566093 SC-90	10/5/2011 17:25
2011563939 SC-90	10/8/2011 12:55 LEES LANDING CIR
2011562578 SC-90	10/9/2011 0:30 OLD REAVES FERRY
2011564719 SC-90	10/9/2011 15:00
2011564918 SC-90	10/14/2011 10:30
2011564924 SC-90	10/14/2011 13:00 MEADOWOOD LN
2011564926 SC-90	10/14/2011 14:25 W L HOLMES RD
2011564942 SC-90	10/15/2011 16:40 LORENE LN
2011574274 SC-90	10/19/2011 7:59 RED BLUFF RD

2011570219 SC-90	10/24/2011 17:53 OLD REAVES FERRY RD
2011578276 SC-90	10/25/2011 17:00 STARBLUFF RD
2011569459 SC-90	10/26/2011 16:05 SANDRIDGE RD
2011571168 SC-90	10/30/2011 19:45 MEADOWOOD LN
2011571353 SC-90	10/31/2011 21:51 E COX FERRY RD
2011571357 SC-90	11/1/2011 18:41 BOMBING RANGE RD
2011575071 SC-90	11/11/2011 8:10 FRENCH COLLINS RD
2011575016 SC-90	11/12/2011 5:40 WILDHORSE DR
2011578285 SC-90	11/12/2011 17:58 YAWNOC
2011578288 SC-90	11/16/2011 6:30 OLD REEVES FERRY
2011579662 SC-90	11/22/2011 14:50 PINNACLE PL
2011582172 SC-90	11/28/2011 7:15 VALLEY RD
2011580938 SC-90	11/29/2011 7:45 BIG BARN DR
2011583010 SC-90	12/5/2011 23:45
11133072 SC-90	12/7/2011 17:53
2011587899 SC-90	12/11/2011 18:11 MT ZION RD
2011587193 SC-90	12/13/2011 15:30 PRINCETON DR
2011589622 SC-90	12/16/2011 20:12
2011587337 SC-90	12/17/2011 14:50
2011590105 SC-90	12/18/2011 12:15 STRAWBERRY RD
2011588240 SC-90	12/18/2011 18:25 CHAVIS RD
2011589649 SC-90	12/22/2011 17:50 PRINCETON DR
2011592636 SC-90	12/23/2011 2:35 MONACA DR
2011590852 SC-90	12/24/2011 20:29
2011590862 SC-90	12/25/2011 18:25 A P THOMPSON RD
2011591096 SC-90	12/26/2011 7:40
2012500279 SC-90	1/1/2012 11:10 CLAY RIDGE ROAD
2012500700 SC-90	1/3/2012 1:23 SMILEY LN
2012501841 SC-90	1/10/2012 17:55 VALLEY RD
2012501739 SC-90	1/12/2012 0:00
2012501231 SC-90	1/12/2012 0:45 OLD HWY 90
2012501848 SC-90	1/14/2012 22:10 MONICA DR
2012503555 SC-90	1/17/2012 6:20 OLD HWY 90
2012507248 SC-90	1/26/2012 18:52 ROBERT EDGE PKWY
2012504919 SC-90	1/26/2012 19:50 RED BLUFF RD
2012505247 SC-90	1/31/2012 16:15 W SHORE DR
2012506357 SC-90	2/3/2012 15:20 CAROLINA POINTE WAY
2012506935 SC-90	2/6/2012 18:40 OLD ALTMAN RD
2012506523 SC-90	2/8/2012 19:20 LEES LANDING RD
2012506928 SC-90	2/11/2012 19:45 CHAVIS RD
2012509270 SC-90	2/14/2012 7:40 FIFTH AVE
2012509022 SC-90	2/17/2012 12:55 BELLAMY RD
2012509023 SC-90	2/18/2012 6:30 B B WATSON RD
2012509126 SC-90	2/19/2012 2:30 STRAWBERRY RD
2012511466 SC-90	2/23/2012 18:00 HWY 57
2012510479 SC-90	2/27/2012 10:10 WILDHORSE DR
2012512732 SC-90	3/6/2012 7:45 SANDRIDGE RD.

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00057

2012513948 SC-90	3/6/2012 14:15 VAUGHT RIDGE RD
2012513951 SC-90	3/6/2012 17:55 BAYBERRY DR
2012513373 SC-90	3/7/2012 19:00 THREE OAK LN
2012512635 SC-90	3/8/2012 17:50 MONACA DRIVE
2012513665 SC-90	3/12/2012 11:00 FRENCH COLLINS RD
2012515924 SC-90	3/15/2012 17:15 VALLEY RD
2012519084 SC-90	3/18/2012 6:23 MT ZION RD
2012521860 SC-90	3/26/2012 22:50 HWY 57
2012519427 SC-90	3/30/2012 14:25
2012518823 SC-90	3/30/2012 18:15 WOODLAWN DR.
2012522397 SC-90	4/5/2012 12:20 OLD ALTMAN RD
2012522121 SC-90	4/11/2012 9:29 DOBROS ROAD
2012522707 SC-90	4/11/2012 18:40 YAWNOC DR
2012523341 SC-90	4/17/2012 1:33 BOMBING RANGE ROAD
2012524653 SC-90	4/18/2012 9:35 5TH AVE
2012529132 SC-90	4/28/2012 2:35
2012526966 SC-90	5/4/2012 1:40 REDDICK RD
2012529233 SC-90	5/9/2012 17:45 LIVE OAK RD
2012529244 SC-90	5/10/2012 8:40 MEADOWOOD LN
2012531965 SC-90	5/11/2012 12:05 RED BLUFF RD
2012528610 SC-90	5/13/2012 17:55 WHISPERING OAKS DR
2012535084 SC-90	5/17/2012 18:20 HICKORY HILL CIR
2012531100 SC-90	5/19/2012 3:00
2012533994 SC-90	5/25/2012 12:30 OLD REAVES FERRY RD
2012534508 SC-90	5/29/2012 6:55 ST JOSEPH RD
2012541557 SC-90	6/1/2012 13:25 E COX FERRY RD
2012535129 SC-90	6/1/2012 20:46 WILDHORSE DR
2012534513 SC-90	6/1/2012 21:00 WATER TOWER
2012534517 SC-90	6/2/2012 18:30 WATER TOWER
2012535695 SC-90	6/12/2012 14:35 LEE'S LANDING CIRCLE
2012540637 SC-90	6/20/2012 13:00 MT ZION
2012544135 SC-90	7/3/2012 14:00 BOMBING RANGE RD
2012545948 SC-90	7/5/2012 5:40
2012544544 SC-90	7/5/2012 16:37 LIVINGSTON LN
2012544555 SC-90	7/6/2012 12:10 FIFTH AVE
2012547056 SC-90	7/7/2012 16:05 OLD REAVES FERRY RD

2010

(40)

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	County	0	ROBERT EDGE PKWY	Secondary
	County	0	NINETY PARK DR	County
	County	0	OLD ALTMAN RD	Secondary
	County	0	STERITT SWAMP RD	County
	County	0	JONES RD	Secondary
	County	0	WOODLAWN DR	County
	County	0	PRINCE DR	County
	County	0	B B WATSON RD	County
	County	0	ROBERT EDGE PKWY	Secondary
	County	0	THREE OAK LANE	County
	County	0	OLD HWY 90	SC Primary
	County	0	BELLAMY RD	County
	County	0	WHISPERING OAKS DR	County
	County	0	DOGWOOD RD	County
	County	0	OLD REAVES FERRY RD	County
	SC Primary	9		Secondary
	US Primary	17		Secondary
	US Primary	17		US Primary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		US Primary
	US Primary	17		County
	US Primary	17		US Primary
	US Primary	17		SC Primary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		SC Primary
	US Primary	17		Secondary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20		US Primary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20	SEA MOUNTAIN HWY	US Primary
	Secondary	20	SEA MOUNTAIN HWY	US Primary
	Secondary	20	SEA MOUNTAIN HWY	US Primary
	Secondary	20	SEA MOUNTAIN HWY	US Primary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20	SEA MOUNTAIN HWY	Secondary
	Secondary	20		County
	Secondary	20	SEA MOUNTAIN HWY	County
	SC Primary	22		Secondary
	SC Primary	22	VETERANS HWY	Secondary

266

SC Primary	22	Secondary - 20
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22 VETERANS HWY	Secondary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22	County
Secondary	31 RED BLUFF RD	Secondary -
Secondary	31 RED BLUFF RD	Secondary -
Secondary	31 RED BLUFF RD	Secondary -
SC Primary	31	Secondary
Secondary	31	SC Primary
Secondary	31 RED BLUFF HWY	Secondary -
Secondary	31 RED BLUFF RD	Secondary -
Secondary	31	Secondary
SC Primary	31	Secondary
Secondary	31	County
Secondary	57	Secondary
SC Primary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
SC Primary	57	Secondary
Secondary	90 LEES LANDING	Secondary -
Secondary	105 OLD REAVES FERRY	Secondary -
Secondary	105 OLD REEVES FERRY RD	Secondary -
Secondary	105 OLD REAVES FERRY	Secondary -
Secondary	105 OLD REAVES FERRY RD	Secondary -
Secondary	105 OLD REWES FERRY ROAD	Secondary -
Secondary	105 OLD REAVES FERRY RD	County
Secondary	105 OLD REAVES FERRY	SC Primary -
Secondary	345 DOBIQS RD	Secondary
Secondary	345 DOBROS RD	Secondary
Secondary	377 BEAR BLUFF RD	County -
Secondary	377 BEAR BLUFF RD	Secondary -
Secondary	377 BEAR BLUFF RD	County -
Secondary	377 BEAR BLUFF RD	Secondary -
Secondary	377 BEAR BLUFF RD	Secondary -
Secondary	377 BEAR BLUFF RD	Secondary -
US Primary	501	Secondary
US Primary	501	Secondary
US Primary	501	Secondary
US Primary	501	Secondary
US Primary	501	Secondary
Secondary	638 STAR BLUFF RD	Secondary
Secondary	638 STARBLUFF RD	Secondary

267

00060

Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CIRCLE	Secondary
Secondary	808 PINT CIRCLE	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CIR	County
Secondary	808 PINT CIRCLE RD	Secondary
Secondary	808	Secondary
Secondary	808	County
Secondary	901 LEES LANDING RD	Secondary
Secondary	901	County
Secondary	901 LEE LANSZNL RD	County
Secondary	901 LEES LANDING RD	Secondary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	901 LEES LANDING CIRCLE	Secondary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	901 LEES LANDING CIR	US Primary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	958 FRENCH COLLINS RD	Secondary
Secondary	1008	US Primary
Secondary	1008	Secondary
Secondary	1008	County
Secondary	1022 6TH AVE	Secondary
Secondary	1022 6TH AVE	US Primary
Secondary	1022 FIFTH AVE	Secondary
Secondary	1022 SIXTH AVE	County
Secondary	1029 WATER TOWER RD	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	County
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	County
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033	Secondary
Secondary	1033 MT ZION RD	Secondary
Secondary	1033 MT ZION RD	County
Secondary	1135 LEES LANDING CIR	Secondary
Secondary	1135 LEES LANDING	County
Secondary	1135 LEES LANDERS	Secondary
Secondary	1135 LEES LANDING CIR	Secondary
Secondary	1173 BOMBING RANGE RD	Secondary

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00061

Secondary	1173	County
Secondary	1173	Secondary
Secondary	1173 BOMBING RANGE ROAD	Secondary
Secondary	1347 ST JOSEPH RD	Secondary
Secondary	1347	Secondary
Secondary	1347 ST JOSEPH RD	Secondary
Secondary	1347 ST JOSEPH RD	Secondary
Secondary	1347 ST JOSEPH RD	Secondary

collision_location	base_rt_cat	base_rt_num	collision_base_street	second_rt_cat
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County		0	HICKORY HILL CIR	County
County		0	LIVINGSTON CIRCLE	Secondary
County		0	OLD ALTMAN RD	County
County		0	INTERNATIONAL DR	County
County		0	EAST COX FERRY ROAD	Secondary
County		0	CARRIES LANE ROAD	County
County		0	ROBERT EDGE PKWY	SC Primary
County		0	BRIDGEWATER DR	Secondary
SC Primary		9	SEA MOUNTAIN HWY	County
US Primary		17		County
US Primary		17		Secondary
US Primary		17		Secondary
US Primary		17		US Primary
US Primary		17		Secondary
US Primary		17		Secondary
Secondary		20	SEA MOUNTAIN HWY	US Primary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAINS	Secondary
Secondary		20	SEA MOUNTAIN HWY	County
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	US Primary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN	Secondary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	Secondary
Secondary		20	SEA MOUNTAIN HWY	County
SC Primary		22		Secondary
SC Primary		22		Secondary
SC Primary		22	VETERANS HWY	Secondary
SC Primary		22		Secondary
SC Primary		22	VETERANS HWY	Secondary
SC Primary		22		Secondary
SC Primary		22		SC Primary
SC Primary		22	VETERANS HWY	Secondary
Secondary		31	RED BLUFF RD	County
Secondary		31	RED BLUFF ROAD	Secondary
SC Primary		31		Secondary
Secondary		31	RED BLUFF HWY	Secondary
Secondary		31		Secondary
Secondary		31	RED BLUFF ROAD	Secondary
Secondary		31	RED BLUFF HWY	Secondary

SC Primary	31	Secondary
Secondary	31	County
SC Primary	31	County
SC Primary	57	Secondary
SC Primary	57	County
Secondary	57	Secondary
SC Primary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	105 OLD REAVES FERRY RD	SC Primary
Secondary	105 OLD REAVES FERRY RD	Secondary
Secondary	377 BEAR_BLUFF RD	Secondary
Secondary	377 BEAR BLUFF RD	County
Secondary	377 BEAR BLUFF HWY	Secondary
Secondary	377 BEAR BLUFF RD	Secondary
Secondary	377 BEAR BLUFF RD	County
BEAR BLUFF RD Secondary	377	Secondary
Secondary	377 BEAR BLUFF RD	Secondary
US Primary	501	Secondary
US Primary	501	County
US Primary	501	Secondary
US Primary	501	Secondary
US Primary	501	Secondary
Secondary	638 STAR BLUFF ROAD	Secondary
Secondary	638 STAR BLUFF	Secondary
Secondary	638 STAR BLUFF RD	Secondary
Secondary	808 PINT CIRCLE	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808 PINT CR	Secondary
Secondary	808 PINT CR	Secondary
Secondary	808 PINT CIRCLE	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	808	Secondary
Secondary	808 PINT CIR	Secondary
Secondary	901	Secondary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	901 LEES LANDING RD	County
Secondary	901 LEE LANDING CIR	Secondary
Secondary	901 LEES LARDING CIR	Secondary
Secondary	901 LEE LANDING	Secondary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	901 LEE LANDING CIR	Secondary
Secondary	901 LEES LANDING CIR	Secondary
Secondary	901 LEE LANDING	Secondary
Secondary	901 LEES LORDING CIRCLE	Secondary

Secondary	901 LEES LANDING	Secondary
Secondary	958 FRENCH COLLINS RD	Secondary
Secondary	958 FRENCH COLLINS RD	Secondary
Secondary	1008	Secondary
Secondary	1022 6TH AVE	Secondary
Secondary	1022 6TH AVE	Secondary
Secondary	1022	Secondary
Secondary	1022 5TH AVENUE	US Primary
Secondary	1022 6TH AVENUE	US Primary
Secondary	1022	US Primary
Secondary	1029 WATER TOWER RD	Secondary
Secondary	1029 WATER TOWER RD	County
Secondary	1029 WATER TOWER RD	Secondary
Secondary	1033 MT ZION ROAD	Secondary
Secondary	1033	Secondary
Secondary	1135 LEES LANDING CIRCLE	Secondary
Secondary	1135 LEES LANDING CIR	County
Secondary	1135 LEES LANDING	Secondary
Secondary	1173 BOMBING RANGE RD	Secondary
Secondary	1173 BOMBING RANGE RD	Secondary
Secondary	1173	Secondary
Secondary	1173 BOMBING RANGE ROAD	US Primary
Secondary	1173 BAMBERG RANGE RD	SC Primary
Secondary	1173 BOMBING RANGE RD	Secondary
Secondary	1173 BOMBING RANGE RD	Secondary
Secondary	1220 KINLAW ST	Secondary
Secondary	1347 ST JOSEPHS RD	Secondary
Secondary	1347 ST JOSEPH RD	Secondary
Secondary	1347 ST JOSEPH RD	Secondary
Secondary	1371 ST JOSEPH RD	County

v

2008

(30)

collision_location	base_rt_cat	base_rt_num	collision_base_street	second_rt_cat	second_rt_num
County	0	PRINCETON DR	Secondary	20	
County	0	FIRETOWER RD	County	0	
County	0	OLD ALTMAN RD	Secondary	901	
County	0	ADAM ST	County	0	
County	0	NINETY PARK DRIVE	Secondary	105	
County	0	OLD WAMPEE ROAD	County	0	
County	0	LEE ST	County	0	
County	0	FIRETOWER RD	Secondary	1033	
County	0	ROWELLS CT	County	0	
County	0	LINCOLN HEIGHTS RD	County	0	
County	0	SANDRIDGE ROAD	Secondary	20	
County	0	DOGWOOD ROAD	Secondary	31	
County	0	MEADOWWOOD LANE	County	0	
County	0	PINNACLE PL	US Primary	17	
County	0	E COX FERRY RD	County	0	
County	0	COUNTY ROAD	County	0	
County	0	OLDE HIGHWAY 17	Secondary	1022	
County	0	CHESTNUT RUN RD	County	0	
County	0	KENWORTH CR	County	0	
Secondary	14	DEPOT RD	US Primary	501	
US Primary	17		SC Primary	9	
US Primary	17		County	0	
US Primary	17		Secondary	20	
US Primary	17		Secondary	1022	
US Primary	17		Secondary	20	
Secondary	17		Secondary	20	
US Primary	17		Secondary	1220	
US Primary	17		Secondary	20	
US Primary	17		Secondary	20	
US Primary	17		Secondary	1022	
Secondary	20		County	0	
Secondary	20		Secondary	1008	
Secondary	20		County	0	
Secondary	20		US Primary	17	
Secondary	20		US Primary	17	
Secondary	20	SEA MOUNTIAN HWY	US Primary	17	
Secondary	20	SEA MOUNTIAN HWY	Secondary	1008	
Secondary	20	SEA MOUNTAIN HWY	Secondary	1008	
Secondary	20		US Primary	17	
Secondary	20		Secondary	1022	
Secondary	20	SEA MOUNTAIN HWY	Secondary	1008	
Secondary	20	SEA MOUNTAIN HWY	Secondary	1008	
Secondary	20	SEA MOUNTAIN HWY	Secondary	1008	
SC Primary	22		Secondary	808	
SC Primary	22		Secondary	377	
SC Primary	22		Secondary	377	

273

00066

SC Primary	22	County	0
SC Primary	22	Secondary	22
SC Primary	22 VETERANS HWY	Secondary	377
SC Primary	22	County	0
SC Primary	22	Secondary	31
SC Primary	22	Secondary	377
SC Primary	22	County	0
Secondary	31	Secondary	808
Secondary	31	Secondary	808
Secondary	31	Secondary	808
Secondary	31	SC Primary	22
SC Primary	31	SC Primary	9
Secondary	31 RED BLUFF RD	County	0
SC Primary	31	Secondary	1347
Secondary	57	Secondary	1033
Secondary	57	Secondary	1033
Secondary	57	Secondary	1029
Secondary	57	Secondary	1029
Secondary	105 OLD REEVES FERRY RD	County	0
Secondary	105 OLD REEVES FERRY	County	0
Secondary	377	Secondary	901
Secondary	377	Secondary	31
Secondary	377	Secondary	901
Secondary	377 BEAR BLUFF	Secondary	901
Secondary	377 BEAR BLUFF ROAD	Secondary	105
Secondary	377	SC Primary	22
US Primary	501	Secondary	14
US Primary	501	Secondary	14
US Primary	501	Secondary	14
US Primary	501	Secondary	14
US Primary	501	Secondary	14
Secondary	638	County	0
Secondary	638	County	0
Secondary	638	Secondary	808
Secondary	638 STARBLUFF	Secondary	808
Secondary	638 STAR BLUFF ROAD	County	0
Secondary	638 STAR BLUFF RD	Secondary	57
Secondary	808	Secondary	31
Secondary	808	Secondary	31
Secondary	808 PINT CIR	County	0
Secondary	808 PINT CIR	Secondary	1173
Secondary	901	Secondary	1135
Secondary	901 LEES LANDING CIRCLE	County	0
Secondary	901 LEES LANDING CIRCLE	County	0
Secondary	901 LEES LANDING	Secondary	377
Secondary	901 LEES LANDING RD	County	0
Secondary	901 LEES LANDING RD	SC Primary	22

20

274

00067

Secondary	901 LEES LANDING CR	Secondary	1135
Secondary	958	Secondary	345
Secondary	1008	Secondary	1033
Secondary	1022	SC Primary	9
Secondary	1022 6TH AVE	Secondary	1220
Secondary	1022 6TH AVE	Secondary	1220
Secondary	1029 WATER TOWER RD	Secondary	638
Secondary	1029 WATER TOWER RD	Secondary	638
Secondary	1033	Secondary	1347
Secondary	1033	Secondary	1008
Secondary	1033 MT ZION RD	County	0
Secondary	1135 LEES LANDING CIR	County	0
Secondary	1173	Secondary	808
Secondary	1173 BOMBING RANGE RD	Secondary	808
Secondary	1220 KINLAW ST	US Primary	17
Secondary	1347	County	0
Secondary	1347 ST JOSEPH RD	Secondary	1008
Secondary	1347	Secondary	1033
Secondary	1347 ST JOSPEH RD	County	0
Secondary	1347 ST JOSEPHS RD	County	0
Secondary	1347 ST JOSEPH RD	Secondary	20

2

275

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2007

111

39

collision_location	base_rt_cat	base_rt_num	collision_base_street	second_rt_cat
	County	0	OLD HWY 90	SC Primary
	County	0	OLD CHESTERFIELD	Secondary
	County	0	STERITT SWAMP ROAD	County
	County	0	HICKORY HILL CIR	County
	County	0	QUAIL RIDGE BLVD	County
	County	0	E COX FERRY RD	Secondary
	County	0	OLD HWY 90	SC Primary
	County	0	OLD HWY 90	County
	County	0	WESTSHORE DR	County
	County	0	LIVE OAK RD	Secondary
	County	0	BELLAMY RD	US Primary
	County	0	CHESTNUNT RUN RD	County
	County	0	THREE OAKS LANE	County
	County	0	LINCOLN HEIGHTS	Secondary
	County	0	FOREST DR	County
	County	0	W SHORE DR	Secondary
	County	0	LENDRIM LAKE DR	County
	County	0	ENVIRONMENTAL PKWY	County
	County	0	DOGWOOD	County
	County	0	VAUGHT RIDGE RD	Secondary
	SC Primary	9		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		US Primary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		US Primary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		US Primary
	US Primary	17		Secondary
	US Primary	17		Secondary
	US Primary	17		SC Primary
	US Primary	17		Secondary
	Secondary	20		US Primary
	Secondary	20		Secondary
	Secondary	20		Secondary
	Secondary	20		US Primary
	Secondary	20		Secondary
	Secondary	20		US Primary
	Secondary	20		US Primary
	Secondary	20		US Primary

276

00069

Secondary	20	US Primary
Secondary	20	Secondary
Secondary	20	Secondary
Secondary	20	US Primary
Secondary	20	Secondary
Secondary	20	Secondary
Secondary	20	Secondary
Secondary	20	US Primary
Secondary	20	US Primary
Secondary	20	US Primary
Secondary	20	Secondary
Secondary	20	Secondary
Secondary	20	SC Primary
Secondary	20	US Primary
Secondary	20	Secondary
Secondary	20	Secondary
Secondary	20	Secondary
SC Primary	22	Secondary
SC Primary	22	SC Primary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22	Secondary
SC Primary	22 VETERANS HWY	Secondary
SC Primary	22	Secondary
Secondary	31	County
Secondary	31	Secondary
Secondary	31	Secondary
Secondary	31 RED BLUFF RD	County
Secondary	31	Secondary
Secondary	31	SC Primary
Secondary	31	County
Secondary	31	Secondary
Secondary	31	Secondary
Secondary	31	Secondary
Secondary	31	Secondary
Secondary	31	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	57	Secondary
Secondary	103	Secondary
Secondary	105	County
Secondary	125 FRENCH AVE	US Primary

277

00070

Secondary	345	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	SC Primary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	377	Secondary
Secondary	449	Secondary
US Primary	501	County
Secondary	638	Secondary
Secondary	638	Secondary
Secondary	638	Secondary
Secondary	638	Secondary
Secondary	638	Secondary
Secondary	638	SC Primary
Secondary	638	Secondary
Secondary	806	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	808 PINT CIRCLE RD	Secondary
Secondary	808	Secondary
Secondary	808	Secondary
Secondary	901	Secondary
Secondary	901	Secondary
Secondary	901	Secondary
Secondary	901	Secondary
Secondary	901	Secondary
Secondary	906	Secondary
Secondary	958	US Primary
Secondary	1008	Secondary
Secondary	1008	Secondary
Secondary	1008	County
Secondary	1008	Secondary
Secondary	1008	Secondary
Secondary	1008	Secondary
Secondary	1022	US Primary
Secondary	1029	Secondary
Secondary	1029	Secondary

278

00071

8

Secondary	1033
Secondary	1033
Secondary	1033
Secondary	1033
Secondary	1033
Secondary	1033
Secondary	1135
Secondary	1135
Secondary	1135
Secondary	1135
Secondary	1135
Secondary	1135
Secondary	1135
Secondary	1173
Secondary	1173
Secondary	1173
Secondary	1173
Secondary	1220
Secondary	1220 KINLAW ST
Secondary	1347
Secondary	1347
Secondary	1347
Secondary	1347
Secondary	1347
Secondary	1347

Secondary
Secondary
Secondary
Secondary
Secondary
Secondary
Secondary
Secondary
County
Secondary
Secondary
Secondary
Secondary
County
Secondary
County
County
Secondary
US Primary
US Primary
Secondary
Secondary
Secondary
Secondary
Secondary
Secondary

FIGURE 3



00073

280

MERCY HOSPICE HOUSE



Figure 5**Contract Review**

Date: 11/01/2010

Name of Vendor: Myrtle Beach Air, LLC
1860 Gray Oaks Drive
Conway, SC 29526

Vendor Representative

Name: Ricky Gunter

Title:

☒ Contract updated with no changes☐ Contract updated with addendum attached

Signature: *Ricky Gunter*
Vendor Representative

Signature: *S. J. Hunch*
Executive Director

Date: 11/15/10Date: 11/15/10

Please include current proof of insurance.

This form is to be completed annually on all contracts

1. Assignment and Subcontracting: Myrtle Beach Air, LLC shall not assign or subcontract its obligations or duties under this Agreement or any portion of it without prior written consent of Mercy Care.

2. Access to Records: Pursuant to Public Law 96-499, the parties hereto agree, upon request of the Comptroller General or upon written request of the Secretary of the Department of Health and Human Services, to make available to either of them or to their duly authorized representatives, all contracts, books, documents, and records of the party providing services hereunder necessary to verify the costs of the services provided under this contract. Such access will be granted until the expiration of four (4) years after the services are furnished under this contract. Similar access will also be granted to the contracts, books, records, and documents of contracts subject to Section 1861 (v) (I) (ii) of the Social Security Act between the party providing services hereunder and any obligation related to such party.

3. Myrtle Beach Direct Air, LLC shall furnish Mercy Care a statement from the insurance company certifying that Myrtle Beach Direct Air, LLC has obtained liability insurance covering the activities and services to be provided. Such coverage shall be in amounts of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

4. Term of Agreement. Notices: This Agreement shall commence on the 01, day of November, 2009, and shall continue in effect for a period of twelve (12) months, until the 01 day of November, 2010. The contract will automatically renew unless terminated by either party upon sixty (60) days written notice prior to the anniversary date.

a. Notwithstanding the foregoing, the parties agree that this Agreement may be terminated at any time by either party upon thirty (30) days written notice to the other party. In the event of such termination, Mercy shall only be responsible for payment of services actually rendered.

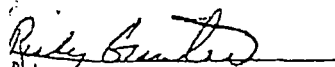
b. Mercy reserves the right to terminate without prior notice in the event of a loss of license or credentials by Myrtle Beach Air, LLC.

5. Notices. Any notices required to be given pursuant to the terms and provisions of this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, to the addresses shown below.

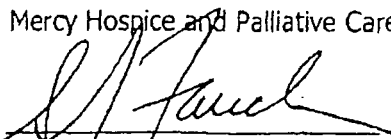
IN WITNESS WHEREOF, this Agreement has been duly executed and signed by:

Myrtle Beach Direct Air, LLC

Mercy Hospice and Palliative Care



BY:



Ricky Gunter

Sara-Jo Faucher

Myrtle Beach Air, LLC

Executive Director

860 Gray Oaks, Drive

PO Box 50640

Conway, SC 29526

Myrtle Beach, SC 29579

43-446-9263

843-347-5500

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00075

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 11/18/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES ISSUED BY THE CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED AGENT, BROKER, PRODUCER OR PRODUCER, AND THE CERTIFICATE HOLDER.

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the holder in lieu of such endorsement(s).

Insurance Group-Gaffney
 1000 St
 SC 29342

CONTACT NAME:	
PHONE (A/C No. Exl): 864.489.5788	FAX (A/C No.): 864.489.7392
E-MAIL ADDRESS:	
PRODUCER:	
CUSTOMER ID #:	
INSURER(S) AFFORDING COVERAGE	
INSURER A: Northland Insurance Co.	NAC # 24015
INSURER B: Empire Fire & Marine Ins. Co.	21326
INSURER C: Colony Ins Co	
INSURER D:	
INSURER E:	
INSURER F:	

Beach Air, LLC
 Ricky Gunter
 Gray Oaks Dr
 SC 29526

CERTIFICATE NUMBER: 2010

REVISION NUMBER:

NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND COVERAGE OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
PROPERTY			CP577387	06/25/2010	06/25/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ex occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
LOCAL GENERAL LIABILITY						
CLAIMS-MADE ☐ OCCUR						
DATE LIMIT APPLIES PER:						
☐ PRO-JECT ☐ LOC						
LIABILITY			806317614	06/25/2010	06/25/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
ED AUTOS						
ED AUTOS						
ED AUTOS						
ED AUTOS						
LIAB						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
CLAIMS-MADE						
EXCLUSION						WC STATU-TORY LIMITS OTH-ER
LIABILITY						E.L. EACH ACCIDENT \$
PARTNER/EXECUTIVE EXCLUDED?						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
OPERATIONS below			AP510873	06/02/2010	06/02/2011	\$1,000,000 Occurrence
Personal Liab						

ADDITIONAL REMARKS / LOCATIONS / VEHICLES (Attach ACORD 101. Additional Remarks Schedule, if more space is required)

CANCELLATION 5535 Price & Palliative Care Partners 40 ach, SC 29579	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Linda Sorrow/LINDAS

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Horry County Zoning Board of Appeals

October 5, 2012

Karole K. Jensen
3740 Indigo Run
Wildhorse
Conway, South Carolina 29526
843-448-9294 Ofc/843-902-9950 Cell
karole@sccoast.net

SUPPLEMENTAL
OUTLINE OF ISSUES

- Issue #1: Increased Traffic
- Issue #2: A Hospital does not fit a residential neighborhood
- Issue #3: Problems created in neighborhood, community and overall quality of life
- Issue #4: Environmental impact, Waccamaw River issues
- Issue #5: Site an industrial dump
- Issue #6: Helicopter ambulance services contracted by Mercy Hospice should not be in a residential neighborhood.
- Issue #7: Certificate of Need has expired.
- Issue #8: Oaks and other protected trees on site.
- Issue #9: Location initially submitted appeared to be Highway 90, in fact, within Wildhorse Subdivision
- Issue #10: SC DHEC Audit of Mercy Hospice reflected problem with records, May, 2012.

00077

**PETITION IN OPPOSITION TO MERCY HOSPITAL
IN WILD HORSE NEIGHBORHOOD**

November, 2012

Horry County
Zoning Board of Appeals
Exhibit # 2012-10-003
Received 11/5/12

We, the following affected persons by the Mercy Hospice proposed Development in Wild Horse subdivision hereby object to the decision of the Zoning Administrator to allow Mercy Hospice to build a 14 bed hospital on land zoned Commercial Agricultural. The CFA Zoning does not allow a hospital to be built on that land. The Zoning Administrator wrongfully ruled that a hospice house is similar to a nursing home and therefore allowed the Mercy Hospice Development.

The S C Code of Laws, Title 44, Section 7, 130 defines a Hospital as:

12. Hospital means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnosis, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy. Hospital may include residential treatment facilities for children and adolescents in need of mental health treatment, which are physically a part of a licensed psychiatric hospital. This definition does not include facilities which are licensed by the Department of Social Services.

The S C Code of Laws, Title 44, Section 71, 20 defines a Hospice House as:

3. Hospice means a centrally administered, interdisciplinary health care program. This program must provide a continuum of medically supervised palliative and supportive care for terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. Inpatient services include, but are not limited to, services provided by a hospice in a licensed hospice facility.

Admission to a hospice program of care is based on the voluntary request of the hospice patient alone or in conjunction with designated family members.

4. Hospice Facility means an institution, place, or

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building in which a license hospice provides a room, board and appropriate hospice services on a 24-hour basis to individuals requiring hospice care pursuant to the orders of a physician.

The S C Code of Laws, Title 44, Section 7, 80 defines a nursing home as:

1. . Nursing home means a facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty four hours, which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing immediate or skilled nursing care for persons who are not in need of hospital care.

Clearly, a Hospice House is a form of hospital and is not allowed under current zoning.

In addition, under the terms of CFA Zoning any use should not adversely affect traffic. The Mercy Development has no direct access to Highway 90 and all ingress and egress must be made on a small subdivision road and will clearly affect traffic.

In addition to the above legal reasons as to why the Development should not be allowed, a Hospital with its attendant noises, storm water runoff pollution, constant ambulances and hearses in a neighborhood will negatively affect this neighborhood. This neighborhood is a quiet family neighborhood of single family dwellings, and a Hospice Hospital should not be allowed to disrupt the quality of life.

Name (print): RAYMOND HUBBE Phone: 331-1196
 Signature: Raymond Hubbe email: MVP-05@HOTMAIL.COM
 Address: 652 BEAVER RD CONWAY S.C. 29526

Name (print): Susan Hubbe Phone: 331-1196
 Signature: Susan D. Hubbe email: _____
 Address: 652 Beaver Pond Rd, Conway 29526

Name (Print): Gregory W. Bratcher Phone (843) 397-0646
 Signature: Gregory W. Bratcher email: ~~bratcher~~ gregorybratcher@ymail.com
 Address: 2883 Dayton Dr. Conway SC 29527

Name (Print): Willie M. Beese Phone (843) 399-5479
 Signature: Willie M. Beese email: _____
 Address: 4907 Karen Lane Longs SC 29568

Name (Print): Barbara A. Hake Phone (843) 390-3908
 Signature: Barbara A. Hake email: bh3679@scwest.net
 Address: 147 Glenmoor Dr, Conway, SC 29526

Name (Print): Barbara R. Livingston Phone (843) 246-1968
 Signature: Barbara R. Livingston email: babsLivingston@aol.com
 Address: 1340 Oaktree Lane Conway SC 29526

Name (Print): Cynthia D. Livingston Phone (843) 234-2538
 Signature: Cynthia D. Livingston email: _____
 Address: 2020 Woodlawn Dr.

Name (Print): James Hemingway Phone (843) 907-0873
 Signature: James Hemingway email: hemingway_james@yahoo.com
 Address: 2330 Old Chesterfield Rd Longs SC 29568

Name (Print): Loretta Johnson Phone (843) 347-3337
 Signature: Loretta Johnson email: _____
 Address: 2211 International Dr. Conway, SC 29526

Name (Print): Mary Colbert Phone (843) 843-3478795

Signature: Mary Colbert email: _____

Address: 3721 Hwy # 90 Conway, S.C. 29526

Name (Print): Andean B. Campbell Phone (843) 843-347-3356

Signature: Andean B. Campbell email: _____

Address: 2879 Lee's Landing Circle, Conway, S.C. 29526

Name (Print): Thelma Hemingway Phone (843) 349-0701

Signature: Thelma Hemingway email: _____

Address: 2350 Edgewaterfield Rd Longs SC 29568

Name (Print): LARRY GALLOWAY Phone (843) 248-5428

Signature: Larry Galloway email: _____

Address: _____

Name (Print): ALVIN C. SMITH Phone (843) 347-4316

Signature: Alvin C. Smith email: _____

Address: 3722 Hwy 90 Conway, S.C. 29526

Name (Print): Carla Richardson Phone (843) 241-7438

Signature: Carla Richardson email: _____

Address: 205 Pannoe Lane Conway, S.C. 29524

Name (Print): Betha Galloway Phone (843) _____

Signature: Betha Galloway email: _____

Address: 3790 Hwy 90 Conway, SC 29526

Name (Print): CLARENCE GAILLARD Phone (843) 847-5018

Signature: Cl Gailly email: _____

Address: 2201 Hwy 90 Conway SC 29526

Name (Print): RAY COLBERT SR. Phone (843) _____

Signature: Ray Colbert email: _____

Address: 3721 Hwy 90 Conway SC 29526

Name (Print): Elizabeth Bellamy Phone (843) 843-347-3496

Signature: E. Bellamy email: _____

Address: 3750 Hwy #90 Conway, SC 29526

Name (Print): SATIRIA COLBERT Phone (843) 347-8795

Signature: Satiria email: _____

Address: 3721 Hwy 90 Conway SC 29526

Name (Print): THOMAS COLBERT Phone (843) 843-347-3496

Signature: Thomas Colbert email: _____

Address: 3721 Hwy 90 Conway SC 29526

Name (Print): Michael Hughes Phone (843) 347-6563

Signature: Michael Hughes email: _____

Address: 3764 Hwy 90 Conway SC 29526

Name (Print): Kyle C. Bear Phone (843) 347-8775

Signature: Kyle Colbert email: _____

Address: 3721 Hwy 90 Conway SC 29526

Page 5 of 11

Shirley Smith
Shirley Smith

3722 Hwy 90 Conway SC 29526

Name(Print): Thelma Galloway Phone (843) 248-5498

Signature: Thelma Galloway email: _____

Address: 503 Pittman A. Conway, SC 29527

Name(Print): Wilhelmina Livingston Phone (843) 365-4228

Signature: Wilhelmina Livingston email: _____

Address: _____

Name(Print): RaShad Colbert Phone (843) _____

Signature: R Colbert email: _____

Address: _____

Name(Print): Rev. Harris Wilson Phone (843) 843-365-1668

Signature: Rev Harris Wilson email: harris@843-365-1668

Address: _____

Name(Print): Tony Frink Phone (843) 358-3450

Signature: Tony Frink email: _____

Address: P.O. Box 2013 Conway

Name(Print): Ronald Graham Phone (843) 446-8143

Signature: R Graham email: _____

Address: _____

Name(Print): Brenda Galloway Phone (843) 845-347-5818

Signature: Brenda Galloway email: _____

Address: 2201 Hwy 70 Conway, SC 29526

Page 6 of 11 Pamela Hughes
5764 Hwy 90
Conway SC 29524

Name (Print): Sharon Girardin Phone (843) 234-2164
 Signature: [Signature] email: sharong@sceast.net
 Address: 849 Tilly Lake Rd. Conway SC 29526

Name (Print): Roger Ramsey Phone ⁹¹⁹ (843) 931-21-70
 Signature: [Signature] email: 2Ramsey@shambhavi.com
 Address: 428 River Pine Dr

Name (Print): RONNIE DiDONATO Phone (843) 331-1286
 Signature: [Signature] email: THE-DIO@SUDONET.NET
 Address: 817 Tilly Lake Road

Name (Print): Ben Crawford Phone ⁷³² (843) 526-8716
 Signature: Ben Crawford email: Ben Crawford 836 yds
 Address: 627 Beaver Pond rd. Conway SC 29536

Name (Print): JAMES & Bobbie deBOWA Phone (843) 547-8292
 Signature: [Signature] email: _____
 Address: 3005 WILD HORSE CR, Conway, SC 29526

Name (Print): DANAY Adams Phone (843) 902-4623
 Signature: [Signature] email: Adams@thumbprintcms.com
 Address: 3294 Wild Horse Cr. Conway S.C.

Name (Print): SUZANNE Adams Phone (843) 458-3031
 Signature: [Signature] email: _____
 Address: 3294 Wild Horse CR. Conway S.C.

Name (Print): Jecanne Browder Phone (843) 347-6833
 Signature: Jecanne Browder email: _____
 Address: 3281 Wildhorse Dr -

Name (Print): Cathi Browder Phone (843) 347-6833
 Signature: Cathie Browder email: _____
 Address: 3281 Wildhorse Dr.

Name (Print): Nackie Browder Phone (843) 347-6833
 Signature: Jackie Browder email: _____
 Address: 03281 Wildhorse Dr -

Name (Print): Charles D Oglesby II Phone (843) 855-4245
 Signature: Charles D Oglesby email: charles.d.oglesby@us.army.mil
 Address: 3265 ~~MARCH~~ WILDHORSE ROAD

Name (Print): Gene Cooke Phone (843) 347-4924
 Signature: Gene Cooke email: rlcooke@scooart.net
 Address: 3249 Wildhorse Dr.

Name (Print): Mike Lemon Phone (843) 347-9193
 Signature: Mike Lemon email: _____
 Address: 3214 Wildhorse Dr

Name (Print): SHARON LEMON Phone (843) _____
 Signature: Sharon Lemon email: _____
 Address: 3214 Wildhorse Dr.

Name (Print): Kasey Herrington Phone (843) 455-5273
 Signature: Kasey H. Herrington email: kax5273@gmail.com
 Address: 3289 Wildhorse Circle Conway SC 29526

Name (Print): Rob Herrington Phone (843) 241-0327
 Signature: Rob H email: herringtonrob@gmail.com
 Address: 3289 Wildhorse Circle Conway SC 29526

Name (Print): John Daniels Phone (843) 421-2337
 Signature: John Daniels email: john.daniels@breaker.com
 Address: 3271 Wildhorse Circle

Name (Print): Ken Herrington Phone (843) 347-3117
 Signature: Ken H email: kenharrington584@gmail.com
 Address: 3093 Wildhorse Circle Conway SC 29526

Name (Print): Hylands Glendinning Phone (843) 347-4829
 Signature: Hylands Glendinning email: _____
 Address: 3017 Wildhorse Circle Conway SC 29526

Name (Print): Ruth Glendinning Phone (843) 347-4829
 Signature: Ruth Glendinning email: _____
 Address: 3017 Wildhorse Circle, Conway SC 29526

Name (Print): Beth Major Phone (843) 347-3053
 Signature: Beth Major email: HORNSTAR@SCCOAST.MI
 Address: 3096 Wild Horse Dr. Conway SC 29526

Name (Print): JAMES W. MAJOR JR Phone (843) 458-7802
 Signature: JAMES W. MAJOR JR email: MORNSTAR@SCCOAST.NET
 Address: 3096 WILD HORSE DR. CONWAY, SC 29526

Name (Print): FLOYD E ALLEN Phone (843) 347-7224
 Signature: FLOYD E ALLEN email: _____
 Address: 3145 WILD HORSE

Name (Print): Deborah Hudson Phone (843) 957-3858 ^{the # one}
 Signature: Deborah Hudson email: deborahhudson1@aol.com
 Address: 3185 Wildhorse Drive

Name (Print): Linda R. Henderson Phone (843) 347-2693
 Signature: Linda R. Henderson email: lroddyhenderson1@gmail.com
 Address: 3719 Indigo Run, Conway, SC 29526

Name (Print): JERRY L. LEWIS Phone (843) 347-6616
 Signature: Jerry Lewis email: _____
 Address: 3296 WILDHORSE CIR, CONWAY S.C. 29526

Name (Print): Rhea Hewitt Phone (843) 234-3807
 Signature: RHEA HEWITT email: _____
 Address: 3071 WILDHORSE CIR. Conway SC 29527

Name (Print): Vernon Hewitt Phone (843) 234-3807
 Signature: Vernon (James) Hewitt email: _____
 Address: Same Address.

Name (Print): Joshua Calder Phone (843) 446-7439
 Signature: Josh Calder email: jmcalders@gmail.com
 Address: 3059 Wildhorse Circle, Conway, SC 29526

Name (Print): KAROLE JENSEN Phone (843) 435-4250
 Signature: Karole Jensen email: KAROLE@SCCOAST.NET
 Address: 3740 Indigo Run, Conway, S.C. 29526

Name (Print): Becky Boyles Phone (843) 317-7923
 Signature: Becky Boyles email: BeckyRBoyles@aol.com
 Address: 11314 Chelsey Cir. Conway SC 29524

Name (Print): O. Fayrell Furr, DO Phone (843) 626-7621
 Signature: O. Fayrell Furr email: ffurr@SCmedicationpractice.com
 Address: 3740 Indigo Run, Conway, SC 29526

Name (Print): _____ Phone (843) _____
 Signature: _____ email: _____
 Address: _____

Name (Print): _____ Phone (843) _____
 Signature: _____ email: _____
 Address: _____

Name (Print): _____ Phone (843) _____
 Signature: _____ email: _____
 Address: _____

Mercy Care Submittal

00089

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)

)

)

AFFIDAVIT OF
DENNIS L. GIBBS

PERSONALLY appeared before me, Dennis L. Gibbs, being duly sworn, deposes and states based on his personal knowledge as follows:

1. I am the Bureau Chief for the Bureau of Health Facilities Regulation at the South Carolina Department of Health and Environmental Control ("DHEC").

2. I have worked at DHEC for twenty-four years, serving in the positions of Bureau Chief for three years.

3. I am familiar with the licensing standards for hospice facilities found in S.C. Code Ann. Regs. 61-78, nursing homes found in S.C. Code Ann. Reg. 61-17, and hospitals found in S.C. Code Ann. Reg. 61-16. Based on my experience and the referenced regulations, it is my opinion that a hospice facility is not a hospital.

4. Hospitals are required to provide emergency services. Hospice facilities are not required to provide emergency services, and I am not aware of any hospice facilities in South Carolina that provide emergency services. No hospice facility in South Carolina has a helicopter pad or emergency room. Hospitals may have operating rooms in which to provide surgical care. Hospice facilities do not have operating rooms and may not provide surgical care. Hospitals have ancillary services such as x-ray, MRI, labs, CT Scanners, other imaging equipment and services, and hospices do not offer those services.

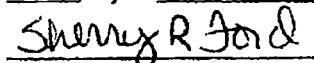
5. An inpatient hospice facility is more similar to a nursing home than a hospital. Like nursing homes, inpatient hospice facilities primarily focus on providing nursing care services, with some minimal ancillary services. The end goal of both a nursing home and an inpatient hospice facility is rarely recovery for traditional residents, but rather comfort and care in a residential setting.

6. On March 23, 2012, DHEC issued Certificate of Need #SC-12-09 approving Mercy Care's proposed hospice facility at 3341 Wildhorse Drive, Conway, South Carolina. The applicable Certificate of Need regulations found at S.C. Code Ann. Reg. 61-15, Section 802(26) required that as part of the review of this application that DHEC make a determination that zoning is appropriate for this hospice facility.

FURTHER AFFIANT SAYETH NOT.


DENNIS L. GIBBS

SWORN TO BEFORE ME this
30 day of October, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 3-14-21



SHERRY R. FORD
Notary Public
State of South Carolina
Comm. Exp. Date: 3-14-21

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

**AFFIDAVIT OF
DAVID LEVITT**

PERSONALLY appeared before me, David Levitt, being duly sworn, deposes and states based on his personal acknowledge as follows:

1. I live and work in Beaufort, South Carolina. I have a Bachelors of Science degree from Virginia Polytechnic Institute and State University and a Masters of Health Administration from The George Washington University. I have over 20 years of experience in health care planning and finance. As a healthcare consultant, I have worked in a variety of settings involving strategic planning, marketing, business development, product line planning, operations, regulatory compliance and financial analysis for over 350 healthcare providers and systems in 48 states. I have been involved in numerous Certificate of Need projects in 12 states. I have assisted healthcare providers in the preparation of nearly 500 Certificate of Need applications and presentations to the applicable review agencies in various states. I have been qualified as an expert in healthcare planning and finance in numerous cases pending before the South Carolina Administrative Law Court. In addition, I have been involved in litigation matters and have been qualified as an expert witness in Georgia, Florida, and Kentucky.

2. I have reviewed the proposed project submitted by Mercy Care for the Mercy Care Hospice House to be located at 3342 Wildhorse Drive in Conway, South Carolina. The proposed hospice facility is not a hospital. Hospitals provide a much more intensive level of care that involves significantly more resources, space, and personnel than a hospice facility. Hospitals provide a wide array of diagnostic and treatment services to include, radiology, ultrasound, X-ray, PET/CT, MRI, and nuclear medicine, cardiopulmonary care services including EKG monitoring, vascular lab services, angioplasty respiratory therapy, lab services including hematology, chemistry, microbiology, histology, cytology, pathology and blood bank services. The proposed Mercy Care Hospice House will not provide these services.

3. Hospitals also are required to offer emergency services and to receive ambulance and helicopter transports on a 24 hour basis. Inpatient hospice facilities do not send or receive patients via helicopter. Ambulances that may transport hospice patients do not use lights or sirens during transport.

4. Inpatient hospice care that will be provided at Mercy Care Hospice House is geared toward residential-like non-institutional settings. Care and services are palliative and not resource or labor intensive.

5. A inpatient hospice facility is more similar to a nursing home than a hospital. Like inpatient hospice facilities, nursing homes primarily focus on providing nursing care services, with some minimal ancillary services. The end goal is rarely recovery for traditional residents, but rather comfort and care in a residential setting.

6. Distinct licensure requirements exist for an inpatient hospice facility. These standards are more similar to nursing home licensure requirements than hospital licensure requirements.

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7. Certificate of need review standards for hospitals are substantially more complex and comprehensive than those for nursing homes or inpatient hospice facilities.

8. Hospitals have greater personnel and support activity than an inpatient hospice. Shift changes, outpatient activities, and supply/delivery activity are substantially greater at a hospital.

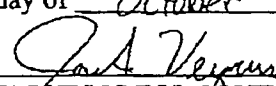
9. An inpatient hospice would not require significant commercial vehicular traffic to support operations.

10. Access for delivery and fire/emergency vehicles to service the proposed Hospice facility would be the same as those required for the current resident of the adjacent subdivision.

11. The proposed hospice expects to employ less than 15 Full Time Equivalent employees. This would not represent a significant level of activity relative to ingress and egress of vehicular traffic for employees coming and going to work.

FURTHER AFFIANT SAYETH NOT.


David S Levitt

SWORN TO BEFORE ME this
26 day of October, 2012

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: April 30, 2017



DAVID S. LEVITT

• 1778 Emory Ridge Drive • Atlanta, GA 30329 •
• 9 River Place • Beaufort, SC 29906 •

Work: 404/315-9011
Work: 843/379-9372

Summary

Outcomes-oriented healthcare professional with over 20 years of progressive experience and leadership in strategic planning, business development, product line planning and marketing for over 340 healthcare providers and systems. Skilled in leading and managing team members and constituents through information collection, analysis, development of findings, identification of best strategic option, consensus development, and implementation. Strong written, verbal, analytical, interpersonal, and quantitative thinking skills.

Professional Experience

MANAGING PARTNER
Levitt Healthcare Affiliates

JULY 2006 – PRESENT

SENIOR PRINCIPAL
SENIOR MANAGER/VICE PRESIDENT
SENIOR CONSULTANT
CONSULTANT
Gill/Balsano Consulting/Mitretek Healthcare-Gill/Balsano

SEPTEMBER 2004 – JULY 2006
DECEMBER 1998 – SEPTEMBER 2004
APRIL 1995 – DECEMBER 1998
JUNE 1994 – APRIL 1995
Atlanta, GA

- ♦ Served as account executive and project manager on a variety of acute and post-acute healthcare strategic planning projects, which included diversification into new inpatient and outpatient services. Consulting assistance included:
 - Market analysis and product line profiling,
 - Developing competitor analysis,
 - Identifying strategies for market positioning,
 - Projecting utilization changes with strategy implementation,
 - Projecting financial effect of strategy implementation,
 - Developing the action plan to achieve the strategic initiatives.
- ♦ Provided financial modeling and reimbursement expertise to clients and oversight on consulting engagements related to financial feasibility, acquisition analysis, and joint venture studies. Project experience includes determining the feasibility of new and replacement facilities, service or bed expansions, asset mergers and purchases, and valuation studies. Areas of experience include:
 - Financial modeling of market share, patient composition, revenue, payor mix, contractual adjustments, and operating expenses variations.
 - Merger, acquisition, and divestiture analyses.
 - Contract negotiations, organizational and governance structure options.
 - Product line development and revenue stream analysis.
- ♦ Developed inpatient and outpatient utilization projections and financial forecasts for numerous projects, including:

▪ Acute care hospitals ▪ Long Term Acute Care ▪ Long-term care facilities ▪ Skilled nursing units ▪ Psychiatric hospitals and units ▪ Rehabilitation hospitals and units	▪ Home health agencies ▪ Hospice ▪ Specialized cardiac services and open heart surgery ▪ Women's services ▪ Oncology programs ▪ Senior Living services

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- ◆ Performed Certificate of Need review functions for the State of Tennessee Health Facilities Commission for all applications to develop or expand Skilled Nursing or Subacute Care services. Responsibilities included the development of written reports and presentations to the Health Facilities Commission recommending approval or denial of the projects. Specific activities included:
 - Determine needs of the residents and providers in the defined service area.
 - Assess existing services provided in defined service area.
 - Determine validity of each applicant's need methodology.
 - Analyze any reasonable alternatives to the proposed project.
 - Assess financial feasibility.
 - Present expert witness testimony at Health Facilities Commission meetings on a monthly basis.
 - Attend all appeal hearings related to reviewed project and provided testimony.
- ◆ Assisted healthcare providers in the preparation of approximately 450+ Certificate of Need applications and presentations to the applicable review agencies in various states. Activities included analysis of relevant markets for services, projection of utilization, and forecast of financial performance.
- ◆ Served as an expert witness in Georgia, Florida, South Carolina, and Kentucky in the areas of health planning and financial feasibility for administrative hearings. Areas of testimony included:

▪ New hospital development	▪ Perinatal services
▪ Acute care bed need	▪ Nursing home development
▪ Acute rehabilitation services	▪ Home health services
▪ Skilled nursing services	▪ MRI services
▪ Open heart surgery services	▪ Oncology services
▪ Ambulatory Surgery services	
- ◆ Provided clients with program planning expertise for specialized services, including oncology, home health, hospice, skilled nursing, cardiac catheterization, psychiatric and rehabilitation services.
- ◆ Served on the Technical Advisor Committee (TAC) for Perinatal Hospital Services of the Georgia Health Strategies Counsel.

CONSULTANT*Fowler Healthcare Affiliates***APRIL 1992 - JUNE 1994***Atlanta, GA*

- ◆ Provided consulting services, project support, and data analyses in product line strategic planning engagements for hospitals, nursing homes, and home health agencies. This included development and analysis of hospital discharge data for feasibility studies, demographics for market profiles, demand studies, bed need methodologies and physician manpower studies. Consulting projects included strategies for subacute program development, rehabilitation, oncology, psychiatry, and skilled nursing facilities.
 - Developed utilization forecasting models based on national, regional and institution-specific incidence and use rates.
 - Conducted ongoing industry research and impact analyses regarding current and proposed reimbursement methods.
 - Translated research into development of recommendations for optimal organizational and operational structures for providers.
 - Responded to marketing inquiries and pursued sales leads through the drafting of proposals, marketing materials, and articles for submission to trade publications.

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DAVID S. LEVITT

Page 3

ACTING ASSISTANT VICE PRESIDENT
ADMINISTRATIVE RESIDENT
Potomac Hospital

JANUARY 1992 - APRIL 1992
DECEMBER 1990 - JANUARY 1992
Woodbridge, VA

- ♦ Gained professional, administrative, and management experience in this full-service, not-for-profit community hospital through comprehensive rotations, assignments, and projects designed to turn theoretical concepts into real-world applications.
 - Performed administrative and management duties of Vice President responsible for Admitting, Medical Records, OB/GYN Clinic, Pharmacy, Physical Medicine and Rehabilitation, Physicians Support Services, Social Services, Utilization Review, and Word Processing.
 - Assumed daily management and operating responsibilities of Materials Management, Purchasing, Warehouse, Central Sterile Supplies, Laundry, and Word Processing.
 - Organized and performed hospital-wide activities related to preparations for the Joint Commission on Accreditation of Healthcare Facilities (JCAHO) resulting in accreditation with commendation.
 - Participated as a member of numerous Joint Commission Survey Teams to external organizations.
 - Successfully directed activities resulting in obtaining Medicare PPS psychiatric waiver.
 - Responsible for state Certificate of Public Need (COPN) and related regulatory compliance regarding development of new services and expenditures.
 - Performed several strategic analyses resulting in initiation of new services including fixed-site MRI, cardiac catheterization, and outpatient surgery services.

Education

MASTER OF HEALTH SERVICES ADMINISTRATION
The George Washington University
Washington, D.C.

BACHELOR OF SCIENCE
Virginia Polytechnic Institute
Blacksburg, VA

Professional Affiliations

- American College of Healthcare Executives
 - Healthcare Financial Management Association
 - Carolina Society for Healthcare Strategy and Market Development
 - Georgia Association of Healthcare Executives
 - Georgia Society for Health Care Planning and Marketing (former member)
 - Virginia Hospital Association (former member)
 - Association of Healthcare Administrators of the National Capital Area (former member)
-

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Publications and Seminars

- "State by State Update on CON and Health Planning Laws and Process", Third Southeastern Health Planning Symposium, March 2010
- "A National Overview of Certificate of Need Regulations", Kentucky Society for Healthcare Planning and Marketing, December 2001.
- "The Balanced Budget Act's Impact on Post-Acute Services", Mountain Area Health Education Council, August 2001
- "Financial Implications for Rehab Units and Freestanding Hospitals", Executive Summit on the New Prospective Payment System for Acute Rehab, May 2001.
- "Meeting the Challenges of PPS for Acute Rehabilitation - Practical Tools and Real World Insights", Healthcare Financial Management Association, November 2000.
- "Perfecting the Strategic Planning Process: Planning for Survival in Today's Competitive Healthcare Environment", Iowa Healthcare Financial Management Association, Fall Institute, October 2000.
- "Financial Incentives of Multiple Levels of Care: The Balanced Budget Act's Effect", Healthcare Financial Management Association, November 1999.
- David S. Levitt and Harriet S. Gill, "Managing Minutia: Succeeding Under a Resource-Based Payment System is a Matter of Minutes." *Post Acute Care Strategy Report*, February 1999.
- "Acute Rehabilitation Services: Addressing the next 6 Months", *Rehab Services '99*, January 1999.
- "Renegotiating and Restructuring Supplier Relationships, The Ins and Outs of Contracting, Outsourcing, and Risk-sharing", *GBH Conferences*, November 1998.
- "Tracking the Costs of Care: Long Term Care Information Systems", *Health Information and Management Systems Society*, September 1998.
- "Introduction to Prospective Payment for SNFs", *Colorado Healthcare Association*, July 1998
- "Overview of SNF Prospective Payment", *Institute of Long Term Care Policy*, April 1998.
- "From DRG to RUG" Estimating your new Patient Mix", *Executive Summit on the New Prospective Payment System*, February 1998.
- "Overview of SNF Prospective Payment Systems", *National Association for the Support of Long Term Care*, January 1998, February 1998.
- David S. Levitt and Harriet S. Gill, "Preparing for Governance Tests that Joint Ventures Raise." *Post Acute Care Strategy Report*, October 1996.
- Armand E. Balsano and David S. Levitt, *Subacute Care: Redefining Healthcare*. Published by the American Subacute Care Association, January 1995.
- *Subacute Care '95 - Practical Strategies for Building a Successful Subacute Program*. March 1995.

PEGAM ASSOCIATES
INC.

ARCHITECTS PLANNERS

To Whom It May Concern:

RE: Mercy Hospice House Design



In working with the owners and after touring several hospice houses in the Southeast with them, the design team has developed an inviting, warm and comforting house design with a "residential" feel both for the patients and their families.

When a visiting family member comes to the house, either to make arrangements for, or visit their terminally ill loved one, they walk through the house's traditional "low country" front porch with rocking chairs and enter the foyer. With residential detailing, warm colors and soft seating, visitors are made to feel "at home". All lighting, furniture and detailing in patient rooms and family areas are residential.

J. Thomas Pegram	AIA
Dennis H. Springs	AIA
David S. Glymph	AIA
David C. Deitz	AIA
Joseph M. Baca	AIA
James M. Hubbard	AIA

Family spaces in the central areas of the building include an open kitchen, dining area, living room with a fireplace, and a playroom for children. All have a comfortable home-like feel. The 14 patient rooms, 7 on each side of the central family area, are designed to have the patient and families feel like they're in a residential bedroom. Each patient room has its own screened porch and overlooks the Waccamaw River. Maintaining peaceful tranquility in and around the house is a Mercy Hospice House priority. The care giving-function rooms and spaces are designed to blend in to the house-like feel of the facility. Most are separate rooms accessed by the staff.

A hospice house is essentially a nursing home that specializes in caring for the terminally ill and shares many similarities with a nursing home. The most significant difference is that a hospice house has less of an institutional and more of a home-like feel than a nursing home.

South Carolina, like most states, licenses, regulates and oversees the design and construction of Hospice Houses. Each type of medical facility that DHEC licenses and regulates in SC (that must apply for a Certificate of Need) has its own specific rules and regulations. DHEC issues "Regulation Number 61-78 Standards for Licensing Hospices" specifically for Hospice Houses. The Certificate of Need that DHEC has issued for the Mercy Hospice House is as per "Regulation Number 61-78 Standards for Licensing Hospices".

The owners have decided to design and build this house to achieve LEED Certification. LEED (Leadership in Energy and Environmental Design) is a nationally recognized, green building certification system developed and overseen by the non-profit US Green Building Council. LEED Certification is recognition that the project has complied with sustainable site and building design and construction practices to lessen the projects environmental impact. The LEED design components and strategies being employed on the site, and in the building, go beyond those required by local, state and national building codes.

Sincerely,

Pegam Associates, Inc.

J. T. Pegram, President

1131B 48th Avenue N.
P.O. Drawer 7448 (29572)
Myrtle Beach, SC 29577
(843) 449-5202
Fax # (843) 497-2635

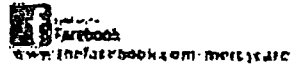
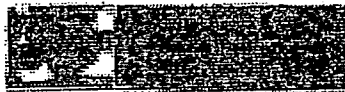
00098

Karen DeLuca

From: Sara Faucher
Sent: Monday, October 08, 2012 11:54 AM
To: Karen DeLuca
Subject: FW: 06 IBC 308.3 (JW)

For our file. sj

Sara-Jo Faucher, BSN, RN, MSN, Geri CNS
 Executive Director/CEO
 (843) 848-6480 Main
 (843) 848-6481 Direct
 (843) 848-6655 Fax
sfaucher@mercyhospice.org



To cure sometimes, to relieve often, to comfort always.

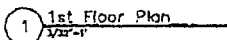
From: Dennis [<mailto:dsprings@pegamassociates.com>]
Sent: Monday, October 08, 2012 11:49 AM
To: Sara Faucher
Cc: Joe Bace; Hiren Shah; Tom Pegram
Subject: FW: 06 IBC 308.3 (JW)

Sara-Jo, I am forwarding the opinion of the ICC (building Code people) on the question that we had asked. Basically, they have said that our Hospice facility is "not unlike a nursing home and that it should be in the Institutional Group I-2 classification of the International Building Code (IBC)". This is where we have it.

Dennis

From: Tom Pegram [<mailto:tpegam@pegamassociates.com>]
Sent: Monday, October 08, 2012 8:54 AM
To: 'Dennis'; Hiren SHAH
Subject: FW: 06 IBC 308.3 (JW)

J. T. Pegram, President
 Pegram Associates, Inc.
 1131-B 48th Avenue North
 Myrtle Beach, South Carolina 29577
 843/449-5202 ph

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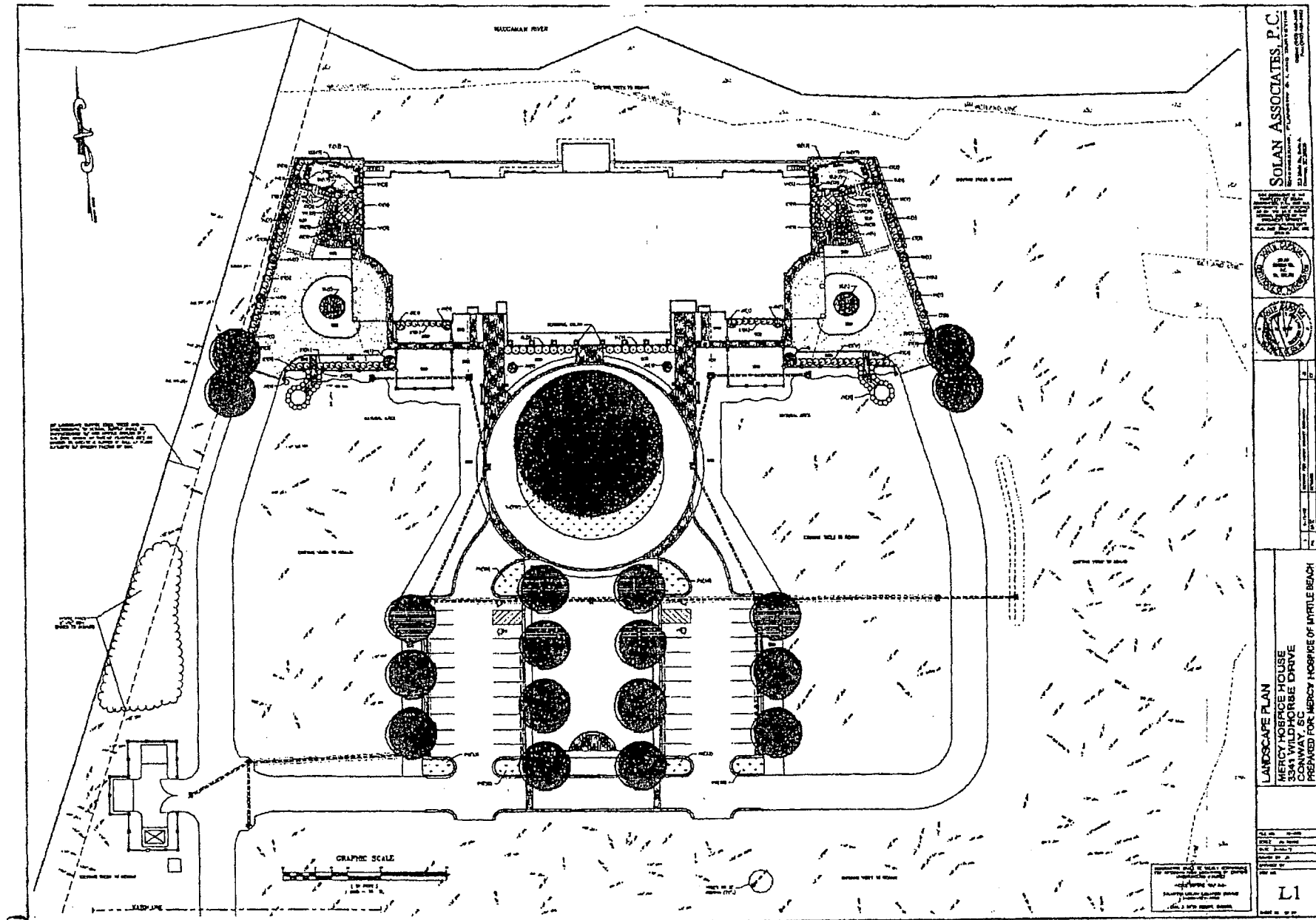
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SOLAN ASSOCIATES, P.C.
ENGINEERING, PLANNING & LAND SURVEYING

October 17, 2012

Mercy Hospice of Myrtle Beach
8216 Devon Court
Myrtle, S.C. 29572

RE: Mercy Hospice Facility
Highway 90, Horry County

Dear Sir:

For informational purposes we offer a comparison of the anticipated traffic to be generated by the proposed hospice facility sited along Wildhorse Drive to the traffic that would be generated by the use of this same property as a single-family residential subdivision.

The proposed facility is to be a 14-bed hospice house. This is classified as a Nursing Care Facility by NAICS (NAICS Code 623110). The anticipated traffic volume estimate based upon ITE (Institute of Traffic Engineers) Trip Generation Manual, 7th Edition, for nursing homes is 2.4 weekday trip ends per bed per day.

Therefore:

Proposed Hospice Facility (14 Beds):

$$14 \text{ Beds} \times 2.4 \text{ ADT's per bed} = 34 \text{ Trips per day}$$

An alternative use also allowed under the existing CFA zoning classification for this site is detached single-family residential. Based on approximately eighteen (18) upland acres, we estimate this site would accommodate 24 one-half acre residential lots allowing for roads and drainage. The anticipated traffic volume estimate based upon ITE Trip Generation Manual, for single-family detached housing is 9.6 weekday trip ends per dwelling per day.

Therefore:

Alternative Property Use, Single Family Residential (24 Lots):

$$24 \text{ Lots} \times 9.6 \text{ ADT's per dwelling unit} = 230 \text{ Trips per day}$$

212 Main St., Suite A
Conway, SC 29526-5129

Office: (843) 488-3400
Fax: (843) 488-3401

00103

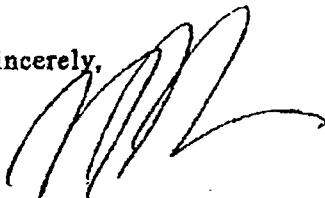
It should be noted that there are many other commercial uses allowed under CFA zoning, all of which would generate more traffic than the residential subdivision comparison above.

There are now 43 residential lots served by Wildhorse Drive, 31 of these lots have homes on them. This equates to 413 potential ADT's and 298 actual ADT's respectively. Using the lower number (298) for existing trips along Wildhorse Drive, the anticipated increase in traffic generated by the proposed hospice facility (34 trips) is 11.4 percent over existing.

Based on the above, the proposed hospice facility will have minimal impact on the traffic in the immediate vicinity and far less than other likely uses for this same property.

Please contact us with any questions.

Sincerely,



Jeffrey D. Solan, PE,PLS

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NAICS Code Description

623110 Nursing Care Facilities (Skilled Nursing Facilities)

This industry comprises establishments primarily engaged in providing resident nursing and rehabilitative services. The care is generally provided for an extended period of time to individuals requiring nursing care. These establishments have a permanent core staff of registered or licensed practical nurses who, along with other staff, provide nursing and continuous personal care services.

Misleading Examples:

Convalescent homes or convalescent hospitals (except psychiatric)

Nursing homes

Assisted living facilities for the elderly with nursing care

Rest homes with nursing care

Infirmary care hospitals

Cross-References:

- Assisted living facilities with on-site nursing care facilities are classified in U.S. Industry [822210](#), Continuing Care Retirement Communities; and
- Psychiatric convalescent homes are classified in Industry [623220](#), Residential Mental Health and Substance Abuse Facilities.

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
623110	623110	623110	Convalescent homes or convalescent hospitals (except psychiatric)
623110	623110	623110	Group homes for the disabled with nursing care
623110	623110	623110	Homes for the aged with nursing care
623110	623110	623110	Homes for the elderly with nursing care
623110	623110	623110	Hospices, inpatient care
623110	623110	623110	Nursing homes
623110	623110	623110	Rest homes with nursing care
623110	623110	623110	Retirement homes with nursing care
623110	623110	623110	Skilled nursing facilities

Free Resources

[2005 Free Handbook](#)
[2012 NAICS Brochure](#)
[2012 NAICS Brochure](#)
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00105

Memo

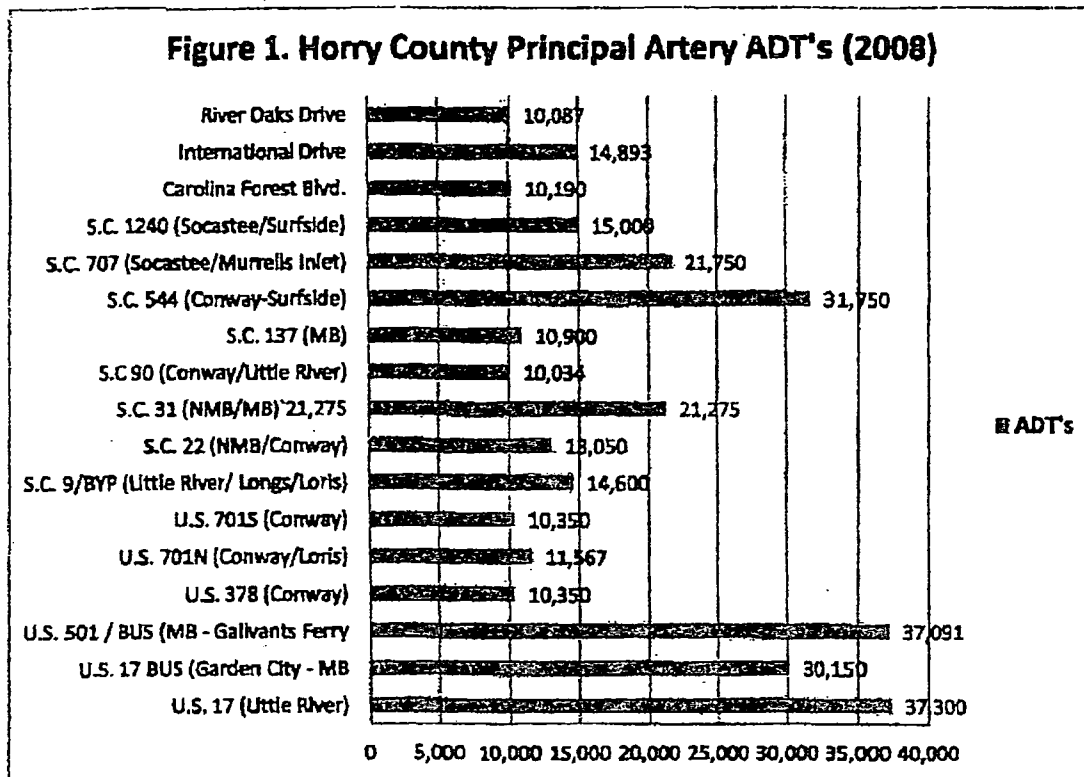
To: Tom Badurski
CC: Sara-Jo Faucher
Date: 10/5/2012
Re: Highway 90 Class, Average Daily Traffic, and Level of Service

Records available through the South Carolina Department of Transportation (DOT) web portal, in addition to data available through Horry County Government provides accurate traffic statistics based upon numerous elements. Based on data, the DOT classifies road and artery types by average daily traffic (ADT). Horry County's Highway 90 (S.C. 90) from Conway to Little River is just one of many arteries and roads included in these classifications. As one of Horry County's principal arteries, Highway 90 receives the least amount of ADT in its class while maintaining a level of service (LOS) grade of A.

"The functional classification system for Horry County's road network consists of: Principal Arteries, Minor Arteries, Collectors, and Local Access Roads" (Horry County Government 2011, 6). Classifications are defined by the number of ADT's each respective road receives. Principal Arteries, for example, receive a minimum of 10,000 ADT's and consequently are the busiest roads in Horry County. Minor Arteries, Collectors, and Local Access Roads receive a minimum of 5,000, 500 – 5,000, and 500 ADT's respectively.

Classified as a Principal Artery within Horry County, Highway 90 received an average 10,034 ADT's along its 23.2 mile stretch from Conway, South Carolina to Little River in 2008.

However, in comparison to all other Principal Arteries in Horry County, Highway 90 received the least amount of ADT's in its class (see Figure 1).



Source: (Horry County Government 2011)

Closer examination by the DOT of ADT's on Highway 90 reveals detailed traffic marker data indicating that ADT is not the same along the entire 23.2 mile route. For example, according to 2011 data, traffic marker 224 which measures between S- 958 and S.C. 22 recorded an ADT of 6,200 while marker 229 measuring between S- 20 to US 17 recorded ADT at 16,200 (South Carolina Department of Transportation 2011). These are significant differences yet reveal that as traffic moves towards Conway, especially as it proceeds beyond S.C. 31 (see Appendix), ADT is reduced by 5,000 and eventually by 10,000 as it reaches marker 224.¹

¹ Mercy Care's Hospice House is located within the measurement of ADT traffic marker 224.

Considering these data, a final look at the level of service (LOS) of Highway 90 provides further positive feedback of the principal arteries' ADT. "Level of Service (LOS) is a tool through which transportation planners can determine the current quality of service and need to improve the relevant transportation facilities" (Horry County Government 2011, 13). Quality of service is graded similar to the A to F grading system used in academic institutions. According to an analysis of traffic volumes, road capacities and resulting LOS classifications for arterial roads in Horry County, the majority of Highway 90 received a letter grade of A wherein "vehicles are almost completely unaffected by other vehicles, and operations are constrained only by geometric features of the highway and driver preferences. Minor disruptions to flow are easily absorbed without major delays" (13). A closer examination of the data, however, provides even clearer understanding for Highway 90's LOS (see Figure 2).

Figure 2. Analysis of Traffic Volumes, Road Capacities and resulting Level of Service (LOS) classifications for Arterial Roads in Horry County

Route No.	Road Capacity (vph) [100]	SCDOT Traffic Census Station Location	ADT, 2005	ADT, 2006	ADT, 2007	ADT, 2008	ADT Capacity (2008 - 2005)	V/C Ratio (2008)	LOS
SC 90	15,800 (3 ln. undiv.)	Conway - #223	7,800	8,500	8,400	7,100	-6.4%		
	16,800 (3 ln. undiv.)	Conway - #224	6,900	7,400	7,300	6,100	-7.4%		
	16,800 (3 ln. undiv.)	NMB/L.R. - #225	6,900	7,300	6,900	6,700	-2.9%		
	16,800 (3 ln. undiv.)	NMB/L.R. - #226	2,800	9,600	9,500	8,000	-0.1%		
	16,800 (3 ln. undiv.)	NMB/L.R. - #227	13,400	13,400	13,100	13,000	-3.0%		
	16,800 (3 ln. undiv.)	L.R. - #228	13,400	14,900	15,100	15,700	12.9%		
	LOS A	V/C = 0.5 or better	NOTE: LOS classification thresholds in accordance to standards provided and used by the South Carolina Department of Transportation (SCDOT) and Grand Strand Area Transportation Study (GSATS).						
	LOS B	V/C = 0.75 or better							
	LOS C	V/C = 1.0 or better							
	LOS D	V/C = 1.2 or better							
	LOS E	V/C = 1.35 or better							
	LOS F	V/C = 1.55 or better	Source: SCDOT/GSATS/Horry County.						

Source: (Horry County Government 2011)

Analysis of these data reveals that there are again significant changes along the entire stretch of Highway 90. Noticing the difference in changes in the northern portion of Highway 90, however, one can conclude once again that traffic significantly reduces as it progresses south towards Conway while LOS improves respectively. Note that traffic marker 224 is not only graded A on the LOS scale, the Volume/Capacity Ratio (V/C Ratio) which determines LOS

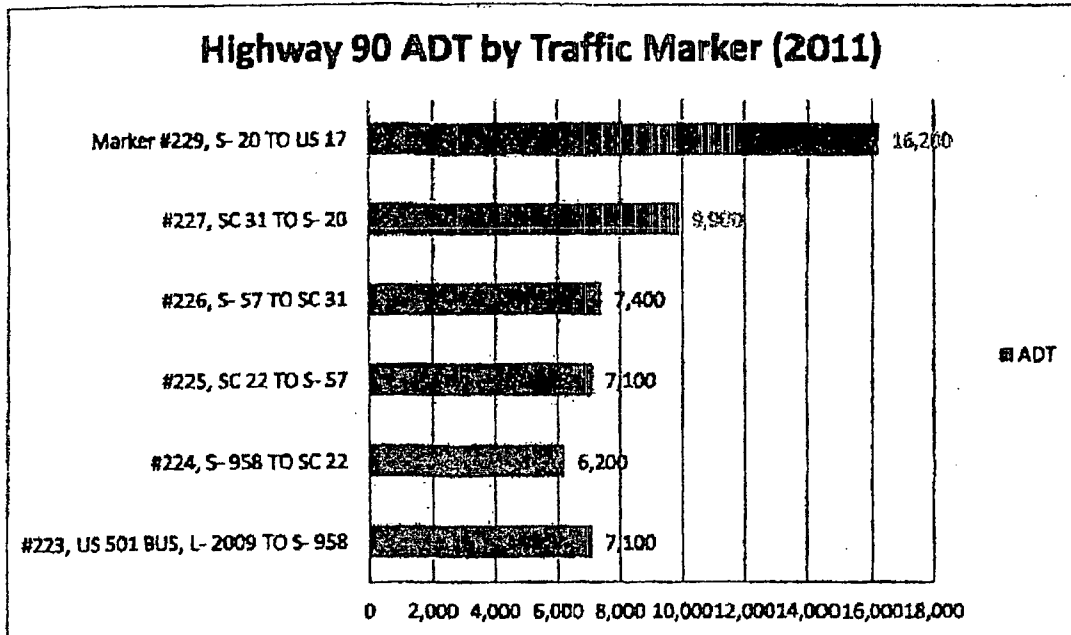
grade (0.5 or better rates LOS A) decreased between 2007 and 2008 from 0.43 to 0.38. This indicates a slight improvement in driving comfort along this stretch of road during this period of time.

When considering ADT along Horry County's 23.2 mile Highway 90, one must examine both ADT and LOS data provided for this principal artery. In comparison to other Principal Arteries within the county, Highway 90 remains at the bottom of its class indicating the least amount of ADT. Furthermore, exhibiting an LOS A-grade, and decreased V/C Ratios in year-to-year comparisons, Highway 90 remains comfortable for drivers and easily absorbs traffic flow without major delays. A significant increase of ADT along Highway 90 would have to occur in order for V/C Ratios to rise beyond 0.5 thus affecting the LOS grade to decrease to a B from an A. Closer examination of just how much ADT along traffic marker 224's measurement would have to increase in order to change the LOS grade could further provide this data.

References

- Horry County Government. "Envision 2025: Horry County Comprehensive Plan Update (Transportation Element)." *Horry County, South Carolina: Committed to Excellence*. 2011. <http://www.horrycounty.org/envision/docs/TranspElement.pdf> (accessed October 2, 2012).
- . "Envision 2025: Planning Horry County's future today!" *Envision 2025*. 2008. <http://www.horrycounty.org/envision/docs/ComprehensivePlan.pdf> (accessed October 2, 2012).
- South Carolina Department of Transportation. "Horry County Traffic Flow Map." *SCDOT.org*. 2010. http://dbw.scdot.org/GISMapping/ViewPdfFile.aspx?Fname=pdfs/TrafficFlow/Horry_County_Trafficflow.pdf (accessed October 3, 2012).
- . "SC Average Annual Daily Traffic." *SCDOT.org*. 2011. http://www.scdot.org/getting/pdfs/Traffic_Counts/2011/HORRY.pdf (accessed October 3, 2012).

Appendix



Source: SC Average Annual Daily Traffic

00110



October 19, 2012

OCT 26 2012

Sara Jo Faucher
Executive Director
Mercy Care
8216 Devon Ct
Myrtle Beach, SC 29572-4178

NORTH CAROLINA
1230 SE Maynard
Suite 203
Cary, NC
27511

PHONE
919 459 5380

FAX
919 459 5390

TOLL FREE
800 662 8859

SOUTH CAROLINA
1350 Browning Rd
Columbia, SC
29210-6903

PHONE
803 791 4220

FAX
803 791 5664

Dear Ms. Faucher:

This letter is in response to your inquiry earlier this month regarding transportation of patients to an inpatient hospice facility.

As you know, The Carolinas Center has been the professional association for hospice and palliative care providers in North and South Carolina for over 37 years. We have over 100 hospice provider members across the Carolinas.

These hospice programs provide in-home hospice care and many provide hospice care in a 24-hour inpatient hospice facility. Our organization sponsors a networking group for our members that operate hospice inpatient facilities that provides the opportunity for them to share and learn from each other and informs our organization about the operational practices and issues facing inpatient providers. Our experience with these inpatient facilities is that patients are transported to the facility in one of two modes, via private vehicle or via non-emergency medical ground transportation. Per Medicare regulations, air ambulance services are not covered for transport to a facility that is not an acute care hospital so transport to a hospice inpatient facility would not be covered. Additionally, we are not aware of any hospice inpatient facility located in the Carolinas that has the capacity (i.e. a helipad) to receive hospice patients via air ambulance.

We trust this answers your question. As always, please let us know if we can be of further assistance.

Sincerely,

David Stone, LCSW, ACSW, CAE
President and CEO
The Carolinas Center for Hospice and End of Life Care

00111

Myrtle Beach Air Medical Transport

1860 Gray Oaks Dr.

Conway, SC 29526

843-446-9263

To whom it may concern,

Myrtle Beach Air started as a fixed wing airplane non emergent medical transport company. After a period of three years we put in service our first ground ambulance. We do not provide helicopter medical transports.

We transport for Mercy Hospice when called from our base in Myrtle Beach by ground ambulance per their request.

Thank you

Ricky Gunter

00112

Thomas S. Badurski

From: Tiffany Loeper
Sent: Thursday, October 25, 2012 5:01 PM
To: Thomas S. Badurski
Cc: Sara Faucher, Charles Sasser, Darlene Fernandez
Subject: FW: Wild Horse Access

Tiffany L. Loeper, LPN, CHPLN
 Mercy Care Hospital Liaison Nurse
 at Conway Medical Center
tloeper@mercyhospice.org
 (843) 848-6480 Phone
 (843) 347-5535 or (843) 347-1513 Fax

From: Beans, Kenneth [<mailto:BeansK@HorryCounty.org>]
Sent: Thu 10/25/2012 3:13 PM
To: Tiffany Loeper
Subject: Wild Horse Access

Tiffany Loeper,

Battalion Chief Kenny Todd of our organization holds Fire Marshal certification in the state of South Carolina. I have forwarded the email message he provided to me after inspecting the site. As you will see in his correspondence, there is no issue with apparatus access or water supply at the Wild Horse subdivision.

Kenneth M. Beans, Interim Fire Chief
 Horry County Fire Rescue Department
 2560 Main St.
 Conway, SC 29526
 843-915-5199
<http://www.horrycountyfirerescue.com>

From: Todd, Kenny
Sent: Thursday, October 25, 2012 2:58 PM
To: Beans, Kenneth
Subject: Wild Horse Access

Chief,

In regards to the question of fire department access into Wild Horse subdivision off hwy 90, The International Fire Code, section 5 requires a fire department access road of 20' wide with a vertical clearance of 13' 6". I submit the following findings:

- 1- The entrance at the gate is over 20' wide
- 2- The only overhead obstruction would be a limb on the large oak tree app. 300' from the gate on the main roadway, but there is access to pass the tree on the left side.
- 3- Water supply would be from a hydrant across hwy 90 at International drive.

In conclusion I find no fire department access issues on the main roadway into Wild Horse subdivision. If you have any further questions or concerns, please let me know.

Kenneth D. Todd | Battalion Chief of Fire Training
Horry County Government
Horry County Fire Rescue
2560 North Main Street, Conway, South Carolina 29526
Tel 843.756.1784 | Fax 843.756.3252 | toddk@horrycounty.org
www.horrycounty.org

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 P.O. Box 261954
 (290 Allied Drive)
 Conway, SC 29528-6054
 843-349-4007, wrk@coastal.edu
www.winyahivers.org



November 2, 2012

Franklin G. Daniels, J.D., L.L.M.
 Nexsen Pruet, LLC
 Attorneys and Counselors at Law
 1101 Johnson Avenue
 Suite 300
 Myrtle Beach, SC 29577

Dear Mr. Daniels,

Re: Mercy Care Hospice's Proposed Site on Hwy 90 in Conway

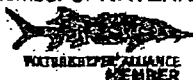
I was advised by Mr. Tom Badurski with Mercy Care of an appeal in front of the Horry County Board of Zoning Appeals regarding the proposed siting for the Mercy Care Hospice off of Hwy 90 in Conway and the statements made regarding the potential for impacts on the Waccamaw River.

As a result of this appeal, I contacted Horry County Stormwater and Horry County Planning and Zoning to inquire about the current plans.

From these discussions, I learned the following regarding the proposed plans for the site:

- the infiltration system is designed to capture stormwater runoff up to a 10-yr storm;
- stormwater runoff from a 25-yr storm would be captured by the level pool spreader proposed in the current plan;
- the proposed design minimizes impervious area by limiting the capacity to 14 rooms and preserving much of the open/wooded space on the site;
- the current Tree Removal Plan includes required protections of live oak trees;
- the Tree Removal Plan also includes protection of other on-site trees and includes the maintenance of a buffer along the property line and along the wetland line.

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00115

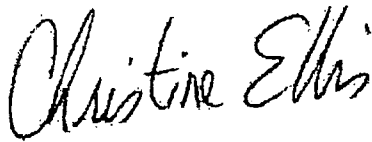
Therefore, I understand the following:

1. that the proposed design exceeds the minimum requirements for stormwater capture, incorporating some Low Impact Development techniques that includes infiltration of stormwater on site resulting in any pollutants being filtered and biologically processed on site;
2. that the proposed design exceeds the minimum requirements for tree protection and proposes to protect other species of trees in addition to live oak and maintain tree buffers along the property line and the wetland line.

The appeal also contains a statement about the potential for impact to the local beaver population. I am not aware of how this proposed project will impact the local beaver population but note that guidance regarding beaver management and control is available at the South Carolina Department of Natural Resources website (<http://www.dnr.sc.gov/wildlife/beaver/beaver.html>) and provides information for landowners on what they can do in South Carolina. In Horry County, flooding issues caused by beaver dams are handled through the Road and Drainage Hotline to determine appropriate steps to take.

Based on the information summarized above, I am supportive of the proposed plans that Mercy Care has for the property located off on Hwy 90 on the Waccamaw River, applaud them for incorporating Low Impact Development practices for infiltrating stormwater on site and for their tree protection plans, and do not believe that the proposed hospice facility will have a negative impact on the water quality of the Waccamaw River.

Sincerely,



Christine Ellis
Waccamaw RIVERKEEPER®
A Program of Winyah Rivers Foundation

Cc: Janet Carter, Planning Director, Horry County
Tom Garigen, Stormwater Manager

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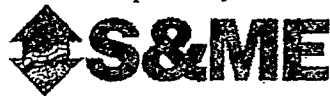
00116

**PHASE I ENVIRONMENTAL
SITE ASSESSMENT
HUCKS HIGHWAY 90 PROPERTY
CONWAY, SOUTH CAROLINA**
S&ME Project No. 1634-10-230

Prepared for:

Mercy Hospice
8216 Devon Court
Myrtle Beach, South Carolina 29572

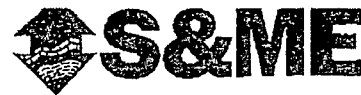
Prepared by:



1330 Highway 501 Business
Conway, South Carolina 29526

October 20, 2010

00117



October 20, 2010

Mercy Hospice
8216 Devon Court
Myrtle Beach, South Carolina 29572

Attention: Ms. Sara-Jo Faucher, RN, MSN, CHPN

Reference: Report of Phase I Environmental Site Assessment
Hucks Highway 90 Property
Conway, South Carolina
S&ME Project No. 1634-10-230

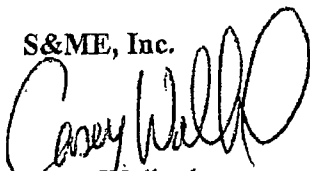
Ms. Faucher:

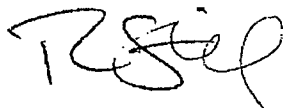
S&ME, Inc. has completed a Phase I Environmental Site Assessment for the referenced property. The attached report presents the findings of S&ME's Phase I Environmental Site Assessment which was performed in general accordance with ASTM E 1527-05 and S&ME Proposal No. 1634-0236-10, dated August 20, 2010.

S&ME appreciates the opportunity to provide the Environmental Site Assessment for this project. Please contact us at your convenience if there are questions regarding the information contained in this report.

Sincerely,

S&ME, Inc.


Casey Wollard
Environmental Technologist



Thomas C. Still, P.E.
Environmental Professional

00118

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SUMMARY

S&ME, Inc. has completed a Phase I Environmental Site Assessment (ESA) on a parcel of land totaling approximately 21.47 acres, located north of Highway 90 and east of Wildhorse Drive in Conway (Horry County), South Carolina. This summary is intended as an overview of the Phase I ESA for the convenience of the reader. The complete report must be reviewed in its entirety prior to making decisions regarding this site.

The purpose of this Phase I ESA was to identify, to the extent feasible pursuant to ASTM E 1527-05, Recognized Environmental Conditions (RECs) in connection with the site. The ASTM Standard Practice E 1527-05 defines "good commercial and customary practice for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and to petroleum products". This practice is intended to permit a user to satisfy one of the requirements to qualify for the "innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations to CERCLA liability."

On October 15, 2010, Mr. Casey Wollard, an environmental technologist with S&ME, under the guidance of Thomas Still, P.E., an environmental professional, conducted a site reconnaissance to evaluate the subject property for drainage patterns, vegetation patterns, stains, discoloration, surrounding land use, and other visual aspects suggestive of the presence of recognized environmental conditions. The subject property is currently undeveloped with the exception of a single-story wood-framed building located on the northern portion of the property. The adjacent properties consist of residential developments and wooded vacant parcels.

S&ME contracted Environmental Data Resources (EDR) to prepare a Field Check™ Radius Report compiling federal and state environmental database information. S&ME also viewed historical aerial photographs to determine past uses of the subject site and its adjacent properties. Interviews with the current property owner and with the local fire department were also conducted to further determine the environmental status of the subject site. This process revealed that the subject property has historically been wooded land and developed with a residential dwelling.

In summary, this assessment has revealed no evidence of RECs in connection with the subject property.

1. INTRODUCTION

S&ME, Inc. (S&ME) conducted a Phase I ESA on a 21.47 acre parcel of land located north of Highway 90 and east of Wildhorse Drive in Conway (Horry County), South Carolina. The ESA was conducted using the American Society for Testing and Materials (ASTM) E 1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process and in accordance with S&ME, Inc. Proposal No. 1634-0236-10, dated August 20, 2010.

1.1 Purpose

The user of this report is Mercy Hospice. The purpose of the ESA is to identify, pursuant to ASTM E 1527-05, recognized environmental conditions in connection with the subject property.

ASTM defines the term recognized environmental condition (REC) as the presence or likely presence of hazardous substances or petroleum products on the property under conditions that indicate an existing release, past release, or a material threat of a release of hazardous substances or petroleum products into the structures on the property or into the ground, groundwater, or surface water of the property. The term does not include de minimis conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of enforcement action if brought to the attention of appropriate governmental agencies.

1.2 Detailed Scope of Services

1.2.1 ASTM E-1527-05

S&ME's approach to performing this Environmental Site Assessment consisted of four major tasks in accordance with ASTM Standard Practice E1527-05.

Task 1 - A review of reasonably ascertainable public records for the site and the immediate vicinity was conducted. This review was performed to characterize environmental features of the site and to identify past and present land use activities, on or in the vicinity of the site, which may indicate a potential for recognized environmental conditions. The review of the reasonable ascertainable public records included:

1. Examination of federal, state, tribal and reasonably ascertainable local public records for the site and immediate vicinity.
2. Examination of one or more of the following resources: aerial photographs, fire insurance maps, tax files, building department records, zoning/land use records, street directories and topographic maps of the site and vicinity for evidence suggesting past uses that might have involved hazardous substances or petroleum products.

Task 2 - A site reconnaissance was performed to identify visual signs of past or existing contamination on or adjacent to the site. This reconnaissance was also performed to evaluate evidence found in our public record review that might indicate activities

resulting in hazardous substances or petroleum products being used or deposited on the site. The site reconnaissance included the following activities:

1. A reconnaissance of the site and adjacent properties was performed to look for evidence of current and past property uses, signs of spills, stressed vegetation, buried waste, underground or above ground storage tanks, subsidence, transformers, or unusual soil discoloration which may indicate the possible presence of contaminants on the properties. Photographs are provided to document these conditions.
2. The exterior reconnaissance involved a viewing of the periphery of the property and a walk-through of accessible areas of the site interior.

Task 3 - Interviews with representatives of present property owners, as well as with appropriate local officials were conducted to consider any local knowledge of hazardous substances or petroleum products on the property or on adjacent properties.

Task 4 - Report preparation and review.

1.2.2 Exclusions from and Additions to Scope of Services

Unless specifically authorized as an addition to the Phase I ESA work scope, the assessment did not include any assessment of environmental conditions not specifically included in the ASTM E1527-05 standard including, but not limited to sampling of materials (i.e., soil, surface water, groundwater or air), or the assessment of business risk issues such as wetlands, lead in drinking water, asbestos containing materials, mold, fungi or bacteria in on-site buildings, regulatory compliance, cultural/historic risks, industrial hygiene, health/safety, ecological resources, endangered species, indoor air quality (including an evaluation of vapor intrusion), radon or high voltage power lines.

1.3 Significant Assumptions

The groundwater within the local geologic province is typically contained in an unconfined (water table) aquifer. The slope of the water table under static conditions (no pumping interference) often approximates the land surface topography. Thus, the interpreted groundwater flow direction is assumed to be approximately the same as the dip of the ground surface. Perennial surface waters (creeks, streams, rivers, etc.) are assumed to act as a discharge point for groundwater flow.

1.4 Limitations and Exceptions of Assessment

The Phase I Environmental Site Assessment was conducted using ASTM E 1527-05. The findings of this report are applicable and representative of conditions encountered at the property on the date of this assessment, and may not represent conditions at a later date. The review of public records was limited to that information which was available to S&ME at the time this report was prepared. Interviews with local and state government authorities were limited to those people whom S&ME was able to contact during the preparation of this report. Information was derived from "reasonably ascertainable" and

“practically reviewable” sources in compliance with our understanding of the standards set forth by ASTM E 1527-05.

The client was responsible for reviewing land title and judicial records for environmental liens or activity and use limitations. The results of that review were not shared with S&ME, Inc. The client did return the User Questionnaire. Information provided by the client, including the User Questionnaire, is assumed to be correct.

According to standards set forth by ASTM 1527-05, an environmental site assessment meeting or exceeding this practice and for which the information was collected or updated within one year prior to the date of acquisition of the property or the date of the intended transaction may be used provided the following components were conducted or updated within 180 days of the date of purchase or the date of the intended transaction:

- Interviews with owners, operators, and occupants;
- Searches for recorded environmental cleanup liens;
- Reviews of federal, tribal, state, and local government records;
- Visual inspections of the property and of adjoining properties; and
- The declaration by the environmental professional responsible for the assessment or update.

1.5 Special Terms and Conditions

This Phase I ESA was conducted in accordance with S&ME Proposal No. 1634-0236-10, dated August 20, 2010. S&ME Agreement for Services (Form AS-071) is incorporated into the Proposal, a copy of which is included in Appendix G.

1.6 User Reliance

The resulting report is provided for the sole use of Mercy Hospice. Use of this report by any third parties will be at such party's sole risk except when granted under written permission by S&ME. Any such authorized use or reliance by third parties will be subject to the same Agreement, under which the work was conducted for Mercy Hospice.

The additional party's use and reliance on the report will be subject to the same rights, obligations, and limitations imposed on the client by our Agreement. However, the total liability of S&ME to all parties of the Phase I ESA shall be limited to the remedies and amounts as provided in the Agreement as a single contract. The additional party's use and reliance on the report shall signify the additional party's agreement to be bound by the proposal and contract that make up the Agreement between S&ME and Mercy Hospice.

2. SITE DESCRIPTION

2.1 Site Location

The subject property is a parcel of land located north of Highway 90 and east of Wildhorse Drive, in Conway (Horry County), South Carolina. Refer to Figures 1, 2 and 3 in Appendix A for the property location.

2.2 Site and Vicinity Characteristics

The subject property is a single parcel of land that is approximately 21.47 acres, which is located in an area of Horry County that generally consists of residential properties, with mostly wooded land. The surface topography in the vicinity of the subject property appears to slope to the north towards the Waccamaw River.

2.3 Current Uses of the Property

The subject property is currently developed with a one-story residential dwelling; however, that structure is dilapidated and unoccupied. The subject property has no current use.

2.4 Site Improvements (Descriptions of Roads, Other Improvements on the Site)

The subject site can be accessed by Highway 90 to the south, via Wildhorse Drive which is located along the west property boundary. A series of unimproved roads and trails traverse the subject property. A dilapidated single-story residential dwelling is located on the northern portion of the subject property. No other structures were identified.

2.5 Current Use of Adjoining Properties

North	Adjoining property to the north consists of the Waccamaw River and wooded land.
East	Adjoining property to the east consists of undeveloped wooded land.
South	Adjoining property to the south consists of cleared land, residential land and a church.
West	Adjoining property to the west consists of wooded land and residential land.

3. USER PROVIDED INFORMATION

3.1 Title Records

Mercy Hospice has not provided a copy of the chain-of-title for the subject property.

3.2 Environmental Liens or Activity and Use Limitations

Mr. J.D. Hill, with Mercy Hospice, returned the completed user-furnished information form (see Appendix F). The user questionnaire indicated that Mr. Hill was not aware of any environmental liens against the subject property. Mr. Hill also indicated that he was not aware of any Activity and Use Limitations (AULS) such as engineering controls, land use restrictions, or instructional controls that are in place on the subject property.

3.3 Specialized Knowledge

The completed user questionnaire indicated that Mr. Hill did not have specialized knowledge or experience related to the property or vicinity.

3.4 Commonly Known or Reasonably Ascertainable Information

The complete user questionnaire indicated that Mr. Hill was not aware of any commonly known or reasonably ascertainable information (i.e. information from a site walk-over, real estate broker, current/past owner, planning agency, etc.) about the property within the local community.

3.5 Property Purchase Price Versus Fair Market Value

Mr. Hill stated in the user questionnaire that the price being paid for the subject property reflects the fair market value.

3.6 Owner, Property Manager and Occupant Information

JC Hucks owned the property at the time this Phase I ESA was performed. Interview information is provided in Section 6.0.

3.7 Reason for Performing the Phase I ESA

The purpose of the Phase I ESA is to identify, pursuant to ASTM E 1527-05, *recognized environmental conditions* in connection with the property. S&ME assumes that this Phase I ESA is being performed to assist the purchaser in qualifying for the *innocent landowner, contiguous property owner, or bona fide prospective purchaser* limitations on CERCLA liability.

3.8 Other

No additional information was provided by the user.

4. RECORDS REVIEW

4.1 Standard Environmental Record Sources

S&ME contracted Environmental Data Resources (EDR), to conduct an environmental search and prepare a Field Check™ Report compiling federal and state environmental database information from the regulatory records of the United States Environmental Protection Agency (US EPA) and the South Carolina Department of Health and Environmental Control (SCDHEC). The purpose of the EDR Report was to identify environmental sites and activities within a radius of potential concern from the subject property, as outlined by ASTM Standard Practice E 1527-05. The EDR Report, including databases searched, along with the date the information was issued and the search radius employed, are provided in Appendix B.

S&ME evaluated the EDR report for regulated sites located within the ASTM-designated search radii. The EDR report, including the “EDR Orphan Summary” and the “EDR Zip Code Scan Report” identified no on-site or off-site findings of an environmental nature.

4.2 Additional Environmental Record Sources

4.2.1 EPA Database

A search of the Environmental Protection Agency (EPA) Window to my Environment database (<http://www.epa.gov/myenvironment/>) and Envirofacts database was conducted. Review of this database did not result in the identification of any additional facilities of potential concern in the immediate vicinity of the subject property.

4.2.2 SCDHEC On-line UST Database

S&ME reviewed the SCDHEC On-line UST database for the purpose of identifying additional regulated facilities. No additional UST facilities were identified within the ASTM Search Radii.

4.2.3 Tribal Record Sources

S&ME evaluated the EDR report for tribal sites located within the ASTM-designated search radii. The following table summarizes the tribal findings that were identified by EDR.

Database	Release Date	Approximate Search Distance	Search Results (number of sites)
Indian Reservations	12/31/2005	1 mile	0
Indian LUST R1	3/12/2008	0.5 mile	0
Indian UST R1	3/12/2008	0.25 mile	0

The subject property does not appear to be located on or near any tribal lands. Based on the United States Census, the Catawba Indian Nation in York County is the only federally recognized tribe in South Carolina. South Carolina began to offer statewide recognition to tribes in early 2005. Currently, none of the recognized tribes identified on the South Carolina Indian Affairs website are listed in Horry County.

S&ME reviewed the South Carolina Indian Affairs Commission website (<http://southcarolinaindianaffairs.com/members.html>) as well as the websites of two recognized tribes, the Pee Dee Indian Tribe (<http://peedeeindiantribeofsc.com>) and the Waccamaw Indian Tribe (http://www.waccamaw.us/FRAME_HOME.htm) for any information regarding environmental issues. These sources did not contain information regarding environmental issues pertaining to the subject property.

4.3 Physical Setting Sources

The site is located in the Coastal Plain Physiographic Province of South Carolina, just inland of the beach strand region along the coast. The topography of this region is dominated by coastal beach terraces, which have been exposed by uplifting of the local area over the last 250,000 years. Since the terraces are relatively young features, they exhibit only minor surface erosion and can be traced large distances on the basis of surface elevation. The soil profile typically consists of a thin veneer of terrace deposited sediments of the Socastee Formation, over older, underlying Coastal Plain limestone or

marls of the Bear Bluff Formation. The erosional contact between the terrace materials and the underlying marls or limestone often varies in elevation over short distances, where the underlying materials have been deeply scoured. Materials comprising the terraces typically consist of a strand or beach ridge deposit of clean sands at the seaward margin. Between the strand and the toe of the next inland terrace, are mainly finely inter-layered clays and sands termed back-barrier deposits.

The property is on the United States Geological Survey (USGS), 7.5-minute series Topographic Map; Nixonville, South Carolina Quadrangle, revision date 1984. A Site Topographic Map, prepared using a portion of the USGS map, is included as Figure 2 in Appendix A.

The previously noted USGS map depicts the subject property as being undeveloped land, and depicts site topography generally sloping from west to east, towards a pond identified on the east portion of the site.

The Soil Survey of Horry County, South Carolina (Sheet #61) was reviewed to examine the soil type underlying the subject property. A review of the map indicated that Yauhannah fine sandy loam (YaA) underlies the majority of the property. Yauhannah soils are well drained and the permeability for this soil type is moderate.

4.4 Historical Use Information on Property

Aerial Photographs

Historical data on the subject property in the form of aerial photographs was available for 1948, 1958, 1963, 1968, 1974, 1983, 1989, 1994, 1999 and 2006.

The 1948 aerial photograph depicts the subject property as being vacant wooded land.

The 1958 aerial photograph does not indicate any major changes to the subject property.

The 1963 aerial photograph depicts the subject property as being developed with a residential dwelling.

The 1968 aerial photograph does not indicate any major changes to the subject property except that the pond along the eastern portion of the subject property is now visible.

The 1974 aerial photograph does not indicate any major changes to the subject property.

The 1983 aerial photograph does not indicate any major changes to the subject property.

The 1989 aerial photograph does not indicate any major changes to the subject property.

The 1994 aerial photograph does not indicate any major changes to the subject property except that the pond on the eastern portion of the subject property is not visible.

The 1999 aerial photograph does not indicate any major changes to the subject property.

The 2006 aerial photograph does not indicate any major changes to the subject property. Current site conditions are similar to those of this aerial photograph.

Sanborn Fire Insurance Maps

S&ME contracted with EDR to conduct a database search of Sanborn Fire Insurance maps (See Appendix C) depicting the subject property. EDR maintains the largest library of Sanborn Fire Insurance maps available. The recent search indicated that Sanborn Fire Insurance maps were not available for the subject property.

City Directories

City Directories were not requested from EDR to further evaluate the historical use of the subject site, as the site has historically been wooded or residentially developed land.

USGS Topographic Maps

Historical data on the subject property in the form of USGS Topographic Maps were available for 1984.

The 1984 USGS Topographic Map depicts the subject property as being undeveloped land with a pond located on the eastern portion of the subject property.

4.5 Historical Use Information on Adjoining Properties

Historical data on the adjoining properties in the form of aerial photographs was available for 1948, 1958, 1963, 1968, 1974, 1983, 1989, 1994, 1999 and 2006.

Northern Adjoining Property

The land that adjoins the subject property to the north appears to be wooded land in the previously noted aerial photographs.

Southern Adjoining Property

The land that adjoins the subject property to the south appears to be residentially developed and developed with a church in the previously noted aerial photographs.

Eastern Adjoining Property

The land that adjoins the subject property to the east appears to be wooded land in the previously noted aerial photographs.

Western Adjoining Property

The land that adjoins the subject property to the west appears to be undeveloped wooded land in the 1948 through 1989 aerial photographs, and developed with sparse residential dwellings in the 1994 through 2006 aerial photographs.

5. SITE RECONNAISSANCE

5.1 Methodology and Limiting Conditions

Mr. Casey Wollard, with S&ME, performed the site reconnaissance of the property on October 15, 2010. The methodology used during the site reconnaissance consisted of walking throughout the property and the property interior. The purpose of the site reconnaissance was to identify recognized environmental conditions at the subject property and identify sites of environmental concern located within ½-mile of the subject site. S&ME personnel searched for evidence of past or present activities which could have led to the deposition of hazardous substances or petroleum products.

5.2 General Site Setting

5.2.1 *Current Use(s) of the Property*

The subject property is currently developed with a one-story residential dwelling; however, that structure is dilapidated and unoccupied. The subject property has no current use.

5.2.2 *Past Use(s) of the Property*

The subject property appeared to be residentially developed in the past. A depression area similar in size and shape to the past pond was observed in the east portion of the site; however, ponded water was not observed in this entire area. Evidence of a past dike breach was noted along the northern portion of the former pond.

5.2.3 *Current Use(s) of Adjoining and Surrounding Properties*

North	Adjoining property to the north consists of the Waccamaw River and wooded land.
East	Adjoining property to the east consists of undeveloped wooded land.
South	Adjoining property to the south consists of cleared land, residential land and a church.
West	Adjoining property to the west consists of wooded land and residential land.

5.2.4 *Past Use(s) of Adjoining and Surrounding Properties*

No indications of alternate past uses of the adjoining or surrounding properties were noted during the reconnaissance.

5.2.5 *Geologic, Hydrogeologic, Hydrologic, and Topographic Conditions*

Details of geology are discussed in Section 4.3. Surface topography in the vicinity of the subject property appears to slope to the north.

5.2.6 General Description of Structures and Roads

The subject site can be accessed by Highway 90 to the south, via Wildhorse Drive, which is located along the western property boundary. A series of unimproved roads and trails traverse the subject property. A dilapidated single-story residential dwelling is located on the northern portion of the subject property. No other structures were identified.

5.2.7 Potable Water Supply and Sewage Disposal System

Community water and sewer appear to be available in the area.

5.3 Exterior Observations

The subject property consists of mostly wooded land with the exception of a cleared area on the northern portion of the subject property where a dilapidated residential dwelling is located. This dwelling can be accessed via a series of unimproved trails that are located throughout the property. Evidence of dumping was noted on the subject property in the form of household garbage, retail displays/sales racks and a dilapidated bus. A discarded tank, presumed to be a petroleum Aboveground Storage Tank (AST) was identified in close proximity to the dilapidated bus; however, the tank appeared to be placed at the site empty, and no ground surface staining or petroleum odors were noted within the vicinity.

A depression area similar in size and shape to the past pond was observed in the east portion of the site; however, ponded water was not observed in this entire area. Evidence of a past dike breach was noted along the northern portion of the former pond.

The northern portion of the subject property slopes sharply to the north towards the Waccamaw River. At the toe of this slope, S&ME identified a galvanized pipe protruding from the ground. This pipe resembled a groundwater drinking well.

5.4 Interior Observations

The dilapidated residential dwelling located on the subject property contained miscellaneous household items and no indication of petroleum products or hazardous materials were noted within the interior.

6. INTERVIEWS

6.1 Interview with Past and Present Owners

JC Hucks owned the subject property at the time the Phase I was performed. Mr. Hucks recently passed away; therefore, S&ME contacted Mrs. Rebecca Hucks, Mr. Hucks widow and representative for the subject property, to inquire of her knowledge of any environmental concerns associated with the property. Mrs. Hucks stated in an interview on October 19, 2010, that she has been familiar with the subject property since her husband purchased the subject property approximately 50 years ago. Mrs. Hucks stated that the dwelling located on the subject property was used as a club house, and not used as a primary residence. Mrs. Hucks also stated that the bus and garbage located on the subject property belonged to Mr. Hucks; however, she was unaware of any environmental concerns associated with the property.

6.2 Interview with Key Site Manager

There is no key site manager.

6.3 Interview with Occupants

The subject property is unoccupied.

6.4 Interview with Local Government Officials

S&ME contacted the Horry County Fire Department on October 19, 2010. The department stated that they were unaware of any major fires, hazardous material, or petroleum related emergency responses in the vicinity of the subject property.

6.5 Interviews with Others

No others were interviewed.

7. FINDINGS

7.1 On-Site Findings

A discarded tank (presumed petroleum AST) was identified in close proximity to the dilapidated bus; however, the tank appeared to be placed at the site empty, and no ground surface staining or petroleum odors were noted within the vicinity.

7.2 Off-Site Findings

There were no off-site findings identified during this Phase I ESA.

8. OPINION

8.1 On-Site Opinions

Based on visual observations indicating the lack of a release, the AST is not considered a recognized environmental condition.

8.2 Off-Site Opinions

There were no off-site findings identified during this Phase I ESA.

8.3 Data Gaps

- The lack of historical references for determining the previous use of the subject site represents a data failure. EDR, Inc. maintains the largest library of Sanborn Fire Insurance Maps available. A search of available Sanborn Fire Insurance Maps by EDR revealed no coverage of the area where the subject site is located. Some gaps greater than five years existed between the aerial photographs of the site which were available and the first developed use of the site could not be determined. This is not considered a significant data gap, as it does not represent a major hindrance to the identification of possible RECs on the site. No evidence was noted which suggested the subject site has been used for anything other than vacant land prior to its current development.

- The complete land title records were not provided to S&ME by the user, and therefore, S&ME could not review these documents for environmental liens and or activity use limitations. This is not considered a significant data gap, as no evidence was noted which suggested the subject site has been used for anything other than vacant land prior to its current development.

9. CONCLUSIONS

S&ME has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of the ASTM E 1527-05 for a parcel of land totaling approximately 21.47 acres, located north of Highway 90 and east of Wildhorse Drive in Conway (Horry County), South Carolina.. Exceptions to this practice are described in Section 1.4 of this report.

This assessment has revealed no evidence of RECs in connection with the subject property.

10. DEVIATIONS

S&ME, Inc. has endeavored to perform this Phase I ESA in conformance with the scope and limitations of ASTM E 1527-05. The environmental professional in responsible charge of the Phase I ESA did not feel the need to deviate from the standard.

11. ADDITIONAL SERVICES

S&ME is currently performing a wetland delineation of the subject property.

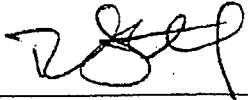
12. REFERENCES

1. Soil Survey of Horry County, South Carolina, United States Department of Agriculture, Soil Conservation Service, issued date 1974.
2. United States Geological Survey (USGS), 7.5-minute Series, Topographic Map, Nixonville, South Carolina Quadrangle 1984.
3. <http://www.epa.gov/myenvironment/>
4. http://www.scdhec.gov/environment/lwm/Databases/tanks_db/index.asp
5. <http://southcarolinaindianaffairs.com/members.html>
6. <http://peedeeindiantribeofsc.com>
7. http://www.waccamaw.us/FRAME_HOME.htm
8. <http://sc.edu/library/digital/index.php>
9. <http://www.horrycounty.org/hcgPortal.asp>

13. SIGNATURE(S) OF ENVIRONMENTAL PROFESSIONAL(S)

I, Thomas C. Still, declare that, to the best of my knowledge, I meet the definition of Environmental Professional as defined in paragraph 312.10 of 40 CFR 312, and I have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property.

I have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.



Thomas C. Still, P.E.
Environmental Professional

14. QUALIFICATION(S) OF ENVIRONMENTAL PROFESSIONAL(S)

S&ME provides a broad range of environmental services, including site assessments for real estate transactions. S&ME has just under 1,000 employees located in 27 offices throughout the southeast. ENR ranked S&ME as one of the 200 largest environmental firms in the country.

Mr. Thomas Still is the Environmental Professional for this Phase I ESA. Mr. Still is a Senior Engineer and Environmental Professional with over 16 years of experience. In addition to Phase I ESAs, projects he has managed include geotechnical exploration, construction materials testing and materials engineering projects. Mr. Still is a Branch Manager and senior reviewer for S&ME and has also attended ASTM training for Phase I Environmental Site Assessments (See Appendix H for Mr. Still's Qualifications).

Casey Wollard is an Environmental Technologist with over 5 years of experience. Mr. Wollard has performed over 300 Phase I and Phase II Environmental Site Assessments for real estate transactions. Mr. Wollard is HAZWOPER certified and has also attended ASTM E 1527-05 training for Phase I Environmental Site Assessments.

00134



This agreement is made as of November 9, 2011 between Rhino Demolition & Environmental Services, Corp. (Subcontractor) and Mercy Hospice (Contractor) for the sum of Three Thousand Seven Hundred and 00/100 Dollars (\$3,700.00) for the following project:

Project Name: Asbestos containing floor tile & mastic removal at a Vacant Residential Structure located off of Highway 90 in Conway, SC

Applications for payment will be submitted every thirty (30) days or upon completion of the project (whichever comes first). Payment is due upon receipt of invoice. By signing here you accept our payment terms.

Signature required - By: _____

IT IS UNDERSTOOD AND AGREED THAT WE SHALL NOT BE HELD LIABLE FOR ANY LOSS, DAMAGE OR DELAYS CAUSED BY FIRE, STRIKES OR MATERIAL STOLEN AFTER DELIVERY UPON PRESENT, LOCKOUTS, ACTS OF GOD, OR THE PUBLIC ENEMY, ACCIDENTS, BOYCOTTS, MATERIAL SHORTAGES, DISTURBED LABOR CONDITIONS, DELAYED DELIVERY OF MATERIAL FROM BELIEF SUPPLIERS, FORCE MAJEURE, INCIDENT WEATHER, FLOODS, FREIGHT EMBARGOES, CAUSES INCIDENT TO NATIONAL EMERGENCIES, WAR OR OTHER CAUSES BEYOND REASONABLE CONTROL. PRICE QUOTED IN THIS CONTRACT IS BASED UPON PRESENT PRICES AND UPON CONDITION THAT THE PROPOSAL WILL BE ACCEPTED WITHIN TEN DAYS. PROJECT IS ACCESSIBLE AT ALL TIMES AND GUARANTEED UNINTERRUPTED WORK, ALSO GENERAL CONDITIONS WHICH ARE STANDARD SPECIFICALLY FOR CONTRACTORS IN THE CONSTRUCTION INDUSTRY, SPECIAL CONDITIONS WILL BE DISCUSSED WITH PROJECT MANAGER AS THEY OCCUR.

By signing below, you accept the terms of our proposal and it becomes a binding contract.

SUBCONTRACTOR:

BY: Rhino Demolition & Environmental Services, Corp.

SIGNATURE: [Signature]

PRINTED NAME: JOSEPH SMITH

TITLE: Project Manager

CONTRACTOR:

BY: Mercy Hospice

SIGNATURE: [Signature]

PRINTED NAME: SARA J. FAULKNER

TITLE: Executive Director/CEO

www.rhinodemolition.com
108 Cass Ct Lake River SC 29566
Phone: 843-399-2153, Fax 843-399-0080

00135



CLEARANCE STATEMENT

Date: 17 Nov 11Job Name: MERCY HOSPICEAddress: (HWY 90 + WILDHORSE DR)
CONWAY, SCSubject: VACANT HM (HWY 90 + WILDHORSE DR, CONWAY)AB FLOOR TILE / MASTIC

On 17, NOV, THUR a visual inspection has been conducted of the above listed structure. All work has been completed as per the scope of work. The area has been left in a clean and orderly manner to a construction clean standard. No deficiencies are noted.

Rhino Demolition Project Supervisor

BY: [Signature]PRINTED NAME: JUSTIN SMITHTITLE: PROJECT SUPERVISOR

Owner or Owner Rep.:

BY: [Signature]PRINTED NAME: SARA FAUCHERTITLE: ELEC DIR / CEO
MERCY CARE



Tom Badurski
 Mercy Hospice
 174 Waccamaw Medical Park Ct.
 Conway, SC 29526
 tbadurski@mercyhospice.org

November 9, 2011

Subject: Asbestos containing floor tile & mastic removal at a Vacant Residential Structure located off of Highway 90 in Conway, SC

This proposal is based on a site visit and asbestos survey report.
 The work scope will involve the following:

- Mobilize to the job site.
- Set up 5 stage remote decon
- Removal of approx. 392 SF of tile & mastic, in specific locations, as outdoor removal in accordance with demo contract.
- Work with demo contractor to locate areas and make them safe working areas.
- Double bag debris and dispose of in accordance to SC regulations.

Total **\$3,700.00**

Price includes labor, materials, permit fee, waste disposal.

Qualifications:

1. Price is based on quantities given. If any more asbestos is found, a change order will apply.
2. GC responsible for any air monitoring and testing.
3. Because of the conditions of the house, Rhino will work with Demo contractor to make rooms safe to access.

I appreciate the opportunity to furnish you with this proposal. This price may change based on additional work required and or changes to the existing scope. Please let me know if I can be of further assistance or if more information is needed.

Jake Smith
 Project Manager
 Rhino Demolition & Environmental Services Corp.
 108 Case Ct., Little River, SC 29566 Phone: (843) 399-2153

Florida Asbestos Contractors License #CJC1154159
 Georgia Contractors License #RN121 69
 Louisiana Contractors License #250146
 North Carolina Contractors License #49003
 South Carolina Contractors License #ASB653
 Virginia Contractors License #2705 114410

00137

www.rhino-demolition.com
 108 Case Ct Little River SC 29566
 Phone: 843-399-2153, Fax 843 399-0080



This agreement is made as of November 9, 2011 between Rhino Demolition & Environmental Services, Corp. (Subcontractor) and Mercy Hospice (Contractor) for the sum of Three Thousand Seven Hundred and 00/100 Dollars (\$3,700.00) for the following project:

Project Name: Asbestos containing floor tile & mastic removal at a Vacant Residential Structure located off of Highway 90 in Conway, SC

Applications for payment will be submitted every thirty (30) days or upon completion of the project (whichever comes first). Payment is due upon receipt of invoice. **By signing here you accept our payment terms.**

Signature required - By: _____

IT IS UNDERSTOOD AND AGREED THAT WE SHALL NOT BE HELD LIABLE FOR ANY LOSS, DAMAGE OR DELAYS CAUSED BY FIRE, STRIKES OR MATERIAL STOLEN AFTER DELIVERY UPON PREMISES, LOCKOUTS, ACTS OF GOD, OR THE PUBLIC ENEMY, ACCIDENTS, BOYCOTTS, MATERIAL SHORTAGES, DISTURBED LABOR CONDITIONS, DELAYED DELIVERY OF MATERIAL FROM SELLERS/SUPPLIERS, FORCE MAJEURE, INCLEMENT WEATHER, FLOODS, FREIGHT EMBARGOES, CAUSES INCIDENT TO NATIONAL EMERGENCIES, WAR OR OTHER CAUSES BEYOND REASONABLE CONTROL. PRICE QUOTED IN THIS CONTRACT IS BASED UPON PRESENT PRICES AND UPON CONDITION THAT THE PROPOSAL WILL BE ACCEPTED WITHIN TEN DAYS. PROJECT IS ACCESSIBLE AT ALL TIMES AND GUARANTEED UNINTERRUPTED WORK, ALSO GENERAL CONDITIONS WHICH ARE STANDARD SPECIFICALLY FOR CONTRACTORS IN THE CONSTRUCTION INDUSTRY, SPECIAL CONDITIONS WILL BE DISCUSSED WITH PROJECT MANAGER AS THEY OCCUR.

By signing below, you accept the terms of our proposal and it becomes a binding contract.

SUBCONTRACTOR:

BY: Rhino Demolition & Environmental Services, Corp.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

CONTRACTOR:

BY: Mercy Hospice

SIGNATURE: [Signature]

PRINTED NAME: SARA-J. FAULTER

TITLE: Executive Director/CEO

00138

PARTNER
Engineering and Science, Inc.

September 30, 2011

Mr. Thomas Badurski
Mercy Hospice
174 Waccamaw Medical Park Court
Conway, South Carolina 29526

Subject: Asbestos Survey Report
Highway 90
Conway, South Carolina 29526
Partner Project No. 11-81294

Dear Mr. Badurski:

Per your request, Partner Engineering and Science, Inc. (Partner) has provided this letter to serve as a general interpretation of the asbestos sampling results outlined in Pre-Demolition Asbestos Survey, dated September 22, 2011, and provide site-specific asbestos exposure information.

Asbestos is the name given to a number of naturally occurring, fibrous silicate minerals mined for their useful properties such as thermal insulation, chemical and thermal stability, and high tensile strength. Asbestos is commonly used as an acoustic insulator, thermal insulation, fire proofing and in other building materials. Exposure to airborne friable asbestos may result in a potential health risk because persons breathing the air may breathe in asbestos fibers. Continued exposure can increase the amount of fibers that remain in the lung. Fibers embedded in lung tissue over time may cause serious lung diseases including: asbestosis, lung cancer, or mesothelioma.

Asbestos-containing material (ACM) is defined as any material containing more than one percent (1%) asbestos as determined using PLM (40 CFR 61). The ACMs most likely to release asbestos fibers into the air are those which are in a friable state. Friability describes the condition of asbestos. The definition of friable is any material, when dry, that is capable of being crumbled, pulverized or reduced to powder by hand pressure (40 CFR 763).

The asbestos survey was conducted in accordance with the U.S. Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations. The NESHAP regulations require sampling potential ACM prior to demolition or extensive renovation, regardless of the date of construction. That survey should include an assessment of all subject building materials, including those in areas which are normally inaccessible. Any material found to be ACM should be handled in accordance with applicable regulations.

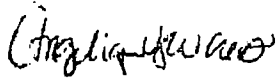
Based upon the results of the pre-demolition asbestos survey, asbestos was detected at concentrations greater than 1 percent (1%) in the one-inch by one-inch (1"x1) floor tile and mastic located within the residential structure. In accordance with asbestos regulations, the floor tile and mastic is not considered a friable material. Nonetheless, the floor tile and mastic will be

2701 Dallas Parkway, Plano, TX 75093 Phone (214) 234-9569 Fax (214) 572-7330

00139

required to be removed by a certified asbestos abatement contractor. Because the asbestos materials are not friable, extraordinary measures during demolition activities that include, air monitoring, material encapsulation and/or supplied-air (personal encapsulation within a suit and face mask) will not be implemented for this type of demolition activity.

Respectfully,
Partner Engineering and Science, Inc.



Angelique Crews
South Carolina Asbestos
Inspector No. BI-00334

**South Carolina Department of Health
and Environmental Control**



Certificate of Need
CON Number: SC-12-09

IS HEREBY ISSUED TO FACILITY: Mercy Care Hospice House

FACILITY LOCATION: Corner of Hwy 90 and Wildhorse Drive
Conway, South Carolina 29526

LICENSEE: Mercy Care

AGENT: Sara Jo Faucher

FOR: Establishment of a fourteen (14) bed inpatient hospice house.

TOTAL PROJECT COST: \$5,975,000.00

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until March 23, 2013, which is a period of twelve (12) months from the date of issuance unless the applicant receives an extension from the Department in accordance with applicable regulations.

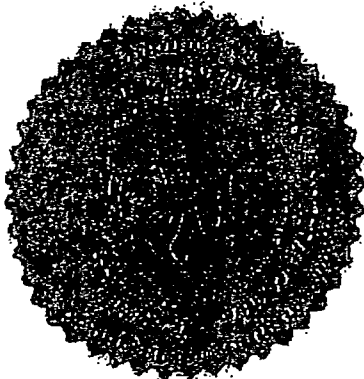
Witness to this Certificate is confirmed by our signatures and the seal of the Department of Health and Environmental Control this twenty third day of March 2012.

Beverly Brandt

Beverly A. Brandt
Chief, Bureau of Health Facilities and Services Development

Pamela M. Dukes

Pamela M. Dukes
Deputy Commissioner, Health Regulation



00141

Total Tree Care & Appraisal, Inc.

P. O. Box 3664

Pawleys Island, SC 29585

843-651-8733

843-651-6123 (fax)

Estimate

Date	Estimate #
10/26/2012	1648

Bill to: Tom Badurski 3341 Wildhorse Drive Conway, SC 29526		Service Address		
Initial approval	Description	Cost	Qty	Total
	Construction management plan for the feature live oak to be preserved for the hospice building construction project. Ongoing consultation for design changes, site supervision, and ongoing tree health evaluation. \$75 per hour	350.00		350.00

Client agrees to pay billings in full upon completion of services. TTC&A assumes no responsibility for damage due to undisclosed potential hazards, including driveway damage. Client agrees that TTC&A cannot be held responsible for work delays due to inclement weather, mechanical failure, employee illness, or Acts of God. Stump grindings are left in place.

Total

\$350.00

Customer approval

"LIKE" us on Facebook for the latest on Tree Preservation, research, tools and tips

Phone #	Fax #	E-mail
843-651-TREE (87...	843-651-6123	totaltreecare@sc.rr.com

00142



MERCY HOSPICE

PALLIATIVE CARE PARTNERS

Camp Happy Hearts

MERCY HONORS

Treasures of the Heart

Senior Wellness

♥ Comforting the Body ♥ Soothing the Spirit ♥ Healing the Heart

8216 Devon Court • Myrtle Beach • South Carolina • 29572 • Main: 843-347-5500 • Fax: 843-347-5535

Plan of Correction
May 18, 2012 Licensing Inspection

Written plan includes:

1. Actions taken to correct each cited deficiency
2. Actions taken to prevent similar recurrences
3. The actual or expected completion dates of those actions

505.A.1:

1. The Annual Skills Fair which covers mandatory topics was in the process of being revised and updated during this inspection. The Skills Fair, as previously scheduled, was offered to volunteers on May 21, 2012 and will be offered to staff members June 1, 2012.
2. The Annual Skills Fair will be offered the same month each year, so that annual requirement is achieved. Beginning in 2013, this will be moved back to March and will remain in mid-March of each year.
3. By June 1, the mandatory topics will be presented to both volunteers and staff. The staff members will have two weeks to complete the required post-test.

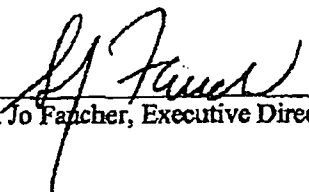
702.A:

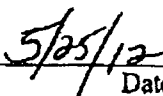
Patient 2:

1. Various pieces of documentation had been filed into the record prior to being signed by appropriate staff members. This documentation has been corrected with signature addendums.
2. Medical records staff members, under the coordination of Director of Compliance, are creating record audit forms to capture the signatures and dates on forms prior to being filed in the clinical record.
3. New audit form/checklist will be completed by June 1 and will be implemented immediately.

Patient 3:

1. Allergies were not identified on Patient Information Sheet. Upon further investigation with this particular electronic record, it was noted that allergies had been listed on the Active Medication Profile and were listed on profile with Hospice Pharmacia, but did not flow onto the Patient Information Sheet. Discovered that this information had not populated on the Patient Information Sheet due to an error in entering information on Medication Profile; this Patient Information Sheet has been corrected. (Agency did not find this same error when other clinical records were reviewed). All nurses have been re-educated in the proper way to document allergies so that this information populates in designated fields.
2. Medical records staff members, as coordinated by Director of Compliance, are revising record audit forms to include verification of Allergies on Patient Information Sheet.
3. New audit form/checklist will be completed by June 1 and will be implemented immediately.

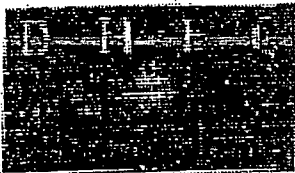

 Sara Jo Fancher, Executive Director


 Date

www.mercyhospice.org

"SERVING HOPKIN, GEORGETOWN & MARION COUNTIES SINCE 1981"

00143



Facility Information	Audit Information
Permit Number: HPC-0053	Audit: HOSPICE Program ROV 20101001
Permit Type: HL- Hospice Program	Type: L01 Routine
Location Name: MERCY CARE	Date: 05/18/2012
Address: 8216 DEVON CT	Stop Date: 12/31/9999
City/State/Zip: MYRTLE BEACH, SC, 29572-4178, Horry	Auditor: Theresa M. Hinton
Phone: 843-347-5500	Contact Name: SARA J ORDWAY-FAUCHER
E-Mail:	Contact Email:

Division of Health Licensing 2600 Bull St Columbia SC 29201-1708	Report Notice
REPORT NOTICE If applicable, this Report of Visit includes a detailed description of the conditions, conduct or practices that were found to be in violation of requirements. This inspection or investigation is not to be confused as a check of every condition that may exist, nor does it relieve the licensee (owner) from the need to meet all applicable standards, regulations and laws. The South Carolina Code of Laws requires this Department to establish and enforce basic standards for the licensure (permitting), maintenance, and operation of health facilities and services to ensure the safe and adequate treatment of persons served in this State. It also empowers the Department to require reports and impose sanctions and investigations as considered necessary. Furthermore, the Code authorizes the Department to deny, suspend, or revoke licenses (permits) or to assess a monetary penalty against a person or facility for (among other reasons), violating a provision of law or departmental regulations or conduct or practices detrimental to the health or safety of patients, residents, clients, or employees of a facility or service. If applicable to the type of report being made, the signature of the activity representative indicates that all of the items cited were reviewed during the exit discussion. If this Report of Visit is required by regulation to be made available in a conspicuous place in a public area within the facility, reduction of the names of those individuals in the report is required as provided by Sections 44-7-310 and 44-7-315 of the S.C. Code of Laws, 1976, as amended.	

ADMINISTRATOR'S SIGNATURE - PLAN OF CORRECTION PLAN OF CORRECTION - Administrator Certification: I certify that the attached plan of correction describes: (1) the actions taken to correct each cited deficiency, (2) the actions taken to prevent similar recurrences, and (3) the actual or expected completion dates of those actions.		POC REQUIRED
PERMIT NAME: <u>SARA J ORDWAY-FAUCHER</u> TITLE: <u>Executive Director/CEO</u> SIGNATURE: <u>[Signature]</u> DATE: <u>5/18/12</u> Administrator retains a copy of this report (original signature required) with desk option of correction submitted to: SCDEEC, Division of Health Licensing, 2600 Bull St, Columbia, SC, 29201 Your response to this report must be received in our office by close of business (5:00 p.m.) no later than the date listed below: The signed Report of Visit, Plan of Correction and any supporting documentation as applicable, is due on June 4, 2012. It may be faxed to 803-545-4212.		

INSPECTION INFORMATION	
Is this an On-Site Visit?	YES
What Date Did the Auditor Arrive at the Activity?	5/18/2012
What Time Did the Auditor Arrive at the Activity?	11:12:14 AM
Licensed to Serve How Many Counties:	3
Select the Type of Inspection to be Performed:	HOS General Inspection
Activity Administrator:	SARA J ORDWAY-FAUCHER
Enter the name and title of the Facility/Activity Representative for this Report of Visit.	SARA J ORDWAY-FAUCHER
Is the Current Facility/Activity Administrator the same as the Administrator of Record?	YES
Does the Facility/Activity Address agree with the Address of Record?	YES
Does the Facility/Activity Telephone Number agree with the Telephone Number of Record?	YES

00144

Does the Facility/Activity E-mail Address agree with the E-mail Address of Record?	YES
Are there any other individuals accompanying the auditor for this visit?	NO
STAFF RECORDS HOS	
505.A.1. The following training shall be provided by appropriate resources, e.g., licensed/registered persons, video tapes, books, etc., to all staff members/direct care volunteers in the context of their job duties and responsibilities prior to patient contact and at a frequency determined by the hospice, but at least annually: Management/care of persons with contagious and/or communicable disease, e.g., hepatitis, tuberculosis, HIV infection; (Class I Violation) • At the time of the inspection, the last documented date of this training was March 2011.	OUT
HOS REGULATION SECTIONS 700-1400 61-78	
702.A. The hospice shall initiate and maintain an organized record for each patient. The record shall contain sufficient documented information to identify the patient and verify appropriate care rendered. All entries shall be written legibly in ink or typed, signed, and dated. (Class II Violation) • Patient 2 At the time of the inspection, the Physician face to face visit had not been signed. At the time of the inspection, the Nurse Practitioner Attestation of face to face signed by nurse practitioner on 9-27-2011, but was missing the certification period dates. It was observed during the inspection that these dates were normally written. At the time of the inspection, the Care Plan dated 8-10-2011 had not been signed or dated by the RN. Other similar forms in the file had been signed. • Patient - 3 At the time of the inspection, allergies had not been properly identified on the Patient Information Sheet.	OUT
DHSC 0282 (05/2010) AUDIT - [Records Retention Schedule] (SRH-F&S-17)	Retention
PROTECTED INFORMATION	
Is this information CONFIDENTIAL? This section names or identifies certain individuals related to cited violations. If you identify by name any patient, client, resident, or participant, you must check 'YES' by CONFIDENTIAL. Otherwise, check 'NO.' (The names of facility/activity staff members are NOT considered CONFIDENTIAL. If required for the audit, list the names of staff members in the citation.) • Patient 2 - Kelly Jones Patient 3 - Esstelle Jordan	YES

00145



8216 Devon Court
 Myrtle Beach, SC 29572
 Phone: (843) 848-6480
 Fax: (843) 848-6655
FAX COVER SHEET

TO DHEC DIVISION OF HEALTH LICENSING FAX: 803-545-4212

FROM: SARA-JO FAUCHER, EXECUTIVE DIR. / CEO DATE/TIME: 5-25-12

SUBJECT: PLAN OF CORRECTION / 5-18-12 LICENSING INSPECTION

NUMBER OF PAGES (including cover sheet): 4

COMMENTS:

Please call with any questions or request and we will contact you with date of discharge and any other vital information.

(If you are unable to read any of this fax or have not received all pages, please call the above number.)

WARNING

This transmittal may contain PRIVILEGED AND CONFIDENTIAL INFORMATION intended for use by recipient named above. Copying, distributing, or use by any other person(s) is STRICTLY PROHIBITED. If you have received this transmittal in error, please notify Mercy Care immediately by telephone and return the misdirected transmittal to our office by U.S. Mail.

00146

**Planning and Zoning
Department**

1301 2nd Ave. Ste. 1D-09
Conway, SC 29526



Phone: 843-915-5340
843-205-5340

Fax: 843-915-5340

www.horrycounty.org

September 22, 2010

Tom Badurski
Director of Special Projects
Mercy Care
8216 Devon Court
Myrtle Beach, SC 29577

Re: Support for Hospice House Project on Highway 90

Dear Mr. Badurski:

I am enclosing the Resolution that Horry County Council passed last night in support of the above referenced project. Please let me know if I can be of further assistance.

Sincerely,

Janet Carter
Planning Director/L&R Counsel

00147

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

RESOLUTION NO. R-103-10**A RESOLUTION IN SUPPORT OF MERCY CARE'S HOSPICE HOUSE PROJECT ON HWY 90.**

WHEREAS Mercy Care is embarking on a mission to build a hospice facility project in Horry County which will serve both Horry and Marion counties; and,

WHEREAS a hospice house is a multi-bed inpatient facility in which patients with 2 weeks left to live are cared for around the clock to make sure they are comfortable and pain free; and,

WHEREAS a parcel of land of approximately 22 acres has been identified off of Hwy 90, and negotiations have begun to purchase the land in order to build a multi-phased hospice facility with Phase One consisting of a 14 bed hospice house at around 30,000 square feet; and

WHEREAS a hospice house is staffed with various medical related employees and staff will consist of nurses, doctors, certified nursing assistants, chaplains, social workers, staff supervisors, as well as other support staff which may include food service, facilities maintenance personnel and site security; and,

WHEREAS wages for the majority of staff should be well above the average salaries for both Horry and Marion counties; and,

WHEREAS the services provided by Mercy Hospice serve the public interest and are greatly needed; and,

WHEREAS Mercy Hospice is applying for a grant through the USDA for Rural Development, and has requested a letter from Horry County Council signifying support for the project and the fact that the project will have no adverse impact on any other facilities.

NOW THEREFORE, Horry County Council believes that the project will have no adverse impact on any other facilities and hereby states its support for this project.

AND IT IS SO RESOLVED.

This 21st Day of September, 2010

00148

HORRY COUNTY COUNCIL

Liz Gilland

Liz Gilland, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Howard D. Barnard, III, District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

ATTEST:

Patricia S. Hartley

Patricia S. Hartley, Clerk to Council

Alan D. Clemmons
 District No. 107 - Horry County
 1800-A North Oak Street
 Myrtle Beach, SC 29577
 Tel. (843) 448-4292

522-B Blatt Building
 Columbia, SC 29211
 Tel. (803) 734-2994



House of Representatives

State of South Carolina

Committees:
 Judiciary
 Election Laws Subcommittee,
 Chairman
 Rules, Vice-Chairman
 Judicial Merit Selection
 Commission

March 10, 2011

The Honorable C. Earl Hunter
 Commissioner
 Department of Health and Environmental Control
 2600 Bull Street
 Columbia, SC 29201

Re: Mercy Care Hospice House Letter of Support

Dear Commissioner Hunter:

I am submitting this letter to express my full support of the Mercy Care Hospice House currently under consideration by DHEC.

It is my belief that the Hospice House will provide a much needed medical facility to many area physicians in their treatment of the terminally ill patient. It will certainly assist families in dealing with such a very difficult time in their lives. The proposed setting would also provide some employment to an area that is in need of jobs.

I fully support this endeavor and the improvements it will bring to the Horry County area.

Sincerely,

Alan Clemmons

00150



May 11, 2011

Ms. Blair H. Davis
CON Development/Healthcare Market Analysis
818 Oxbow Drive
Myrtle Beach, SC 29579

Dear Ms. Davis,

As requested, Conway Medical Center has reviewed hospital data for a period of one year (April 2010 – March 2011) and have identified that on average this facility has approximately five (5) patients on any given day that are receiving end-of-life care.

Should you have any questions or require additional information, please do not hesitate to contact me at 843-347-8204.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Bart A. Haas', is written over the typed name.

Bart A. Haas, MBA, RHIA
Director, Health Information Management

Member of Premier: The Nation's Largest Healthcare Alliance

300 Singleton Ridge Road / P.O. Box 828 / Conway, South Carolina 29528-0828 / 843.347.7111 / www.conwaymedicalcenter.com

00151

Life is a gift. Live it well.

Grand Strand
Regional Medical Center

May 13, 2011

Blair Davis
CON Development/Healthcare Market Analysis
616 Oxbow Drive
Myrtle Beach, SC 29579

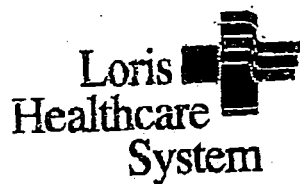
Dear Ms. Davis:

Based on internal experience, Grand Strand Regional Medical Center typically has anywhere from three to five inpatients that are receiving comfort measures for end-of-life care. These patients could be appropriately cared for in an inpatient hospice setting. Our organization supports this important project for our community.

If you should have any questions or require additional information, please contact me at 692-1154.

Sincerely,

Donna Carrillo
Director of Case Management



Loris Healthcare System

3655 Mitchell Street
Box 690001
Loris, SC 29569-9601
843.716.7000
Fax 843.716.7195

May 5, 2011

Dear Blair,

Loris Community Hospital

3655 Mitchell Street
Box 690001
Loris, SC 29569
843.716.7000

Research for the average number of admissions at Loris Community Hospital for end of life care found that there are three patients on average in our facility. I hope this assist you as you strive to assist Mercy Care in gaining approval for a Hospice House. Please do not hesitate to contact me if further information is needed.

Seacoast Medical Center

4000 Highway 9 East
Little River, SC 29566
843.716.7100

Sincerely,

Center for Health & Fitness

3207 Casey Street
Loris, SC 29569
843.716.7111

Linda Johnson
Linda Johnson, MD

Loris Healthcare System

Extended Care Center

1620 Stroens Street
Loris, SC 29569
843.716.7106

Family Health Center - Loris

304 Casey Street
Loris, SC 29569
843.756.9292

Family Health Center - Ft. Olive

Highway 9
Green Sea, SC 29545
843.392.9222

00153

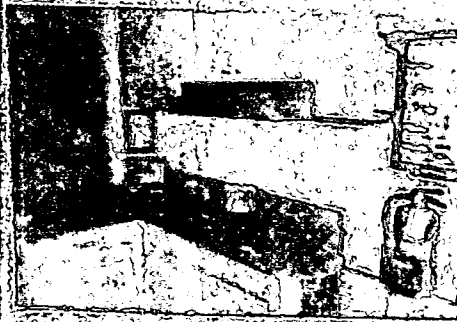
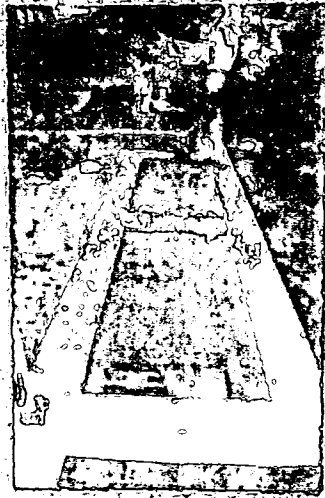


Hospice House

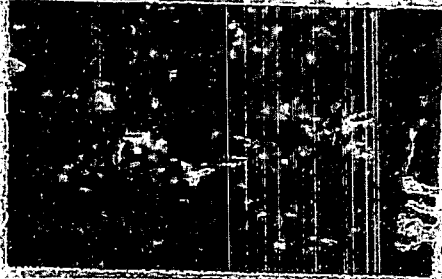
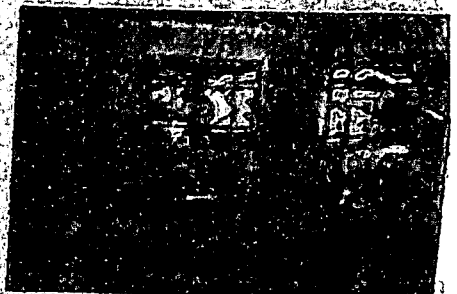
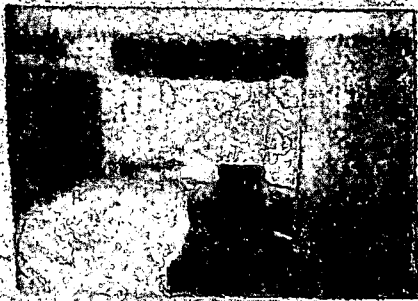
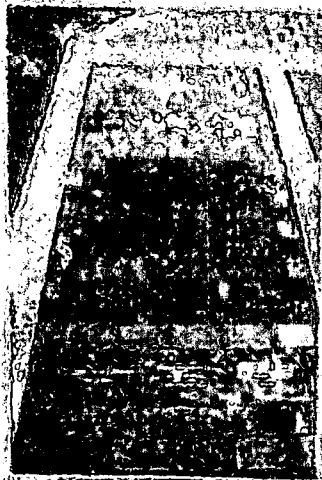


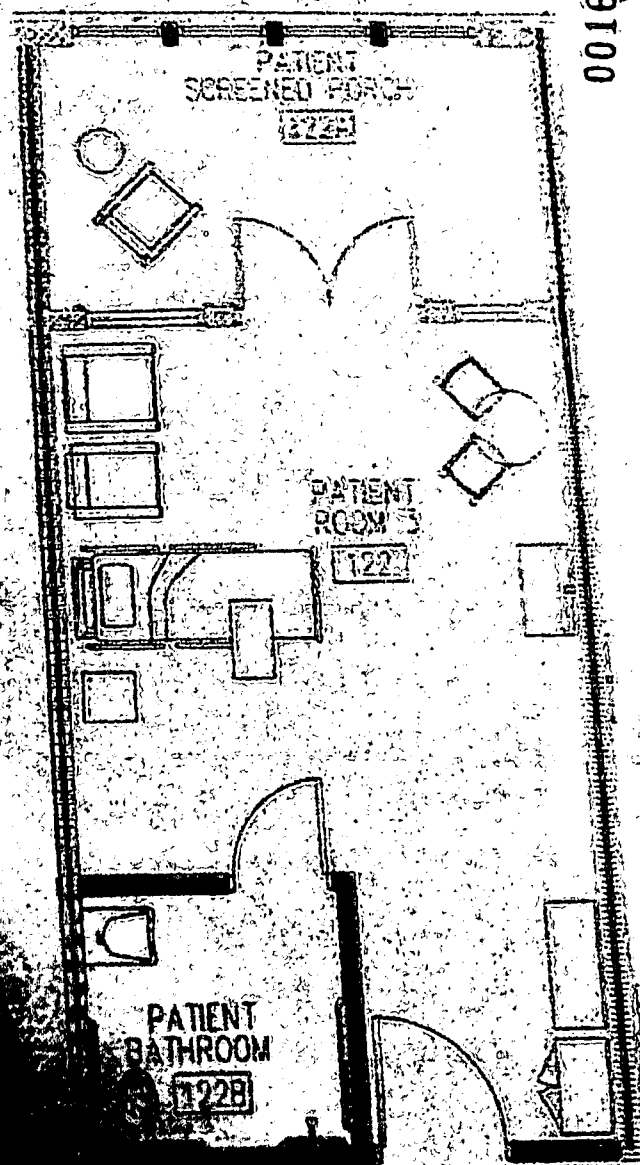
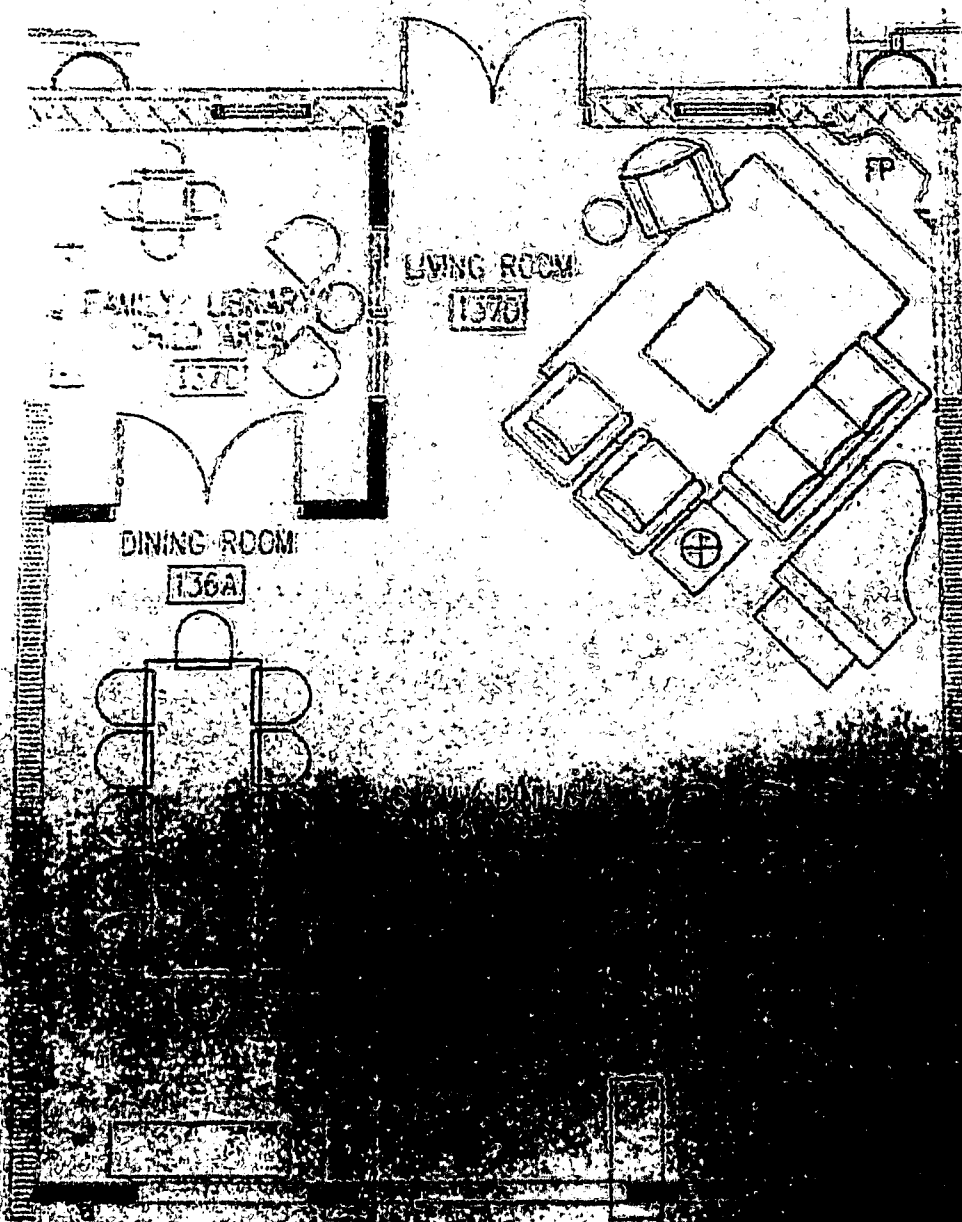
BCE

00154



00156





1
2 NOVEMBER 5, 2012 Horry COUNTY ZONING BOARD
3 OF APPEALS HEARING
4

5 BOARD PRESENT:

6 CHRISTOPHER HANNA, CHAIRMAN

7 PAM CREECH, VICE CHAIRMAN

8 ALLEN BEVERLY

9 BO IVES

10 PAT KEELAN

11 PAT LEBIEDZ

12 ACE PARKER
13

14 STAFF PRESENT:

15 RENNIE MINCEY, ZONING ADMINISTRATOR

16 STEVE GOSNELL, ASST. COUNTY ADMIN.

CAROL COLEMAN, DEPUTY PLANNING DIRECTOR

17 DAVID SCHWERD, PRINCIPAL PLANNER

STEVIE BROWN, CHIEF PLANS REVIEWER

18 ALICIA SHELLEY, SECRETARY

SANFORD GRAVES, DEPUTY COUNTY ATTORNEY

19 JERRY MABRY, COURT REPORTER
20
21
22
23
24
25

COPY

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1 MRS. MINCEY: WE HAVE A HANDOUT, HANDOUT
2 NUMBER 7, WHICH INCLUDES A DEFINITION AND IT
3 ALSO INCLUDES A PETITION. ON PAGE 235, YOU
4 HAVE A LETTER IN YOUR PACKET SUPPORTING THE
5 REQUEST. THIS IS AN APPEAL. THE APPLICANTS
6 ARE FAYRELL FURR AND KAROLE JENSEN. THE
7 SPECIFIC PROPERTY IS 3341 WILDHORSE DRIVE,
8 CONWAY AND IS ZONED CFA. THE APPLICANTS ARE
9 APPEALING THE ZONING ADMINISTRATOR'S DECISION
10 THAT A HOSPICE HOUSE IS NOT AN ALLOWED USE IN
11 THE COMMERCIAL, FOREST/AGRICULTURE ZONING
12 DISTRICT. THE ISSUE BEFORE THE BOARD TONIGHT
13 IS WHETHER OR NOT THE ZONING ADMINISTRATOR HAS
14 CORRECTLY INTERPRETED THE ZONING ORDINANCE BY
15 CONFIRMING THAT A HOSPICE HOUSE IS ALLOWED IN
16 THE COMMERCIAL, FOREST/AGRICULTURE ZONING
17 DISTRICT. AN APPEAL AND LIKE A VARIANCE. AN
18 APPEAL IS NOT SPECIFIC TO A LOCATION. AN
19 APPEAL IS SPECIFIC TO THAT ... THIS APPEAL IS
20 SPECIFIC TO THAT. WHAT IS ALLOWED WITHIN THE
21 ZONING DISTRICT AND WHETHER OR NOT THE ORDIN-
22 ANCE HAS BEEN CORRECTLY INTERPRETED. ARTICLE
23 IV, 436.1 DEFINES A PERMANENT OVERNIGHT
24 RESIDENTIAL GROUP CARE HOMES: A FACILITY OR
25 DWELLING UNIT HOUSING PERSONS UNRELATED BY

Testimony of Rennie Mincey

1 BLOOD OR MARRIAGE AND OPERATING AS A GROUP
2 FAMILY HOUSEHOLD. A GROUP CARE HOME MAY
3 INCLUDE HALFWAY HOUSES, RECOVERY HOMES, AND
4 HOMES FOR ORPHANS, FOSTER CHILDREN, THE
5 ELDERLY, BATTERED CHILDREN AND WOMEN AND ALSO
6 IT COULD ALSO INCLUDE A SPECIALIZED TREATMENT
7 FACILITY PROVIDING LESS THAN PRIMARY HEALTH
8 CARE. ALSO YOU HAVE THE DEFINITION IN THE
9 HANDOUT FOR A NURSING HOME, WHICH IS: AN
10 EXTENDED OR INTERMEDIATE CARE FACILITY
11 LICENSED OR APPROVED TO PROVIDE FULL-TIME
12 CONVALESCENT OR CHRONIC CARE TO INDIVIDUALS
13 WHO, BY REASON OF ADVANCED AGE, CHRONIC ILL-
14 NESS OR INFIRMITY, ARE UNABLE TO CARE FOR
15 THEMSELVES. THIS IS ARTICLE IV, SECTION 447.1
16 IN THE ZONING ORDINANCE. THE COMMERCIAL,
17 FOREST/AGRICULTURAL ZONING DISTRICT IS
18 DESCRIBED IN ARTICLE VII, SECTION 703.2 (N)
19 STATES, "THAT PERMANENT OVERNIGHT RESIDENTIAL
20 GROUP CARE HOMES, NURSING HOMES, ARE ALLOWED
21 PROVIDED THAT CERTAIN CONDITIONAL REQUIREMENTS
22 ARE MET." THE PROPERTY IN QUESTION IS OWNED
23 BY MERCY CARE AND IS LOCATED OFF OF HIGHWAY
24 90. THE PROPERTY IS ZONED COMMERCIAL, FOREST/
25 AGRICULTURE. THE PROPOSED USE OF THE SITE IS

1 FOR A HOSPICE HOUSE. ON SEPTEMBER 21ST 2010,
2 RESOLUTION No. R-103-10 WAS PASSED. IT'S
3 LOCATED ON PAGE 226 OF YOUR PACKET. IT WAS
4 APPROVED BY Horry COUNTY COUNCIL STATING
5 SUPPORT FOR A PROPOSED MULTI-PHASED HOSPICE
6 FACILITY TO BE LOCATED ON A PARCEL OF LAND
7 APPROXIMATELY TWENTY-TWO ACRES OFF OF HIGHWAY
8 90. ON MAY 3, 2011, A LETTER WAS ISSUED FROM
9 THE PLANNING AND ZONING DEPARTMENT, AND THIS
10 IS ALSO ON YOUR PAGE 228 OF YOUR PACKET,
11 CONFIRMING THAT THE PROPOSED HOSPICE HOUSE AND
12 THE ASSOCIATED ACCESSORY BUILDINGS AND STRUC-
13 TURE ARE PERMITTED USES PROVIDED THAT THE
14 CONDITIONAL REQUIREMENTS ARE MET. ON JULY 30,
15 2012, COMMERCIAL PLANS FOR MERCY HOSPICE HOUSE
16 WERE SUBMITTED TO Horry COUNTY AND ARE
17 CURRENTLY UNDER REVIEW FOR COMPLIANCE AND
18 ISSUANCE OF PERMITS. THE APPLICANTS STATE
19 THAT THE PROPOSED HOSPICE HOUSE IS A HOSPITAL
20 AND ARE APPEALING THE ZONING ADMINISTRATOR'S
21 INTERPRETATION OF THE ZONING ORDINANCE TO
22 ALLOW THE HOSPICE HOUSE IN THE CFA ZONING
23 DISTRICT. ARTICLE VII, SECTION 703 OF THE
24 Horry COUNTY ZONING ORDINANCE STATES THAT
25 PERMANENT OVERNIGHT RESIDENTIAL GROUP CARE

Testimony of Rennie Mincey

1 HOMES ARE ALLOWED AS A CONDITIONAL USE IN THE
2 CFA ZONING DISTRICT. THE ZONING ORDINANCE
3 DEFINITION OF A PERMANENT OVERNIGHT RESIDENT
4 GROUP CARE HOME INCLUDES A SPECIALIZED TREAT-
5 MENT FACILITY PROVIDING LESS THAN PRIMARY
6 HEALTH CARE. THE STATE DEFINES HOSPICE CARE
7 AND A HOSPICE FACILITY AS FOLLOWS:

8 HOSPICE: "A CENTRALLY ADMINISTERED, INTERDIS-
9 CIPLINARY HEALTHCARE PROGRAM, WHICH PROVIDES
10 CONTINUUM OF MEDICALLY SUPERVISED PALLIATIVE
11 AND SUPPORTIVE CARE FOR THE TERMINALLY ILL
12 PATIENT AND THE FAMILY OR RESPONSIBLE PARTY,
13 INCLUDING, BUT NOT LIMITED TO, HOME,
14 OUTPATIENT AND INPATIENT SERVICES PROVIDED
15 DIRECTLY THROUGH WRITTEN AGREEMENT. INPATIENT
16 SERVICES INCLUDE, BUT ARE NOT LIMITED TO,
17 SERVICES PROVIDED BY A HOSPICE IN A LICENSED
18 HOSPICE FACILITY."

19 HOSPICE FACILITY: DEFINITION IS, "AN INSTITU-
20 TION, PLACE OR BUILDING LICENSED BY THE
21 DEPARTMENT TO PROVIDE ROOM, BOARD, AND APPRO-
22 PRIATE HOSPICE CARE ON A TWENTY-FOUR HOUR
23 BASIS TO INDIVIDUALS REQUIRING SUCH CARE
24 PURSUANT TO THE ORDERS OF A PHYSICIAN."

25 IT IS THE DETERMINATION OF THE ZONING ADMINIS-

1 TRATOR THAT THE PROPOSED MERCY HOSPICE HOUSE
2 MEETS THE DEFINITION OF A PERMANENT OVERNIGHT
3 GROUP CARE HOME AS DEFINED IN ARTICLE IV,
4 SECTION 436.1 OF THE Horry COUNTY ZONING
5 ORDINANCE AND IS A PERMITTED USE IN THE
6 COMMERCIAL, FOREST/AGRICULTURE ZONING DISTRICT
7 PROVIDED CERTAIN SPECIFIED CONDITIONS ARE MET.
8 PURSUANT TO SECTION 1402 OF THE ZONING ORDIN-
9 ANCE, "THE CONCURRING VOTE OF A MAJORITY OF
10 THE MEMBERS PRESENT AT A MEETING OF THE BOARD
11 OF APPEALS SHALL BE NECESSARY TO REVERSE ANY
12 ORDER, REQUIREMENT, DECISION OR DETERMINATION
13 OF THE ZONING ADMINISTRATOR." THEREFORE, THE
14 CHAIRMAN SHOULD ASK THE BOARD IF THERE IS A
15 MOTION TO REVERSE THE DETERMINATION OF THE
16 ZONING ADMINISTRATOR IN THIS CASE. UNLESS
17 SUCH A MOTION IS MADE, SECONDED AND CONCURRED
18 UPON BY A MAJORITY OF THE MEMBERS PRESENT, THE
19 DETERMINATION WILL STAND.

20 MR. HANNA: THANK YOU, MS. MINCEY. I SHOULD
21 HAVE STATED THIS BEFORE WE GOT STARTED. I
22 WANT TO THANK EVERYBODY FOR HANGING OUT SO
23 LATE. WE'RE GONNA TRY AND HEAR EVERYBODY
24 WHO'S BEEN HERE AND WAITED SO LONG, BUT I DID
25 WANT TO MAKE SURE THAT WE STAY ON POINT. THE

Testimony of Christopher Hanna, Chairman

Testimony of Sanford Graves

Testimony of Fayrell Furr

1 POINT BEING HERE, DID THE ZONING ADMINISTRATOR
2 ... THE QUESTION BEFORE US IS, DID THE ZONING
3 ADMINISTRATOR MAKE THE RIGHT DECISION IN
4 DETERMINING THAT THIS IS NOT A HOSPITAL. IS
5 THAT CORRECT, MR. GRAVES?

6 MR. GRAVES: AS STATED BY THE ZONING ADMINIS-
7 TRATOR, YES, SIR, THAT IS CORRECT.

8 MR. HANNA: THAT BEING SAID, AT THIS TIME, IS
9 THERE ANYTHING ELSE YOU'D LIKE TO ADD, MRS.
10 MINCEY, OR ANY QUESTIONS OF MRS. MINCEY?
11 HAVING NONE, WOULD YOU COME FORWARD PLEASE,
12 SIR.

13 MR. FAYRELL FURR IS A MEMBER OF THE COURT AND
14 THEREFORE, DOES NOT HAVE TO BE SWORN IN:

15 MR. FURR: MY NAME IS FAYRELL FURR, 3740
16 INDIGO RUN, WILDHORSE, CONWAY, SOUTH CAROLINA.
17 I'M HERE ON BEHALF OF MYSELF. MY PROPERTY IS
18 RIGHT NEXT DOOR TO WHERE THEY'RE GOING TO
19 BUILD THE HOSPICE HOUSE, IF IT'S APPROVED. WE
20 OWN SEVEN ACRES OF LAND. IF I CAN SHOW YOU ON
21 THE MAP. MY HOUSE IS RIGHT UP HERE. THAT IS
22 MY HOUSE, I BELIEVE. WE OWN THE PROPERTY
23 RIGHT DOWN TO HERE. IT'S IN WILDHORSE SUBDIV-
24 ISION. WE BOUGHT THAT PROPERTY ABOUT TWELVE
25 YEARS AGO AND WE'VE LIVED THERE VERY QUIETLY

Testimony of Fayrell Furr

1 EVER SINCE. WE FOUND OUT THAT HOSPICE, MERCY
2 HOSPICE, HAD BOUGHT THIS PROPERTY AND WANTED
3 TO MAKE IT A HOSPICE HOUSE. I BEGAN TO READ
4 UP ON WHAT A HOSPICE HOUSE IS AND WHAT A
5 HOSPITAL IS. I STARTED LOOKING AT THE ... I'M
6 A LAWYER, SO I LOOKED AT THE CODE OF LAWS.
7 THE CODE OF LAWS DEFINES HOSPITAL AS A
8 FACILITY ORGANIZED AND ADMINISTERED AND TO
9 PROVIDE OVERNIGHT MEDICAL OR SURGICAL CARE OR
10 NURSING CARE OF ILLNESS, INJURY OR INFIRMITY
11 AND MAY PROVIDE OBSTETRICAL CARE, AND IN WHICH
12 ALL DIAGNOSES, TREATMENT OR CARE IS ADMINIS-
13 TERED BY OR UNDER THE DIRECTION OF PERSONS
14 CURRENTLY LICENSED TO PRACTICE MEDICINE,
15 SURGERY OR OSTEOPATHY.
16 "HOSPITAL MAY INCLUDE RESIDENTIAL TREATMENT
17 FACILITIES FOR CHILDREN AND ET CETERA.
18 HOSPICE IS NOTHING MORE THAN A SPECIALIZED
19 HOSPITAL. THAT'S ALL IT IS. ANY WAY YOU LOOK
20 AT IT, IT'S A HOSPITAL. THEY TREAT PEOPLE WHO
21 ARE DYING. THEY DO A GOOD JOB OF THAT. I
22 BELIEVE MERCY HOSPICE HAS DONE A GREAT JOB AND
23 I'VE TOLD `EM TRYING TO WORKED THIS OUT. I
24 THINK MERCY DOES A GREAT JOB FOR PEOPLE WHEN
25 THEY GO UP THERE. WE'RE NOT FUSSING ABOUT

Testimony of Fayrell Furr

1 THAT. THIS IS A SINGLE FAMILY RESIDENTIAL
2 AREA. BEEN THERE FOR YEARS. IT'S NOT A PLACE
3 TO BUILD A MERCY HOSPICE HOSPITAL IN THE
4 MIDDLE OF A RESIDENTIAL AREA THERE. WE ASK,
5 DON'T PUT THE FOLKS HERE EITHER IN WILDHORSE
6 SUBDIVISION OR AROUND WILDHORSE SUBDIVISION.
7 INSTEAD, I DON'T KNOW WHO YOU ARE, BUT THESE
8 FOLKS CAME OUT HERE TONIGHT BECAUSE THEY ARE
9 AS AFFECTED BY THIS AS WE ARE. WE HAVE ABOUT
10 SIXTY NAMES ON A PETITION WHICH WE FILED WITH
11 YOU FOLKS. WE'VE GOT A LOT OF OLD FOLKS THAT
12 COULDN'T COME OUT TONIGHT THAT WANTED TO BE AT
13 THIS MEETING TO PROTEST THE BUILDING OF THAT
14 HOSPITAL THERE. WHAT YOU MAY NOT UNDERSTAND
15 IS, THAT NOT ONLY IS THIS A HOSPITAL, BUT ALSO
16 THE ENTRANCE TO IT IS GOING TO BE RIGHT HERE.
17 WILDHORSE ROAD RIGHT IN HERE. YOU COME OFF
18 HIGHWAY 90 AND THEY DON'T HAVE ACCESS TO
19 HIGHWAY 90. THE ONLY WAY THEY'RE GOING TO BE
20 ABLE TO GET IN AND OUT IS THROUGH A LITTLE
21 PIECE OF LAND HERE THEY BOUGHT, GOING TO
22 WILDHORSE DRIVE. THIS RIGHT HERE IS WILDHORSE
23 DRIVE. THIS IS THE ENTRANCE UP THERE. IT'S
24 THE SAME ENTRANCE. AND YOU'VE GOT TWO SMALL
25 ROADS THAT COME THROUGH THAT ENTRANCE THERE

Testimony of Fayrell Furr

1 AND TO COME DOWN TO HERE AND GO TO WILDHORSE.
2 THAT'S MY HOUSE HERE. THIS IS WHERE THEY'RE
3 GONNA COME OUT ON WILDHORSE ROAD. THEY DON'T
4 HAVE ACCESS TO HIGHWAY 90. ALL OF THE TRAFFIC
5 FOR THIS FACILITY IS GOING TO COME OUT OF THIS
6 SUBDIVISION ROAD. IT'S A COUNTY HIGHWAY. WE
7 PAY TAXES. IT'S A COUNTY HIGHWAY, BUT THIS IS
8 SMALL ROAD NOT MEANT FOR THE AMOUNT OF TRAFFIC
9 THAT THIS THING IS GONNA BE GENERATING. THIS
10 HERE IS WHERE THE ... IT'S ANOTHER ... LOOK AT
11 MY HOUSE RIGHT HERE. ONE GOES THIS WAY AND
12 THE OTHER GOES THAT WAY. THAT'S THE ENTRANCE
13 TO WILDHORSE. THAT'S A SMALL ROAD. IF YOU GO
14 THROUGH ... IF YOU GO THROUGH THIS LITTLE GATE
15 HERE. IT'S TWO SMALL ROADS THAT FINALLY COME
16 TOGETHER WITH A BIG OLD TREE DOWN HERE, A BIG
17 OLD TREE. THIS IS WHERE THEY'RE GOING TO BE
18 COMING IN AND GOING OUT ON THAT LITTLE SMALL
19 ROAD HERE. THIS ROAD IS SMALL AND NOT BUILT
20 FOR COMMERCIAL TRAFFIC AND IT'S GONNA REQUIRE
21 THE COUNTY TO DO A LOT OF ROAD WORK IN ORDER
22 TO BRING IT UP TO SNUFF.

23 MR. HANNA: IS THAT A PRIVATE ROAD OR A COUNTY
24 ROAD?

25 MR. FURR: COUNTY ROAD. WE DON'T BELIEVE THAT

1 THE ROAD IS BIG ENOUGH FOR COMMERCIAL TRAFFIC
2 AND THE HEAVY TRUCKS THAT WILL BE TAKING STUFF
3 IN THERE. AND IN ADDITION TO THE TRAFFIC
4 PROBLEM IT'S GONNA CREATE, MERCY HOSPICE,
5 ALTHOUGH THEY SAY THEY'RE NOT GOING TO BE
6 HAVING AMBULANCES COME OUT THERE AND MAKING
7 NOISE, BUT THE WAY THIS THING IS SET UP,
8 ACCORDING TO THEIR OWN CERTIFICATE OF NEED,
9 THEY'RE GOING TO PUT PEOPLE OUT THERE THAT
10 HAVE TWO WEEKS TO LIVE. THAT MAY NOT WORK OUT
11 IN TWO WEEKS, BUT THAT'S WHAT THE PURPOSE OF
12 THE WHOLE THING IS TO TREAT PEOPLE IN THE LAST
13 TWO WEEKS OF THEIR LIFE. THERE ARE FOURTEEN
14 BEDS CURRENTLY IN THE PLANS, AND THEY PLAN TO
15 DOUBLE THAT AND PUT ANOTHER STORY ON, WHICH
16 WILL DOUBLE THAT. IF YOU HAVE FOURTEEN PEOPLE
17 DYING EVERY TWO WEEKS, YOU SEE HOW MANY PEOPLE
18 ARE GOING TO BE GOING IN AND OUT OF THERE. IN
19 ADDITION TO THAT, HIGHWAY 90 HAS BEEN CALLED
20 THE CORRIDOR OF DEATH BECAUSE OF ALL THE
21 ACCIDENTS OUT THERE. YOU'VE GOT DEER RUNNING
22 IN FRONT OF YOU AT NIGHT. YOU'VE GOT CARS
23 RACING UP AND DOWN THAT ROAD. IT'S REALLY A
24 VERY DANGEROUS ROAD. IT'S NOT FOR ELDERLY
25 PEOPLE TO BE DRIVING AT NIGHT WHO GO OUT AND

Testimony of Fayrell Furr

1 SEE THEIR LOVED ONES. THIS PLACE IS NOT THE
2 PLACE FOR A MERCY HOSPICE TO GO. IT'S FAR
3 AWAY FROM ANY HOSPITALS. IT'S NOT CLOSE TO
4 CONWAY HOSPITAL. IT'S NOT CLOSE TO GRAND
5 STRAND HOSPITAL NOR LORIS HOSPITAL. IT'S NOT
6 A PLACE THAT YOU WOULD THINK WOULD BE A GOOD
7 PLACE FOR A HOSPITAL TO BE. SO, WE PROTEST
8 IT, THE DEVELOPMENT OF THAT HOSPITAL AND WE
9 HOPE THE BOARD HERE WILL REVERSE THE DECISION.
10 MR. HANNA: THANK YOU, MR. FURR. DOES ANYONE
11 HAVE ANY QUESTIONS FOR MR. FURR? ANY
12 QUESTIONS FROM THE MEMBERS OF THE BOARD? MR.
13 PARKER.
14 MR. PARKER: WHERE DO YOU THINK THEY SHOULD GO
15 IF IT DOESN'T GO IN CFA? HAVE YOU DONE ANY
16 RESEARCH ON THAT?
17 MR. FURR: A HOSPITAL IS NOT ALLOWED TO BUILD
18 IN CFA. THAT'S CLEAR. HOSPITALS ARE NOT
19 COVERED UNDER CFA. THEY CAN GO IN COMMERCIAL
20 OR OTHER COMMERCIAL DESIGNATIONS. THERE ARE
21 PLACES YOU CAN GO TO BUILD A HOSPITAL. CFA IS
22 NOT ONE OF THEM. CLEARLY IT IS NOT. I THINK
23 THE ADMINISTRATOR WILL AGREE WITH THAT. IT'S
24 NOT THE TYPE OF PLACE TO BUILD A HOSPITAL.
25 MR. HANNA: ANY FURTHER QUESTIONS OF MR. FURR?

Testimony of Karole Jensen

1 THANK YOU, SIR.

2 MR. FURR: I THINK THERE'S OTHERS WHO WANT TO
3 SPEAK.

4 MR. HANNA: BEFORE WE DO THAT, MR. FURR WAS
5 NICE ENOUGH TO POLL YOU AND HAVE EVERYBODY
6 STAND UP THAT LIVES NEAR OR IN THE SURROUNDING
7 AREA WHO IS AFFECTED BY THIS. I'M ASSUMING,
8 IT'S GONNA BE ALL OF YOU. AGAIN, I MIGHT NOT
9 NEED TO ASSUME, BUT I'M GOING TO ASK THE
10 QUESTION, WOULD EVERYBODY WHO IS OPPOSED TO
11 THIS AND AGREES WITH EVERYTHING MR. FURR SAID,
12 PLEASE STAND UP. (WHOLE RIGHT SIDE OF ROOM
13 STANDS UP.) THIS WILL SAVE US A LOT OF TIME
14 AND EFFORT AND YOU WON'T HAVE TO COME BACK UP
15 HERE AND REPEAT WHAT HE JUST SAID. YOU'VE
16 BEEN HERE A LONG TIME, AND WE WANT TO HEAR
17 FROM YOU, BUT TRY TO MAKE IT SOMETHING THAT
18 MAYBE HAS NOT BEEN COVERED. THANK YOU. MS.
19 JENSEN.

20 KAROLE JENSEN, HAVING BEEN DULY SWORN, TESTIFIED AS
21 FOLLOWS:

22 MR. HANNA: STATE YOUR NAME AND ADDRESS FOR
23 THE RECORD.

24 MRS. JENSEN: MY NAME IS KAROLE JENSEN.
25 FAYRELL AND I ARE MARRIED. 3740 INDIGO RUN,

MABRY COURT REPORTING
Verbatim Reporters

Jerry S. Mabry
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1 WILDHORSE. DURING THIS FOR ... THIS IS A REAL
2 TOUGH ISSUE AND I JUST HAVE TO SAY WHEN WE MET
3 WITH MERCY HOSPICE PLANNING STAFF SEVERAL
4 MONTHS AGO, WE MET SO THAT WE COULD MAYBE
5 FLUSH OUT SOME ISSUES AND SOLVE SOME OF THIS.
6 THAT WAS REALLY MY FIRST ENCOUNTER WITH SOME
7 OF THE STAFF AND THEY REALLY HAVE BEEN
8 SUPPORTIVE AND HELPFUL. I DIDN'T KNOW MUCH
9 ABOUT THIS PROCESS AND THEY'VE PROFFERED A LOT
10 OF ASSISTANCE. OUR MEETING WAS NOT SUCCESS-
11 FUL, BUT WE DID, YOU KNOW, WE DID POSITIVELY
12 AND OPENLY DISCUSS ALL THE DIFFERENT ISSUES
13 THAT WE HAD. WE WEREN'T ABLE TO RESOLVE MUCH,
14 BUT, YOU KNOW, WE TRIED. ONE OF THE THINGS
15 THAT MERCY HOSPICE OFFERED IN DISCUSSIONS WAS
16 THAT THEY SAID THAT RIVER'S EDGE, WHICH IS
17 JUST OFF THE SIDE OF US, WHICH ALSO FACES
18 TOWARD THE RIVER HEADING TOWARDS TILLY SWAMP,
19 THEY WERE FULLY IN FAVOR OF THIS. WHEN I WAS
20 WORKING AND GETTING SIGNATURES FOR THE
21 PETITION, I RAN OVER TO RIVER'S EDGE ON
22 SATURDAY AND WAS TALKING TO DIFFERENT FOLKS,
23 AND LO AND BEHOLD, I BELIEVE THE SECOND OR
24 THIRD HOUSE THAT I WENT TO, SHE SIGNED THE
25 PETITION OPPOSING A HOSPITAL BEING BUILT OVER

Testimony of Karole Jensen

1 THERE, THIS, THAT AND THE OTHER, BUT I TOLD
2 HER THERE WAS SOME TYPE OF LETTER OR SOMETHING
3 SUPPOSEDLY REVERSING THE HOSPICE THAT RIVER'S
4 EDGE WAS IN FAVOR OF IT. SHE BECAME PRETTY
5 UPSET AND SAID SHE DIDN'T KNOW ANYTHING ABOUT
6 IT AND THAT SHE PRETTY MUCH HANDLES ALL THE
7 EMAILS AND COMMUNICATION FOR THE AREA AND SHE
8 WOULD LIKE TO FIGURE OUT WHERE THAT CAME FROM.
9 TRY TO FIGURE OUT ALL THOSE DETAILS. I'M JUST
10 PUTTING THAT OUT THERE. ONE OF THE THINGS I
11 SUBMITTED TO Y'ALL WAS THE SUSPICIONS ABOUT
12 TRAFFIC AND WHAT I DID WAS I GOT IN TOUCH WITH
13 THE HIGHWAY DEPARTMENT. OF COURSE, YOU WIND
14 UP WITH STATISTICS OF WRECKS OFF HIGHWAY 90
15 FROM ONE END TO THE OTHER. AND WHEN I GOT THE
16 STATISTICS, IT WASN'T ONE END TO THE OTHER. I
17 TOOK A LINE AND TOOK IT DOWN TO 22 TO WHERE IT
18 BEGINS IN CONWAY. I THEN CALCULATED THE
19 WRECKS. SO, IF YOU DON'T QUITE UNDERSTAND ALL
20 THOSE LITTLE THINGS THAT YOU GOT, YOU GOT A
21 LOT OF WRECKS ON 90. JUST IN THE LAST SIX TO
22 EIGHT WEEKS, THERE WERE ONE, TWO, THREE WRECKS
23 RIGHT BY THAT FOOD STORE. RIGHT NOW WE'LL
24 JUST CALL IT THE BLUEBERRY STORE. BECAUSE
25 THERE HAD BEEN A SIMPLE RAIN, TRAFFIC WAS

1 BACKED UP FOR OVER TWO HOURS FOR BOTH OF THOSE
2 WRECKS COMING FROM THERE. IT WAS JUST JAMMED
3 THERE. THE OTHER ISSUE IS THAT THE DEBRIS
4 COMING OFF OF THE TRUCKS AND THOSE TRUCKS ARE
5 REALLY HAULING IT DOWN 90 I'LL HAVE TO TELL
6 YOU. BECAUSE OF RUBBER TIRES, THE DEBRIS FROM
7 THOSE TRUCKS, A NUMBER OF TIMES I'VE SEEN THE
8 HIGHWAY PATROL STOP JUST ACTUALLY TRYING TO
9 PICK UP BOARDS AND THINGS THAT HAVE COME OFF.
10 SO, TRAFFIC IS A PROBLEM OUT THERE. OF
11 COURSE, TRAFFIC IS IN THE SUBDIVISION. ONE OF
12 THE REASONS THAT WE CAME ... THE REASON THAT
13 MY HUSBAND AND I MOVED FROM MYRTLE BEACH OVER
14 HERE WAS THE NEED FOR BOTH OF US. THEY
15 CLEARED OUT THAT GRAND DUNES PROPERTY AND
16 BECAUSE WE WERE THE FIRST HOUSE, WE HAD A LOT
17 OF VARMINTS, A LOT OF TRAFFIC AND THERE ARE
18 BEARS OUT IN THESE WOODS.
19 MR. HANNA: I DON'T MEAN TO CUT YOU OFF, BUT
20 WHERE ARE YOU GOING WITH THIS AS TO HOW THIS
21 HELPS TO ANSWER THE QUESTION AS TO WHETHER
22 THIS IS A HOSPITAL IS NOT AN OVERNIGHT
23 FACILITY? I THINK ALL OF US WOULD AGREE THAT
24 HIGHWAY 90 IS NOT A SAFE ROAD. MAYBE A WOODED
25 AREA OR A RURAL AREA. AGAIN, THE QUESTION

Testimony of Karole Jensen
Testimony of Fayrell Furr
Testimony of Christopher Hanna

1 BEFORE US IS, HOW DID THE ADMINISTRATOR ERR IN
2 DETERMINING THIS WAS A PERMISSIBLE USE. I
3 DON'T THINK THOSE COME INTO PLACE.

4 MS. JENSEN: RIGHT. WELL, I WAS ADDRESSING
5 MORE OF THE COMMUNITY ISSUES MORE THAN ANY-
6 THING ELSE, BUT QUITE FRANKLY, I THINK AS FAR
7 AS THAT'S CONCERNED, IT'S THE LAW AND THE
8 CURRENT ZONING IS WHAT WE'RE HERE FOR. SO,
9 THAT WRAPS THAT UP.

10 MR. HANNA: I'VE GOT A QUESTION OF MR. FURR,
11 AND YOU FEEL FREE TO ANSWER ANY OF THESE
12 QUESTIONS AS WELL. HELP ME DIFFERENTIATE
13 BETWEEN WHY A HOSPICE HOUSE IS NOT A NURSING
14 HOME.

15 MR. FURR: A NURSING HOME BY DEFINITION IS AS
16 STATED IN THE PACKET.

17 MR. HANNA: HERE'S WHAT I'M WRESTLING WITH AND
18 MAYBE YOU CAN HELP ME. A HOSPICE HOUSE TO ME
19 IS WHERE YOU BRING SOMEBODY TO DIE. YOU ARE
20 NOT ADMINISTERING CARE. YOU'RE HELPING THEM
21 DIE COMFORTABLY. WHETHER YOU'RE IN YOUR OWN
22 HOME OR ANOTHER HOME. I DON'T KNOW IF THAT'S
23 ADMINISTERING ANY MORE CARE THAN YOU WOULD
24 ADMINISTER AT YOUR OWN HOUSE. I DON'T THINK
25 WE WOULD CATEGORIZE OUR HOUSE AS A HOSPITAL.

Testimony of Fayrell Furr
Testimony of Sara Jo Faucher

1 MR. FURR: A HOSPICE HOUSE HAS TO HAVE A
2 MEDICAL DIRECTOR JUST LIKE A HOSPITAL DOES.
3 IT'S HERE SOMEWHERE. OH, HERE IT IS. A
4 NURSING HOME DOES NOT HAVE TO HAVE A MEDICAL
5 DIRECTOR. THEY MAY HAVE DOCTORS ...
6 MR. HANNA: BUT THEY'RE NOT REQUIRED.
7 MR. FURR: A HOSPICE HOUSE DOES, IN FACT, GIVE
8 MEDICAL CARE TO PEOPLE JUST LIKE A HOSPITAL.
9 THERE'S NO DIFFERENCE IN A HOSPICE HOUSE AND A
10 HOSPITAL. A NURSING HOME IS CALLED A HOSPICE
11 'CAUSE IT'S A HOSPITAL. IT'S JUST A SPECIA-
12 LIZED KIND OF HOSPITAL. IT'S WHAT I TALKED
13 ABOUT IN THIS PAPER HERE. YOU'VE GOT ALL
14 THESE DIFFERENT KINDS OF DEFINITIONS FOR
15 HOSPITALS AND UNDER ANY DEFINITION, A HOSPICE
16 HOUSE CAN BECOME THE DEFINITION OF A HOSPITAL,
17 NOT A NURSING HOME.
18 MR. HANNA: THANK YOU. ANY OTHER QUESTIONS AT
19 THIS TIME? ANYONE ELSE WHO WANTS TO SPEAK
20 WHO'S OPPOSED AT THIS TIME WHO WOULD LIKE TO
21 COME SPEAK AND ADD SOME NEW INFORMATION, FEEL
22 FREE TO COME FORWARD.
23 SARA-JO FAUCHER, HAVING BEEN DULY SWORN, TESTIFIED
24 AS FOLLOWS:
25 MR. HANNA: IF YOU WOULD COME FORWARD PLEASE

1 AND STATE YOUR NAME AND ADDRESS.

2 MS. FAUCHER: SARA-JO FAUCHER, 1000 8TH AVENUE
3 NORTH, NORTH MYRTLE BEACH, SOUTH CAROLINA.

4 MR. HANNA: THE FLOOR IS YOURS AS TO ANYTHING
5 YOU THINK THE BOARD SHOULD HEAR IN CONSIDERING
6 AS TO WHY YOU THINK THE ZONING ADMINISTRATOR'S
7 DECISION WAS APPROPRIATE OR NOT APPROPRIATE.

8 MR. FLOWERS: I HAVE A PACKAGE THAT WE HAVE
9 PUT TOGETHER AND I WOULD LIKE TO PASS IT OUT.

10 MR. HANNA: SURE.

11 MS. FAUCHER: I'M EXECUTIVE DIRECTOR OF MERCY
12 HOSPICE AND PALLIATIVE CARE. I'LL TRY AND BE
13 AS BRIEF AS I CAN AND JUST HIGHLIGHT SOME OF
14 THE THINGS THAT MR. FURR AND MS. JENSEN
15 MENTIONED IN THEIR PRESENTATION. AT LEAST I
16 CAN DIRECT YOU ABOUT MERCY HOSPICE CARE AND
17 PALLIATIVE CARE. WHAT MERCY CARE IS, IS A
18 STATE LICENSED MEDICARE CERTIFIED CHAP
19 ACCREDITED HOSPICE CARING FOR PATIENTS AND
20 FAMILIES IN THE HORRY, GEORGETOWN AND MARION
21 COUNTIES FOR THE LAST THIRTY-ONE YEARS. THE
22 ZONING ADMINISTRATOR RULED THAT A HOSPICE
23 HOUSE IS LIKE A NURSING HOME OR A GROUP HOME
24 AND IS THEREFORE, PERMITTED UNDER THE ZONING
25 ORDINANCE. THIS IS CORRECT. THE APPELLANTS

1 ARGUED THAT A HOSPICE HOUSE IS NOT ALLOWED
2 BECAUSE IT'S MORE LIKE A HOSPITAL. A HOSPICE
3 HOUSE IS A SPECIALIZED TREATMENT FACILITY THAT
4 PROVIDES LESS THAN PRIMARY HEALTH CARE. THE
5 CARE A PATIENT RECEIVES AT A HOSPICE HOUSE IS
6 NOT FOR TREATMENT TO MAKE THE PATIENT BETTER
7 LIKE IN A HOSPITAL OR TO CURE THEM OR TO KEEP
8 THEM ALIVE. HOSPICE HOUSE IS COMFORT CARE AND
9 NOT ACUTE CARE OR PRIMARY CARE LIKE A
10 HOSPITAL. HOSPICE HOUSE IS LIKE A HOME IN
11 WHICH PATIENTS CAN BE CARED FOR IN THEIR OWN
12 HOME. THE FAMILY GETS TO STAY WITH PATIENTS
13 OVERNIGHT IN A HOME-LIKE SETTING. PETS CAN
14 EVEN STAY IF THE FAMILY CAN MANAGE THEM.
15 FAMILIES CAN EVEN COOK THE PATIENT'S FAVORITE
16 FOODS IN THE HOME'S KITCHEN. YOU CAN'T DO
17 THAT IN A HOSPITAL. IN SUPPORT OF OUR
18 POSITION, I HAVE SEVERAL DOCUMENTS FOR YOUR
19 REVIEW.
20 EXHIBIT 1, AN AFFIDAVIT FROM DENNIS GIBBS, WHO
21 IS THE BUREAU CHIEF OF THE BUREAU OF HEALTH
22 FACILITIES REGULATION AND DHEC. ACCORDING TO
23 THIS AFFIDAVIT, HE IS FAMILIAR WITH THE
24 LICENSING STANDARDS FOR HOSPICE FACILITIES,
25 HOSPITALS AND NURSING HOMES. HE HAS INDICATED

1 THAT A HOSPICE HOUSE IS NOT A HOSPITAL. HE
2 SETS FORTH THE DIFFERENCES, INCLUDING THE FACT
3 THAT A HOSPITAL HAS AN OPERATING ROOM,
4 EMERGENCY ROOMS, X-RAY, MRI, CAT SCANNERS. A
5 HOSPICE HOUSE DOES NOT HAVE THESE AND NOT DOES
6 PROVIDE ANY OF THESE SERVICES. ACCORDING TO
7 THE AFFIDAVIT, AN INPATIENT HOSPICE IS MORE
8 LIKE A NURSING HOME BECAUSE BOTH FOCUS ON
9 PROVIDING NURSING END CARE. THE GOAL OF A
10 NURSING HOME AND HOSPICE HOUSES ARE RARELY FOR
11 THE RECOVERY BUT FOR COMFORT CARE IN A
12 RESIDENTIAL SETTING. FURTHER, IN ITEM 6, DHEC
13 HAS LOOKED AT THE ZONING ISSUES AS PART OF OUR
14 CON APPLICATION AND MADE A DETERMINATION THAT
15 THE ZONING IS APPROPRIATE FOR THIS HOSPICE
16 HOUSE.
17 EXHIBIT 2, I HAVE AN AFFIDAVIT FROM DAVID
18 LEVITT, WHO IS WITH LEVITT HEALTHCARE. MR.
19 LEVITT IS A HEALTHCARE CONSULTANT WHO WORKS
20 WITH NATIONAL FACILITIES INVOLVING OPERATIONS,
21 STRATEGIC PLANNING, AND REGULATORY COMPLIANCE
22 IN CONJUNCTION WITH THE CERTIFICATE OF NEED
23 APPLICATIONS. HE HAS BEEN QUALIFIED AS AN
24 EXPERT IN HEALTHCARE PLANNING BY THE SOUTH
25 CAROLINA ADMINISTRATIVE LAW COURT. AS YOU CAN

Testimony of Sara Jo Faucher

1 SEE FROM HIS AFFIDAVIT, IT IS HIS OPINION THAT
2 THE PROPOSED HOSPICE HOUSE IS NOT A HOSPITAL.
3 HOSPITALS PROVIDE MUCH MORE INTENSIVE LEVELS
4 OF CARE WITH SIGNIFICANTLY MORE RESOURCES. HE
5 NAMES RADIOLOGY, X-RAY, ULTRASOUND, CAT SCANS,
6 MRI, NUCLEAR MEDICINE, RESPIRATORY THERAPY,
7 VASCULAR LABS, HEMATOLOGY, PATHOLOGY, BLOOD
8 BANKS. A HOSPICE HOUSE DOES NOT PROVIDE ANY
9 OF THOSE SERVICES. HOSPICE HOUSES DO NOT AND
10 ARE NOT REQUIRED TO PROVIDE EMERGENCY
11 SERVICES. IF YOU'LL LOOK AT NUMBER 3.
12 INPATIENT HOSPICE FACILITIES DO NOT SEND OR
13 RECEIVE PATIENTS VIA HELICOPTERS. AMBULANCES
14 THAT MAY TRANSPORT PATIENTS TO A HOSPICE HOUSE
15 DO NOT USE LIGHTS OR SIRENS DURING TRANSPORT
16 TO A HOSPICE HOUSE. AN INPATIENT HOSPICE
17 HOUSE DOES NOT REQUIRE SIGNIFICANT COMMERCIAL
18 VEHICLE TRAFFIC TO SUPPORT ITS OPERATIONS.
19 ACCORDING TO THE AFFIDAVIT, THE CARE IS GEARED
20 TOWARD RESIDENTIAL-LIKE-NON-INSTITUTIONAL
21 SETTINGS. THE CARE IS PALLIATIVE FOR COMFORT
22 CARE WHICH IS DIFFERENT FROM THE CARE RECEIVED
23 IN A HOSPITAL, WHICH IS LIFE-SAVING. THAT'S
24 NOT HOSPICE. THE HOSPICE IS MORE AKIN TO A
25 NURSING HOME. AN INPATIENT HOSPICE FACILITY

Testimony of Sara Jo Faucher

1 IS MORE SIMILAR TO A NURSING HOME THAN A
2 HOSPITAL. THE END GOAL IS FOR COMFORT AND
3 CARE IN A RESIDENTIAL SETTING. FURTHERMORE,
4 HE STATES, "THE CMA STANDARDS FOR HOSPITALS
5 ARE SUBSTANTIALLY MORE COMPLEX AND COMPREHEN-
6 SIVE THAN THE NURSING HOMES OR HOSPICE
7 HOUSES." IF YOU WILL LOOK ON THE SECOND PAGE,
8 NUMBERS 9 AND 10. AN INPATIENT HOSPICE WOULD
9 NOT REQUIRE SIGNIFICANT COMMERCIAL VEHICULAR
10 TRAFFIC TO SUPPORT OPERATIONS UNLIKE A
11 HOSPITAL. ACCESS FOR DELIVERY AND FIRE
12 EMERGENCY VEHICLES TO SERVICE THE PROPOSED
13 HOSPICE HOUSE WOULD BE THE SAME AS THOSE
14 REQUIRED FOR THE CURRENT RESIDENTS OF THE
15 ADJACENT SUBDIVISION. I HAVE ALSO INCLUDED
16 HIS RESUME.
17 EXHIBIT NUMBER 3. IT'S FROM ARCHITECT
18 PLANNERS OF PEGRAM ASSOCIATES AND IT DESCRIBES
19 THE DESIGN OF THE BUILDING. IT'S A LOW
20 COUNTRY ANTEBELLUM IN TIME WITH ROCKING CHAIRS
21 ON THE PORCH. THE RESIDENTIAL DETAIL WOULD
22 BRING WARM COLORS AND SOFT SEATING. ALL
23 LIGHTING, FURNITURE AND DETAIL IN PATIENT
24 ROOMS AND FAMILY AREAS ARE RESIDENTIAL, NOT
25 INSTITUTIONAL LIKE A HOSPITAL. THE FOURTEEN

Testimony of Sara Jo Faucher

1 PATIENT ROOMS ARE DESIGNED TO HAVE THE PATIENT
2 AND FAMILIES FEEL LIKE THEY'RE IN A RESIDEN-
3 TIAL BEDROOM. SO, MAY I HAVE THE SPECIFIC
4 DESIGN PLEASE FOR THE ROOMS. WHAT WE'RE
5 SHOWING YOU NOW IS WHAT THE ROOMS WILL LOOK
6 LIKE, THE COLOR SCHEME, ET CETERA, THE
7 MATERIAL THAT WILL LOOK VERY HOME-LIKE. THIS
8 IS ALL ONE PATIENT ROOM. A HOSPICE HOUSE IS
9 ESSENTIALLY LIKE A NURSING HOME THAT SPECIA-
10 LIZES IN CARE FOR THE TERMINALLY ILL AND IT'S
11 DESIGNED TO FEEL LIKE A HOME.
12 EXHIBIT NUMBER 4 IN YOUR PACKET. AS YOU CAN
13 SEE IN THE EMAIL FROM PEGRAM AND ASSOCIATES,
14 THE INTERNATIONAL CODE COUNCIL, WHICH
15 PUBLISHES THE INTERNATIONAL BUILDING CODE HAS
16 DETERMINED THAT A HOSPICE HOUSE IS AKIN TO A
17 NURSING HOME, NOT A HOSPITAL.
18 EXHIBIT 5, IF YOU'LL TAKE SOME OF THOSE
19 DRAWINGS THERE, THAT'S NOT EXACTLY HOW IT WILL
20 LOOK, BUT VERY, VERY CLOSE. THIS IS THE
21 DESIGN WE'RE LOOKING AT. ON THE BACK PAGE,
22 YOU CAN SEE THE CHILDREN'S PLAY ROOM. YOU'LL
23 SEE A FIREPLACE. YOU'LL SEE A FAMILY ROOM.
24 THERE IS A DESIRE TO HAVE THE DESIGN OF A
25 FAMILY ROOM. YOU SHOULD BE GOING AROUND TO

1 THE RIGHT NOW. ALL RIGHT.
2 OKAY, THE EXHIBIT 5. THIS IS THE ACTUAL
3 DESIGN. FOURTEEN ROOMS. THEY WILL BE FACING
4 THE WATER SIDE OF THE RIVER. THEY WILL HAVE
5 SCREENED-IN PORCHES WITH PORCH DOORS SO THAT
6 WE CAN LITERALLY TAKE THEM OUTSIDE FOR
7 PATIENTS WHO CANNOT GET OUT OF BED. A FAMILY
8 ROOM AND A FAMILY KITCHEN, THE CHILDREN'S
9 PLAYROOM. THEY'LL BE ABLE TO DINE AROUND OUR
10 ENDLESS CENTER AND THERE WILL BE SEVEN BEDS,
11 SEVEN ROOMS ON EITHER SIDE. THERE IS THE
12 FAMILY ROOM AND THE FAMILY KITCHEN AND THAT'S
13 WHERE THEY CAN MAKE MEALS FOR THEIR LOVED ONES
14 AND MAKE THEIR FAVORITE FOODS. THERE IS A
15 FIREPLACE IN THE CORNER, MAYBE A GRAND PIANO,
16 A DINING ROOM, ET CETERA, IN THE CENTER.
17 THAT'S NOT A HOSPITAL.
18 THE NEXT EXHIBIT IS A PICTURE OF THE ROAD FROM
19 WILDHORSE DRIVE. WHAT WE'RE LOOKING AT NOW
20 LOOKS MORE LIKE AN ESTATE, AN ENTRANCE TO AN
21 ESTATE. THE LAST PICTURE THERE IS A DRAWN
22 LAYOUT OF THE BUILDING AND THE WATER IS ON THE
23 FAR SIDE AND THESE ARE ALL IN YOUR PACKETS.
24 LAST OF ALL, THERE'S WHAT WE THINK IS A TWO
25 HUNDRED FIFTY YEAR OLD TREE WHICH IS NOT ON

1 THE WATER SIDE OF THIS HOSPICE HOUSE. THERE
2 IS A LARGE AREA OF BUFFER BETWEEN WHERE THE
3 HOSPICE HOUSE WILL END AT THE EDGE OF OUR
4 PROPERTY, WHICH IS ADJACENT TO MR. FURR AND
5 MS. JENSEN. THERE'S A HUNDRED AND TWENTY FEET
6 OF BUFFER WITH BEAUTIFUL OAKS AND ALL KINDS OF
7 TREES AND SHRUBBERY. WE PLAN TO KEEP AS MUCH
8 OF THAT AS POSSIBLE. IN ADDITION, THERE
9 HAPPENS TO BE ANOTHER THIRTY FEET BUFFER ON
10 THE OTHER SIDE ON THE MR. FURR'S SIDE. WE ARE
11 REQUIRED TO HAVE THIRTY FEET. WE HAVE HUNDRED
12 AND TWENTY. WE HAVE ALSO AGREED TO PUT MORE
13 TREES IN TO CREATE MORE OF A BUFFER FOR MR.
14 FURR AND MS. JENSEN. IT HAS BEEN STATED THAT
15 THE HOSPICE HOUSE WILL CREATE TRAFFIC AND
16 NOISE PROBLEMS IN THEIR COMMUNITY.
17 EXHIBIT 6 FROM SOLAN ASSOCIATES. THIS IS FROM
18 JACK SOLAN. A HOSPICE HOUSE IS CLASSIFIED AS
19 A NURSING HOME PER THE NORTH AMERICAN INDUSTRY
20 CLASSIFICATION SYSTEM. A HOSPICE HOUSE OR A
21 NURSING HOME GENERATE 2.4 WEEK DAY TRIPS PER
22 BED PER DAY. OUR HOSPICE HOUSE WITH FOURTEEN
23 BEDS WILL GENERATE THIRTY-FOUR TRIPS PER DAY.
24 THE PROPERTY COULD BE USED FOR A RESIDENTIAL
25 SUBDIVISION FOR TWENTY-FOUR SINGLE FAMILY

1 HOMES. A SINGLE FAMILY HOME GENERATES 9.6
2 TRIPS PER DAY. IT COULD BE A MOBILE HOME PARK
3 THAT WOULD PROBABLY INCLUDE FIFTY TO SIXTY
4 MOBILE HOMES. THE IMPACT WOULD BE MUCH
5 GREATER. ACCORDING TO MR. SOLAN, THIRTY-FOUR
6 TRIPS WOULD ONLY INCREASE THE TRAFFIC ON
7 WILDHORSE DRIVE BY 11.4%.
8 EXHIBIT 7. THIS IS A MEMO THAT WE PREPARED
9 FROM OUR REVIEW OF THE TRAFFIC FLOW PATTERNS
10 FROM THE SOUTH CAROLINA DEPARTMENT OF TRANS-
11 PORTATION. IF YOU WILL GO TO PAGE 4, YOU WILL
12 SEE MY REFERENCES THERE. HORRY COUNTY GOVER-
13 NMENT, SOUTH CAROLINA DEPARTMENT OF TRANSPOR-
14 TATION, SOUTH CAROLINA AVERAGE ANNUAL DAILY
15 TRAFFIC, SCDOT. HIGHWAY 90 RECEIVES AN
16 AVERAGE OF 10,034 ADTS, AVERAGE DAILY TRAFFIC,
17 ALONG IT'S 23.2 STRETCH FROM CONWAY TO LITTLE
18 RIVER. HOWEVER, TRAFFIC IS NOT EVENLY SPACED
19 ALONG THE 23.2 MILES. THEIR AVERAGE OF 16,280
20 ADT ON HIGHWAY 90 NEAR LITTLE RIVER. THERE'S
21 ONLY 6,200 COMPARED TO 16,000 ADT AT TRAFFIC
22 MARKER 224 WHERE THE PROPOSED HOSPICE HOUSE IS
23 LOCATED. AGAIN, FARTHER IMPACT THAN OTHER
24 USES FOR THE PROPERTY. YOUR ARGUMENT
25 REGARDING NOISE AND LIGHTS AND NOISE FROM

1 AMBULANCE TRANSPORT.

2 PLEASE REFER TO EXHIBIT 8. THIS IS A LETTER
3 FROM DAVID STONE, PRESIDENT AND CEO OF THE
4 CAROLINAS CENTER FOR HOSPICE AND END OF LIFE
5 CARE. IT'S A PROFESSIONAL ORGANIZATION FOR
6 HOSPICE CARE PROVIDERS IN NORTH AND SOUTH
7 CAROLINA WITH OVER A HUNDRED HOSPICE PROVIDER
8 MEMBERS. HE SAYS, "PATIENTS EITHER ARRIVE IN
9 PERSONAL VEHICLES OR BY NON-EMERGENCY MEDICAL
10 GROUND TRANSPORT." MR. STONE IS NOT AWARE OF
11 ANY HOSPICE HOUSE THAT RECEIVES PATIENTS BY
12 HELICOPTERS. OUR DESIGN, IN FACT, SHOWS THAT
13 WE WILL NOT RECEIVE PATIENTS BY HELICOPTERS.
14 OUR DESIGN DOES NOT INCLUDE THAT. I'VE NEVER
15 HEARD THAT. WE WILL ONLY RECEIVE PATIENTS BY
16 PRIVATE CAR OR BY AMBULANCE IN NON-EMERGENCY
17 TRANSPORT. THERE WILL BE NO LIGHTS OR SIRENS
18 FOR TRANSPORT OF PATIENTS. THERE WILL BE NO
19 FIRE TRUCKS WITH SIRENS UNLESS WE'RE UNFORTUN-
20 ATE ENOUGH TO HAVE A FIRE. PEOPLE DON'T COME
21 TO A HOSPICE HOUSE IN AN EMERGENCY. THEY
22 DON'T LEAVE THAT WAY EITHER. THEY HAVE MADE
23 THEIR DECISION. THEY ARE NOT LOOKING FOR
24 RECESSIVE OR CURATIVE CARE. THEY ARE LOOKING
25 TO BE IN AN HOME-LIKE ENVIRONMENT WHEN THEY

1 CAN'T BE AT HOME SURROUNDED BY THEIR LOVED
2 ONES THAT THEY WATCH DIE IN COMFORT, IN
3 DIGNITY AND THEY WANT TO EXPERIENCE DEATH IN A
4 SPIRITUAL SENSE AS WELL AS A PHYSICAL ONE.
5 THEY HAVE MADE THEIR DECISION. THERE HAS BEEN
6 SOME CONFUSION BECAUSE ONE OF MY TRANSPORT
7 COMPANIES IS MYRTLE BEACH AIR MEDICAL TRANS-
8 PORT. THEY DO NOT PROVIDE HELICOPTER TRANS-
9 PORT BECAUSE THEY DON'T HAVE A HELICOPTER.
10 INSTEAD, THEY PROVIDE GROUND TRANSPORTATION BY
11 AMBULANCE, WHICH IS THE SERVICE WE USE.
12 AGAIN, WE DON'T USE HELICOPTER SERVICE AT ALL.
13 THERE WILL BE NO HELICOPTER TRANSFER. THERE
14 IS A LETTER IN YOUR PACKET FROM MYRTLE BEACH
15 AIR MEDICAL TRANSPORT SHOWING YOU THAT WE DO
16 NOT PROVIDE HELICOPTER MEDICAL TRANSPORT.
17 EXHIBIT 10. THIS IS AN EMAIL FROM BATTALION
18 CHIEF, KENNY TODD, WHO WENT OUT AND MEASURED
19 THE CLEARANCE ON WILDHORSE DRIVE. ACCORDING
20 TO CHIEF TODD, THE INTERNATIONAL FIRE CODE
21 REQUIRES THE FIRE DEPARTMENT TO HAVE ACCESS
22 ROADS TWENTY FEET WIDE. CHIEF TODD MEASURED
23 THE ENTRANCE AT WILDHORSE ROAD AND FOUND THAT
24 THE ENTRANCE GATE IS OVER TWENTY FEET WIDE.
25 HE DETERMINED THERE ARE NO FIRE DEPARTMENT

Testimony of Sara Jo Faucher

1 ACCESS ISSUES WITH WILDHORSE ROAD.
2 MR. FURR ALSO ... HE ALSO CITES THE ORDINANCE
3 703.289, THE INGRESS AND EGRESS OF VEHICLE
4 TRAFFIC SHALL NOT CREATE A HAZARD FOR TRAFFIC
5 ON ADJACENT STREETS. THIS PROVISION ONLY
6 APPLIES TO ROADSIDE MARKETS AND NOT TO A
7 NURSING HOME OR A HOSPICE HOUSE. THERE'S NO
8 EVIDENCE SHOWING THAT WE WOULD CREATE A
9 TRAFFIC HAZARD. THE APPEAL ALSO RAISES THE
10 ISSUE THAT THIS WILL BE BUILT IN TWO PHASES
11 WITH TWENTY-EIGHT BEDS IN THREE SECTIONS WITH
12 TWO FLOORS. THAT IS INCORRECT. I SHOWED YOU
13 THE DRAWING EARLIER AND IT'S ONLY GOING TO BE
14 A FOURTEEN BED FACILITY. THE BUILDING IS ONE
15 STORY.
16 EXHIBIT 11. THIS LETTER IS FROM CHRISTINE
17 ELLIS WHO IS WITH WACCAMAW RIVERKEEPER. SHE
18 CONTACTED HORRY COUNTY STORMWATER AND HORRY
19 COUNTY PLANNING AND ZONING TO INQUIRE ABOUT
20 THE PLANS FOR CONSTRUCTION. THE PLANS CALL
21 FOR THE INFILTRATION SYSTEM TO CAPTURE STORM-
22 WATER RUNOFF UP TO A TEN YEAR STORM. STORM-
23 WATER RUNOFF FROM A TWENTY-FIVE YEAR STORM
24 WOULD BE CAPTURED BY THE LEVEL POOL SPREADER
25 PROPOSED IN THE CURRENT PLAN. THE PROPOSED

Testimony of Sara Jo Faucher

1 DESIGN MINIMIZES IMPERVIOUS AREAS BY LIMITING
2 THE CAPACITY TO FOURTEEN ROOMS AND PRESERVING
3 MUCH OF THE OPEN/WOODED SPACE. THE CURRENT
4 TREE REMOVAL PLAN INCLUDES PROTECTIONS OF LIVE
5 OAKS AND OTHER ONSITE TREES AS WELL AS A
6 BUFFER ALONG THE PROPERTY LINE AND WETLAND
7 LINE. RIVERKEEPER IS IN SUPPORT OF THE
8 PROPOSED PLAN OFF HIGHWAY 90 AND APPLAUD US
9 FOR INCORPORATING LOW IMPACT DEVELOPMENT
10 PRACTICES FOR INFILTRATING STORMWATER ON SITE
11 AND FOR TREE PROTECTION. SHE DOES NOT BELIEVE
12 A HOSPICE HOUSE WILL HAVE A NEGATIVE IMPACT ON
13 THE WATER QUALITY OF THE WACCAMAW RIVER. LOW
14 LIGHTING IS ALSO USED IN THE DESIGN PROJECT
15 NOT ONLY TO PROTECT WILDLIFE, BUT ALSO TO
16 PREVENT LIGHT FROM SHINING IN NEIGHBORING
17 PROPERTIES.

18 THE APPEAL ALSO CLAIMS THAT THIS SITE IS AN
19 INDUSTRIAL DUMP. PLEASE REFER TO EXHIBIT 12.
20 PRIOR TO PURCHASING THE LAND, WE HAD AN ENVIR-
21 ONMENTAL SITE ASSESSMENT DONE BECAUSE WE WOULD
22 NOT HAVE PURCHASED THIS PROPERTY IF IT HAD
23 BEEN A TOXIC DUMP OR HAD ANY KIND OF TOXICS ON
24 IT. A COPY OF THIS IS BEFORE YOU AND IT SHOWS
25 THERE ARE NO RECOGNIZED ENVIRONMENTAL CONDI-

1 TIONS ON THIS SITE AND THE PROPERTY IS SUIT-
2 ABLE FOR OUR DESIGN. ALSO THERE WAS NON-
3 FRIABLE ASBESTOS FOUND DURING THE DEMOLITION OF
4 A HOUSE WHICH WAS LOCATED ON THE PROPERTY.
5 PLEASE LOOK AT EXHIBIT 13. ATTACHED IS AN
6 AGREEMENT WITH RHINO DEMOLITION AND ENVIRON-
7 MENTAL SERVICES AS WELL AS A LETTER FROM
8 PARTNER ENGINEERING AND SCIENCE, INC. PARTNER
9 DETERMINED THAT THE ONE INCH BY ONE INCH FLOOR
10 TILE AND MASTIC CONTAINED NON-FRIABLE
11 ASBESTOS. SINCE THIS WAS NON-FRIABLE, EXTRA-
12 ORDINARY MEASURES DURING DEMOLITION THAT
13 INCLUDE AIR MONITORING, MATERIAL ENCAPSULATION
14 AND/OR SUPPLIED-AIR WERE NOT IMPLEMENTED AND
15 THEY WERE NOT NEEDED. THEY HIRED RHINO, WHICH
16 IS A CERTIFIED ASBESTOS, A DHEC CONTRACTOR, TO
17 REMOVE THE MATERIAL AND DISPOSE OF IT
18 PROPERLY. THIS MATERIAL HAD TO BE REMOVED
19 FROM THE ABANDONED HOUSE IF THE PROPERTY WERE
20 APPROVED FOR ANY PURPOSE.
21 THIS APPEAL ALSO ASSERTS THAT THE CON APPLICA-
22 TION PROVIDES THAT THE SITE CANNOT HAVE ENVIR-
23 ONMENTAL CONDITIONS THAT WOULD BE A HEALTH
24 HAZARD. DHEC FOUND THAT THERE WERE NO SUCH
25 ENVIRONMENTAL CONDITIONS AND REPORTED THAT TO

1 MERCY CARE.

2 EXHIBIT 14. YOU CAN SEE THAT OUR CON HASN'T
3 EXPIRED. YOU HAVE A COPY OF THIS CON SHOWING
4 THAT IT EXPIRES ON MARCH 23, 2013 AND CAN BE
5 EXTENDED TO ACCOMMODATE CONSTRUCTION AND
6 DELAYS.

7 EXHIBIT 15 I'LL JUST HAVE YOU REFER TO IT VERY
8 QUICKLY. THIS IS AN INVOICE FROM TOTAL TREE
9 CARE AND APPRAISAL. WE HAVE HIRED AN ARBORIST
10 TO WORK WITH US ON THIS PROJECT TO MAKE SURE
11 THAT THE TWO HUNDRED AND FIFTY YEAR OLD LIVE
12 OAK TREE, PLUS ALL THE OTHER BEAUTIFUL TREES,
13 ET CETERA, ON THE PROPERTY ARE MAINTAINED AND
14 THAT WE CARE FOR THEM.

15 IF YOU'LL LOOK AT EXHIBIT 16. IT'S A PLAN OF
16 CORRECTION THAT WE HAD A ROUTINE DHEC SURVEY
17 AND MR. FURR IS ASSERTING THAT WE WERE NOT
18 TAKING CARE OF OUR PATIENTS PROPERLY, ET
19 CETERA. THAT IS UNTRUE. ABSOLUTELY UNTRUE.
20 IT'S FAR FROM THE REAL TRUTH. THERE'S AN
21 ACCREDITED ACTION AS YOU CAN SEE FROM THE
22 PAPERWORK.

23 SO, IN SUMMARY, WE HAVE ALL KINDS OF SUPPORT
24 FOR THIS HOSPICE HOUSE AT THIS LOCATION. I
25 WOULD ASK THE PEOPLE IN THE AUDIENCE WHO

1 SUPPORT THIS HOSPICE HOUSE TO PLEASE STAND UP.
2 (AUDIENCE ON THE LEFT SIDE OF THE ROOM
3 STANDING UP.)
4 IF YOU REPRESENT ANY OF THE HOSPITALS, I WOULD
5 ASK YOU TO REMAIN STANDING. EVERYONE ELSE SIT
6 DOWN PLEASE. ANY PHYSICIANS? (THREE STANDING
7 UP.) THANK YOU. ANY BOARD MEMBERS? (A FEW
8 STANDING UP.)
9 ONE OF THE THINGS ABOUT HOSPICE HOUSE ... ONE
10 OF THE THINGS IN OUR COMMUNITY AND BY CHOICE,
11 THAT RESIDENTS IN OTHER COUNTIES HAVE WHEN
12 THEY CAN'T DIE COMFORTABLY IN THEIR OWN HOMES,
13 THEY HAVE SOMEWHERE TO GO. Horry COUNTY DOES
14 NOT OFFER ASSISTANCE IN THIS CHOICE. IT'S THE
15 HOSPITAL OR NOTHING IF YOU CAN'T STAY HOME.
16 THIS IS WHY WE WANT THIS HOME. IT ACCESSIBLE
17 TO ALL Horry COUNTY RESIDENTS. IT'S SERENE
18 AND IT'S PEACEFUL AND IT'S A PLACE FOR PEOPLE
19 TO HAVE THIS SPIRITUAL EXPERIENCE AND START
20 HEALING THOSE FAMILIES THAT SURVIVE THOSE
21 PEOPLE. THERE IS A PHYSICAL EXPERIENCE AS
22 WELL AS A SPIRITUAL ONE. THIS LOCATION IS
23 ALSO EQUA-DISTANCE TO ALL FOUR HOSPITALS. AT
24 ANY GIVEN TIME, CONWAY MEDICAL CENTER HAS AN
25 AVERAGE OF FIVE PATIENTS. GRAND STRAND

Testimony of Sara Jo Faucher

1 REGIONAL CENTER HAS ABOUT THE SAME AMOUNT.
2 MCLEOD/LORIS HAS THREE PATIENTS ON AVERAGE AND
3 SEACOAST ONE. THESE PATIENTS ARE HOSPICE
4 PATIENTS OR HOSPICE APPROPRIATE AND IF THEY'RE
5 IN A HOSPITAL, THAT'S WHERE THEY HAVE TO DIE.
6 THERE IS NO HOSPICE HOUSE FOR THEM TO GO TO
7 YET. ONCE INTERNATIONAL DRIVE IS COMPLETED,
8 IT WILL BE TEN MINUTES FROM GRAND STRAND
9 REGIONAL CENTER, MAKING IT INCREDIBLY ACCES-
10 SIBLE FROM THE BEACH AREA.
11 IF YOU AGREE WITH MR. FURR AND MS. JENSEN'S
12 ABSURD CONTENTION THAT A HOSPICE HOUSE IS A
13 HOSPITAL, THEN WHAT YOU'RE REALLY SAYING IS
14 THE PLANNING AND ZONING DEPARTMENT IS WRONG.
15 THE COUNTY COUNCIL, WHO HAD A COMPLETE
16 RESOLUTION SUPPORTING THIS, EVERY MEMBER. IT
17 WAS UNANIMOUS. THEY'RE WRONG. WHAT YOU'RE
18 SAYING IS DHEC IS WRONG. DO THEY SAY OTHER
19 COUNTIES ARE WRONG IN SOUTH CAROLINA? THESE
20 ARE MISTAKES. THEN THEY'RE SAYING THAT MEDI-
21 CARE IS WRONG. IS THAT POSSIBLE? THANK YOU.
22 MR. HANNA: ARE THERE ANY QUESTIONS FROM ANY
23 MEMBERS? MR. IVES.
24 MR. IVES: THANK YOU FOR A VERY THOROUGH
25 PRESENTATION. IN SOME CORRESPONDENCE WE WERE

Testimony of Sara Jo Faucher

Testimony of Dr. Preston Strosnider

1 GIVEN IT WAS STATED THAT THIS PHASE PROJECT
2 WOULD BE BEGINNING WITH FOURTEEN BEDS. DO YOU
3 ENVISION EXPANDING THE FACILITY?

4 MS. FAUCHER: I PERSONALLY CANNOT ENVISION
5 EXPANDING. I WANT TO GET THIS ONE HOUSE
6 BUILT. WE HAVE TWENTY-TWO ACRES. I CAN'T
7 TELL YOU WHAT'S GONNA HAPPEN IN THE FUTURE,
8 BUT I WOULD CERTAINLY HOPE THAT I'M GONNA BE
9 HERE WRITING LETTERS TO YOU ALL TO MAKE IT
10 BIGGER.

11 MR. IVES: THANK YOU VERY MUCH.

12 MS. FAUCHER: YOU'RE WELCOME.

13 MR. HANNA: ANY OTHER QUESTIONS FROM BOARD
14 MEMBERS?

15 MR. FLOWERS: MR. CHAIRMAN, IN THE INTEREST OF
16 TIME, WE HAVE TWO DOCTORS WHO ARE HERE TO
17 TESTIFY. I BELIEVE THAT MOST OF THEIR TEST-
18 IMONY HAS BEEN COVERED. SO, THAT'S ALL FROM
19 OUR SIDE.

20 MR. HANNA: I'VE GOT A QUESTION OF ONE OF THE
21 HOSPITAL DOCTORS. I THINK THE GENTLEMEN WHO
22 STOOD UP WHO ARE AFFILIATED WITH THE
23 HOSPITALS. WOULD ONE OF YOU COME FORWARD?

24 DR. PRESTON STROSNIDER, HAVING BEEN DULY SWORN,
25 TESTIFIED AS FOLLOWS:

1 MR. HANNA: WOULD YOU STATE YOUR NAME AND
2 ADDRESS FOR THE RECORD PLEASE?

3 DR. STROSNIDER: DR. PRESTON STROSNIDER, 4266
4 CONGRESSIONAL DRIVE, MYRTLE BEACH.

5 MR. HANNA: WOULD IT BE ALL RIGHT IF I CALLED
6 YOU DR. PRESTON?

7 DR. STROSNIDER: JUST CALL ME STRO. A FOUR
8 LETTER WORD.

9 MR. HANNA: WHAT DO YOU DO WITH HOSPITALS?

10 DR. STRO: I'M THE CHIEF ... I AM THE CHIEF
11 MEDICAL ... I AM THE VICE PRESIDENT FOR
12 MEDICAL AFFAIRS. I'M ESSENTIALLY THE MEDICAL
13 DIRECTOR OF THE HOSPITAL IN CONWAY. I ALSO
14 SIT ON THE BOARD OF MERCY CARE.

15 MR. HANNA: OKAY. CONWAY HOSPITAL. IN YOUR
16 OPINION, IS HOSPICE A NURSING HOME OR A
17 HOSPITAL?

18 DR. STRO: IT'S DEFINITELY NOT A HOSPITAL. I
19 DON'T EVEN THINK IT'S A NURSING HOME. IT'S
20 REALLY JUST A RESIDENTIAL HOME IN THE FACT
21 THAT THEY DO NOT PROVIDE WHAT WE CALL MEANING-
22 FUL TREATMENT. COMFORT CARE, YES, BUT THEY
23 ARE NOT BEING TREATED IN A HOSPITAL ROOM.
24 THEY'RE NOT A HOSPITAL.

25 MR. HANNA: IS THERE A CRITERIA FOR THE SIZE

1 AND NUMBER OR THE NUMBER OF BEDS IN A
2 HOSPITAL?

3 DR. STRO: NO. THERE ARE CRITICAL ACCESS
4 HOSPITALS THAT HAVE LESS THAN TWENTY-FIVE
5 BEDS, BUT IN DEFERENCE TO WHAT MR. FURR SAID
6 EARLIER, I WOULD LIKE TO COMMENT. NURSING
7 HOMES DO REQUIRE THAT THEY HAVE A MEDICAL
8 DIRECTOR.

9 MR. HANNA: ANY QUESTIONS FROM ANY OTHER
10 MEMBERS OF THE BOARD? MR. LEBIEDZ.

11 MR. LEBIEDZ: YES, SIR. I'VE GOT A QUESTION
12 IN REFERENCE TO MERCY HOSPICE. ARE YOU GOING
13 TO HAVE NURSES ON STAFF?

14 DR. STRO: THERE WOULD BE NURSES AVAILABLE TO
15 HELP.

16 MR. LEBIEDZ: BEYOND STAFF, AS LONG AS THERE
17 WAS A PATIENT THERE, WOULD YOU HAVE SOMEBODY
18 AVAILABLE?

19 DR. STRO: OH, YES.

20 MR. LEBIEDZ: WOULD YOU HAVE CNAS OR MEDICAL
21 ASSISTANTS ON STAFF?

22 DR. STRO: SURE.

23 MR. LEBIEDZ: SO, YOU WOULD ACTUALLY HAVE THE
24 SAME STAFFING AS YOU WOULD IN A HOSPITAL,
25 DOCTORS MAKING ROUNDS?

Testimony of Dr. Preston Strosnider
Testimony of Pat Lebiedz

1 DR. STRO: DOCTORS COULD MAKE ROUNDS, YES.

2 MR. LEBIEDZ: IF I'M A HOSPICE PATIENT, WOULD
3 THEY MAKE ROUNDS?

4 DR. STRO: SURE.

5 MR. LEBIEDZ: ON A DAILY BASIS?

6 DR. STRO: NOT DAILY.

7 MR. LEBIEDZ: NOT DAILY. BUT YOU WOULD HAVE A
8 MEDICAL STAFF THERE AVAILABLE 24/7?

9 DR. STRO: YES. THERE ARE PHYSICIANS WHO
10 CURRENTLY CARE FOR HOSPICE PATIENTS IN THEIR
11 HOME. AND THEY'RE AVAILABLE TO COME TO THE
12 HOME, HELP WITH THE FAMILY UNDERSTANDING THE
13 GRIEVING PROCESS OR DYING PROCESS.

14 MR. LEBIEDZ: JUST FOR BACKGROUND, I'VE GOT A
15 WIFE WHO HAS BEEN IN GERIATRIC CARE AS A NURSE
16 FOR WELL OVER TWENTY-FIVE YEARS. SHE'S BEEN A
17 NURSE FOR OVER FORTY-FIVE YEARS. I'M FAMILIAR
18 WITH HOSPICE COMING IN TO THE HOME WHE MY
19 MOTHER-IN-LAW PASSED AWAY SEVERAL YEARS AGO.
20 SO, I'M FAMILIAR WITH THAT. I'M FAMILIAR WITH
21 YOUR ASPECT OF WHAT A NURSING HOME IS AND I
22 DON'T WANT TO SEEM CRUEL, BUT A NURSING HOME
23 IS LONG TERM AND THERE'S REALLY NO RECOVERY.
24 BASED ON MY WIFE'S ALMOST TWENTY-FIVE YEARS AS
25 A NURSE IN A NURSING FACILITY ... I MEAN, A

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1 NURSING HOME, BUT I JUST . . . LOCATION, LOCA-
2 ION, LOCATION. IF IT WERE SOME PLACE OUT IN
3 THE MIDDLE OF NOWHERE, BOY, I COULD SUPPORT
4 THAT. THERE'S A NEED FOR HOSPICE BECAUSE LIKE
5 I SAID, I'VE EXPERIENCED IT FIRSTHAND, BUT
6 LOCATION. LOCATION. ONE QUESTION IN MY MIND
7 WAS TRAFFIC STUDIES. I DON'T EVEN KNOW IF
8 WE'VE HAD A TRAFFIC STUDY OTHER THAN WHAT MS.
9 JENSEN DID. THERE'S GOING TO BE A LOT OF
10 TRAFFIC FOR FOURTEEN PEOPLE. HOW MANY NURSES
11 ARE YOU GONNA HAVE, EMPLOYEES ALONE COMING AND
12 GOING ON A DAILY BASIS, OKAY? HOW ABOUT
13 SUPPLIES THAT YOU HAVE NEED ON A DAILY BASIS
14 COMING AND GOING? THAT'S A RESIDENTIAL
15 COMMUNITY. OKAY. THAT'S NOT A COMMERCIAL
16 VENUE TO ME, OKAY? JUST AS YOUR REPORT.
17 THAT'S A LOT OF HARD WORK TO PUT INTO THIS,
18 BUT I CAN'T POSSIBLY DIGEST THIS IN A SHORT
19 THIRTY-FIVE, FORTY MINUTES. I WOULD LOVE TO
20 SIT DOWN BUT I COULD NOT LISTEN TO YOU AND
21 POSSIBLY GO THROUGH WHAT YOU PRESENTED IN SUCH
22 AN EXCELLENT FASHION. THERE'S JUST ACTUALLY
23 NO WAY. I CAN'T GIVE YOU FOLKS A FAIR AND A
24 JUST DECISION . . . PAT LEBIEDZ CAN'T, WHEN YOU
25 HAVE HERE ALL THIS AND LISTEN TO WHAT YOU HAVE

Testimony of Fayrell Furr
Testimony of David Flowers

1 BEEN SAYING AND YOU EXPECT ME TO MAKE A DETER-
2 MINATION, I CAN'T DO IT. I'LL TELL YOU I
3 CAN'T DO IT. THANK YOU FOR YOUR TIME.

4 MR. HANNA: ANY OTHER QUESTIONS? JUST MAYBE
5 TO ADDRESS WHAT YOU HAD TO SAY, PAT, ABOUT
6 COMMERCIAL. IT'S CFA. I MEAN, THEY CAN PUT A
7 GROCERY STORE THERE. I MEAN, TRACT COUNTS
8 REALLY ... DON'T REALLY ... IN THIS INSTANCE,
9 DON'T REALLY, I DON'T THINK, REALLY COME INTO
10 PLAY BECAUSE THAT'S ... THEY CAN PUT A GROCERY
11 STORE THERE, WHICH IS GONNA BE A LOT MORE
12 TRAFFIC THAN THIS. MR. FURR, I THINK YOU
13 WANTED TO COME BACK UP.

14 MR. FURR: JUST ONE POINT. I HAVE RECENTLY
15 ATTEMPTED TO READ WHAT HAS BEEN SENT TO DHEC.
16 I HAD A COPY OF THAT TO REVIEW. I JUST GOT
17 THAT. AND THEY'VE ALWAYS HAD PLANS TO
18 INCREASE THIS TO TWENTY-EIGHT BEDS. THAT'S
19 WHAT THEY SAID IN THEIR PRESENTATION, BUT IF
20 THEY CHANGED IT, I DON'T KNOW. WHEN THEY DID
21 THEIR PRESENTATION BEFORE DHEC, THEY HAD A
22 TWENTY-EIGHT BED HOSPITAL.

23 MR. HANNA: THANK YOU. YOU MAY WANT TO
24 ADDRESS THAT.

25 MR. FLOWERS: I CAN ADDRESS THAT. MY NAME IS

Testimony of David Flowers
Testimony of Sara Jo Faucher

43

1 DAVID FLOWERS. I'M WITH MERCY CARE. JUST TO
2 CLARIFY, THIS IS ONLY FOR FOURTEEN BEDS.
3 THERE ARE NO PLANS FOR ANY ADDITIONAL PHASE
4 WHATSOEVER. IT HAS BEEN LIMITED TO THOSE
5 FOURTEEN BEDS.

6 MR. HANNA: SO, THE APPLICATION HAS BEEN
7 CHANGED?

8 MR. FLOWERS: THAT'S MY UNDERSTANDING IT HAS
9 BEEN. IT'S ONLY BEEN APPROVED FOR FOURTEEN
10 BEDS.

11 MS. FAUCHER: INITIALLY WE WANTED TO ADD TO
12 THE BUILDING OVER THE HOSPICE HOUSE THE
13 FOURTEEN BEDS. WE'VE NEVER HAD A PLAN FOR
14 MORE THAN FOURTEEN BEDS. BUT, IF WE WERE TO
15 ADD A BUILDING ON TOP, WE FOUND OUT AS WE GOT
16 FURTHER INTO THE PROJECT THAT WE WOULD HAVE TO
17 SURVEY THE ... THAT DHEC WAS SURVEYING THE
18 ADMIN BUILDING WITH THE SAME KIND OF EYES AND
19 RESTRICTIONS THAT THEY DO IN A MEDICAL
20 FACILITY OR A NURSING HOME, WHICH HOSPICE IS
21 NOT AKIN TO. AND THE COST FOR THAT WAS OUT-
22 RAGEOUS AND IT WAS THE COST FACTOR THAT MADE
23 US DECIDE NOT TO PUT AN ADMIN BUILDING UP
24 THERE. WE'RE NOT GONNA GO VERTICAL. IT'S
25 JUST WAY TOO EXCESSIVE. SO, IT'S FOURTEEN

Testimony of Dr. Preston Strosnider
Testimony of David Flowers

44

1 BEDS. THAT'S ALL WE HAVE A CON FOR. IF WE
2 WANTED MORE BEDS, WE'D HAVE TO GO BACK AND
3 APPLY FOR ANOTHER CON FOR MORE BEDS. IT'S NOT
4 WHAT WE'RE LOOKING FOR RIGHT NOW. I'M NOT
5 SURE WHAT WILL HAPPEN IN THE FUTURE, BUT IT'S
6 NOT ANYTHING WE'RE LOOKING TO RIGHT NOW.
7 MR. FLOWERS: I WOULD JUST LIKE TO BRIEFLY
8 ADDRESS THE OTHER ISSUES. THE ISSUE BEFORE
9 THE BOARD HERE IS REALLY A NARROW ONE AND THAT
10 IS WHETHER A HOSPICE HOUSE IS A HOSPITAL AND I
11 KNOW THERE ARE SOME ISSUES RELATED TO TRAFFIC,
12 NOISE AND OTHER CONCERNS, BUT I WOULD POINT
13 OUT, AS THE CHAIRMAN SAID, THIS PROPERTY COULD
14 BE USED FOR A GROCERY STORE. IT COULD BE USED
15 FOR A BANK, A SERVICE STATION, A RAILROAD
16 DEPOT. IT COULD EVEN BE USED FOR AN AIR FIELD
17 OR OFFICE BUILDING. SO, THERE ARE MANY
18 PERMITTED USES OF THIS PROPERTY. THIS USE
19 RIGHT HERE HAS THE LEAST IMPACT OF ANY OF
20 THOSE WHATSOEVER. THE TRAFFIC SITES THAT WE
21 ELUDED TO. THERE ARE FOURTEEN BEDS.
22 ACCORDING TO A NATIONAL OR NORTH AMERICAN
23 INDUSTRY CLASSIFICATION SYSTEM, A HOSPICE
24 HOUSE IS CLASSIFIED AS A NURSING HOME. AND
25 WITH A NURSING HOME YOU GET AN AVERAGE OF 2.4

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1 TRIPS PER BED PER DAY. SO, IN THIS CASE,
2 INCLUDING STAFF AND THREE VISITORS, INCLUDING
3 DELIVERY, WILL ONLY AVERAGE 2.4 TRIPS PER DAY
4 PER BED. THAT IS A TOTAL OF THIRTY-FOUR TRIPS
5 PER DAY FOR THIS HOSPICE FACILITY. NOW, IF
6 YOU HAVE A SINGLE FAMILY RESIDENTIAL NEIGHBOR-
7 HOOD, YOU'RE GONNA GENERATE AT LEAST NINE
8 TRIPS PER DAY PER HOME. SO, IF YOU ALLOW FOR
9 THIS RESIDENTIAL NEIGHBORHOOD, YOU'RE GONNA
10 HAVE MUCH MORE IMPACT ON HIGHWAY 90 AND ON
11 WILDHORSE THAN YOU WOULD WITH THIS HOSPICE
12 HOUSE. THEY HAVE DONE EVERYTHING THAT THEY
13 CAN TO DEVELOP THIS PIECE OF PROPERTY TO HAVE
14 AS LITTLE IMPACT ON THEIR NEIGHBORS AS
15 POSSIBLE. YOU'VE HEARD ABOUT THE TREE
16 PROBLEM. YOU'VE HEARD ABOUT THE ENVIRONMENTAL
17 ISSUES AND CONCERNS THAT THEY TRIED TO
18 ADDRESS. RIVERKEEPER IS INCLUDED IN THIS AND
19 THEY SAID THAT THEY FULLY SUPPORT THIS BASED
20 ON THE CONSTRUCTION TECHNIQUES WE'RE GONNA USE
21 FOR THIS PROJECT. BUT IT REALLY GOES TO THE
22 NARROW ISSUE OF IS THIS A HOSPITAL. YOU CAN'T
23 LOOK AT THE DESIGNS. YOU CAN'T LOOK AT WHAT'S
24 BEEN SAID OR LAID OUT BEFORE YOU TODAY AND
25 COME TO ANY OTHER CONCLUSION THAT YOU CAN'T

1 MAKE A DETERMINATION THAT THIS IS A HOSPITAL.
2 A HOSPITAL FUNCTIONS DIFFERENTLY AND MOST
3 IMPORTANTLY, IT'S LICENSED FOR THAT. THE
4 STATE OF SOUTH CAROLINA HAS TWO SEPARATE
5 LICENSINGS OR LICENSING REGULATIONS FOR A
6 HOSPITAL AND FOR HOSPICE. DHEC HAS EVEN
7 LOOKED AT THIS. HAVE SAID THAT THIS ORDIN-
8 ANCE ... GO AHEAD AND TAKE A LOOK AT `EM AND
9 THEY HAVE SAID THIS HOSPICE HOUSE IS ALLOWED
10 IN THIS ZONE. WE BELIEVE THAT IT FITS WITHIN
11 THE DEFINITION OF A GROUP HOME AND A NURSING
12 HOME. THE DEFINITION OF A GROUP HOME UNDER
13 THE ORDINANCE IS DEFINED AS A SPECIALIZED
14 TREATMENT FACILITY THAT PROVIDES LESS THAN
15 PRIMARY CARE. THAT'S WHAT A HOSPICE HOUSE
16 DOES. IT'S LESS THAN PRIMARY CARE OR ACUTE
17 CARE. AS EVERYONE HAS SAID, THE GOAL OF
18 HOSPICE CARE IS NOT FULL TREATMENT AND TO GET
19 PEOPLE BETTER AND NOT DIE. IT'S END OF LIFE
20 COMFORT CARE. THAT IS A SPECIALIZED CARE THAT
21 IS AVAILABLE IN A GROUP HOME SETTING BY THIS.
22 YOU'VE HEARD ABOUT THE DESIGN OF THE PROJECT.
23 IT'S DESIGNED TO BE LIKE A RESIDENCE. IT'S
24 NOT A HOSPITAL. THAT'S THE ISSUE THAT'S
25 BEFORE THE BOARD TONIGHT. IS THIS A HOSPITAL

Testimony of David Flowers

Testimony of Matt Scalise

1 OR IS IT A GROUP HOME OR A NURSING HOME. AS
2 YOU CAN SEE FROM THE AFFIDAVITS THAT WERE
3 SUBMITTED TO YOU BY MR. LEVITT AND BY MR.
4 GIBBS, WHO IS A DHEC CHIEF, THIS IS NOT A
5 HOSPITAL. THIS IS MORE AKIN TO A NURSING HOME
6 OR GROUP CARE. SO, WE THANK YOU FOR YOUR
7 ATTENTION TONIGHT. WE APPRECIATE YOU
8 LISTENING TO US AND WE HOPE THAT YOU WILL
9 UPHOLD THE DECISION OF THE ZONING ADMINIS-
10 TRATOR. THANK YOU.

11 MATT SCALISE, HAVING BEEN DULY SWORN, TESTIFIED AS
12 FOLLOWS:

13 MR. HANNA: PLEASE STATE YOUR NAME AND ADDRESS
14 FOR THE RECORD.

15 MR. SCALISE: MATT SCALISE, 1362 LYNCHBURG,
16 MYRTLE BEACH, SOUTH CAROLINA. THERE'S BEEN A
17 LOT OF DETAILS SHARED BY THE GENTLEMAN WHO'S A
18 NEIGHBOR. ONE OF THE THINGS I WANTED TO MAKE
19 CLEAR AND I COULD GET SIDETRACKED ON THE
20 OUTSIDE ISSUES ACCORDING TO DAVID HE
21 MENTIONED. I LOOKED AT THIS AS A VERY NARROW
22 SUBJECT TO BE RULED ON. THERE'S A LOT OF
23 SMOKE AND MIRRORS HERE AND A LOT OF UNRELATED
24 ISSUES THAT HAVE BEEN BROUGHT UP TONIGHT AND
25 WE RESPONDED TO EACH AND EVERY ONE OF THEM.

1 THERE'S A REASON WHY SO MANY OTHER BODIES AND
2 SOME OF THE OTHER AGENCIES RULED IN THE SAME
3 MANNER TO AUTHORIZE THIS. OUR ORGANIZATION,
4 OUR BOARD, WOULD NEVER HAVE AUTHORIZED THE
5 PURCHASE OF THIS PIECE OF LAND IF IT WEREN'T
6 FOR THE FACT THAT WE GOT ALL OUR DUCKS IN A
7 ROW AND IT MAKES YOU WONDER ONE OF THE THINGS
8 THAT WE DID. WE HAVE A RESOLUTION THAT WAS
9 VOTED ON UNANIMOUSLY BY COUNTY COUNCIL. HORRY
10 COUNTY COUNCIL SIGNED A RESOLUTION UNANIMOUSLY
11 SUPPORTING THIS AS A USE. THAT COMBINED WITH
12 DHEC AND THE CON THAT DHEC GRANTED US WAS NOT
13 JUST A CON AND GO FIND A LOCATION. THAT CON
14 WAS SPECIFIC TO THIS PARTICULAR SITE. SO,
15 THERE'S A LOT OF TIME AND EFFORT, MONEY AND
16 HARD WORK THAT'S GONE INTO THIS AND TO ME TO
17 GET SIDETRACKED ON OTHER PHERIPHAL ISSUES
18 SEEMS TO ME TO BE A TRAVESTY. THAT'S ALL I
19 HAVE TO SAY.

20 MR. HANNA: THANK YOU, MR. SCALISE. ANYONE
21 ELSE WISHING TO SPEAK WITH ANYTHING NEW.
22 PLEASE COME FORWARD.

23 LAWRENCE GALLAWAY, HAVING FIRST BEEN DULY SWORN,
24 TESTIFIED AS FOLLOWS:

25 MR. HANNA: STATE YOUR NAME AND ADDRESS FOR

1 THE RECORD PLEASE.

2 MR. GALLAWAY: WILLIAM GALLAWAY, HIGHWAY 90,

3 RURAL HIGHWAY 90. I'M NOT GOING TO GET OFF

4 TRACK, JUST GIVE ME TWO OR THREE MINUTES AND

5 LISTEN TO SOME FACTS. WHERE THE WILDHORSE

6 ROAD IS A LOT OF LAND. IT'S GOT A RED BORDER

7 AROUND IT WHERE YOU GO INTO THE ENTRANCE.

8 OKAY, I GUESS I'M THE OLD GUY OF THE GROUP

9 HERE. I WAS BORN AND RAISED ON ALL THAT

10 PROPERTY THERE. I WAS IN A HOUSE IN WILDHORSE

11 BEFORE IT EVER BECAME WILDHORSE. MY GRAND-

12 FATHER HAS DONE PASSED AND ALL THAT LAND

13 BELONGED TO HIM FIRST. THAT BLOCK THERE SIT

14 BACK ACROSS THERE WHEN YOU GOT OFF OF

15 INTERNATIONAL DRIVE. THE RESIDENTIAL THING

16 ASIDE, I'M TOTALLY AGAINST IT. THIS WAS

17 CALLED NIXONVILLE. IF YOU DIDN'T KNOW, IT WAS

18 CALLED NIXONVILLE, OKAY, AND THERE'S VERY FEW

19 FAMILIES LIVING IN NIXONVILLE PER SE THE

20 WILDHORSE, ET CETERA. THE TRAFFIC AND

21 EVERYTHING IS EXTREMELY BAD. NOW, ON THE 23RD

22 OF JANUARY OF THIS YEAR, MY FATHER PASSED AND

23 I'M NOT GOING AGAINST THE HOSPICE PROGRAM, BUT

24 I HAD SOME BAD EXPERIENCE FROM HOSPICE 'CAUSE

25 THEY SAID ... THE DOCTOR SAID, "LEAVE HIM HERE

Testimony of Lawrence Galloway

1 AND LET HIM DIE." WE SAID, "NO, WE'RE TAKING
2 HIM HOME." BUT HE LIVED A HAPPY LIFE FOR
3 ANOTHER YEAR. I DON'T KNOW WHEN YOU SAY ABOUT
4 TAKE `EM AND SOMEONE MADE THE STATEMENT THAT
5 WHETHER THEY WANT TO DIE. MY DADDY NEVER SAID
6 HE WANTED TO DIE. HE WANTED TO LIVE AND WE
7 WANTED HIM TO LIVE. ONLY THING THAT HOSPICE
8 WAS ASKING ME ABOUT IS SIGNING A DOR AND I
9 SAID, "NO, I'M NOT GONNA SIGN THAT." YOU
10 KNOW, AND I WENT DOWN THERE. I SAID, "WE WANT
11 THE AMBULANCE TO COME GET HIM WHATEVER
12 HAPPENS. OKAY. IT WAS ALL ABOUT A MONEY
13 THING. OKAY. AT THIS POINT, I DID HAVE SOME
14 BAD EXPERIENCES DEALING WITH HOSPICE AND IT
15 JUST ... I GOT ALL THE GLORY IN THE BEGINNING
16 TO GET HIM IN THE PROGRAM. THEY ...

17 MR. HANNA: MR. GALLOWAY, WILL YOU ADDRESS THE
18 BOARD.

19 MR. GALLOWAY: I'M SORRY. ONCE HE GOT IN THE
20 PROGRAM, WE FOUND OUT DIFFERENTLY. SO, I JUST
21 WISH THEY WOULD NOT CONSIDER THIS THING ON
22 HIGHWAY 90 RIGHT THERE IN THE NIXONVILLE AREA.
23 WE HAVE ENOUGH PROBLEMS WITH TRAFFIC, ET
24 CETERA, LIKE IT IS, BUT I'M TRYING IN THE
25 STATE OF HOPE ON BEHALF OF EVERYONE'S WELFARE

Testimony of Lawrence Gallaway

Testimony of Gloria Moyer

1 THAT WE WISH NOT TO HAVE THAT IN THIS AREA.

2 THANK YOU.

3 MR. HANNA: THANK YOU, SIR. COME FORWARD IF
4 YOU HAVE SOMETHING DIFFERENT TO SAY.

5 MS. MOYER: THIS IS DIFFERENT.

6 GLORIA MOYER, HAVING FIRST BEEN DULY SWORN,

7 TESTIFIED AS FOLLOWS:

8 MR. HANNA: GIVE US YOUR NAME AND ADDRESS FOR
9 THE RECORD PLEASE.

10 MS. MOYER: GLORIA MOYER, 9469 CARRINGTON
11 DRIVE, MYRTLE BEACH. I OWN A PROPERTY AT
12 WILDHORSE. THE ONLY THING I WANTED TO SAY IS
13 THAT NOBODY MENTIONED REAL ESTATE VALUES HERE
14 AND THIS IS GOING TO AFFECT ... WE'VE BEEN
15 TOLD BY PROFESSIONAL REALTORS THAT IT IS GOING
16 TO AFFECT THEIR VALUES AND IT WILL AFFECT
17 THEIR LAND AND I DON'T KNOW HOW THIS CAME
18 ABOUT IN THE VERY BEGINNING, BUT WHEN THEY
19 TALKED ABOUT IT WAS GONNA BE OFF 90 ... WELL,
20 IT IS GONNA BE OFF 90, BUT THEY DIDN'T GO IN
21 OUR SUBDIVISION. THAT'S THE WHOLE THING THAT
22 THEY'RE SAYING IS GONNA AFFECT THEM. ANOTHER
23 THING IS THEY TALK ABOUT MEETING THE NEED FOR
24 A HOSPICE HOUSE. SO, THERE ARE EMPTY HOSPICE
25 ROOMS RIGHT NOW. MY DAD DIED IN HOSPICE. SO,

Testimony of Dr. Charles Sasser

1 THERE ARE ROOMS AVAILABLE RATHER THAN HAVING
2 THIS HOUSE IN A RESIDENTIAL SECTION. THAT'S
3 ALL.

4 DR. CHARLES SASSER, HAVING BEEN DULY SWORN, TESTI-
5 FIED AS FOLLOWS:

6 MR. HANNA: STATE YOUR NAME AND ADDRESS FOR
7 THE RECORD.

8 DR. SASSER: CHARLIE SASSER, 1517 FOREST VIEW
9 ROAD, CONWAY, SOUTH CAROLINA. I'M AN HORRY
10 COUNTY NATIVE. MY FAMILY HAS BEEN PRACTICING
11 MEDICINE AND SURGERY IN HORRY COUNTY, ALMOST
12 WITHOUT INTERRUPTION, SINCE 1925. I'VE BEEN
13 MEDICAL DIRECTOR OF MERCY HOSPICE SINCE 1981
14 AND MEDICAL DIRECTOR OF A PALLIATIVE CARE PRO-
15 GRAM AT CONWAY MEDICAL CENTER SINCE 2003. I
16 WANT TO GET BACK TO THE MAIN ISSUE OF WHY A
17 HOSPITAL IS DIFFERENT FROM A HOSPICE FROM A
18 MEDICAL PROSPECTIVE. I WOULD, WITH DUE
19 RESPECT TO MR. FURR. THE WORD HOSPICE IS A
20 MEDIEVAL TERM WHICH REFERS TO THE WAY STATIONS
21 ACROSS EUROPE FOR SOLDIERS RETURNING FROM THE
22 CRUSADES TO DIE. ALTHOUGH HOSPICE AND
23 HOSPITAL MAY HAVE THE SAME ROOT WORD, THEY'RE
24 IN THE SEMINARY END. THE PROBLEM WITH
25 HOSPITALS IS THAT IT COMES OUT OF A BIBLE OF

1 CARE WE CALL THE ACUTE CARE BIBLE. THIS WENT
2 ON FOR ABOUT A HUNDRED YEARS AND IT'S STILL
3 GOING ON. BASICALLY IT AROSE FROM A SITUATION
4 WHERE MOST PEOPLE DIED OF ACUTE ILLNESS OR
5 INJURY. THIS PROBLEM IS RECOGNIZED AS WE'VE
6 GOTTEN MORE SOPHISTICATED WITH OUR HEALTH CARE
7 TO KEEP PEOPLE ALIVE LONGER WITH CHRONIC,
8 INCURABLE, PROGRESSIVE DISEASE AND NOW, WE
9 HAVE THIS EXPLODING POPULATION OF AGING AND
10 PEOPLE WITH LIFE-THREATENING ILLNESS WHERE AN
11 ACUTE CARE MODEL NO LONGER SERVES. AND, IN
12 FACT, WHAT WE HAVE COME TO UNDERSTAND IS THAT
13 IT CAN ACTUALLY BE DELETERIOUS. THE ACUTE
14 CARE MODEL WORKS GREAT IF YOU'VE GOT SOMETHING
15 TO RETURN TO IN TERMS OF NORMAL HEALTH AND
16 IT'S DESIGN IS TO CURE AND TO RESTORE TO SOME
17 PREVIOUS STATE OF NORMAL HEALTH. AND THAT'S
18 WHAT HOSPITALS ARE SO GOOD AT. THAT'S WHY
19 THEY GOT SO MANY DIFFERENT MECHANISMS FOR
20 DIAGNOSE AND TREATMENT IN HOSPITALS. THAT
21 SHOULD BE FAIRLY APPARENT. IF YOU LOOK AT THE
22 CAUSE OF DEATH IN THIS COUNTRY, AFTER HEART
23 ATTACKS, CANCER AND STROKES, THE FOURTH MOST
24 COMMON CAUSE OF DEATH IS MEDICAL MISADVENTURE.
25 A HUNDRED THOUSAND A YEAR ESTIMATED AND I'LL

1 BET THERE ARE TWO OF US HERE WHO DIDN'T HAVE
2 FOLKS WHO HAD COMPLICATIONS AND THAT'S NOT TO
3 SAY WE'RE GIVING BAD MEDICINE. THEY ARE
4 GETTING THE MOST AND THE BEST MEDICINE WE
5 COULD. THE PROBLEM IS, THEY CAN USE THE ACUTE
6 CARE MODEL OVER HERE WITH PEOPLE WHO ARE AGING
7 AND CHRONICALLY ILL AND FRAGILE. IT OFTEN
8 DOESN'T WORK OR IT MIGHT ACTUALLY MAKE PEOPLE
9 WORSE. AND SO IT'S REALLY IMPORTANT TO GET
10 PEOPLE OUT OF THAT ACUTE CARE SETTING WHEN
11 THEY'VE GOT A CHRONIC INJURY OR ILLNESS. NOW,
12 I HAVE NOT HAD A PRIOR EXPERIENCE WITH A
13 HOSPICE HOUSE. I HAVE OVER THREE DECADES OF
14 EXPERIENCE WITH TAKING CARE OF HOSPICE
15 PATIENTS IN THE HOSPITALS AND NURSING HOMES.
16 I CAN TELL YOU THAT ALTHOUGH I THINK THAT OUR
17 MEDICINE DOES A WONDERFUL JOB AND WE'VE GOT
18 NURSES THAT WE HAVE THOROUGHLY TRAINED IN THE
19 ACUTE CARE MODEL AND IN THE COMFORT CARE MODEL
20 WHO CAN TAKE CARE OF THESE PEOPLE. WHEN YOU
21 HAVE HEARD WHAT WE ARE DESIGNING OUT HERE, A
22 PLACE WHERE THE ENVIRONMENT THAT SPEAKS TO
23 THESE PEOPLE AND SAY TO THEM THAT THEY ARE
24 SPECIAL PEOPLE AND THAT THEY HAVE SOME SIGNI-
25 FICANCE AND THE BEAUTY OF THE ENVIRONMENT,

Testimony of Dr. Charles Sasser
Testimony of Ed Allen

1 OKAY. IT'S NOT HOSPICE IN HOSPITALS AND THEY
2 ARE NOT THE SAME.

3 MR. HANNA: THANK YOU, SIR. HAVE WE GOT ONE
4 MORE GENTLEMAN? I'M GOING TO TAKE THIS
5 GENTLEMAN, MAYBE ONE OTHER PERSON AND WE'RE
6 GONNA CUT IT OFF.

7 ED ALLEN, HAVING FIRST BEEN DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 MR. HANNA: STATE YOUR NAME AND ADDRESS FOR
10 THE RECORD.

11 MR. ALLEN: I'M ED ALLEN. I LIVE AT 3145 LAW
12 ENFORCE DRIVE. I'M NOT GONNA GET INTO
13 UGLINESS. I'LL TRY TO GET THROUGH THIS. I
14 WAS BORN AND RAISED IN CONWAY. I KNOW THE
15 AREA. WHEN I DECIDED TO BUILD MY FINAL HOME,
16 I LOOKED AROUND AND FOUND LAW ENFORCE. IT'S
17 QUIET AND IT'S PEACEFUL. IT'S BEEN THAT WAY
18 FOR THIRTY YEARS. THE WORD, "HOSPICE", I
19 WOULD BET IS DERIVED FROM THE WORD,
20 "HOSPITAL." YOU GOT NURSES AND DOCTORS IN A
21 BUILDING TAKING CARE OF PATIENTS. TO ME, IF
22 IT WALKS LIKE A DUCK, LOOKS LIKE A DUCK AND
23 QUACKS LIKE A DUCK, YOU CALL IT A DUCK.
24 THERE'S A LOT MORE I WOULD LIKE TO SAY, BUT
25 I'LL LEAVE IT AT THAT.

1 MR. HANNA: I'LL TAKE ONE MORE PERSON.

2 VERONICA SMALLS, HAVING BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 MR. HANNA: PLEASE STATE YOUR NAME AND ADDRESS
5 FOR THE RECORD.

6 MS. SMALLS: MY NAME IS VERONICA SMALLS. I
7 LIVE IN NORTH CAROLINA, I'M A GALLAWAY, AND
8 WE'RE THE HEIRS TO MY MOTHER'S PROPERTY, WHICH
9 IS THAT AREA THAT YOU'RE LOOKING AT ON THE
10 MAP. I'M HERE ON BEHALF OF OUR FAMILY, OUR
11 ELDER MEMBERS AS WELL. EVERY TIME THEY HAD A
12 ZONING MEETING, MY MAMA WOULD CALL ME IN NORTH
13 CAROLINA AND SAY, "YOU GOT TO COME HOME. THEY
14 GETTING READY TO MESS MY LAND UP. YOU GOTTA
15 HELP ME." I KNOW THERE'S AN OLD BUILDING OVER
16 THERE SOMEWHERE. I CAME HOME AND GOT UP AND
17 SHE WOULD ALWAYS SAY, "YOU GOT TO GET UP AND
18 DO THE TALKING 'CAUSE YOU KNOW THE TRUTH."
19 WELL, I'M HERE BECAUSE I WANT TO EXPECT
20 HOSPICE BECAUSE, IN FACT, MY MOM DIED SIX
21 YEARS AGO AND SHE WAS THE ELDEST OF THE DO
22 ELLERY CHILDREN AND THEY WANTED TO PUT HER IN
23 HOSPICE BUT WE CHOSE AND WE SAID, "NO. YOU
24 GONNA STAY HOME AND DIE IN PEACE AT HOME."
25 THAT LAND HAS BEEN IN MY FAMILY FOR I DON'T

Testimony of Veronica Smalls

1 KNOW HOW MANY YEARS, AND OUR GRANDFATHER HAD
2 WORKED YEARS AND YEARS AND YEARS TO LEAVE
3 SOMETHING FOR HIS CHILDREN AND HIS GREAT
4 GRANDCHILDREN AND SO FORTH. I KNOW PROGRESS
5 HAS TO GO. I LIVE IN NORTH CAROLINA AND I SEE
6 PROGRESS EVERY DAY. WE HAVE A MERCY HOME.
7 UNFORTUNATELY OUR MERCY HOME, FORTUNATE FOR
8 US, IS IN A MORE COMMERCIAL AREA SO IT DOES
9 NOT HAVE HOMES IN THE NEIGHBORHOOD. IT MAY
10 NOT SEEM LIKE MUCH TO THESE FOLKS BECAUSE I
11 KNOW FOR A FACT THAT I WORK FOR THE STATE.
12 IT'S MORE OF A BUSINESS ADVENTURE AS WELL AND
13 THEY'RE TAKING CARE OF THE NEEDS OF ELDERLY
14 PEOPLE. OLD PEOPLE DIE BECAUSE OF ILLNESSES.
15 THAT LAND IS A LOT ... IT MEANS A LOT. YES,
16 YOU COULD BUILD GROCERY STORES. YES, YOU
17 COULD BUILD THIS AND YOU CAN BUILD THAT, BUT
18 WHEN I THINK OF THE SWEAT AND TEARS OF OUR
19 ANCESTORS TO HAVE THAT LAND TO LEAVE SOMETHING
20 BACK, ONLY THING HE CAN LEAVE FOR US IS THAT
21 LAND. WE VALUE THAT LAND AND EVERY TIME I
22 COME HOME, AND MY MAMA'S BURIED OUT THERE IN
23 THE CEMETERY, I GO BY THERE AND I LOOK AND I
24 FEEL OKAY. "OKAY, THAT WAS GRANDPA'S LAND.
25 THAT WAS GRANDPA'S LAND." SO, IT MAY SEEM

1 RIGHT TO YOU GUYS, AND I NOTICED THAT MOST OF
2 THE PEOPLE THAT GOT UP TO SPEAK DON'T LIVE
3 THERE. THEY DON'T LIVE THERE. THAT'S LIKE
4 ME. THEY DON'T LIVE THERE. SIT DOWN AND PUT
5 YOUR FACE DOWN. THAT'S LIKE ME. I LIVE IN A
6 BEAUTIFUL HOUSE IN NORTH CAROLINA. I DON'T
7 HAVE TO WORK AT HOSPICE. THEY NEVER HAD A
8 HOSPICE IN THAT FACILITY. MY HO WON'T ALLOW
9 IT. BUT, WHEN I THINK ABOUT IT, MY AUNTS AND
10 UNCLES, THE CHILDREN OUT THERE, THEY WOULD BE
11 HERE RIGHT NOW, BUT IT'S COLD OUT HERE AT
12 NIGHT. SO, I TOOK OFF WORK AND I SAID, "YOU
13 KNOW, I WILL COME AND I WILL SPEAK IN THEIR
14 BEHALF. I WILL RAISE MY VOICE UP BEFORE GOD.
15 I'M GOING TO SPEAK IN THEIR BEHALF." SO, I
16 DON'T HAVE ANYTHING AGAINST HOSPICE. HOSPICE
17 IS LIKE ANYTHING ELSE, BUT I DO THINK THEY
18 NEED TO BE MORE CONSIDERATE OF THE FACT THAT
19 ELDERLY PEOPLE THAT LIVE IN THAT COMMUNITY.
20 THEY'RE NOT HERE. (INAUDIBLE) WE DON'T HAVE
21 BIG LAWYERS IN HERE. WE'RE JUST EVERYDAY
22 PEOPLE STANDING UP FOR WHAT WE BELIEVE IN AND
23 I DO BELIEVE THAT WE HAVE THAT RIGHT, WHETHER
24 THEY HAVE TEN LAWYERS OR A BIG CORPORATION, WE
25 ARE AMERICANS AND WE HAVE THE RIGHT TO EXPRESS

Testimony of Veronica Smalls

1 OUR OPINION THAT, THAT LAND BELONGS TO OUR
2 ANCESTORS, WHETHER THEY BLACK OR WHITE, IT
3 DOESN'T MATTER, BUT WE HAVE THE RIGHT TO HOLD
4 ON TO THAT LAND AND HOLD ON TO THE INTENT OF
5 THAT LAND AND THERE'S PLENTY OTHER PLACES IN
6 HORRY COUNTY THAT THEY CAN SEARCH AND BUILD
7 THEIR HOSPICE, AND I HAVE TO SPEAK TO HOSPICE.
8 GOD KNOWS MY MAMA DIED AND I THOUGHT IT WAS
9 THE END OF MY WORLD. BUT, YOU KNOW WHAT, IT
10 WON'T THE END OF THE WORLD, BUT SHE WAS GONNA
11 DIE. SHE GONNA DIE THERE WHETHER IT'S IN
12 HOSPICE OR IN THE HOUSE. MY HEART IS HEAVY
13 WITH THIS. PLEASE BE CONSIDERATE OF ALL THESE
14 PEOPLE WHO YOU DON'T SEE HERE RIGHT NOW. WHO
15 ARE UP IN AGE AND THAT'S ALL THEY GOT TO HOLD
16 ON TO 'CAUSE THEY DON'T HAVE BIG BANKROLLS,
17 AND FABULOUS HOUSES AND SO FORTH. THAT'S ALL
18 THEY GOT IS THEIR LAND. SO, PLEASE TAKE THAT
19 INTO CONSIDERATION 'CAUSE I KNOW IF IT CAME
20 DOWN TO IT, THEY COULD FIND ANOTHER SITE IF
21 THEY REALLY WANTED TO. I THINK THEIR MIND
22 JUST SET ON THAT SITE. THANK YOU FOR GIVING
23 ME THE OPPORTUNITY.
24 MR. HANNA: THANK YOU, MA'AM. I'M GOING TO
25 CLOSE PUBLIC INPUT AT THIS TIME. I WANT TO

Testimony of Sharon Lemon

1 THANK EVERYBODY FOR TAKING THE TIME TO COME
2 AND SPEAK. MA'AM, DO YOU HAVE SOMETHING NEW
3 YOU'D LIKE TO ADD? WOULD YOU STEP UP TO THE
4 PODIUM. I'M GOING TO SWEAR YOU IN AND THEN
5 YOU CAN GET YOUR POINT ACROSS.

6 SHARON LEMON, HAVING BEEN DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 MR. HANNA: STATE YOUR NAME AND ADDRESS FOR
9 THE RECORD.

10 MS. LEMON: MY NAME IS SHARON LEMON. MY
11 ADDRESS IS 3214 WILDHORSE DRIVE.

12 MR. HANNA: OKAY, MS. LEMON, WOULD YOU LIKE TO
13 CLARIFY?

14 MS. LEMON: I JUST WANT TO CLARIFY A COUPLE OF
15 THINGS. FIRST OF ALL, THE PICTURE THAT THEY
16 ARE PASSING TO Y'ALL OF THE BUILDING TONIGHT,
17 THAT DOESN'T LOOK LIKE THE PICTURE THEY
18 PRESENTED IN THE EARLIEST MEETING TO US. THEY
19 CHANGED THEIR BUILDING A COUPLE OF TIMES ON
20 THIS.

21 MR. HANNA: PLEASE ADDRESS THE BOARD NOT THE
22 CROWD.

23 MS. LEMON: IT'S NOTHING LIKE WAS ORIGINALLY
24 SHOWED TO US. IT'S BEEN CHANGED TWO OR THREE
25 TIMES. JUST ABOUT EVERY TIME, "THIS IS WHERE

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1 IT'S GONNA BE." IT'S NOT SHOWING WHERE IT'S
2 GONNA BE. ANOTHER THING IS, THIS IS THE MERCY
3 HOSPICE PROPERTY. THESE ARE ALL RESIDENTIAL
4 LOTS IN RIVERS EDGE. THERE IS A FARM HERE
5 WITH COWS AND THE GALLAWAYS LIVE THERE. THEY
6 HAVE COWS AND EVERYTHING. THIS HAS BEEN THEIR
7 PROPERTY FOR MANY YEARS. ALL THIS IS THE
8 GALLAWAYS AND THEIR FAMILIES' PROPERTY. THESE
9 ARE ALL HOMES AND STUFF AND ALL BACK IN HERE.
10 THERE'S HOMES HERE. I MEAN, THEY'RE IN THE
11 MIDDLE OF THAT RESIDENTIAL AREA. I UNDERSTAND
12 THEY GOT THIS PROPERTY ..

13 MR. HANNA: MA'AM, WOULD YOU STEP BACK TO THE
14 PODIUM.

15 MS. LEMON: LIKE SOMEONE ELSE SAID, THERE'S
16 MANY OTHER PROPERTIES IN THIS COUNTY WHERE
17 THEY CAN BUILD A COMMERCIAL PIECE OF PROPERTY
18 LIKE THIS AND NOT DISTURB A WHOLE RESIDENTIAL
19 NEIGHBORHOOD. THEY DO NOT ... ALL THESE
20 PEOPLE STANDING UP, NOT ONE OF `EM LIVE OUT
21 THERE. OF COURSE, THEY'RE GONNA OKAY IT. DR.
22 SASSER IS A NICE MAN AND I'M NOT POSITIVE, BUT
23 HIS PROPERTY ...

24 MR. HANNA: I'M GOING TO ASK YOU ONE MORE
25 TIME. PLEASE ADDRESS THE BOARD AND NOT THE

Testimony of Sharon Lemon

1 MEMBERS IN THE AUDIENCE.

2 MS. LEMON: I APOLOGIZE. I'M PRETTY SURE THAT
3 ... I DON'T KNOW IF THIS IS DR. SASSER, BUT HE
4 HAS PROPERTY ON HIGHWAY 90. DO THEY WANT THIS
5 ON THEIR PROPERTY IN THEIR SUBDIVISION, RIGHT
6 ON TOP OF THEIR HOMES? I'M SORRY.

7 MR. HANNA: I KNOW THAT'S IT'S A VERY ...

8 MS. LEMON: CAN YOU BUILD A HOSPITAL IN
9 ANOTHER RESIDENTIAL AREA?

10 MR. HANNA: WE'RE HERE TO DECIDE AS TO WHETHER
11 THE ZONING ADMINISTRATOR MADE THE PROPER
12 DECISION IN DETERMINING THAT THIS IS A ALLOW-
13 ABLE USE IN THIS ZONED AREA. WE HAVEN'T RE-
14 ZONED IT. NOBODY'S RE-ZONED IT. IT IS WHAT
15 IT IS. THE ZONING ADMINISTRATOR HAS MADE A
16 DECISION THAT A HOSPICE HOUSE IS AN ALLOWABLE
17 USE IN THIS AREA. OKAY? WHAT WE'RE HERE TO
18 DETERMINE IS IF IT IS. MR. FURR AND MS.
19 JENSEN AND THE REST OF YOU ARE SAYING NO, IT'S
20 NOT ALLOWED BECAUSE IT'S A HOSPITAL. THEY'RE
21 SAYING IT'S NOT A HOSPITAL. WHETHER THE
22 TRAFFIC COUNTS ARE GONNA INCREASE OR DECREASE
23 REALLY DOESN'T COME INTO PLAY HERE. NOBODY
24 LIKES PROGRESS. SHOOT, I'D LOVE TO GO OUT AND
25 LIVE BUT IN THE MIDDLE OF MY FAMILY. IT IS

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Testimony of Sharon Lemon

1 WHAT IT IS. SO, IF YOU'D LIKE TO TELL US WHY
2 YOU THINK THAT IT IS A HOSPITAL, PLEASE DO.

3 MS. LEMON: I THINK ALL THE EVIDENCE POINTS
4 TO, EVEN THOUGH THEY SAY IT DOESN'T, IT BEING
5 A HOSPITAL. IT HAS A STAFF ...

6 MR. HANNA: WHAT EVIDENCE DO YOU HAVE THAT
7 IT'S A HOSPITAL? TELL US NOW.

8 MS. LEMON: I GUESS I CAN'T CHANGE ANYTHING
9 ELSE AS FAR AS IN THAT RESPECT, BUT I JUST
10 WANTED TO CLARIFY WHERE IT IS AND IT IS
11 SURROUNDED BY RESIDENTIAL.

12 MR. HANNA: THANK YOU, MS. LEMON. AGAIN, I
13 WANT TO THANK EVERYBODY FOR TAKING THE TIME.
14 I KNOW YOU CAME FROM NORTH CAROLINA AND I KNOW
15 IT'S IMPORTANT TO YOU. I KNOW IT'S IMPORTANT
16 TO YOUR FAMILY. FAYRELL FURR AND KAROLE
17 JENSEN, I HAVE THE UPMOST RESPECT FOR THE
18 FINEST PEOPLE I'VE HAD THE OPPORTUNITY TO
19 KNOW. THAT BEING SAID, ME PERSONALLY, I'M
20 TRYING TO WRAP MY HANDS AROUND A HOSPITAL AND
21 HOSPICE. THEY'VE GOT TWO DIFFERENT GOALS.
22 SO, I DON'T KNOW HOW THEY CAN BE CONSIDERED
23 THE SAME THING, BUT THAT'S JUST ME. ANY DIS-
24 CUSSIONS AMONGST THE BOARD? MR. PARKER.

25 MR. PARKER: IN MY OPINION, THIS ALL BOILS

1 DOWN TO TWO THINGS. IT'S THE DEFINITION OF A
2 HOSPITAL, A NURSING HOME AND IF A NURSING HOME
3 IS ALLOWED IN THIS, I KNOW ... A NURSING HOME
4 TO ME ... OR HOSPICE TO ME IS SOMETHING THAT
5 YOU DON'T GO FOR TREATMENT. YOU GO FOR THE
6 END RESULT. OKAY. YOU DON'T LEAVE FROM THERE
7 AND GO TO A HOSPITAL. SO, IT'S VERY
8 EMOTIONAL. I UNDERSTAND THAT, BUT WE HAVE TO
9 TAKE ALL THE EMOTIONS OUT OF IT. THIS MESS OF
10 LOCATION, LOCATION, LOCATION. THAT IS ALL
11 BULL TO ME. AND, MR. LEBIEDZ, I HAVE A
12 PROBLEM WITH YOUR STATEMENT. YOU SAID THAT
13 YOU CANNOT RENDER A FAIR AND JUST DECISION
14 BASED ON THE INFORMATION. THEN I FEEL YOU
15 NEED TO RECUSE YOURSELF AND NOW, THAT TO ME,
16 IN YOUR STATEMENT AND YOU DID SAY THAT, THEN
17 HOW CAN YOU MAKE A FAIR AND JUST DECISION
18 AFTER ALL THIS INFORMATION THAT WE'VE SEEN,
19 HOW CAN YOU DO THAT?

20 MR. LEBIEDZ: YOU WANT ME TO RESPOND NOW?

21 MR. PARKER: YOU CAN RESPOND HOWEVER YOU NEED
22 TO, SIR.

23 MR. LEBIEDZ: LOOK HERE, I WAS GIVEN A ONE
24 PAGE DOCUMENT WITH SEVENTEEN CHAPTERS, OKAY?
25 I WAS TRYING TO LISTEN TO THIS LADY SPEAK

1 BECAUSE THE WAY I WAS BROUGHT UP IS I'M GONNA
2 PAY ATTENTION TO HER AS SHE'S SPEAKING, NOT
3 TRY TO READ AND LISTEN AT THE SAME TIME
4 BECAUSE I'M GONNA MISS ONE OR THE OTHER. I
5 CANNOT RENDER A FAIR AND JUST DECISION WHEN
6 I'M HANDED A MULTI-PAGE DOCUMENT TO REVIEW TO
7 SEE WHO'S RIGHT AND WHO'S WRONG. I CAN'T DO
8 THAT. THAT'S JUST LIKE MR. FURR. THE PACKAGE
9 THAT HE PUT TOGETHER, OKAY? I REVIEWED IT
10 WHEN I GOT MY PACKAGE. NOW, I'D LIKE TO
11 COMPARE ONE WITH THE OTHER.

12 MR. PARKER: THEN, YOU NEED TO DEFER THE
13 ENTIRE ISSUE.

14 MR. LEBIEDZ: WELL, I'D LIKE TO. I'D MAKE A
15 MOTION TO DEFER IT.

16 MR. PARKER: I'D MAKE A MOTION THAT YOU CANNOT
17 RENDER A FAIR AND JUST DECISION.

18 MR. LEBIEDZ: I CANNOT.

19 MR. PARKER: WELL, YOU HAVEN'T DONE IT.

20 MR. LEBIEDZ: I'LL BE GLAD ... I MAKE A
21 MOTION, MR. CHAIRMAN, TO DEFER THIS ISSUE
22 UNTIL ALL THE FACTS AND ALL THE DOCUMENTS ARE
23 REVIEWED WHERE I FEEL I KNOW I ... I DON'T
24 KNOW HOW ALL THE BOARD MEMBERS FEEL. WE'LL
25 FIND OUT IN A VOTE. I MAKE A MOTION TO DEFER

1 IT UNTIL WE CAN REVIEW THESE DOCUMENTS THAT
2 WERE PRESENTED TO US FOR YOU. THEY DIDN'T
3 GIVE US THIS DOCUMENT JUST TO SIT HERE ON THE
4 DESK.

5 MR. HANNA: THIS IS MY OPINION. I WAS ABLE TO
6 FOLLOW RIGHT ALONG BECAUSE SHE BASICALLY
7 RECITED IT. BUT, ANYWAY, THERE'S A MOTION.
8 IS THERE A SECOND. FOR LACK OF A SECOND, THE
9 MOTION FAILS. ANY OTHER DISCUSSION? MR.
10 PARKER.

11 MR. PARKER: LET ME FINISH WHAT I STARTED.
12 HONESTLY, LIKE I SAID, THIS BOILS DOWN TO THE
13 DEFINITION OF A HOSPITAL OR A NURSING HOME.
14 OKAY. AND, YOU KNOW, I DON'T KNOW. MAYBE WE
15 CAN GO EITHER WAY. WE CAN ARGUE ABOUT IT ALL
16 NIGHT, BUT I UNDERSTAND THAT NO MATTER WHERE
17 YOU GO IN THIS COUNTY, YOU'RE ALWAYS GONNA
18 HAVE NEIGHBORS, OKAY. I DON'T CARE WHERE IT
19 IS. YOU'RE ALWAYS GONNA HAVE SOMEBODY NEXT
20 DOOR THAT DOESN'T LIKE SOMETHING OR THEY DON'T
21 FEEL THEY WANT IT NEXT TO THEM. AND THAT IS A
22 PART OF SOMETHING THAT WE REALLY CAN'T CHANGE.
23 WE HAVE TO MAKE A DECISION THAT'S GONNA AFFECT
24 BOTH SIDES OF THIS AND SOMETIMES IT'S NOT THE
25 WAY YOU WANT IT TO BE, BUT WE TRY VERY HARD TO

1 MAKE RIGHT DECISIONS. BUT, THIS TO ME IS NOT
2 ABOUT EMOTIONS. THIS IS ABOUT SIMPLY WHETHER
3 SHE MADE A MISTAKE IN PUTTING IT IN THIS ZONE.
4 NOW, THAT ALL BOILS DOWN TO WHETHER IT'S A
5 HOSPITAL, A NURSING HOME AND OBVIOUSLY IT'S A
6 HOSPICE. SO, I THINK EACH ONE DOES HAVE TO
7 TAKE ALL THE EMOTIONS OUT OF IT AND DECIDE
8 WHAT IS A HOSPICE AND WHAT IS A HOSPITAL AND
9 WHAT IS A NURSING HOME. I'VE HEARD HOSPICE
10 HOUSE IS A HOME AND I'VE HEARD THAT A NURSING
11 HOME IS A HOSPITAL. TO ME, A HOSPITAL IS
12 SOMEWHERE YOU GO FOR TREATMENT. WHEN I GO TO
13 A HOSPICE, I DON'T THINK I'M GOING FOR TREAT-
14 MENT. I'M GOING FOR THE END RESULT. I'M
15 GOING TO BE COMFORTABLE AND THAT'S, TO ME, AND
16 I'M NOT TRYING TO PUSH THAT DOWN ANYBODY
17 ELSE'S THROAT, BUT I THINK THAT IS WHAT WE
18 HAVE TO DECIDE. NOT ABOUT EMOTIONS AND NOT
19 ABOUT, YOU KNOW, WHAT'S GOING AND WHO'S WHO,
20 WHERE IT'S LOCATED, BUT DID SHE MAKE A MISTAKE
21 OR NOT AND THAT'S WHAT IT'S ALL ABOUT TO ME.
22 MR. HANNA: THANK YOU, MR. PARKER. MR.
23 LEBIEDZ.
24 MR. LEBIEDZ: MRS. MINCEY, UNDER CFA IS A
25 HOSPICE ALLOWED? THE TERM "HOSPICE"?

1 MRS. MINCEY: IT IS OUR INTERPRETATION THAT IT
2 IS ALLOWED A HOSPICE AS IT IS WRITTEN OUT.
3 THE WORD, "HOSPICE" IS NOT ANYWHERE WITHIN OUR
4 ORDINANCE. THERE ARE OTHER USES AS WELL THAT
5 THIS SPECIFIC NAME OF THE FACILITY MAY NOT BE
6 WITHIN OUR ORDINANCE. IF YOU LOOK AT THE
7 DEFINITION PROVIDED IN YOUR PACKET FOR
8 PERMANENT OVERNIGHT RESIDENTIAL GROUP CARE
9 HOMES OR NURSING HOMES HERE. IF YOU LOOK AT
10 THE DEFINITION WE GAVE YOU FOR A NURSING HOME,
11 WHICH IS ALSO FROM OUR ORDINANCE, YOU CAN SEE
12 THE CFA ZONING DISTRICT SPECIFICALLY SAYS
13 UNDER ARTICLE VII, SECTION 703 THAT PERMANENT
14 OVERNIGHT RESIDENTIAL GROUP CARE HOMES OR
15 NURSING HOMES ARE ALLOWED, ALLOWED AS A
16 CONDITIONAL USE IN THE CFA ZONING DISTRICT.
17 UNDER THE DEFINITION OF PERMANENT OVERNIGHT
18 RESIDENTIAL GROUP CARE HOME, IT ALSO INCLUDES
19 A SPECIALIZED TREATMENT FACILITY PROVIDING
20 LESS THAN PRIMARY HEALTH CARE. ALONG WITH THE
21 DEFINITION THAT IS ALSO PART OF OUR ZONING
22 ORDINANCE THAT BESIDES A NURSING HOME, WE ARE
23 CONFIDENT THAT THIS ORDINANCE SUPPORTS THE
24 HOSPICE HOUSE CAN BE ADDED AND IT IS DEFINED
25 BY THE STATE IN THE ZONING DISTRICT. THAT IT

1 IS NOT A HOSPITAL. A HOSPITAL IS DEFINED
2 DIFFERENTLY. THEY GO THROUGH DIFFERENT CODING
3 STANDARDS. THE MOST DILIGENT PROCESS AND THE
4 FACILITY ITSELF IS IN IT AND WE BELIEVE THAT
5 WE HAVE MADE THE RIGHT DECISION THAT IT IS A
6 SPECIALIZED TREATMENT FACILITY PROVIDING LESS
7 THAN PRIMARY HEALTH CARE AND IT ALSO FALLS
8 WITHIN THE GUIDELINES OF THE ZONING DISTRICT.
9 WE HEARD A LOT OF INFORMATION HERE TONIGHT
10 THAT BASICALLY REALLY HAS NOTHING TO DO
11 FORTUNATELY WITH THE ISSUE BEFORE YOU. THE
12 ISSUE IS NOT ALL OF THESE THINGS ABOUT TRAFFIC
13 OR ANY OF THESE OTHER THINGS. IT IS WHETHER
14 THE ORDINANCE, UNFORTUNATELY FOR THE PEOPLE
15 WHO ARE AGAINST IT, THIS PROPERTY IS ZONED
16 COMMERCIAL, FOREST/AGRICULTURAL WITH A LOT OF
17 COMMERCIAL USES ALLOWED. SO, THE ISSUE IS NOT
18 WHETHER OR NOT ALL THESE OTHER ITEMS ARE ...
19 ALL THESE THINGS WILL BE LOOKED AT, BUT WHEN
20 IT COMES UP FOR COMMERCIAL REVIEW ONCE THE
21 PLANS IN DUE PROCESS IS PARTLY ... THAT'S
22 CURRENTLY UNDERWAY, BUT IT'S BEFORE YOU
23 WHETHER OR NOT HOW OUR ORDINANCE IS WRITTEN
24 TODAY. WHAT IS WRITTEN IN THIS ORDINANCE
25 WHETHER IT HAS BEEN INTERPRETED CORRECTLY. WE

1 FEEL THAT ALL THESE DEFINITIONS THAT WE
2 PROVIDED SUPPORT OUR INTERPRETATION OF THE
3 ORDINANCE. IN ADDITION TO THAT, IN 2010,
4 HORRY COUNTY COUNCIL WITH THE SAME ORDINANCE
5 WE HAVE TODAY, LOOKED AT THIS AND GAVE A
6 RESOLUTION SUPPORTING THIS HOSPICE HOUSE ON
7 THE SAME PROPERTY THAT WE'RE LOOKING AT. SO,
8 WE HAVE THAT DOCUMENT THAT WAS DATED SEPTEMBER
9 21, 2010. SO, THIS IS A PROCESS THAT HAS JUST
10 NOT STARTED TODAY. IT'S BEEN IN WITH YOU FOR
11 AWHILE. SO, THE WORD "HOSPICE" IS NOT
12 MENTIONED IN OUR ORDINANCE, NO, BUT WE FEEL
13 LIKE BASED ON THOSE DEFINITIONS AND WHAT THIS
14 FACILITY IS GOING TO BE IS ALLOWED IN THE
15 ZONING DISTRICT.

16 MR. HANNA: AS WELL AS THE RESOLUTION. ANY
17 OTHER MEMBERS LIKE TO SAY ANYTHING? IF NONE,
18 THE CHAIR WILL ENTERTAIN A MOTION TO REVERSE
19 THE DETERMINATION OF THE ZONING ADMINISTRATOR.
20 IS THERE SUCH A MOTION?

21 MR. PARKER: SO MOVED.

22 MR. HANNA: IS THERE A SECOND?

23 MS. CREECH: SECOND.

24 MR. HANNA: I'VE GOT A SECOND. STARTING WITH
25 MR. IVES, A VOTE OF YES IS TO REVERSE THE

1 DETERMINATION OF THE ZONING ADMINISTRATOR.
2 MR. IVES.
3 MR. IVES: NO.
4 MR. KEELAN: NO.
5 MR. PARKER: NO.
6 MS. CREECH: YES.
7 MR. LEBIEDZ: YES.
8 MR. HANNA: NO. THANK YOU, LADIES AND GENTLE-
9 MEN.

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1 SOUTH CAROLINA

2 CERTIFICATE

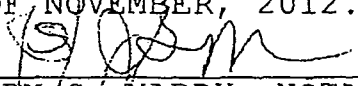
3 COUNTY OF HORRY.

4 I, JERRY S. MABRY, A NOTARY PUBLIC AND
5 VERBATIM REPORTER, IN AND FOR THE STATE OF SOUTH
6 CAROLINA, DO HEREBY CERTIFY THAT THE WITNESSES IN
7 THIS HEARING WERE DULY SWORN PRIOR TO THE TAKING OF
8 THIS AND THAT THE FOREGOING SEVENTY-ONE (71) PAGES
9 CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE
10 EVIDENCE AS GIVEN BY SAID WITNESSES AND AS TAKEN
11 DOWN AND TRANSCRIBED BY ME. I FURTHER CERTIFY THAT
12 THE PERSONS WERE PRESENT AS STATED IN THE CAPTION.

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

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

20 THIS THE 16TH DAY OF NOVEMBER, 2012.

21 
22 JERRY S. MABRY, NOTARY PUBLIC
AND VERBATIM REPORTER

23 MY COMMISSION EXPIRES:
24 NOVEMBER 22, 2012.

25

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
	)	February 28, 2013
	)	

Fayrell Furr and Karole Jensen	)
	)
	)
APPELLANTS	)
	)
VERSUS	)
	)
Horry County Zoning Board of Appeals	)
	)
RESPONDENTS	)
_____	)

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

Gene M. Connell, Jr., Esquire
ATTORNEY FOR THE APPELLANTS

Emma Ruth Brittain, Esquire
ATTORNEY FOR THE RESPONDENT

Pamela Ozment-Cartee
Circuit Court Reporter

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COURT EXHIBIT

NUMBER	DESCRIPTION	PAGE
1	Presentation by Appellant	25

2012-CP-26-09291

3

1 (Whereupon, this hearing began at 9:45 a.m.
2 on Thursday, February 28, 2013.)

3 THE COURT: All right. Good morning, everyone.

4 MR. CONNELL: Good morning.

5 MS. BRITTON: Good morning, Your Honor.

6 THE COURT: I am Judge Baxley, and for those of you
7 who are here for the first time. This is the case of
8 Fayrell Furr and Karole Jensen versus The Horry County
9 Zoning Board of Appeals. This matter was before me
10 approximately a month ago, actually a little less than a
11 month ago. At which time we stayed any actions by the
12 County and set a hearing today for the appeal of The Zoning
13 Board's decision. It is my recollection that there was
14 going to be a mediation in the meantime. And, if you are
15 ready, counsel let's start by letting counsel introduce
16 themself and who you have with you here today. And then we
17 will proceed into the arguments. And, Ms. Brittain, we
18 will start with you. Go ahead, ma'am.

19 MS. BRITTAIN: Thank you, Your Honor. My name is
20 Emma Ruth Brittain with Thomas and Brittain Law Firm,
21 Myrtle Beach, and I have with me Janet Carter on behalf of
22 Horry County.

23 THE COURT: All right. Welcome.

24 MR. CONNELL: Your Honor, I am Gene Connell, and I
25 represent the appellants, the Furrs.

2012-CP-26-09291

4

1 THE COURT: Very good. Now, we have a group of
2 individuals that I see in the courtroom. Perhaps divided
3 into different sides. I am not sure. But, tell us
4 generally who we have with us today as spectators.

5 MS. BRITTAIN: Your Honor, on our side we have Mr.
6 David Slough with Nexsen Pruet, a representative on behalf
7 of Mercy Hospice.

8 THE COURT: Welcome to the courtroom, ladies and
9 gentlemen.

10 Mr. Connell, you have some individuals with you as
11 well?

12 MR. CONNELL: Yes, sir. We have some of the
13 individuals who live in the subdivision and some others who
14 will be coming about 10:15. It is my understanding that we
15 might go to the scene first.

16 THE COURT: Well, we were going to talk about that
17 and see whether counsel felt it was better first to see the
18 scene and then hear the arguments, or better first to hear
19 the arguments and see the scene. So, I will hear from you
20 on that. What is your position, Mr. Connell, if you have
21 one?

22 MR. CONNELL: Your Honor, my position would be that
23 you go first, so that you will have a better understanding
24 about what we are going to show you.

25 THE COURT: Ms. Brittain, what do you say to that?

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1 MS. BRITTAIN: Your Honor, I will defer to your
2 preference on it. That will be fine with us. And, I have
3 no problem accommodating counsel's request that you visit
4 the site.

5 THE COURT: All right. And, tell me what logistic
6 plans for travel have been made, if any. I know obviously
7 there are many people here. So, tell me what your thoughts
8 are concerning that?

9 MR. CONNELL: Your Honor, I would assume we would
10 do it like a condemnation case. Your Honor, would go out
11 there --- If you want to go out there by yourself, that is
12 fine with me. If you want us to go with you, I am happy to
13 do that also. But, it might be better if we go with you.
14 I don't think we need to take everybody in the courtroom,
15 all the residents and people from Mercy Hospice, and all.
16 I don't think that is appropriate.

17 THE COURT: Ladies and gentlemen, let me suggest
18 this to you. First of all, I will tell you there will not
19 be any formal proceedings at the site. We will just simply
20 go and look.

21 What I would propose that we do is, let me ride with
22 counsel and we will go together. We will take our court
23 reporter with us so that we can confirm that there was no
24 proceeding that occurred. And then we will return here,
25 having had the benefit of looking at the property and

1 undertake the hearing.

2 How long do you believe, just for our people who are
3 here today, that this exercise will take, Mr. Connell?

4 MR. CONNELL: Forty-five minutes, Your Honor.

5 THE COURT: All right. Let's do this then. Let's
6 go ahead and leave. Do you agree with that, Ms. Brittain?

7 MS. BRITTAIN: Yes, sir.

8 THE COURT: Then let's leave, and for the purpose
9 of those who wish to remain here, we should be back in
10 session, and we will aim for 10:30. All right? Which will
11 be approximately forty-five minutes from now.

12 MR. CONNELL: Thank you, Your Honor.

13 MS. BRITTAIN: Your Honor, I have a request from
14 Mercy Hospice, if they could have their attorney accompany
15 us.

16 THE COURT: All right. Well, if we do that, I
17 would give the same prerogative to the appellants, so that
18 if Mr. Furr or Ms. Jensen wish to go, then they may do so
19 as well.

20 MR. FURR: Your Honor, you can follow me out there.
21 If you want, I can show you how to get out there, it will
22 be easier.

23 THE COURT: Again, just so we will all understand
24 though. My intention will be just like when a jury goes
25 and looks at the scene of a condemnation, or the scene of

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1 an accident, or whatever it may be that they are viewing,
2 we really will not discuss the case. There may be certain
3 questions as to identify a particular location or something
4 of that nature, but there will not be any argument or other
5 activity on the case. All right, fair enough? Then,
6 counsel how do you wish for us to travel? My preference
7 would be, I am not familiar obviously not from Conway.

8 (Whereupon, a discussion took place off the
9 record.)

10 THE COURT: Okay. Very good. Then why don't when
11 you all are ready to go, when you are finished talking with
12 your folks, if you will come to the back, I will be in the
13 office back in the back, and we will proceed from there.

14 Again, ladies and gentlemen, my target time to return
15 is 10:30, maybe slightly beyond that. But we will be in
16 recess until that time.

17 (Whereupon, a recess was taken from 10:53
18 a.m. until 11:20 a.m. where a site visit took place off the
19 record.)

20 THE COURT: Let's go ahead, it appears that
21 everyone is present. So, let's go ahead and begin the
22 argument portion of the hearing.

23 Ladies and gentlemen, let me say, so that the record
24 will reflect, along with our court reporter, who is Ms.
25 Pamela Cartee, in the event that a transcript is needed

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1 from today, and Mr. Connell and Ms. Brittain, we rode out
2 to the scene. We looked at the property. I did ask
3 certain questions of the principals, because with us we had
4 representatives of the Appellants as well as the
5 Respondents about the footprint or the structure on the
6 property, the logistics of ingress and egress, the
7 boundaries of the property, and other matters that I could
8 only ask while we were there, just to have an understanding
9 of the site, and how the site was set out. And with that
10 introduction, is there anything that either party would
11 like to add to the record that occurred during our visit to
12 the scene. From the Appellant?

13 MR. CONNELL: No, Your Honor.

14 THE COURT: And from the Respondent?

15 MS. BRITTAIN: Nothing, Your Honor.

16 THE COURT: All right. Very good. Then, Mr.
17 Connell, you are the moving party here. You are the
18 Appellant, and I will be glad to hear from you, sir.

19 MR. CONNELL: Your Honor, let me give you a Brief,
20 if I could.

21 THE COURT: And, counsel while you step up, let me
22 say to both parties, you may have noted that the clerk's
23 file has not been in the Clerk's Office. When we had our
24 last hearing, I checked this file out to myself, and had an
25 opportunity to review it. In it of course are the

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1 pleadings, the file of the Zoning Board, and I have had an
2 opportunity to review those. So, I have an understanding
3 of the underlying facts, and I will be glad to hear from
4 you.

5 MR. CONNELL: Your Honor, we have a short
6 presentation that we would like to show you. And it is
7 based on the record. We understand, Your Honor, that Your
8 Honor's decision would have to be based on the record for
9 The Board of Zoning and Appeals.

10 THE COURT: Of course.

11 MR. CONNELL: So, we would like to show you some
12 things that we think, in the record, that would show the
13 Court that it is our opinion, and the statutory opinion,
14 that what was intended to be built out there is in fact a
15 hospital.

16 THE COURT: All right.

17 MR. CONNELL: And, Your Honor, our legal issue has
18 always been in this case is this hospice and hospital. We
19 do not object to a hospice being built, it is just we
20 object to where it is being built in this subdivision.

21 THE COURT: All right. And, is there an objection
22 to the presentation, or any portion of it?

23 MS. BRITTAIN: Yes, Your Honor. I have not seen
24 the presentation. And, as Your Honor is well aware, under
25 the Statute the judicial review is confined to the record

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1 before the Court that was made before The Zoning Board, and
2 those findings are entitled to be treated in the same
3 manner as findings of facts by a jury. To the extent there
4 is anything in the presentation that either goes beyond the
5 record, or disputes the records, we would object to that
6 because it was not made part of the record before The
7 Board, and it is not within the appropriate scope of
8 review.

9 THE COURT: Ms. Brittain, that is certainly a valid
10 point. Let's do it this way, if we may. And ladies and
11 gentlemen, as you heard counsel say, whenever we have an
12 appeal from a zoning board, we don't start off and try the
13 case *de novo*, we argue from the record that
14 is made below, and whether there is some error of fact or
15 law that occurred below. So, at the end of the
16 presentation, since we are not working with a jury, and the
17 Court has an appreciation of what is in the record and what
18 is not, we will give you an opportunity after it is played,
19 to tell us if there is some specific portion that you
20 object to, and if so, then I will strike it from our record
21 that is from the presentation, and we will proceed in that
22 fashion. Is that fair enough?

23 MS. BRITTAIN: Yes, sir. Thank you, Your Honor.

24 THE COURT: Go ahead. Do you need for us to take
25 the lights down and bring the screen down?

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1 MR. CONNELL: If you would, please.

2 THE COURT: All right. Ladies and gentlemen, we
3 are going to bring the screen down at this time.

4 MR. CONNELL: And, Your Honor, I will tell you, the
5 only thing that is not in the record that I am told is the
6 last document, and that is the Horry County zoning map.

7 THE COURT: Okay. Thank you, very good. Now,
8 ladies and gentlemen, if you want to come sit over here in
9 the jury box where you have a good view. Again, we are not
10 working with a jury, much less formal. If you want to be
11 seated in the front so that you have a better view, come on
12 and walk through the courtroom and be seated in the jury
13 box.

14 (PAUSE.)

15 THE COURT: Ladies and gentlemen, are you able to
16 see there on the front?

17 UNIDENTIFIED SPEAKER: Yes, Your Honor.

18 THE COURT: Okay, very good. Anyone wish to move,
19 if so, you are welcome to do so.

20 All right. Go ahead, Mr. Connell.

21 MR. CONNELL: Thank you, Your Honor. Your Honor,
22 as you know, Mr. and Mrs. Furr have appealed the opinion of
23 the Zoning Board, and we are going to show you some things
24 that we think in the record that would show that it was an
25 error of law.

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1 The issue, Your Honor, is whether or not a Hospice
2 facility can be built in the commercial forest agriculture
3 district. And the term Hospice facility is what it is used
4 in the Statute, or what is used in the State Statutes.

5 Your Honor, as you went out there you will see that
6 the Jensen home, referring to the Jenson home is directly
7 adjacent to the property --- this is the document that was
8 presented in the hearing. That blue area is the property
9 they intend to build on. Your Honor, that is the area that
10 was also presented in the hearing. And, again it shows you
11 the entrance into the Wild Horse Subdivision, and it shows
12 you the Furr's house. You can see right, the swimming
13 pool, that is the line that separates the --

14 Your Honor, this is the rendition that has been
15 presented. We are going to show you two renditions of the
16 facility. It is called The Hospice House, that is what
17 they have on their document. But, you will see in a few
18 minutes, the Statute actually talks about it as a facility.
19 There is no such thing in the Statute as a Hospice House.
20 They plan to build fourteen beds to start. We believe that
21 they are going to build more, and I am going to show you
22 why in just a second here. This is also in the record,
23 Your Honor, that shows a two-story facility and not a one-
24 story facility as has it has been portrayed. So, rather
25 than having fourteen beds, it appears it will be twenty-

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1 eight beds at some point in the future.

2 What the question becomes in these kinds of cases is,
3 what is the Court's authority? And, case law in South
4 Carolina says that Your Honor can take a broad view in
5 construing an ordinance. And, in this case, we of course
6 argue to the Court that there is an error of law, in that
7 Hospice is in fact a hospital. So, the facts are the
8 facts. The law is for Your Honor to decide, and that is
9 what we think is the issue in this case.

10 As we have said, the question is whether you can build
11 a Hospice facility in a commercial forest agricultural
12 area. Significantly, Your Honor, Hospice is not defined at
13 all in the zoning ordinances. There was no definition of
14 Hospice. The ruling that Your Honor is looking at defines
15 something as a permanent overnight resident group care
16 home. And, I looked in the Statutes for South Carolina,
17 and a permanent overnight resident group home is not a
18 Hospice. There is a specific statute, Section 63-1-40, and
19 that is a staff residence with fewer than twenty people who
20 are living apart from their parents on a full-time basis,
21 orphanages, foster homes, those types of situations. The
22 order of the Zoning Board of Appeals likens the Hospice
23 facility to a overnight resident group care home. And the
24 statute clearly has a different definition than what we see
25 in this case.

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1 The ruling also says, that this Hospice is in effect a
2 nursing home. And, Your Honor, we would point out to Your
3 Honor in just a minute, that a Hospice facility requires a
4 couple of things. The statute require that it has the
5 order of a doctor. A nursing home does not require that
6 you have an order of a doctor. The statute also requires a
7 building, room and board on a twenty-four hour basis. And
8 in the nursing home statute, it specifically defines and
9 care for the age of those who are unable to care for
10 themselves. The difference between Hospice, a nursing home,
11 and a hospital, between a Hospice and a hospital, you have
12 to have a doctor's order to be in those. In a nursing
13 home, you do not have to have that, and we are going to
14 show you that in the statute.

15 And, I apologize. This is very light. The Horry
16 County Counsel signed an exterior resolution allowing this
17 to be built in this area. And, this is the transcript, and
18 I will have to get you a better copy. But, as you see
19 about three paragraphs down, the Horry County Counsel says
20 this is going to be staffed by doctors. There are going to
21 be medical people there. There will be nurses. All of the
22 things that we say make this not a nursing home, and not a
23 group care home, but a hospital. And that is page ten of
24 the transcript, that is Horry County Counsel Resolution,
25 September 21st.

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1 Your Honor has already been out there, of course.
2 These are photos of the area that the facility would go
3 into, a subdivision or a residential subdivision. This is
4 the road that leads in. That is in the transcript, that is
5 page 15 of the transcript. Page 16, Your Honor has already
6 been out there, but that also shows next door neighbors.
7 As you see looking out, Your Honor, that shows the entrance
8 of Wild Horse Subdivision with the gate. You were just out
9 there. That of course is the sign where the entrance is.

10 Your Honor, if you will look at these three statutes,
11 you will see what we are talking about. There are all
12 sorts of Affidavits in the file that talk about what a
13 hospital is. But, South Carolina's Code of Laws has
14 allowed or has a definition for what hospitals are, what
15 Hospice facilities are, and what nursing homes are. And,
16 in Title 44, they talk about a hospital being a facility,
17 overnight medical or surgical care by a licensed doctor.
18 Hospice facility is in the same section of the code, it is
19 a facility operated under a twenty-four hour basis, under
20 orders of a doctor. The same exact same principle that you
21 have in a hospital. Nursing home is different. A lot of
22 people live in nursing homes who do not need to be there by
23 order of a doctor, but they are just too old to take care
24 of themselves. So, you have a facility and a nursing staff,
25 but you do not have an order of the doctor. We would point

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1 out to Your Honor, that it was an error of law for the
2 Zoning Board of Appeals to find this was akin to a nursing
3 home, when there are specific South Carolina statutes that
4 allow them or that define what a Hospice is, and what a
5 hospital is.

6 Your Honor, this is a Certificate of Need, this is
7 also a transcript record, page 141. And, we have
8 highlighted the Certificate of Need, and it talks about it
9 as a help facility, under the Health Facility Licensure
10 Act. And, if Your Honor, please back in the Zoning Board
11 of Appeals opinion, they talk about it as a nursing home,
12 and they talk about it as a residential group home. This
13 provision of the code, of course, does not consider those
14 issues, and we would ask that, Your Honor, take notice of
15 that. We would also ask, Your Honor, to take note that
16 this is not a small project. The total project cost is
17 going to almost six-million dollars for the first fourteen
18 beds.

19 The next pieces of evidence that we would present to
20 you from the record, there are three letters. There is one
21 from Conway Hospital, there is one from the Grand Strand,
22 and there is one from Loris. And all the letters indicate
23 that those hospitals see four to five patients a day who
24 are at the end of their life and who need care. And they
25 are more or less recommendations, if you will, that a

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1 Hospice facility is needed. We don't argue that it is
2 needed, we just argue that this is the wrong place for it.
3 But, again, we point out the fact to the Court that
4 patients who are Conway Hospital, Loris, and Grand Strand,
5 that are being transferred, or would be transferred are all
6 people who are being quote, "hospital care" under the order
7 of a doctor, which again goes back to this Hospice statute
8 and the hospital statute that we have already pointed out
9 to Your Honor.

10 That is the letter from Grand Strand, it is a sender
11 letter, and then we have one from Loris too, those are all
12 in the record. They see three to five patients a day that
13 they know that they need quote, "Hospice care."

14 And then, Your Honor, we would point out the testimony
15 at the Zoning Hearing, pages 39, 40, and page 37. A doctor
16 testified at the hearing, and his testimony was that
17 doctors would make rounds at this Hospice facility. That
18 there would be twenty-four/seven medical staff, and that
19 there would be the same staffing as a hospital, and that
20 nurses would be available, and, of course, medications and
21 narcotics. All of those things, Your Honor, we point out
22 under the hospital statute. The same thing that they are
23 planning to do here in which makes Hospice akin to a
24 hospital.

25 Now, we went and did some research around the country,

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1 and in your Brief there are all of these cases. There are
2 a number of cases about what a hospital is, and what you
3 consider it to be for purposes of zoning. The first case
4 we would point out to Your Honor is from York, it is in
5 brief. It is a finding by the Court that a substance abuse
6 clinic could not be allowed in a residential subdivision.
7 The second case we point out is a case, a Jersey case that
8 says Hope Hospice and Rehab center should not be allowed in
9 a residential area. The third case we have pointed out is
10 a finding by the Jersey Court that says that a
11 residential/narcotic treatment center where they have
12 inpatients, doctors, nurses, etcetera, was in fact a
13 hospital under the statute. The same ruling in
14 Pennsylvania, a substance abuse center was a hospital under
15 the statute, because it had doctors, nurses, medication, and
16 twenty-four hour care. And the Pennsylvania argument there
17 was whether or not certain doctor's offices that were
18 adjoining the hospital were a hospital, and the Court said,
19 under the zoning statute, they are being used for the same
20 thing, and as result that was part of the hospital. Number
21 six, Pennsylvania again, a skilled care facility is a
22 hospital and not a group home, which if you go back and
23 look at the way the order has been written, the basis of
24 the order is that this Hospice is like a group home, and it
25 is like a nursing facility. And, if you look at the

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1 statutes and parse it out, you come to the conclusion very
2 quickly that a Hospice cannot be like a residential group
3 home, because there aren't twenty people living there like
4 in a nursing home. And, a Hospice can't be like a nursing
5 home, because it is required to have an order by a
6 physician. So, if you go back and look at the other cases
7 that we have cited them all, alcoholic rehabilitation
8 center was a hospital, if by order by a physician, and that
9 is a Washington State case. The last case from Delaware is
10 a case involving nurses who are actually treating people in
11 a outpatient facility for maternity care, and the Court
12 said, that is a hospital also.

13 One of the things that was argued is, that a hospital
14 has to have a emergency room in the lower court, or in the
15 Board of Zoning Appeals. And, nothing in the statute says
16 that a Hospice facility has to have an emergency room for
17 people to come in and out. We would point out that the
18 regulations provide that a Hospice facility must have an
19 emergency treatment plan. And, of course, Your Honor, the
20 reason for that is people go into Hospice, and sometimes
21 they change their mind, and they decide that we need to go
22 back to the hospital. We are not going to give up. So, as
23 a result, there are regulations that require Hospice to
24 have an emergency treatment plan.

25 Also, the regulations describe the Hospice or define

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1 it as specialized care for palliative measures. And also,
2 as I have said before, require that in order to go to a
3 Hospice, you have to be admitted by a doctor, that is South
4 Carolina law, the same way you do if you were in a
5 hospital.

6 Now, the national trend is that a Hospice is a
7 hospital. And the question is, why? It is because there
8 are doctors there, twenty-four hour care, narcotics, and
9 the presence of sick people. And we would submit to Your
10 Honor, that the case law that we have presented to you
11 shows that.

12 Now, this is what I believe is objected to by Ruth.
13 This is the Horry County zoning map. You will see from the
14 zoning map that there are actually zones, districts for
15 hospital, maybe one, maybe two are what is called office
16 professional, and all of those zones have different colors.
17 So, Your Honor, that is what needs to be built, but we
18 submit that you cannot build that in a commercial, in the
19 CFA area.

20 And, that is our presentation, Your Honor. Your
21 Honor, you will see --

22 THE COURT: Let me break in though and take one
23 point. Do you object to the zoning plan, the county wide
24 zoning plan, Ms. Brittain?

25 MS. BRITTAIN: I object to the county zoning map,

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1 Your Honor. I mean, the zoning map, and I think you can
2 take notice of that.

3 I do have concern about the trend. If he is asserting
4 that as a fact, that should have been on the record. And,
5 there was nothing about the growing trend for a certain
6 definition in the record below.

7 I would like to maybe just have two minutes to consult
8 with Ms. Carter. Also, I was not present during the actual
9 presentation in the transcript. But, just to see if she
10 observed anything else.

11 THE COURT: Well, let's do this. I will give you
12 that opportunity, but I am going to go ahead with Mr.
13 Connell's argument, and then we will resolve those when you
14 begin your presentation.

15 MS. BRITTAIN: Thank you.

16 THE COURT: Go ahead, Mr. Connell.

17 MR. CONNELL: Your Honor, I would point out one
18 other thing and I will sit down. There are other zoning
19 ordinances that I have looked at, and one of them is from
20 Charleston County. And, it specifically defines hospital.
21 And in that definition of hospital inside out Brief, is the
22 term Hospice. And, we would submit to the Court that the
23 Charleston County zoning ordinance that defines hospital to
24 include Hospice is based on the statutes that we have
25 already shown you. And that, Your Honor, is where we point

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1 to as to the heart of the legal issue that was an error of
2 law to allow the Hospice facility to be allowed under
3 either the nursing home section or under the overnight
4 group home.

5 MS. BRITTAIN: And, Your Honor, I am going to
6 object to references to other ordinances that are not in
7 the record, and were not placed in the record, and you know
8 your counsel is not bound by what Charleston County does in
9 defining the scope of its ordinance.

10 THE COURT: I am going to overrule that objection,
11 because the point was really made not from the record, but
12 as an argument of law, and the Court will give latitude to
13 both sides to make arguments on the law. And, for that
14 reason I will overrule your objection.

15 MS. BRITTAIN: Thank you, Your Honor.

16 THE COURT: Let's take up the issue of the trends,
17 that you question whether or not the trends were
18 appropriate in the presentation. I am going to overrule
19 that objection as well, on the basis that here again, the
20 Court finds that to be an argument --- a persuasive
21 argument not based on facts in the record, but the parties
22 are permitted to argue beyond the facts and to discuss law
23 as well as the industry generally. So, I am going to give
24 Mr. Connell the latitude to do that as well.

25 MS. BRITTAIN: Thank you, Your Honor.

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1 THE COURT: Yes, ma'am. And you need to speak
2 with your client before you begin your presentation?

3 MS. BRITTAIN: Just a quick moment.

4 THE COURT: Go ahead.

5 (PAUSE.)

6 MS. BRITTAIN: Your Honor, one clarification, is
7 this presentation going into some kind of record for an
8 appeal? Is that the purpose of it? If it is, I would have
9 an overall objection to it, if it was not submitted as part
10 of the presentation to the Zoning Board below.

11 THE COURT: Well, we have not marked it as an
12 exhibit in this proceeding, so, thus it cannot be a part of
13 our record. Now, we have put our eyes on it.

14 MS. BRITTAIN: Yes, sir.

15 THE COURT: But, it is not part of the record on
16 appeal. If you object to it being made an exhibit, the
17 Court will sustain that objection, simply because it was
18 used for demonstrative purposes and the Court does not find
19 that objectionable. And, if you agree to it and consent,
20 then we will allow it to be marked for purposes of review,
21 if there is further review, in the event there should be
22 some issue about an inappropriate permission to counsel to
23 argue from. So, I will leave it up to you as to how you
24 wish to proceed.

25 MS. BRITTAIN: We do object to it being made a part

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1 of the record for appeal.

2 THE COURT: Very good. Then that objection is
3 sustained.

4 MS. BRITTAIN: Thank you.

5 THE COURT: Counsel really hasn't offered it as an
6 exhibit to be marked.

7 Go ahead, ma'am.

8 MR. CONNELL: Your Honor, we just marked it as
9 Court's Exhibit Number 1, since she has sustained it.

10 THE COURT: Do you wish to do that. That may be
11 the best for both worlds. It is not part of the record,
12 but it is a court's exhibit in case the appellate court
13 would wish to review something that may later be argued as
14 inappropriate.

15 MR. CONNELL: Your Honor, everything that was shown
16 is already in the record. I just put it together because
17 it is a hundred and fifty pages into twenty, except for the
18 zoning map. I do agree that the zoning map was not
19 presented. I don't think that's --

20 THE COURT: Do you want to mark it for a Court's
21 Exhibit in the event that it would give you an opportunity
22 to argue from it later?

23 MS. BRITTAIN: And, I am thinking that through,
24 Your Honor, I am real slow sometimes. But, maybe I can
25 explain better the objection too, is that there was wording

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1 at the bottom of, I think, one or more of the slides
2 talking about the residential area. This is a commercial
3 forest agricultural area. And, that we think is somewhat
4 misleading in terms of the presentation that is made, or
5 the way the transcript has been presented is not entirely
6 the way the portions are in the record and did not have
7 that labeling.

8 THE COURT: All right. As the finder of fact here,
9 I appreciate that nuance, and I am aware of that.

10 Again, the question I have is, do you want to mark it
11 as a Court's Exhibit?

12 MS. BRITTAIN: We will allow it to be marked as a
13 Court Exhibit.

14 THE COURT: Very good. And for those of you who
15 are here what that means is, if we had a jury who is our
16 finder of fact, the Court's exhibit does not go to the jury
17 as the finder of fact. So, I will not review it, but
18 simply have it marked as a Court's Exhibit, in case counsel
19 wishes to argue at some appellate proceeding that there was
20 an error for the admission --- error to permit it to be
21 used here for any purpose.

22 So, let's come forward and mark it as a Court's
23 Exhibit.

24 MS. BRITTAIN: Thank you, Your Honor.

25 THE COURT: Thank you.

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1 WHEREUPON, COURT'S
2 EXHIBIT NUMBER 1 WAS
3 MARKED FOR THE RECORD.

4 THE COURT: I will be glad to hear from you, Ms.
5 Brittain, after you have had a chance to talk with your
6 client.

7 (PAUSE.)

8 MS. BRITTAIN: Your Honor, we have some additional
9 grounds that really address in my argument that they
10 basically just relate to the fact that the reliance on the
11 State law definitions that the county is able to enact
12 legislatively it's own zoning code, and it cannot envision
13 every type of use request that may be made. And, that it
14 has leeway in its determination of whether a particular
15 request before it falls within or as Mr. Connell kept
16 saying akin to, does that mean it is just like such-in-
17 such, but it has similarities. And, to the extent that
18 there is nay implication in the presentation that state law
19 is contradicted, we would object to that, because this is
20 not an issue of violation of state law. It is an issue of
21 what does the Horry County Zoning Code provide for the CFA
22 District? It is not a matter of lack of compliance with
23 the State requirement, it is finding the proper niche for
24 this Hospice. I think that broadly encompasses the
25 remaining concerns we have, and I will certainly address

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1 some of those in the argument.

2 THE COURT: All right. So, noted. Go ahead with
3 your argument.

4 MS. BRITTAIN: Are you finished?

5 MR. CONNELL: Yes, I am, thank you.

6 MS. BRITTAIN: Thank you, Your Honor. What we have
7 before us is an appeal of the November 5, 2012 decision of
8 the Horry County Board of Zoning Appeals. The Board based
9 its decision on a record that is replete with evidence that
10 it made the proper decision in finding that this use or a
11 Hospice is appropriate in a commercial forest agriculture
12 district. And, I think we need to get away from the very
13 narrow view of just a residential area, or a person's house
14 next door. We are looking at approximately twenty-two acre
15 parcel of property. The adjoining parcel is approximately
16 seven acres, and it is --- the proposed site is right off
17 of Highway 90, not far from many mixed-used sites such as
18 stores, markets, county facilities. The overview I think
19 we need to take is to look hence at the intent of a CFA
20 District, commercial forest agriculture. It is to be used
21 for agriculture, forestry, residential, commercial, social,
22 cultural, and religious uses. The code specifically
23 mentions many uses that are permitted. And, these include
24 things such as nursery's, trucks, gardens, social clubs,
25 watches, hence spiritual retreats, parks, veterinary

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1 offices, some boarding houses for animals, office
2 buildings, banks, residential's as we have discussed,
3 mobile homes, retail stores, grocery stores, pharmacy
4 stores, ABC stores could be locate on the parcel. Small
5 equipment repair shops, locksmiths, gunsmiths, laundry
6 mats, cleaners, photography studios, barber and beauty
7 shops, video stores, you can have drive through - drive in
8 restaurants, RVs, synagogues, churches. You can have some
9 conditional uses, such as temporary shelters, or stands
10 where you can sell produce and shrimp like you drive by on
11 the road throughout the Horry County area at times. You
12 can have facilities that raise, care for, and handle
13 livestock. Hardware stores, service stations where gas is
14 pumped, white lights, you know, light, garages for auto
15 repair, garages for farm equipment, which farm equipment is
16 big, so it would be a large garage operation. Trade shops,
17 cabinet makers, carpentry, electrical, HVAC, machine shops,
18 and it goes on. There are more uses. You can have
19 multifamily housing. There could be a mobile home park on
20 the parcel. So, really we have and the intent of the
21 ordinance was to provide, because it is in what is still a
22 rural area of the county, was to provide for a mix of these
23 uses, which commercial uses are as much a part of it as the
24 agricultural and the residential. You can even put in ---
25 It allows a runway in this CFA district for airplanes, if

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1 you had enough acreage.

2 Now, what we are looking at is a Hospice that is
3 designed to look like a low-country house, and we do have a
4 visual that we would just like to put up. It is in the
5 record. But, we have a larger blow up, and it is made to
6 give a residential appearance that would fit in with the
7 habitat and with the trees. The evidence establishes here
8 that it will takes care to retain as many trees to
9 establish a roadway and to give the appearance of a home
10 where someone would go to provide care in the last days of
11 their life.

12 Also, in the record are photographs and descriptions
13 of what the various rooms would look like, with a family
14 room, kitchen for cooking, and just really a home-like type
15 activities during these last days.

16 Now, at the center of controversy, it is what we call
17 it, it is a correct designation. For purposes of the
18 zoning code, when a facility is not specifically mentioned,
19 it is up to the zoning administrator to take a look at the
20 different uses allowed in the different areas, and
21 determine whether or not the proposed use actually meets
22 the intent of the ordinance. In this case, and you have in
23 the record before you the finding of Horry County Zoning
24 Administrator, and she found that it was an appropriate
25 facility for the CFA zoning designation. That finding was

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1 appealed to the Board, and the Board took extensive
2 testimony on the issue of whether it was a correct finding.
3 And the exceptions of the zoning ordinance, that the zoning
4 administrator looked at, and that the Board relied upon in
5 affirming her finding are set forth in Section 703.2,
6 related to permanent overnight residential, group homes,
7 nursing homes, etcetera, involving a specialized treatment
8 facility, providing less than primary health care.

9 And then also the permanent overnight resident groups
10 care home, and the nursing home sections of that provision.
11 Both of those terms are defined in the Horry County
12 ordinance. And, that is also in the record. We have a
13 definition of group housing, Section 436 of nursing homes,
14 in Section 447. And, it is our position that this Hospice,
15 it has enough similarities to --- this category contained
16 in the CFA district that it is a proper interpretation of
17 the ordinance, and it has an intent in the ordinance to
18 cover those facilities. As has been mentioned, the
19 standard of review is whether there really is any evidence
20 in the record to support the decision as to findings for
21 the Board. And we would submit that record is replete with
22 evidence.

23 And, I will start with the contention made by the
24 Appellant, that a Hospice is a hospital, and that the
25 opinion finding a Hospice is not a hospital is contrary to

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1 existing statutory case law. In the record evidence we
2 have the Affidavit of Dennis L. Gibbs. Mr. Gibbs is the
3 Bureau Chief for The Bureau of Health Facilities Regulation
4 with DHEC. And, he is charged with interpreting the DHEC
5 regs. He has been Bureau Chief for three years, and has a
6 twenty-four year total experience with the agency. And he
7 testified without equivocation that an inpatient Hospice is
8 more similar to a nursing home, and that it was his opinion
9 that a Hospice facility is not a hospital. And, this is on
10 page 91 of the record. It is established in the record
11 that Mr. Gibbs is familiar with licensure standard for
12 Hospice facilities, for hospitals, and for nursing homes in
13 the State of South Carolina. And in the record testimony,
14 Mr. Gibbs explains the differences between a Hospice, a
15 hospital, and a nursing home. And, his record testimony is
16 unrefuted.

17 We also have in the record the Affidavit of David
18 Levitt, who is a healthcare consultant. He works with
19 health care companies and facilities across the United
20 States in planning and regulatory compliance. Mr. Levitt
21 has been qualified as an expert in at least one South
22 Carolina Administrative Law case, and that is in the
23 record. His resume is in the record. And, Mr. Levitt also
24 explains in his Affidavit why a Hospice is properly
25 permitted use in this CFA zoning district, and his

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1 Affidavit is found at pages 92 to 93 of the record.

2 Just briefly as to Affidavit of Mr. Gibbs, there are a
3 couple of key provisions that I will quickly point out.
4 Paragraph 3, he states his familiarity with the regs, and
5 states his opinion that a Hospice facility is not a
6 hospital. He gives an example in paragraph 4, hospitals
7 are required to provide emergency service. Hospice
8 facilities are not required to provide emergency services.
9 And then he gives additional examples in that paragraph as
10 to other services that hospitals must have and ancillary
11 services that Hospices do not provide.

12 Paragraph 5, on page 91, sets forth his opinion as to
13 the inpatient Hospice, being more familiar to a nursing
14 home than to a hospital. And based on the envol (phonetic)
15 of the facility being consistent with those of the nursing
16 home.

17 He also makes reference to another item in the record,
18 and that is that on March 23, 2012, DHEC issued a
19 Certificate of Need. And, it approved Mercy Care's
20 proposed Hospice facility. Now, there was a comment made
21 about the Certificate of Need, which is at page 141 of the
22 record, referencing State's Certification of Need and
23 health facility licensure at. Well, that is a record
24 document, and there has been no evidence placed into the
25 record that would refute the proper listing of the State

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1 Certification of Need and Health Facility licensure --- I
2 mean, the Certificate of Need is unrefuted in the record.
3 There is no evidence that it was improperly granted or
4 anything like that.

5 And then Mr. Gibbs concludes that upon review of the
6 application for the Certificate of Need, DHEC made a
7 determination that zoning is appropriate for this Hospice
8 facility. So, we have a level of state agency review where
9 the State Bureau Chief has placed an Affidavit, the fact
10 that DHEC made an independent determination that zoning is
11 appropriate for this Hospice facility based on the
12 information provided to it.

13 The Affidavit of Mr. Levitt consist of one and a half
14 pages. I will not read all of that for you. But, if you
15 will note paragraphs two, three, four, five, six, seven,
16 eight, nine, and ten. You will see the differences between
17 the Hospice and the hospital in response to counsel's
18 argument on that issue. But, again, that is abundant
19 record testimony supporting this decision.

20 Also in the record, we have the letter of Mr. Tom
21 Pegram, Mr. Pegram is a well respected architect. He has
22 been in this area for quite some time. And his letter, Mr.
23 Pegram was involved, his firm was, with the design of the
24 Hospice facility. And, Mr. Pegram states: A Hospice
25 House is essentially a nursing home that supplies and cares

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1 for the terminally ill, and shares many similarities with a
2 nursing home. The most significant difference is that a
3 Hospice House is less of an institutional and more of a
4 home-like feel than a nursing home. South Carolina, like
5 most states, licenses, regulates, and oversees the
6 construction of Hospice Houses. And then he incorporates
7 a reference to the Certificate of Need. He also references
8 the fact that the house has been designed to achieve, lead
9 certification to be recognized as a frame building under
10 federal law.

11 Also, in the record are excerpts pertaining to the
12 international code counsel, and from the North American
13 Industry Classification System, that Hospices fall more
14 similarly into the definition of nursing homes. And you
15 will find those documents on pages 98 and 105 of the
16 record. I have mentioned the Certificate of Need on page
17 141. As to other supporting documentation, the Horry
18 County Counsel resolution was two years before the actual
19 planning documents, and for the Hospice it was sort of a
20 good will statement of support, that we like what you are
21 doing. We envision that it could have a scope of these
22 activities and services, and we support it. There are some
23 other supporting letters in the record, such as from
24 Representative Clemmons, which again is a statement of
25 support, and from area hospitals also stating their

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1 support. There was also engineering letter, Solan
2 Associates P.C., provided an analysis on pages 103 through
3 104 of the record, addressing the proposed facility. Mr.
4 Solan states, the proposed facility is to be a fourteen bed
5 Hospice House. This is classified as a nursing care
6 facility by NAICS, again that is The North American
7 Industry Classification System. Mr. Solan also prepared an
8 analysis, traffic count based on a fourteen bed facility,
9 and concludes that there are many other commercial uses
10 allowed under CFA zoning, all of which would generate more
11 traffic than the comparison used with just the Hospice with
12 the fourteen beds, so that addresses --- I believe there
13 was an allegation of nuisance in the pleadings, or made at
14 the hearing, and that addresses that aspect.

15 There are also traffic counts in the record. I won't
16 bore you with those, but they show that the impact of a
17 fourteen bed Hospice is minimal. You would have a much
18 bigger impact if the twenty-two acres was broken down into
19 half acre lots, and you had housing placed there, or if it
20 were sold to a convenient store, or a gas store, or many of
21 the other allowed uses.

22 There is record testimony about buffers, trees, about
23 the fact that the fire chief, who is also a certified State
24 Fire Marshall, has reviewed the area, and vehicles --- as
25 they would have to get through there for the residences,

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1 these fire people can get through the gate and on the
2 county owned road to get to the facility to provide
3 emergency services.

4 There is a letter of support from the Waccamaw River
5 people that illustrate that the Hospice House will be built
6 in a way that takes into consideration runoff, a certain
7 amount of runoff, and that they are going beyond what is
8 required by law to keep the environment out there as
9 pristine as they can, because part of the appeal, as stated
10 in the record, of this particular parcel is that it
11 provides the type of setting that is restful and would be
12 part of the palliative care offered to the patients who go
13 there. There is a Phase I environmental that is part of
14 the record, and photographs.

15 There were several different arguments that I think
16 has been put up by counsel, more in the record or the
17 pleadings. But basically the same evidence that I have
18 referenced or portions of it would apply to each of those
19 arguments. So, I really do not see a need to go through
20 the necessary argument that has been made, because we would
21 be relying on --- they are all similar arguments. The
22 record would show given the credentials of the people who
23 have testified and the caliber of the evidence before the
24 Board, that the decision was not arbitrary or capricious.
25 That it was consistent with the intent of the ordinance.

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1 And that brings us to --- And I would urge you to read Ms.
2 Faucher's testimony in the record. It is very straight
3 forward. It addresses with precision the arguments raised
4 by the appellants and all of her testimony was presented
5 live personally before the Zoning Board. And they had the
6 opportunity to ask questions. Again, as Your Honor I am
7 sure well knows, there is a strong presumption that exist
8 in favor of the validity and the application of a zoning
9 ordinance under South Carolina law. And, Peterson versus
10 The City of Clemson, 312 S.C. 162, has some very good
11 language about the scope of this validity, and that the
12 decision of the reviewing body, in this case the Zoning
13 Board of Appeals, will not be disturbed if there is
14 evidence in the record to support its decision. The Court
15 will refrain from substituting its judgment for that of the
16 reviewing body, even if it disagrees with the decision, and
17 here they cite Talbot versus Myrtle Beach Board of
18 Adjustments, 222 S.C. 165. And, I do have copies of some
19 of the cases, and I will be glad to provide for the Court.

20 THE COURT: I would like to have a copy of the
21 Clemson Case, if you --- The Peterson case --- thank you.

22 MS. BRITTAIN: And, I have it cited in Peterson,
23 but I will give you the Peterson Case.

24 Another really good one is Harbit versus City of
25 Charleston, 382 S.C. 383, again it says that the

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1 legislative body's decisions in zoning matters is not
2 particularly valid. And a property owner has the burden of
3 proving -- but, again we go to the any evidence standard.

4 THE COURT: Anything further, Ms. Brittain?

5 MS. BRITTAIN: Nothing further, Your Honor.

6 THE COURT: All right. Anything in reply?

7 MR. CONNELL: Just a couple of things, Your Honor.

8 Transcript of Record, Page 102, we showed that to you.

9 That is the landscape architecture. I have counted some
10 forty some parking spaces in there for people who are going
11 to visit, doctors, nurses, that sort of thing, which
12 clearly shows this is not going to be a house, but a few
13 people there. You are going to have at least fourteen beds
14 with people coming and going all hours of the day and
15 night. You are obviously going to have people in distress.
16 You are going to have use of power for medications and
17 those sorts of things. And, Your Honor has been out there,
18 and you have to go into the subdivision to get to this
19 particular facility. The Affidavit of Dennis Gibbs, we
20 object to the Affidavit of Mr. Gibbs. He did not offer
21 testimony at the hearing. He presented an Affidavit. It
22 was presented at the hearing. We did not get notice of
23 that ahead of time. I would also point out to the Court,
24 and as Your Honor knows, it is for the Court to decide what
25 the law is. And, Mr. Gibbs' Affidavit clearly contradicts

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1 the definition of statute in the code, which does not
2 require you to have an emergency room. The same with the
3 professional that was talked about. Only what you have to
4 do in this case is, you have to look at the order that was
5 written by The Board of Zoning Appeals. And they find that
6 this is like a permanent overnight resident group home.
7 And that definition in the code, and in the section talks
8 about home for battered children, foster children, orphans,
9 recovery houses, and that kind of thing, and they also talk
10 about nursing home. And as I have said, Your Honor, the
11 statutory difference in the code is so different, a Hospice
12 requires a medical decision to put you in Hospice or to go
13 into a Hospice. A nursing home does not require that. So,
14 what you have in this situation is, you have the zoning
15 administrator deciding as a matter of law that a Hospice
16 facility fits into these two subdivisions of the zoning
17 ordinance in contradiction to state law. And, Your Honor,
18 we submit to you that that can't happen. We also would
19 point out to Your Honor that as you said in the beginning,
20 that the we have uniform zoning in Horry County. There are
21 many areas where this facility could be put. There ME1,
22 ME2, those are inpatient facility areas where those places
23 are zoned, and office professional. This does not meet
24 those definitions in any manner. So, Your Honor, we would
25 submit that those are also errors of law by the zoning

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1 administrator, and that is not a factual issue that can be
2 decided by the Zoning Board. That is an issue of law.
3 What is a Hospice facility? Does it fit within the
4 definitions that they have in the zoning code. And if you
5 look at permanent group overnight residents and nursing
6 home, and you look at state statutes, they don't marry up.
7 And then as Your Honor as we have submitted to you before,
8 if you look at the Charleston County Zoning Ordinance, the
9 definition of hospital includes Hospice. That is exactly
10 in line with the State's statutes that talks about
11 licensure and what you have to do to be admitted into a
12 Hospice. So, Your Honor, we would ask the Court to reverse
13 as a matter of law based on the definitions of the State.
14 I mean, the zoning ordinances cannot be in contradiction to
15 the State's statutory definitions. It would make no sense
16 for them to be that way. And we would also point out the
17 term Hospice is not in the zoning ordinance anywhere. And
18 it certainly can't fall into nursing home or overnight
19 group home. I mean, those facilities, even overnight group
20 home, Your Honor, is defined in the State code. And not a
21 place that someone is going to go if they need medical
22 care. They have to have twenty-four hour service, and they
23 are going to be in a facility. A resident group home, as
24 defined by the statute, and the zoning administrator needed
25 to look at that if she had any question about how that is

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1 defined. So, we would ask Your Honor to reverse based on
2 these grounds.

3 THE COURT: Thank you, ladies and gentlemen. Now,
4 one or two question about really where we find ourselves
5 with regard to the plans of the respondent. When we were
6 last together time was of the essence, because there were
7 some deadline dates that needed to be met. And tell me
8 counsel, where do we find our self today with regard to how
9 quick a decision needs to be made. And, before I even ask
10 you to say that, let me simply say, I can't be controlled
11 by that, but I try to within the real word parameters of
12 where we find ourselves be as efficient as possible in what
13 I am tasked to do with regard to other peoples schedules
14 and commitment plans. So, tell me about that again please,
15 Ms. Brittain.

16 MS. BRITTAIN: Your Honor, Mercy Hospice has been
17 granted an extension on the CLN. And, a blast for nine
18 months from the end of March. But, they are required to
19 make substantial efforts in construction within that nine
20 months. That is the position they are in.

21 THE COURT: All right, very good. Then that tells
22 me that a decision does not have to be made today. What I
23 would like to do is in light of these arguments that I have
24 heard, review the case law, review the Briefs, as well as
25 again the record, and then make a decision sometime in the

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1 near future, realizing that we need to bring some finality
2 to this as soon as we can.

3 Is there anything else for our record today in this
4 proceeding from either side. First, from the Appellant?

5 MR. CONNELL: Your Honor, do you have the
6 transcript of testimony in the --- I just want to make sure
7 we have the record right. Do you have the transcript of
8 record, and that includes the testimony?

9 THE COURT: I have the entire file. But, I do not
10 recall as I looked through it seeing the testimony.

11 MS. BRITTAIN: The transcript record --

12 THE COURT: We don't have a jacketed testimony in
13 the file.

14 MS. BRITTAIN: It should be in an envelope sealed.

15 THE COURT: It is not there.

16 MS. BRITTAIN: I believe Mr. Furr asked the
17 reporter to send it to him?

18 THE COURT: Well, it also may be downstairs,
19 because I have had this file for the past two weeks.

20 Let's just submit it to the file right now. Fair
21 enough?

22 MS. BRITTAIN: Yes, sir.

23 THE COURT: Anything else now, Mr. Connell?

24 MR. CONNELL: Well, the stay would remain in effect
25 until Your Honor rules?

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1 THE COURT: It will, it does, just maintain the
2 status quo.

3 MS. BRITTAIN: May I ask opposing counsel a
4 question?

5 THE COURT: Yes, go ahead. Feel free to have a
6 discussion.

7 (PAUSE.)

8 MS. BRITTAIN: Your Honor, do you wish for us to
9 prepare any closing Briefs or anything like that?

10 THE COURT: No. What I would like to do is have a
11 chance to review this, and then I will be in touch with
12 counsel to ask one side or the other, and we will do this
13 by communication, all of us at one time so there would not
14 be any one sided communication, for someone to prepare an
15 order.

16 MS. BRITTAIN: Thank you.

17 THE COURT: Depending on who prevails. Anything
18 further then, Ms. Brittain?

19 MS. BRITTAIN: Clear that we are not to take any
20 action as far as the county is concerned on any plans until
21 we --

22 THE COURT: Please do not, and, of course, I will
23 try to respond as expeditiously as possible, because I know
24 that really on both sides of this case time is money
25 itself. And the cost of business over time, and thus will

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1 try to respond within the next week, if not sooner.

2 All right. Then, ladies and gentlemen, you have been
3 patient today. Thank you for your attendance at this
4 proceeding, and I am going to declare this hearing
5 adjourned.

6 MS. BRITTAIN: Thank you.

7 THE COURT: Thank you.

8 (Whereupon, this hearing was concluded at
9 12:22 p.m. on Thursday, February 28, 2013.)

10 (Whereupon, these proceedings were concluded
11 at 12:22 p.m. on Thursday, February 28, 2013.)

12 -- END OF TRANSCRIPT --

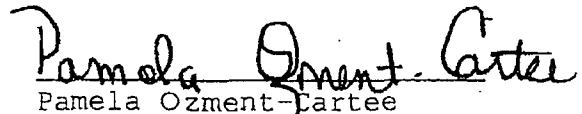
CERTIFICATE OF REPORTER

45

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of Common Pleas in Horry County, South Carolina, on the 28th day of February 2013.

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

June 11, 2013


Pamela Ozment-Cartee
Circuit Court Reporter



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3-11-13

State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL BAXLEY
JUDGE

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March 7, 2013

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Re: Furr v. Horry County Zoning Board of Appeals
Case Number: 2012-CP-26-09291

Counsel:

As you are aware, the above listed zoning appeal has been under advisement since our hearing and site visit on February 28, 2013. Please accept this letter as the Court's decision in this matter.

Based upon the arguments of counsel, review of the overall Horry County Zoning scheme and specific provisions at issue, review of the Clerk of Court's file, analysis of the record below, as well as a visit to the site, the Court reverses the decision of the Horry County Zoning Board of Appeals that would permit the construction of a hospice facility in a Commercial Forest Agricultural (CFA) zoning district. This reversal is based upon the fact that the Horry County Zoning Board of Appeals has impermissibly expanded the definitions contained within its own regulations to permit the hospice facility in question. This expanded definition is inconsistent with state law and with Horry County's own zoning scheme, which specifically contains zoning areas for medical facilities such as a hospice house.

A zoning scheme is a plan of limitation. This Court finds that in the absence of a pre-existing specific definition for a hospice facility within the Horry County zoning regulations that contemplates and includes the medical and non-medical operations permitted therein in order for such a facility to be located within a CFA zoning district, the Board cannot analogize among

other non-related permissive uses in such a way as to expand the locations wherein a hospice facility may be located.

In reaching this decision, the Court is aware that the standard of review for an appeal from the Zoning Board is whether there is any evidence in the record that supports the decision of the Board. While there are "expert" opinions in the record that concern the functions necessary to the operation of a hospice facility, and further that such functions do not violate the definitional standards set forth in the zoning act, the Court finds that these opinions bear upon a matter of law that is the sole province of the Court.

Additionally, the Court would be remiss if not commenting that, while there seems to be an economic development push by County authorities to support the building of the hospice facility, the chosen location is inconsistent with the current use of that location, which while zoned CFA, is clearly a residential neighborhood. The proposed facility's lack direct access to Highway 90 will cause significant logistical infrastructure problems and difficulties for emergency responders in having to access this property through narrow subdivision gates and neighborhood roads.

Finally, in the interim between arguments in this case and the issuance of this decision letter, the Court has received a motion by Mercy Care (filed March 1) to intervene pursuant to Rule 24, SCRCP. Respectfully, the Court denies this motion as untimely, for at the time of filing arguments had already been heard and the matter under advisement for decision.

Attorney Connell is requested to prepare an Order within ten (10) days of the date of this letter detailing the decisions stated herein and forward the same to opposing counsel. Attorneys Brittain and Slough are not asked to agree or consent to this Order, but are requested to review it for mistake of fact or misstatement of thier party's position. Thereafter, Attorney Connell is asked to forward the finalized Order via e-mail (jbaxleylc@sccourts.org) in Word format to my office for signature, which will then be finalized, signed, and returned to him for filing and formal service on the parties.

Together with a copy of this letter, the Clerk's file in this matter is being returned to the Clerk's office.

Sincerely yours,


J. Michael Baxley
JMB/jlc

cc: Rhonda Lilly, Deputy Clerk of Court (for filing)

THOMAS & BRITTAIN, P.A.
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POST OFFICE BOX 1290
MYRTLE BEACH, SC 29578

April 4, 2013

Via U.S. Mail and E-Mail Transmission

Gene M. Connell, Jr., Esquire
Kelaheer, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587

Re: Fayrell Furr and Karole Jensen v. Horry County Zoning Board of Appeals
Civil Action No.: 2012-CP-26-09291

Dear Gene:

Pursuant to Judge Baxley's letter of March 7, 2013, we are hereby providing, on behalf of our client Horry County, our response to Judge Baxley's request that we review your draft order "for mistake of fact or misstatement of [our] party's position." Judge Baxley specifically instructed that we are not asked to agree or consent to the draft Order. Accordingly, Horry County specifically reserves all objections related to findings of fact and errors of law in the draft Order and, by providing the information herein, neither agrees to nor consents to any provisions, factual or legal, of the proposed Order; all objections thereto and to the final order are specifically reserved.

To the extent any one of the following matters may be construed to constitute a finding of fact, Horry County is of the opinion that such would constitute mistake of fact:

1. All findings to the effect that the Mercy Care Hospice Facility is not akin to a "permanent overnight residence group care home" or a "nursing home" as defined by the Horry County Zoning Ordinance;
2. All findings that a "hospice" is a hospital;
3. All findings pertaining to descriptions of the nature of care provided in a "hospice" and or hospital, which are not supported by record evidence (pages 6, 7, and the two full paragraphs on page 9);
4. All references to Dr. Strosnider's testimony, and the characterization thereof, as providing support for the contention that the Mercy Care Hospice Facility does

Gene M. Connell, Jr., Esquire
 April 4, 2013
 Page 2

not fall within an allowed use in the Horry County CFA district as a "permanent overnight resident group care home" or "nursing home";

5. All references to the Hospice Certificate of Need, and Application as providing support that the Hospice is "akin to a hospital" (page 8).
6. Characterization of the testimony regarding Mercy Hospice's position and testimony in this matter that is unsupported by the record transcript and evidence, generally as set forth in page 8 of the Order beginning with the last paragraph thereof and continuing on page 9 through the end of the first full paragraph thereof;
7. The finding in heading numbered "VII" that the "sophisticated medical care necessary in a hospice facility is a higher level of care than in a nursing facility." Appellant introduced no credible evidence, nor does the record contain supporting evidence, for this statement;
8. The finding that the "chosen location is clearly within a residential neighborhood" is factually inaccurate;
9. The finding, and inferences therein, that "the proposed facility lacks direct access to Highway 90 which will cause significant logistical infrastructure problems and difficulties for emergency responders in having to access this property through narrow subdivision gates and neighborhood roads" contains information that is factually inaccurate and contrary to the record evidence; and
10. To the extent that the Court's reference to misstatement of the party's position also refers to legal issues, the County objects to the legal analysis and conclusions of Appellant's counsel.

We have conferred with David Slough, attorney for Mercy Care Hospice Facility as to the content of this letter. Mr. Slough has requested that we inform you, and in fulfillment of the request of the Court, that, on behalf of his client, he joins Horry County in regard to the positions stated in this letter.

Counsel for Horry County and Mercy Care Hospice Facility further jointly disagree with the proposed finding that the Motion to Intervene filed on behalf of Mercy Care Hospice Facility is untimely and further assert that Mercy Care Hospice Facility has and continues to have a vested interest in this matter and should be allowed to intervene; said intervention would neither cause a delay in this matter nor prejudice the position of the parties.

Please do not hesitate to contact me if you have any questions regarding the contents of this letter.

Gene M. Connell, Jr., Esquire
April 4, 2013
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With best regards,

Sincerely yours,

THOMAS & BRITTAIN, P.A.

A handwritten signature in cursive script that reads "Emma Ruth Brittain". The signature is written in dark ink and is positioned above the printed name.

Emma Ruth Brittain

ERB/kwn

cc: Honorable J. Michael Baxley
Honorable Melanie Huggins-Ward, Clerk of Court (for filing)
David C. Slough, Esquire
Arrigo P. Carotti, Esquire, Horry County Attorney

Emma Ruth Brittain

From: Baxley, J. Michael Law Clerk (James H. Scruggs, III) <JBaxleyLC@sccourts.org>
Sent: Thursday, April 04, 2013 5:01 PM
To: Emma Ruth Brittain; Gene Connell
Cc: dslough@nexsenpruet.com
Subject: RE: Furr v. Horry County Zoning Board of Appeals; C/A No. 2012-CP-26-9291

Thank you, counsel. I have received both Mr. Connell's proposed Order and Ms. Brittain's comments concerning the proposed Order. Please let me know if you have further questions or comments.

James H. Scruggs, III
 Law Clerk to the Honorable J. Michael Baxley
 Circuit Court of the Fourth Judicial Circuit
 531 E. Carolina Avenue
 Hartsville, South Carolina 29550
 Telephone: 843.383.4114
 Fax: 843.383.4116
jbaxleylc@sccourts.org

From: Emma Ruth Brittain [<mailto:ERBrittain@myrlaw.com>]
Sent: Thursday, April 04, 2013 4:59 PM
To: Gene Connell; Baxley, J. Michael Law Clerk (James H. Scruggs, III)
Cc: dslough@nexsenpruet.com
Subject: RE: Furr v. Horry County Zoning Board of Appeals; C/A No. 2012-CP-26-9291

Dear Gene:

We have received a confirmation that you received our review response reference below at 4:26 p.m. today and that it was opened at 4:28 p.m. today. If this is not the case, please let me know.

My Best,
 Emma Ruth

From: Gene Connell [<mailto:gconnell@classactlaw.net>]
Sent: Thursday, April 04, 2013 4:51 PM
To: JBaxleyLC@sccourts.org
Cc: Emma Ruth Brittain; dslough@nexsenpruet.com
Subject: Furr v. Horry County Zoning Board of Appeals; C/A No. 2012-CP-26-9291

Dear Judge Baxley:

I attach a proposed Order in the referenced case. A copy of the proposed Order was provided to Attorneys Brittain and Slough on March 27th. It is my understanding you allowed them additional time to review the proposed Order and requested same be forwarded to you today, April 4th.

By copy of this email I am advising them that I have forwarded the proposed Order to you.

Should you have any questions or need anything further at this time, please contact me.

Sincerely,

Gene M. Connell, Jr., Esq.
Kelaher, Connell & Connor, P.C.
P. O. Drawer 14547
Surfside Beach, SC 29587-4547
Phone: (843) 238-5648
Fax: (843) 238-5050
Email: gconnell@classactlaw.net

CONFIDENTIALITY NOTE: THIS E MAIL HAS BEEN SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF PERSON OR PERSONS NAMED ABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE NOTIFY US IMMEDIATELY AT (843)238-5648.

Sec. 1-2. Definitions and rules of construction; generally.

In the construction of this Code and of all ordinances of the county, the following definitions and rules of construction shall be observed unless inconsistent with the manifest intent of the council or the text clearly requires otherwise:

Generally. All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the county council may be fully carried out. Terms used in this Code, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of the state for the same terms.

In the interpretation and application of any provisions of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this Code imposes greater restrictions upon the subject matter than other, more general provisions imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

In the construction of this Code and of all ordinances of the county, all things and places therein referred to, shall, unless a contrary intention appear, be construed to mean things and places situated in the county or employed by or appertaining to the county.

Bond. When a bond is required, an undertaking in writing shall be sufficient.

Clerk. The word "clerk" shall mean the clerk of the county council.

Computation of time. The time within which an act is to be done shall be computed by excluding the first day and including the last day, and if the last day is a Sunday or a legal holiday, that shall be excluded.

Council, county council. The words "the council" or "the county council" shall mean the county council for Horry County, South Carolina.

County. The word "county" shall be construed to mean the County of Horry in the State of South Carolina.

County limits. The words "county limits" shall mean the legal boundaries of Horry County.

Delegation of authority. Whenever a provision appears requiring the head of a department or some other county officer or employee to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

Gender. Words importing the masculine gender shall include the feminine and neuter.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Keeper and proprietor. The words "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and copartnerships, whether acting by themselves or through a servant, agent or employee.

Month. The word "month" shall mean a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. Words used in the singular shall include the plural and words used in the plural shall include the singular number.

Oath, swear, sworn. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Officer, official. Whenever reference is made to any officer or official the reference will be taken to be to such officer or official of Horry County.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

Person. The word "person" shall include a corporation, firm, partnership, association, organization, trust company and any other group acting as a unit, as well as an individual.

Personal property. The words "personal property" include every species of property except real property, as herein defined.

Preceding, following. The words "preceding" and "following" shall mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

Real property, real estate. The words "real property" and "real estate" shall include lands, tenements and hereditaments.

Roadway. The word "roadway" shall mean that portion of a street improved, designed or ordinarily used for vehicular travel.

Shall, may. The word "shall" is mandatory; "may" is permissive.

Sidewalk. The word "sidewalk" shall mean any portion of a street or road between the curb line, or the lateral lines of the roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.

Signature, subscription. The words "signature" and "subscription" include a mark when the person cannot write, when such mark is witnessed by a longhand signature.

State. The words "the state" or "this state" shall be construed to mean the State of South Carolina.

Street. A dedicated public way or an approved private street for vehicular traffic, whether designated as an avenue, boulevard, thoroughfare, road, highway, expressway, lane, drive, alley or any other public way.

Tenant or occupant. The words "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Week. The word "week" shall be construed to mean seven (7) days.

Written or in writing. The words "written" or "in writing" shall include printing and any other mode of representing words and letters.

Year. The word "year" shall mean a calendar year.

436. - Group housing.

A group of two (2) or more one-family, two-family, or multiple dwellings occupying a lot in one (1) ownership and having common yards, parking, or other facilities.

436.1 Permanent overnight resident group care homes: A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care.

436.2 Group family household: A group of individuals not related by blood, marriage, adoption or guardianship living together in a dwelling unit as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

(Ord. No. 35-94, § 1, 5-17-94)

447. - Nursing homes.

One licensed by the State of South Carolina.

447.1 Nursing home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves

(Ord. No. 35-94, § 1, 5-17-94)

Other Requirements

- (a) All allowed uses shall be required to conform to the standards 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.
- (Ord. No. 219-99, § 1, 4-18-00; Ord. No. 45-00, § 1, 5-2-00; Ord. No. 26-01, § 1, 3-20-01; Ord. No. 87-01, § 1, 7-10-01; Ord. No. 36-03, § 3, 6-3-03; Ord. No. 141-05, § 2, 2-7-06)

703. Commercial Forest/Agricultural District (CFA).

Intent. It is the intent of this section that the Commercial Forest and Agriculture Zoning District be reserved and utilized for agriculture, forestry, residential, commercial, social, cultural, recreational and religious uses.

703.1 Permitted Uses. The following uses shall be permitted in any Commercial Forest Agricultural District:

- (A) Any use permitted in the Limited Forest Agriculture or Forest Agriculture Districts, except non-commercial personal use buildings.
- (B) Commercial and recreational fishing activities including docking and repair of vessels and minimum necessary processing for shipping of seafood, not including cooking or canning.
- (C) Marinas, including common accessory uses.
- (D) Farms, nurseries or other establishments for the growing, care and handling of field crops, truck gardening products, fruit and/or nut trees.
- (E) Social and cultural-religious uses:
 - 1. Private or semi-private clubs, lodges, ranges, union halls or social centers;
 - 2. Eleemosynary, religious, semi-public or philanthropic institutions or camps, spiritual centers or retreats;
 - 3. Recreational parks;
 - 4. Cemeteries subject to the provisions of Article 12.
- (F) Veterinary offices, animal hospitals and/or boarding facilities provided all boarding arrangements are maintained within a building and no noise or odors connected with the operation of the facility is perceptible beyond the premises. This shall prohibit the use of outside facilities for grazing and exercise.
- (G) Office buildings and banks.
- (H) Residential uses: single-family dwellings and mobile homes.
- (I) Wildlife refuges including single-family dwellings for caretakers employed to maintain and protect the refuge.
- (J) Golf courses.

- (K) Railroad depots.
 - (L) Retail stores including but not limited to grocery stores, pharmacies, florists, and ABC stores.
 - (M) Business involving the rendering of personal or professional services or the repair and servicing of small equipment, including but not limited to: appliance repair shops, dressmakers, locksmiths or gunsmiths shop, laundromats, cleaners, photography studio, barber and beauty shops, and schools offering instruction in art, music, dancing, fitness and similar activities.
 - (N) Nonadult video stores (does not include video poker).
 - (O) Restaurants, including drive-ins and drive-throughs.
 - (P) Signs in accordance with Article X.
 - (Q) Accessory uses.
 - (R) Campers or recreation vehicles subject to the special provisions of Article 12.
 - (S) Churches, synagogues, temples, and other places of worship subject to the provisions of Article 12.
- (Ord. No. 157-02, § 2, 12-17-02; Ord. No. 138-04, § 2(Att. 1), 2-1-05; Ord. No. 12-05, § 2, 2-15-05)

703.2 Conditional Uses. The following uses shall be permitted on a conditional basis in any Commercial Forest/Agricultural District:

- (A) Stands, shelter or vehicles for the retail sales of seasonal agricultural produce, shrimp and ice provided that:
 - 1. Temporary stands, shelters or vehicles must obtain a Certificate of Zoning Compliance annually;
 - 2. All stands, shelters, mobile sales must meet South Carolina DHEC regulations;
 - 3. Off-site temporary stand, shelters or vehicles may meet a minimum front yard setback of twenty (20) feet if the stand, shelter or vehicle is completely removed after the produce season;
 - 4. Off-site stands or shelters that remain on the property where the zoning district permits it and are not disassembled after the produce/shrimp season, must meet the setbacks of the zoning district in which they are located;
 - 5. A minimum of four (4) parking spaces must be provided and suitably maintained;
 - 6. The size of such stands or shelters shall not exceed three hundred (300) square feet;
 - 7. Mobile shrimp and produce sales may not be located within two thousand (2,000) feet of a permanent business specifically owned or leased for the purpose of selling seafood or produce;

8. Stands, shelter or vehicles erected on properties where the owner of said properties are growing seasonal produce are not required to obtain a Certificate of Zoning Compliance provided that sections 702.2(B), 2., 3., 4. and 5. above are met.
9. Ingress and egress of vehicle traffic shall not create a hazard for traffic on an adjacent street; and
10. Signage for produce stands shall obtain a temporary sign permit meeting the following:
 - (a) Temporary stands, shelters or vehicles shall be allowed no more than one (1) temporary ground sign on-site and be no larger than forty (40) square feet.
 - (b) All signage must be set back ten (10) feet from the paved portion of the road and out of the highway right-of-way.
 - (c) Temporary signs shall be permitted off-site provided;
 1. Only two (2) signs in one (1) road direction from the stand site shall be allowed or one (1) sign per road direction;
 2. The sign(s) are no larger than twenty-five (25) square feet;
 3. The signs(s) are placed no further than two thousand (2,000) linear feet from the stand site;
 4. The sign(s) are not placed in the highway right-of-way; and
 5. Not placed on utility poles, trees, fences, other state authorized signs, rocks or natural appurtenances.
 - (d) All signage associated with existing produce stands shall come into compliance within ninety (90) days of the adoption of this Ordinance.
- (B) Publicly owned buildings, facilities, or lands, provided the review as required by Section 6-29-540 of South Carolina State Law is complete.
- (C) Publicly or privately owned utility substations, sub-installations, and combination office and maintenance/storage facilities, including water towers, provided that:
 1. The requirements of section 516 of the zoning ordinance and Chapter 13, Article 3 (Noise Control) of the County Code are met;
 2. The facility is reviewed and approved as required by Section 6-29-540 of the South Carolina State Law;
 3. A site plan of the proposed facilities approved by the Planning Commission in accordance with the provisions of the Horry County Land Development Regulations.
- (D) Facilities for the raising, care and handling of animals and livestock, provided that:
 1. Such use is located on a lot of not less than one and one-half (1½) acres.
 2. Stable or shelter, manure piles, pits or bins shall meet a sixty (60) foot front setback, a twenty-five (25) foot side setback and a forty (40) foot rear setback.

3. If operated for commercial purposes, minimum lot size shall be three (3) acres.
- (E) Airfields together with subordinate uses and radio and/or television stations and transmission towers provided that such use complies with any adopted standards for communication towers.
1. Airpark hangars, subject to Article XII, Section 1206.
- (F) Hardware stores with outdoor storage provided it is screened from adjacent road rights-of-way and adjacent developed property.
- (G) Bakeries provided that goods baked on the premises are sold only on the premises.
- (H) Motor vehicle service stations provided all pumps are set back at least twenty-five (25) feet from the right-of-way line of the street and storage and/or service areas are separated from adjoining properties by a suitable planting screen fence or wall at least six (6) feet in height. Where wrecker service is provided, wrecked or disabled vehicles with current license plates may be stored on the premises, provided that the maximum number of vehicles shall not exceed ten (10).
- (I) Garages for the major repair of motor vehicles or farm equipment provided all operations are conducted within a fully enclosed building. Servicing shall be conducted in a proper manner so that the area can be cleaned, etc.; and provided that any open storage of junked vehicles, dismantled parts, scrap parts, or other salvage including disabled vehicles is screened from adjacent land owners and road rights-of-way by a six (6) foot high privacy fence or wall.
- (J) Convenience stores provided that all gas pumps are set back at least twenty-five (25) feet from the right-of-way line of any street.
- (K) Trade shops of all kinds, including cabinet, carpentry, electrical, plumbing, heating and air conditioning, welding sheet metal and machine shops and exterminations shops; provided that such uses shall not produce noise, vibration, smoke, gas fumes, odor, dust, fire hazards, dangerous radiation or any other conditions which constitute a nuisance beyond the premises. All uses and work shall be conducted entirely within a fully enclosed structure.
- (L) Private educational facilities, nurseries or day care centers, provided that:
1. Such uses meet the minimum standards set forth for such facilities by the Department of Social Services and other state departments; and
 2. All day care centers must adhere to the standards contained in section 525 of this ordinance.
- (M) Reserved.
- (N) Permanent overnight residential group care homes, nursing homes, provided that:
1. Such use meets the minimum standards set for such facilities by the Department of Social Service and other state, federal and local departments which exercise jurisdiction over s such facilities;

2. Such use is housed in permanent nature; and
3. Such use shall have a minimum lot area of one (1) acre and meet the net density requirements set forth below:

Minimum Lot Area Requirements in Square Feet Per Room

<i>Number of Beds Per Room</i>	<i>1-Story</i>	<i>2-Story</i>	<i>3-Story</i>	<i>4-Story</i>	<i>5-Story</i>
					<i>or more</i>
1 bed	2,000	1,775	1,625	1,438	1,240
2 beds	2,650	2,475	2,125	1,825	1,438
3 beds	3,525	3,175	2,653	2,200	1,825
4 beds	4,375	3,975	3,492	2,725	2,220
5 or more beds	1,050/bd	950/bd	850/bd	650/bd	550/bd

4. Such use shall meet the buffer requirements set forth below:
Twenty (20) feet of natural or re-vegetated buffer along residential property lines; and thirty (30) feet of natural or re-vegetated buffer along adjacent commercial property lines; and fifty (50) feet of natural or re-vegetated buffer along adjacent industrial property lines; or, a minimum six (6) foot high privacy fence along all property lines.
5. Such uses shall be required to maintain a minimum outside recreational area of seventy-five (75) feet per bed. Group care facilities may be required to place a fence around the recreation area when the Planning Staff determines that there is a safety concern.
6. Group care homes and nursing homes shall be considered multifamily uses for the purposes of section 709.3. All requirements of section 709.3 shall be met.

(O) Multifamily housing provided that:

1. The maximum density for a parcel of land shall not exceed three (3) units per acre.
2. The maximum density of three (3) units per acre shall apply to attached multifamily units only.
3. The maximum height of structure shall not exceed thirty-five (35) feet.
4. All applicable parking standards must be met.
5. The impervious surface ratio of all lot improvements shall not exceed fifty (50) percent. This ratio is calculated by dividing the area of impervious surface by the gross site area.
6. The floor area ratio of all structures shall not exceed thirty (30) percent. This ratio is calculated by dividing the area of all floors by the gross site area.

7. Only one (1) other primary use structure (residential only) may be located on the parcel. Such unit(s) shall be included in calculations of density.
 8. This parcel shall be at least three (3) acres.
 9. The provisions of section 709.4(A) and (B) shall be met.
 10. Site plans shall be reviewed and approved by the Zoning Administrator, and if not approved, no building permit shall be issued. Site plans shall include parking, landscaping impervious surface ratios, gross floor area ratios, building locations, sign locations surface water drainage plans and water/sewer or septic tank plans or approvals.
- (P) Multiple single-family houses or mobile homes on one (1) parcel of land provided:
1. The parcel of land must contain at least three (3) acres.
 2. Each unsubdivided parcel of land must conform to the Forest/Agriculture Standards of Article VIII.
 3. Each structure placed on an unsubdivided parcel of land must meet all required setbacks and standards contained in Article VIII.
 4. The total number of principal structures placed on an unsubdivided parcel of land shall not exceed five (5) regardless of the total number of acres.
 5. Each unsubdivided parcel of land must have a minimum of fifty (50) feet of frontage on a fifty (50) foot right-of-way/easement. If a right-of-way/easement does not exist, each unsubdivided parcel of land must have a minimum fifty (50) foot access.
 6. Water/sewer or septic tank approvals must be furnished to the Zoning Administrator prior to the issuance of a certificate of zoning compliance.
 7. A site plan drawn to scale showing all lot dimensions, road right-of-way/easements or access and building locations must be reviewed and approved by the Zoning Administrator prior to the issuance of a certificate of zoning compliance.
- (Q) Mini-warehouses, including the outdoor storage of campers and recreational vehicles provided:
1. Such units shall be used for storage only and not occupied.
 2. Such uses shall be screened from adjacent uses by a six (6) foot vegetative hedge or fence.
- (R) 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:

1. The said premises shall be limited to five (5) machines per structure enclosed by exterior walls as defined by the Standard Building Code; and
 2. 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:
 - a. One thousand (1,000) feet from a residentially zoned district or residential structure.
 - b. Five hundred (500) feet from a church, cemetery, place of worship, daycare center, public or private elementary or secondary education school.
 - c. One thousand (1,000) feet from another video gaming arcade.
 - d. Measurements of distance separations shall be in a straight line from the closest points of the building(s) [in] which the video gaming machines are located.
 3. The right to maintain a legal nonconforming establishment covered by subsection (L)2. of this section shall terminate three (3) years after the effective date of this ordinance [subsection (L)].
- (S) Accessory living quarters, within an existing dwelling or in a separate structure, provided:
1. When accessory living quarters will be in a separate structure, the minimum lot area shall be equal to two (2) times that normally required for the zoning district where the accessory living quarters is proposed. If located in an existing dwelling, the minimum lot area shall be the same as that of the zoning district.
 2. The primary dwelling unit shall be owner-occupied.
 3. The tenant of the accessory living quarters is a family member of the owner of the primary dwelling unit, as attested to by a sworn statement signed by a Notary Public.
 4. The accessory living quarters may be located in any yard provided all setback requirements are met.
 5. The accessory living quarters shall have a bathroom and cooking facilities.
 6. The accessory living quarters, if within the primary dwelling unit, may have its own entrance.
 7. The construction of the accessory living quarters, within existing structures, shall not alter the appearance or character of the structure. When detached from the primary dwelling unit, it shall be separated by no less than twenty (20) feet or applicable zoning district setbacks.

8. Screening, by fencing or vegetation, is installed to completely block the view from adjacent properties of detached accessory living quarters that are not of like construction (i.e. manufactured home adjacent to a stick-built house).
 9. Adequate off-street parking is provided.
 10. The conditional use permit for the accessory living quarters shall be renewed every five (5) years to ensure that the units is being used in compliance with these regulations; and
 11. Upon permit expiration, manufactured housing units used as accessory living quarters shall be removed from the property within thirty (30) days and the property restored to its pre-permit condition.
- (Ord. No. 26-01, § 1, 3-20-01; Ord. No. 114-01, § 1, 9-4-01; Ord. No. 81-03, § 1, 8-19-03; Ord. No. 138-04, § 2(Att. 1), 2-1-05; Ord. No. 21-08, § 1, 2-19-08; Ord. No. 65-11, § 2, 9-20-11)

703.3 *Special Exceptions.* Owing to their potential negative impact on the community, the following use may be approved as a special exception by the Board of Zoning Appeals:

(A) *Reserved.*

(B) Bed and breakfast establishments (B&Bs) subject to the following conditions:

1. That the special exception complies with all applicable development standards.
2. That the special exception will be in substantial harmony with the area in which it is to be located.
3. That the special exception will not be injurious to adjoining property.
4. That the special exception will contribute to the economic vitality and promote the general welfare of the community.
5. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
6. In granting a special exception, the Board of Zoning Appeals may impose such reasonable and additional stipulations, conditions, or safeguards as, in its judgement, will enhance the siting of the proposed special exception.

Other Requirements

- (a) All allowed uses shall be required to conform to the standards 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.

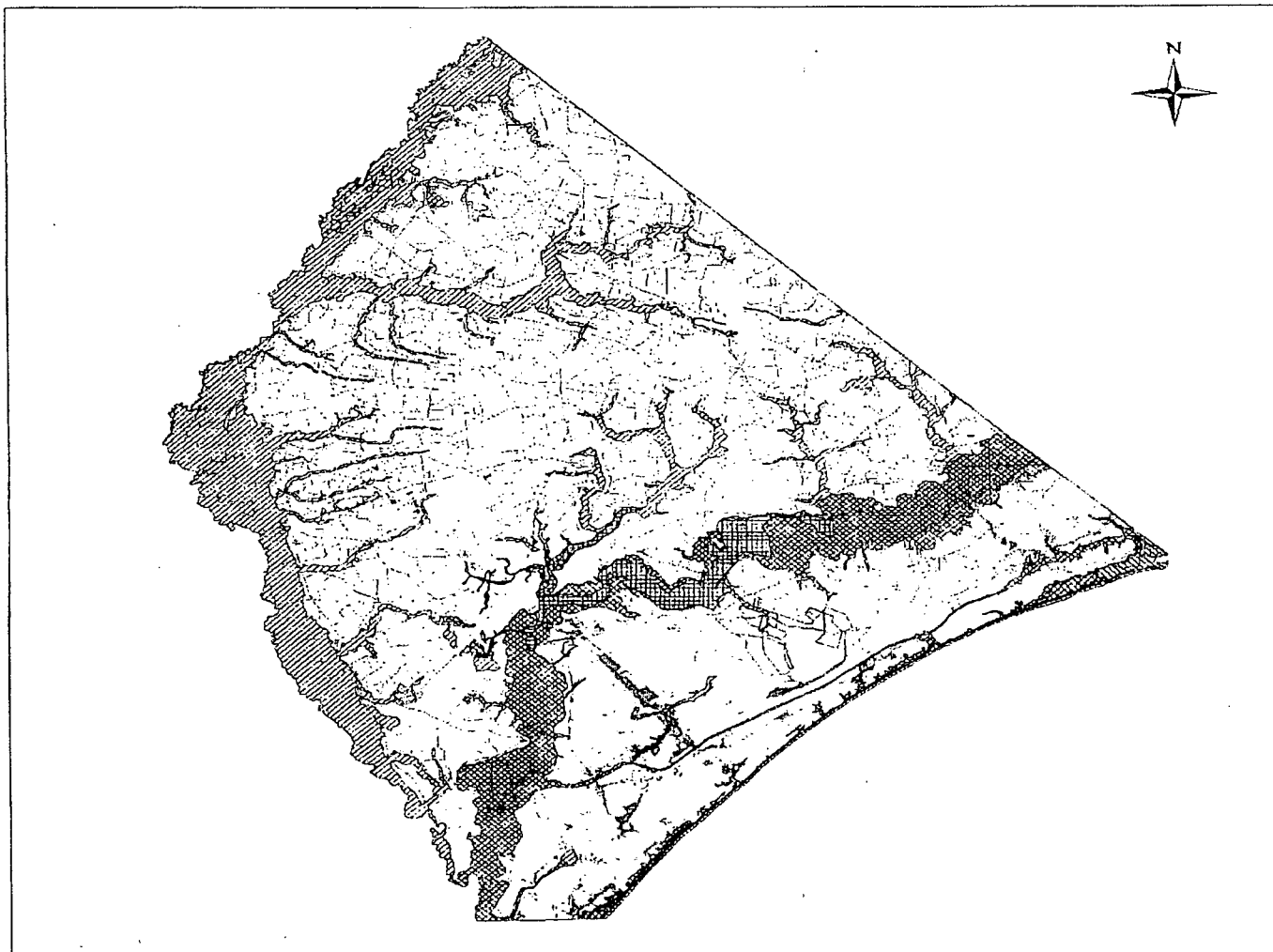
(Ord. No. 67-88, 4-18-89; Ord. No. 75-90, 12-11-90; Ord. No. 37-94, § 1, 5-17-94; Ord. No. 45-94, § 1, 7-5-94; Ord. No. 51-99, §§ 15, 17—19, 12-7-99; Ord. No. 219-99, § 1, 4-18-00; Ord. No. 45-00, § 1, 5-2-00; Ord. No. 26-01, § 1, 3-20-01; Ord. No. 87-01, § 1, 7-10-01)

704. SF 40 Residential District (SF 40).

Intent. This district is intended to be utilized in areas when, due to its remoteness, the impermeability of soil, soil characteristic or the absence of the necessary urban services,

Horry County Zoning Map

OP1	Office/Professional/Institutional	County or to other destinations
PR1	Office-Professional	Office developments, hospitals, and nursing homes
PR2	Campus Institution, Office & Research	Office or institutional uses
ME1	Inpatient Medical Services	Research, institutional & light industrial uses that are developed in "park" settings
ME2	Outpatient Medical Services	Inpatient and outpatient medical services (doctor's office, clinics etc.)
		Intense outpatient medical services (drug treatment centers, counseling facilities etc.)



Horry County Flood Zones and Zoning Districts

Legend	
FEMA_2006	
	<all other values>
CODE	
	A
	AE
	AF
	VE
	X
HC_ZONING	
	<all other values>
ZONING_CD	
	AC
	CC
	CFA
	CP
	CR
	DP
	EIO
	FA
	GR
	HC
	HR
	LFA
	LI
	MHP
	MR-1
	MR-2
	MR-4
	MR-7
	NC
	OPI
	PDD
	PUD MULTIZONED
	PUD-PAULTONED
	PUDMULTIZONED
	R-1
	R-2
	R-3
	R-4
	R-7
	RC
	RCS
	RE
	RR
	TRG

0 12,500 25,000 50,000 Feet

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.

December 27, 2013



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley
Circuit Court Judge

CASE NO. 2012-CP-26-9291

Fayrell Furr and Karole Jensen..... Respondents

v.

Horry County Zoning Board of Appeals..... Appellant

BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR WHEN IT FAILED TO ACCORD THE FINDINGS OF FACT OF THE Horry COUNTY ZONING BOARD THE SAME DEFERENCE AS A FINDING OF FACT BY A JURY?
- II. DID THE LOWER COURT ERR IN SUBSTITUTING ITS OWN JUDGMENT FOR THAT OF THE Horry COUNTY ZONING BOARD AND FAILING TO DEFER TO THE FACTUAL FINDINGS OF THE ZONING BOARD THAT A HOSPICE IS A PERMITTED USE IN THE COMMERCIAL FOREST AGRICULTURE DISTRICT?

STATEMENT OF THE CASE

On or about December 3, 2012, Respondents Fayrell Furr and Karole Jensen (“Respondents”) filed this action in the Horry County Court of Common Pleas appealing the Order of the Horry County Zoning Board that the proposed Mercy Hospice facility is an allowed use in the Commercial Forest Agriculture Zoning District (“CFA”) (R. pp. 20-27). The property in question is located at 3341 Wildhorse Drive, Conway in rural Horry County off of Highway 90 (R. pp. 56-60). The Zoning Board issued its Order, following a hearing, on November 5, 2012, at which Respondents and Mercy Hospice offered evidence, including testimony. (R. pp. 24-27). The Board upheld the interpretation of the zoning ordinance by the zoning administrator, thereby denying Respondents’ appeal of the zoning administrator’s decision.

This matter was heard before the Honorable J. Michael Baxley on February 28, 2013. Prior to the hearing of the appeal, on February 5, 2013, Judge Baxley stayed any actions by Horry County with respect to issuance of a permit for Mercy Hospice. (R. pp. 18-19). During the February 28, 2013 appearance, before arguments on the appeal commenced, Judge J. Michael Baxley visited the property with counsel for Horry County and the Respondents¹.

The lower court issued an Order, dated April 24, 2013², (“Order”) reversing the

¹ On the record, after visiting sites, Judge Baxley stated, on the record, as follows: “We looked at the property. I did ask certain questions of the principals, because with us we had representatives of the Appellants as well as the Respondents about the footprint or the structure on the property, the logistics of ingress and egress, the boundaries of the property, and other matters that I could only ask while we were there, just to have an understanding of the site, and how the site was set out.” (R. p. 279, l. 2-9).

² Prior to issuing the Order, Judge Baxley sent a letter to counsel, dated March 7, 2013, that stated “please accept this letter as the Court’s decision in the matter” and requested that counsel for the Respondents prepare an order based on the decisions based within the letter. See letter of the Honorable J. Michael Baxley, dated March 7, 2013 (“Decision”). (R. pp. 317-318). The Decision provided that it was “[b]ased upon the arguments of counsel, review of the overall Horry County Zoning scheme and specific provisions at issue, review of the Clerk of Court’s file, analysis of the record below, as well as a visit to the site.” *Id.*

decision of the Zoning Board and held that as a matter of law that a “hospice facility cannot be permitted in the Commercial Forest Agricultural (“CFA”) Zoning District” (R. pp. 12-17).

This Appeal followed by timely Notice of Appeal, dated May 23, 2013.

STATEMENT OF FACTS

This matter arises from an appeal of a decision of the Horry County Zoning Board of Appeals (“Zoning Board”) that a hospice is a permitted use in the Commercial Forest Agriculture (“CFA”) zoning district in Horry County. The property at issue in this case is located at 3341 Wildhorse Drive, Conway, off of Highway 90 in rural South Carolina (the “Property”). The Property is zoned CFA and owned by Mercy Hospice. Mercy Hospice intends to operate a fourteen bed hospice on the Property.

On September 21, 2010, Horry County Council approved Resolution No. R-103-10 stating support for a proposed hospice facility to be located on a parcel of land of 22 acres off of Highway 90. (R. p. 52). On May 3, 2011, Horry County Planning and Zoning Department issued a letter confirming that the proposed hospice house and associates accessory buildings and structures are permitted uses provided that conditional requirements of the Zoning Code are met. (R. p. 54). On March 23, 2012, South Carolina Department of Health and Environmental Control (“DHEC”) issued a Certificate of Need for Mercy Hospice. (R. p. 183)

The Decision noted that the attorney for Horry County was not asked to agree or consent to the proposed Order, but to review it for mistakes of fact. By letter dated April 4, 2013, Horry County Zoning Board of Appeal’s Attorney reserved all objections related to findings of fact and error of law in the draft Order. (R. pp. 319-321). In addition, during the hearing itself, counsel for Horry County Zoning Board of Appeals stated that: “[U]nder the statute the judicial review is confined to the record before the Court that was made before The Zoning Board, and those findings are entitled to be treated in the same manner as findings of facts by a jury. To the extent there is anything ... that either goes beyond the record, or disputes the records, we would object to that because it was not made part of the record before the Board, and it is not within the appropriate scope of review.” (R. p. 280, line 24 – p. 281, line 8).

On July 30, 2012, Mercy Hospice submitted plans for Mercy Hospice House to Horry County for review for compliance and issuance of permits. (R. pp. 49-70). The Horry County Zoning Administrator approved the submittal, consisting, *inter alia*, of a fourteen room hospice house, as an allowed use in the Commercial Forest Agriculture (“CFA”) Zoning District. (R. pp. 328-335).

Respondents, whose property adjoins the Mercy Hospice Property, appealed the decision of the Horry County Zoning Administrator, contending the proposed hospice house is a hospital and is not an allowed use in the CFA zoning district. At the hearing before the Zoning Board, Mercy Hospice introduced extensive evidence supporting the Zoning Administrator’s decision that the 14 room hospice facility was an allowed use. The evidence presented by Mercy Hospice included the following:

Mary Jo Faucher, the Executive Director of Mercy Hospice and Palliative Care, testified with respect to the proposed hospice house – explaining what it is - and its similarity to a nursing home. (R. p. 218, line 23 – p. 236, line 10; p. 242, line 11- p. 243, line 6).

Mercy Hospice also supplied the Zoning Board with evidence in the form of affidavits and other documents that demonstrate that a hospice is more akin to a nursing home and not a hospital. Mercy Hospice submitted an affidavit from Dennis L. Gibbs, who was the Bureau Chief for the Bureau of Health Facilities Regulation at South Carolina Department of Health and Environmental Control (“DHEC”). (R. p. 133, ¶1). Mr. Gibbs opined, based on his familiarity with licensing standards for hospice facilities, nursing homes, and hospitals that a hospice facility is not a hospital. *Id.* at ¶5. He further noted that DHEC previously made a determination that the zoning was appropriate for

the facility when issuing the Certificate of Need. *Id.* at ¶6. David Levitt, a healthcare consultant that has been certified as an expert in healthcare planning and finance by the South Carolina Administrative Law Court, opined in his affidavit that the services provided by Mercy Care would be palliative, in nature, and neither resource nor labor intensive. (R. pp. 134-135, ¶4). Mr. Levitt further opined that inpatient hospice facilities are more similar to a nursing home than a hospital based on the type of care provided. *Id.* at ¶5.

Charles Sasser, M.D., Medical Director of Mercy Hospice and Medical Director of a Palliative Care Program at Conway Medical Center, testified as to the models of care offered by hospitals and hospices and agreed with Messrs. Levitt and Gibbs that a hospice is not a hospital. Hospitals are based on an “acute [health] care model.” (R. pp. 52, line 24 – p. 53, line 17). “The acute care model ...[is designed] to cure and to restore to some previous state of normal health. ... That’s why they got so many different mechanisms for diagnose (sic) and treatment in hospitals.” (R. p. 252, lines 1-20). A hospice differs from a hospital in that it is based on a “comfort care model.” (R. p. 253, lines 15-25).

Mercy Hospice also presented a letter from J.T. Pegram, President of Pegram Associates, Inc. and an architect involved with Mercy Hospice that highlighted the warm, residential feeling of the proposed hospice, which stands in stark contrast to the cold, institutional feeling of hospitals. Mr. Pegram noted that “the design team has developed an inviting, warm and comforting house design with a “residential” feel both for the patients and their families.” *Id.* Mr. Pegram noted that the hospice would be built to achieve LEED (Leadership in Energy and Environmental Design) Certification which is a

recognition that “the project has complied with sustainable site and building design and construction practices to lessen the project’s environmental impact.” In describing the hospice, he noted that the:

[f]amily spaces in central areas of the building include an open kitchen, dining area, living room with a fireplace, and a playroom for children. All have a comfortable home-like feel. The 14 patient rooms, 7 on each side of the central family area, are designed to have the patient and families feel like they’re in a residential bedroom. Each patient room has its own screened porch and overlooks the Waccamaw River.”

(R. p. 140).

In addition to submitting evidence with respect to the nature of services offered by hospice and the design of the hospice, Mercy Hospice submitted evidence regarding the anticipated traffic and accessibility for emergency services. Mercy Hospice submitted the letter of Solan Associates, P.C. – an engineering, planning and land surveying firm – with respect to the anticipated traffic that would be generated by Mercy Hospice. Solan Associates, P.C. noted that Mercy Hospice facility would generate an additional 34 trips per day. However, the Property could also accommodate 24 one-half acre residential lots, which use would generate 230 trips per day. Accordingly, Solan Associates, P.C. found that the proposed hospice would have a “minimal impact on traffic in the immediate vicinity” and far less than other likely uses for this same property. (R. pp. 145-146).

In addition, Mercy Hospice submitted as evidence correspondence from Horry County Fire Department regarding emergency services access. Kenneth M. Beans, Interim Fire Chief, noted that “there is no issue with apparatus access or water supply at the Wild Horse subdivision.” Chief Beans relied upon the findings of Battalion Chief

Kenny Todd who found that there would be no fire department access issues on the main roadway into Wild Horse subdivision based upon his review of the International Fire Code. Battalion Chief Todd holds a Fire Marshall certification in the state of South Carolina. Indeed, Battalion Chief Todd noted that the entrance gate was tall enough for emergency access. (R. pp. 155-156). Significantly, the photographs in the record, introduced by Respondents, show that the Property is outside the gated entrance and there would be no need for emergency services to access the site utilizing the gate. (R. p. 59). Accordingly, there are no safety issues with respect to building a hospice at the Property.

In sum, the evidence adduced by Mercy Hospice overwhelmingly supports the building of a hospice facility because it is properly zoned within the CFA district.

ARGUMENT

STANDARD OF REVIEW OF COUNTY ZONING BOARD DECISION

The Supreme Court has summarized the applicable 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 board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 215-216, 516 S.E.2d 442, 446 (S.C. 1999) citing *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (S.C. 1952). Even if a court disagrees with the zoning board's decision, it may not substitute its judgment for that of the zoning board unless the decision "is

arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the [zoning] board has abused its discretion.” *Rest. Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (internal citations omitted). *See also Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997).

The standard of review for findings of fact is addressed by statute. “The findings of fact by the [zoning] board of appeals must be treated in the same manner as a finding of fact by a jury....” S.C. Code § 6-29-840 Ann. (1976) (Supp. 2013). Our appellate courts have been mindful of the narrow standard of review applicable to local zoning decisions. “In zoning matters, this Court is obligated to apply the extremely narrow standard of review outlined in *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000).” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001).

In reviewing zoning matters, the findings of the zoning board should “not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports” the zoning board’s findings. *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct. App. 2001) (emphasis in the original) (citing *Sterling Devel. Co. v. Collins*, 309 S.C. 237, 421 S.E.2d 402 (S.C. 1992). “A “use” in the zoning context is “the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct. App. 2001) (emphasis in the original). Of significance in the instant action, a determination by a zoning board that a particular purpose or activity does or does not constitute a “use” is a finding of fact.” *Id.*

In the present case, both the Horry County Zoning Administrator and Zoning Board determined that a hospice is a conditional allowed use in the CFA district, even though the term “hospice” is not defined in the zoning ordinance. (See Horry County Zoning Ordinance). (R. pp. 328-335; R. pp. 7-9) Courts have uniformly recognized that it would be difficult if not impossible to craft a zoning ordinance that anticipates and provides for every possible use. See *Subdivisions, Inc. v. Town of Sullivan*, 92 A.D.3d 1184, 1187, 938 N.Y.S.2d 682, 685-686 (3rd Dep’t. 2012) (noting that when crafting a zoning ordinance, a municipality cannot be expected to anticipate each and every potential use to which a property owner may wish to put his or her property); *Arceri v. Town of Islip Zoning Bd. of Appeals*, 16 A.D.3d 411, 412, 791 N.Y.S.2d 149, 150-151 (2d Dep’t. 2005) (noting the delegation of discretion to an administrative body or official in the interpretation of zoning ordinance because “it would be difficult or impractical for a legislative body to promulgate an ordinance which is both definitive and all-encompassing”); *In re Laberge Moto-Cross Track*, 15 A.3d 590, 594-595 (Vt. 2011) (recognizing that zoning regulations, despite containing restrictive clause, “cannot be considered to be entirely exhaustive, given the breadth of novel land-development possibilities a municipal body may face”); *City of Okoboji v. Okoboji Barz, Inc.*, 746 N.W.2d 56, 61 (Iowa, 2008) (noting “it is next to impossible for a zoning ordinance to express every possible lawful use of property”) (internal citations omitted). See also, *Cellco P’ship v. North Annville Tp. Zoning Hearing Bd.*, 939 A.2d 430, 434 (Pa. Commw. Ct. 2007) (“It is impossible for a legislative body to anticipate every conceivable use of land”); *Tanis v. Twp. of Hampton*, 704 A.2d 62, 68 (N.J. Super. App. Div. 1997) (ruling that restrictive clause alone was not enough to prohibit use not

expressly contemplated in local zoning ordinance in part because of “the impracticality of defining in advance every permissible accessory use”); *Town of Salem v. Durrett*, 125 N.H. 29, 480 A.2d 9, 10 (N.H. 1984) (in an opinion by then N.H. Supreme Court Justice Souter, recognizing “the impossibility of providing expressly by zoning ordinance for every possible lawful use”).

Because of the impossibility of crafting an all-encompassing zoning statute for every use, the failure to denominate a specific use in a zoning statute should not bar all uses not specifically denominated. As provided by Horry County’s Zoning Code, “[i]t is the intent ... that the Commercial Forest and Agriculture Zoning District be reserved and utilized for agriculture, forestry, residential, commercial, social, cultural, recreational and religious uses.” (R. p. 328). The CFA district is a mixed use district, with requirements much less restrictive than other zoning districts. (R. pp. 328-335, *See* Art. 7. The Zoning Board – the primary entity responsible for planning and development of communities in South Carolina – after hearing extensive testimony and receiving extensive documentary evidence, properly found that a hospice was a permitted use in the CFA district.

I. THE LOWER COURT ERRED IN SUBSTITUTING ITS OWN JUDGMENT FOR THAT OF THE HORRY COUNTY ZONING BOARD AND FAILING TO DEFER TO THE FACTUAL FINDING BY THE HORRY COUNTY ZONING BOARD THAT A HOSPICE IS A PERMITTED USE IN THE CFA DISTRICT

A zoning board determination that a particular purpose or activity does or does not constitute a “use” is a finding of fact.” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 411, 552 S.E.2d 42, 47-48 (Ct. App. 2001). In this case, the Zoning Board framed the issue before it as whether: “a hospice house is an allowed use in the Commercial Forest Agriculture (CFA) zoning district.” (R. pp. 7-9). The zoning administrator and, ultimately, the Zoning Board found that a hospice was a permitted use

in the CFA district. *Id.* Accordingly, the Zoning Board made a factual finding that a “hospice” is a permitted “use” within the CFA district. *Id.*

Even if the lower court disagreed with the Zoning Board, it was required to uphold that decision unless the Zoning Board’s decision was arbitrary, capricious and had no reasonable relation to a lawful purpose. *Restaurant Row Assocs. v. Horry County*, 334 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). Here, there can be no argument that the Zoning Board’s decision was arbitrary, capricious or had no reasonable relation to a lawful purpose. The Zoning Board considered the evidence of both Mercy Hospice and Respondents. The Respondents’ primary argument is that a hospice is, in fact, a hospital, and thus, is not properly zoned CFA. The Zoning Board rejected their argument and, instead, affirmed the decision of the Zoning Administrator. The Zoning Board accepted the argument of Mercy Hospice that a hospice is akin to a nursing home or permanent overnight group care home (“Group Care Home”) and/or nursing home, both of which are conditional permitted uses in the CFA district.

A. The Record Evidence Supports the Zoning Board’s Decision that Hospitals Offer Different Services From Hospices

The Zoning Board also considered evidence of the services offered by hospice and hospitals, which clearly established that the types of services offered at a hospital are different from the types of services offered at a hospice. Mercy Hospice offered as evidence, *inter alia*, affidavits from David S. Levitt, a healthcare consultant that has worked on 500 Certificate of Need projects in 12 states and has been qualified as an expert in healthcare planning and finance before the South Carolina Administrative Law Court, and Dennis L. Gibbs, the Bureau Chief for the Bureaus of Health Facilities Regulation at DHEC, on the types of services offered by hospices and hospitals. (R. pp.

133-135).

Mr. Levitt opined that the services offered by a hospital are more resource and labor intensive than those offered by a hospice facility. (R. p. 134, ¶2). Thus, hospitals have greater personnel and support activity than an inpatient hospice. (R. p. 134, ¶8).

Hospitals are required to provide emergency services. (R. p. 133, ¶4; p. 134, ¶3). Hospitals are required to receive emergency patients, via ambulance or helicopter transport, on a twenty-four hour a day. (R. p. 134, ¶3). In contrast, hospices do not provide emergency services. (R. p. 133, ¶4). Conversely, “[h]ospices do not send or receive patients via helicopter.” (R. p. 134, ¶3). Moreover, “[p]er Medicare regulations, air ambulance services are not covered for transport to a facility that is not an acute care hospital, [therefore] transport to a hospice inpatient facility would not be covered.” (R. p. 153). Typically, patients are transferred to “hospice via private vehicle or via non-emergency medical ground transportation.” *Id.* If a patient was transported to hospice by ambulance, the ambulance would not use sirens or lights during the transport of the hospice patient. (R. p. 134, ¶3).

Hospitals generally have operating facilities equipped to provide surgical care whereas hospices do not have operating facilities and cannot provide surgical care. (R. p. 133, ¶4). The range of services offered by a hospital also vary widely from what a hospice would offer:

Hospitals provide a much more intensive level of care that involves significantly more resources, space and personnel than a hospice facility. Hospitals provide a wide array of diagnostic and treatment services, [including] radiology, ultrasound, X-ray, PET/CT, MRI and nuclear medicine, cardiopulmonary care services, including EKG monitoring, vascular lab services, angioplasty respiratory therapy, lab services including hematology, chemistry, microbiology,

histology, cytology, pathology and blood bank services.

(R. p. 134, ¶2). Hospices do not offer any of these services. (R. p. 134, ¶2; p. 133, ¶4).

The models of care offered by hospitals and hospice also differ. (*See* Transcript of the Zoning Board of Appeals Hearing dated November 5, 2012, Testimony of Charles Sasser, M.D., Medical Director of Mercy Hospice and Medical Director of a Palliative Care Program at Conway Medical Center). Hospitals are based on an “acute [health] care model.” (R. pp. 52, line 24 – p. 53, line 17). “The acute care model ...[is designed] to cure and to restore to some previous state of normal health. ... That’s why they got so many different mechanisms for diagnose (sic) and treatment in hospitals.” (R. p. 252, lines 1-20). A hospice differs from a hospital in that it is based on a “comfort care model.” (R. p. 253, lines 15-25).

In sum, the scope of services provided by a hospital are significantly different from services offered by a hospice. The Zoning Board’s decision that a hospice is not a hospital was supported by the overwhelming record evidence of professionals, including doctors, an architect, and a DHEC bureau chief, and was not irrational, arbitrary or capricious.

B. The Record Evidence Supports the Zoning Board’s Decision That The Nature of Services Offered by a Hospice Are Similar to the Services Provided by a Nursing Home

The Zoning Board, having considered evidence regarding the services provided by nursing homes and hospices, correctly determined as a finding of fact, that the services offered by a hospice are similar to the services offered by a nursing home. At hospice facilities, like nursing homes, the primary focus is on providing nursing services, with minimal ancillary services. (R. p. 134, ¶5). “The end goal of both a nursing home and an inpatient hospice facility is rarely recovery for traditional residents, but rather comfort

and care in a residential setting.” (R. p. 133, ¶5; R. p. 134, ¶5). J.T. Pegram, an architect and President of Pegram Associates, Inc. that is involved in the design of Mercy Hospice, noted that a hospice is “essentially a nursing home that specializes in caring for the terminally ill and shares many similarities with a nursing home. The most significant difference is that a hospice house has less of an institutional and more of a home-like feel than a nursing home.” (R. p. 140).

The evidence and testimony offered by Mercy Hospice is that a “[a] hospice house is essentially like a nursing home that specializes in care for the terminally ill and is designed to feel like a home.” (R. p. 224, lines 8-11). Testifying before the Zoning Board, Mary Jo Faucher, the Executive Director of Mercy Hospice and Palliative Care, described the proposed hospice house and the services offered as follows:

A hospice house is a specialized treatment facility that provides less than primary health care. The care a patient receives at a hospice house is not for treatment to make the patient better like in a hospital or to cure them or to keep them alive. Hospice house is comfort care and not acute care or primary care like a hospital. Hospice house is like a home in which patients can be cared for in their own home. The family gets to stay with patients overnight in home-like settings. Pets can even stay ... Families can even cook the patient’s favorite foods in the home’s kitchen.

(R. p. 220, lines 2-16). The proposed design of the hospice is fourteen rooms. (R. p. 225, line 3).

[The rooms] will be facing the water side of the river. They will have screened-in porches with porch doors so that we can literally take them outside ... A family room and a family kitchen, the children’s playroom. They’ll be able to dine around our endless center and there will be seven beds, seven rooms on either side. There is the family room and the family kitchen and that’s where they can make meals for their loved ones and make their

favorite foods. There is a fireplace in the corner, ... a dining room ... That's not a hospital.

(R. p. 225, lines 3-17).

We will only receive patients by private car or by ambulance in non-emergency transport. There will be no lights or sirens for transport of patients. There will be no fire trucks with sirens unless we're unfortunate enough to have a fire. People don't come to a hospice house in an emergency. They don't leave that way either. They have made their decision. They are not looking for recessive or curative care. They are looking to be in a home-like environment when they can't be at home surrounded by their loved ones that they watch die in comfort, in dignity and they want to experience death in a spiritual sense as well as a physical one. They have made their decision.

(R. p. 228, lines 15 – p. 229, line 5). The testimony of Ms. Faucher was echoed by Preston Strosnider, M.D., Vice President for Medical Affairs at Conway Medical Center and board member of Mercy Hospice. During his testimony, Dr. Strosnider was questioned by the Zoning Board and was specifically asked whether a hospice is a hospital:

Q. In your opinion, is hospice a nursing home or a hospital.

A. It's definitely not a hospital. I don't even think it's a nursing home. It's really just a residential home in the fact that they do not provide what we call meaningful treatment. Comfort care, yes, but they are not being treated in a hospital room. They're not a hospital.

(R. p. 237, lines 15-24).

David Flowers, of Mercy Hospice, similarly testified:

The definition of a group home under the ordinance is defined as a specialized treatment facility that provides less than primary care. That's what a hospice does. It's less than primary care or acute care. As everyone has said, the goal of hospice care is not full treatment and to get

people better and not die. It's end of life comfort care. That is a specialized care that is available in a group home setting by this.

(R. p. 245, lines 12-21).

The testimony offered by Mercy Hospice provides ample evidentiary support for the Zoning Board's factual conclusions that a hospice is similar to a nursing home and Group Care Home and a permitted use in the CFA zoning district. Accordingly, the lower court erred in overruling the Zoning Board's determination and substituting its own judgment as to the factual issues in this matter.

C. Horry County Zoning Board's Decision that a Hospice is Better Analogized to a Nursing Home or Permanent Overnight Resident Group Care Home Than a Hospital is Supported by the Statutory Definitions

The Zoning Board considered evidence presented to it regarding the statutory definitions of nursing home, Group Care Home, hospice and hospital. The plain language, statutory definitions of these terms substantiate the Zoning Board's determination that a hospice is similar to a nursing home and permanent overnight resident group care home and therefore is an appropriate use in the CFA zoning district.

Horry County's Zoning Ordinance defines a Group Care Home as:

A facility or dwelling unit housing persons unrelated by blood or marriage and operating a group family household. A group care home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care.

(R. p. 327). In addition to permanent overnight resident group care homes, nursing homes are also permissible uses in the CFA zoning district.

Horry County's Zoning Ordinance defines "nursing home" as: "[a]n extended or

intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.” (R. p. 327).

Although “hospice” and “hospice facility,” are not defined terms or uses within the Horry County Zoning Code, they are defined by the South Carolina Code. The Zoning Code endorses reference to the South Carolina statutes to provide meaning for terms not otherwise defined in the Zoning Code. (R. pp. 324-326; *See* Horry County Code of Ordinances §1-2) (“terms used in this Code, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of the state for the same terms”). According to the South Carolina Code, “hospice” is defined as

[A] centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. The inpatient services include, but are not limited to, services provided by hospice in a licensed hospice facility.

S.C. Code Ann. §44-71-20(3) (Rev. 2002).

“Hospice facility” is defined as “an institution place or building in which a licensed hospice provides room, board and appropriate hospice services on a 24 hour basis to individuals requiring hospice care pursuant to the orders of the physician.” S.C. Code. Ann. §44-71-20(4) (Rev. 2002).

Focusing on the above referenced definitions of Group Care Home, nursing home and hospice, the Zoning Board correctly recognized that a hospice is better analogized to a Group Care Home than to a hospital. Nursing homes and hospices focus on a specific type of patient. A hospice focuses on “terminally ill patient[s]” and nursing homes focus

on individuals who are “unable to care for themselves.” Similarly, each Group Care Home focuses on a specific type of resident – each home focuses on a specific group of individuals, such as “orphans, foster children, the elderly, battered children and women” or those receiving “specialized care.” The residents at Group Care Homes, nursing homes and hospices stay for an extended period of time at their respective facility. The main difference is that a patient staying in a hospice is terminally ill and, thus, by definition, has a briefer life expectancy than a patient residing at a nursing home or permanent overnight resident care group home.

In addition, nursing homes and hospices provide care only for their residents; they do not provide care for the general population. In nursing homes, a patient receives convalescent or chronic care and, in hospice, a person receives palliative care. Moreover, at both nursing homes and hospices, the focus of treatment is not recovery or a cure.

According to the South Carolina Code, nursing homes may be operated in conjunction with a hospital. The South Carolina Code defines a “nursing home” as a:

facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty four hours, which is *operated either in connection with a hospital or as a freestanding facility* for the express or implied purpose of providing immediate or skilled nursing care for persons who are not in need of hospital care.

S.C. Code §44-7-80 (Rev. 2002) (emphasis added). The South Carolina Code, while distinguishing a hospital from a nursing home, provides that a nursing home may be operated in conjunction with a hospital or as a free-standing facility with immediate or skilled nursing care for persons who are not in need of hospital care. The mere operation of a nursing home in conjunction with a hospital, however, does *not* transform a nursing

home into a hospital.³

The South Carolina Code defines hospital as:

[A] facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury or infirmity and may provide obstetrical care and in which all diagnosis, treatment or care is administered by or under the direction of a person currently licensed to practice medicine, surgery or osteopathy.

S.C. Code Ann. §44-7-130(12) (Rev. 2002).⁴

³ There is admittedly a commonality between nursing homes, hospices, and hospitals in that all require some level of medical care over the course of at least twenty four hours. Even the Group Care Home's definition encompasses facilities providing "less than primary health care" services. As a corollary of providing medical care, all of these facilities are staffed, in part, by members of the medical profession. In addition, at these facilities patients may be seen by medical staff and provided with medical treatment, including pharmacological treatment. But these similarities do not transform a hospice into a hospital, any more than a nursing home or Group Care Home is a hospital.

⁴ A second definition provided by DHEC, in its Minimum Standards for Licensing Hospitals and Institutional General Infirmaries of hospital is:

General hospital:...a facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for diagnosis, treatment and care of such persons over a period exceeding 24 hours and provides medical and surgical care of acute illness, injury or infirmity and may provide obstetrical care, and in which all diagnosis, treatment or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the state of S.C.

DHEC also provides definitions for specific types of hospitals:

Specialized hospital:...a facility which has an organized medical staff, maintains and operates organized facilities and services to accommodate two or more nonrelated persons for the diagnoses, treatment and/or care of such persons over a period exceeding 24 hours and which provides a specialized service for one type of care, such as tuberculosis, maternity, orthopedics, pediatrics, E.E.N.T., etc. and in which all diagnosis, treatment or care are under the direction of persons currently licensed to practice medicine and surgery in the State of S.C.

Intuitional General Infirmary:...a facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents or inmates with illness, injury or infirmity for a period exceeding 24 hours for the diagnosis, treatment and care of such persons and which provides medical, surgical care and professional medical care, and in which all diagnosis, treatment and

A hospital differs from a hospice, Group Care Home and nursing home in that it alone provides emergency and surgical services and a host of diagnostic services. (R. pp. 133-135; *See generally* Gibbs Aff., Levitt Aff.). In addition, only hospitals treat the general population. Hospitals treat infirm, ill and injured patients. Nursing homes, Group Care Homes and hospices only treat their patients. Thus, the statutory definitions support the analogy of a hospice to a nursing home or Group Care Center as opposed to a hospital.

Accordingly, the Zoning Board's factual finding is supported by the statutory definitions applicable to the various uses considered by the Zoning Board.

D. The Zoning Board's Decision that a Hospice is Similar to a Nursing Home is Supported by Definitions from Other Jurisdictions.

Other governmental bodies, including the federal government, have defined hospice care in a manner similar to the definition utilized by South Carolina. The federal government defines "hospice care" as "a comprehensive set of services described in 1861(dd)(1) of the [Social Security] Act, identified and coordinated by an interdisciplinary group to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care." 48 C.F.R. § 481.3. The State of Georgia defines "Hospice" as:

... a public agency or private organization or unit of either providing to persons terminally ill and to their families . . .

care are performed under the direction of persons currently licensed to practice medicine and surgery in the state of S.C.

Chronic Hospital:...a facility which has an organized medical staff and provides skilled nursing and other services in facilities designed and equipped for diagnosis and treatment over a period exceeding 24 hours of two or more nonrelated persons who have chronic diseases. This includes a minimum, diagnostic, x-ray services, minor surgery, clinical laboratory and rehabilitation services if the licensee does not already operate these services in a physically attached facility.

a centrally administered and autonomous continuum of palliative and supportive care, directed and coordinated by the hospice care team primarily in the patient's home but also on an outpatient and short-term inpatient basis and which is classified as hospice by the department. In addition, such public agency or private organization or unit of either may also provide palliative care to persons with advanced and progressive diseases and to their families, directed and coordinated by the hospice care team.

O.C.G.A. 31-7-172(5). Both of these definitions accord with South Carolina's definition of hospice and focus on providing interdisciplinary care for the terminally ill and his or her family members.

Various dictionaries also provide definitions for "hospice" which accord with South Carolina's definition of hospice care. Merriam-Webster defines hospice as "a facility or program designed to provide a caring environment for meeting the physical and emotional needs of the terminally ill." See <<http://www.merriam-webster.com/dictionary/hospice>>. Oxford Dictionaries defines hospice as "a home providing care for the sick, especially the terminally ill." <http://oxforddictionaries.com/us/definition/american_english/hospice>. Cambridge Dictionary defines hospice as "a place or an organization that provides care for people who are dying." <<http://dictionary.cambridge.org/us/dictionary/american-english/hospice?q=hospice>>.

American Heritage Dictionary defines hospice as "a program that provides palliative care and attends to the emotional and spiritual needs of terminally ill patients at an inpatient facility or at the patient's home." <http://www.ahdictionary.com/word/search.html?q=hospice>.

Significantly, none of these dictionaries define "hospice" by reference to a "hospital." Instead, almost universally, the dictionary definitions focus on the provision

of care for the emotional and physical needs of the terminally ill.

E. The South Carolina Department of Health and Environmental Control Determined that the Zoning of the Hospice was Appropriate

Mercy Hospice presented evidence establishing that DHEC determined that the CFA zone is appropriate for Mercy Hospice. (R. p. 133, ¶ 6). Mercy Hospice introduced an affidavit from Dennis L. Gibbs, the Bureau Chief for the Bureau of Health Facilities Regulation at DHEC. *Id.* Mr. Gibbs is familiar with the licensing standards for hospice facilities, nursing homes and hospitals. *Id.* As part of the review of Mercy Hospice's application for a Certificate of Need, DHEC was required to make a determination that Horry County's zoning was appropriate for the facility. (R. p. 133, ¶6) S.C. Code Ann. Reg. 61-15 § 802(26). In issuing the Certificate of Need, DHEC must make a finding that the proposed site complies with the local zoning regulations. *Id.* Accordingly, in issuing the Certificate of Need, DHEC determined that the CFA zone is appropriate for Mercy Hospice. (R. p. 183; *See* Certificate of Need, dated March 23, 2012, stating "This Certificate is being issued in accordance with the Code of Laws of South Carolina").

Further, the regulatory and statutory scheme adopted by South Carolina is further evidence that South Carolina considers a hospice a distinct medical facility from a hospital. DHEC licenses, regulates and oversees the design and construction of medical facilities. "Each type of medical facility that DHEC licenses and regulates in [South Carolina] (that must apply for a Certificate of Need) has its own specific rules and regulations." (R. p. 140). Regulation Number 61-78 Standards for Licensing Hospices" is issued by DHEC specifically for hospice licensure. Conversely, hospitals must be licensed according to Regulation Number 61-66. Mercy Hospice applied for and obtained a Certificate of Need pursuant to the former regulation – Regulation 61-78 – for

hospice licensure. (R. p. 183).

In sum, South Carolina adopted a regulatory scheme that provides for the licensing of hospices as distinct from hospitals. DHEC issued a license for Mercy Hospice pursuant to this statutory scheme confirming that Mercy Hospice is indeed a hospice. (R. p. 133).

F. The Lower Court Erroneously Failed to Consider the Evidence That The North American Industry Classification System Classifies Hospices as a Nursing Facilities

It is unrefuted in the record that the North American Industry Classification System (NAICS) considers a “hospice” a “nursing care facility.” (R. p. 147). The NAICS⁵, which was developed under the auspices of the Office of Management and Budget to classify business establishments, classifies a hospice as a nursing care facility (“[s]killed nursing facilities”). Nursing care facilities are classified as NAICS code 623110. <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=623110&search=2012> NAICS Search. The hospice facilities code is also 623110. *Id.* The NAICS code description for nursing care facilities, also known as skilled nursing facilities, is as follows:

This industry comprises establishments primarily engaged in providing inpatient nursing and rehabilitative services. The care is generally provided for an extended period of time to individuals requiring nursing care. These establishments have a permanent core staff of registered or licensed nurses who, along with other staff, provide nursing

⁵ NAICS “was developed as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. Use of the standard provides uniformity and comparability in the presentation of these statistical data. NAICS is based on a production-oriented concept, meaning that it groups establishments into industries according to similarity in the processes used to produce goods or services....” <http://www.census.gov/eos/www/naics/faqs/faqs.html#q1>

and continuous personal care services.

(R. p. 147).

Significantly, NAICS specifically includes “inpatient care hospices” as an illustrative example of a nursing care facility. (R. p. 147). Also of significance, the NAICS codes for General Medical and Surgical Hospitals (622110), Psychiatric and Substance Abuse Hospitals (622210) do not reference hospice at all. Thus, utilizing these codes, federal statistical agencies classify inpatient hospices as nursing homes as opposed to hospitals. Accordingly, the evidence establishes that the NAICS considers hospices to be part of a separate industry from hospitals.

II. BY SUBSTITUTING ITS OWN JUDGMENT FOR THAT OF THE ZONING BOARD, THE COURT FAILED TO TREAT THE ZONING BOARD’S DECISION AS A FINDING OF FACT BY A JURY

“The findings of fact by the board of [zoning] appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” *Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 62, 737 S.E.2d 863, 866 (S.C. App. 2013) citing S.C. Code Ann. §6-29-840(A) (Supp. 2012). “In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing.” S.C. Code Ann. §6-29-840(A) (Supp. 2012). *Id.*

In this case, the lower court improperly disregarded the findings of fact by the Zoning Board and considered additional evidence not before it in violation of the S.C. Code Ann. §6-29-840(A) (Supp. 2012). The lower court improperly determined that whether a hospice is a permitted use is an issue of law as opposed to an issue of fact. As stated above, whether a given use is permitted is a question of fact.

The lower court improperly considered evidence that was not within the record and that was contrary to the clear record evidence. In its Order, the lower court detailed its opportunity to view the proposed hospice site with counsel, as a result of the Court's request. Based upon its viewing of the proposed site, the lower court stated as follows, in its Order:

. . .the Court would be remiss in failing to comment that while there seems to be an economic development push by County authorities to support the building of this hospice facility, the chosen location is not a good one, completely inconsistent with the current use of that location, which while zoned CFA, is clearly a residential neighborhood. More importantly, the proposed facility's lack direct access to Highway 90 is a significant impediment to the function of the proposed facility. The brick entrance columns and roads within the Wildhorse subdivision are narrow, and there is no plan or consensus to alter them. Lack of Highway 90 access is a substantial infrastructure deficiency that creates a tremendous logistical problem for emergency responders. This is particularly true where multiple infirm residents are intended to live communally, and where the passage of seconds may make the difference in savings lives and property.⁶

(R. pp. 12-17).

Each of the factual findings cited in the above passage from the Order are improper and not supported by the record as demonstrated below:

Court Finding: The Court found that there was an economic development push by Horry County authorities to support the building of Mercy Hospice. (R. pp. 12-17).

Record Evidence: There is no evidence in the record that Horry County is advocating for the building of a hospice. The Horry County Council passed a

⁶ Although the lower court cautioned that these "facts" were technically not an issue on appeal, the lower court's discussion indicates that several improper factual findings were made which likely impacted the Court's review of the record.

resolution in support of the hospice stating that “Horry County Council believes that the project will have no adverse impact on any other facilities and hereby states its support for this project” Horry County Council Resolution, dated September 21, 2010. (R. pp. 190-191). In a “whereas clause,” the resolution references that the wages of the “majority of the staff should be well above the average salaries for both Horry and Marion counties” (R. pp. 190-191). Representative Alan D. Clemmons submitted a letter of support of the project stating that the proposed project would “provide some employment to an area that is in need of jobs.” (R. p. 192). The Horry County Council resolution and letter from Rep. Clemmons merely support the building of the hospice, but cannot be considered an “economic development push.”

Court Finding: The proposed location for Mercy Hospice is a residential neighborhood despite being zoned CFA. (R. pp. 12-17).

Record Evidence: There is no evidence in the record that the neighborhood is a “residential neighborhood.” The neighborhood is a mixed use neighborhood, zoned CFA and the proposed hospice sits on 22 acres of wooded land in a rural setting in that zoning district. (R. pp. 56-60; pg. 204, lines 6-8; p. 268, lines 15-17). CFA Zoning Regulations permit the building of, *inter alia*, railroad depots, motor vehicle service stations, airfields, and office buildings in the district. (R. pp. 328-335).

Court Finding: Mercy Hospice’s proposed location, which lacks direct access to Highway 90 is a substantial infrastructure deficiency that creates a tremendous logistical problem for emergency responders. (R. pp. 12-17).

Record Evidence: The record evidence directly contradicts this statement. Interim Fire Chief Kenneth M. Beans of Horry County Fire Rescue Department stated that there was “no issue with apparatus access or water supply at the Wild Horse subdivision.” Chief Beans referred to the email of Battalion Chief Kenny Todd of Horry County Fire Rescue Department. Chief Todd holds Fire Marshal certification in the state of South Carolina and noted there are “no fire department access issues on the main roadway into Wild Horse subdivision.” (R. pp. 155-156).

Court Finding: Lack of Highway 90 access creates logistical issues for emergency responders where multiple infirm residents are intended to live communally and “where the passage of seconds may make the difference in saving lives.” (R. pp. 12-17).

Record Evidence: As noted directly above, there is no evidence of a logistical problem for emergency responders.

Despite the lower court’s attempt to frame these issues as “not on appeal,” the recitation of these facts, even in *dicta*, demonstrate that the lower court substituted its own judgment for the Zoning Board. Further, the lower court specifically based its Decision⁷ upon its review of the Property in a manner that completely disregarded the factual record and the proper standard of review. The lower court clearly disagreed with the decision made by the Zoning Board; the lower court’s substitution of its own findings of fact is inappropriate and conflicts with the record evidence as to the ability of emergency responders as set forth in the correspondence of the Horry County Fire Department (R. pp. 155-156). Moreover, to the extent that the Court determined that the record before it was insufficiently incomplete, the Court’s only permissible recourse was

⁷ See Footnote 1, *infra*.

to remand for further review. Having failed to apply the appropriate standard of review, the lower court's decision should be reversed and the decision of the Horry County Zoning Board of Appeal's affirmed.

CONCLUSION

For all of the foregoing reasons, Horry County Zoning Board of Appeals respectfully requests that the Court reverse the lower court's decision and reinstate the decision of the Horry County Zoning Board of Appeals.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Emma Ruth Brittain", written over a horizontal line.

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley
Circuit Court Judge

CASE NO. 2012-CP-26-9291

Fayrell Furr and Karole Jensen..... Respondents

vs.

Horry County Zoning Board of Appeals..... Appellant

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court err when it found an inpatient hospice was not allowable in the Commercial Forest Agriculture District (CFA)?
- II. Did the lower court err in finding as a matter of law that an inpatient hospice was not a permitted use in the Commercial Forest Agriculture District?
- III. Did the lower court err in finding as a matter of law that an inpatient hospice is more similar to a hospital than it is to a residential group home or a nursing home?

STATEMENT OF THE CASE

Furr and Jensen filed this action in the Circuit Court appealing the Order of the Horry County Zoning Board of Appeals that a proposed inpatient hospice facility could be built in their residential neighborhood adjacent to their home. (R. p. 7) The Board ruled that the inpatient hospice could be built because it was similar to a nursing home or a permanent residential group home under the County's zoning regulations. (R. p. 8)

Judge Michael Baxley heard this matter on February 28, 2013. He had previously stayed any actions by the County pending his decision in this case. Judge Baxley also visited the site without objection by either party. Thereafter, the Court issued its Order on April 24, 2013 holding as a matter of law that an inpatient hospice facility was not a nursing home or permanent overnight group home by definition and thus could not be built on the subject property. (R. p. 12) This appeal follows.

STATEMENT OF FACTS

This case is before the Court because the Horry County Zoning Board of Appeals has appealed the decision of the circuit court finding as a matter of law that an inpatient hospice was not an allowable use of real property in the Commercial Forest Agricultural

(CFA) Zoning District.¹ The Respondents, Fayrell Furr and Karole Jensen, live at 3740 Indigo Run, Conway, South Carolina, also known as the Wildhorse Subdivision. Mercy Hospice intends to build a 14 bed (and possibly 28 bed) inpatient hospice facility at 3341 Wildhorse Drive, Conway, South Carolina (which is directly adjacent to their property and within the entrance to the Wildhorse Subdivision). Respondents maintained at the appeal hearing before the circuit court judge that it was an error of law for the Zoning Administrator to allow an inpatient hospice facility in the Commercial Forest Agricultural (CFA) Zoning District because it was not a specifically allowed use. As provided by Horry County's Zoning Code, "It is the intent ... that the Commercial Forest and Agricultural Zoning District be reserved and utilized for agricultural, forestry, residential, commercial, social, cultural, recreational and religious uses. Inpatient medical facilities are not within this definition. (See Horry County Code of Ordinances, Appendix B, Section 703.) At the original hearing before the Horry County Zoning Board of Appeals on November 5, 2012, that Board upheld the Zoning Administrator's opinion that an inpatient 14 room hospice facility was not a hospital and was an allowable use. (R. pp. 7-8). See a picture of the hospice facility, R. p. 115, p. 196). Thereafter, Appellants timely filed their appeal pursuant to S.C. Code Ann. § 6-29-830(a) and S.C. Code Ann. § 6-29-825, et. seq. A mediation was held without resolution on February 21, 2013 and a hearing before the trial judge on respondents' appeal was heard on February 28, 2013. The circuit court reversed the Horry County Board of Zoning Appeals and this appeal follows.

¹ Horry County has a countywide zoning map which allows medical facilities in the ME-1 or ME-2 Zoning District. It is undisputed that the area in question is not zoned for inpatient medical facilities.

ARGUMENT

I. Standard of Review

It is well established in this state that the courts have the authority to review decisions of zoning boards. In *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999), the Supreme Court noted that all decisions of municipal zoning boards must not be arbitrary or capricious and must bear a reasonable relationship to a lawful purpose otherwise this court will reverse such a ruling. Further, an appeal to the circuit court is only for a determination of whether the board's decision is correct as a matter of law. Thus a broad and independent review is allowed in the construction of these ordinances. See *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (2000) and *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 464, 602 S.E.2d 76, 78 (S.C. App. 2004). (Since this matter involves an error of law, the “de novo” standard applies). *N. Am. Rescue Prods., Inc. v. Richardson*, 720 S.E.2d 53, 58 (S.C. Ct.App. 2011).

This Court has found in other cases that errors of law mandate reversal of a Zoning Board of Appeals. See *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 455 S.E.2d 171 (1995) (Town building inspector erred as a matter of law by severing ground level from the entire structure during his evaluation); *Vulcan Materials Co. v. Greenville County Board of Appeals*, 342 S.C. 480, 536 S.E.2d 892 (S.C.App. 2000) (Court of Appeals upholds circuit court's reversal of zoning board based on errors of law.).

II. The circuit court was correct as a matter of law in holding that an inpatient hospice facility was not allowable in the CFA Zoning District.

In this case, the Zoning Administrator was called upon to determine whether an inpatient hospice facility was appropriate under certain Horry County Zoning Regulations. Those regulations were incorporated into an order upholding the decision of the Zoning

Administrator that the inpatient hospice facility could be built at 3341 Wildhorse Drive, Conway, SC. Significantly, none of the Horry County zoning regulations in this case define or identify what an inpatient hospice is or whether it is an allowable use in a CFA Zoning District.

The Zoning Board of Appeals found that an inpatient hospice facility was an allowable use and could be constructed in the CFA Zoning District because of the following Horry County zoning regulations:

1. Article IV, Sec. 436.1 defines “permanent overnight resident group care homes” as “a facility or dwelling unit housing persons unrelated by blood or marriage and operating a group family household. A group care home may include half-way houses, recovery homes, and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care.”² (R. p. 8)

2. Article IV, Sec. 447.1 defines a “nursing home” as an “extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.”³ (R. p. 8.)

3. Article VII, Sec. 703 Commercial Forest/Agricultural Section 703.2 states that permanent overnight residential group care homes and nursing homes are allowable. (R. p. 8)

² Obviously a 14-bed inpatient facility with 24/7 care by doctors and nurses for the dying is more than primary health care.

³ Again not applicable for intensive care for those who are close to death. Further, all nursing homes must be licensed as such by the State of South Carolina.

The Zoning Administrator and the Horry County Board of Zoning Appeals found that an inpatient hospice was an allowable use under the CFA and fit within the definition of a permanent overnight resident group care home or a nursing home. This ruling was made despite the fact that neither a nursing home nor a permanent overnight residential group care home defined those terms as being an inpatient hospice facility which is specially defined in the South Carolina Code of Laws.

In fact, the Zoning Administrator and the Horry County Board of Zoning Appeals ignored that Horry County's Zoning map had a hospital district and that the County's own interpretation was in violation of South Carolina statutes which define permanent overnight residential group care homes, nursing homes, hospitals and hospice facilities.

This was a question of law for the Zoning Board of Appeals and not a factual matter since the Zoning Board of Appeals normally considers issues such as whether a variance should be granted for a few feet or whether a person had built in a setback area. The Horry County Board of Zoning Appeals in effect found an inpatient hospice to be within the legal definition of permanent overnight group care home and nursing home. This decision by Appellant was a legal error, especially in light of the South Carolina laws regarding licensure of hospitals and the Hospice Licensure Act.⁴

S.C. Code Ann. § 44-71-20(3) provides:

(3) "Hospice" means a centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through a written agreement. The inpatient services include, but are not limited to, services provided by hospice in a licensed hospice facility.

(4) "Hospice facility" means an institution, place or building in which a licensed hospice provides room, board and appropriate hospice services on a

⁴ The Hospice Licensure Act is found in the same section of the Code as the statutes construing hospitals.

24-hour basis to individuals requiring hospice care pursuant to the orders of a physician.⁵

In the same section of the South Carolina Code, the legislature defined hospital under S.C. Code Ann. § 44-71-30(12) as follows:

(12) "Hospital" means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury or infirmity and may provide obstetrical care and in which all diagnosis, treatment or care is administered by or under the direction of a person currently licensed to practice medicine, surgery or osteopathy.⁶

⁵ Clearly a hospice is a form of hospital. See Regulation 61-16, DHEC, Minimum Standards for Licensing Hospitals and Institutional General Information provides:

1. General Hospital: A "general hospital" is a facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for diagnosis, treatment and care of such persons over a period exceeding 24 hours and provides medical and surgical care of acute illness, injury or infirmity and may provide obstetrical care, and in which all diagnosis, treatment or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the state of S. C.
2. Specialized Hospital: A "Specialized Hospital" is a facility which has an organized medical staff, maintains and operates organized facilities and services to accommodate two or more nonrelated persons for the diagnoses, treatment and/or care of such persons over a period exceeding 24 hours and which provides a specialized service for one type of care, such as tuberculosis, maternity, orthopedics, pediatrics, E.E.N.T., etc. and in which all diagnosis, treatment or care are under the direction of persons currently licensed to practice medicine and surgery in the State of S. C.
3. Institutional General Infirmary: An "institutional general infirmary" is a facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents or inmates with illness, injury or infirmity for a period exceeding 24 hours for the diagnosis, treatment and care of such persons and which provides medical, surgical and professional medical care, and in which all diagnosis, treatment and care are performed under the direction of persons currently licensed to practice medicine and surgery in the State of S.C.
4. Chronic Hospital: A "chronic hospital" is a facility which has an organized medical staff and provides skilled nursing and other services in facilities designed and equipped for diagnosis and treatment over a period exceeding 24 hours of two or more nonrelated persons who have chronic diseases. This includes, as a minimum, diagnostic, x-ray services, minor surgery, clinical laboratory and rehabilitation services if the licensee does not already operate these services in a physically attached facility).

⁶ A hospital does not need an emergency room as the Appellant argues in its brief pursuant to this statute.

The Court in its Order reversing the Board of Zoning Appeals found that the Board of Zoning Appeals was not correct as a matter of law. (R. p. 12) The Court's ruling was based upon the factual record and legal principals and upon South Carolina statutes. The circuit court noted: "...there is no Horry County zoning ordinance that defines the term 'hospice facility' or 'hospice' nor addresses whether it is allowed in a CFA Zoning District." (R. p. 14) Consequently, the Court appropriately looked at the definitions of hospice as defined by the South Carolina General Assembly. Thus, Appellant's argument throughout its brief that the Court inappropriately reversed the Board of Zoning Appeals based on a factual issue is incorrect. The circuit court held as a matter of law that a permanent overnight resident group care home or nursing home was not a hospice based on the statutory definitions.

III. The court was correct in finding that an inpatient hospice facility by definition or function would not be a nursing home or group home.

The Court looked at the definition of permanent overnight resident group care homes as found in Horry County's CFA Zoning District Reg. 703.2. The definition of permanent overnight resident group care home is as follows:

A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A group care home may include half-way houses, recovery homes and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care. (Ord. No. 35-9 § 1, 5-17-94). (R. p. 14)

None of the examples of a group care home meet the definition of an inpatient hospice facility. Obviously, you only get admitted to an inpatient hospice or hospital under doctor's orders, whereas, a permanent overnight resident group care home allows for homes for orphans, foster children and the elderly or battered children and women (no doctor is

required). Accordingly, the court was correct as a matter of law in finding that an inpatient hospice facility was not a permanent overnight resident group care home because it required orders of a physician and 24-hour, 7-day a week (around the clock) care by medical personnel. Obviously, a hospice is not a group home, but an inpatient medical facility to care for dying people.

The Appellant also argued that a hospice was akin to a nursing home. Again, Horry County's ordinances stated as follows in regard to the definition of a nursing home:⁷

An extended or intermediate care facility licensed or approved to provide full time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity are unable to care for themselves. (Ord. No. 35-94, § 1, 5-17-94).

In applying the definitions of the Horry County Zoning Ordinance and in looking at South Carolina's definitions of an inpatient hospice facility in the State statutes, the court was most definitely deciding whether or not the Zoning Board committed an error of law. Neither of the legal definitions of permanent overnight resident group care home or nursing home describes an inpatient hospice. An inpatient hospice facility is very similar to a hospital. It requires doctor's orders to be admitted.⁸ A hospital is not a nursing home by definition. It is a special hospital which provides room, board and appropriate hospice services on a 24-hour basis pursuant to the orders of a doctor. In contrast, a permanent overnight resident group care home does not provide care pursuant to the orders of a physician. Further, an inpatient hospice facility provides supportive and palliative health care to patients, which is more than primary health care. Johns Hopkins University has

⁷ One may go to a nursing home without doctor's orders. However, one may not be admitted to an inpatient hospice facility or hospital without a doctor's order.

⁸ See letters of support for an inpatient hospice facility by Conway Medical Center dated 05/11/2011 and Grand Strand Regional Medical Center dated 05/13/2011.

defined primary health care as “the levels of a health services system that provides entry into the system for all needs and problems, provides person-focused (not disease-oriented) care over time, provides care for all but very uncommon or unusual conditions and coordinates or integrates care, regardless of where the care is delivered and who provides it.” Primary health care is the care a patient first receives when he has contact for the first time with a healthcare facility. In this case, the proposed 14-bed hospice facility would provide 24-hour care by nurses and other staff members, including doctors, for patients at the end of their life and, thus, cannot and is not a primary healthcare facility as the Appellant argues is contained in Article IV, Sec. 436.1 of the CFA Zoning District.

South Carolina’s legislature has specifically defined a group care home in S.C. Code Ann. § 63-1-40. The term “group care home” is defined as follows:

It means a staffed residence with a population fewer than 20 people who are in care apart from their parents or relatives or guardians on a full time basis.

This is what the Horry County Zoning Ordinances envisioned allowing in the CFA District, not a hospice facility (i.e., an inpatient medical facility for the dying) as is contemplated in this case. Further, the South Carolina Children’s Code has regulations that cite group care homes in its definition no less than seven times and never once mention hospice facilities. See S.C. Reg. 24-15, 24-3, 24-17, 24-25, 24-9, 24-7 and 24-19(3).

For this reason, the circuit court was wholly justified in finding as a matter of law that a hospice facility is not defined in the CFA Zoning District and accordingly was not an allowable use especially in light of Horry County’s uniform zoning plan in which there was and is a hospital district for inpatients.⁹

⁹ See Horry County’s uniform zoning ordinance and map and zoning districts ME-1 and ME-2 which specifically allow for hospitals and other inpatient facilities.

IV. The transcript of record of the Horry County Zoning Board of Appeals supports the circuit court's decision.

The Court is directed to the Transcript of Record of November 5, 2012 for support in affirming the circuit court's decision to reverse the Horry County Zoning Board of Appeals. In that hearing, Dr. Preston Stronider was asked to testify. He stated he was the Medical Director of the Conway Hospital (R. p. 237, lines 12-14); that there would be nurses available to assist at this proposed facility because it was an inpatient hospice facility (R. p. 238, lines 14-15); that there would be staff available to assist the patients at the hospice (R. p. 238, lines 16-18); that medical assistants would be on staff (R. p. 238, lines 20-22); that there would actually be the same staffing as there would be in a hospital (R. p. 238, lines 23-25); that doctors would be making rounds (R. p. 239, lines 1-5); that there would be medical staff on a 24/7 basis (R. p. 239, lines 7-12).¹⁰

This testimony by this physician clearly establishes that the Horry County Zoning Board of Appeals and the Zoning Administrator erred as a matter of law in finding that an inpatient hospice facility was similar to a permanent overnight resident group care home. In fact, it is a hospital and had none of the characteristics of either a nursing home or overnight resident group care home.

V. Other zoning ordinances in this state define an inpatient hospice as a hospital.

At the hearing before the circuit court judge, the Respondents cited County of Charleston Zoning and Land Development Regulations, Chapter 12/Definitions/Article 12.1

¹⁰ Respondents submit that the doctor was talking about a hospital or a hospice when he described the workings of a hospice.

Terms and Uses Defined, in which “Hospital” is defined to include general hospitals, specialized hospitals, chronic hospitals, psychiatric and substance abuse hospitals or **hospices** (Chapter 12, page 18).¹¹

It should also be noted that the Horry County Zoning Regulations do not define hospice. Further, Mercy Care’s Certificate of Need Application for the proposed inpatient hospice it planned had as its stated intent to build a facility to service “patients with two weeks or less to live are admitted to maintain the highest level of comfort and pain management as possible.” Obviously providing comfort and pain management is not and cannot be part of a permanent resident group home nor is it available at a nursing home. Therefore, Mercy Care has proposed to build a special type of inpatient facility. Patients will require complex round-the-clock care including narcotic drug therapy and will receive intensive inpatient care for the end of their life. All of this cannot be accomplished in the patient’s home or in other facilities other than a hospital because of the specialized care needed. Further, Mercy Hospice admits that close supervision and monitoring will be necessary and nurses and doctors will be on staff 24 hours a day, seven days a week and check frequently on their patients. Treatment typically will include changes in medication, intravenous fluids or medicines, complex wound care or other complicated medical tasks all of which make the inpatient hospice facility similar to a hospital. (If a hospice is not a hospital, it is a first cousin).

It should also be noted that the Transcript of Record of the Board of Zoning Appeal reveals that the medical and community leader statements and the Certificate of Need Application support the proposition that an inpatient hospice facility is a very specialized medical facility. Community medical leaders are quoted as saying “a hospice will benefit

¹¹ This definition is in accord with the statutory definitions of hospital and hospice.

patients who may be in the hospital and unable to go home.” (R. pp. 193, 194, 195 and the Certificate of Need, R. p. 183).

This evidence, along with South Carolina regulations requiring that patients who are admitted to a hospice must be under the direction of a licensed physician, required the court to hold as a matter of law that a hospice was similar to a hospital and not a nursing home or permanent resident group overnight home. See S.C. Code Reg. § 61-78.801 which provides “treatment that embraces comfort and improves the quality of an individual’s life during the last phases of life”. Further, Mercy Care’s own brochures state “the goal of palliative care is to help ease the patient’s pain and distressing symptoms that may arise from any current curative treatments. The palliative care team works with the primary health care provider in determining the best medical plan of care while managing the pain and other symptoms that can nag at a quality of life such as pain, trouble sleeping, nausea, vomiting, constipation and the loss of appetite. See www.mercyhospice.org/mercy-care-services.cfm?page=12.

VI. Other courts are in accord with the circuit court judge’s ruling in this case.

While it is true that no South Carolina cases are available regarding the definition of a nursing home or hospital in the context of a zoning ordinance, other states around the country have had the opportunity to consider this issue. The Court’s attention is directed to the following cases:

1. *Frax Realty Co. v. Kleinert*, 123 Misc. 455, 205 NYS 728 (1924) (“home for aged” is place where persons of advanced age go to live and is not a hospital within zoning resolution, prohibiting garages for more than five cars within 200 feet of charitable hospital, ordinary meaning of hospital being an institution to provide a place to which people report for medical or surgical treatment.

2. *Hispanic Counseling Center Inc. v. Village of Hempstead*, 237 F.Supp. 2d 284, (EDNY 2002) (village code prevented clinic and substance abuse treatment centers from relocating to village's residential area when code specifically permitted in those areas only hospitals, sanatoriums, clubs or lodges except when conducted as a business that authorizes a special exception and thus did not include clinic or substance abuse treatment as a permitted use.

3. *Marino v. Town of Smithtown*, 61 A.D.3d 761, 877, N.Y.S.2d 183 (2d Dept 2009) (town zoning board of appeals rationally concluded that in-home hospice and rehabilitation center for approximately 200 terminally ill and disabled animals did not constitute customary, accessory use of premises or lawful preexisting nonconforming use, board relied in part on table of use regulations in town's zoning code, which expressly recited that animals, hospitals, veterinarians, and kennels were not permitted in residential zone and that any land use not listed or used in table was not permitted in any district.)

4. *Scerbo v. Orange Board of Adjustment*, 121 N.J. Super 378, 297 A.2d 207 (LawDiv. 1972) (residential narcotic rehabilitation and treatment center under supervision of Commissioner of Health was hospital and qualified as institutional use under local zoning ordinance.

5. *Diversified Health Associated Inc. v. Norristown Zoning Hearing Board*, 781 A.2d 244 (Pa. Commonw. Ct. 2001) (proposed substance abuse treatment center was a hospital within meaning of zoning ordinances stating that a hospital was "a place for the diagnosis, treatment or other care of humans including such establishments as a sanitarium."

6. *Collis v. Wiles-Barre Zoning Hearing Board*, 465 A.2d 53 77 Pa. Commonw. 4. (1983) (term hospital for zoning purposes, includes facility for treatment of any illness, whether etiology is physical or mental.)

7. *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 590 A.2d 65 139 Pa. Commonw. 206 (1991) (skilled care facility was hospital or sanatorium and not group home within meaning of township zoning ordinance that permitted hospitals or sanitariums within residential district when authorized by special exception.)

8. *Friedlander v. Sayre Borough Zoning Hearing Board*, 119 PA Commonw. 164, 546 A.2d 755 (1988) (hospital offices constituted hospitals for zoning purposes since hospital offices are just as much a hospital as patient room).

9. *State ex. Rel. Lyon v. Snohomish County Board of Adjust.*, 9 Wash. App. 446, 512 P.2d 1114 (1973) (proposed alcoholic recovery rehabilitation intermediate care center was a hospital because patients were there either by court order or by order of physician, were supervised 24 hours a day and were treated for observation, detoxification, intensive care and outpatient therapy).

10. *City of Wilmington v. Turk*, 14 Del. CH 392, 129 A. 512 (1925) (residents were trained nurses who treated private patients for diseased tonsils and maternity cases with a room fitted for minor operations was held to be a hospital within the zoning ordinances.

11. *People ex rel. D'Iorio v. Alfa Realty Co.*, 69 Misc. 2d 475, 479-80, 330 N.Y.S.2d 403, 407-08 (N.Y. City Ct. 1972) (words "general hospital" as used in zoning ordinance included and embodied all accessory uses customary and appurtenant to general

hospital such as outpatient clinics; "clinics" were thus permissible in any district in which hospitals were permitted; center where drug addicts were examined and daily given doses of methadone was "clinic" carrying on "hospital" operation, which was not permissible in B-3 zone in city; *Black's Law Dictionary* (1951 Fourth Edition, Page 871) defines 'Hospital' as an 'Institution for the reception and care of sick, wounded, infirm, or aged persons * * * also the building used for such purpose.' *Webster's Third New International Dictionary of the English Language Unabridged*, defines 'Clinic' as: '1. An institution connected with a hospital * * * where diagnosis and treatment are made available to out-patients.' The preamble to the agreement between the Mount Vernon Hospital and the County of Westchester refers to the 14 East Prospect Avenue operation as an 'experimental pilot Clinic.' (Emphasis the Court's). The fact is, and this Court takes judicial notice of such fact, that drug addicts are sick or infirm persons.");¹²

12. *Mercy Hosp. v. Hempstead Bd. of Zoning Appeals*, 127 A.D.2d 659, 660, 511 N.Y.S.2d 886, 887 (2d Dept 1987) (hospital's proposed use of building for purpose of providing outpatient medical services and programs for treatment of mentally disabled patients fell under category of "hospital" eligible for issuance of special-use permit under town building zone ordinance; a "hospital" under section of ordinance was defined as any lawful "hospital" under Public Health Law article, and proposed facility was within statutory definition; "The term 'hospital' under Public Health Law article 28 includes a much broader range of institutions, providing more limited services, such as nursing homes, diagnostic centers, treatment centers, and out-patient departments (Public Health Law § 2801[1]).

¹² Respondents suggest the Court take judicial notice that hospice patients are sick and should only be treated in a hospice or hospital under physician supervision.

Since the petitioner's proposed facility in effect, would be an out-patient department, it fell under this definition of 'hospital.')

In summary, Courts around the country have been asked as a matter of law to define hospice, hospital, nursing home and permanent overnight group residential home. This circuit judge did nothing different than what has been done by other judges around the country. He reviewed the South Carolina Code for their legal definitions. Appellant's assertion that this is a factual matter akin to a jury decision is not correct. The question in this case is one of law which this court has said the circuit courts of this state are authorized to hear and correct if necessary. Issues of credibility, believability of witnesses and other factual disputes about setbacks including variances are clearly factual issues. The issue of whether or not an inpatient hospice facility is an allowed use under a zoning regulation which does not define hospice is a legal question which requires review of S.C. Code § 44-71-20(3). Thus, the circuit court correctly found as a matter of law that "a hospice facility cannot be properly analogized as either 'a permanent overnight resident group care home' or a 'nursing home'. The court further noted "specifically the sophistication and level of care including the providing of primary medical care if needed required in a hospice facility is greater than that of both permanent overnight resident group care home and nursing home." (R. p. 15)

VII. The Horry County zoning ordinances must define allowable uses.

Appellant argues that the zoning ordinance in this case should be upheld even though the term hospice is not found in the CFA zoning regulation. Respondents reply that Horry County has a unified zoning map and that there is a hospital zoning district (ME1 and ME2) in which a hospice could be built. Further, a hospice is not an unusual type of

healthcare facility and those inpatient facilities have been built around the country. Here, Appellant's interpretation of its own zoning laws is not only irrational but arbitrary. This case presents a pure legal interpretation of the term hospice, nursing home and permanent resident overnight group home. It is wholly arbitrary and unreasonable to find as a matter of law that inpatient hospice facility is encompassed within overnight residential group home and nursing home. Respondents also report that Horry County had established in its zoning laws specific zoning for inpatient medical services (See § 740 Inpatient Medical Services District (ME1)). It is not disputed that the proposed hospice facility is not within the boundaries of the Inpatient Medical Services District. Further, §740 provides, "uses in this district are generally concentrated into a single area...." Also § 741, Outpatient Medical Services District (ME2) which allows for "other facilities of similar nature as might be required to serve a growing population. These uses can have substantial negative impact on adjacent developments and are often considered noxious uses, ... to avoid possible negative impact upon adjacent development, these uses are not allowed to locate directly adjacent to existing residential development." Respondents suggest that an inpatient hospice facility adjacent to a residential subdivision would have a similar negative impact. In this case, a 14-bed hospice facility would be built directly adjacent to Furr and Jensen's home in a residential neighborhood. One can only imagine the traffic at all hours of the night, ambulances rushing by, funeral cars parked outside and people walking around outside grieving their friends and relatives.

Further, the plain and unambiguous language of the zoning ordinance defines permanent group resident overnight group home and nursing home and those definitions in and of themselves exclude inpatient hospice facilities which requires a physician's orders to

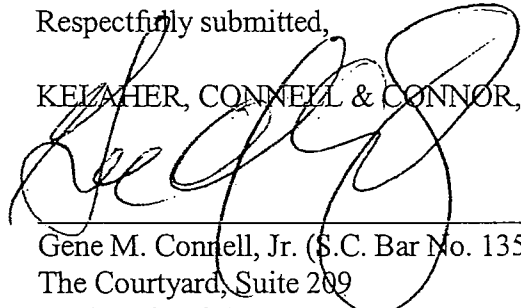
be admitted under South Carolina's statutory scheme. For that reason alone, the court correctly found that an inpatient hospice facility could not be built in the Wildhorse subdivision.

CONCLUSION

Accordingly, Respondents request this Court affirm the Circuit Court.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Gene M. Connell, Jr., is written over the printed name and firm name.

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January 15, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley
Circuit Court Judge

CASE NO. 2012-CP-26-9291

Fayrell Furr and Karole Jensen..... Respondents

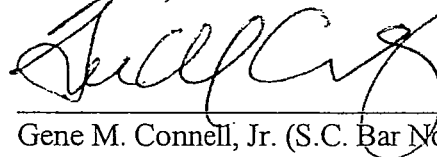
vs.

Horry County Zoning Board of Appeals..... Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCACR.

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v.

Horry County Zoning Board of Appeals..... Appellant

REPLY BRIEF OF APPELLANT

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APPEALS**

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN DETERMINING THAT WHETHER A HOSPICE WAS A PERMITTED USE IN THE CFA DISTRICT WAS A MATTER OF LAW?
- II. DOES RESPONDENTS' ARGUMENT IGNORE THE EXTENSIVE FACTUAL RECORD, WHICH DEMONSTRATES THAT THE ZONING BOARD PROPERLY DETERMINED THAT A HOSPICE IS A PERMITTED USE IN THE CFA DISTRICT?

ARGUMENT

The Appellant Horry County Zoning Board of Appeals (the “Zoning Board”) hereby replies to the brief of the Respondents Fayrell Furr and Karole Jensen (the “Respondents”).

I. THE LOWER COURT ERRED IN DETERMINING THAT WHETHER A HOSPICE WAS A PERMITTED USE IN THE CFA DISTRICT WAS A MATTER OF LAW

Based upon extensive evidence, the Horry County Zoning Board of Appeals (the “Zoning Board”) determined that a hospice is a permitted use in the Commercial Forest Agriculture District (the “CFA District”). The Zoning Board’s determination is a finding of fact that is entitled to be treated in the same manner as a finding of fact by a jury. The lower court erred by not deferring to the Zoning Board’s finding of fact. Respondents argue that the lower court’s Order¹ should be affirmed because the question before the Zoning Board was a “question of law and not a factual matter.” Respondents, however, argue only in conclusory terms that the Zoning Board’s determination was erroneous as a matter of law and fail to cite any binding legal authority for that principal. Instead, Respondents cite a bevy of cases from other jurisdictions without explaining the relevance of these cases to the instant appeal. Perhaps recognizing the dearth of supporting caselaw for its position and in an apparent concession that whether a hospice is a permitted use in the CFA District is a matter of fact, Respondents utilize the vast majority of their brief to extensively argue the facts of this matter. Respondents, however, rarely cite the record for the broad generalizations of fact contained within their brief. Significantly, this is not a case where Respondents merely omitted to cite the

¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Initial Brief.

record to support their factual statements. Instead, Respondents are unable to cite the record for their “facts” because the record simply does not contain evidentiary support for Respondents alleged “facts.” Accordingly, the Court should reverse the lower court and reinstate the decision of the Zoning Board.

II. RESPONDENTS’ ARGUMENT IGNORES THE EXTENSIVE FACTUAL RECORD, WHICH DEMONSTRATES THAT THE ZONING BOARD PROPERLY DETERMINED THAT A HOSPICE IS A PERMITTED USE IN THE CFA DISTRICT.

A. A Hospital is Not a Hospice

Although throughout their brief, Respondents consistently equate hospices and hospitals, there is no evidence that hospices and hospitals are one and the same. Respondents cite to a single physician’s testimony to support the proposition that the testimony supports a finding that a hospice is a hospital. Citing the testimony of Preston Strosnider, M.D., Respondents argue the hospice is a hospital. Significantly, however, Dr. Strosnider testified to the opposite conclusion. Dr. Strosnider was specifically questioned by the Zoning Board as to whether a hospice is a nursing home or a hospital. He unequivocally responded:

It’s definitely not a hospital.

(R. 237, line 18; (emphasis added).

Moreover, extensive evidence was considered by the Zoning Board. The transcript of the testimony before the Zoning Board spanned seventy pages. Over one hundred and fifty exhibits were presented to the Zoning Board regarding the zoning of the proposed hospice. Despite the vast evidence presented to the Zoning Board, Respondents are unable to cite a single piece of evidence to support their theory that a hospice is a hospital. The reason they are unable to do so is simple – a hospice is not a

hospital. *See* Initial Brief, pg. 12 – 24.

Just as Respondents are unable to point to any evidence that would allow a finding that a hospice is a hospital, Respondents are unable to point to any evidence to support their statement that treatment at a hospice is similar to treatment that occurs at a hospital. In fact, the overwhelming majority of the testimony before the Zoning Board establishes that the purpose of and care provided at a hospice is of a markedly different nature than that of the treatment and care provided at a hospital. (Initial Brief, pg. 12-13). The evidence speaks for itself: a hospice is not a hospital and the treatments provided at hospices and hospitals are distinct.

B. Hospices and Hospitals are Subject to Different Licensing Standards

In arguing that a hospice is a hospital, Respondents ignore the relevant regulations and fail to recognize the nature and content of the applicable statutes. For instance, Respondents argue that the decision was legal error “in light of the South Carolina law regarding licensure of hospitals and the Hospice Licensure Act.” Respondents direct the Court to the regulation regarding licensing of hospitals to further their argument that a hospice is a “form of hospital.” (Respondents Brief, pg. 5, fn. 5.) Pursuant to the promulgated regulations in South Carolina for hospices and hospitals, however, the licensing standards for hospices and the licensing standards for hospitals are separate and distinct.

Regulation Number 61-78, Standards for Licensing Hospices, promulgated by the South Carolina Board of Health and Environmental Control (“DHEC”), governs the standards for licensing hospices. The Standards for Licensing Hospices is promulgated pursuant to South Carolina Code Ann. 44-71-10 *et. seq.* (the “Hospice Licensure Act”).

Regulation Number 61-16 Minimum Standards for Licensing Hospitals and General Infirmaries, promulgated by DHEC, governs the standards for licensing hospitals. Pursuant to these regulations, an individual or entity intending to operate a hospice is guided exclusively by the Hospice Licensure Act and Standards for Licensing Hospices; significantly, an entity or individual intending to operate a hospital must consult the more comprehensive Minimum Standards for Licensing Hospitals and General Infirmaries. Respondents' attempt to combine these separate regulations is as transparent as their attempt to combine hospices and hospitals. Respondents' argument that a hospice is a hospital must fail because the governing licensing standards do not support Respondents' position.

C. The Fact that a Doctor's Authorization is Required for Admission to a Hospice Does Not Transform a Hospice into a Hospital

In yet another effort to transform a hospice into a hospital, Respondents contend that a hospice is a hospital based on the fact that a physician's orders are required to be admitted to a hospice. Physician's orders, however, are required for many things that may occur outside of the premises of a hospital. For example, a physician's orders may be required: (i) for laboratory tests such as magnetic resonance imaging, blood work or a sleep studies, (ii) for treatment of various medical conditions utilizing therapies such as chemotherapy and dialysis, (iii) to obtain a prescription medication from a pharmacy, or (iv) to see a specialist in a certain medical area. The presence of a doctor's prescription, referral or "order" for tests, procedures, treatments or medication does not transform a laboratory or other medical facility where patients are seen by medical personnel into a hospital. The nature of the practice of medicine involves many discrete events that require an order or prescription or authorization; however, the requirement of a

physician's "order" clearly does not transform all facilities that require doctor authorization into hospitals. Accordingly, Respondents' position that the factual requirement of a doctor's order for admission to a hospice transfers a hospice facility into a hospital is without merit.

D. The Hospice is Not Required to Be Located in Inpatient Medical Services District

Contrary to Respondents' argument, the Horry County Code of Ordinances does not require a hospice (or any medical facility for that matter) to be located in an area zoned as inpatient medical services district. *See* Horry County Code of Ordinances Art. VII § 740. The inpatient medical services district "is intended to provide opportunities to locate and develop businesses providing services that meet general medical needs (inpatient and outpatient) of the public." *Id.* No language in the Horry County Code of Ordinances limits any and all medical facilities to this zoning district. Indeed, there is no language that restricts all medical facilities to the inpatient medical services district and/or outpatient medical services district. *Id.* §§ 740, 741. If the intent of the zoning scheme was to limit all medical facilities to the medical services districts, the drafters could have so limited the location of medical facilities.

Rather, the zoning scheme specifically allows hospitals, medical offices and nursing homes as permitted uses in several zoning districts other than the medical services districts. Medical clinics or office may be located in areas zoned Office/Professional institutional (713), Highway Commercial District (716), Commercial Educational Institution Office (724(d)), or Traditional Neighborhood. *Id.* §§ 713, 716, 724(d). Nursing homes may be located in districts zoned Commercial Forest Agriculture (703), General Residential (709), Office/Professional Institutional (713) or Commercial

Educational Institution Office (724(d)). *Id.* §§ 703, 709, 713, 724(d). Hospitals may be located in areas zoned Office Professional Institutional (713), Highway Commercial District (716), and Commercial Educational Institutional District (724(d)). *Id.* §§ 713, 716, 724(d). Respondents' argument that the proposed hospice can only be located in the medical services district is not supported by the Horry County Code of Ordinances, which clearly provides that a medical use may be permissible in any of several districts, including the CFA District where the proposed hospice is intended to be built.

E. A Hospice is Not a Noxious Use of the Property

There is no record support for Respondents' statement that a hospice would be a noxious use of the Property. Horry County's Zoning Code specifically provides that certain types of uses are considered noxious. These include "halfway houses, residential treatment centers, outpatient clinics for the treatment of drug and alcohol addiction and other facilities of similar nature." Horry County Code of Ordinances § 741. "These uses can have substantial negative impacts on adjacent developments and are often considered noxious uses." *Id.* There is simply no evidence in the record that a hospice is similar in type to the uses listed in § 741 or that a hospice would have substantial negative impacts on adjacent developments. Respondents suggest – without citation to any factual record evidence – that the effects would include "traffic at all hours of the night, ambulances rushing by, funeral cars parked outside and people walking around outside grieving their friends and relatives." The evidence adduced before the Zoning Board directly contrasts with Respondents' bare unsupported statements.

Mary Jo Faucher, the Mercy Hospice and Palliative Care Executive Director, testified that "patients would be received by private car or by ambulance in non-

emergency transport. There will be no lights or sirens for transport of patients...They don't leave [in emergency transport either]." (R. p. 228, line 15 – p. 229, line 5). Ms. Faucher's testimony is supported by Dennis L. Gibbs, the Bureau Chief for the Bureaus of Health Facilities Regulation at DHEC. The uncontradicted testimony of Bureau Chief Gibbs is that patients typically are transferred to "hospice via private vehicle or via non-emergency medical ground transportation." (R. p. 133, ¶3). Bureau Chief Gibbs further testified that if a patient is transported to hospice by an ambulance, the ambulance does not use sirens or lights during the transport. *Id.*

Mercy Hospice also submitted evidence regarding the anticipated traffic and accessibility for emergency services. Solan Associates, P.C., an engineering, planning and land surveying firm, opined that the Mercy Hospice facility would generate an additional 34 trips in the neighborhood per day. (R. p. 145-146). Notably, this minimal increase in traffic is less than would be generated if the property owned by Mercy Hospice was used to accommodate 24 one-half acre residential lots (another permitted use in the Zoning District). By contrast, it was opined that the accommodation of 24 residential lots would generate 230 trips per day, a significant traffic increase *Id.* Accordingly, Solan Associates, P.C.'s unrebutted finding is that the proposed hospice would have a "minimal impact on traffic in the immediate vicinity" and far less than other likely uses for this same property. *Id.* The record evidence provides no support for Respondents' factual contention that the hospice is a noxious use of the Property.

F. The Proposed Hospice is to Be Built in an Area Zoned Commercial Forest Agriculture, Which Includes Many Allowed Nonresidential Uses

Respondents' consistent referral to the Property at issue as "residential" fails to accurately portray the nature of current and future allowed uses of the Property. The area

is zoned Commercial Forest Agriculture; however no record evidence supports a classification of the Property as merely “residential.” Among the permitted uses specifically allowed in the CFA District are: cemeteries, animal hospitals, office buildings, banks, mobile homes, railroad depots, restaurants, small equipment repair establishments, and retail stores – including grocery stores, pharmacies and ABC stores. (R. pp. 328-335). Conditional uses allowed by the Zoning Code in the CFA District include utility substations, airfields, transmission towers, hardware stores, motor vehicle stations, garages for the repair of motor vehicles, convenience stores, and trade shops. *Id.*

As demonstrated by the list of permissible and conditional uses in this zoning district, the area of the proposed hospice site is not an exclusively residential area, but an area in which many commercial and agricultural uses are allowed, including uses that involve more noise and traffic than a hospice. Respondents’ preference that the area be residential is immaterial. It is undisputed that the area is currently zoned for commercial uses. If Respondents wish to change the zoning code and the zoning of their area, their avenue of change under these circumstances is through the legislative body responsible for its enactment – the Horry County Council. Respondents’ efforts to amend the CFA District through litigation should be denied.

G. The Zoning Board is Vested with the Authority by the State of South Carolina and Horry County to Make Factual Determinations Regarding the Instant Matter

Respondents argue that whether a hospice is a permitted use is a matter of law because the Zoning Boards normally considers “issues such as whether a variance should be granted for a few feet or whether a person had built in a setback area.” (Respondents Brief, pg. 5). Respondents argue that the only “fact” issues that can be decided are “issues of credibility, believability of witnesses and other factual disputes about setbacks

including variances.” (Respondents Brief, pg. 16). Respondents fail to cite legal authority for those propositions nor can they, because the Zoning Board’s duties are not so limited and the Board is empowered to make factual determinations such as in the instant matter. The Horry County Code of Ordinances provides for the broad vestment of power in the Zoning Board. *See, generally*, Horry County Code of Ordinances Art. XIV.

The Horry County Code of Ordinances provide the Zoning Board with broad powers and duties including the following:

- (A) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of this act.
- (B) To hear and decide appeals for variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes [certain enumerated findings]:...
- (C) In granting a variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, general welfare
....
- (D) To hear and decide special exceptions. In addition to definitive standards in this article, the Board of Zoning Appeals shall consider [enumerated criteria]....
- (E) In granting a special exception, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

- (F) To decide on other matters where a decision of the Board of Appeals may be specifically required by the provisions of this ordinance.

Accord S.C. Code Ann. § 6-29-800.

As is readily apparent from the language of the Code of Ordinances, the Zoning Board's authority is not limited to making simple decisions about measurements as Respondents argue. Rather, the Code of Ordinances, coupled with South Carolina statutory and case law, provide that the Zoning Board is an administrative body empowered by the State and County to decide issues related to the County's zoning. Significantly, the Board's factual determinations are entitled to judicial deference. *See e.g., Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 215-216, 516 S.E.2d 442, 446 (S.C. 1999); S.C. Code Ann § 6-29-840.

Respondents' argument for narrow interpretation of the Zoning Board's duties and power would render the Zoning Board functionally powerless, resulting in an increase in challenges to zoning board decisions. Because the Zoning Board acted within the scope of its statutorily defined role in upholding the factual determination of the Zoning Administrator that a hospice was a permitted use within the CFA District the lower court's decision in this matter should be reversed.

H. The South Carolina Code's Statutory Definition of Hospice is the Relevant Definition Applicable to the Instant Action

(i) The Zoning Code and South Carolina Code Provide the Controlling Definitions of Hospice and Hospital

The Horry County Zoning Code endorses reference to the South Carolina statutes to provide meaning for terms not otherwise defined in the Zoning Code. *See* Horry County Code of Ordinances § 1-2. Both "hospice" and "hospice facility" are defined in the South Carolina Code. (See Initial Brief pg. 18). Similarly, the South Carolina Code

defines “hospital.” *Id.* at pg. 20. The definitions of hospice, hospice facility and hospital contained in the South Carolina statutes are the controlling definitions for purposes of this matter. Accordingly, the Zoning Board (and the lower court) appropriately considered these definitions – as Respondents concede in their brief. (See Respondents Brief, pg. 7.)

Respondents, however, are not content to utilize the definitions that are required by statute to be used by the Zoning Board. Instead, Respondents refer this Court to a definition of hospital utilized by Charleston Zoning and Land Development Regulations. The definition of “hospital” contained in the Charleston Zoning and Land Development Regulations is simply immaterial to the instant action. Charleston’s zoning code is of no jurisdictional authority in Horry County; pursuant to Home Rule, this authority is vested in Horry County Council. See S.C. Ann. § 4-9-10 *et seq.* Moreover, the Charleston Code was neither entered into the record evidence nor otherwise made a part of Respondent’s submission to the Zoning Board. Charleston’s definition of hospital is clearly irrelevant to the instant analysis because, pursuant to the terms of Horry County’s Zoning Code, South Carolina statutes provide the relevant definitions of hospital, hospice and hospice facility.

**(ii) Respondents’ Citation to Case Law From Other Jurisdictions
is Neither Relevant to the Instant Action Nor in Accord with
the Lower Court’s Ruling**

While Respondents spend considerable effort listing cases from other jurisdictions as supportive of their position, these cases are cited in cursory fashion by way of a parenthetical as to alleged relevance. While the citation of such cases provides examples of different definitions of hospitals and how other zoning authorities have interpreted their respective zoning codes, they are, for the most part, not of precedential value herein.

The issues before this Court are whether a hospice is a permitted use in the CFA district under the specific provisions of the Horry County Zoning Code and whether the lower court erred in overruling the Zoning Board's finding of fact that a hospice is an allowed use in the CFA District as such District is defined in the Horry County Ordinance.

The decisions cited by Respondents from other jurisdictions are not instructive in the analysis before this Court. (Respondents Brief pg. 12-15). As a general matter, the cases from the other jurisdictions reference zoning codes that are neither before this Court nor included in the record or otherwise provided. Moreover, these decisions are not binding precedent on this Court. Finally, while some of the cases actually appear to support Appellant's position in this matter, the others are readily distinguishable from the instant case.

As an initial matter, Respondents have cited several cases that in fact support Appellant's position in certain aspects. *See e.g., Marino v. Town of Smithtown*, 61 A.D.3d 761, 877, N.Y.S.2d 183 (2d Dep't 2009), *Collis v. Zoning Hearing Bd. of the City of Wilkes-Barre*, 465 A.2d 53 (Pa. Cmwlth.1983), and *Scerbo v. Board of Adjustment of the City of Orange*, 121 N.J. Super. 378 (N.J.Super.L. 1972). In *Marino v. Town of Smithtown*, 61 A.D.3d 761, 877, N.Y.S.2d 183 (2d Dep't 2009), the appellate court held that the trial court "improperly substituted its judgment for that of the Zoning Board." *Id.* The Zoning Board had rationally concluded under the applicable zoning code that an animal hospice had been maintained in violation of a zoning ordinance and the animal hospice did not constitute a "customary accessory use of the premises or a lawful preexisting use" *Id.* In reversing the trial court's order, the appellate court noted that "[l]ocal zoning boards have broad discretion in considering applications for variances and

interpretations of local zoning codes, and the scope of judicial review is limited to whether their action was arbitrary, capricious, illegal or an abuse of discretion.” *Id.* Appellant contends the same deference should be accorded to its decision that the challenged hospice is an allowed use in the instant matter.

In *Scerbo v. Board of Adjustment of the City of Orange*, 121 N.J. Super. 378 (N.J. Super. L. 1972) the court determined that the zoning board had properly granted a special exception and variance to a narcotic and drug abuse rehabilitation and treatment center and that the board’s action was “not arbitrary, capricious or unreasonable or in manifest abuse of its discretionary authority.” *Id.* The Court stated that “public bodies because of their peculiar knowledge of local conditions must be allowed wide latitude in their delegated discretion ... [T]here is attached to a decision of the board a presumption of correctness, fairness and proper motive and the burden of providing otherwise is on the party attacking it.”

In *Collis v. Zoning Hearing Bd of the City of Wilkes-Barre*, 465 A.2d 53 (Pa. Cmwlth. 1983), the zoning board concluded that the intervenors, who sought to use premises previously used as a hospital to treat individuals suffering from mental illness, had requested a continuation of a non-conforming pre-existing use and approved the application. *Id.* The appellants in that case argued that the proposed facility was not a hospital but a separate use – treatment for the mentally disturbed. *Id.* The appellants urged the court to consider two statutory definitions that excluded mental health establishments from the definition of hospitals. *Id.* The court noted that its scope of review was limited to whether the zoning authorities abused their discretion or committed an error of law. *Id.* The court agreed with the zoning board, and construed the term

hospital to include facilities for the treatment of any illness, whether physical or mental. *Id.* See also *State of Washington v. Snohomish County Bd. of Adjustment*, 512 P.2d 1114 (Wash. App. Div. 1 1973) (affirming trial court and zoning board's finding that an alcoholic recovery-rehabilitation-intermediate care center was permitted in a rural use zone for hospitals, sanitariums, rest homes and institutions which provide care for those incapable of independent living and holding that the board had not acted arbitrarily in issuing conditional use permit); *Mercy Hospital v. Bd. of Zoning Appeals of the Town of Hempstead*, 511 N.Y. S.2d 886 (2d Dep't 1987) (noting that the zoning board failed to consider the appropriate statutory definition of hospital and thus finding that the board had acted arbitrarily and contrary to law).

Although the above-referenced cases cited by Respondents support Appellant's position in whole or in part, in general, many of the cited cases do not provide enough detail for this court to consider them of any persuasive value. First, some of the cases cited by Respondents do not enunciate the applicable standard of review, and, as such, do not provide a complete analysis of the issues at bar in the case. See *Frax Realty Co., Inc. v. Kleinert*, 123 Misc. 455 (Kings Sup Ct. Special Term 1924) (not enunciating a standard of review). Second, certain of the cases do not detail the applicable zoning code or the duties and powers of the board of appeals. See e.g., *Frax Realty*, 123 Misc. 455 (Kings Sup Ct. Special Term 1924) (not identifying who is charged with applying or interpreting the ordinance in the first instance, not detailing the zoning ordinance); *Friedlander v. Zoning Hearing Board of Sayer Borough*, 546 A.2d 755 (Pa.Cmwlth 1988) (holding that a hospital offices are part of a hospital, but not defining hospital in the applicable zoning code or otherwise).

Third, some of the actions appear to have been initiated in court without an appeal from a board of appeals. See *Frax Realty*, 123 Misc. 455 (Kings Sup Ct. Special Term 1924) (petition for peremptory mandamus order as opposed to an appeal). *People of the City of Mount Vernon ex rel Anthony C. D'Iorio v. Alfa Realty Co.*, 330 N.Y.S.2d 403 (N.Y. City Ct. 1972) (this case concerned a zoning law prosecution and held that defendants were guilty of operating a methadone treatment in violation of the city's zoning ordinance; the zoning ordinance was attacked in court by defendants as opposed to being challenged before a zoning board of appeals); *Mayor and Council of Wilmington v. Turk*, 129 A. 512 (Del.Ch. 1925) (the court heard an injunction bill to restrain defendant from violating a zoning ordinance and determined factual issues presented to court).

Fourth, at least one of the cases were not properly contested by the party so that the issue was not fully litigated. *Hispanic Counseling Ctr., Inc. v. Incorp. Vill. of Hempstead*, 237 F. Supp.2d 284 (E.D.N.Y. 2002) (defendants failed to present evidence at the preliminary injunction hearing and waived judicial review of the magistrate's decision by failing to timely object). Fifth, at least one case was primarily concerned with the intersection of the zoning ordinance and another body of law as opposed to the interpretation of the zoning ordinance in and of itself. *Hispanic Counseling Ctr., Inc. v. Incorp. Vill. of Hempstead*, 237 F. Supp.2d 284 (E.D.N.Y. 2002) (determining that sections of the zoning code violated the Americans with Disabilities Act).

Sixth, and finally, certain of the cases utilize a standard of review that does not apply in South Carolina. *Diversified Health Assocs, Inc. v Zoning Hearing Bd. of the Borough of Norristown*, 781 A.2d 244 (Pa. Cmwlth. 2001) (holding that "whether a

proposed use ... falls within a given categorization contained in the zoning regulations is a question of law”) (internal citations omitted); *Manor Healthcare Corp. v. Lower Moreland Township Zoning Bd.*, 139 Pa. Cmwlth 206 (Pa. Cmwlth 1991) (same). See *Heilker v. Zoning Bd. Of Appeals for City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct. App. 2001) (a determination by a zoning board that a particular purpose or activity constitutes a use is a finding of fact). Accordingly, the cases Respondents cite from other jurisdictions are not of persuasive value and should be disregarded.

CONCLUSION

For the reasons set forth herein, the Horry County Zoning Board of Appeals respectfully requests that the Court reverse the lower court’s decision and reinstate the decision of the Horry County Zoning Board of Appeals in this matter.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Reply Brief complies with Rule 211(b),
SCACR.

January 16, 2014

A handwritten signature in cursive script that reads "Emma Ruth Brittain". The signature is written in black ink and is positioned above the printed name and address.

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