

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Charleston County
Honorable Kristi L. Harrington, Circuit Court Judge
Civil Action No.: 2016-CP-10-5578
Appellate Case No.: 2018-000511

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SC Court of Appeals

TOWN OF SULLIVAN'S ISLAND,

Respondent,

v.

MICHAEL MURRAY,

Appellant.

**RECORD ON APPEAL
Volume II**

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TOWN OF SULLIVAN'S ISLAND
SOUTH CAROLINA

Ticket No. 5713, Michael Murray

Ticket No. 5714, Jason Thompkins

AUDIO TRANSCRIPTION

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1 JUDGE CORNELLY: All right. So this
2 is -- Mary, you're here representing Jason Thompkins
3 and Eric or Eric --

4 MR. DODDS: Michael.

5 JUDGE CORNELLY: Michael --

6 MR. DODDS: Yes.

7 JUDGE CORNELLY: -- Murray.

8 MS. SHAHID: Eric is his son. The
9 ticket was originally issued to Eric, but it's my
10 understanding that the Town agreed that Mike could
11 assume responsibility for it.

12 MR. DODDS: That's -- that's correct,
13 Your Honor. We didn't correct it, we looked at some
14 permit documents --

15 JUDGE CORNELLY: Okay.

16 MS. SHAHID: -- and incorrectly put
17 Eric down, but it should be Michael.

18 JUDGE CORNELLY: And so it has you -- it
19 has your clients charged with violation of a dock
20 construction permit. Is this -- and it's on the
21 same document, I'm assuming; correct?

22 MS. SHAHID: Correct.

23 JUDGE CORNELLY: Okay.

24 MS. SHAHID: We have the owner and the
25 dock builder.

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1 JUDGE CORNELLY: Okay.

2 MS. SHAHID: Mr. Thompkins is the owner
3 of the property.

4 JUDGE CORNELLY: Okay, wonderful. Thank
5 you. And then I'm assuming at this point you're
6 pleading not guilty --

7 MS. SHAHID: Right.

8 JUDGE CORNELLY: -- to the charges?

9 MS. SHAHID: It actually alleges a
10 violation of a specific ordinance, Your Honor.

11 JUDGE CORNELLY: Okay. And this -- this
12 one has the violation as the -- as the Town Code --
13 it looks like --

14 MS. SHAHID: 21-75.

15 JUDGE CORNELLY: That's right, 21-75
16 violation.

17 MR. HENDERSON: Additionally, it's Code
18 Section -- Chapter of the Town Code of Ordinances,
19 Chapter 5.

20 JUDGE CORNELLY: Subtext 10, 5-10 --

21 MR. HENDERSON: Yes, sir.

22 JUDGE CORNELLY: -- down at the bottom
23 there. Thank you very much. Okay. And you must be
24 Mr. Henderson?

25 MR. HENDERSON: Yes, sir, the zoning

1 administrator.

2 JUDGE CORNELLY: Okay, all right. So
3 are we -- are you ready to go forward?

4 MS. SHAHID: Well, the case was
5 originally set in -- in July, and I filed a motion
6 to dismiss. And they haven't presented before the
7 Court before today. And I believe we were here to
8 argue that motion. We may be here for the entire
9 proceeding, which is fine with me, too.

10 JUDGE CORNELLY: I got a call this
11 morning about 9:00 from Judge Duffy saying, "Can you
12 cover for me?"

13 MS. SHAHID: Yeah, yeah.

14 JUDGE CORNELLY: So I wasn't aware of
15 anything. But is the Town ready to proceed on
16 the -- to argue the motion, first and foremost?

17 MR. DODDS: Well, we're prepared to go
18 forward on the case, Judge.

19 JUDGE CORNELLY: Okay. But if she wants
20 to argue the motion, if she has a motion she wants
21 to argue, I mean, she certainly can argue that.

22 MR. DODDS: Well, but -- but --

23 JUDGE CORNELLY: Her motion would be
24 dispositive of the charges.

25 MR. DODDS: Her motion has various and

1 sundry exhibits, Your Honor, that, you know, I
2 don't -- I don't have an objection with if she
3 doesn't have an objection with regard to our
4 exhibits.

5 JUDGE CORNELLY: Okay.

6 MR. DODDS: So, you know, I mean --

7 JUDGE CORNELLY: Well, do you guys have
8 that part of it worked out, sir?

9 MR. DODDS: I don't know. We really
10 haven't discussed it.

11 JUDGE CORNELLY: Do you want a minute to
12 discuss it?

13 MS. SHAHID: I don't -- I mean, I think
14 I've seen everything he's got.

15 MR. DODDS: You've seen --

16 MS. SHAHID: Yeah.

17 MR. DODDS: -- we have the accessory
18 structures permit, the building permit
19 application --

20 MS. SHAHID: Yeah.

21 MR. DODDS: -- and you've seen that.
22 Of course, this was submitted by your client.

23 JUDGE CORNELLY: Take your time. I'm
24 going to sign off on these cases while you're
25 looking at it.

1 MR. DODDS: These are our pictures, and
2 an extra copy if you'd like. This is e-mail
3 correspondence with Ross Nelson, an extra copy of
4 that if you'd like.

5 MS. SHAHID: Can I see that?

6 MR. DODDS: Sure.

7 MS. SHAHID: Because I have not seen
8 that one.

9 MR. DODDS: And I'll give this back to
10 you -- just a minute -- let's see --

11 JUDGE CORNELLY: Ms. Shahid, if you need
12 some time to review these, I'm happy to do it. Or
13 if you need, you know, a continuance, I'm happy to
14 listen to that.

15 MS. SHAHID: No, I'm good, Your Honor.
16 It was continued after we made our motion and -- I
17 mean, I'm good to argue the motion and good to
18 proceed with testimony, if that's appropriate. I
19 just -- I got stuck in Litchfield, Your Honor, I had
20 to have my files scanned to me. I couldn't get
21 downtown and I don't have copies, but everything I'm
22 using was attached to the motion.

23 JUDGE CORNELLY: Okay. And you filed
24 the motion -- I haven't seen it. Do you want me to
25 review the motion before you --

1 MS. SHAHID: Well, we'll argue it. I
2 honestly feel like -- that -- that some ruling is
3 warranted on the motion before we proceed with an
4 actual hearing.

5 JUDGE CORNELLY: Okay.

6 MS. SHAHID: I mean, it --

7 JUDGE CORNELLY: Okay.

8 MR. DODDS: I'm prepared to hear the
9 motion, Judge.

10 JUDGE CORNELLY: Sure, okay. Well, see
11 you're -- since you're the moving party -- but just
12 so we're clear on this thing, so it's Michael Murray
13 and Jason Thompkins. Michael Murray is the dock
14 builder and Jason Thompkins is the homeowner. And
15 the allegations are that there was a dock
16 construction violation under 21-75 and also under
17 Town Code 5-10. So your clients understand what
18 they're charged with --

19 MR. DODDS: What they're charged with.

20 JUDGE CORNELLY: Okay. And you're ready
21 to proceed today?

22 MS. SHAHID: Yes.

23 JUDGE CORNELLY: Okay. And you
24 previously filed a motion to dismiss these tickets
25 for some sort of violation or it doesn't fit the

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1 statute, or whatever it is. Okay. And you have a
2 copy of the motion today or you don't have a copy of
3 it?

4 MS. SHAHID: I do, I do.

5 JUDGE CORNELLY: Okay. Well, you can
6 just go ahead and argue and tell me what it is, and
7 I'll be glad to listen. And then, of course, you
8 know, I'm glad to hear from Mr. Dodds. And then --

9 MS. SHAHID: Right.

10 JUDGE CORNELLY: -- we can go into the
11 actual charges if we need to.

12 MR. DODDS: So, Judge, are the exhibits
13 admitted as evidence for purposes of the motion?

14 JUDGE CORNELLY: If that's what you
15 asked. Nobody's indicated that to me but, yeah, if
16 that's what they note.

17 MS. SHAHID: Yeah, I don't have an
18 objection.

19 JUDGE CORNELLY: That's fine.

20 MR. DODDS: I just -- just want to --

21 JUDGE CORNELLY: Yeah, sure. But go
22 ahead whenever you're ready.

23 MS. SHAHID: Okay. Well, the -- the
24 allegation is that -- well, let me give you a little
25 background.

1 JUDGE CORNELLY: Okay.

2 MS. SHAHID: The property, which is
3 located on Osceola, 1102 Osceola, is owned by an
4 entity, CMB Beach House. Mr. Thompkins is a member
5 of CMB Beach House. Mr. Murray is the owner of
6 American Dock and Marine, a very reputable marine
7 contractor who -- with licenses, who's been in
8 businesses -- business for many years and built many
9 docks on Isle of Palms and Sullivan's. And the dock
10 was completed in January of 2015; commenced in July
11 of 2014, completed in '15. The actual ticket in
12 this matter was issued in June of '16, so almost
13 eighteen months after the dock's been completed. So
14 it's been out there -- at this point the dock's been
15 out there coming up on, you know, two years -- a
16 year and a half, two years. The OCRM permit was
17 issued for the dock in May '14.

18 JUDGE CORNELLY: Okay.

19 MS. SHAHID: So --

20 JUDGE CORNELLY: Who issued the permit?

21 MS. SHAHID: DHEC.

22 JUDGE CORNELLY: Okay.

23 MS. SHAHID: Office of Ocean and Coastal
24 Resource Management.

25 JUDGE CORNELLY: Okay.

1 MS. SHAHID: The state agency issued
2 the permit in May of '14.

3 JUDGE CORNELLY: Okay.

4 MS. SHAHID: So this relates to -- the
5 ordinance that we've been alleged to violate is
6 25 -- 21-75B(1): "No dock shall be permitted to be
7 constructed which extends into the channel or
8 extends so far as to interfere with navigation," and
9 that's the precise wording in the ordinance. Now,
10 these docks are on the Intracoastal Waterway, which
11 has a channel. It is a surveyable, recoverable,
12 depicted on survey channel. Our dock is no closer
13 and is, in fact, farther from that channel than the
14 docks -- and I don't know east, west, north,
15 south -- the docks to the right.

16 JUDGE CORNELLY: My guess would be the
17 west would be on the back side of the island and the
18 east is on the front side.

19 MS. SHAHID: Okay. And I'll show you,
20 this is an as-built survey that we turned in to the
21 Town. I think we turned the survey in in July, so
22 this post-dates the violation. But this as-built
23 survey shows this is the channel, and this is shown
24 on all the permit drawings, this is the alleged
25 offending dock. These are the two docks to the

1 right, and there's others, but if you'll note, these
2 docks are much closer to the channel than this dock.

3 JUDGE CORNELLY: Okay.

4 MS. SHAHID: All right. Now --

5 JUDGE CORNELLY: So all these things
6 that you're referring to, including this --

7 MS. SHAHID: Yes.

8 JUDGE CORNELLY: -- is going to be part
9 of the record? We just need to make sure that we
10 have that --

11 MS. SHAHID: Right.

12 JUDGE CORNELLY: -- for the record.

13 MS. SHAHID: So this is Exhibit F.

14 MR. DODDS: And I'm going to get my
15 exhibits into the record as well, Your Honor.

16 JUDGE CORNELLY: Okay.

17 MR. DODDS: I don't have any objection
18 to the exhibits that are attached to the motion to
19 dismiss.

20 JUDGE CORNELLY: Okay.

21 MS. SHAHID: And I was just making
22 reference to Exhibit F, which is attached to the
23 motion. I also want to show you something else on
24 the second page of Exhibit F, which is what we were
25 referring to earlier, and that is the demarcation

1 of -- first of all, we've got the seaward most edge
2 of adjoining docks. And you can see using that mark
3 that the as-built survey showed that we were -- I
4 think it's approximately nine feet over the seaward
5 most edge of adjoining docks. But more importantly,
6 if you look at the mean low water mark, you will see
7 that we are pretty much in line with mean low water,
8 you know, maybe two or three feet off from the dock
9 to the left. So I'm -- I'm just very concerned
10 about a reputable dock builder and a reputable
11 member of the -- member of the community and
12 homeowner on Sullivan's Island being charged with a
13 criminal offense for violation of a regulation that
14 doesn't say anything about you can't go any further
15 out than the existing docks.

16 Moreover, if that's the Town's policy,
17 if the Town has written that requirement into its
18 regulation and that's how it interprets that
19 regulation, that's completely illogical. We're
20 talking about construction of docks to provide -- to
21 provide water access and boat launch to people who
22 live on the Atlantic Intracoastal Waterway. And
23 what Mr. Murray does for every client is he tries to
24 get them in front of the mean low water mark to
25 facilitate tidal access -- as much possible tidal

1 access as he can. Because he endeavored to comply
2 with the statements of the Town admin -- is
3 Mr. Robinson the Town's zoning administer or the
4 building --

5 UNIDENTIFIED MALE: No, the building.

6 MS. SHAHID: The building, yeah. To
7 endeavor to comply with those statements, he was
8 conscious of not getting too far out, but mean low
9 water seemed an appropriate demarcation. And what
10 that does, that gives this property water access two
11 hours -- you know, approximately an hour and a half
12 to two hours before and after low tide. Not 24-hour
13 access, limited access. So then he's confronted
14 with this allegation, he and Mr. Thompkins, that
15 somehow they are impeding navigation in a regulation
16 that basically -- and an ordinance that says you
17 can't get any further to the channel, and then it
18 says, "or extends so far as to interfere with
19 navigation." So evidently, what the Town has done
20 is they said, "Well, we'll make everybody line up
21 and that doesn't interfere with navigation."

22 That's so illogical, Your Honor.
23 Navigation is -- is determined by the boundary of
24 the area, which is measured from marsh grass to
25 marsh grass, by the location of mean low water and

1 mean high water on either side of the bank. That's
2 how you determine navigation. It's not a fixed line
3 that goes straight across the channel. And the idea
4 that navigation is interfered with because of an
5 extension three, four, five feet over mean low water
6 when you still -- and this is to scale -- when
7 you're still 80 feet from the edge of the channel,
8 much further from the edge of the channel than the
9 two docks to the east, perhaps, if that's north.

10 And, you know, you could -- the idea
11 that there's any impediment to navigation -- I just
12 don't think the Town can make this black and white
13 rule that says every dock has to be lined up. I
14 mean, when we do these surveys, we're not focused on
15 this particular issue because we assume that there's
16 some, you know, general understanding. But look at
17 this, this shows the irregular nature of the edge of
18 marsh grass and the shoreline. We know -- we would
19 have focused a lot harder on the surveyor doing mean
20 low water and mapping mean low water, but mean low
21 water is not going to be a fixed -- you know, a
22 straight line in front of all these lots. It's
23 going to meanderer with the elevations out in the
24 water. But more importantly, the navigation in this
25 body of water is in this navigable channel. It's --

1 it's not out here.

2 JUDGE CORNELLY: I don't have a copy of
3 the law, so I need --

4 MR. DODDS: I got one, Judge.

5 JUDGE CORNELLY: Maybe I should see a
6 copy of the law so I understand what --

7 MS. SHAHID: Yeah, I'm sorry.

8 JUDGE CORNELLY: No, no, no, no.

9 MS. SHAHID: I wish I had copies of
10 everything. I just kind of got --

11 JUDGE CORNELLY: We've heard about Title
12 21 that -- okay, thank you.

13 MR. DODDS: This is the zoning
14 ordinance. That's the zoning ordinance, Your Honor.
15 And the other paper is the actual Code of
16 Ordinances.

17 JUDGE CORNELLY: Okay. I mean --

18 MR. DODDS: This is a highlighted
19 section.

20 JUDGE CORNELLY: Okay. Okay.

21 MR. DODDS: So those are the two
22 sections cited on the tickets.

23 JUDGE CORNELLY: Okay. So -- so I'm
24 clear, the allegations as far as the violation of
25 the Town ordinance is what? Because the Town

1 ordinance is just -- 5-10 is just an application.
2 Someone has to make an application for a building
3 permit for a dock --

4 MR. DODDS: Correct.

5 JUDGE CORNELLY: -- correct?

6 MR. DODDS: Right.

7 JUDGE CORNELLY: Was that done?

8 MS. SHAHID: Yes.

9 MR. DODDS: Yes.

10 JUDGE CORNELLY: Okay.

11 MR. DODDS: Okay. And --

12 JUDGE CORNELLY: Okay. The violation is
13 that --

14 MR. DODDS: I'm sorry, Judge.

15 JUDGE CORNELLY: No, go ahead.

16 MR. DODDS: And so secondarily, if you
17 look to Section 21-75, it says "in the RC-2 Area
18 District." And the testimony will be, and I think
19 everybody agrees, this is in the RC-2 Area District.
20 "The construction of private docks by owners of lots
21 adjoining this area may be permitted, provided
22 approval of the Town of Sullivan's Island, U.S. Army
23 Corps of Engineers, OCRM," et cetera. So, Judge, a
24 permit application was submitted, a permit
25 application was given approval as noted, okay, by

1 the building official and by the zoning
2 administrator. And that as noted part was
3 specifically, "Must not exceed adjoining -- adjacent
4 docks," okay, it was a condition noted on the
5 specific approval.

6 JUDGE CORNELLY: Okay. Have you seen
7 this, ma'am?

8 MS. SHAHID: Yeah, and that's actually
9 part of my argument. I didn't want to interrupt
10 Mr. --

11 JUDGE CORNELLY: Oh, no, no, no.

12 MS. SHAHID: -- Dodds, but that -- I'm
13 going to leave my discussion of what it looks like
14 out there and move to that issue.

15 JUDGE CORNELLY: Okay, go ahead. I just
16 needed to see the statutes so I can --

17 MR. DODDS: And secondarily, and part
18 of the application process was the submission a
19 plat, which is this document, part of Exhibit 1.
20 And again, the building official and the zoning
21 administrator specifically noted not to exceed
22 adjacent docks. So our position --

23 JUDGE CORNELLY: It said not to exceed
24 adjacent docks into the navigable waters or --

25 MR. DODDS: Doesn't say anything about

1 that. It just says not to exceed the adjoining
2 docks.

3 JUDGE CORNELLY: Okay.

4 MR. DODDS: Okay. So that was the
5 permit that was given by the Town of Sullivan's
6 Island, Judge.

7 JUDGE CORNELLY: To Mr. Murray?

8 MR. DODDS: If -- if they had some
9 issue with that, vis-a-vis the mean low water mark,
10 et cetera, the process would have been to appeal the
11 building and zoning officials' determination. That
12 was not done, they proceeded under this permit. And
13 their position, and as you've heard Counsel
14 acknowledge, they have exceeded the --

15 JUDGE CORNELLY: Adjacent docks?

16 MR. DODDS: Right. And as depicted on
17 the -- I guess it looks like a portion of their --
18 looks like -- looks like the second and third pages
19 of their Exhibit F show the subject dock -- it says,
20 "Seaward most edge of the adjoining docks," and
21 specifically a line drawn. And this particular
22 floating dock exceeds that seaward most edge of the
23 adjoining docks. So they violated the permit.
24 We're not -- we're not getting into the issue of
25 navigation, because our position is that they

1 secured a permit and they agreed to proceed under
2 the permit, and they violated, admittedly, the
3 permit by extending this floating dock beyond the
4 adjoining docks. We've -- we've got pictures, Your
5 Honor, that we've reflected as Exhibit 2. I've
6 given Counsel a copy of those.

7 JUDGE CORNELLY: What are the extended
8 property lines?

9 MS. SHAHID: They're shown on the --
10 what are they --

11 JUDGE CORNELLY: Yeah.

12 MS. SHAHID: -- or do you want to see
13 them? You take the seaward most property corners at
14 the critical line, where OCRM puts its critical
15 line, and you use that bearing and you extend it out
16 using that bearing.

17 JUDGE CORNELLY: Okay. So it says not
18 to -- and this was a permit that Mr. --

19 MS. SHAHID: Can I -- I don't want to
20 interrupt him --

21 JUDGE CORNELLY: Yeah, yeah, yeah.

22 MS. SHAHID: -- but that's the second
23 part of my argument.

24 MR. DODDS: I'm just going to --

25 JUDGE CORNELLY: Okay, okay.

1 MS. SHAHID: So if you'll just let
2 me --

3 MR. DODDS: I'm just going to show you
4 the pictures --

5 JUDGE CORNELLY: Okay.

6 MR. DODDS: -- that we have. So --

7 JUDGE CORNELLY: Well, then I'll give --
8 well, then I'll be glad to hear from you --

9 MS. SHAHID: Yeah.

10 JUDGE CORNELLY: -- if you want to
11 finish up. All right.

12 MR. DODDS: And -- I mean, if you want
13 me to finish that or finish what Mary wants to --

14 JUDGE CORNELLY: Whatever, I don't care.

15 MR. DODDS: -- I was trying to respond
16 to the questions you had.

17 JUDGE CORNELLY: Okay. Well, why don't
18 we let Mary finish up and then I'll let you go. And
19 you guys can sit down if you'd like, you don't have
20 to stand up. Nobody has to stand up, okay?

21 MR. DODDS: Okay.

22 JUDGE CORNELLY: Okay. Just sit down
23 until -- until somebody addresses you, then you can
24 stand up. It makes no sense.

25 MS. SHAHID: So I have -- yes,

1 they're -- we're charged with violation of an
2 ordinance that requires us to get a building permit,
3 and we're charged with violation of an ordinance
4 that requires us not to extend into the channel any
5 further than adjacent docks. We are on the Atlantic
6 Intracoastal Waterway, the channel is a well-known,
7 marked feature. But here's the permit, and it was
8 Exhibit C to my motion, this is an accessory
9 structures permit. No conditions on it.

10 JUDGE CORNELLY: Right.

11 MS. SHAHID: No conditions on it. This
12 is a Certificate of Zoning Compliance that included
13 a condition from Mr. Robinson: "Move pier head and
14 location of boat lift landward to not exceed
15 adjacent docks." This is a building permit
16 application, not a permit, but a permit application
17 that says again, "Must not exceed adjacent docks."
18 Then there's an OCRM permit that Mr. Robinson
19 took -- and, actually, if you note on the OCRM
20 permit, it says, "All special conditions attached to
21 this permit will take precedent over submitted
22 plans." And Mr. Robinson appeared to know what a
23 special condition was, and he handwrote on the OCRM
24 permit that you provide a copy of the as-built
25 survey to Sullivan's. Nothing under these special

1 conditions in this permit that says no further than
2 adjoining docks. Nothing on this permit that says
3 no further than adjoining docks. Not only that,
4 you've got some conflicting stuff. Mr. Dodds
5 pointed out this survey. The survey says on the one
6 hand, "Must be ten feet from extended docks," and
7 then it says, "Boat lift okay to be as drawn."
8 Well, the boat lift is lined up with everything
9 else. So --

10 JUDGE CORNELLY: As drawn on some plans
11 that were submitted?

12 MS. SHAHID: As drawn on the OCRM
13 permit.

14 MR. DODDS: I believe that was end of
15 the property line (unintelligible) or something
16 because of other properties in the location.

17 MS. SHAHID: Right, the offset.

18 MR. DODDS: It's allowed in that
19 ordinance.

20 MS. SHAHID: Yeah, the offset.

21 JUDGE CORNELLY: I got you, I got you.

22 MS. SHAHID: But it's confusing, I
23 think it's conflicting, because you can't do the
24 boat lift as drawn and also line up with all of the
25 adjoining docks. So while I understand that the

1 discussion was had between Mr. Robinson and
2 Mr. Murray and that some annotations were made on
3 the permit, I don't -- first of all, if you're going
4 to charge -- ticket somebody and charge them with a
5 criminal violation, you need to have -- you need to
6 not have a staff policy and interpretation of
7 something, but you need to have an ordinance that
8 says, "We've got this line and you can't go past
9 it." And then, you know, second of all, if you're
10 going to write a permit, you don't write -- you're
11 dealing with contractors and crews and -- and people
12 out on the field trying to do something. You
13 don't -- you don't rely on hand-scrawling on a
14 permit, necessarily, particularly a permit that
15 includes a specific survey. Because OCRM requires a
16 survey, OCRM requires so much specificity with
17 regard to the placement of the dock.

18 So Mr. Murray didn't want to argue with
19 Mr. Robinson about whether or not he should be lined
20 up with adjoining docks. And -- and despite the
21 fact I don't think the Town had any authority to
22 require that, nor did they have authority to these
23 tickets, Mr. Murray did his best to see that the
24 dock was built in accordance with Mr. Robinson's
25 concerns. And I don't know how often you guys are

1 out on the water, but it's very difficult to get a
2 good sense of perspective out on the water when
3 you're building these things. And so this was an
4 inadvertent error on his part, but he was also
5 driven with the desire to give his -- you know, he
6 had to be reasonable and give his clients some
7 navigation. These poor neighbors who are being held
8 to this line, who are behind the mean low water
9 mark, their ability to use their dock and use their
10 boats is seriously limited. And I don't know what's
11 being furthered by it, because the navigation is not
12 occurring right there by the docks.

13 So I'm just very -- I'm very upset that
14 these people are facing criminal liability,
15 misdemeanor liability, whatever it is. These are
16 very reputable people, they tried to work with the
17 Town, they tried to do what was needed, and I think
18 this is a really onerous restriction for the Town to
19 be allowed to interpret it this way. Certainly, if
20 there's any concern about navigation, you can put
21 lights, you can put reflectors up. But if you look
22 at any of the plats that are in evidence that give
23 you sort of the big picture of what's out there --
24 and I guess what I need to show you is --

25 JUDGE CORNELLY: Let me ask something --

1 MS. SHAHID: -- is this.

2 JUDGE CORNELLY: Yeah, I'm sure.

3 MS. SHAHID: Something like this. I
4 mean, this is us, okay? This is the channel way out
5 here.

6 JUDGE CORNELLY: Right, I got you. I
7 got you.

8 MS. SHAHID: This is us. People are
9 not navigating here.

10 JUDGE CORNELLY: Hopefully.

11 MS. SHAHID: Hopefully. And if they
12 are, I don't think that the extension that we've
13 caused in our effort to get to the mean low water
14 mark is impeding this at all. I mean, we've got
15 300-something feet here.

16 JUDGE CORNELLY: Okay. So the -- so
17 there's no allegation that he didn't get a permit,
18 because he got a permit. But the allegation is he
19 built -- the dock he built is not within the scope
20 of the permit; right?

21 MR. DODDS: Yeah. He violated the
22 permit, Judge.

23 JUDGE CORNELLY: Violated the permit --

24 MR. DODDS: Yeah.

25 JUDGE CORNELLY: -- that's the

1 allegation? I'm just asking just so I can get to
2 the meat of the issue.

3 MS. SHAHID: Yeah, that's what they
4 think. I don't think he violated anything.

5 JUDGE CORNELLY: Of course.

6 MS. SHAHID: I think if you're going to
7 put a condition like that, you've got to be a little
8 more specific.

9 JUDGE CORNELLY: Okay.

10 MS. SHAHID: And have no contradiction.

11 JUDGE CORNELLY: So when he came in to
12 get the permit, was -- is there some sort of
13 drawings that were submitted that have to be
14 approved, and --

15 MR. DODDS: Yes.

16 JUDGE CORNELLY: -- are those drawings
17 part of what --

18 MR. DODDS: This is what -- part of
19 what was submitted along with the application, Your
20 Honor.

21 JUDGE CORNELLY: Okay.

22 MR. DODDS: This is the notation that
23 was made by -- I believe it was Mr. Robinson.

24 JUDGE CORNELLY: Okay. So have you seen
25 this?

157

1 MS. SHAHID: That's the one I think has
2 the conflicting information on it about the boat
3 lift and the -- well, maybe not, I have something
4 else. I'm sorry.

5 JUDGE CORNELLY: No, you can take a look
6 at it.

7 MS. SHAHID: I'm sorry.

8 JUDGE CORNELLY: Take a look at it.
9 That's what -- I'm trying to figure this out. You
10 guys have the advantage of being -- working with
11 this thing for a long time and you're asking me to
12 do something --

13 MS. SHAHID: Oh, I know.

14 JUDGE CORNELLY: -- in a short period of
15 time with my limited capabilities.

16 MR. DODDS: This is Exhibit 1 there,
17 Judge.

18 JUDGE CORNELLY: Oh, I'm sorry.

19 MR. DODDS: That's okay.

20 JUDGE CORNELLY: And then this is 1?

21 MR. DODDS: Yes, sir.

22 JUDGE CORNELLY: Okay. So what I want
23 to do is I just want to make sure that I'm -- I'm,
24 you know, making the right decision --

25 MR. DODDS: So he basically comes in

1 with an application --

2 MS. SHAHID: And it had three
3 annotations on it and it looked okay.

4 MR. DODDS: So an application that's --

5 JUDGE CORNELLY: So this -- this right
6 here --

7 MR. DODDS: Right.

8 JUDGE CORNELLY: -- it's the same thing
9 that you had over there, but it's a miniature
10 version of that. And it says, "Boat lift okay as
11 drawn," and that's "RR." Is that you?

12 MR. ROBINSON: Yes, it is.

13 JUDGE CORNELLY: And that's what you
14 wrote on this document right here?

15 MR. ROBINSON: Yes, sir.

16 JUDGE CORNELLY: And so then it's the
17 allegation that the boat lift as drawn on here is
18 not the same that's -- was put in; is that accurate
19 or not?

20 MR. ROBINSON: The -- and, Judge, this
21 is a long time ago. It's hard for me to remember,
22 you know. But see the boat lift right here is -- is
23 next to the extended property line, and that's what
24 this was about. "The boat lift okay as drawn," was
25 the boat lift was close to the property line. You

1 know, I don't know if I didn't write that note --
2 and I'm not saying for sure, but I'm not so sure I
3 didn't write that note when Mr. Murray was in the
4 office picking up a permit or something or --

5 JUDGE CORNELLY: Okay.

6 MR. ROBINSON: -- his man was -- I
7 don't know who picked up the permit actually for
8 him.

9 JUDGE CORNELLY: Well, I don't know -- I
10 mean, I'd be glad to hear the rest of the arguments.

11 MR. DODDS: This note did not pertain
12 to the structure of the pier head, structure of the
13 floating dock. This note where we specifically drew
14 the build-to line said, "Must not pass the build-to
15 line."

16 JUDGE CORNELLY: I got you, I got you.
17 So what I'm going to do now is if we're finished
18 with the motion, okay, and both sides have heard it,
19 I really, to be honest with you, I'm going to be
20 completely honest, I'd have to hear sworn testimony
21 before I'd be able to make a decision based on
22 what's going on. Because there seems to be some
23 conflict as to -- to -- again, the issue would be
24 that he got approval, it wasn't the fact he didn't
25 get approval, it's just that what he got approval

1 for he didn't build; right --

2 MR. DODDS: That's exactly it.

3 JUDGE CORNELLY: -- is that it? And I
4 know your -- your contention is, "Yes, he did and
5 they're being awfully picky here," and that's great.
6 But I'm going to have to hear testimony --

7 MS. SHAHID: Well, really, Your Honor,
8 my contention is --

9 JUDGE CORNELLY: Okay.

10 MS. SHAHID: -- if you're going to
11 charge somebody with a criminal offense, the offense
12 needs to be a properly promulgated ordinance, and
13 not an interpretation of what your power is. If the
14 speed limit's 55 and I'm going 54, you can't charge
15 me just because it's on Saturday you want me to go
16 54. And that's how I feel about it.

17 JUDGE CORNELLY: Okay.

18 MS. SHAHID: You know, it'd be
19 different if these weren't criminal tickets.

20 JUDGE CORNELLY: Yeah, but, I mean, you
21 have the ability and your client has the ability
22 to -- if, for instance, you know, if he was charged
23 with this and he gets a ruling that's unfavorable,
24 you have the ability to appeal that and say that,
25 "Hey, listen, this statute as written is wrong

1 because it's" --

2 MS. SHAHID: Well, I'm not going to
3 question the Town's statutes.

4 JUDGE CORNELLY: Okay.

5 MS. SHAHID: I mean, you know, the Town
6 does what it does for whatever reason. This is the
7 interpretation of the statute.

8 JUDGE CORNELLY: Okay.

9 MS. SHAHID: This statute says nothing
10 about a line that you can't cross when you've got
11 meandering creek boundaries and a meandering mean
12 low water line and a meandering channel. That's
13 ridiculous. This statute says, "No closer to the
14 channel," and we are farther from the channel.

15 JUDGE CORNELLY: Okay. Well, then I --
16 what I would propose is that we take testimony.
17 Now, you can either do that tonight, if you'd like,
18 or if you want, if you need more time -- and I'm
19 happy to hear it. If you need more time to bring
20 more witnesses or whatever, I think you have to do
21 that. As far as your motion, I don't think that I
22 can rule on a motion because if I understand -- and
23 you both have said I did, I have it. If I
24 understand the argument right, then I really would
25 have to hear sworn testimony because -- again, the

1 reason we're recording this is because if your
2 clients are convicted or if the Town wants to appeal
3 my decision, there has to be some record of it for
4 another court. So that's where we are now. So we
5 can go forward today or we can reschedule it for --
6 and I'll hear it, I'm not going dump it on Judge --
7 you know, since I started, I'm not going to dump it
8 on Judge Duffy. I'll hear it, I'll just come out
9 here another time, okay? So you just decide -- if
10 you guys want to talk and decide when you want to do
11 it, that's fine with me.

12 MS. SHAHID: I mean, I'm good going
13 forward tonight.

14 JUDGE CORNELLY: Okay.

15 MS. SHAHID: I really kind of gave them
16 the impression that I thought it was motion only.
17 Can I have three minutes to go outside with them?

18 JUDGE CORNELLY: Absolutely, yeah.
19 Absolutely, absolutely.

20 MS. SHAHID: Okay. Because I assume --
21 oh, I don't go first.

22 JUDGE CORNELLY: Yeah, it doesn't
23 matter. But, yeah -- but you still have an
24 opportunity, they still have their opportunity.
25 Because they may have witnesses they want to bring

1 or they may have, you know, adjacent homeowners or
2 something like that. I don't know.

3 MS. SHAHID: Okay. Let me -- let me
4 talk to them.

5 JUDGE CORNELLY: Yes, ma'am. I think
6 that's the fairest way to handle it so that
7 everybody gets...

8 UNIDENTIFIED FEMALE: Can you sign off
9 on this, please.

10 JUDGE CORNELLY: Yeah. You got all
11 this?

12 UNIDENTIFIED FEMALE: This is only my
13 second court.

14 JUDGE CORNELLY: I don't do this stuff.

15 UNIDENTIFIED FEMALE: This is the --

16 JUDGE CORNELLY: Deferred.

17 UNIDENTIFIED FEMALE: It's been 180
18 days.

19 JUDGE CORNELLY: Oh, so it's going to be
20 dismissed; right? Okay.

21 UNIDENTIFIED FEMALE: And both of these
22 also.

23 JUDGE CORNELLY: And none of the motions
24 have been heard before, right, none of these
25 motions?

1 MR. DODDS: No, no.

2 JUDGE CORNELLY: Judge Duffy hadn't
3 heard -- started hearing them or anything like that?

4 MR. DODDS: No.

5 JUDGE CORNELLY: Okay. Same thing on
6 these?

7 UNIDENTIFIED FEMALE: Uh-huh.

8 MR. DODDS: Judge, how's your wife?

9 JUDGE CORNELLY: She's fine. Thank you
10 for asking.

11 MR. DODDS: Bit by a doggone snake?

12 JUDGE CORNELLY: Yeah.

13 UNIDENTIFIED FEMALE: What?

14 MR. DODDS: Holy crap, was she, like,
15 gardening or something?

16 JUDGE CORNELLY: No, no, no, no. She
17 was bit by a copperhead in the yard.

18 UNIDENTIFIED FEMALE: Oh, my gosh.

19 This person, he reduced it to 150.

20 JUDGE CORNELLY: Okay.

21 UNIDENTIFIED FEMALE: And so it just --

22 JUDGE CORNELLY: Initial.

23 UNIDENTIFIED FEMALE: Can you sign it?

24 JUDGE CORNELLY: No, you've got to let
25 (unintelligible) sign it.

1 UNIDENTIFIED FEMALE: Okay. And then
2 can you sign this?

3 JUDGE CORNELLY: That's an expungement
4 order?

5 UNIDENTIFIED FEMALE: There was one
6 ticket, she had that, and that's the one that they
7 dismissed.

8 JUDGE CORNELLY: (Unintelligible)

9 UNIDENTIFIED MALE: How's it going?
10 What's the latest on the hurricane?

11 UNIDENTIFIED MALE 2: It's out there.
12 We're going to get a lot of rain.

13 JUDGE CORNELLY: You know, they've
14 already closed schools for the remainder of the
15 week.

16 UNIDENTIFIED MALE: Closed the
17 courthouse.

18 UNIDENTIFIED MALE 2: Government
19 offices, all county offices.

20 UNIDENTIFIED MALE: That's silly.

21 UNIDENTIFIED MALE 3: I mean, I
22 understand. You and I were here and I guess some
23 other people were, too, for Hugo. So you understand
24 what -- how it can creep up on you -- hey, how are
25 you -- so I get that. But, you know -- I mean, we

1 don't even know. Tomorrow it can make a turn to
2 the -- to the west and be gone. You know, and
3 then --

4 UNIDENTIFIED MALE: I sure hope it
5 does.

6 UNIDENTIFIED MALE 3: So do I. I don't
7 want -- I don't want to be stuck in that stuff
8 again. I lost one house in a hurricane, I don't
9 want to lose this one.

10 MS. SHAHID: We're okay to proceed.

11 JUDGE CORNELLY: Okay. We're still on
12 the record. And just so we're clear, I'm going to
13 swear everybody in at once so everybody who
14 testifies can -- you know, and even if you don't
15 testify, that's fine, I'll still swear you in. So
16 the two tickets that we're here for this afternoon
17 are for Jason Thompkins, and although it says Eric
18 Murray it's Michael Murray.

19 MR. DODDS: Yes, sir.

20 JUDGE CORNELLY: And the ticket numbers
21 are 5714 and 5713, and the tickets are for violation
22 of 21-75 and Code Section 5-10. They both were
23 issued on -- it looks like -- okay, here it is. The
24 date of issuance is June 24, 2006.

25 MR. DODDS: 2016, sir.

1 JUDGE CORNELLY: '16, excuse me, you're
2 right, 2016. I apologize. And we just heard a
3 motion as for -- motion to dismiss for violation of
4 the -- I guess, basically, the statute. I heard the
5 motion, but honestly, I think I need to hear
6 testimony in order to make an informed decision on
7 the statute stuff. Now, the argument would be that
8 the statutes say that you have to have approval to
9 get a dock, and that approval comes from the Town of
10 Sullivan's Island, U.S. Corps of Engineers,
11 Department of Health and Environmental Control,
12 Office of Ocean and Coastal Resource Management.
13 And the argument is not that the permit was not
14 done, the argument is that the dock that was
15 constructed is in violation of the permit that was
16 given because it was a -- a permit was given for one
17 dock and a different dock was built.

18 MR. DODDS: That's correct.

19 JUDGE CORNELLY: The dock that extends
20 into the --

21 MR. DODDS: Essentially correct, Your
22 Honor.

23 JUDGE CORNELLY: Okay.

24 MR. DODDS: In other words, the length
25 of the dock.

168

1 JUDGE CORNELLY: It just helps to have
2 one statement on there.

3 MR. DODDS: Sure.

4 JUDGE CORNELLY: If everybody agrees
5 with that, then we can get started. Anybody who
6 wants to testify, if you just raise your right hand
7 and swear to tell the truth, the whole truth, and
8 nothing but the truth. Okay. So Mr. Murray and the
9 two Town employees are going to testify, okay, in
10 this case. And I'm assuming that then, therefore,
11 that Mr. Thompkins is not going to testify in --

12 MS. SHAHID: I told him that -- did he
13 not raise his hand?

14 MR. THOMPCKINS: I raised my hand after
15 that --

16 JUDGE CORNELLY: Oh, I'm sorry, I
17 apologize. Okay, I got it then. As long as it's on
18 the record.

19 MR. THOMPCKINS: I certainly want to.

20 JUDGE CORNELLY: So because Mr. -- and
21 I'm sure your attorney has explained this to you.
22 Because the Town has written you with these
23 violations, they have the burden of proof,
24 therefore, they go first. After they -- after their
25 witnesses testify, your attorney will be able to ask

1 them questions, okay, and then your attorney can put
2 up any evidence if she desires. She doesn't have
3 to, but if she wants to, she can put up any
4 evidence, okay?

5 MR. THOMPCKINS: Yes, sir.

6 JUDGE CORNELLY: So we can get started.

7 MR. DODDS: Judge, if it will please
8 the Court, I will call Joe Henderson to the stand.

9 JUDGE CORNELLY: Okay. And you can
10 stand, you can sit, and if you'd like, you can sit
11 to everybody because there's no reason for you to
12 stand. But go ahead.

13 JOSEPH HENDERSON,
14 of lawful age, produced, sworn, and examined,
15 deposes and says:

16 EXAMINATION

17 BY MR. DODDS:

18 Q State your full name, please.

19 A Joseph Rodney Henderson.

20 Q And are you employed by the Town of
21 Sullivan's Island?

22 A Yes, sir, I am.

23 Q And in what capacity?

24 A Zoning administrator.

25 Q And would you describe your duties and

1 responsibilities as the zoning administrator.

2 A I interpret the zoning ordinance, I
3 conduct inspections, and review plans for zoning
4 compliance.

5 Q All right. And have you had occasion
6 to become involved with respect to a dock which had
7 been constructed at the property known as 1102
8 Osceola Avenue, Sullivan's Island, South Carolina?

9 A Yes, sir.

10 Q All right. And are you familiar with
11 what specific district that property is located in?

12 A It is in the RS district, but it's
13 directly adjacent to the RC-2 zoning district or the
14 Recreation Conservation district.

15 Q All right. And have you ever met
16 Mr. Murray Michaels -- excuse me -- Mr. Michael
17 Murray?

18 A Yes, I have on several occasion.

19 Q All right. And did you have occasion
20 to have contact with Michael Murray incident to an
21 application for construction of a dock at the
22 property of 1102 Osceola Avenue?

23 A Yes, I did. I reviewed his plans when
24 he submitted them in June of 2014.

25 Q All right. Let me show you what's been

1 marked as an exhibit.

2 JUDGE CORNELLY: Yeah, let's just put
3 them in evidence, received into evidence.

4 (Exhibits 1, 2, 3, and 4 received into evidence.)

5 Q (By Mr. Dodds) What's been received
6 into evidence as Exhibit 1. And if you would --

7 JUDGE CORNELLY: Just make sure that
8 Co-counsel has seen that.

9 MS. SHAHID: Did you have an extra copy
10 of that or did you --

11 MR. DODDS: Yeah, let's see. Here you
12 go.

13 MS. SHAHID: Thank you.

14 JUDGE CORNELLY: Okay. So why don't
15 you, just for the record, explain what Exhibit 1 is.

16 Q (By Mr. Dodds) All right. Let me --
17 let me show you what's been received in evidence as
18 Exhibit 1. Town of Sullivan's Island accessory
19 structures permit, Town of Sullivan's Island
20 building permit application, Town of Sullivan's
21 Island Certificate of Zoning Compliance, looks like
22 the construction authorization from Office of Ocean
23 and Coastal Resource Management, and application for
24 the construction of the dock signed by -- it appears
25 to be Mr. Thompkins, CMB Beach House, LLC, with a

1 plat -- several plats, and what appears to be a
2 Tidewater Environmental Services location map.

3 I'll ask you if you -- if you
4 recognize these documents. Let me -- also attached
5 is what appears to be some blown up versions of
6 those same plats. Do you recognize these documents?

7 A Yes, sir. That's the permit that we
8 issued.

9 Q If you would go through and explain to
10 Judge Cornely specifically what the process is with
11 regard to an application to construct the dock.

12 A Okay. So typically, Judge --

13 Q And if you need to show him, show him.

14 A So typically, a contractor will come
15 into the Town's offices and submit a building permit
16 application. This is what's completed for
17 everything from an accessory structure to a new home
18 on the island to commercial construction. It's
19 typically filled out in the contractor's hand, and
20 Town staff reviews the plans, a building official
21 signs here once it's compliant. I sign here for
22 zoning compliance. Sometimes I will issue a
23 Certificate of Zoning Compliance for larger
24 projects.

25 Q And that was done in this case?

1 A This was done in this case because it
2 had specific conditions required of the contractor.

3 Q All right. And let's talk a moment
4 about what those specific conditions were.

5 A Well, in this case the applicant
6 submitted a site plan that did not -- it did not
7 comply with the Town's regulation. So -- and the
8 Town's interpretation, "No dock may exceed or go
9 beyond the adjacent docks." This rendering shows
10 that the dock went probably a foot and a half to two
11 feet beyond the adjacent docks. Because I had -- I
12 had previous correspondence and communication with
13 the dock company and also Ross Nelson, who's an
14 engineer, Randy and I did not require a resubmittal,
15 but we instead -- in order to keep the permit
16 moving, we redlined it, drew a line, and made some
17 notes.

18 Q Okay. Were these notes and lines, were
19 they made known to the contractor?

20 A Absolutely. The building official had
21 a meeting with him. We -- we spoke extensively to
22 the -- to the applicants, to the engineer. Everyone
23 knew about this, and that's why we scribbled on this
24 permit --

25 Q Okay.

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1 A -- to get this gentleman his permit.

2 So that's the process.

3 Q All right.

4 A It's then issued -- once we --

5 Q Well, let me ask you this: In looking
6 to the blown up plats that are marked and received
7 in evidence as Exhibit 1, were there any conditions
8 that were similarly placed on those plats?

9 A On this one?

10 Q Yeah, on the -- on the blown up plats?

11 A Yeah, so we required -- we denoted the
12 line that the dock pier head had to be dropped back,
13 too, to the build-to line. And then the building
14 official made a note that you can't go beyond the
15 adjacent docks. I made a note that there must be a
16 ten foot side setback from the extended property
17 lines, but then the building official made some
18 different notes saying that -- saying that it was
19 okay. And that's what we referred to.

20 Q Just make sure that the Judge
21 understands: With regard to the ten foot issue,
22 that relates to proximity of the dock to the
23 adjoining property line?

24 A That's right.

25 JUDGE CORNELLY: But that's not an issue

1 here.

2 MR. DODDS: Right. I just want to make
3 sure, Judge --

4 JUDGE CORNELLY: Yeah, I got that.

5 A So, Judge, the final document that's
6 issued in this permitting process is what Kat
7 Kenyon, our permit technician, issues. And that is
8 a computer-generated building permit, in this case
9 it's an accessory structures permit. And then the
10 applicant signs off once he confirms that he will
11 comply with all of the notes.

12 JUDGE CORNELLY: Okay. And he says --
13 is there some language on the accessory structure
14 permit that says that he has reviewed this and he
15 has complied, or he is complaint or going to be
16 compliant with the --

17 A There's no area to input that kind of
18 information. That's done in these other documents,
19 the statement on the zoning compliance that he signs
20 and the building permit application that he signs.
21 So this is simply a computer-generated form --

22 JUDGE CORNELLY: I got you.

23 A -- that he signs.

24 Q (By Mr. Dodds) Did you or are you aware
25 of any conversations that Mr. Robinson had with the

1 dock contractor, the engineer, or Mr. Thompkins,
2 himself, specifically as to the notations made with
3 regard to extending beyond the existing docks on
4 Cove Inlet?

5 A I do know that they had a conversation
6 about the setback issue, but that's just from our
7 conversation and the notes that we've already talked
8 about here.

9 Q All right. Did you have any
10 conversations with the contractor, with
11 Mr. Thompkins, or with the engineer acting on behalf
12 of the owner?

13 A Yes.

14 Q Okay.

15 A I exchanged several e-mails, and I have
16 that in Exhibit 3, I believe.

17 Q All right.

18 A This is what Ross Nelson -- months
19 before, Mr. Nelson asked, "Hey, Joe, can you
20 extend" --

21 MS. SHAHID: Objection, Your Honor.

22 JUDGE CORNELLY: Yeah, he can't say
23 hearsay stuff. But if it's in the -- I'll be glad
24 to look at the exhibit.

25 Q (By Mr. Dodds) Let me show you what's

1 been received in evidence as Exhibit 3, and ask if
2 you recognize that?

3 A Yes, sir. That's the e-mail exchange
4 with Ross Nelson.

5 JUDGE CORNELLY: Do you have a copy of
6 that?

7 MS. SHAHID: I do.

8 JUDGE CORNELLY: Okay.

9 MS. SHAHID: I would like to note for
10 the record that Mr. Robinson was dealing directly in
11 the issuance of these permits with Mr. Murray, not
12 with Mr. Nelson.

13 MR. DODDS: Okay, okay.

14 JUDGE CORNELLY: Who is Ross Nelson?

15 A He was serving as consultant to the
16 property owner and also American Dock and Marine.
17 He's an engineer, and I believe he came up with
18 these -- with the cross-section, the engineer
19 renderings of the pier head, the floating dock, and
20 the -- I think he worked with the surveying
21 companies.

22 MR. THOMPCKINS: Would you like me to
23 weigh in?

24 JUDGE CORNELLY: You have to talk to
25 your attorney and she'd be happy to weigh in.

1 Q (By Mr. Dodds) Does Exhibit 3 include
2 e-mails from Ross Nelson to you and Mr. Robinson?

3 A Yes.

4 Q Okay.

5 A It was addressed to both of us.

6 Q All right.

7 JUDGE CORNELLY: And that's in evidence?

8 And, Ms. Shahid, do you have this?

9 MS. SHAHID: I do have a copy.

10 MR. DODDS: That's Exhibit 3, Your
11 Honor.

12 Q (By Mr. Dodds) How is it that you found
13 out that the dock extended beyond the adjoining
14 docks?

15 A I was conducting a CO, Certificate of
16 Occupancy, inspection this summer. I believe it was
17 June -- on June 27th, I did CO for the house.
18 Mr. Thompkins was moving into his house, I was doing
19 inspections of the setbacks, the construction of the
20 house, and noticed the dock there and knew that we
21 hadn't closed out that project. I knew that we had
22 issued permits for it, so I walked out on the dock
23 and I noticed, "My goodness, this has to be ten feet
24 past the adjacent docks, violating the permit." I
25 remember making the notes, I remember issuing it.

1 These things are a big deal to us on this island.

2 Q All right.

3 A And so when I identified that, I took
4 pictures. I came back and asked the contractor to
5 send me an as-built survey, which is always a
6 requirement.

7 Q Right. Had you -- and when was that --
8 in terms of time frame, when was that?

9 A It was that day, that day I came out
10 there.

11 Q When, though? July? September?

12 A July 27th of -- I'm sorry, June 27,
13 2016.

14 Q Okay. And had you received an as-built
15 survey prior to June 27, 2016?

16 A No, I did not.

17 Q All right. Do you know when it is that
18 the dock was completed?

19 A There's no -- we did not know. We
20 didn't receive an as-built survey, which is the --
21 what prompted us to go out and do the final
22 inspection.

23 Q All right.

24 A To make sure it complies.

25 Q In looking at Exhibit 1, specifically

1 what appears to be the South Carolina Department of
2 Health Environment Control Office of Coastal and
3 Resource Management, it looks like the approval
4 under special conditions there's a handwritten note.
5 Do you recognize that?

6 A Yes, sir.

7 Q What is that?

8 A It's Mr. Robinson's note saying that we
9 needed to have an as-built survey.

10 Q All right. Is that a special
11 condition?

12 A Yes.

13 Q All right. Were you provided an
14 as-built survey?

15 A No, sir, not until we asked for it.

16 Q All right. You mentioned some
17 pictures. Let me show you Exhibit 2, which has been
18 received, and I'll ask you to go through that now if
19 you would, sir.

20 A So this is looking west from the pier
21 head and the dock, and both of these encroached past
22 that build-to line. So I'm standing on the pier
23 head looking towards the floating dock, and this is
24 looking east --

25 Q Okay.

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1 A -- and this is the neighbor's dock.

2 And this is the aerial photograph; this is east,
3 this is west. So that's about -- according to the
4 as-built survey submitted in the motion, it's about
5 9.2 feet encroaching beyond the build-to mark.

6 Q To include the entire floating dock?

7 A Yes.

8 Q All right.

9 A And half of the pier head and half of
10 the boat lift. All of that was required to be
11 behind that line.

12 Q And was the extension beyond the
13 seaward most edge in the adjoining docks confirmed
14 in page three of Exhibit F that was submitted with
15 Defendant's motion?

16 A Yes.

17 Q Did you subsequently receive a letter
18 from Mr. Thompkins, the property owner, on or about
19 June 30th of 2016?

20 A Yes, sir, I did.

21 Q All right. Let me show you what's been
22 received in evidence as Exhibit 4. Do you recognize
23 that?

24 A Yes, sir. That's the letter that was
25 submitted.

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1 Q All right. And how is it that that
2 letter came to be issued to you, if you know?

3 A We require -- during the seaward
4 inspection, we notified the property's owner of the
5 violation and explained that a certificate of
6 occupancy could not be issued if there was a pending
7 zoning violation like this on the property.

8 Q Right.

9 A So Mr. Thompkins confirmed that he
10 would take the corrective action to -- to fix the
11 dock, to relocate it according to Town regulations
12 if we allowed his family to move in. Of course, we
13 wanted Mr. Thompkins's family to move in to the
14 brand new home, he did a great job on the
15 restoration and we wanted to work with him. But he
16 submitted this letter explaining that he would
17 remedy the situation.

18 MS. SHAHID: What exhibit number's the
19 letter?

20 JUDGE CORNELLY: Four.

21 MR. DODDS: Oh, here, I've got it. No,
22 I don't think I have is.

23 Q (By Mr. Dodds) Has any remedy been had
24 with respect to the violation pertaining to the
25 dock?

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1 A No, sir.

2 Q All right.

3 A We -- as a condition, we allow American
4 Dock and Marine to submit building permits to show
5 how they would retrofit the structure, relocate the
6 floating dock. And if that was done, then we would
7 have continued these tickets and recommended
8 dismissal of it if he had submitted those building
9 permits. Of course, that was not done.

10 Q All right. Let's assume for a moment
11 that Mr. Thompkins and/or his dock contractor were
12 dissatisfied with the modifications made on their
13 application for permit. What -- what is the
14 procedure for an aggrieved homeowner in that regard?

15 A In that case you would not sign a
16 building permit. Instead, complete a board of
17 zoning appeals application and appeal the decision
18 of Zoning Administrator.

19 Q All right.

20 A And appealed my interpretation of the
21 Town's interpretation of the zoning ordinance and
22 Code of Ordinances.

23 Q Does the Board of Zoning Appeals have
24 the authority under Ordinances of Sullivan's Island
25 to overturn the decision of the zoning

1 administrator?

2 A Yes.

3 Q Okay. And was an appeal taken by
4 Mr. Thompkins or the dock contractor on his behalf
5 of this case?

6 A No, sir.

7 MR. DODDS: Nothing further of this
8 witness, Your Honor.

9 JUDGE CORNELLY: Ms. Shahid?

10 MS. SHAHID: Yes.

11 JUDGE CORNELLY: Now, let me just make
12 sure I'm clear. We have two Exhibits 1. One is
13 the actual architectural drawings and then another
14 one, Exhibit 1, seems to be all the building permits
15 plus some smaller versions of those drawings. Just
16 so we're clear.

17 MR. DODDS: Right. It's actually part
18 of the same exhibit.

19 JUDGE CORNELLY: Right, I got you. I
20 just want it for the record. Exhibit 2 seems to be
21 three photos that were introduced of the dock,
22 itself. Okay. Exhibit 3 is a -- is a letter --
23 excuse me -- is an e-mail from Joe Henderson to Ross
24 Nelson, who I understand was the engineer on this
25 project. And exhibit 4 is a letter from Jason K.

1 Thompkins on June 30, 2016 to Joe Henderson, Zoning
2 Administrator. Okay. So I just wanted to have that
3 clear. Go ahead. Those are the exhibits, and you
4 can use these or you can use your own if you like.

5 MS. SHAHID: Your Honor -- oh, there it
6 is.

7 JUDGE CORNELLY: You need this?

8 MS. SHAHID: Yes, that one's mine.
9 Your Honor, I need to move -- assuming that my
10 motion is in the court's file, I need to move all of
11 my exhibits into evidence if I haven't already --

12 JUDGE CORNELLY: Okay.

13 MS. SHAHID: -- that were attached to
14 the --

15 JUDGE CORNELLY: I don't know where the
16 court file is because I was not made aware of
17 anything about this.

18 MS. SHAHID: Yeah.

19 JUDGE CORNELLY: Now, do you know where
20 the court file is?

21 UNIDENTIFIED FEMALE: I can look for
22 them.

23 JUDGE CORNELLY: Okay.

24 MS. SHAHID: Well, I don't -- I mean,
25 unless you want to see them. They're --

1 JUDGE CORNELLY: Well, if you're going
2 to argue them or if you want to submit them --

3 MS. SHAHID: Yeah.

4 JUDGE CORNELLY: -- I probably should
5 see them, yes.

6 MS. SHAHID: Yeah.

7 JUDGE CORNELLY: Joe, do you have an
8 extra copy of the motion? Do you have an extra
9 copy? Officer, will you make a quick copy.

10 MS. SHAHID: Can I make sure all of the
11 exhibits are here real quick, because this seems
12 kind of skinny. Okay. A, B, C, D, E, F, G, H, is
13 that it?

14 MR. DODDS: I think so.

15 MS. SHAHID: H. Oh, I'm sorry, you're
16 going to make the copies?

17 UNIDENTIFIED MALE: Sure.

18 MS. SHAHID: Thank you.

19 JUDGE CORNELLY: Officer, if you just
20 let the clerk know that we seem to have the exhibits
21 under control. She doesn't need to look for the
22 court file anymore and she can come on out.

23 UNIDENTIFIED MALE 2: Okay. I'm sorry,
24 I didn't know whether you could hear me or not in
25 there.

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1 JUDGE CORNELLY: (Unintelligible)

2 MS. SHAHID: I'm not going to take that
3 personally. We're standing between you and your
4 hurricane preparations.

5 JUDGE CORNELLY: Wife's preparations.

6 MS. SHAHID: Did Kathleen recover from
7 the snake bite? I've told -- I just saw it on
8 Facebook. I told everybody, "Don't walk the dog at
9 night." Who knew, though?

10 JUDGE CORNELLY: I know.

11 MS. SHAHID: Who knew?

12 JUDGE CORNELLY: Officer
13 (unintelligible), are you my clerk (unintelligible)
14 or something?

15 OFFICER: Family's open.

16 JUDGE CORNELLY: Well, you don't need to
17 stick around unless they're requiring you to. You
18 can go do whatever you got to do. I mean, this is
19 not -- it's not like somebody's going to jump me, I
20 don't think, anyway. I don't think you need to
21 worry, is what I'm saying. If you need to go, you
22 can go.

23 OFFICER: That's okay.

24 JUDGE CORNELLY: Okay.

25 OFFICER: No, I'm good.

1 JUDGE CORNELLY: I mean, it may be a
2 little bit because we have another couple witnesses
3 to go, so it may be as much as an hour or so. I
4 don't care.

5 (Unintelligible)

6 MS. SHAHID: Is it done? I'm sorry.

7 JUDGE CORNELLY: I don't know.

8 UNIDENTIFIED MALE: I think he is
9 trying to get a copy of it.

10 UNIDENTIFIED MALE 2: He went over to
11 the police department to make a copy.

12 MS. SHAHID: Oh, okay.

13 UNIDENTIFIED MALE 2: I was having
14 trouble with the copying machine.

15 JUDGE CORNELLY: You want to just go
16 forward?

17 MS. SHAHID: Yeah, I can just go
18 forward and --

19 JUDGE CORNELLY: Sure. We'll supplement
20 it.

21 (Exhibit's A, B, C, D, E, F, G, and H received into
22 evidence.)

23 MS. SHAHID: I'll describe whatever it
24 is that I think is --

25 JUDGE CORNELLY: So at this point you

1 can ask any questions that you need to of
2 Mr. Henderson.

3 MS. SHAHID: Okay. Would you prefer
4 him seated?

5 JUDGE CORNELLY: It doesn't matter.

6 MS. SHAHID: Whatever you're
7 comfortable with.

8 MR. HENDERSON: I'm okay here.

9 BY MS. SHAHID:

10 Q Okay. Mr. Henderson, do you have a
11 copy of 21-75 in front of you?

12 A Yes.

13 Q Okay.

14 A I do.

15 Q All right. Which section of 21-75 says
16 that docks can't extend any further than adjacent
17 docks?

18 A Well, our interpretation of this
19 section of the ordinance under B-1 -- basically,
20 it's a long-standing interpretation of the Town that
21 not extending so far as to interfere with navigation
22 means that no docks subject to a permit can extend
23 beyond adjacent documents.

24 Q Okay.

25 A That's a long standing interpretation

1 of the Town.

2 Q You would agree with me that 21-75 is a
3 very explicit regulation with specific standards in
4 it?

5 A It has specific standards, yes.

6 Q And just by way of an example, it has a
7 specific -- 800-foot extension is the maximum that a
8 dock can be, and it has specific widths regarding a
9 creek as of 200 feet. And I'm look at 21-75B(2)(a),
10 specific -- specific standards regarding dock length
11 and creek width.

12 A That's right when describing where a
13 dock can cross a creek.

14 Q Okay. Specific standards in 21-75B(3)
15 regarding the sizes of pier heads, floating docks,
16 and boat lifts?

17 A Yes.

18 Q Okay. Specific standards in B(4)
19 regarding setbacks of adjoining property lines and
20 when you can cross an extended property line?

21 A Yes.

22 Q Okay. So all in all, you would agree
23 with me that 21-75 is pretty specific in terms of
24 docks and dock standards?

25 A Fairly specific, yes.

1 Q Sizes, locations, et cetera?

2 A Uh-huh.

3 Q Doesn't lend itself to a whole lot of
4 interpretation,, the ones that you and I went through
5 together, do you agree?

6 A Uh-huh, yes.

7 Q And you would agree with me that the
8 dock was built in accordance with the OCRM permits,
9 so far as you know?

10 A I am not clear on that.

11 Q Okay. Well, so far as you know? Do
12 you or don't you?

13 A I do not know. I did reach out to
14 DHEC's OCRM permit -- permit inspector, and she
15 indicated there was some question about the length,
16 but I would -- I would rather them testify on that.
17 I don't know.

18 Q As far as you know, there's been no
19 enforcement action on OCRM?

20 A No. Not to my knowledge, no.

21 Q Okay, all right. And, in fact, you
22 require the applicant to provide you an OCRM permit
23 before obtaining your authorization?

24 A Yes.

25 Q Okay. And that permit was provided,

1 which is Exhibit A to my motion, and I'll show you a
2 copy.

3 A That's correct.

4 Q Okay.

5 A It appears to be the same one.

6 Q And that permit provides special
7 conditions by -- from OCRM. And it says in it that
8 the plans govern unless we have special conditions;
9 correct? I'll show you what I -- I won't -- "If
10 there are no special conditions and the work is
11 authorized as described in the project description
12 and is modified by the general conditions." It
13 says, "Please carefully read the project description
14 and any special conditions that may appear on this
15 permit certification, as they will affect the work
16 that is allowed and may modify the work from that
17 shown on submitted plans." Do you see that?

18 A Uh-huh.

19 Q All right. And do you see that
20 somebody from the Town included a special condition
21 within the OCRM permit on June 30, 2014?

22 A We talked about previously. That was
23 the building official, Randy Robinson, requiring an
24 as-built survey --

25 Q Okay.

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1 A -- following the construction.

2 Q All right. But you don't see any
3 special condition handwritten by anybody from the
4 Town on the OCRM permit regarding the extension of
5 the dock?

6 A Regarding the extension of the dock?

7 Q The seaward extension of the dock, the
8 seaward most point of the dock. There's nothing --

9 A Oh, not being able to build past the
10 build-to?

11 Q Right.

12 A That's right, because as -- from what I
13 understand it, that is not one of the DHEC OCRM
14 regulations.

15 Q Well --

16 A It's a local regulation.

17 Q -- neither is the requirement to give
18 an as-built to Sullivan's Island a DHEC regulation,
19 that's a local regulation.

20 A That's a local regulation, that's
21 correct.

22 Q All right.

23 A That's what's called into question.

24 Q And you and -- you and Mr. Dodds were
25 looking at a plat that's attached to Exhibit 1 that

1 includes two notations on it. And I'll submit to
2 you that I had attached as Exhibit A, because it was
3 part of the OCRM permit, the same plat but with
4 three notations on it. Do you see this to be the
5 same plat? It's got the OCRM permit number written
6 on it, it's got the seal, it says Tidewater, and
7 it's got this handwritten notation on the top and
8 this one in the middle. Do you see that?

9 A That's right.

10 Q Okay.

11 A It's only different that it doesn't
12 have this --

13 Q Okay.

14 A -- notation.

15 Q And you see that in the one that was
16 handwritten on one of the pages of the OCRM permit,
17 there's a notation, "Boat lift okay as drawn, RR,
18 7/2/14." Do you see that?

19 A That's right, and there's a little
20 arrow or little line --

21 Q Okay.

22 A -- going across from my circle setback
23 comment.

24 Q Yeah. And that is not drawn on
25 Exhibit -- that is not shown on what you've put into

1 evidence as Exhibit 1; correct?

2 A Right.

3 Q All right. But it -- but this is part
4 of the OCRM permit drawings?

5 A I'm not sure why this wasn't scanned in
6 to them.

7 Q Okay. And when I refer to this, for
8 the record, I'm talking about the page that's in
9 Exhibit A. Maybe I better check my --

10 MR. DODDS: Here it is.

11 MS. SHAHID: Thank you. Yeah, okay.

12 MR. DODDS: It's right there, I was
13 looking at it.

14 MS. SHAHID: And that's part of Exhibit
15 A?

16 MR. DODDS: Yes, ma'am.

17 MS. SHAHID: Okay. Page that's part of
18 Exhibit A that has the three written notations.

19 JUDGE CORNELLY: I'll have the staff
20 copy that thing.

21 Q (By Ms. Shahid) Okay. Now, let's talk
22 about this build-to line that you -- that you
23 referenced. You testified about a build-to line,
24 and you testified that you went out on these docks
25 and they did not meet the build-to line. And the

1 build-to line is drawn on what?

2 A I would like to correct. They didn't
3 meet the terms and conditions of the building permit
4 that we issued.

5 Q Okay. So -- but you testified about a
6 build-to line.

7 A Uh-huh.

8 Q Okay.

9 A That we identified on the building
10 permit right here.

11 Q Okay, all right. And that's the line
12 identified on the building permit?

13 A That's right.

14 Q Potentially identified on the same
15 drawing that is attached to my Exhibit A?

16 A That's right, corresponding with this
17 comment here.

18 Q Okay. Does that build-to line have any
19 metes and bounds to it?

20 A No, it doesn't.

21 Q Is it scaled on there?

22 A It's just pulled from the leading edge
23 of one adjacent dock to the other.

24 Q Okay. As depicted on that survey? And
25 it doesn't take into account the docks that are

1 located -- I'm going to say to the right?

2 JUDGE CORNELLY: That would be to the
3 east.

4 Q (By Ms. Shahid) To the east?

5 A To the east, no.

6 Q Because those docks are not shown on
7 that plat, does it?

8 A That's correct.

9 Q And it only takes into account the
10 existing float, which is sketched in by the surveyor
11 on the right and --

12 A Right here.

13 Q -- dock? All right. So you relied on
14 that indication by the surveyor of the location of a
15 portion of a float and an edge of a dock to
16 establish your build-to line?

17 A Yes.

18 Q You put no metes and bounds on it, you
19 didn't scale it, there's no map coordinates to find
20 it?

21 A Again, we -- we wanted to -- we try to
22 expedite these permits. We handle lots of permits
23 on a daily basis, and we didn't want to send them
24 back to an engineer or surveyor and have them redraw
25 it. We thought that the contractor here with all

1 his years of experience understood what we were
2 going for here.

3 Q Right. So there's 50 -- 55 feet of
4 distance between Mr. Thompkin's floating dock and
5 the depiction of the edge of the dock on one side,
6 and 89 feet of distance between the boat lift or
7 whatever's on this side of the pier head, which I
8 believe might be the boat lift, and the depiction of
9 the floating dock on the other side; right?

10 A I think that 89 refers to the edge of
11 the pier head --

12 Q Okay.

13 A -- and not the piles for the boat lift;
14 isn't that right?

15 Q Well, regardless, I'm just asking you
16 to confirm that there's distances shown --

17 A Yes.

18 Q -- and there's --

19 A Yes, absolutely. But that's 89 to the
20 pier head.

21 Q Eighty-nine and 55, if I'm reading that
22 correctly?

23 A Eighty-nine and 55 --

24 Q Okay. And you understand --

25 A -- are the scales

1 Q And you understand that those docks on
2 either side are private property; right? They're
3 not -- okay.

4 A They are --

5 Q They're privately owned?

6 A They're privately owned docks that
7 extend into the RC-2 zoning district. Well, that's
8 not necessarily --

9 Q It's not a trick question. You
10 understand they're privately owned? I promise it's
11 not a trick question.

12 A Yeah, they're privately owned docks,
13 yeah.

14 Q And that Mr. Thompkins or Mr. Murray or
15 any of his crew would need permission of the
16 property owners on either side to enter those docks;
17 right?

18 A Yes.

19 Q All right. So your expectation when
20 you draw your build-to line is that they are going
21 to stand at the terminus of their walkway and
22 they're going to look to the left 55 feet and
23 they're going to look to the right 69 feet, and
24 they're going to be able to line up with these
25 structures?

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1 A It should be done more scientifically
2 than that. I mean, they should have -- once we
3 wrote in this build-to line -- I mean, when they
4 send their crews out, they should have survey
5 markings identifying these two points. I mean,
6 typically, when we do this, when we redline plans,
7 we make sure that they have an understanding of what
8 message we're sending here.

9 Q Okay. But you didn't require them to
10 create those points, you just drew a line on those
11 diagram?

12 A We said, "There's a line here and don't
13 cross it," that's right.

14 Q And you understand that there's a
15 difference between a hand drawn line and a line
16 surveyed by a surveyor, there's a big difference?
17 You understand -- you probably need to say yes or no
18 for the record.

19 A Yes.

20 Q You understand that a hand drawn line,
21 as you -- if you actually ask a surveyor to go out
22 there and do this, it might not look like your hand
23 drawn line once they recover the points in the field
24 and do the drawing?

25 A Yeah, that's -- that's true, that's --

1 that's true. There may be a slight difference.

2 Q Okay. And -- and the -- the exceedance
3 here is, what, eight feet over the build-to line?

4 A I think your as-built survey line
5 showed 9.2. In your motion --

6 Q Okay.

7 A -- it showed that distance.

8 Q Nine feet over the build-to line. But
9 you would agree with me -- well, I'll get to that in
10 a minute. Now if we could look for -- look at --
11 too much paper -- I think it's -- here it is, your
12 Exhibit 1. And Exhibit 1 is the accessory
13 structures permit. And you would agree with me that
14 there's no stated permit condition on Exhibit 1,
15 just on that one page of paper?

16 A That's right. This is generated by the
17 computer after the building official and I have
18 given zoning compliance and building code compliance
19 to the building application.

20 Q Okay.

21 A That's correct. And also reiterates
22 compliance with the Certificate of Zoning
23 Compliance.

24 Q Now, I'm looking at Certificate of
25 Zoning Compliance and it has a special -- it has a

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1 section that says, "Special conditions of approval;"
2 right?

3 A Uh-huh, yes.

4 Q And that special condition is,
5 "Application -- application approved provided shown
6 pier head with roof, floating dock, and boat lift
7 meet the conditions of Zoning Ordinance 21-75 and
8 that all structures meet at 10-foot setback from the
9 extended lot lines." So we're not here about that
10 ten-foot setback; right?

11 A That's right.

12 Q We're here --

13 A Mr. Robinson cleared that up with his
14 comment there.

15 Q All right. We're here about meeting
16 the condition of Zoning Ordinance 21-75.

17 A And violation of the building permit.

18 Q Okay. And so your Certificate of
19 Zoning Compliance, the expressed condition that's
20 typed on there says, "Meet the conditions of Zoning
21 Ordinance Section 21-75." It doesn't say go to a
22 build-to line, does it?

23 A It does here.

24 Q That's under Work Description, that's
25 not under Special Condition of Approval.

1 A It was a note that was shown to the
2 contractor before he signed that permit.

3 Q But you would agree with me it's under
4 Work Description and not Special Condition of
5 Approval?

6 A But it was described -- multiple
7 conversations were had with this company and their
8 engineers.

9 Q I'm not arguing with you. But you
10 would agree with me that it is under the paragraph
11 entitled Work Description, it is not within the body
12 of the certificate that says Special Condition of
13 Approval?

14 A I got a cramp there and I filled up all
15 the room.

16 Q All right. And I believe it was your
17 testimony that when you talked to or met with
18 Mr. Thompkins, you told him he could not get a CO
19 and his family could not come and enjoy their
20 property over the summer holiday unless he addressed
21 the problem with the docks?

22 A I don't think I ever mentioned --
23 stated it in those terms. What I did mention to him
24 is it's our requirement by the zoning ordinance that
25 the site must -- the property must be in compliance

1 with zoning regulations and the Town Code of
2 Ordinances before we could issue a certificate of
3 occupancy, and that's what I was doing that day is
4 reviewing the entire site. So the location of the
5 house, the (unintelligible) board of management
6 planned the landscaping, Randy was doing structural
7 compliance, we identified a violation.

8 Q Okay.

9 A So we needed to get past that, and we
10 needed something in writing from Mr. Thompkins
11 addressing this violation. We wanted him to get out
12 there and start enjoying his property, which is why
13 we let him in the house.

14 Q But, no, he couldn't get out there
15 until you got something in writing from him;
16 correct?

17 A Well, we wanted him to address the
18 violation and explain what had happened here
19 eighteen months ago, why we weren't supplied with
20 correct documentation from American Dock and Marine.

21 Q Well, there's nothing wrong with the
22 construction of the house; correct?

23 A The site.

24 Q There was nothing wrong with the
25 construction of the house, correct, just the house,

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1 itself, the structure? There was nothing wrong with
2 the residence?

3 A There were several issues that were
4 wrong with the site, and we issued a temporary
5 certificate of occupancy because of that. So the
6 still water management hadn't been installed
7 correctly, there was some landscaping that hadn't
8 been installed --

9 JUDGE CORNELLY: Does this have anything
10 to do with (unintelligible)?

11 MS. SHAHID: Well, no, they offered a
12 letter of -- into evidence of --

13 JUDGE CORNELLY: Oh, okay.

14 MS. SHAHID: -- Mr. Thompkins's --

15 JUDGE CORNELLY: Yes, I'll allow you to
16 go -- go ahead.

17 A This was one -- one issue of many
18 issues that we had to have Mr. Thompkins address and
19 then the contractor to address, all in an effort to
20 get him into the house that day, that weekend. And
21 I think we made it happen, I think (unintelligible)
22 move in.

23 Q (By Ms. Shahid) I'm going to show you
24 an e-mail that's Exhibit G to the materials that I
25 provided in the motion to dismiss, and ask you if

1 you recognize this e-mail?

2 A Yes.

3 Q Okay.

4 A That's an e-mail from Mr. Murray.

5 Q Okay.

6 A I don't know which one.

7 Q And it was dated -- I'm trying to find
8 the date on it -- in or around this date, June 28th?

9 A Yes. So this is when -- yeah, it's not
10 showing the date from my e-mail, but -- but that's
11 in response to -- oh, that's when the as-built was
12 sent over to me --

13 Q Okay.

14 A -- on June 28th.

15 Q Now, I'm particularly interested in --
16 I'm just going to quickly read this:

17 "Mr. Murray, I've attached several
18 pictures taken during my inspection of June 27th,
19 and an aerial rendering showing the walkway, pier
20 head, and floating dock at 1102 Osceola. Also
21 attached is a copy of your building permit that
22 shows you agreed to meet the Town's requirements,
23 i.e., that the walkway, pier head, and floating dock
24 must not be constructed any closer to the creek than
25 either of the adjacent docks."

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1 All right. So now you're saying that
2 this -- the measurement is any closer to the creek?

3 A I was referring to the build-to line.

4 Q Okay.

5 A The same one that we've been talking
6 about.

7 Q But you didn't say build-to line, you
8 said creek. Are you saying that the build-to line
9 is the boundary of the creek?

10 A No. I was referring to the build-to
11 line that we identified in this permit. And I think
12 I -- do you have the attachments that went along
13 with this here.

14 Q Probably not.

15 A Okay. So it refers to probably a
16 picture -- I think I said that there's --

17 Q They might be these photographs.

18 A Yeah, I attached the copy of the
19 building permits and also an aerial rendering --
20 this one. So I was referring to that line.

21 Q Okay, all right. But you say any
22 closer to the creek. You would agree with me that
23 telling somebody to offset from a creek, which is a
24 defined geological feature, is different from
25 telling somebody to offset from a build-to line?

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1 A I think it was clear in my e-mail that
2 I was referring to the build-to line --

3 Q Well, you didn't --

4 A -- that's the subject of the violation.

5 Q You didn't say build-to line, you said
6 creek. All right. Let me --

7 A Usually, I refer to the center line of
8 the creek.

9 Q Okay.

10 A So, you know, the -- the goal was to
11 get as close to the center line of the deep water of
12 that creek as possible.

13 Q Okay.

14 A And that's really what this zoning
15 ordinance is intended to do, is to stop folks from
16 racing out to that deep water and causing a hazard
17 for people traveling along that creek.

18 Q All right.

19 A That's why we have this interpretation.

20 Q Okay. Let's look --

21 A (Unintelligible)

22 Q Let's look, if we can, at the OCRM
23 permit. Or if it's not on there, let's look at the
24 as-built survey. Do you have a copy of that on you?
25 I probably do have it.

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1 A I think one's submitted in here.

2 Q Yeah, I probably got it.

3 A Yeah, it's in the motion on the
4 third --

5 Q Gotcha.

6 A -- page of the exhibits, yes.

7 Q Here we go, I got it right here. So
8 this is attached as part of Exhibit F, and it's a
9 two-page as-built survey. You've seen this before?

10 A Uh-huh, yes.

11 Q Okay. You understand that in OCRM
12 regulations a creek is defined from edge of marsh
13 grass to edge of marsh grass?

14 A From what I understand, that's how they
15 determine it.

16 Q Okay. And this particular as-built
17 does indicate the edge of marsh grass on one point
18 and the edge of marsh grass on the other point of
19 the water body?

20 A It appears that it indicates that.

21 Q Okay. And every one of these docks
22 is -- shown on this as-built is well in front of the
23 boundary of the creek if it is edge of marsh grass;
24 correct? Not just Mr. Thompkins's dock, but every
25 one of these docks is in front of the edge of marsh

1 grass?

2 A Yes, uh-huh.

3 Q So when you tell somebody they can't
4 get any closer to the creek, all of these docks are
5 well into the creek; correct?

6 A Again, I -- I was referring to the
7 center line of the creek.

8 Q Okay. Now, you're aware these
9 properties are on the Intracoastal Waterway?

10 A They are not. They're actually on Cove
11 Creek.

12 Q Okay. But Cove Creek is a federal
13 channel; did you know that?

14 A It's the jurisdiction of Army Corps of
15 Engineers.

16 Q So it's a federal channel, makes it
17 part of the Intracoastal Waterway?

18 A I'm not sure about that terminology.

19 Q So if you were looking for a center
20 line of the cove -- you see where the channel has
21 been mapped here? First of all, you've got a --
22 you've got a water body that's shown 347 -- God, I
23 need reading glasses -- 367 feet wide, right --

24 A Uh-huh.

25 Q -- going marsh grass to marsh grass?

1 A Sure. I see the -- the delineation of
2 the boundaries of the channel.

3 Q So your build-to line is not the center
4 line of the channel; correct?

5 A That's correct.

6 Q Okay.

7 MS. SHAHID: Can I take a moment to
8 confer?

9 (No audio)

10 MS. SHAHID: No other questions.

11 MR. DODDS: I'm sorry.

12 JUDGE CORNELLY: Go ahead.

13 BY MR. DODDS:

14 Q So in redistrict, Mr. Henderson, did
15 the contractor, did the engineer, or did
16 Mr. Thompkins ever indicate to you that they did not
17 understand the notations that were made on the
18 documents that had been received as part of the
19 building permit application, Exhibit -- Exhibit 1 in
20 evidence?

21 A No, sir.

22 Q All right. When you sent the -- when
23 you communicated with the dock contractor, did he
24 ever indicate that it was to the desire of the owner
25 to exceed the approval that had been given in the

1 building permit, as far as the location of the dock?

2 A After it was issued, no. No, after it
3 was issued, we didn't hear from them. For all we
4 knew, they were going to comply with the terms and
5 conditions of the permit.

6 Q All right. And just so the judge is
7 clear, and I believe that he is, with regard to
8 Exhibit G, it appears that in your e-mail to
9 Mr. Murray, which you referenced June 29, 2016, it
10 was sent June 28, 2016, did you provide a copy of
11 the pictures that had been received in evidence as
12 Exhibit 2, as well as the building permit
13 application that has been received in evidence as
14 Exhibit 1?

15 A I did provide -- yes, I provided a copy
16 of a building permit and an aerial rendering showing
17 walkway, pier head, as-built, yes.

18 Q Okay. Were those the same pictures
19 that had been received in evidence as Exhibit 2?

20 A I'm pretty sure. I'm not sure.

21 Q You're not sure?

22 A I'm not sure if I actually attached
23 that specific -- I'm pretty sure that I attached
24 those pictures to the e-mail.

25 Q You're referring to Exhibit 2?

1 A Yes.

2 Q Okay.

3 A The ones that I took that day.

4 Q I understand, thank you.

5 MR. DODDS: Nothing further, Judge.

6 JUDGE CORNELLY: Anything else?

7 MS. SHAHID: No.

8 JUDGE CORNELLY: Okay.

9 MR. DODDS: I call Randy Robinson to
10 the stand, Your Honor.

11 JUDGE CORNELLY: Okay. He's already
12 been sworn, so go ahead. You can just sit down
13 there if you'd like.

14 THOMAS R. ROBINSON,
15 of lawful age, produced, sworn, and examined,
16 deposes and says:

17 EXAMINATION

18 BY MR. DODDS:

19 Q State your full name for the record,
20 please.

21 A Thomas R. Robinson.

22 Q All right. And are you employed by the
23 City of -- or the Town of Sullivan's Island?

24 A I am.

25 Q And in what capacity?

1 A The chief building inspector.

2 Q All right. And how long have you been
3 the chief building inspector for the Town of
4 Sullivan's Island?

5 A The building inspector was probably --
6 it was a different title, but I've been working for
7 the Town since 1990 in some capacity in the building
8 department.

9 Q All right. And are you familiar with
10 the property located at 1102 Osceola Avenue,
11 Sullivan's Island in South Carolina?

12 A I am.

13 Q And is that property adjacent to the
14 RC-2 Area District as defined in the zoning
15 ordinances for Sullivan's Island?

16 A It is.

17 Q All right. And do you know the
18 owner -- well, do you know Jason Thompkins?

19 A Unfortunately, I didn't have a chance
20 to meet him until all this came up.

21 Q All right. What about the dock
22 contractor, Mr. Murray?

23 A I've known Mr. Murray for years.

24 Q All right. And did you have occasion
25 to review an application for a permit to construct

1 the dock at the property of 1102 Osceola Avenue on
2 Sullivan's Island?

3 A I did.

4 Q All right. And how is it that that
5 came to pass?

6 A Generally, somebody will come in and
7 apply for a permit -- to Kat Kenyon for a permit.

8 Q All right.

9 A And the progression is it goes from Kat
10 to Joe to myself, and back to Kat.

11 Q All right.

12 A That's just how we do all permits.
13 Sometimes permits will go from Kat, go to Joe, they
14 come to me, and I will see something or Joe will see
15 something that he wants to bring to my attention in
16 that process. So that permit might bounce from Joe
17 to myself, and then end up in Kat's office.

18 Q All right. Let me show you what's been
19 received in evidence as Exhibit 1, and ask if you
20 recognize these documents? Take a moment and go
21 through them, please.

22 A I do.

23 Q All right. And do you recognize any
24 notations that are contained on the face of the
25 building permit application?

1 A I do.

2 Q All right.

3 A Notations that I made.

4 Q And would you tell the Judge what
5 notations were made?

6 A Well, it says, "Must not exceed
7 adjacent docks and ten feet from extended property
8 line."

9 Q All right. Let's focus our attention
10 on the first part of the notation, "Must not exceed
11 adjacent docks." What did you mean, specifically,
12 in that regard?

13 A Well, generally -- or in general, since
14 I've been with the Town, if there were docks
15 adjacent to a proposed dock, we made those docks
16 line up. Over the years I've had instances where
17 other people wanted to go out beyond the adjacent
18 docks and we've done the same thing, drawn lines and
19 said, "No, you can't go beyond the adjacent docks,"
20 and that's what they've done.

21 Q Okay.

22 A We've actually had one that -- probably
23 four doors -- four, maybe five, six docks down from
24 this that just did it, went out and did it without a
25 permit, and we made them pull it back.

1 Q Right. Okay. What's the rationale
2 that you employ with regard to not -- not exceeding
3 adjacent docks?

4 A It's pretty practical. I mean, we're
5 not experts in dock building or coastal zone
6 management or anything like that. I mean, you're in
7 a boat and you're riding down a creek
8 (unintelligible) or whatever you want to use. And
9 you're riding down that creek and you're using those
10 docks as a guide to go down the dock.

11 Q All right.

12 A And if one's sticking out there, you
13 run in that dock.

14 Q Let me show you some handwritten
15 notation on the Certificate of Zoning Compliance,
16 which is part of Exhibit 1, and ask if you recognize
17 that language?

18 A I do.

19 Q All right. And is that you or is that
20 Mr. Henderson's writing?

21 A That's mine.

22 Q All right. And what specifically does
23 it say, again?

24 A Well, it says, "Move dock boat lift ten
25 feet from extended property line. Move pier head,

1 floater, and boat lift landward to not exceed
2 adjacent dock."

3 Q All right. Is your signature on that
4 document?

5 A Yes, sir.

6 Q All right. Are those notations part of
7 the building permit that was issued by Sullivan's
8 Island to the owner of the property of 1102 Osceola?

9 A Yes, sir.

10 MS. SHAHID: Objection, your Honor.

11 JUDGE CORNELLY: (Unintelligible)

12 MS. SHAHID: Because the accessory
13 structures permit doesn't have those conditions on
14 it, they're part of the building permit application.

15 JUDGE CORNELLY: Okay.

16 MR. DODDS: He's testified he had to do
17 it, Your Honor. He is the building official,
18 Mr. Henderson is the zoning administrator, and they
19 both indicated that is a condition of the building
20 permit that was issued.

21 Q (By Mr. Dodds) Did the engineer, the
22 owner, or anyone acting on behalf of the owner ever
23 indicate to you any displeasure or confusion or
24 misunderstanding about what those specific notations
25 meant as contained in the building permit that was

1 issued by the Town?

2 A Yes, sir.

3 Q All right. Did the owner ever seek an
4 appeal of the building permit that was issued by
5 Sullivan's Island with respect to the construction
6 of the dock at this property?

7 A No, sir.

8 Q All right. There appears to be some
9 handwritten notations on the permit that was issued
10 by OCRM and made a part of the permit application
11 submitted by the owner in this case relative to the
12 construction of the dock. Do you recognize that,
13 the handwritten notation?

14 A Yes, sir, I made that.

15 Q All right. And what does that say?

16 A Well, it's partly cut off, but it also
17 provides for Sullivan's Island.

18 Q Okay.

19 A Concerning the as-built survey.

20 Q And why is it that Sullivan's Island is
21 interested in getting an as-built survey?

22 A To make sure it lined up with the other
23 docks.

24 Q All right. And have you had occasion
25 to go to the property on Osceola Avenue?

1 A I have been down there.

2 Q All right. And did you see the dock as
3 built?

4 A I have actually not been out on the
5 dock.

6 Q Okay. Have you seen Mr. Henderson's
7 pictures?

8 A Yes, I have.

9 Q All right. Have you seen the aerial?

10 A I have.

11 Q All right. Do you believe that the
12 dock, as constructed, from the property at 1102
13 Osceola satisfies the requirements of the building
14 permit issued by the Town of Sullivan's Island?

15 A I do not think so.

16 Q And why is that?

17 A Because it's -- it's creekward where
18 the other -- the build-to line is between the other
19 two docks.

20 Q All right. Did you have any
21 conversations with Mr. Thompkins or Mr. Murray since
22 receiving the as-built survey?

23 A You know, both of them have -- I don't
24 think since receiving the as-built survey.

25 Q Okay.

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1 A But I really can't say. I mean, both
2 of them have been in the office.

3 MR. DODDS: I have no further questions
4 of Mr. Robinson, Your Honor.

5 JUDGE CORNELLY: When -- when did -- was
6 the -- was the as-built survey a (unintelligible) of
7 the Town of Sullivan's Island?

8 A It was, Judge, and I believe --

9 JUDGE CORNELLY: When was that?

10 A Let's see. I think it was in
11 response --

12 MR. HENDERSON: After my CO inspection
13 on June 27th when I took these pictures and
14 identified the violation.

15 MR. DODDS: And I was going to show you
16 something, Judge. The Exhibit G -- Exhibit G
17 references Mr. Henderson receiving the as-built
18 survey -- it looks like June the 28th, 2016 from
19 American Dock and Marine.

20 JUDGE CORNELLY: Ms. Shahid, you can ask
21 Mr. Robinson as many questions as you might have.

22 BY MS. SHAHID:

23 Q Mr. Robinson, the cove is actually a
24 federal channel, correct, maintained by the Corps of
25 Engineers?

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1 A You said so and Joe said so. I'm not
2 exactly sure, but I do know they do some dredging in
3 there for the federal government, yes.

4 Q Okay. And you understand that to be
5 part of the Atlantic Intracoastal Waterway back
6 there?

7 A Again, you said -- I have no reason
8 to -- to not to believe that.

9 Q You understand the term "federal
10 channel?" Have you seen that term before?

11 A No.

12 Q Okay.

13 A No.

14 Q You -- you've seen the as-built survey,
15 you see where Robert Frank, a licensed professional
16 land surveyor in South Carolina established the edge
17 of channel on that survey?

18 A I see that.

19 Q Okay. And you see where Robert Frank
20 also -- and for the record, the survey is part of
21 the exhibits attached to the --

22 JUDGE CORNELLY: Okay, what is that?

23 Would that be under Exhibit F? I think --

24 Ms. Shahid, are we looking at this right here?

25 MS. SHAHID: Yes.

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1 JUDGE CORNELLY: Okay. So that's behind
2 F and before G?

3 MS. SHAHID: Yes.

4 JUDGE CORNELLY: Okay.

5 Q (By Ms. Shahid) And you see that
6 there's a dimension provided marsh grass to marsh
7 grass for the cove and that dimension is 367 feet?

8 A Yes, ma'am.

9 Q Okay. And do you agree with me that
10 the docks located to the east of Mr. Thompkins's
11 dock are closer to the edge of the channel, as shown
12 on the as-built, than Mr. Thompkins's dock in terms
13 of this distance from dock to channel versus this
14 distance from dock to channel?

15 A This distance from dock to channel is
16 shorter --

17 Q Shorter.

18 A -- than this distance from dock to
19 channel.

20 Q So the docks to the east have a
21 shorter -- or located closer to the edge of the
22 channel than Mr. Thompkins's dock?

23 A Correct.

24 Q And have you navigated in the cove in
25 your boat?

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1 A Yes, ma'am.

2 Q Okay. And would you agree with me that
3 at least in this area of the cove that's
4 approximately 80 feet wide depicted as the edge of
5 channel, that's good water, deep water?

6 A Where are you talking --

7 Q What they're calling the channel.

8 A Oh, yeah, that's probably the deepest
9 water.

10 Q Okay.

11 A Sure.

12 MS. SHAHID: And, Your Honor, I've got
13 something that I thought might be an exhibit, but
14 maybe I better mark it. It's simply a Google Earth
15 drawing that I would like to mark as an exhibit.

16 JUDGE CORNELLY: Okay.

17 MR. DODDS: May I see it?

18 JUDGE CORNELLY: Sure.

19 MS. SHAHID: Google Earth image, I'm
20 sorry, not drawing.

21 MR. DODDS: No objection, Judge.

22 JUDGE CORNELLY: Okay. Well, we'll --
23 do you have -- in your motion your exhibits end on
24 H, so this would be I.

25 MS. SHAHID: Can I just write it on

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1 there?

2 JUDGE CORNELLY: You don't have any
3 exhibit stickers? It's okay, don't worry about it.
4 Yeah, just write it on there. So that will be
5 Exhibit I.

6 (Exhibit I received in evidence.)

7 MS. SHAHID: Okay.

8 JUDGE CORNELLY: Okay, go ahead.

9 Q (By Ms. Shahid) I'm going to show you
10 Exhibit I, which is a Google photograph, and do you
11 recognize that to be the area of the cove in
12 question?

13 A Uh-huh.

14 Q And this dock that I'm going to draw a
15 blue circle around, that will be Mr. Thompkins's
16 dock, okay?

17 A Yes, ma'am.

18 Q And then there's three docks located
19 over here --

20 A Uh-huh.

21 Q -- okay? Doesn't it appear to you that
22 these docks, not just Mr. Thompkins's dock but all
23 three of these docks, are located further out than
24 the docks to the east of Mr. Thompkins's? And if
25 you got --

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1 A I have to take it straight ahead, you
2 know, and I go like that.

3 Q Oh, you're doing it at an angle? Show
4 me what you're doing.

5 A I'm just trying to take the existing
6 docks that are here --

7 Q Okay.

8 A -- and trying to go down those docks,
9 you know --

10 Q Okay.

11 A -- and Mr. Thompkins's is out beyond
12 them.

13 Q Okay. And --

14 A Not much, but --

15 Q Okay.

16 A -- you know, from our standpoint, we
17 start letting a guy go two feet out, the next guy's
18 going to go four feet out and the next guy's going
19 to go ten feet out. And there's a procedure for
20 doing that.

21 Q Okay. Let me ask you something: When
22 I look at the docks to the east of Mr. Thompkins as
23 compared to the docks to the west of Mr. Thompkins,
24 the -- if you look at boundary of the marsh, the
25 extension of the walkways beyond the edge of marsh

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1 seems longer for the docks to the west versus -- to
2 the west versus east. Do you not agree with that
3 observation looking at this photograph, that the
4 docks to the west have longer extensions extending
5 from the marsh line?

6 A No. It looks like Mr. Thompkins might
7 be longer than marsh grass to me. If this is the
8 marsh grass --

9 Q Well, I'm not disputing that
10 Mr. Thompkins's dock is longer, I'm certainly not
11 disputing that. What I'm asking you is that it
12 appears to me that there are other docks that extend
13 further out than docks to the east of Mr. Thompkins
14 in that photograph.

15 A It looks like he's pretty far out to
16 me.

17 MS. SHAHID: I think the photograph
18 speaks for itself, Your Honor.

19 JUDGE CORNELLY: Okay. I'll mark it as
20 an exhibit without objection, I'll just add it to
21 the exhibits. Now, I am using the -- your motion to
22 dismiss as a complete exhibit from you and then I'll
23 add this I to that, okay?

24 MS. SHAHID: This is an as-built in
25 2015 (unintelligible).

1 JUDGE CORNELLY: Part of this as well?

2 MS. SHAHID: I don't know because it's
3 got a different date. I don't think it is. I'll
4 tell you what, I'll just hold that. I'll get
5 Mr. Thompkins to identify that. Yeah, it doesn't
6 look -- that's not an as-built, no. That's all
7 right.

8 JUDGE CORNELLY: Okay.

9 MS. SHAHID: I'll do that with somebody
10 else. That's all I've got.

11 MR. DODDS: Just one question.

12 BY MR. DODDS:

13 Q Mr. Robinson, let me show you what
14 appears to be the third page of Exhibit F as
15 depicted -- as attached to the defendant's motion to
16 dismiss, which appears to be an as-built survey of
17 the dock at 1102 Osceola Avenue. Do you see the
18 indication of the seaward most edge of adjoining
19 dock on that exhibit?

20 A Yes, sir.

21 Q And where does the dock of the
22 defendant that -- emanating from 1102 Osceola, where
23 does it stand in relation to the survey's seaward
24 most edge of adjoining docks?

25 A It appears the surveyor wrote down here

1 9.2 feet.

2 Q In which direction?

3 A Toward the Cove Creek into the channel.

4 Q Thank you.

5 MR. DODDS: Nothing further, Judge.

6 JUDGE CORNELLY: Okay. Anything further
7 from the Town?

8 MR. DODDS: No, your Honor.

9 JUDGE CORNELLY: Okay. Do you have some
10 witness you'd like to --

11 MS. SHAHID: Yes.

12 JUDGE CORNELLY: Okay. Go ahead
13 whenever you're ready.

14 MS. SHAHID: Mr. Murray.

15 JUDGE CORNELLY: And you can just sit
16 there if you'd like (unintelligible).

17 MICHAEL MURRAY,
18 of lawful age, produced, sworn, and examined,
19 deposes and says:

20 EXAMINATION

21 BY MS. SHAHID:

22 Q All right. Mr. Murray
23 (unintelligible) --

24 JUDGE CORNELLY: Just get cozy.

25 Q (By Ms. Shahid) Mr. Murray, state your

1 full name for the record.

2 A Michael James Murray.

3 Q All right. And tell me what your
4 business is.

5 A I'm the president and owner of American
6 Dock and Marine Construction, Inc., here in
7 Charleston, South Carolina.

8 Q And how long have you been the
9 president and owner of American Dock and Marine?

10 A Twenty-seven years.

11 Q Okay. And what kind of construction
12 does American Dock and Marine do?

13 A All types of waterborne marine
14 construction, docks, piers, repairs, maintenance,
15 boat lift, riprap, little bit of everything.

16 Q Okay. And have you constructed docks
17 on Sullivan's Island?

18 A I have.

19 Q All right. Other than Mr. Thompkins's
20 dock?

21 A I have.

22 Q And Isle of Palms?

23 A I have.

24 Q Any idea, approximately, how many docks
25 you have constructed in your career?

1 A Hundreds.

2 Q Okay. And what licenses do you hold?

3 A I hold a Marine Specialty Contractors
4 license that allows me to build structures s up to
5 one million dollars --

6 Q Okay.

7 A -- in the state of South Carolina.

8 Q And what experience do you have with
9 regards to navigation, if any?

10 A I'm a licensed captain, I've been one
11 for probably 40, 45 years.

12 Q Okay. And does your experience or
13 knowledge that you have as a licensed captain, do
14 you use that when you are constructing docks or
15 designing docks?

16 A Well, it comes into play. I mean,
17 navigation is -- is an understanding of moving about
18 in the water in a vessel of any size.

19 Q Okay.

20 A So we're conscious of it. We look to
21 see, you know, if there's going to be a problem with
22 a particular structure, whether it's a dock, boat
23 lift, pilings, whatever. But, yeah, we're aware of
24 it.

25 Q Okay. Are you familiar with

1 Mr. Thompkins's property, his waterfront and his
2 dock?

3 A I am.

4 Q Did you supervise that construction?

5 A I did not.

6 Q All right. What was your involvement
7 with that construction?

8 A Obtain the paperwork from
9 Mr. Thompkins's engineer, supply him with a bid to
10 build the project, agreed on pricing, pull permits,
11 and then get a crew started on the project once
12 everything was approved.

13 Q Have you seen the dock as constructed?

14 A Yes, I have.

15 Q You've been out on the dock?

16 A I have.

17 Q Have you had an opportunity to review,
18 either in the field or using aerial photography,
19 where the dock is relative to other docks?

20 A I have.

21 Q Okay. What have you reviewed in that
22 regard?

23 A Everything from Google Earth to
24 standing on the dock and lining things up the best
25 you can with my eyes, having a surveyor actually go

1 out and survey the docks and the channel and the
2 water and the marsh. So, you know, I've very
3 familiar with it.

4 Q And you've been told by the Town that
5 the dock cannot extend any further than other docks?

6 A I was told that.

7 Q All right. Did you observe that there
8 were docks -- not Mr. Thompkins's dock, but other
9 docks that extended ahead of existing docks?

10 A Yeah. There's docks to the right or to
11 the east that are shorter than the docks to the
12 west. Mr. Thompkins's falls in-between those --

13 Q Okay.

14 A -- as far as where it is constructed.

15 Q I entered into evidence as Exhibit I an
16 aerial photo and an attempt to illustrate that. And
17 I would ask if you -- does -- does -- did you
18 observe the docks that are depicted on Exhibit I?

19 A That's correct. The docks to the right
20 and the docks to the left, yes.

21 Q Okay. And using my pen, would you put
22 a check mark over the docks that in your belief
23 extend further out than other docks existing on
24 Exhibit I?

25 A These docks right --

1 Q Does the pen show up?

2 A Yeah, it's -- just checking.

3 Q Okay.

4 A At least -- I know you can see these
5 two to three right here, because I took pictures at
6 low tide off of Mr. Thompkins's dock, and noticed
7 how far back these sat, how far the water was in
8 front of him at the time. As a matter of fact, one
9 of them actually has a crab trap about 20 feet in
10 front of the floating dock, it was almost high and
11 dry at the time.

12 Q Well, my question is are these the
13 docks that extend further out than other docks?

14 A No, these are -- these are shorter,
15 these are further.

16 Q Okay. So the docks to the east are the
17 shorter docks?

18 A Are shorter, and the ones to the west
19 are longer.

20 Q Okay. And you're not Ross Nelson, are
21 you?

22 A No, I'm not.

23 Q You don't work with Ross Nelson?

24 A No, I do not.

25 Q Okay. And Ross Nelson didn't build

1 this dock?

2 A No, he did not.

3 Q Did -- and did you have any
4 conversations with Ross Nelson about this dock?

5 A The only thing I -- if I can remember
6 correctly, was someone maybe with his company or
7 someone, a representative of his company, did the
8 staking in the field for an alignment. And I'm not
9 even sure if that was him or who it was. I'd have
10 to try to even look for something like that.

11 Q Okay. Is it typical to have somebody
12 staked in the field?

13 A It is. Yeah, we don't start
14 construction until something's staked in the field
15 for an alignment.

16 Q Okay. And what do you mean by
17 alignment?

18 A That's a starting point on the hill and
19 a center line going out for the four foot walkway.

20 Q Okay.

21 A So we know where we're starting on the
22 hill, that we're in a straight line parallel with
23 the property line so that we end up parallel and out
24 in the creek.

25 Q Okay. And by hill, are you talking

1 about the upland?

2 A Upland.

3 Q Okay. Did you have the opportunity to
4 access navigation or navigability in the area of
5 Mr. Thompkins's dock?

6 A Well, I know the area real well. I've
7 lived here all my life and I've navigated that
8 channel before. I know it's silting in considerably
9 in the 50-something plus years that I've been
10 navigating around here.

11 Q Okay.

12 A It's very shallow out there now.

13 Q Okay. And was there any particular
14 reason -- you didn't do the permitting for
15 Mr. Thompkins's dock?

16 A No, I did not.

17 Q Where is the dock located relative to
18 mean low water?

19 A It's probably right at it.

20 Q And what does that mean in terms of
21 navigability?

22 A There is none. It's mud flats.

23 Q Okay.

24 A It's, you know, considerably far out in
25 front of all of those docks.

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1 Q Okay. And you're -- you've navigated
2 that channel?

3 A I have.

4 Q In your experience in navigating that
5 channel, do -- is the shoreline -- is the area of
6 water closest to the docks used for navigation, or
7 where is the navigation located?

8 A Normal navigation is the center line of
9 any creek or body of water, that's normally where
10 you start the navigation. You look for aids of
11 navigation, such as markers or buoys, to navigate,
12 you know, channels that aren't marked or wouldn't be
13 marked. In this case there are no markings. You
14 would try to navigate the center first to find the
15 deepest water preferably because the way the, you
16 know, mud would come off of the marsh. So you
17 wouldn't be going up next to somebody's dock. There
18 would be no reason unless you were going to the dock
19 to tie your vessel up.

20 Q Okay.

21 A And you couldn't, anyway, probably
22 half-tide on either side because there is no water
23 there. Unless you're trimming your motor way up and
24 basically churning mud to get through there.

25 Q The Town's Ordinance 21-75 that you've

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1 been cited as violating requires you to ensure that
2 you don't interfere with navigation. What have you
3 done to -- in the construction of this dock to
4 ensure that you didn't interfere with navigation?

5 A I don't feel like I'm interfering with
6 navigation.

7 Q Is that -- what is that based on?

8 A The fact that I'm only apparently 9.2
9 feet further in front of the docks to the left,
10 considerably further than the docks to the right
11 along with the docks to the left. So that would
12 indicate that if it's a hazard to navigation, you're
13 way out of the channel. You're not supposed to be
14 there, you know, you're navigating a vessel
15 improperly, as far as I'm concerned.

16 Q Okay. As a dock builder, are there
17 measures that can be taken with docks to -- to
18 protect against boats colliding with them?

19 A There's methods in which you can put
20 all around lighting after dark, you can have
21 reflectors placed on pilings, strip reflectors.
22 Yeah, there's ways of marking them to where if at
23 night you can't see, you should be using a light or
24 any type of light that would reflect off the water
25 that could be picked up by any dock.

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1 Q Okay. As a dock builder, is it -- can
2 you -- well, you heard the testimony of Mr. Robinson
3 and Mr. Henderson; correct?

4 A Uh-huh.

5 Q Okay. So can you explain to the Court
6 what your interaction with them was?

7 A Not so much with Mr. Henderson, but
8 with Mr. Robinson I've had numerous encounters with
9 him pulling permits, you know, through the Town to
10 build structures over the last 25 years.

11 Q But what about with regard to this
12 dock?

13 A Mostly it was just Mr. Robinson.

14 Q Okay.

15 A You know, I brought the paperwork over,
16 dropped it off, left it, and usually I'm called a
17 week or two later, depending on how busy they are,
18 to come back and pick it up.

19 Q Okay. And did you have an
20 understanding through that process that you had to
21 not go any further than a certain line?

22 A The paperwork that was filled out at
23 the time, he made notations, it was probably talked
24 about. I, obviously, based on the paperwork, have
25 initialed and signed those documents. But after

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1 that, I walked out the door with my paperwork and we
2 got a construction crew on-site fairly soon
3 thereafter, and started building over the next
4 seven, seven and a half months.

5 Q What's the difference between building
6 in accordance with an OCRM permit that requires a
7 registered survey and meeting the requirements that
8 the Town has articulated tonight, which is don't
9 exceed any further than -- than the other docks, and
10 there it's sort of a handwritten requirements.
11 What's the difference in being able to comply with
12 those from a construction crew standpoint?

13 A Well, you would have surveyors come out
14 and mark things or give us coordinates to work to.
15 In this case we didn't have that. It was just
16 simply, "Don't build any further than the adjacent
17 docks." I give my contractor or my crew the
18 paperwork and they start building, and six, seven
19 months later on a dock this size they're out in the
20 river and they're lining their barges up the best
21 they can and looking down the docks and those are
22 short and those are long and I guess that's where
23 they're supposed to be. And they build a dock.

24 Q Okay.

25 A I mean, we weren't told to don't go

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1 specifically to this point. It was just, "Don't
2 build any further than the adjacent docks." And I
3 guess we're nine feet off, and that's why we're here
4 tonight, and hopefully try to remedy it the best way
5 we can.

6 Q Was it your intent to disregard the
7 Town's instructions.

8 A Absolutely not. I'm not in the
9 business to break the law, I'm not in the business
10 to cause grief or harm to anyone, I'm not out there
11 building illegal structures. I'm a fully licensed,
12 fully insured contractor that's been at this -- I've
13 grown up here, I live here, so breaking the law is
14 not what I'm after here. It's not it.

15 Q Okay. And if the law is, in fact, that
16 you have to make sure that there's no interference
17 with navigation, has anybody contracted you and
18 said, "Hey, that dock has interfered feared with my
19 navigation"?

20 A Absolutely not.

21 MS. SHAHID: That's all I have for
22 Mr. Murray.

23 BY MR. DODDS:

24 Q Mr. Murray, you understand that before
25 a dock can be constructed by you or any other

1 contractor on Sullivan's Island, that you first have
2 to secure a permit from the building official in
3 Sullivan's Island --

4 A Yes.

5 Q -- correct? All right. And you
6 indicated that you dropped off an application for a
7 dock permit with Mr. Robinson, the building official
8 on Sullivan's Island?

9 A Yes, sir.

10 Q All right. And you've seen Exhibit 1,
11 which includes the accessory structures permit --
12 and I'll give this do you in just a second --

13 A Yes, sir.

14 Q -- the building permit application with
15 Mr. Robinson's notes, as well as the Certificate of
16 Zoning Compliance with Mr. Robinson's notes,
17 specifically under Work Description; correct?

18 A Yes, sir.

19 Q And you've also seen the blown up plats
20 that were reviewed by Mr. Robinson with additional
21 further specific language, "Move dock to not exceed
22 adjacent docks;" correct?

23 A Yes, sir.

24 Q And you understand that is an
25 authorization from the Town to you to build a

1 specific project in accordance with the application;
2 right?

3 A Yes, sir.

4 Q And you -- you agree with me that the
5 as-built dock that your company constructed exceeds
6 the adjoining dock, as depicted on the third page of
7 Exhibit F, by some 9.2 feet --

8 A That is correct.

9 Q -- is that right? And -- thank you,
10 sir.

11 A Yes.

12 Q And this is your signature in a couple
13 of places on the accessory structures permit?

14 A Yes, sir.

15 Q And again on the building permit
16 application?

17 A Yes, sir.

18 Q And you acknowledged that the building
19 permit application, which has been initialed by both
20 Mr. Henderson, the zoning administrator, and
21 Mr. Robinson, the building official, specifically
22 say, "Approved as noted;" correct?

23 A Yes, sir.

24 Q And those notations being the two
25 notes, "Must not exceed adjacent docks," and then

1 the other issue with regard to ten feet from the
2 adjoining property line; correct?

3 A That is correct.

4 Q And would you agree that those specific
5 notations became a part and parcel of the building
6 permit that was issued to your company relative to
7 the construction of the dock on Osceola Avenue?

8 A As far as I know, yes, sir.

9 Q Okay. I don't have any further
10 questions. Thank you, Mr. Murray.

11 JUDGE CORNELLY: I do, if I can.

12 A Yes, sir.

13 JUDGE CORNELLY: Does this dock exceed
14 the adjacent docks to the left and to the right?

15 A It exceeds them by -- well, yes, sir,
16 by 9.2 -- to the docks to the right it exceeds them
17 considerably. To the docks to the left, based on
18 the survey that I had done, 9.2 feet, yes, sir.

19 JUDGE CORNELLY: Okay, all right.

20 BY MS. SHAHID:

21 Q What was your understanding of what had
22 to be done to remedy the situation?

23 A Well --

24 Q Well, let me ask you this: Who
25 provided that understanding to you? What

1 information did you get?

2 A When I was notified by the Town by
3 Mr. Henderson that there was a problem and we
4 scheduled a meeting, I showed up on-site thinking he
5 was going to be there, which he didn't, and he had
6 and I had -- anyway, I came over to the -- his
7 office and we sat down. Randy was there and we
8 started discussed what had happened and what was
9 going on and why. I said, you know, "That was
10 almost two years ago, I didn't think there was a
11 problem. What's the problem?"

12 "Well, it looks like -- I'm
13 eyeballing" --

14 I said, "Yeah, I eyeballed it and it
15 looks like four feet."

16 "We're sitting in the mud,
17 everybody's in the mud. What are we going to do
18 about it?"

19 I said, "Well, you know, can't we
20 just put reflectors up and mark it? I mean, no
21 one can navigate in here, anyway. I mean it's
22 basically a mud flat until the tide gets
23 considerably high, no one's going to run a boat in
24 here." I mean, Randy even nodded at me when I
25 started mentioning lights and reflectors and things.

1 Mr. Henderson said, "No, you've got
2 to remedy this a different way. You're going to
3 have to do something."

4 And I said, "Well, what if we put the
5 floating dock back? I mean, that'll move the whole
6 thing, I can move that back almost eight feet with
7 no problem. Pull the piles, a ramp, some handrails,
8 hook it up and go." And he didn't sound like he
9 wanted any part of that. And I said, "Well" -- and
10 then we got into paperwork and whether or not I
11 should submit, you know, plans for tearing this
12 thing out and moving it back. And then it just kind
13 of came to a stop after that. It was like, oh, now
14 we're talking tens of thousands of dollars. I'm
15 going to be basically pushing him nine feet back up
16 into the mud. So now not only is he not even going
17 to be at the low water mark, he's going to be
18 sitting nine feet from the low water mark. So I
19 said, "We got to try to work something out here
20 besides all of that." So that's when it kind of
21 came to a stop and we're here.

22 Q And all of that was for the removal of
23 what? What was the --

24 A Well, that would be the ramp, floating
25 dock, four piles, pier head or almost half of the

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1 pier head roof, electrical boat lift, four piles --

2 I mean, considerable amount.

3 Q How much -- how many -- how much effort
4 is that in terms of a crew?

5 A Well, I'd probably have to put a big
6 barging crane out there for approximately three
7 weeks or more, maybe, depending. Dismantling a lot
8 of that, some I could save, a lot of it I might not
9 be able to. And then reconstructing everything,
10 rewiring everything, resetting everything.

11 Q And what would that -- what cost would
12 that be for you?

13 A We're talking tens of thousands of
14 dollars. At least \$25,000.

15 Q Okay.

16 MS. SHAHID: And one more question that
17 I should have asked him initially.

18 Q (By Ms. Shahid) The as-built survey, do
19 you have any understanding as to why the as-built
20 survey was not sent to the Town?

21 A I know we applied for it, and I have
22 office staff and I guess with the file being put
23 away -- I mean, we're running 20 and 30 projects at
24 any given time, things get overlooked. I mean,
25 again, I'm not trying to break laws, I don't want to

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1 break laws, but things get mishandled or misplaced,
2 it was done. It may have come into the office and
3 someone said, "Hey, the as-built's back. It looks
4 like we matched up. Everything's good, everything's
5 good. Hadn't heard from anything." And it just
6 didn't get sent to the Town.

7 Q Did you --

8 A I'm sorry.

9 Q Did you make any effort to deliberately
10 conceal conditions by withholding the as-built?

11 A Absolutely not.

12 Q Was the as-built sent to OCRM when you
13 received it initially?

14 A Well -- yes, oh, yeah. We had it done
15 and sent to OCRM. They signed off on it, and that's
16 what should be in the exhibits, is the signed
17 approval from OCRM.

18 Q Mr. Thompkins --

19 A And we met their permit.

20 Q Mr. Thompkins provided me an as-built
21 from 2015. Does that sound about right --

22 A Yes.

23 Q -- when you got the as-built.

24 A Right.

25 Q And the lapse of time between 2015 and

1 2016, you attribute that to --

2 A It was filed away and put upstairs and
3 basically forgotten about. I mean, it was an
4 oversight, I apologies. You know, like I said, I've
5 been doing a lot of work and --

6 MS. SHAHID: That's all I've got.

7 BY MR. DODDS:

8 Q Just -- so you acknowledged,
9 Mr. Murray, that it was your responsibility to
10 provide the as-built survey to the Town of
11 Sullivan's Island?.

12 A Yes, sir.

13 Q You just forgot to do that or
14 whatever --

15 A Administratively, it just got lost in
16 the shuffle. It was done, we adhered to that part
17 of it to make sure -- it may came in. If I had seen
18 that it was something different than what it should
19 have been, I probably would have red flagged it,
20 something would have been done about it, and we
21 would have moved on.

22 Q Just one final question. Mr. Murray,
23 did you understand that it was important to the Town
24 of Sullivan's Island, specifically to the building
25 official, Mr. Robinson, that this dock not exceed

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1 further seaward from the edge of the adjoining
2 docks, the dock to the left and the dock to the
3 right, did you understand that was important to the
4 Town of Sullivan's Island?

5 A Yes, sir, I understand.

6 Q And did you understand that it became a
7 part of the building permit that was given you to
8 build this dock for Mr. Thompkins's LLC?

9 A Yes, sir.

10 Q Okay. And you acknowledge that you
11 didn't do that; correct?

12 A I made a mistake or my crew made a
13 mistake.

14 Q Right.

15 A Yeah, we made a mistake. We're 9.2
16 feet too far on the mud flat, it looked like.

17 Q Thank you, sir.

18 JUDGE CORNELLY: Any other witness?

19 MS. SHAHID: Well, I was going to put
20 Mr. Thompkins up.

21 JUDGE CORNELLY: Okay, that's fine.

22 MS. SHAHID: But I don't really know --
23 well, yeah.

24 JUDGE CORNELLY: Do you need a break?

25 MS. SHAHID: Well, two seconds. Let me

1 just --

2 JUDGE CORNELLY: Yeah, yeah, yeah, go
3 ahead.

4 MS. SHAHID: Going to step out there
5 for a second.

6 JUDGE CORNELLY: Yeah, take your time.
7 I'll just try to collect all these exhibits again.

8 MR. DODDS: I think I got some that are
9 marked, too, that are actually (unintelligible).

10 UNIDENTIFIED FEMALE: That's okay.

11 UNIDENTIFIED MALE: Yeah, this is why I
12 should work out in the morning like you. I was
13 supposed to meet Gary at 6:30.

14 JUDGE CORNELLY: Really? Where?

15 UNIDENTIFIED MALE: We meet at
16 (unintelligible) usually at 6 Mondays and
17 Wednesdays -- no, it's going to be Tuesdays and
18 Thursdays.

19 JUDGE CORNELLY: People are sending me
20 messages. Apparently 526 and I-26 are parking lots
21 already.

22 UNIDENTIFIED MALE: Oh, my God.

23 UNIDENTIFIED FEMALE: What?

24 JUDGE CORNELLY: People leaving town.
25 I'm not going anywhere.

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1 UNIDENTIFIED FEMALE: I'm staying home.

2 JUDGE CORNELLY: Okay, go ahead. Thank
3 you.

4 JASON THOMPKINS,
5 of lawful age, produced, sworn, and examined,
6 deposes and says:

7 EXAMINATION

8 BY MS. SHAHID:

9 Q Mr. Thompkins, state your name, please.

10 A Jason Thompkins.

11 Q And what do you do for a living?

12 A I'm in commercial real estate.

13 Q All right. And where do you reside?

14 A My permanent residence is in Columbia.

15 Q Okay. And you own the property on
16 Osceola that's the subject of this?

17 A Yes, I'm one of the members of the
18 ownership.

19 Q Okay. And when did you purchase the
20 property?

21 A We purchased the property in February
22 of 2014.

23 Q Okay. And for what reason?

24 A To -- we recognized the historic value
25 of the house. And it was in a dilapidated condition

1 and we thought there was an opportunity to restore.
2 the house.

3 Q Okay.

4 A To, you know, preserve the house.

5 Q All right. And did -- were you
6 attracted to the property for waterfront location?

7 A Yes, absolutely.

8 Q And did you -- are you a recreational
9 boater?

10 A Yes.

11 Q Do you have a boat?

12 A Yes.

13 Q Do you keep it at the property?

14 A Yes.

15 Q So you made some improvements to the
16 property?

17 A Yes.

18 Q And we've heard some testimony tonight
19 about this process, including some -- the as-built
20 survey. Tell me everything you did to ensure that
21 you, as property owner, complied with the ordinances
22 and requirements of the State of South Carolina and
23 the Town of Sullivan's Island?

24 A Yes. So I personally engaged Ross
25 Nelson from Tidewater to facilitate the process to

1 work through the Army Corps of Engineers, OCRM, and
2 ultimately, Sullivan's Island. He recommended John
3 Wade as a surveyor. We had John Wade conduct a
4 survey, the original survey of the property. Ross
5 Nelson from Tidewater worked -- you know,
6 coordinated the process to get all the permits from
7 OCRM. It was my understanding that based on the
8 OCRM permit, that we had six months post-completion
9 to submit the the as-built drawing to the state of
10 South Carolina.

11 Q Okay, okay.

12 A So, you know, a few months after the
13 dock was built, I did reach back out to John Wade,
14 asked him to complete the as-built survey, which he
15 did. And then that was subsequently forwarded to
16 American Dock and Marine to submit to OCRM.

17 Q Okay. And you --

18 A And -- I'm sorry.

19 Q You handed me a survey of John Wade.
20 Can I enter this into the record? Is this the
21 survey you're talking about?

22 A Yes.

23 Q Okay. And can I enter this into the --

24 JUDGE CORNELLY: Yeah, sure. That will
25 be Exhibit -- H, I, J -- Exhibit J, I think, to your

1 motion exhibits, okay?

2 MR. DODDS: Without objection.

3 (Exhibit J received in evidence.)

4 Q And this is the as-built survey that
5 you're talking about?

6 A Yes, ma'am.

7 Q Okay. And you understood that you
8 needed to do this for OCRM?

9 A Yes, for OCRM.

10 Q Okay. Did you have any knowledge or
11 understanding at the time that the Town also
12 required this survey?

13 A I did not.

14 Q Okay. And had you had that knowledge,
15 would you have sent that survey to the Town?

16 A I would have -- I would have
17 encouraged -- well, I didn't send it to OCRM. I
18 passed it along to American Dock and Marine --

19 Q Okay.

20 A -- who was coordinating closing out the
21 file with OCRM. If I knew that Sullivan's was also
22 requiring the as-built, then I certainly would have,
23 just as my own sort of mental checklist, closed the
24 loop to American Dock and Marine so that we fully
25 complied with the requirements.

1 Q When was the dock construction
2 completed?

3 A In the fall of -- fall -- late fall of
4 2014.

5 Q Okay. And when did you first learn
6 that the Town of Sullivan's had a problem with the
7 dock?

8 A On June 26th or June 27th of this year.

9 Q Okay.

10 A Our builder who was building our house
11 forwarded an e-mail to me, I think from Joe
12 Henderson. I subsequently called Joe or Joe called
13 me, but within a handful of hours we were on the
14 phone. I was shocked that, you know, during the 18
15 months or longer post-construction, there was an
16 issue I was unaware of the issue. Joe forwarded me
17 the Sullivan's Island permit and the kind of
18 handwritten what I thought were somewhat ambiguous
19 sort of markings on the OCRM permit. That was the
20 first time I had ever seen the Sullivan's Island
21 permit or the Sullivan's Island handwritten
22 conditions or the requirement that the as-built
23 needed to be provided to Sullivan's Island. So I
24 was very surprised that we had this issue.

25 Q Okay. Did the -- did the problem with

1 the dock prevent you from utilizing your new home on
2 Sullivan's?

3 A Yes. It was made clear to me through
4 the conversation with Joe and -- through the
5 conversation with Joe that we would not be receiving
6 the temporary CO on our home until we provided a
7 letter that was notarized acknowledging that we --
8 you know, that the dock was not built in accordance
9 with the permit and that we would rectify the
10 situation.

11 Q Okay. And there's a letter in there
12 that Mr. Dodds put in as Exhibit 4. Is that the
13 letter that you're referring to?

14 A Yes.

15 Q Okay. And at the time that you wrote
16 this letter, did you take any measures -- did you --
17 did you agree with Mr. Henderson that you had
18 violated any ordinances?

19 A I mean, I was shocked because I knew,
20 you know, that we were in compliance with OCRM and I
21 was not aware of the conditional conditions that
22 were put on the construction. So I was very
23 surprised. I -- you know, my family was -- was --
24 been looking forward to moving into the house for
25 two years and, you know, in some ways -- you know, I

1 took Joe at his word that somehow we had violated
2 the Sullivan's Island requirements. And that -- but
3 that I honestly -- you know, maybe believe is a
4 strong word, but I felt that I was being squeezed to
5 provide a letter to get my family into a house for
6 the Fourth of July week that we had been working on
7 for two years.

8 Q Okay. And were there any other
9 deficiencies identified other -- with the house
10 other than the deficiency with the dock?

11 A I knew that we hadn't installed the
12 grass yet. By way of example, there were some
13 landscaping items that we were waiting on a part --
14 critical part for our drainage system that was kind
15 of part of our landscaping system. So I knew that
16 there was some cleanup items that we needed to deal
17 with. Which is why the CO, really under any
18 scenario, even before this dock issue surfaced, my
19 understanding was it was going to be a temporary CO
20 until the grass was installed, until some of these
21 landscaping items was resolved.

22 Q Okay. And is it your understanding
23 that this letter, Exhibit 4, was what you were
24 required to do in order to get the CO --

25 MR. DODDS: Object to the form of the

1 question, Judge.

2 MS. SHAHID: All right. Let me try
3 again. I got to ask it again.

4 JUDGE CORNELLY: Okay.

5 Q (By Ms. Shahid) What were you going to
6 have to do for Mr. Henderson in order to get the
7 temporary CO?

8 A He asked me to come here with a letter
9 that -- a notarized letter acknowledging that we
10 were in violation and that we would work toward
11 rectifying the situation.

12 Q And this is the -- this is the letter?

13 A This is the letter. And I carefully --
14 because I was taking Joe at his word, but I was
15 squeezed for time three days before we were moving
16 into this house. I didn't -- you know, I needed I
17 needed to do some research to really draw my own
18 conclusions. So I did carefully word the letter,
19 and I used the word -- said that, "Likely does not
20 comply with the additional requirements," because I
21 didn't know that it absolutely didn't comply. So I
22 was careful with the way I worded this so that we
23 could work through a process to work with you and
24 Mike and do the necessary research to really
25 understand where the breakdown was and what the

1 resolution could be.

2 Q And did you have any understanding if
3 you hadn't written that letter as to whether a
4 temporary CO would have been issued to allow
5 occupancy of the house?

6 A No. I was told a condition to getting
7 into our house was that I had to show up with this
8 letter.

9 Q Okay.

10 MS. SHAHID: That's all I've got for
11 Mr. Thompkins.

12 BY MR. DODDS:

13 Q What is your educational background,
14 Mr. Thompkins?

15 A I have a bachelor's degree in
16 engineering.

17 Q All right. And when did you get that?

18 A 1992.

19 Q All right. And is your LLC, CMB Beach
20 House, LLC, is that a member-managed LLC?

21 A Yes.

22 Q All right. And are you the managing
23 member?

24 A Yes.

25 Q All right. You're also the registered

1 agent, as far as the state of South Carolina is
2 concerned; isn't that correct?

3 A Yes.

4 Q Okay. And you understand that as the
5 managing member of an LLC that secured a building
6 permit from the Town of Sullivan's Island, that you
7 were obligated to comply with the terms of the
8 building permit; correct?

9 A Yes.

10 Q Okay. And is it your testimony today
11 under oath that the first time you you saw the
12 building permit was June -- late June -- I think you
13 said June 26, 2016?

14 A Yes. To my knowledge, yes.

15 Q Okay. So you're the managing member of
16 an LLC that had made application to the Town of
17 Sullivan's Island for a building permit to construct
18 a dock, and you didn't look at the permit that was
19 issued from the Town of Mount Pleasant -- excuse
20 me -- Town of Sullivan's Island until some two years
21 after the permit was issued?

22 A My understanding was that Sullivan's
23 Island accepted the OCRM permit, which I reviewed
24 extensively, and that we were going to build the
25 dock in accordance with the OCRM permit, which had

1 been reviewed and approved by Sullivan's Island. I,
2 was not aware of an additional set of conditions
3 that were laid on top of that.

4 Q And who told you that, Mr. Murray?

5 A No.

6 Q So that was just your understanding?

7 A Just my understanding from just the
8 conversations that I -- you know, just through the
9 process.

10 Q Now, wait a minute. Conversations with
11 who?

12 A I don't -- I mean, you know, it's a
13 complex process to build a dock. So -- and I -- you
14 know --

15 Q Not any conversations with Randy
16 Robertson, the building official; correct?

17 A Nothing -- I think maybe early on when
18 I bought -- was thinking about buying the house, I
19 had a phone conversation with Randy about what I
20 could and couldn't do on the property. And I did
21 want to make sure that I could build a dock there
22 before we bought the property.

23 Q Sure.

24 A So I did get some assurances that there
25 weren't any issues that I wasn't aware of to prevent

1 us from building a dock.

2 Q Okay.

3 A But that was the extent of my
4 conversation with Mr. Robinson.

5 Q You obviously understood that in order
6 to build a dock you had to secure a permit from the
7 town of Sullivan's Island?

8 A Yes.

9 Q All right. And you further understood
10 prior to construction of a dock, that if a building
11 permit was issued allowing construction of the dock,
12 that you were required to comply with the terms and
13 conditions of the building permit; correct?

14 A Yes.

15 Q And you acknowledged that the as-built
16 dock from the property at 1102 Osceola extends some
17 9.2 feet beyond the most seaward edge of the dock to
18 the left and to the dock to the right of the dock
19 you constructed on 1102 Osceola; correct?

20 A Based on the survey, that's what it
21 appears, yes.

22 Q It's your surveyor that did the survey;
23 correct?

24 A Well, through American Dock and Marine,
25 yes.

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1 Q Okay. You paid this surveyor to do
2 this survey; correct?

3 A Not the one that indicates the 9.2
4 feet. American Dock and Marine conducted it,
5 engaged that surveyor.

6 Q Okay?

7 A The as-built survey that I conducted,
8 you know, commissioned in early 2015, I -- there was
9 no -- none of -- those dimensions were not --

10 Q Because it didn't show a dock to the
11 right and it didn't show a dock to the left; right?

12 A It may have. I'm not sure, I wasn't
13 focused on the neighboring dock. Because I wasn't
14 aware that --

15 Q But you would agree with me that had
16 you reviewed the building permit that was issued by
17 the Town incident to the construction of this dock,
18 that you would have seen what those specific
19 requirements were as reflected in the notations of
20 the building official and the zoning administrator;
21 correct?

22 A Well, it was never provided to me. And
23 my assumption was that the permit that I had worked
24 on that for -- that was approved by OCRM was also
25 approved by Sullivan's Island, and I was hiring a

1 builder to build the dock in accordance with that
2 permit. It was a new process for me. But, yeah --
3 yes, when I saw the hand notations on June 27th, I
4 think they're very ambiguous, they're conflicting,
5 some of the hand notations folks here have indicated
6 are not relevant, some are relevant. So I think
7 it's very -- it's very confusing.

8 Q Mr. Murray --

9 A Like the setback comment Mr. Murray
10 gave was not relevant.

11 Q -- Mr. Murray was your agent; correct?

12 A That's right.

13 Q You employed Mr. Murray with American
14 Dock and Marine Construction to petition and apply
15 to Sullivan's Island for a building permit; right?

16 A That's right.

17 Q So you understand when Mr. Murray did
18 that on your behalf, he was acting as your agent in
19 that capacity; correct?

20 A I understand. Yes, sir.

21 Q Okay. And you understand that
22 ultimately it's the responsibility of the owner to
23 comply with a building permit?

24 A Of course.

25 Q You understand that; right?

1 A Yep.

2 Q Now, this statement that you gave to
3 Mr. Henderson -- thank you -- marked and received in
4 evidence as Exhibit 4, that's a sworn statement,
5 isn't it?

6 A It's a notarized statement, yes, sir.

7 Q All right. "Sworn to before me this
8 30th day of June 2016"?

9 A Uh-huh.

10 Q All right. You were aware that you
11 were signing this statement in the presence of a
12 notary public who was taking a oath that the
13 information contained in here was sworn before that
14 notary?

15 A Yes.

16 Q Okay. You also understand now, don't
17 you, that in accordance with the building permit
18 that was issued that it was the responsibility of
19 the owner to provide as-built survey to the Town of
20 Sullivan's Island?

21 A I understand that now.

22 Q Okay. And you acknowledge that the
23 owner failed to do that; correct?

24 A Yes.

25 Q Okay. Do you understand the purpose of

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1 giving the town an as-built survey was to allow the
2 Town to determine whether or not that dock was built
3 in accordance with the building permit that was
4 issued?

5 A Yes.

6 Q Okay.

7 MR. DODDS: Nothing further, Judge.

8 MS. SHAHID: Just a couple.

9 BY MS. SHAHID:

10 Q I'm going to hand you back your sworn
11 statement and find my copy of the ordinances -- two
12 pages -- thank you. Mr. Dodds noted that as
13 managing member you had certain responsibilities
14 with regard to the property. Have you had an
15 opportunity to review the section of the ordinance
16 that you are cited as violating?

17 A Yes.

18 Q Okay. And do you see anywhere in that
19 ordinance any requirement that you only go to a
20 build-to line?

21 A I do not.

22 Q Do you see any requirement that you
23 don't go any further out than other docks?

24 A I do not.

25 Q Do you see a requirement that you do

1 not interfere with navigation?

2 A Yes.

3 Q All right. And have you, as property
4 owner, had any complaints from those that would be
5 most affected by the dock, your neighbors, regarding
6 their ability to navigate around?

7 A I've had zero complaints, whatsoever,
8 about the dock.

9 Q And the dock has been out there since
10 late winter or fall of 2014 in its completed state?

11 A Yes.

12 Q Okay. So almost two years?

13 A Yes.

14 Q All right. And so in your sworn
15 statement when you make the statement that you have
16 the ultimate responsibility to comply with
17 Sullivan's Island zoning resting with you, having
18 reviewed the zoning ordinance, do you standby that
19 statement?

20 A Yes.

21 Q And I'm going show you what's in
22 evidence as Sullivan's Island Exhibit 3, which is
23 the Certificate of Zoning Compliance, and I'm going
24 to ask you if you have reviewed this special
25 condition of approval?

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1 A Yes.

2 Q Okay. And the special condition of
3 approval says -- excuse me, I'm going to take it
4 from you -- "Application approved provided shown
5 pier head with roof, floating dock, and boat lift
6 meets the conditions of Zoning Ordinance Section
7 21-75, and that all structures meet at ten foot
8 setback from the extended lot lines;" correct?

9 A Yes.

10 Q And you didn't see anything in 21-75
11 that said that you couldn't exceed any further than
12 existing docks?

13 A I did not.

14 Q Okay.

15 MR. DODDS: Just one question.

16 JUDGE CORNELLY: Do I move -- time-out.

17 Do I have a copy of that exhibit? You said

18 Exhibit --

19 MR. DODDS: She was referring to 1,

20 Your Honor.

21 MS. SHAHID: Oh, gosh, I'm sorry.

22 JUDGE CORNELLY: No, that's okay.

23 MR. DODDS: You said 3, but it was

24 Exhibit 1.

25 JUDGE CORNELLY: And so this would be --

1 MS. SHAHID: Certificate of Zoning
2 Compliance.

3 JUDGE CORNELLY: Okay, got you.

4 MS. SHAHID: It's, like, the third
5 document.

6 JUDGE CORNELLY: This right here?

7 MS. SHAHID: Yes.

8 JUDGE CORNELLY: Okay, okay, I got it.
9 I got it, thank you.

10 MS. SHAHID: The condition is in the
11 middle.

12 JUDGE CORNELLY: Yes, ma'am, thank you.
13 I just want to make sure I was on the right page
14 with you. Go ahead.

15 MS. SHAHID: That's all I got.

16 MR. DODDS: Just one question.

17 BY MR. DODDS:

18 Q Of course, all of what Ms. Shahid just
19 told you wouldn't have matter at all, Mr. Thompkins,
20 because you didn't review this building application
21 and building permit until June 26, 2016; correct?

22 A That's right.

23 MR. DODDS: That's all I have, Judge.

24 JUDGE CORNELLY: Okay. Do y'all want to
25 make any final statements?

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1 MS. SHAHID: No, I think you got it.

2 MR. DODDS: Judge, you know --

3 MS. SHAHID: Well, if he's going to, I
4 have to.

5 MR. DODDS: I'm going to be brief.

6 MS. SHAHID: Well, I'm not.

7 MR. DODDS: Our position, Judge, is
8 that -- that the owner of the property had to secure
9 a building permit in order to construct the dock.
10 That's what -- that's what this statute -- that's
11 what Section 5-10 says and that's what 21-75 says.
12 It says, "In the RC-2 Area District construction of
13 private docks by owners of lots adjoining this area
14 may be permitted, provided approval of the Town of
15 Sullivan's Island," et cetera. And the Town gave
16 specific approval, Your Honor, with conditions as
17 noted. And those conditions have not been complied
18 with, Your Honor, admittedly. And so we believe
19 there has been a violation of 21-75 in that the
20 building permit was not complied with as required by
21 the zoning ordinances for the Town.

22 And it's not good enough, Judge, to
23 say, "Well, we're sorry we failed to do this, we
24 failed to do that." That is a specific requirement
25 for the construction of the dock, that it be done in

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1 accordance with the building permit. And I think
2 you hit it exactly on the head. You said, "Does it
3 extend seaward beyond the adjoining dock on the left
4 and the adjoining dock on the right?" And the
5 answer to that was yes. So our position is they
6 violated the building permit, Judge. Both the owner
7 and the contractor have acknowledged that they have.

8 JUDGE CORNELLY: I don't think that -- I
9 don't think the testimony of Mr. Murray was that it
10 exceeded the adjacent docks on the left and the
11 right. I think he said it exceed the docks on the
12 right but not the left, or vice versa. But, anyway,
13 just for the purposes of clarity.

14 MR. DODDS: Right. I have the note
15 specifically what he said, and I think that's what
16 the survey says.

17 JUDGE CORNELLY: Okay, we have it.

18 MR. DODDS: I thought he said it was
19 not -- it was not as much on the left as it was on
20 the right.

21 JUDGE CORNELLY: Okay.

22 MR. DODDS: Thank you.

23 MS. SHAHID: Well, I mean, just
24 briefly, Your Honor. They acknowledge it's an
25 interpretation that they made. It's not -- it's not

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1 a promulgated standard that the -- the general
2 provision is not to interfere with navigation.
3 Well, there's two parts 21-75, and it wasn't until
4 tonight that we actually heard which part was the
5 topic. But the first part said no closer to the
6 channel, and we're further from the channel. And
7 then the second part says to not interfere with
8 navigation, and there's been absolutely to evidence
9 that we interfered with navigation. The only
10 evidence that you have is that they decided that by
11 lining all the docks up, you don't have a
12 navigational interference, but that's not the same
13 as a specific fact-based analysis as to whether we
14 interfere with navigation. And, in fact, the
15 testimony is that there have been no complaints
16 about this dock from the property owners who are the
17 most affected by it.

18 And I'll be quick because I don't like
19 to beat a dead horse, but I hear about the Town
20 talking about this requirement and that requirement.
21 There is no condition on the accessory structures
22 permit, and there's one condition on the Certificate
23 of Zoning Compliance typed in that just has a
24 general reference to meeting Section 21-75. There's
25 one handwritten condition from the Town on the OCRM

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1 permit to submit an as-built survey. Those are the
2 conditions. Those are the conditions of the
3 building permit, not this general discussion of not
4 to exceed, Your Honor. Those were not incorporated
5 as conditions on any of the approvals from what we
6 can see from the record.

7 JUDGE CORNELLY: The OCRM permit, which
8 is in evidence, it seemed to have some written notes
9 at the bottom that says, "Also to provide to
10 Sullivan's Island."

11 MS. SHAHID: Right.

12 JUDGE CORNELLY: Is that what you're
13 referring to?

14 MS. SHAHID: That's it, right.

15 JUDGE CORNELLY: Okay. So that -- it
16 has someone's initials on it and a date on there.

17 MS. SHAHID: That's Mr. Robinson.

18 JUDGE CORNELLY: Okay, all right. And
19 is it my understanding that this -- this would have
20 been attached to the building permit that was given
21 to the builder?

22 MS. SHAHID: Given to the builder, yes.

23 JUDGE CORNELLY: Okay.

24 MR. DODDS: It was also a part of the
25 application that was submitted by the builder.

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JUDGE CORNELLY: Okay, all right. Turn
it off for a second.

(End of audio recording.)

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CERTIFICATE OF REPORTER

I, Sarah M. Elvington, do hereby certify that the witness whose testimony appears in the foregoing audio recording was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any parties to the action, and further, that I am not a relative or employee of any counsel or attorney employed by the parties thereto, nor financially or otherwise interested in the outcome of this action.

Sarah Elvington

Sarah M. Elvington

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STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

RECEIVED

NOV 21 2018

Appeal from the Court of Common Pleas
For Charleston County
Honorable Kristi L. Harrington, Circuit Court Judge
Civil Action No.: 2016-CP-10-5578
Appellate Case No.: 2018-00511

Courts of Appeals

TOWN OF SULLIVAN'S ISLAND,

Respondent,

v.

MICHAEL MURRAY,

Appellant.

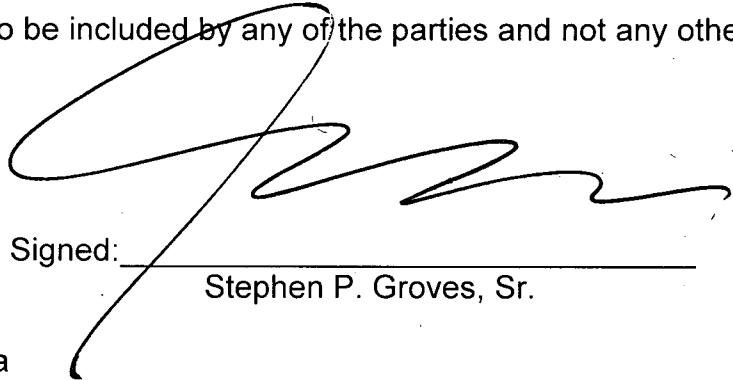
**Rule 210(g), SCACR, Certificate of Counsel
(Volume II)**

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I, Stephen P. Groves, Sr., Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal (Volumes I and II)** contains all of the material and documentation proposed to be included by any of the parties and not any other material.



Signed: _____
Stephen P. Groves, Sr.

Charleston, South Carolina

7 November 2018

NPCHAR1:2529654.1-TBF-(SPG) 059803-00001

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