



The Town of Hilton Head Island
Special Board of Zoning Appeals Meeting
Monday, December 13, 2010
11:00 a.m. Benjamin M. Racusin Council Chambers
AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. CALL TO ORDER

2. ROLL CALL

3. FREEDOM OF INFORMATION ACT COMPLIANCE

Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.

4. WIRELESS TELEPHONE USAGE

Please turn off all wireless telephones so as not to interrupt the meeting.

5. WELCOME AND INTRODUCTION TO BOARD PROCEDURES

6. APPROVAL OF AGENDA

7. APPROVAL OF MINUTES – October 25, 2010 Meeting

8. UNFINISHED BUSINESS

APL100007: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating revocation proceedings will not be pursued for a notice of action, approving a tabby walkway and brick areas at Edgewater on Broad Creek. The appellant contends that the Community Development Department erred in its decision and is requesting that town staff be directed to institute proceedings to revoke the notice of action. *Presented by: Nicole Dixon*
Request for a motion to postpone the review of this application to the January 24, 2010 meeting at 2:30 p.m.

APL100010: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating that an appeal application filed by the appellant should not be heard by the Planning Commission since the subject of the appeal was an administrative determination. The appellant contends that the Community Development Department erred in its decision and is requesting that town staff be directed to accept the previously submitted appeal to the Planning Commission.
Presented by: Nicole Dixon

Request for a motion to postpone the review of this application to the January 24, 2010 meeting at 2:30 p.m.

**9. NEW BUSINESS
PUBLIC MEETING
APL100013**

Request for Appeal from Chester C. Williams on behalf of St. James Baptist Church. The Community Development Department issued a Tree Approval to Beaufort County allowing tree pruning and removal in the approach slopes on the north end of airport property. The appellant contends that the Tree Approval letter was issued improperly and is requesting that the letter be declared void. *Presented by: Anne Cyran*

10. BOARD BUSINESS

11. STAFF REPORT

Waiver Report – *Presented by: Nicole Dixon*

12. ADJOURNMENT

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THE TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, October 25, 2010 Meeting
2:30pm – Benjamin M. Racusin Council Chambers

DRAFT

Board Members Present: Chairman Roger DeCaigny, Vice Chairman Peter Kristian,
Alan Brenner, Stephen Murphy and Bob Sharp

Board Members Absent: Michael Lawrence and Jack Qualey

Council Members Present: Bill Ferguson, George Williams and Bill Harkins

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Anne Cyran, Senior Planner; Teri Lewis, LMO Administrator
Gregg Alford, Town Attorney; Brian Hulbert, Board Attorney
Jayme Lopko, Senior Planner, Comprehensive Planning Division
Kathleen Carlin, Board Secretary

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1. CALL TO ORDER

Chairman DeCaigny called the meeting to order at 2:30pm.

2. ROLL CALL

3. INTRODUCTION TO BOARD PROCEDURES

Chairman DeCaigny stated the Board's procedures for conducting today's meeting.

4. APPROVAL OF THE AGENDA

Vice Chairman Kristian made a **motion** to **revise** the agenda as follows: (1) move Item # 10, Board Procedures, to the top of the agenda; (2) move Item # 9, public hearing, APL100010, to be heard before APL100007, because it is a jurisdictional issue and will decide whether or not the Board will hear APL100007. At this point, Chairman Kristian requested legal advice from Brian Hulbert, Board Attorney, regarding the Board's receipt of a separate jurisdictional issue (a separate appeal). Mr. Hulbert and Vice Chairman Kristian discussed the issue and Mr. Hulbert stated that he believed that the jurisdictional issues (with regard to the appeal) were properly received; and (3) change the hearing for all three appeals from a Public Hearing to a Public Meeting. Mr. Murphy **seconded** the motion and the motion **passed** with a vote of 5-0-0.

5. APPROVAL OF THE MINUTES

Vice Chairman Kristian made a **motion** to **approve** the minutes of the September 27, 2010 meeting as presented. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 4-0-1. Mr. Brenner abstained from the vote due to his absence from the meeting.

1
2 **6. BOARD BUSINESS**

3 Ms. Nicole Dixon reported that the Board reviewed the proposed revisions to the Rules of
4 Procedure on September 27, 2010. Chairman DeCaigny requested additional comments from
5 the Board today and none were received. Chairman DeCaigny requested that a motion for
6 adoption of the revised Rules of Procedure be made.
7

8 Vice Chairman Kristian made a **motion** to adopt the revised Rules of Procedures as presented
9 by the staff. Mr. Sharp **seconded** the motion. Before the vote was taken, Chester C.
10 Williams, Esq., requested the Board's permission to present public comments on this issue.
11 Chairman DeCaigny asked that a motion be made regarding this request. Mr. Sharp made a
12 **motion** to allow Mr. Williams to present comments. Mr. Brenner **seconded** the motion and
13 the motion **passed** with a vote of 5-0-0.
14

15 Mr. Williams stated his opposition to the Board's adoption of the revised Rules of Procedure,
16 particularly as the revisions related to the issue of requiring four affirmative votes to pass a
17 motion on an appeal. Mr. Williams stated that this rule is unfair to the appellant. The Board
18 discussed the issue with Mr. Williams. Vice Chairman Kristian stated that he would like to
19 receive a response from Brian Hulbert, Board Attorney.
20

21 Mr. Hulbert responded that Robert's Rules of Procedure state that the Board's voting
22 requirements are entirely up to the Board's discretion. The motion **passed** with a vote of
23 4-1-0. Mr. Sharp was against the motion.
24

25 **7. NEW BUSINESS**
26 **PUBLIC HEARING**

27 **APL100010:** Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures,
28 LLC. The Community Development Department issued a letter stating that an appeal
29 application filed by the appellant should not be heard by the Planning Commission since the
30 subject of the appeal was an administrative determination. The appellant contends that the
31 Community Development Department erred in its decision and is requesting that town staff
32 be directed to accept the previously submitted appeal to the Planning Commission.
33

34 Before Ms. Nicole Dixon could begin her presentation on behalf of the staff, Chester C.
35 Williams, Esq., requested permission from the Board to allow statements to be heard from
36 Michael Mogil, Attorney, for the Edgewater Homeowner's Association. The Board
37 discussed the issue and granted this request.
38

39 Mr. Mogil requested that the Board grant a request for postponement of the review of both
40 APL100007 and APL100010 to a future meeting. Mr. Mogil's request for postponement is
41 for review of both the jurisdictional issues and the substantive issues for both applications.
42 Mr. Mogil stated that the parties involved in these two appeals are trying to work the issues
43 out among themselves.
44

45 Vice Chairman Kristian requested a response from Chester C. Williams, Attorney for
46 Ephesian Ventures. Mr. Williams stated that he agreed with Mr. Mogil's request for the
47 postponement of these two appeals. The Board discussed the issue and agreed to the request.
48 Chairman DeCaigny then requested that a motion be made.

1
2 Vice Chairman Kristian made a **motion** to **grant** the request for postponement of
3 Applications for Appeal, APL100007 and APL100010 on both the jurisdictional issues and
4 the substantive issues. Both parties have agreed to postpone these applications to the
5 December 20, 2010 meeting. Mr. Murphy **seconded** the motion and the motion **passed** with
6 a vote of 5-0-0.
7

8 Gregg Alford, Town Attorney, stated for the record, that the Town is prepared to proceed on
9 the jurisdictional issue. Mr. Brenner stated that he was unable to ascertain an injury to the
10 aggrieved party.
11

12 Before proceeding to the next business item, public hearing for APL100011, Chester C.
13 Williams, Esq., requested a postponement of the public hearing of APL100011. Mr.
14 Williams stated that he would like to wait until all of the members of the Board of Zoning
15 Appeals are present to hear the appeal. The Board discussed the issue and requested a
16 response from Gregg Alford, Town Attorney.
17

18 Mr. Alford stated that the Town is prepared to move forward on the jurisdictional issues.
19 The Board discussed the issue and at the completion of their discussion, Chairman DeCaigny
20 requested that a motion be made with regard to the request for postponement.
21

22 Vice Chairman Kristian made a **motion** that the Board should hear the jurisdictional issue on
23 this matter today. Mr. Sharp **seconded** the motion.
24

25 Chester C. Williams, Esq., stated his opposition to the motion because there is not a full
26 complement of the Board present today. There were no further comments from the Board and
27 the motion **passed** with a vote of 5-0-0. The Board then proceeded with the review of
28 appeal, APL100011.
29

30 **PUBLIC HEARING**

31 **APL100011**: Request for Appeal from Chester C. Williams on behalf of St. James Baptist
32 Church. The Community Development Department issued a letter stating that the Tree
33 Approval Application submitted by Beaufort County for the Hilton Head Island Airport was
34 considered complete. The appellant contends that the Community Development Department
35 erred in its decision and is requesting that tree application be deemed incomplete.
36

37 Ms. Anne Cyran, case manager, presented a brief timeline of the appeal including the receipt
38 of Mr. Williams' supplemental brief on Friday, October 22, 2010. Ms. Cyran then
39 introduced Gregg Alford, Esq., Attorney for the Town.
40

41 Before Mr. Alford could begin his presentation on behalf of staff, Mr. Williams stated, for
42 the record, that the published notice of this meeting does not meet the Town's LMO
43 requirements. Mr. Williams stated that the Town's public notice for this application is
44 defective and, therefore, invalid.
45

46 Mr. Alford responded that Mr. Williams' claim regarding public notification requirements is
47 a procedure issue and should be addressed at a later time. The jurisdictional issue is before

1 the Board today. The staff believes that the public notice is sufficient for the jurisdictional
2 issue to be heard today.

3
4 Mr. Alford then distributed a sheet to each of the Board members on behalf of staff. Mr.
5 Williams stated his objection to this distribution of information as he felt that it is in violation
6 of the Board's Rules of Procedure.

7
8 Mr. Alford stated that he would like to move past some of these procedural arguments. The
9 staff believes that all jurisdictional requirements are met. Mr. Alford stated that the applicant
10 has attempted to create a dual-appeal path when the proper path and proper jurisdiction lies
11 with the Board of Zoning Appeals and not the Planning Commission. Mr. Alford discussed
12 this issue at length. This application is properly before the Board of Zoning Appeals because
13 it is a zoning issue and is related to the Airport Overlay District. Mr. Alford stated that a
14 great deal of confusion has been created regarding the distinction about what goes before the
15 Planning Commission and what goes before the Board of Zoning Appeals. The Board of
16 Zoning Appeals has the proper authority to review the applicant's permit to remove trees at
17 the Airport. This is a zoning issue and not a subdivision or land planning issue.

18
19 Chairman DeCaigny, Vice Chairman Kristian and Mr. Alford discussed the process for
20 today's review. The Board stated that they would like to rule on the jurisdictional issue first
21 and then the substantive issue.

22
23 Mr. Alford then discussed the specific grant of authority in the State Enabling Act and the
24 Land Management Ordinance that places the burden on the Board of Zoning Appeals to
25 decide this issue. Mr. Alford and the Board discussed this issue at length.

26
27 Following Mr. Alford's presentation, Chairman DeCaigny requested that the applicant make
28 his presentation. Mr. Williams stated that he represents St. James Church. His client is
29 arguing, not the issuance of a permit, but the determination as to whether or not the County's
30 application was complete when accepted. Mr. Williams stated that the issue is whether this is
31 a zoning issue or a land development issue. Mr. Williams stated that he believes that this is a
32 land development issue and the Planning Commission has jurisdiction over land development
33 issues. Mr. Williams and the Board discussed the issue at length.

34
35 Mr. Williams read from several articles of the State Enabling Act. He also presented
36 comments regarding the Land Use Element of the Comprehensive Plan. Following Mr.
37 Williams' presentation, Chairman DeCaigny requested that the Town's attorney provide a
38 response.

39
40 Mr. Alford stated that Ladson Howell, Esq., Attorney for Beaufort County, has requested an
41 opportunity to present statements to the Board. Mr. Alford agreed to this request on behalf of
42 the Town. The Board discussed the issue and agreed to receive comments from Mr. Howell.

43
44 Mr. Howell presented statements with regard to the jurisdictional issues being faced by the
45 Board. Mr. Howell discussed the distinction between zoning ordinances and land
46 development issues. Mr. Howell stated that this issue is correctly before the Board of Zoning
47 Appeals as it is a zoning issue (Overlay District of the Hilton Head Island Airport). The trees
48 need to be removed or trimmed for reasons of safety. Following these statements, Chairman

1 DeCaigny requested a response from Mr. Alford. Mr. Alford stated that he agreed with Mr.
2 Howell's statements. Mr. Alford stated that this land has already been developed and zoned.
3 Mr. Alford recommended that common sense be used in making a determination on these
4 jurisdictional issues. The staff believes that the Town's interpretation is a reasonable
5 interpretation.
6

7 Next Mr. Alford read from LMO, Sec. 16-3-403, Approval Letter for the Proposed Removal
8 of Trees. The Board discussed this section of the LMO with Mr. Alford. Following these
9 comments, Chairman DeCaigny granted a request from Mr. Williams to respond.
10

11 Mr. Williams stated that the issue of the determination of jurisdiction is a legal decision. Mr.
12 Williams suggested that the Board receive legal advice from Brian Hulbert, Board Attorney,
13 in an executive session. At the end of these comments, Chairman DeCaigny thanked Mr.
14 Williams and stated that the public portion of the presentation is closed.
15

16 Following final discussion, Chairman DeCaigny requested that a motion be made on this
17 appeal's jurisdictional issue.
18

19 Mr. Brenner made a **motion** that the Board of Zoning Appeals has jurisdiction to hear this
20 application for appeal based on the arguments of Town Counsel and the counsel for Beaufort
21 County, as well as Land Management Ordinance Sections 16-3-401 through 409. Vice
22 Chairman Kristian **seconded** the motion. Prior to taking a vote on this motion, Chairman
23 DeCaigny called a five-minute recess to allow time for Ms. Kathleen Carlin, Board
24 Secretary, to type the motion for review by the Board.
25

26 Following this brief recess, the staff placed the typed motion on overhead for review by the
27 Board. Chairman DeCaigny requested that Brian Hulbert, Board Attorney, present any
28 comments that he may have on the motion. Mr. Hulbert stated that the motion is correct as
29 stated by Mr. Brenner. It is a proper motion. The motion **passed** with a vote of 5-0-0.
30

31 Next, the Board discussed the substantive portion of this appeal. Chairman DeCaigny
32 requested that the staff make their presentation. Mr. Alford stated that this is where the
33 Administrator's determination that the application was complete enough for her to review has
34 been appealed. Mr. Alford stated that there is no standing for this appeal because there is no
35 aggrieved party. The St. James Baptist Church did not suffer an injury by the
36 Administrator's decision to find that this application was complete enough to be reviewed.
37 The law requires that an injury in fact occur, and there is no aggrieved party in this decision.
38 The issue is whether or not the application was complete when it was accepted by the
39 Administrator. Mr. Alford stated that he believes this particular appeal has been brought
40 forward in an effort to delay the process. The appeal is inappropriate because an injury in
41 fact, as required by law, is not a part of this issue.
42

43 Mr. Alford stated that the merits of the issuance of the permit will be addressed at a later
44 time. That is not a part of this discussion. Mr. Alford discussed the staff's position on this
45 appeal at length. Following Mr. Alford's presentation, Chairman DeCaigny invited Mr.
46 Williams to respond.
47

1 Mr. Williams presented statements on behalf of his client, St. James Baptist Church. Mr.
2 Williams stated his opposition to Mr. Alford's statements as related to issuance of a permit.
3 Vice Chairman Kristian stated that the only issue before the Board today is the
4 completeness of the application.
5

6 The Board and Mr. Williams discussed the criteria of an injury. Mr. Williams stated that the
7 LMO specifically says that an aggrieved person is defined as any property owner located
8 within 350 feet of the property for which a decision and determination has been rendered.
9 His client, St. James Baptist Church, is within 350 feet of the airport. Mr. Williams stated
10 that the Church is an aggrieved party because a permit was issued based upon an incomplete
11 application. Mr. Williams claimed that the application did not contain all of the necessary
12 permits and approvals from all of the other agencies when it was accepted by the
13 Administrator. Mr. Williams stated that the application before the Board is incomplete and
14 invalid.
15

16 The Board questioned how St. James Baptist Church is harmed. Chairman DeCaigny stated
17 that today's discussion should be confined to whether or not the application was complete
18 when it was accepted by the Administrator. Chairman DeCaigny asked if the staff would like
19 to respond to Mr. Williams. Mr. Alford stated that Ladson Howell, Attorney for Beaufort
20 County, would like to present statements.
21

22 Ladson Howell, Esq., presented statements in opposition to Mr. Williams' comments
23 particularly regarding the staff's acceptance of the application, and subsequent issuance of a
24 permit. Mr. Howell stated that it is the County's position that the issues being raised today
25 by Mr. Williams are not ripe for consideration. They will be addressed and reviewed by the
26 Board at a later date.
27

28 Mr. Alford then presented additional statements with regard to the absence of an aggrieved
29 party in this matter. There is no injury involved to the appellant. Mr. Williams' concerns
30 will be appropriately addressed at a later date. Mr. Alford stated that this appeal is
31 inappropriate and improper. Mr. Alford recommended a common sense approach with an
32 interpretation of fairness and balance. Mr. Alford asked that the Board take a stand on this
33 issue.
34

35 Mr. Williams responded that as long as the Town and the County are willing to stipulate that
36 his client does not waive any rights with respect to the preservation of the argument, and with
37 respect to the completion of the application, they do not have a problem with consolidating
38 that particular issue with the remaining issues that will be raised in the substantive appeal on
39 the issuance of the permit. Mr. Williams stated that he needed to file today's appeal in this
40 manner or he would have forfeited the right to do so at a later time.
41

42 The Board had no additional comments and Chairman DeCaigny stated that the public
43 portion of this presentation is closed. Vice Chairman Kristian stated that the issue before the
44 Board today is whether or not an application was complete; and not whether a permit has
45 been issued. And, in that particular instance, no party has been aggrieved, no injury has
46 occurred, and no action was taken. Following final comments, Chairman DeCaigny
47 requested that a motion be made.
48

1 Vice Chairman Kristian made a **motion** to **deny** the appeal based on the fact that no party has
2 been aggrieved, that no action was taken, and no permit had been issued at the time; and
3 therefore, this issue is not ripe for consideration. We uphold the decision of the LMO
4 Administrator. Mr. Brenner **seconded** the motion.
5

6 Prior to taking a vote, Chairman DeCaigny called a five-minute recess in order for Ms.
7 Kathleen Carlin to type the motion for review by the Board. Following the five-minute
8 recess, the meeting was reconvened. The Board reviewed the motion. Prior to the vote,
9 Mr. Alford requested an opportunity to comment on the motion. The Board agreed to this
10 request. Mr. Alford stated that the staff would prefer to see the last sentence that reads, “We
11 uphold the decision of the Administrator” be deleted from the motion because there is no
12 decision to be upheld at this point.
13

14 Brian Hulbert, Esq., Board Attorney stated that he agrees with the recommendation to delete
15 this sentence from the motion. Mr. Hulbert recommended that the Board amend their motion
16 to delete this sentence. Chairman DeCaigny requested that a motion be made to amend the
17 original motion.
18

19 Vice Chairman Peter Kristian stated that he would like to amend his motion to delete the last
20 sentence that reads, “We uphold the decision of the Administrator”. Mr. Brenner **seconded**
21 the amendment and the motion **passed** with a vote of 5-0-0.
22

23 Chairman DeCaigny stated that the Board will now vote on the motion itself. For the record,
24 the amended motion reads: Vice Chairman Kristian made a **motion** to **deny** the appeal based
25 on the fact that no party has been aggrieved, that no action was taken, and no permit had been
26 issued at the time; and therefore, the issue is not ripe for consideration. This motion was
27 **seconded** by Mr. Brenner and the amended motion **passed** with a vote of 5-0-0.
28

29 **8. STAFF REPORT**

- 30 1) Ms. Dixon stated that there are no Waivers to report to the Board today.
- 31 2) Ms. Dixon reviewed State mandated training requirements with the Board. These
32 training requirements must be completed by the end of December.
- 33 3) Staff will present a webinar on Form Based Codes on Thursday, October 28th at
34 1:00pm in Conference Room # 3.
35

36 **9. ADJOURNMENT**

37 The meeting was adjourned at 4:10p.m.
38
39

40 Submitted By:

Approved By:

41
42
43 _____
44 Kathleen Carlin
45 Board Secretary
46

41
42
43 _____
44 Roger DeCaigny
45 Chairman
46



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Anne Cyran, *Senior Planner*
VIA: Teri B. Lewis, AICP, *LMO Official*
DATE: November 23, 2010
SUBJECT: APL100013 – Hilton Head Island Airport

Staff has received an appeal from Chester C. Williams on behalf of St. James Baptist Church regarding the Tree Approval Application submitted by Beaufort County for the Hilton Head Island Airport to allow tree pruning and removal in the approach slopes on the north end of airport property. The application was approved on September 1, 2010 in a letter sent by Sally Krebs, Natural Resources Administrator, to Paul Andres, Hilton Head Island Airport Director. The appellant contends that the Tree Approval letter was issued improperly and is requesting that the letter be declared void.

The appellant is appealing the Town's decision to approve tree pruning and removal on Hilton Head Island Airport property. The record therefore consists of the following documents:

1. Appeal Application
2. Appellant's Narrative titled Attachment 1
3. Exhibits to Narrative

There are other items contained in the application file such as the Tree Removal Permit and the Historical Assessment, which can be viewed by contacting the Town at (843)341-4757.

If you have any questions, contact Anne Cyran at (843) 341-4697 or annec@hiltonheadislandsc.gov.



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC

17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

September 15, 2010

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED
and
VIA EMAIL TO
TeriL@HiltonHeadIslandSC.gov

RE: Appeal of September 1, 2010 Tree Approval for Hilton Head Island
Airport – Our File No. 01245-007

Dear Teri:

We are pleased to deliver to you herewith for filing with the Town's Board of Zoning Appeals our appeal on behalf of our client, St. James Baptist Church, regarding the September 1, 2010 Tree Approval letter from Sally Krebs to Paul Andres for the Hilton Head Island Airport. Also enclosed is our check for \$100.00 payable to the Town for the required filing fee for this appeal.

By way of his copy of this letter, we advise Roger A. DeCaigny, the Chairman of the Board of Zoning Appeals, of our filing of this appeal to the Board of Zoning Appeals on behalf of St. James Baptist Church.

Because Beaufort County is a necessary party to this appeal, along with his copy of this letter, we are forwarding a copy of our appeal application to Gary T. Kubic, Esq., the Beaufort County Administrator.

As you know, South Carolina law requires that you immediately send this appeal and the entire record upon which the Tree Approval letter was based to the members of the Board of Zoning Appeals, and we trust you will do so. While we do not have access to all of the information you and your staff have that constitutes the record in this matter, we trust you will compile and include in the record all Town correspondence, both internal and external, including, but not limited to emails, and the full application dated August 18, 2010 filed with the Town by Beaufort County. We also ask that you provide us with a complete copy of the record you transmit to the Board of Zoning Appeals.



Please let us know if you, your staff, or the Board of Zoning Appeals require any further information from or on behalf of our client with respect to this appeal.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC



This signature is an electronic reproduction

Chester C. Williams

CCW:skt
Enclosures

cc: Rev. Charles E. Hamilton, Sr.
Mrs. Fran White
Mr. Perry White
Mr. Roger A. DeCaigny
Gary T. Kubic, Esq.



Town of Hilton Head Island
 Community Development Department
 One Town Center Court
 Hilton Head Island, SC 29928
 Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY	
Date Received:	_____
Accepted by:	_____
App. #: APL	_____
Meeting Date:	_____

Applicant/Agent Name: St. James Baptist Church Company: Chester C. Williams, Attorney for the Applicant
 Mailing Address: Post Office Box 21883 City: Hilton Head island State: SC Zip: 29925
 Telephone: 843-681-6446 Fax: _____ E-mail: Firm@CCWLaw.net

APPEAL (APL) SUBMITTAL REQUIREMENTS

Digital Submissions may be accepted via e-mail by calling 843-341-4757. The following items must be attached in order for this application to be complete:

- A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the Board of Zoning Appeals. See Attachment 1
- Any other documentation used to support the facts surrounding the decision. See Attachment 1
- Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: _____ Date: September 15, 2010
 Chester C. Williams, Attorney for the Applicant

STATE OF SOUTH CAROLINA)	BEFORE THE BOARD OF ZONING
)	APPEALS OF THE TOWN OF HILTON
)	HEAD ISLAND, SOUTH CAROLINA
)	
)	REQUEST FOR APPEAL
COUNTY OF BEAUFORT)	NO. APL1000_____

ATTACHMENT 1

TO THE APPEAL APPLICATION OF

ST. JAMES BAPTIST CHURCH

NARRATIVE

I. RESERVATION OF RIGHTS

Nothing in this Attachment 1 or the Request for Appeal to which it is attached should be construed or interpreted as an admission by St. James Baptist Church that jurisdiction lies with the Board of Zoning Appeals of the Town of Hilton Head Island for all of the issues presented herein. This appeal to the Board of Zoning Appeals is being filed with the LMO Official in case the LMO Official refuses to accept for filing an appeal on behalf of St. James Baptist Church to the Planning Commission of the Town of Hilton Head Island that is substantially similar to this appeal. St. James Baptist Church is unsure of the correct procedure to follow with respect to this Request for Appeal, and believes that jurisdiction to hear some, if not all, of the issues raised in this appeal may lie with the Planning Commission, and not with the Board of Zoning Appeals.

II. INTRODUCTION

This Attachment 1 is part of the Request for Appeal (this “Appeal”) filed on behalf of St. James Baptist Church (the “Church”) in connection with the



September 1, 2010 letter from Sally L. Krebs, Natural Resources Administrator for the Town of Hilton Head Island (the “Town”), to Paul Andres, Director of the Hilton Head Island Airport (the “Tree Approval Letter”), which purports to grant approval for “Tree pruning/removal at north end of airport”. The Tree Approval Letter, a copy of which is attached to this Narrative as Exhibit A, is applicable to the property owned by Beaufort County that is the site of the Hilton Head Island Airport. This Narrative is submitted to the Town as part of this Appeal, for inclusion in the record of this Appeal, and for review by the Town’s Board of Zoning Appeals (the “BZA”).

The Hilton Head Island Airport property is designated as Beaufort County tax parcel R510-008-000-0085-0000. The Church owns property adjacent to and contiguous with the Hilton Head Island Airport property. The Church’s property is designated as Beaufort County tax parcel R510-005-000-0015-0000. Copies of the current deeds for the Church’s property are attached to this Narrative as Exhibits B-1 and B-2.

This Appeal seeks to void the Tree Approval Letter.

III. BACKGROUND

At its regular meeting held on November 3, 2009, the Town Council for the Town of Hilton Head Island (the “Town Council”) approved a resolution to hold a public hearing on Proposed Ordinance No. 2009-39, an ordinance to amend Chapter 4, Section 403 of the Town’s Land Management Ordinance (the “LMO”), Title 16 of the Municipal Code of the Town of Hilton Head Island (the “Municipal Code”).¹ That public hearing, which was not properly noticed as required by law, was held during the Town Council’s next regular meeting on November 17, 2009. Immediately after that public hearing, the Town Council amended the agenda for its November 17, 2009 meeting to delete from the

¹ See the approved minutes of the Town Council’s November 3, 2009 meeting which are attached to this Narrative as Exhibit C, and are available online at the Town’s web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2009minutes/tc_11-3-2009.pdf; and Resolution No. 2009-27 which is attached to this Narrative as Exhibit D.



agenda the scheduled first reading approval of Proposed Ordinance No. 2009-39, which was instead referred to the Town Council's Public Safety Committee for further review.²

On December 7, 2009, the Town Council's Public Safety Committee reviewed a revised Proposed Ordinance No. 2009-39, and recommended that the Town Council approve Proposed Ordinance No. 2009-39 with additional revisions.³

The Town Council took up the revised Proposed Ordinance No. 2009-39 at its regular meeting on December 15, 2009 for first reading approval; however, rather than vote on first reading approval, the Town Council instead referred the revised proposed ordinance back to the Town Staff for further refinements and consideration by the Town Council on January 5, 2010.⁴

On January 5, 2010, the Town Council again took up a still further revised Proposed Ordinance No. 2009-39, and gave the revised proposed ordinance first reading approval.⁵

In accordance with applicable state law and the LMO, the Town's Planning Commission reviewed Proposed Ordinance No. 2009-39 on February 3, 2010. After holding a public hearing that was not properly noticed as

² See the approved minutes of the Town Council's November 17, 2009 meeting which are attached to this Narrative as Exhibit E, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2009minutes/tc_11-17-2009.pdf.

³ See the approved minutes of the Public Safety Committee's December 7, 2009 meeting which are attached to this Narrative as Exhibit F, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/boards/minutes/2009minutes/pubsafe_12-7-2009.pdf.

⁴ See the approved minutes of the Town Council's December 15, 2009 meeting which are attached to this Narrative as Exhibit G, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2009minutes/tc_12-15-2009.pdf.

⁵ See the approved minutes of the Town Council's January 5, 2010 meeting which are attached to this Narrative as Exhibit H, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2010minutes/tc_1-5-2010.pdf.



required by law, the Planning Commission recommended that the Town Council approve Proposed Ordinance No. 2009-39 with further revisions.⁶

On March 2, 2010, the Town Council again considered Proposed Ordinance No. 2009-39, this time with the further revisions recommended by the Planning Commission. On the recommendation of Town Manager Stephen G. Riley, the provisions of Proposed Ordinance No. 2009-39 were further revised by the Town Council at that meeting to delete some of the revisions recommended by the Planning Commission and to include other revisions not recommended by the Planning Commission, and then given revised first reading approval by the Town Council.⁷

Thereafter, on March 16, 2010, the Town Council took up Proposed Ordinance No. 2009-39 for second reading approval. However, prior to voting on second reading approval, the Town Council voted to further amend the provisions of Proposed Ordinance No. 2009-39 to delete certain language from the proposed amendments to LMO Section 16-4-403(C)(2)(a)(v). Only after approving that additional revision did the Town Council vote to give Proposed Ordinance No. 2009-39 second reading approval.⁸

Based on the Town Council's second reading approval on March 16, 2010, Proposed Ordinance No. 2009-39 was signed by Mayor Thomas D. Peoples and Town Clerk Betsy Mosteller and designated as Ordinance No. 2010-03.⁹

⁶ See the approved minutes of the Planning Commission's February 3, 2010 meeting which are attached to this Narrative as Exhibit I, and are available at the Town's web site at http://www.hiltonheadislandsc.gov/boards/minutes/2010minutes/plngcom_2-3-2010.pdf.

⁷ See the approved minutes of the Town Council's March 2, 2010 meeting which are attached to this Narrative as Exhibit J, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2010minutes/tc_3-2-2010.pdf.

⁸ See the approved minutes of the Town Council's March 16, 2010 meeting which are attached to this Narrative as Exhibit K, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2010minutes/tc_3-16-2010.pdf.

⁹ A copy of Ordinance No. 2010-03 as approved on second reading on March 16, 2010 is attached to this Narrative as Exhibit L.



While not reflected in the minutes of the Town Council's March 16, 2010 meeting, immediately after second reading approval of Proposed Ordinance No. 2009-39 (which was then Ordinance No. 2010-03), Charles F. Cousins, the Town's Director of Community Development, announced to the Town Council and the public present at the March 16, 2010 meeting that the Town Staff had prepared an application for Tree Approval for execution on behalf of Beaufort County, and delivered to Mr. Andres that application and an approval letter dated March 16, 2010 (the "03/16/10 Approval") from Ms. Krebs to Mr. Andres.

On March 30, 2010, the Church appealed the issuance by the Town of the 03/16/10 Approval by timely filing appeals to the BZA and the Planning Commission.¹⁰ Thereafter, by way of her April 23, 2010 letter and her April 26, 2010 email to the undersigned Chester C. Williams, attorney for the Church, Teri B. Lewis, AICP, the Town's LMO Official, advised the Church that Beaufort County had requested that the Town withdraw the 03/16/10 Approval, that Ordinance No. 2010-03 had not yet been properly adopted by the Town Council, and that the Town had voided Beaufort County's Tree Approval application. Because of the voiding of Beaufort County's application and the withdrawal of the 03/16/10 Approval, the Church's appeals were mooted.

Subsequently, on May 4, 2010, the Town Council again took up Proposed Ordinance No. 2009-39, this time for revised second reading approval, and approved same.¹¹ As the minutes from that meeting reflect, the undersigned voiced procedural concerns with the Town Council's action to give revised second reading approval to Proposed Ordinance No. 2009-39; however, based on the Town Council's revised second reading approval on May 4, 2010, Proposed Ordinance No. 2009-39 was again signed by Mayor Thomas D.

¹⁰ Among other things, the Church's March 30, 2010 appeals alleged that Ordinance No. 2010-03 had not yet been properly adopted by the Town Council in conformance with the requirements of Section 2-7-40(b) of the Town's Municipal Code.

¹¹ See the approved minutes of the Town Council's May 4, 2010 meeting which are attached to this Narrative as Exhibit M, and are available online at the Town's web site at http://www.hiltonheadislandsc.gov/Boards/minutes/2010minutes/tc_5-4-2010.pdf.



Peebles and Town Clerk Betsy Mosteller and again designated as Ordinance No. 2010-03.¹²

Ordinance No. 2010-03 purports to amend LMO Section 16-4-403, part of the Airport Overlay District regulations, to provide an alternate method of obtaining approval from the Town for the pruning, topping, and removal of trees in the Approach Path of the Hilton Head Island Airport, including trees on Airport property and off Airport property.

Beaufort County's application for Tree Approval (the "County's Application"), which is the basis for the Tree Approval Letter, was signed by Mr. Andres on August 18, 2010, and accepted for filing by the Town on August 20, 2010. Mrs. Lewis determined on August 25, 2010 that the County's Application was complete, and the Tree Approval Letter was thereafter issued by Ms. Krebs on September 1, 2010. A copy of a portion of the County's Application is attached to this Narrative as Exhibit O.¹³

The Church alleges that the pruning or removal of any trees on the Hilton Head Island Airport property pursuant to the Tree Approval Letter is not an activity that is allowed under the LMO, as Ordinance No. 2010-03 and the Tree Approval Letter are both invalid, as more fully explained below.

IV. ADMINISTRATIVE INTERPRETATIONS AND ISSUANCE OF PERMITS

Sections 16-2-101 and 16-10-201 of the LMO identify the Administrator as "the LMO Official or his/her designee".

¹² A copy of Ordinance No. 2010-03 as approved on revised second reading on May 4, 2010 is attached to this Narrative as Exhibit N.

¹³ Exhibit O is only the application forms and Narrative from the County's Application, as the entire application, as provided to the undersigned by Mrs. Lewis on August 25, 2010, contains a total of 284 pages. The Church refers the members of the BZA and the members of the Planning Commission to the Town's records for a full copy of the County's Application.



LMO Section 16-2-102 says that the Administrator shall, among other things, make administrative interpretations of the LMO, and review and take action on, among other things, development plans, tree protection applications, and wetland alteration applications.

Teri B. Lewis, AICP is the Town's LMO Official, and Ms. Krebs is the Town's Natural Resources Administrator. Subject to the arguments for appeal set forth below, the Church has assumed, for purposes of this Appeal only, that the LMO Official has the legal authority to issue the Tree Approval Letter, and Ms. Krebs had appropriate delegated authority from Mrs. Lewis to do likewise.

V. THE AUTHORITY AND POWER OF THE PLANNING COMMISSION

Among other things, Section 6-29-340(B) of the State Enabling Act grants the Planning Commission the power, and imposes on the Planning Commission the duty, to oversee the administration of the land development regulations, and arguably the administration of the zoning regulations, that may be adopted by the Town pursuant to the State Enabling Act.

Nevertheless, LMO Section 16-2-205 seems, in part, to attempt to restrict the power and duty of the Planning Commission, as its listing of powers and duties conspicuously omits any reference to the Planning Commission overseeing the administration of the regulations that are the LMO.¹⁴ In addition, prior to October 6, 2009, LMO Sections 16-3-309 and 16-3-607 said that appeals of administrative decisions by the Administrator on development plans and subdivision applications were made to the Planning Commission; however, with the enactment of Town Ordinance No. 2009-33, the Town has attempted to further limit the appeal jurisdiction of the Planning Commission

¹⁴ LMO Section 16-2-205 also omits any reference to the Planning Commission's power and duty to prepare and recommend for adoption regulations for the subdivision or development of land and appropriate revisions thereof, as spelled out in the State Enabling Act.



to only allow for the review of Town Staff decisions to approve or disapprove a development plan or subdivision.

VI. THE AUTHORITY AND POWER OF THE BZA

Among other things, Section 6-29-800(A) of the State Enabling Act grants the BZA the power and duty to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Town's zoning ordinance. Note, however, that the BZA's appeal jurisdiction under the State Enabling Act is limited to the zoning ordinance, which is authorized by Article 5 of the State Enabling Act, and does not extend to the Town's subdivision and land development regulations, which are different portions of the LMO authorized by Article 7 of the State Enabling Act. When hearing and deciding appeals, the BZA may subpoena witnesses, and may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit,¹⁵ and is authorized to make findings of fact and conclusions of law.¹⁶

Nevertheless, LMO Section 16-2-305(A) purports to confer additional authority on the BZA, supposedly authorizing the BZA to hear appeals of orders, requirements, decisions, or determinations made by an administrative official in the **administration or enforcement of the entire LMO**, and not just the zoning ordinance portions of the LMO. In addition several sections of the LMO purport to extend the appeal jurisdiction of the BZA to certain approvals, permits, and administrative decisions.¹⁷

¹⁵ See SC Code Section 6-29-800(D) and LMO Section 16-3-2003.

¹⁶ See SC Code Section 6-29-800(E).

¹⁷ See, for example LMO Sections 16-3-117, 16-3-205, 16-3-408, and 16-3-506.



VII. THE TREE APPROVAL LETTER

The Tree Approval Letter purports to grant approval for the pruning and removal of trees in the approach slopes at the north end of the Hilton Head Island Airport property,¹⁸ and contains eleven conditions.

With respect to the proper procedure to follow for this Appeal, the Church and the undersigned are uncertain whether the Tree Approval Letter is a permit or is merely an administrative decision, and whether the Tree Approval Letter was issued by the Town under the zoning portions of the LMO or under the land development portions of the LMO. These issues have a direct bearing on the jurisdiction of the Planning Commission and the BZA to hear and act on some or all of the issues raised in this Appeal.

In any event, however, the Church asserts that Ordinance No. 2010-03 is invalid and did not properly and legally amend the LMO as it purports to do; and further asserts that the Tree Approval Letter was wrongfully and improperly issued by the Town to Beaufort County, arbitrarily and capriciously, contrary to the explicit provisions of the State Enabling Act and the LMO. The Church is aggrieved by the Tree Approval Letter, and therefore has filed this Appeal to the Planning Commission and the BZA.

VIII. STANDING

The Church has standing to file this Appeal as to the validity of Ordinance No. 2010-03 under Section 6-29-760(C) of the State Enabling Act. As to the validity of the Tree Approval Letter, the Church has standing to file this Appeal to the Planning Commission in order to invoke the Planning Commission's power and duty to oversee the administration of the LMO

¹⁸ The County Application is for the pruning and removal of trees at the end of Runway 21, which is the runway at the Hilton Head Island Airport that is utilized by airplanes taking off in a generally northerly direction towards and over the Church's property and landing in a generally southerly direction from over Port Royal Sound.



pursuant to Section 6-29-340(B)(2) of the State Enabling Act, and, assuming the Tree Approval Letter is a land development plan or permit, pursuant to Section 6-29-1150(C) of the State Enabling Act; and the Church has standing to file this Appeal to the BZA under Section 6-29-800(B) of the State Enabling Act and LMO Sections 16-3-408 and 16-3-2001.

IX. NECESSARY PARTY

Under the holding in *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment*, 367 S.E.2d 160 (S.C. 1988),¹⁹ Beaufort County, as the permittee under the Tree Approval Letter, is a necessary party to this Appeal. Accordingly, the Church asks that Beaufort County receive notice of all matters and hearings associated with this Appeal.

X. APPEAL JURISDICTION

The Church and the undersigned readily admit that they are uncertain as to the proper procedure to be utilized in this Appeal, and as to whether it is the BZA or the Planning Commission, or some combination of the two, that has jurisdiction over the matters raised in this Appeal.

The Church submits that a thorough review of applicable provisions of the State Enabling Act and the LMO seems to lead to the conclusion that the Planning Commission, and not the BZA, has jurisdiction to hear at least some, if not all, of the issues raised in this Appeal. Without doubt, only the Planning Commission and the BZA, and not the LMO Administrator or the Town Staff, have the authority to determine the extent of their respective jurisdictions.

The Church assumes that the Town Staff, relying on LMO Section 16-3-408, will say that only the BZA has jurisdiction to hear this Appeal, and will

¹⁹ A copy of the cited case is attached to this Narrative as Exhibit P-1.



either refuse to accept for filing this Appeal to the Planning Commission, or will return the appeal application to the Planning Commission to the undersigned. If the Town Staff refuses to accept this Appeal to the Planning Commission for filing or otherwise refuses to allow this Appeal to be heard by the Planning Commission, by doing so, the Town Staff will usurp the Planning Commission's right and authority to determine the scope of its jurisdiction. There are no provisions in either the State Enabling Act or the LMO that vest any authority or power in the Administrator or the Town Staff to determine what appeals will or will not be "accepted" for filing; instead, the Church believes the Administrator and the Town Staff are obligated to accept for filing any complete appeal application that is timely tendered to the Administrator for filing.

It is an elementary legal principle that no party to a dispute or appeal has, or should have, the right to determine what body has jurisdiction to hear the dispute or appeal. To allow otherwise would present a classic case of the fox guarding the henhouse. Further, the principle of jurisdiction to determine jurisdiction vests in each adjudicatory body the authority and power to determine if it has subject matter jurisdiction over any particular issue presented to it. Clearly, in an adversarial context such as this Appeal, no one party has the authority to determine if an adverse party has a right to appeal, nor does any one party have the right to determine what body has jurisdiction to hear an appeal. Those are legal decisions that can only be made by the body to which the appeal is taken.

In this case, a determination of whether or not the Planning Commission has jurisdiction to hear some or all of the issues presented in this Appeal is a decision for the Planning Commission alone to make, and the same is true for the BZA; however, it is equally important to note that the BZA does not have the authority or power to determine the scope of the Planning Commission's jurisdiction, and *vice versa*.



XI. GROUNDS FOR APPEAL

The Church alleges that the Tree Approval Letter was wrongfully and improperly issued by the Town to Beaufort County, arbitrarily and capriciously, because Ordinance No. 2010-003 is invalid, the County's Application is defective and incomplete, and the activities purportedly authorized by the Tree Approval Letter are contrary to the explicit provisions of the State Enabling Act and the LMO in several respects.

XII. APPLICABLE SOUTH CAROLINA CASE LAW

Initially, the Church notes that the South Carolina courts have consistently held that zoning ordinances, being in derogation of the common law, are strictly construed against the governing authority and in favor of the property owner. See, for example, *Keane/Sherratt Partnership v. Hodge*, 357 S.E.2d 193 (S.C.App. 1987), citing *Purdy v. Moise*, 75 S.E.2d 605 (S.C. 1953).²⁰

The Church also notes that the South Carolina courts have held that local zoning ordinances may not override state law and policy; and that the state enabling legislation (*i. e.*, the State Enabling Act) on which local zoning ordinances are based is not merely suggestive in nature, but rather is mandatory, and prescribes the parameters of conferred authority. See, *Bostic v. City of West Columbia*, 234 S.E.2d 224 (S.C. 1977).²¹ Further, an amendment to a zoning ordinance that does not comply with the State Enabling Act is invalid. *Sinkler v. County of Charleston*, 690 S.E.2d 777 (S.C. 2010).²² In addition, an amendment of a zoning ordinance accomplished

²⁰ Copies of the cited cases are attached to this Narrative as Exhibits P-2 and P-3.

²¹ Again, a copy of the cited case is attached to this Narrative as Exhibit P-4.

²² Again, a copy of the cited case is attached to this Narrative as Exhibit P-5.



pursuant to defective notice is void. *Brown v. County of Charleston*, 309 S.E.2d 784 (S.C. App. 1990).²³

When construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *City of Myrtle Beach v. Juel P. Corporation*, 543 S.E.2d 538 (S.C. 2001).²⁴

With respect to the determination of jurisdiction to hear a particular matter, the doctrine of "jurisdiction to determine jurisdiction" is well settled in the law. One of the leading cases in South Carolina on this point is *Bridges v. Wyandotte Worsted Company*, 132 S.E.2d 18 (S.C. 1963), which says, "[e]very court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination."²⁵ The Church submits that this doctrine is equally applicable to both the BZA and the Planning Commission.

XIII. THE CHURCH'S ARGUMENTS FOR APPEAL

A. INVALIDITY OF ORDINANCE NO. 2010-03

The Church submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because there is no evidence that Ordinance No. 2010-03 was drawn by or under the supervision of the Town Attorney, as required by Section 2-11-40(c) of the Town's Municipal Code.

²³ Again, a copy of the cited case is attached to this Narrative as Exhibit P-6.

²⁴ Again, a copy of the cited case is attached to this Narrative as Exhibit P-7.

²⁵ Again, a copy of the cited case is attached to this Narrative as Exhibit P-8. Note this case was later overruled by the South Carolina Supreme Court on other grounds regarding the right to a trial by jury on a workers compensation claim.



If Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County's Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

B. INVALIDITY OF ORDINANCE NO. 2010-03

The Church further submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because the Town failed to comply with the published notice requirements of the public hearings held by the Town Council and the Planning Commission in their review of Proposed Ordinance No. 2009-39, as required by Section 6-29-760(A) of the State Enabling Act and by LMO Sections 16-3-110 and 16-3-111.

Ordinance No. 2010-03 purports to amend LMO Section 16-4-403, part of the regulations governing activities in the Airport Overlay District. It seems clear, then, that is an amendment of a zoning regulation, which is governed by Section 6-29-760 of the State Enabling Act; and being an amendment to the Town's zoning ordinance, it is either a rezoning or a text amendment. Under Section 6-29-760(A) of the State Enabling Act, before amending any zoning regulation, the Town Council or the Planning Commission must hold a public hearing on the proposed amendment, which "must be advertised and conducted according to lawfully prescribed procedures." LMO Sections 16-3-110 and 16-3-111(A) require, for both rezonings and text amendments, that a distinctive advertisement, a Public Hearing Notice, be placed in a local newspaper of general circulation within the Town for not less than 30 calendar days prior to the meeting for the purpose of notifying the public of all public hearing agenda items which may be considered or reviewed.²⁶

²⁶ Note the confusing language of LMO Section 16-3-111(A) which says the advertisement must be run in the newspaper "for not less than 30 days" before the public hearing. It does not say that the advertisement must be run at least 30 days before the public hearing.



On the other hand, if the adoption of Ordinance No. 2010-03 was not an amendment of the Town's zoning ordinance, then it had to have been an amendment of the Town's land development regulations. Under Section 6-29-1130(B) of the State Enabling Act, the Town Council has "the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the [Town]." The published public notice requirements of LMO Sections 16-3-110 and 16-3-111(A) for amendments of the LMO's land development regulations are the same as the requirements for amendments of the LMO's zoning regulations.

The bottom line here is that notice of the public hearing on a proposed amendment to the LMO must be published in a local newspaper at least 30 days prior to the public hearing, regardless of whether the public hearing is held by the Town Council or the Planning Commission, and regardless of whether the amendment affects the zoning regulations or the land development regulations.

As mentioned in the chronology above, and as indicated on the face of Ordinance No. 2010-03, there were two public hearings held on Proposed Ordinance No. 2009-39, one by the Town Council on November 17, 2009 and one by the Planning Commission on February 3, 2010; however, neither of those public hearings were properly noticed as required by law.

On November 3, 2009 the Town Council resolved to hold a public hearing on Proposed Ordinance No. 2009-39 on November 17, 2009, which was only 14 days later. Notice of that public hearing was published in *The Island Packet* on November 8, 2009, only 9 days prior to the date of the public hearing,²⁷ instead of the required 30 days.

²⁷ See the undated memorandum from Mrs. Lewis and Kathleen Carlin to *The Island Packet* – Legal Notices which is attached to this Narrative as Exhibit Q, which asks that the Notice of Public Hearing be published on November 8, 2009. The Church notes that public hearing notice requirements of Section 2-5-70(g) of the Town's Municipal Code are different from the requirements of Section 6-26-760(A) of the State Enabling Act and LMO Section 16-3-110 and 16-3-111.



On December 1, 2009, a Notice of Public Hearing was published in *The Island Packet* advising the public of a public hearing to be held by the Planning Commission on January 6, 2010 to review the amendments to the LMO contained in Proposed Ordinance No. 2009-39; however, that public hearing was not held, and the January 6, 2010 meeting of the Planning Commission was cancelled “due to a lack of agenda items.”²⁸ The Meeting Cancellation Notice also said that the next regularly scheduled meeting of the Planning Commission would be held on January 20, 2010.

The agenda for the January 20, 2010 Planning Commission meeting refers to the review of Proposed Ordinance No. 2009-39, but only to indicate that, “Review of this item is postponed to the February 3, 2010 meeting.”²⁹ The Church notes that there is no reference on that agenda to any public hearing on Proposed Ordinance No. 2009-39.

The agenda for the February 3, 2010 Planning Commission meeting refers to the review of Proposed Ordinance No. 2009-29, but gives no notice whatsoever that a public hearing will be held.³⁰ Nevertheless, as indicated in the minutes of the February 3, 2010 Planning Commission meeting,³¹ the Planning Commission proceeded at that time to hold a public hearing on Proposed Ordinance No. 2009-39. However, there never was any published notice of that public hearing by the Planning Commission in *The Island Packet*³² or, to the undersigned’s knowledge, any other newspaper published in

²⁸ See the Meeting Cancellation Notice which is attached to this Narrative as Exhibit R.

²⁹ See the Agenda for the January 20, 2010 meeting of the Planning Commission Meeting which is attached to this Narrative as Exhibit S.

³⁰ See the Agenda for the February 3, 2010 meeting of the Planning Commission Meeting which is attached to this Narrative as Exhibit T.

³¹ See the minutes at Exhibit I.

³² See the email from Sandy Gillis, Vice President, Advertising for *The Island Packet* which is attached to this Narrative as Exhibit U.



the Town, as required by Section 6-29-760(A) of the State Enabling Act and by LMO Section 16-3-110 and 16-3-111.

The case law in South Carolina is clear that an amendment of a zoning ordinance accomplished pursuant to defective notice is void. See, *e. g.*, the *Brown* case cited above. Accordingly, because the amendment of LMO Section 16-4-403 by Ordinance No. 2010-03 was accomplished pursuant to defective notice, that amendment is void, and LMO Section 16-4-403 remains as it was prior to May 4, 2010.

Again, if Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County's Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

C. INVALIDITY OF ORDINANCE NO. 2010-03

The Church further submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because conspicuous notice of the public hearing on Proposed Ordinance No. 2009-39 and the rezoning of properties within the Airport Overlay District³³ to be implemented thereby was not posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property, as required by Section 6-29-760(A) of the State Enabling Act and by LMO Sections 16-3-110 and 16-3-111.

It is well settled in South Carolina that a change in the regulations applicable to a particular zoning district can be a "rezoning" in the context of Section 6-29-760(A) of the State Enabling Act. See, *e. g.*, the *Brown* case cited above. Clearly, the Town Council's adoption of Ordinance No. 2010-03 was an

³³ Overlay districts are specifically allowed by Section 6-29-720(C)(5) of the State Enabling Act.



attempt to amend the zoning ordinance portions of the LMO, as it purports to change the regulations applicable to an overlay zoning district. If the Town Council's adoption of Ordinance No. 2010-03 is construed to be a "rezoning", then the Town had to comply with the notice posting requirement of Section 6-29-760(A) of the State Enabling Act. To the knowledge of the undersigned, in this case, the Town did not do so. Therefore, because the notice posting requirements of Section 6-29-760(A) of the State Enabling Act and LMO Sections 16-3-110 and 16-3-111 are mandatory (note the use of the term "shall" in Section 6-29-760(A) of the State Enabling Act), and because an amendment of a zoning ordinance pursuant to defective notice is void,³⁴ the amendment of LMO Section 16-4-403 by Ordinance No. 2010-03 is void, and LMO Section 16-4-403 remains as it was prior to May 4, 2010.

Again, if Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County's Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

D. INVALIDITY OF ORDINANCE NO. 2010-03

The Church further submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because Proposed Ordinance No. 2009-39 was not re-submitted to the Planning Commission for review and recommendation, as required by Section 6-29-760(A) of the State Enabling Act.

Section 6-29-760(A) of the State Enabling Act establishes the required procedure for the enactment and amendment of zoning regulations. Ordinance No. 2010-03 purports to amend certain LMO regulations applicable to the

³⁴ Again, see the *Brown* case cited above, a copy of which is attached to this Narrative as Exhibit P-6.



Airport Overlay District. The Planning Commission is charged with preparing and recommending for adoption to the Town Council amendments to the Town's zoning ordinance,³⁵ and while the Town Council ultimately must approve an amendment to the LMO by the proper adoption of an ordinance, "No change in or departure from the text ... as recommended by the ... [Planning Commission] may be made ... unless the change or departure be first submitted to the ... [Planning Commission] for review and recommendation."³⁶

The Planning Commission reviewed Proposed Ordinance No. 2009-39 on February 3, 2010 and recommended that the Town Council approve Proposed Ordinance No. 2009-39 with certain revisions.³⁷ The Town Council did not follow the recommendation of the Planning Commission, and instead changed the text recommended by the Planning Commission at least twice (on March 2, 2010 and March 16, 2010) before giving second reading approval to the proposed ordinance. Therefore, the purported amendment of LMO Section 16-4-403 by Ordinance No. 2010-03 is invalid because the mandatory amendment procedure required by Section 6-29-760(A) of the State Enabling Act was not followed.

Again, if Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County's Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

³⁵ See Section 6-29-340(B)(2)(a) of the State Enabling Act.

³⁶ See Section 6-29-760(A) of the State Enabling Act.

³⁷ Again, see the approved minutes of the Planning Commission's February 3, 2010 meeting which are attached to this Narrative as Exhibit I.



E. INVALIDITY OF ORDINANCE NO. 2010-03

The Church further submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because Ordinance No. 2010-03 purports to amend LMO Section 16-4-403 in a manner that violates Section 6-29-720(B) of the State Enabling Act.

Section 6-29-720(B) of the State Enabling Act requires that zoning regulations “must be uniform for each class or kind of building, structure, or use throughout each district”. However, Ordinance No. 2010-03 purports to amend the regulations applicable to the Airport Overlay District in a manner that establishes new, alternative regulations for the pruning, topping, and removal of trees on certain properties in the Airport Overlay District (*i. e.*, those properties owned by Beaufort County located in the Approach Path used for operations of the Hilton Head Island Airport, and those properties “affected by the height limits in the approach path.”) that are different from the regulations for the pruning, topping, and removal of trees on other properties in the Airport Overlay District; and establishes buffer regulations for certain properties in the Airport Overlay District that are different from the buffer regulations for other properties in the Airport Overlay District.

Again, if Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County’s Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

F. INVALIDITY OF ORDINANCE NO. 2010-03

The Church further submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because Ordinance No. 2010-03 purports to allow one property owner or occupant, the Hilton Head Island Airport, to undertake activities that no other person or



property owner is allowed to do, in violation of the due process and equal protection provisions of the United States Constitution and the South Carolina Constitution. It has long been settled that zoning deals with land use, not the owner, operator, or occupant of the land. Clearly, an amendment to a zoning ordinance that provides a benefit to one particular property owner or occupant, to the exclusion of all other property owners or occupants, violates the equal protection clauses of the United States Constitution and the South Carolina Constitution.

Again, if Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County's Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

G. INVALIDITY OF ORDINANCE NO. 2010-03

The Church further submits that Ordinance No. 2010-03 is invalid, and therefore ineffective as an amendment of LMO Section 16-4-403, because Ordinance No. 2010-03 purports to allow one entity or property owner, the Hilton Head Island Airport, to undertake activities on the Church's property without the approval or consent of the Church, and allows Beaufort County and the Town to prepare a mitigation plan for the Church's property without the participation, approval, or consent of the Church, in violation of the due process and equal protection provisions of the United States Constitution and the South Carolina Constitution.

Again, if Ordinance No. 2010-03 is invalid, LMO Section 16-4-403 has not been amended, and the alternate procedure for pruning, topping, and removal of trees provided for in Ordinance No. 2010-03, which is the basis for the County's Application and the Tree Approval Letter, is not available to Beaufort County or the Town, and any actions based on Ordinance No. 2010-



03, including, without limitation, the issuance of the Tree Approval Letter, are invalid and unlawful.

H. INVALIDITY OF THE TREE APPROVAL LETTER

The Church further submits that if LMO Section 16-4-403 has not been properly amended because Ordinance No. 2010-03 is invalid for any one or more of the reasons asserted above, then the Tree Approval Letter is invalid under Section 6-29-950 of the State Enabling Act and LMO Section 16-3-401, because neither the County's Application nor the Tree Approval Letter conform to the requirements of LMO Chapter 3, Article IV regarding tree protection.

Section 6-29-950 of the State Enabling Act says, in part, "No permit may be issued or approved unless the requirements of [the State Enabling Act or the LMO] are complied with." LMO Section 16-3-401 says, in part, "No person shall cut, destroy, cause to be destroyed, move or remove any tree within the Town limits of Hilton Head Island without first obtaining a tree protection approval as required [in Chapter 3, Article IV of the LMO]."

If LMO Section 16-4-403 has not been properly amended by Ordinance No. 2010-03, then Beaufort County, like all other property owners, must obtain a tree protection approval by submitting an application that complies with the provisions of LMO Section 16-3-404, and until Beaufort County has done so, the Town is prohibited from issuing a tree protection approval letter to Beaufort County.

I. INVALIDITY OF THE TREE APPROVAL LETTER

Even if LMO Section 16-4-403 was properly amended by Ordinance No. 2010-03 (which the Church disputes), the Church further submits that the Tree Approval Letter is invalid under LMO Sections 16-3-106 and 16-3-108, as the County's Application is incomplete.



LMO Section 16-3-106 requires that all applications be completed and submitted to the Administrator. LMO Section 16-3-108 requires that the Administrator notify an applicant if an application is incomplete.

The County's Application was received by the Town on August 20, 2010, and Ms. Lewis determined that the application was complete on August 25, 2010. On September 8, 2010, appeals to the Planning Commission and the BZA were filed on behalf of the Church alleging that the County's Application was incomplete,³⁸ and the Church hereby incorporates those appeals herein, and re-alleges that the County's Application does not comply with the requirements of LMO Section 16-3-404(A) and LMO Section 16-4-403(C)(2)(a), as amended on May 4, 2010 by Ordinance No. 2010-03. Specifically, the County's Application (1) is not on an approved application form published by the Administrator, (2) contains a written narrative that is incomplete because it does not adequately address tree protection and replacement, (3) includes an inadequate site plan, (4) does not, or may not, include copies of all required permits from other agencies, and (5) does not include a mitigation plan.

If the County's Application was, and is, incomplete, then under LMO Section 16-1-108, Mrs. Lewis is required to notify Beaufort County that such is the case, and the issuance of the Tree Approval Letter violated LMO Section 16-3-106 and the Tree Approval Letter was unlawfully and wrongly issued and is therefore invalid.

J. INVALIDITY OF THE TREE APPROVAL LETTER

The Church further submits that the Tree Approval Letter is invalid under LMO Section 16-4-103, because neither the County's Application nor the Tree Approval Letter conform to or comply with the requirements of LMO Chapter 3, Article IV regarding tree protection.

³⁸ See the Town's records on Request for Appeal No. APL100011 (an appeal to the BZA) and Request for Appeal No. APL100012 (an appeal to the Planning Commission). For the record, the Church has no objection to consolidating each of those appeals with this Appeal to the Planning Commission and the BZA, respectively.



All of the property that is the subject of the Tree Approval Letter is located in a base zoning district³⁹ and also in the Airport Overlay District. LMO Section 16-4-103 says, in part, that “Where a certain property may be so situated that it lies within both a base district and one or more overlay districts, the regulations and standards of both the base and overlay district shall be applicable to the development and use of such property. Where specific regulations or standards regarding a property so situated may conflict, the more restrictive regulation or standard shall be applicable.”

With respect to the Hilton Head Island Airport property, the more restrictive regulations or standards for pruning or removing trees are those that are applicable to the base zoning districts, which are found in LMO Chapter 3, Article IV. Accordingly, notwithstanding the purported amendment of LMO Section 16-4-403 by Ordinance No. 2010-03, and whether or not that amendment is valid, the Town and Beaufort County are still bound by and obligated to follow the requirements of LMO Sections 16-3-401, *et seq.* regarding tree protection.

K. INVALIDITY OF THE TREE APPROVAL LETTER

The Church submits that certain actions that may be taken by Beaufort County pursuant to the Tree Approval Letter are activities that constitute development under the provisions of the LMO. Therefore, to the extent that the Tree Approval Letter purports to authorize any activities that require development plan review approval by the Town, the Tree Approval Letter is invalid, and Beaufort County is prohibited from undertaking such activities prior to submitting a complete application for development plan review approval and receiving such approval from the Town.

The Church notes that LMO Section 16-3-407(B), which is applicable to Beaufort County and any activities it seeks to undertake pursuant to the Tree Approval Letter, says, in part, “Tree approval does not authorize any tree

³⁹ The base district applicable to the Airport property is the IL—Light Industrial District. See the Town’s Official Zoning Map.



removal or development activity until such time as development plan approval is granted [by the Town].”

LMO Section 16-1-105 specifies certain activities that constitute development, and says that “Development ... shall include all other activities customarily associated with it unless otherwise specified herein.” The pruning and removal of trees on Hilton Head Island Airport property pursuant to the Tree Approval Letter is not included in any of the activities that do not constitute development listed in LMO Section 16-1-106, nor is it included in any of the development activities that are exempt from approval listed in LMO Section 16-3-302. Accordingly, the Church asserts that Beaufort County must first apply for and receive development plan approval from the Town under LMO Chapter 3, Article III before any actions purportedly allowed by the Tree Approval Letter can be undertaken.

L. INVALIDITY OF THE TREE APPROVAL LETTER

The Church submits that certain actions that may be taken by Beaufort County pursuant to the Tree Approval Letter are activities within wetlands and wetland buffers, and that will alter wetlands. In fact, the Tree Approval Letter specifically acknowledges that activities will be undertaken in wetlands and wetland buffers. Therefore, to the extent that the Tree Approval Letter purports to authorize any activities within wetlands or that will alter wetlands, or any activities within wetlands buffers, the Tree Approval Letter is invalid, and Beaufort County is prohibited from undertaking such activities prior to submitting a complete application for wetlands alteration approval and receiving such approval from the Town.

LMO Section 16-3-501(B) prohibits any activity within a wetland or alteration of a wetland without a wetlands alteration approval issued pursuant to LMO Chapter 3, Article V. LMO Section 16-6-204(C)(5) specifically prohibits the removal or destruction of trees in wetland buffer areas. By its very terms, however, the Tree Approval Letter contemplates that activities will be undertaken in wetlands that will clearly alter those wetlands, and in wetland buffer areas that will result in the removal of trees. However, nothing in



Ordinance No. 2010-03 purports to relieve Beaufort County or the Hilton Head Island Airport from complying with the wetlands and wetland buffers requirements of the LMO. Accordingly, the Church asserts that Beaufort County must first apply for and receive wetlands alteration approval under LMO Chapter 3, Article V before any actions purportedly allowed by the Tree Approval Letter can be undertaken in wetland or wetland buffers.

M. INVALIDITY OF THE TREE APPROVAL LETTER

The Church submits that if the activities to be undertaken by Beaufort County pursuant to the Tree Approval Letter constitute development under the terms of the LMO, then Beaufort County is prohibited from undertaking such activities prior to submitting a complete application for Design Review Board approval and receiving such approval from the Town.

LMO Section 16-3-1001 requires that all development proposed in the Corridor Overlay District shall submit an application to the Administrator for review by the Design Review Board. The Design Review Board must review the application at a public meeting, and either approve, approve with modifications or conditions, or disapprove the request. The County's Application clearly acknowledges that the Hilton Head Island Airport property is located in the Corridor Overlay District, and the Tree Approval Letter, in Condition 10, acknowledges the jurisdiction of the Design Review Board over the process contemplated by the Tree Approval Letter. Nothing in Ordinance No. 2010-03 purports to relieve Beaufort County or the Hilton Head Island Airport from complying with the Corridor Overlay District requirements. Accordingly, the Church asserts that if the activities to be undertaken by Beaufort County pursuant to the Tree Approval Letter constitute development under the terms of the LMO, Beaufort County must first apply for and receive Design Review Board approval under LMO Chapter 3, Article X before any actions purportedly allowed by the Tree Approval Letter can be undertaken.



N. INVALIDITY OF THE TREE APPROVAL LETTER

The Church believes that the pruning and removal of trees allowed by the Tree Approval Letter will result in the Hilton Head Island Airport becoming nonconforming with the minimum tree coverage requirements of LMO Section 16-6-406. Because no permit may be issued or approved unless the requirements of the LMO are complied with, to the extent the Tree Approval Letter authorizes the removal of trees from Hilton Head Island Airport property in a manner that causes the Hilton Head Island Airport property to become nonconforming with the minimum tree coverage requirements of LMO Section 16-6-406, the Tree Approval Letter is invalid under Section 6-29-950 of the State Enabling Act.

O. CONSTITUTIONAL ISSUES

The Church further believes the Town's issuance of the Tree Approval Letter is wrong because Ordinance No. 2010-03 and its amendments to LMO Section 16-4-403 violates the due process and equal protection clauses of the United States Constitution and South Carolina Constitution and is therefore invalid and unenforceable. The actions of the Town surrounding the purported approval of Ordinance No. 2010-03 and the subsequent issuance by the Town of the Tree Approval Letter were arbitrary and capricious, and without reasonable basis or justification in law or fact, for the reasons specified above.

XIV. CONCLUSION

South Carolina law provides local governments with wide latitude to enact ordinances regulating what people can do with their property, but those ordinances must be drafted, and amended, in conformance with the State Enabling Act.⁴⁰

⁴⁰ See, again, the *Bostic* case, the *Sinkler* case, and the *Brown* case, all cited above, copies of which are attached to this Narrative as Exhibits P-4, P-5, and P-6.



The United States Constitution and the South Carolina Constitution both require that all persons be afforded due process and equal protection of the laws. In the context of Ordinance No. 2010-03, it is unconstitutional to establish a procedure in a zoning ordinance for obtaining a tree protection approval letter from the Town, and then establish an alternate procedure for the same end result that one, and only one, particular property owner or occupant may utilize.

It is clear that Ordinance No. 2010-03 has not been properly approved by the Town, and therefore does not have the force of law; and it is equally clear that the amendments to LMO Section 16-4-403 purportedly enacted by Ordinance No. 2010-03 do not conform to the State Enabling Act. The mandatory notice requirements for a rezoning have not been complied with; and the regulations purportedly enacted by Ordinance No. 2010-03, which are part of the regulations applicable to the Airport Overlay Zone, have resulted in non-uniform regulations in that zoning district, all in violation of the State Enabling Act.

Because the Tree Approval Letter is based on the amendments to LMO Section 16-4-403 purportedly enacted by Ordinance No. 2010-03, if the ordinance is invalid, then the Tree Approval Letter is also invalid.

In addition, it is clear that the Tree Approval Letter was issued in violation of the requirements of the LMO for a complete application, without the prerequisite development plan review approval and Design Review Board approval, and in violation of the requirements of the tree protection, wetlands, and wetland buffers sections of the LMO.

For any number of reasons, the Tree Approval Letter was improperly issued, in an arbitrary and capricious manner, contrary to the explicit provisions of the State Enabling Act, the SC Code, the LMO, and the Municipal Code. Therefore, the Church asks that the BZA (a) consider the issues raised in this Appeal and the pertinent provisions of the State Enabling Act, the SC Code, the LMO, and the Municipal Code, and other applicable law, and (b) find



that the Tree Approval Letter was improperly issued, and declare the Tree Approval Letter void.

The Church reserves the right to submit additional materials, documents, and information to the BZA in connection with this Appeal.

Respectfully submitted on behalf of the Church this 15th day of September, 2010.



Chester C. Williams, Esquire
Law Office of Chester C. Williams, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
843-842-5411
843-842-5412 (fax)
Firm@CCWLaw.net



Exhibit A to Appeal Narrative (2 Pages)

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov

Thomas D. Peeples
Mayor

Kenneth S. Heitzke
Mayor ProTem

Council Members

Willie (Bill) Ferguson
William D. Harkins
Drew A. Laughlin
John Safay
George W. Williams, Jr.

Mr. Paul Andres
Director of Airports
Hilton Head Island Airport
PO Box 23739
Hilton Head Island, SC 29925

1 September 2010

Stephen G. Riley
Town Manager

Re: Tree pruning/removal at north end of airport

Dear Paul,

This letter serves as Natural Resources approval for the above-mentioned project, with the following conditions:

1. This approval is for tree pruning/removal in the approach slopes of on-airport property only. No disturbance of the existing soil surface is allowed to complete this project.
2. This approval is based on plans drawn by Wilbur Smith Associates, particularly sheet 5 of 22 (date drawn 5-17-2010), and sheets 6 through 22 (date drawn 6-8-10), with the Town/County arborist having the final say on whether to prune or remove each tree listed as a projection in these plans.
3. Stakeout inspection with Town staff is required prior to start of work. Prior to this inspection, stake all required buffers and wetlands and erect tree protection fencing around the cluster of pond spice. The County's construction manager, contractor and arborist must all be present for this inspection.
4. The arborist jointly hired by the Town and County shall keep a list of all trees 6 inches in diameter and over that are removed for this project. This list will be used to generate a list of replacement trees to be planted for mitigation.
5. The arborist jointly hired by the Town and County shall submit a written report on the progress of this project on a weekly basis, including an update on the list of trees removed.

6. Reasonable care shall be taken to protect all understory vegetation during this project.
7. Mechanized vehicles shall not be used in any wetlands, wetland buffers or other buffer areas.
8. Specimen live oak trees shall only be pruned one foot out of the 1:34 slope; other hardwoods may be pruned to five years growth potential below the slope and conifers may be pruned to ten years growth potential below the slope.
9. Prior to beginning any work on tree pruning or removal, please schedule a meeting with Town staff to begin discussing a plan to protect water quality. This water quality plan must be submitted for approval prior to submitting the landscape mitigation plan to the Design Review Board.
10. Work with the Town to develop a landscape mitigation plan to be approved by the Town's Design Review Board (DRB). This plan shall be submitted to the DRB no later than 45 days after the final tree has been removed. Once the plan is approved, the County shall pay into the Town's tree replacement fund for tree mitigation not accomplished by the approved landscape mitigation plan. Within 90 days of the DRB approval, the mitigation planting must be complete. Please keep in mind that planting trees during the months of June-August is not recommended, as survival of the trees is compromised by water loss due to high air temperatures during this time.
11. Once the replanting of mitigation trees is completed, please schedule a final inspection with this office.

Should you have any questions or comments about this approval, please do not hesitate to call me at 341-4690.

Sincerely,



Sally L. Krebs
Natural Resources Administrator

Cc: Charles Cousins, Community Development Director
Teri Lewis, LMO Official ✓

Exhibit B-1 to Appeal Narrative (2 Pages)

THE STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

To all Whom these Presents May Come:

FRED C. HACK AND OLIN T. McINTOSH, JR., TRUSTEES

SEND GREETING.

WHEREAS: by deed dated December 27, 1957, and recorded in the office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 88 at page 154, Fred C. Hack and Olin T. McIntosh, Jr., Trustees, became vested with title to lands formerly owned by Honey Horn Plantation, a South Carolina corporation, and

WHEREAS: the said Fred C. Hack and Olin T. McIntosh, Jr. as Trustees desire to quit claim to St. James Baptist Church all right, title and interest which they the said Trustees have in and to the hereinafter described property, NOW THEREFORE

NOW, KNOW ALL MEN BY THESE PRESENTS, That they the said FRED C. HACK AND OLIN T. McINTOSH, JR., TRUSTEES

in consideration of the premises and also in consideration of the sum of TEN AND NO/100 (\$10.00) dollars to them in hand paid at and before the sealing and delivery of these presents by ST. JAMES BAPTIST CHURCH

(the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said ST. JAMES BAPTIST CHURCH, ITS SUCCESSORS AND ASSIGNS, all the right, title and interest of the aforesaid grantors in and to the following described lands, to-wit:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island in Beaufort County, South Carolina shown and described as Parcel 15 of Sheet 5 of the Hannicutt survey of Hilton Head Island and more particularly described as follows, to-wit: Being bounded on the Northwest by a public road; on the Southwest and Southeast by lands formerly belonging to Honey Horn Plantation and now owned by the grantors herein and on the Northeast by a public road.

TOGETHER with all and singular the rights, members, hereditaments and appurtenance to the said premises belonging or in anywise incident or appertaining:

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said

ST. JAMES BAPTIST CHURCH, ITS SUCCESSORS

~~Trustees~~ and assigns, forever—so that neither they the said Fred C. Hack and Olin T. McIntosh, Jr. Trustees

nor their Successors ~~Trustees~~ nor any other person or persons, claiming under us or of them, shall at any time hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

Witness our hand and seal this twentieth day of March
in the year of our Lord one thousand nine hundred and fifty-eight and in the one hundred
and eighty-second year of the Sovereignty and Independence of the United States of
America.

Signed, Sealed and Delivered }
in the presence of }
Hendry Sr
Phyllis L. Stone

Fred C. Hack (L. S.)
Olin T. McIntosh Jr (L. S.)
Trustees (See Deed Book 88, page 154,
Office of the Clerk of Court for
Beaufort County, South Carolina)

THE STATE OF SOUTH CAROLINA,
Beaufort County.

PERSONALLY appeared before me E. S. Hendry, Sr.
and made oath that he saw the within named Fred C. Hack and
Olin T. McIntosh, Jr., Trustees sign, seal, and as their act and deed, deliver the within written
Deed; and that he with Phyllis L. Stone
witnessed the execution thereof.

SWORN to before me, this 10th
day of March, A. D. 19 58
(SEAL) Phyllis L. Stone
Notary Public for S.C.

Hendry Sr.

RENUNCIATION OF DOWER.

THE STATE OF SOUTH CAROLINA,
County.

No dower necessary --- deed of conveyance
is from Trustees

CERTIFIED
A TRUE COPY
W. S. Gardner
CLERK OF COURT OF BEAUFORT COUNTY, S. C.

State of South Carolina

FRED C. HACK AND OLIN T. MCINTOSH, JR., TRUSTEES,

To

ST. JAMES BAPTIST CHURCH

QUIT-CLAIM DEED

Filed 20th day
of March A. D. 19 58
at 9:30 o'clock A. M.,
and recorded in Book 89
Page 273 Fee \$ 1.50
E. S. Hendry Sr.
K. W. W. or Clerk Court, C. P. & G. S.
Beaufort County, S. C.

29, 1956 and recorded October 27, 1956 in Deed Book 83 at Page 160 in said Register of Deed's Office.

This deed was prepared in the Law Office of Chester C. Williams, LLC, Post Office Box 6028, Hilton Head Island, SC 29938, by Chester C. Williams, Esquire.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the **Grantee**, its successors and assigns, forever.

AND the **Grantors** do hereby bind themselves, as members of the Board of Deacons, and their successors and assigns to warrant and forever defend all and singular the said premises unto the **Grantee**, its successors and assigns, against themselves and their successors and assigns lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, We set our hands and seals this 19th day of August, 2006.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Charles C. Williams, II
William C. Williams

ST. JAMES BAPTIST CHURCH

By: Charles Young, III (L.S.)
Its: Chairman, Board of Deacons
By: Virgil Ford (L.S.)
Its: Deacon
By: Ralph H. Milledge (L.S.)
Its: Deacon
By: Odell Riley (L.S.)
Its: Deacon

Exhibit C to Appeal Narrative (5 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, November 3, 2009

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, Drew Laughlin, Bill Ferguson, John Safay, Bill Harkins, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects & Facilities*; Susan Simmons, *Finance Director*; Nancy Gasen, *Director of Human Resources*; Jill Foster, *Deputy Director of Community Development*; Brian Hulbert, *Staff Attorney*; Paul Rasch, *Emergency Management Coordinator*; Teri Lewis, *LMO Official*; Randy Nicholson, *Comprehensive Planning Manager*; Heather Colin, *Development Review Administrator*; Jayme Lopko, *Senior Planner*; Sarah Skigen, *Natural Resources Associate*; Nicole Dixon, *Planner*; Susan Blake, *Executive Assistant*

Present from Media: Josh McCann, *Island Packet*

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
- 6) **APPROVAL OF MINUTES**
 - a. **Regular Town Council Meeting of October 20, 2009**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Town Manager reported on some items of interest.
 - b. **Annual report of the Disaster Recovery Committee – Ward Kirby, Chairman**

Chairman Kirby presented a report of the Committee's activities for the past year.
 - c. **"Future of the Island" presentation – Steve Riley**

Town Manager Steve Riley gave a power point presentation to the Town Council members on the issues that affect the future of the Town.
- 8) **REPORTS FROM MEMBERS OF COUNCIL**

a. General Reports from Council

Mr. Williams mentioned that he would like to see additional beach matting placed at the Coligny Beach Park to widen the access path for individuals in wheelchairs.

The Mayor commented on Steve Riley’s powerpoint presentation. Mayor Peeples stated that he would consider appointing a task force to study the long term issues facing the Island.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

The Committee reviewed proposed changes to crime-related bills in the State Legislature at their last meeting and subsequently, met with the Sheriff’s Department to hear their point of view on these proposals. The Committee did not feel any action was necessary at this time and would continue to monitor these bills.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

They would be making a recommendation for a candidate to fill the vacancy on the Airport Advisory Board.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

No report.

e. Report of the Public Facilities Committee – John Safay, Chairman

This Committee met earlier that day and heard a presentation from Frank Soule of the Island Recreation Association. This would be coming forward with a recommendation that the Town Council budget funds for a master plan study of the Island Recreation’s proposed enhancements.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

No report.

9) APPEARANCE BY CITIZENS

None.

10) UNFINISHED BUSINESS

a. Second Reading of Proposed Ordinance No. 2009-37 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, The Land Management Ordinance, Chapter 4, to revise various articles and sections. These amendments, commonly referred to as OCIL (Office/Light Commercial/Light Industrial) Zoning District LMO Amendments include changes that provide for amendments to: Designation of Districts, Use Table, Industrial Use Categories, Contractor’s Materials, Contractor’s Office, Kennel, Boarding/Pet Store/Veterinary Hospital, Light Industrial, Other Retail Sales and Service, Density Standards Table, Maximum Impervious Coverage and Minimum Open Space, Maximum Structure Height; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Laughlin seconded.

Mr. Ferguson stated that Beach City Road around the section of the OCIL zone needed improvements and that a traffic flow study should be conducted. Mayor Peeples suggested that

this be brought up as a discussion during the review and prioritizing of the Capital Improvements Program.

Mr. Laughlin thought the Use Table in Section 16-4-1104, page 3 “Other Retail Sales or Service” was confusing. Staff agreed to try to further clarify on the chart that Other Retail Sales are not permitted and Services Uses are permitted by condition.

Mr. Heitzke acknowledged the hard work of Heather Colin, Teri Lewis and Nicole Dixon on these revised amendments.

The motion was approved by a vote of 7-0.

11) NEW BUSINESS

a. Consideration of a recommendation that Town Council should direct staff to draft a Request for Proposal (RFP) to assess the feasibility of designating two collection zones for the Island and within those zones to franchise recycling and waste services for all single family residences.

Mr. Heitzke moved to approve. Mr. Safay seconded. Bill Libertoff suggested that a citizen referendum should be conducted to determine the level of interest in a recycling franchise.

Mr. Williams noted that there were some multi-family dwellings, such as condominiums, in addition to single family residences that still have individual garbage pick ups. So the RFP should include any place that has individual pick ups, not just single family residences.

Mr. Harkin observed that the success of this effort would be directly related to volume. He would like to offer consideration of having one zone for the Island instead of two – as he thought this would increase the volume and the probability of success.

Mr. Ferguson asked if it had been decided what this service was going to cost each household.

Mayor Peebles thought it would be appropriate to clarify exactly what was being considered by Council with this motion. All they were doing here was taking a vote on if they wanted to ask staff to move forward with the drafting of an RFP which would go back to the Public Facilities Committee for review and public comment. The Mayor also stipulated that they were not suggesting that residents put out their recycling on the curb - they would continue to support service yard pickup.

After further discussion, Mr. Harkins moved to amend the recommendation to read “.....direct staff to draft a Request for Proposal to assess the feasibility of franchising recycling and waste services for all residences with service yards.” Mr. Ferguson seconded. The amendment was passed by a vote of 7-0.

The amended motion was approved by a vote of 7-0.

b. Consideration of a Resolution of the Town Council of the Town of Hilton Head Island to consider at a Public Hearing on November 17, 2009 at 5:00 p.m. Proposed Ordinance Number 2009-39, an Ordinance to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance by amending Chapter 4 Article IV (Airport Overlay District) to provide for changes to tree pruning and removal requirements in the approach path of the Hilton Head Island Airport.

Mr. Heitzke moved to approve. Mr. Harkin seconded. Charles Cousins, Community

Development Director, made a presentation to the Council members about the background of tree removal issues at the airport and what this Ordinance was going to be proposing.

Mr. Perry White spoke at length about his concerns related to the tree pruning and removal procedures contained in this proposed ordinance.

During the council members' discussion, it became apparent that they were not prepared to invoke pending ordinance doctrine at this time. Mr. Heitzke moved to remove pending ordinance enactment from the Resolution. Mr. Harkins seconded. The amendment was approved by a vote of 7-0.

The amended motion was approved by a vote of 6-1. Mr. Ferguson was opposed.

c. ATAX committee recommendation for existing forward-funded grants and review of CY2009 Accommodations Tax revenues to date.

Mr. Williams moved to approve. Mr. Harkins seconded. Bud Shay, the Chairman of the Accommodations Tax Advisory Committee, addressed the Town Council concerning the committee's recommendation to amend the funding level to the "forward-funded" organizations to 85%. The motion was approved by a vote of 7-0.

12) EXECUTIVE SESSION

Steve Riley said that he needed an executive session for contractual matters pertaining to land acquisition, contractual matters pertaining to an agreement with Indigo Run POA regarding storm water utility; legal matters pertaining to ongoing litigation including a possible settlement agreement; and personnel matters related to a nominee for the Beaufort County Airport Advisory Committee.

At 5:33 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mayor Peeples called the meeting back to order at 6:01 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Laughlin moved that the Mayor and Town Manager be authorized to execute and deliver a Drainage Easement and an Access Drainage and Maintenance Agreement by and between the Indigo Run Community Owners Association, Inc., the Indigo Run Golf Club Community Association, Inc., The Broad Pointe Owner's Association, Inc., The River Club Land Owners Association, Inc., Indigo Run Asset Corporation and the Town of Hilton Head Island, South Carolina. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

Mr. Laughlin moved that the Town Council approve Joseph Zimmerman for recommendation to the County to serve on the Airport Advisory Board committee. Mr. Safay seconded. The motion was approved by a vote of 7-0.

Mr. Williams moved to approve a Resolution that the Town Council of the Town of Hilton Head Island, South Carolina, authorize the execution of that certain settlement agreement with Carolina Office Park, LLC. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

14) ADJOURNMENT

At 6:02 p.m., Mr. Heitzke moved to adjourn. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved:

By Thomas D. Peeples, Mayor on November 17, 2009

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND TO CONSIDER AT A PUBLIC HEARING ON NOVEMBER 17, 2009 AT 5:00 PM PROPOSED ORDINANCE NUMBER 2009-39, AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE BY AMENDING CHAPTER 4 ARTICLE IV [AIRPORT OVERLAY DISTRICT] TO PROVIDE FOR CHANGES TO TREE PRUNING AND REMOVAL REQUIREMENTS IN THE APPROACH PATH OF THE HILTON HEAD ISLAND AIRPORT

WHEREAS, on July 21st, 1998, the Town Council adopted Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a new Land Management Ordinance (LMO); and

WHEREAS, on November 3, 1999, the Town Council adopted revisions to the Airport Overlay District; and

WHEREAS, these revisions were the result of numerous public meetings and a study of safety issues; and

WHEREAS, the Town Council now intends to amend Chapter 4 to revise Article IV, Airport Overlay District to provide additional flexibility for the pruning and removal of trees within the Hilton Head Island Airport approach path; and

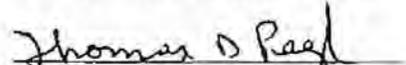
NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT the Town Council will consider amendments to the Airport Overlay District and hereby designates a public hearing and first reading of Proposed Ordinance 2009-39 to be held on November 17, 2009 at 5:00 pm.

(This part left intentionally blank)

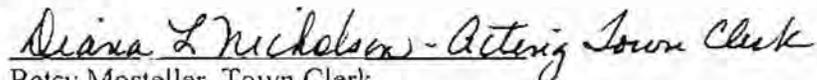
Page 2

Resolution for Amendments to LMO Chapter 4, Article IV, Airport Overlay District

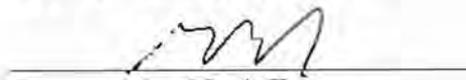
MOVED, APPROVED, AND ADOPTED ON THIS 3rd DAY OF NOVEMBER, 2009


Thomas D. Peeples, Mayor

ATTEST:


Betsy Mosteller, Town Clerk

APPROVED AS TO FORM:


Gregory M. Alford, Town Attorney

Introduced by Council Member: KEN HEITZKE

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2009-

PROPOSED ORDINANCE NO.: 2009-39

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE, CHAPTER 4, SECTION 403. THESE AMENDMENTS, COMMONLY REFERRED TO AS THE *AIRPORT APPROACH PATH AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON NOVEMBER 1, 2009, INCLUDE CHANGES THAT PROVIDE FOR AMENDMENTS TO: AIRPORT OVERLAY DISTRICT REGULATIONS AND THE APPROACH PATH; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance (LMO); and

WHEREAS, from time to time Town Council recognizes that changes to the LMO are necessary to improve certain processes; and

WHEREAS, Goal 10A of the Transportation Element of the Comprehensive Plan states, "Continue to ensure that airport operations remain safe while providing air travel to Island residents and visitors."; and

WHEREAS, Town Council does not wish to present any impediments to the safe operations of the Hilton Head Island Airport; and

WHEREAS, LMO Section 16-4-401 states that the regulations governing use and height within the Airport Overlay District conform to the standards recommended by the Federal Aviation Administration's Advisory Circular, 150/5190-4A, "Model Zoning Ordinance to Limit Height of Objects Around Airports" (12-14-87); and

WHEREAS, Town Council has determined that developing certain requirements for tree pruning and removal in the Approach Path of the Hilton Head Island Airport is necessary to ensure the continued safe operations of the airport; and

WHEREAS, Town Council met on November 3rd, 2009 and voted <VOTE> to adopt a resolution to enact pending ordinance doctrine to amend LMO Chapter 4, Article 4 [Airport Overlay District]; and

WHEREAS, Town Council held a public hearing on November 17th, 2009 at which time a presentation was made by staff and comments were received from Council and the public; and

WHEREAS, Town Council voted <MOTION>; and

WHEREAS, Town Council now finds that, upon further review, it is in the public interest to adopt the changes to Chapter 4, Article IV [Airport Overlay District] of the Land Management Ordinance.

NOW, THEREFORE BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:

Section 1. Amendment. That the Land Management Ordinance of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

NOTE: New text is indicated by a double underline and deleted text is indicated by a ~~strike-through~~.

Section 2. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2009.

Thomas D. Peoples, Mayor

ATTEST:

Betsy Mosteller, Town Clerk

**Public Hearing:
First Reading:
Second Reading:**

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

ARTICLE IV. AOD--AIRPORT OVERLAY DISTRICT

Sec. 16-4-401 – 16-4-402 --- No Change.

Sec. 16-4-403. Overlay District Regulations

A-B ---- No Change.

C. Approach Path. Within the Approach Path, no building, structure, utility pole or protrusion of any kind thereof shall be permitted to extend to a height measured from the mean elevation of the airport runway that exceeds the limits established by the methodology described herein.

1. The maximum height limits permitted under this Title of 75 feet shall be lowered as necessary to correspond with the limits established as follows:

~~1.~~ a. Along both sides and ends of the airport primary surface area, at the extremity of the primary surface, the height restriction shall be zero feet. Moving outward from both sides of the runway, 250 feet from the runway center line, the height limit shall increase at the rate of 1 foot upward per 7 linear feet, or a ratio of 1:7.

~~2.~~ b. Moving outward from both ends of the runway primary surface area, the height limit shall increase at the rate of 1 foot upward per 34 linear feet, or a ratio of 1:34. From both ends of the primary surface area, the area subject to these special height limitations shall fan outward beyond the area that would be covered if the height limitation from the sides of the primary surface area extended beyond the ends of the runway.

2. The following process has been established for tree pruning and removal on and off airport property to address the height limits in 16-4-403.C.1. a and b. For purposes of this section, on airport property shall be defined as any Beaufort County owned property used for the operations of the Hilton Head Island Airport and off airport property shall be defined as that property affected by the height limits in the approach path. The requirements listed below are the only requirements in this Title that the Hilton Head Island Airport must follow for tree pruning and removal in the approach path.

a. On Airport Property

i. Submit only items 1 and 3 under Section 16-3-404.A, Tree Protection Approval Application. In lieu of the other items the applicant will submit copies of all required permits from other agencies and a site plan. The site plan must identify the parcels where trees will be pruned or removed and delineate any wetlands and wetland buffers within the subject parcels. Additionally, the Town of Hilton Head Island and Beaufort County will jointly fund and employ an arborist to document the size and species of each removed tree by parcel. This data will be used to prepare a mitigation plan for the buffers and to calculate any required fee for the tree replacement fund.

ii. Prior to any tree pruning or removal the applicant shall flag all buffers and wetlands.

iii. All trees and vegetation, unless located within wetlands or adjacent street, adjacent use or wetland buffers, may be removed.

iv. The arborist will evaluate whether specimen trees which have exceeded or have the potential to exceed the height requirements in 16-4-

403.C.1.a and b in any wetlands and any buffers can be pruned; if not, the trees may be removed without a variance.

v. Non-specimen trees which have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b may be removed from the adjacent street and adjacent use buffers. Reasonable care should be taken to protect understory vegetation in the buffers.

vi. Trees, within wetlands, which have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b may be removed without a wetland alteration permit. Trees, within wetland buffers, which have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b may be removed without a variance. Mechanized vehicles shall not be used in the wetland or wetland buffer. In lieu of the variance and wetland alteration permit, understory vegetation in the wetland and wetland buffer shall not be removed and the County and Town shall work together to jointly develop a plan to protect water quality consistent with our storm water utility objectives. This plan shall be implemented by the County.

vii. Trees that volunteer in the wetland or wetland buffer after the initial tree removal project is complete and have the potential to exceed the height requirements in 16-4-403.C.1. a and b may be removed without additional approvals as long as mechanized vehicles are not used in these areas.

b. Off Airport Property

i. Submit only items 1 and 3 under Section 16-3-404, Tree Protection Approval Application. In lieu of the other items the applicant will submit copies of all signed avigation easements or a copy of paperwork indicating that condemnation notices have been filed, copies of all required permits from other agencies and a site plan. The applicant may phase the tree pruning and removal by parcel. The site plan must identify the parcels where trees will be pruned or removed and delineate wetlands and wetland buffers within the subject parcels. Additionally, the Town of Hilton Head Island and Beaufort County will jointly fund and employ an arborist to document the size and species of each removed tree by parcel. This data will be used to prepare a mitigation plan for buffer and non buffer areas.

ii. Prior to any tree pruning or removal the applicant shall flag all wetlands and wetland buffers.

iii. Non-specimen trees which have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b may be removed.

iv. The arborist will evaluate whether specimen trees which have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b can be pruned; if not, the trees may be removed without a variance.

v. For trees within wetlands and wetland buffers, the language in 16-4-403.C.2.a.vi shall apply.

vi. For trees that volunteer in wetlands and wetland buffers the language in 16-4-403.C.2.a.vii shall apply.

c. Other Requirements

- i. All previous Hilton Head Island Airport projects related to non-development tree removal and mitigation on and off airport property must be completed prior to a permit being issued for additional tree removal.
- ii. For both on airport and off airport property the County and Town will work together to develop a landscape plan to meet mitigation requirements based on tree removal documented by the arborist; the mitigation plan will indicate dense plantings in all buffer areas. This landscape plan shall be presented to the DRB by the County for approval and then shall be implemented by the County. Once the landscape plan is approved, the Town will provide the County with any required fee for the tree replacement fund for tree mitigation not accomplished by replanting.

D – E --- No Change.

Exhibit E to Appeal Narrative (4 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, November 17, 2009

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, Drew Laughlin, Bill Ferguson, John Safay, Bill Harkins, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects & Facilities*; Susan Simmons, *Finance Director*; Nancy Gasen, *Director of Human Resources*; Jill Foster, *Deputy Director of Community Development*; Brian Hulbert, *Staff Attorney*; Paul Rasch, *Emergency Management Coordinator*; Julian Walls, *Facilities Manager*; Jeff Buckalew, *Town Engineer*; Teri Lewis, *LMO Official*; Randy Nicholson, *Comprehensive Planning Manager*; Heather Colin, *Development Review Administrator*; Jayme Lopko, *Senior Planner*; Sally Krebs, *Natural Resources Administrator*; Nicole Dixon, *Planner*; Anne Cyran, *Planner*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmais, *Island Packet*

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
- 6) **APPROVAL OF MINUTES**
 - a. **Regular Town Council Meeting of November 3, 2009**

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes were approved by a vote of 7-0.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Town Manager reported on some items of interest.
 - b. **November 2009 Policy Agenda, Management Targets and CIP Updates**

Steve Riley noted the November update was attached to the agenda package and invited Council members to contact him if they had any questions.

c. FY2010 Financial Statements through October 2009

Steve Riley advised that the financial statements only just arrived today and were not ready for distribution. They would be provided at the next meeting.

d. Update on Airport Master Plan

Judy Elder provided Town Council with an update on the Airport Master Plan.

8) REPORTS FROM MEMBERS OF COUNCIL

a. General Reports from Council

Mr. Safay spoke about his personal experience with the Hilton Head Island Emergency Medical Services. He expressed his gratitude to them.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

No report.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

No report.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

No report.

e. Report of the Public Facilities Committee – John Safay, Chairman

No report.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

At their last meeting, they drafted modified language for proposed ordinances for post disaster debris as well as nuisance abatement. These would be coming forward with the Committee's recommendations.

9) APPEARANCE BY CITIZENS

David Bennett spoke about the need for an affordable housing development.

Garrett Hamilton, treasurer for the Hilton Head Island Rugby Club, talked about the club's use of the playing fields on the Island.

10) UNFINISHED BUSINESS

a. None

11) NEW BUSINESS

a. First Reading of Proposed Ordinance No. 2009-40 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 6, to revise Section 409. This amendment includes changes that provide for amendments to: Tree Replacement Fund; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. Mr. Ferguson observed that this amendment came with a favorable recommendation from the Planning and Development Standards Committee. Mr. Heitzke noted a clarification that he felt should be made in the third

“whereas” of the Proposed Ordinance. Instead of saying “...based on the average of three quotes received from a landscaping firm...” he thought it should read “...based on the average of three quotes received from *local landscaping firms*...” Nicole Dixon of the Community Development Department responded that she would make that change before the second reading. The motion was approved by a vote of 7-0.

b. Consideration of a recommendation that the Town Council for the Town of Hilton Head Island endorse in concept the elements of the proposed Island Recreation Association/Aquatics Facility Enhancements and approve the expenditure of the funds for a feasibility study.

Mr. Heitzke moved to approve. Mr. Safay seconded. Mr. Williams noted that when the Art League vacated existing space on Cordillo Parkway, it was agreed that use of that vacated building would be included in the feasibility study. Charles Cousins added that this vacated space was one of many rental spaces that will be studied.

The motion was approved by a vote of 7-0.

12) EXECUTIVE SESSION

Since it was not yet 5:00 p.m., the Mayor suggested they adjourn to Executive Session. Mr. Riley stated that he needed an executive session for legal matters pertaining to a proposed settlement with various property owners in the Singleton Beach area and legal matters pertaining to threatened and ongoing litigation.

At 4:33 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

11) NEW BUSINESS (continued)

c. 5:00 P.M. : PUBLIC HEARING on Proposed Ordinance No. 2009-39

At 5:00 p.m., the Mayor called the meeting back to order and opened the public hearing. Charles Cousin made a detailed presentation to Council explaining the proposed changes in the LMO and the airport sections that pertained to trees.

After Mr. Cousins’ presentation, Mayor Peeples explained that it was his belief that the Town needed to find a way to work with the County and the aviation interests to address the safety issues created by the tree growth in the flight path. He wished to dispel the opinion that the Town was being obstructionist; there was a process in place to deal with tree removal and pruning, but the County has had difficulty maneuvering that process. The Mayor felt it was important to find a way to expedite it. He admitted that his first attempt to expedite this process overstated the means to resolve the issue.

At the last Town Council meeting, Council members, as well as Mr. Perry White in particular, registered concerns about the extreme measures proposed in the amended LMO. The Mayor realized that what needed to be done should not be so extreme. He suggested that a revised proposal should be drafted that would not make any distinction between airport property and non-airport property. And rather than automatically removing trees because they could grow up into the approach slope, that trees be trimmed back so that they would not need to be trimmed again for at least ten years. He would also like to suggest that an earthen berm be built at the end of the airport property to provide sound protection for the church. Mayor Peeples agreed that vegetation needed to be left in place or replanted on airport property in order to create a noise barrier. Trees that had to be removed for safety reasons should be replaced with

other species of trees that would not grow up into the slope. The Mayor stated that after the public hearing, he was going to ask Council to make a motion to delete this vote from the agenda, refer it back to staff, taking into account all comments that would be heard tonight, and rework the ordinance for a review by the Public Safety Committee prior to being brought forward to the Town Council at the second meeting in December.

Members of the audience were invited to approach the dais and express their opinions regarding the proposed changes to the LMO.

After everyone in the audience who wished to speak had done so, the Mayor closed the public hearing at 5:58 p.m. He thanked everyone for their attendance at today's meeting and appreciated their input. He announced that the County was hosting a Federal Environmental Assessment public hearing on tree removal and trimming on December 3rd at 6 PM at the Hilton Head Library. He encouraged people to attend.

d. First Reading of Proposed Ordinance No. 2009-39 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, section 403. These amendments include changes that provide for amendments to: Airport Overlay District Regulations and the Approach Path; and providing for severability and an effective date.

Mr. Heitzke moved to delete New Business Item 11.d. First Reading of Proposed Ordinance No. 2009-39 from the agenda. Mr. Williams seconded. The motion was approved by a vote of 7-0. Mayor Peeples then tasked the Public Safety Committee to review and to recommend additional revisions to the proposed amendments.

12) EXECUTIVE SESSION (continued)

The Mayor asked if there was any business to take up as a result of the executive session.

Mr. Safay moved that the Town Council for the Town of Hilton Head Island adopt a Resolution authorizing the execution of a Declaration of Restrictive Covenants on nine residential lots in Singleton Beach, Hilton Head Island. Mr. Heitzke seconded. The motion was approved by a vote of 6-1. Mr. Williams was opposed.

13) ADJOURNMENT

At 6:02 p.m., Mr. Heitzke moved to adjourn. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved:

Thomas D. Peeples, Mayor

Exhibit F to Appeal Narrative (4 Pages)

TOWN OF HILTON HEAD ISLAND

PUBLIC SAFETY COMMITTEE REGULAR MEETING

Date: December 7, 2009

Time: 10:00 a.m.

Members Present: Bill Harkins, *Chairman*, George Williams, Bill Ferguson

Members Absent: None

Town Staff Present: Lavarn Lucas, Fire Chief; Charles Cousins, Director of Community Development; Jill Foster, Deputy Director of Community Development; Paul Rasch, Emergency Management Coordinator; Teri Lewis, LMO Official; Sally Krebs, Natural Resources Administrator; Vicki Pfannenschmidt, *Administrative Assistant*

Others Present: Mayor Tom Peeples; Council Members Ken Heitzke and John Safay; Stu Rodman, Beaufort County Council Member; Gary Kubic, Beaufort County Administrator; Paul Andres, Director of Beaufort County Airports; Numerous members of the public

Media Present: Laura Nahmais, *Island Packet*

1. Call to Order.

The meeting was called to order at 10:00 a.m.

2. FOIA Compliance:

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

3. Approval of Minutes:

- August 3, 2009

Mr. Harkins invited Mr. Heitzke to the dais to vote on the August 3, 2009 minutes.

Mr. Heitzke moved to approve the Minutes of August 3, 2009. Mr. Ferguson seconded the motion. The Minutes of August 3, 2009 were approved 2-0. (Mr. Harkins and Williams abstained because they were not present at the August 3, 2009 meeting.)

Mr. Heitzke left the dais.

- November 9, 2009

Mr. Williams moved to approve the Minutes of November 9, 2009. Mr. Ferguson seconded the motion. The Minutes of November 9, 2009 were approved unanimously. (3-0)

4. Chairman's Report:

None.

5. Unfinished Business:

None.

6. New Business:

- **LMO Amendments** - The Town of Hilton Head Island is proposing to amend Chapters 3 and 4 of the Land Management Ordinance (LMO) to revise the following sections:

Section 16-4-403. These changes will create more flexibility for tree pruning or removal to address height limitation in the airport approach path.

Mr. Williams moved to approve as a recommendation to Town Council. Mr. Ferguson seconded. Mr. Harkins invited Charles Cousins to approach the podium with an explanation of the updated proposal. Mr. Cousins reviewed both the original and the updated changes while explaining the requirements for the approach path at the airport. He referred to overhead projections of the affected area pointing out the regulations and requirements. He also reviewed the point by point results the amendment would achieve. He explained this amendment would treat on and off airport property the same and to only prune or remove trees that are currently in the approach path or have the potential to be within ten years. Mr. Ferguson asked for clarification concerning the removal of trees stating he was not in favor of clear-cutting the trees in the area and feared that the language did not clearly state there would be no clear-cutting. Mr. Cousins explained that the language in the amendment states they could not remove any tree that is not within ten feet of the slope. He added that the language in the amendment states *arborist shall determine which trees have exceeded or have the potential to exceed the height requirements and within ten years of the approval date; the arborist will then evaluate which of these trees can be pruned to address this ten year growth period. Those that cannot be pruned may be topped as long as the tree will not become a hazard to nearby improvements or may be removed.* Mr. Cousins noted that it does not say all trees can be removed noting the language was specific as to how to determine which trees can be removed. Mr. Ferguson stated he was suggesting the language be clear as to not being able to remove all trees. Mr. Harkins suggested the language state *else may be removed* as opposed to *or may be removed*. Mr. Cousins asked if the change covered Mr. Ferguson's concern. Mr. Ferguson stated it covered it but he was concerned about the general public. Mr. Cousins noted if they need to clarify that, they would work on the language to make it clear. Mr. Williams stated he wanted to make a general comment that this meeting was only concerning the tree issue and not any expansion of the airport. Mr. Harkins asked what the Town gains or loses with this process. Mr. Cousins explained with this process it will move much more quickly and the arborist will help expedite the matter along with better record keeping. He also explained the conflict in the code requiring BZA review and approval.

Mr. Kubic spoke to the Committee noting the assumption of risk the County and Town are undertaking with the airport operation. He encouraged them to include looking out multiple years from now for a maintenance contingency fund. He introduced Paul Andres and stated Mr. Andres would review the list of questions submitted to Beaufort County and Airport representatives. Mr. Andres addressed each question submitted. During his presentation he stated he supported the originally proposed amendments that allowed more trees to be

removed on airport property. He asked if there were additional questions. Mr. Williams stated the Town and County will have to have an ongoing plan for expenses. Mr. Williams asked about the easements outside the airport and if the FAA was paying for them. Mr. Andres replied that the FAA will pay 95% of the cost. Mr. Williams asked if the permits were in line for the work and Mr. Andres responded most permitting will occur once the project is designed.

Mr. Graham Carr, a retired commercial airline pilot and Mr. Dave Ames and private pilot both spoke in favor of the original amendments which allowed more trees to be removed on airport property stating public safety as the issue.

Mr. Harkins called for a recess at 11:25 a.m. and the meeting reconvened at 11:35 a.m.

Mr. Harkins then called for comments from the public. Mr. Charlie White, Mrs. Fran White, Mr. Chet Williams, Ms. Mary Amonitti and Mr. Ed Batan spoke against the amendment and Mr. Charles Raley, Mr. Stu Rodman and Mr. Charlie Reed spoke in favor of the amendment. Mayor Peeples explained the charge given to the committee was not whether trees will be removed but how they would be removed. He further stated that he supported modifying the current proposal to allow all trees on airport property that had the potential to get into the slope to be removed. The detailed comments from individuals in attendance at this meeting are recorded and a matter of public record

After lengthy discussion, Mr. Williams then moved to amend the motion on the table with the addition of the wording *to trim or remove tree on airport property that are in the glide slope or have the potential to grow into the glide slope except for wetlands and buffer areas*. He moved to meld this with the original proposal which was to *accept the recommendations for off airport property per the amendment before them today*. Mr. Ferguson asked for clarification from Mr. Cousins that the language in the 6th bullet in his memo will be changed. Mr. Cousins said he will revisit it with alternative language and have it ready for consideration by the scheduled Town Council meeting. Mr. Harkins seconded the motion. The motion passed 2-1 (Mr. Ferguson opposed)

Mr. Ferguson explained his opposition. He stated he feels the airport has outgrown usefulness and he believes there is property between Hilton Head Island and Bluffton which can be utilized to construct a new airport which would meet the length and FAA requirements.

Mr. Williams moved to place on the recommendation to Town Council to approve the Public Safety Committee amended motion that Town Council also consider pending ordinance doctrine at that time. Mr. Harkins seconded the motion. The motion passed 2-1 (Mr. Ferguson opposed)

Section 16-3-402. These changes will create more flexibility for tree topping to address height limitation in the airport approach path.

Mr. Harkins noted a correction in Section 16-3-402.A. Item 4 the line *except as noted in Section 16-4-402.C.2.c* should read *except as noted in Section 16-4-403-C.2.c*. Mr. Cousins agreed and stated the correction would be made.

Mr. Cousins explained the item was an amendment which will allow tree topping to occur not just on airport property but on off airport property as well. Mr. Williams moved to recommend to Town Council to approve the amendment. Mr. Harkins seconded the motion. The motion passed 2-1. (Mr. Ferguson opposed)

7. Adjournment:

Mr. Williams moved to adjourn the meeting. Mr. Ferguson seconded the Motion. The meeting adjourned at 12:40 p.m.

Respectfully submitted:

Vicki L. Pfannenschmidt, Secretary

Approved: February 1, 2010

Bill Harkins, Chairman

Exhibit G to Appeal Narrative (4 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, December 15, 2009

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peebles, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, Drew Laughlin, Bill Ferguson, John Safay, Bill Harkins, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects & Facilities*; Susan Simmons, *Finance Director*; Nancy Gasen, *Director of Human Resources*; Brian Hulbert, *Staff Attorney*; Jeff Buckalew, *Town Engineer*; Jill Foster, *Deputy Director of Community Development*; Julian Walls, *Facilities Manager*; Teri Lewis, *LMO Official*; Heather Colin, *Development Review Administrator*; Jennifer Hasting, *Asst. Town Engineer*; Jayme Lopko, *Senior Planner*; Paul Rasch, *Emergency Management Coordinator*; Darrin Shoemaker, *Traffic & Transportation Engineer*; Sally Krebs, *Natural Resources Administrator*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, *Island Packet*

1) CALL TO ORDER

2) PLEDGE TO THE FLAG

3) INVOCATION

4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5) PROCLAMATIONS AND COMMENDATIONS

6) APPROVAL OF MINUTES

a. Regular Town Council Meeting of December 1, 2009

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

7) REPORT OF THE TOWN MANAGER

a. Town Manager's Items of Interest

The Town Manager reported on some items of interest.

Steve Riley invited Glenn Stanford, who works with Beaufort County on their land buying program, to make an announcement. Mr. Stanford reported that County Council last night unanimously approved the acquisition of a one half interest jointly with the Town of Hilton Head Island in the four parcels that the Town previously acquired on Spanish Wells Road. That closing should move forward promptly. The County was pleased to have the opportunity to again join with the Town in a land conservation project.

Steve Riley noted that approximately \$1.2 million dollars would be returned to the Land

Acquisition fund as a result of the County's decision.

b. 2009 Town Council Targets and Goals – year end update

Steve Riley noted that the year end update of Council's Targets and Goals was included with their agenda package.

8) REPORTS FROM MEMBERS OF COUNCIL

a. General Reports from Council

Mr. Ferguson expressed his concern about the burial of power lines in his ward. He wished that Palmetto Electric could speed up the process to accomplish this in a timely manner.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

Mr. Williams reported that the committee reviewed the list of upcoming legislation for 2010. They also have recommended that the Mayor send a letter to the Legislative Delegation regarding a proposed tax incentive for a mall developer off-Island. There was grave concern about the scope of the incentives and the potential for a serious negative impact on existing businesses both on the Island and in the Bluffton and Beaufort areas if this mall was built. The letter would ask the delegates to very carefully review all aspects of the potential tax incentives to be offered to the developer before proceeding further. Mr. Williams moved that the Mayor be authorized to sign the letter and Mr. Harkins seconded. The motion was approved by a vote of 7-0.

At the January 5, 2010 Town Council meeting, the committee would be bringing forward a letter currently being drafted by staff in opposition of the point of sale bill roll-back. They will be asking the Town Council to authorize the Mayor to sign this letter.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

No report.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

No report.

e. Report of the Public Facilities Committee – John Safay, Chairman

No report.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

The Chairman noted that the committee met and they have an item on tonight's agenda.

9) APPEARANCE BY CITIZENS

Peter Ovensnoted that the Chamber of Commerce would be providing informational pamphlets on all of the non-profit organizations and charities here on the Island. This information would be available at the Community Space within Shelter Cove Mall, the Hilton Head Island library as well as other prominent public spaces.

Frank Babel encouraged Council to participate in the "Bike Friendly Community" program.

Mary Amonitti spoke on a number of topics regarding the Town's environment and the

Council's order of business.

Starletta Hairston asked Town Council to pass the Lawful Employment Ordinance that Beaufort County passed two years ago.

10) UNFINISHED BUSINESS

- a. Second Reading of Proposed Ordinance No. 2009-38 to amend Chapter 5 of Title 9 of the Municipal Code of the Town of Hilton Head Island, to add Section 9-5-211, Post-Disaster Debris Collection; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

- b. Second Reading of Proposed Ordinance No. 2009-42 to amend Chapter 1 of Title 9 of the Municipal Code of the Town of Hilton Head Island, to amend Section 9-1-115, Abatement of Nuisance; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

11) NEW BUSINESS

- a. Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, establishing the Town of Hilton Head Island Vision Statement, The Five Year (2015) Goals, 2010 Policy Agenda/Targets for Action, and 2010 Management Agenda.**

Mr. Heitzke moved to approve. Mr. Harkins seconded. The Mayor mentioned that he felt that the wording of some of the targets and goals needed more clarification and elaboration. Mr. Williams said that regarding the presentation they just heard about a Bike Friendly Community, he wanted to let the public know that this topic was discussed at the workshop but it did not make the list of priorities. Mr. Williams asked that the Town Manager keep this program in mind for possible action at a later date during 2010.

After discussion, Mr. Laughlin moved that the Town Manager review the wording of the targets for revision and bring consideration of the Resolution back to the January 5, 2010 meeting. Mr. Ferguson seconded. The maker and seconder of the original motion agreed. The motion was approved by a vote of 7-0.

- b. First Reading of Proposed Ordinance No. 2009-39 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Section 403. These amendments include changes that provide for amendments to: Airport Overlay District Regulations and the Approach Path; providing for severability and an effective date; and considering invoking pending ordinance doctrine.**

Mr. Harkins moved to approve. Mr. Williams seconded.

Charles Cousins presented on overview of the process and changes that had occurred at the review of the Proposed Ordinance at the Public Safety Committee level.

When Charles Cousins completed his presentation, Mr. Harkins commented that some of these changes did not appear to coincide with his recollection of the recommendations of the Public Safety Committee. After a lengthy discussion, Mr. Harkins moved and Mr. Williams seconded the motion to return the proposed ordinance to staff for further refinements and consideration at

the January 5, 2010 Town Council meeting. The maker and seconder agreed.

The motion was approved by a vote of 7-0.

12) EXECUTIVE SESSION

Mr. Riley stated that he needed an executive session for land acquisition matters, including a request to sell Town owned land.

At 6:20 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mayor Peeples called the meeting back to order at 7:05 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Heitzke moved that the Town Council for the Town of Hilton Head Island authorize the execution of a contract for purchase of 0.71 acres on William Hilton Parkway from William Green, Jr., Margaret Polite, Allen Green, Kelvin G. Grant and Calvin Green for Three Hundred Thousand (\$300,000) dollars. Mr. Williams seconded. The motion was approved by a vote of 6-0-1. Mr. Ferguson recused himself from the Executive Session discussion and the vote on the Resolution. A signed, completed disclosure of potential conflict of interest form is attached.

13) ADJOURNMENT

At 7:06 p.m., Mr. Heitzke moved to adjourn. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved: January 5, 2010

Thomas D. Peeples, Mayor

Exhibit H to Appeal Narrative (5 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, January 5, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, Drew Laughlin, Bill Ferguson, John Safay, Bill Harkins, *Councilmen*.

Present from Town Staff: Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects & Facilities*; Nancy Gasen, *Director of Human Resources*; Brian Hulbert, *Staff Attorney*; Teri Lewis, *LMO Official*; Heather Colin, *Development Review Administrator*; Jennifer Hasting, *Asst. Town Engineer*; Jayme Lopko, *Senior Planner*; Paul Rasch, *Emergency Management Coordinator*; Sally Krebs, *Natural Resources Administrator*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, *Island Packet*

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
- 6) **APPROVAL OF MINUTES**
 - a. **Regular Town Council Meeting of December 15, 2009**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Assistant Town Manager, Greg DeLoach reported on some items of interest.
 - b. **Jacquie Houck, Public Tennis, Inc. –Check Presentation of Fourth Installment of \$7,500**

Ms. Houck presented a check for \$7,500 to Town Council as the fourth installment payment on the tennis courts at Chaplin Park.
 - c. **Semi-Annual Report of the Design Review Board – Marvin Caretsky, Chairman**

Mr. Caretsky provided Town Council with an update on the Design Review Board activities for the second half of 2009.
- 8) **REPORTS FROM MEMBERS OF COUNCIL**
 - a. **General Reports from Council**

The Mayor reminded everyone the 2010 Census questionnaires will start arriving at everyone's home address in mid-March. He encouraged everyone to participate.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

The committee will have a letter regarding the point of sale rollback bill for consideration at the next Town Council meeting.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

No report.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

No report.

e. Report of the Public Facilities Committee – John Safay, Chairman

The committee held a meeting earlier that day and reviewed a presentation from the Heritage Library for a History Park at the corner of William Hilton Parkway and Mathews Drive at the site of the Zion Chapel of Ease. There existed a number of logistical problems involving space for a park, traffic safety and environmental issues. They recommended that Town Council adopt the idea of a History Park and to permit some staff support to examine its feasibility or develop alternative options.

The residents of Dove Street will continue the Christmas lighting tradition and fundraiser on their street for one more year. After that time, they proposed that the Town provide land for them to decorate. The Public Facilities Committee voted to recommend that Town Council permit staff support to examine the feasibility of allowing the use of Town-owned land for the continuation of the annual Christmas display and fundraiser.

The last presentation was by the Hilton Head Public Service District regarding the acceleration of TIF area sewer projects. This would be coming forward to the next meeting with a recommendation.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

No report.

9) APPEARANCE BY CITIZENS

None.

10) UNFINISHED BUSINESS

a. Revised First Reading of Proposed Ordinance No. 2009-39 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Section 403. These amendments include changes that provide for amendments to: Airport Overlay District Regulations and the Approach Path; providing for severability and an effective date; and considering invoking pending ordinance doctrine.

Mr. Heitzke moved to approve. Mr. Harkins seconded.

Charles Cousins, Community Development Director, provided an overview of the most recent revisions to the proposed ordinance. These included a discussion of the new proposed buffers on airport property and the provisions to allow hardwood trees to be cut at a level which represents 5 feet below the required slope and 10 feet for conifers.

Mr. Cousins brought up the issue that the LMO currently allowed topping of trees only on airport property. The proposed change in Section 16-3-402 would allow trees off airport property to be topped in order to address the tree slope approach to the airport. It created more

flexibility for the County to top trees, to prune trees and to remove trees. Lastly, Mr. Cousins spoke about the large, specimen live oak tree at the St. James Church. The County survey identified this tree as being 54 inches in diameter and 68 feet tall. The Town physically measured the tree and it was 64 inches in diameter and 54-58 feet tall. At that location, a tree would only allowed to be 46 ft. tall which would result in a 12 foot ‘topping’ of this significant tree. Staff recommended that more analysis be done on this tree to determine what slope could be met with the current tree height and what that meant to the airlines in the number of “seats” lost. What economic impact would leaving this tree untouched have on the commercial airlines business? Other airports have lighted a tree or other obstacles in the past and he thought that option needed to be considered. The Mayor asked if this was part of the ordinance now and Mr. Cousins said it was not.

Mr. Laughlin thought there needed to be some codification to single out that tree and any others as nice as that one for special protection and require that every effort be made to avoid pruning, topping, or removing them. Even if they passed the ordinance today in its current form, there needed to be some protection for the specimen trees before the County began their project in the spring. Mr. Cousins responded that if that was the Council’s desire, then the proposed ordinance would have to go back to the Planning Commission next for a public hearing before it came back to Town Council for a second reading.

Mr. Ferguson asked about invoking pending ordinance doctrine. The Mayor replied that a vote would have to be taken on that following the vote on the proposed ordinance. There was a discussion about the value of invoking pending ordinance. The Mayor said that he requested it because it sent a clear message to the County that the Town was going to be taking action. Mr. Laughlin asked if pending ordinance doctrine would make the ordinance effective immediately and then the County could start their tree pruning/ removal project. Mr. Cousins said he believed the thinking would be that they could start designing their project based on the assurance that Town was moving in this direction. The Mayor concurred that the point was to send the message that the Town was taking action.

Paul Andres, Beaufort County Airport Director, addressed the Town Council. He said that the Town’s proposals seemed perfectly reasonable to him. He mentioned that the County Administrator and he would be meeting with the FAA on Jan. 26 to discuss this project, among other things. They would bring this proposed ordinance to the FAA’s attention and get their confirmation that they are in agreement with the processes that have been jointly worked out this evening. Mr. Andres had a few items that he hoped to be ‘tweaked.’ There was an isolated wetlands directly on the center line of the runway and leaving any trees in that vicinity presented safety implications. His request was to be allowed to remove the trees flush with ground level in that particular wetland. The second area was the buffer area on the additional wetlands. He was suggesting drawing the demarcation of this additional buffer at the other edge of the wetlands instead of the edge closest to the runway. Depending on where the demarcation line was drawn, it created an additional 100 ft. of space. That would provide an additional safety area for the pilots on their take-off and approach to the runway. Regarding the specimen tree at the St. James Church, Mr. Andres was in perfect agreement that they should take whatever steps necessary to try to preserve that tree.

Perry White talked about an environmental assessment that had been completed a couple of months ago and some of the issues within that assessment that were not being addressed, such as an eagle’s nest on the airport’s property as well as endangered species vegetation that was protected by law. He questioned if the Town was giving permission to the County to do things

that the Town had not even been asked to do.

Joe Mazzei, a member of the airport aviation board and resident of the Island spoke to Council. He spoke in favor of Mr. Andres “tweaking” suggestions from a safety standpoint. As a pilot, he did not need all of these safety changes normally; but in an emergency, these safety changes would be crucial.

Stu Rodman endorsed making every effort to preserve the specimen trees. He suggested that the arborist should be given some flexibility in trimming adjacent trees because the more room there was out for these trees, the more apt they were to grow out rather than up.

Mr. Ferguson asked about the issues highlighted by Mr. White concerning the eagle’s nest and the endangered vegetation. He wondered how the County could clear-cut this protected habitat. Charles Cousins said that prior to beginning this project, the County would have to obtain all the permits from all the State agencies they would need to do this work.

Mr. Williams said this was as far as he wanted to go to cut down any more trees. If there were any additional issues the airport had such as with the wetlands, they would have to be addressed within the parameters of this proposed ordinance. The Town has come a long way in trying to make the airport safety changes happen at the most reasonable cost, for ease of long term maintenance and for safety and as far as he was concerned if there were any substantial changes to this proposed ordinance, he was not going to support them.

Mr. Safay shared Mr. Williams’ frustration over the process. But regarding the wetland buffer that was right in the middle of the airport runway, Mr. Safay felt it was important to consider the recommendation to look at this again.

Mr. Harkins said that he was going to support the original motion and as a matter of record, he would like to indicate that he respected what was shared by the aviation people, whether it was pilots, aviation board members or the airport director. He would hope that the Town Council would have the opportunity of having those positions memorialized in terms of position statements so that somebody else following this Council or at some time in the future they can review those points that they “quote” ‘tweaked’ the Town Council’s motion. He would also like to request, through the Chair, that their comments be accompanied by either supportive or non-supportive comment of the FAA. The Chairman allowed that Mr. Harkins could certainly make that request.

Mr. Heitzke did not understand exactly what was the impact of the small wetland piece that was the subject for ‘tweaking.’ He wondered if there were any endangered trees. Sally Krebs, Natural Resource Administrator responded (but the answer was not clearly recorded). Mr. Heitzke’s reaction to her response was to comment that there wasn’t really much of an impact.

Mayor Peeples asked if staff could expand their review of live oak trees to include any others in the yellow area of the map (reviewed at the meeting), not just the tree at St. James Church. He wanted to codify how many specimen trees there were in order to determine if they could be dealt with by an annual pruning. He was just seeking a little more information.

The Mayor said he tended to lean towards Mr. Williams’ position; he thought the Town has bent over backwards to accommodate the county and now it was time to move on and get something done.

The motion was approved by a vote of 6-1. Mr. Ferguson was opposed.

Mr. Safay moved that Town Council invoke pending ordinance doctrine. Mr. Harkins

seconded. Mayor Peeples commented that in response to Mr. Laughlin's question why they needed to do this, Mayor Peeples thought that Paul Andres made a good point – they were going to be meeting with the FAA and would be able to show the FAA that the Town had approved these ordinance changes. A simple passage on first reading was not a binding ordinance. Charles Cousins noted that to invoke pending ordinance, there has to have been a public hearing first on a certain scheme of changes. The public hearing that was held on November 17 referenced Section 16-4-403; it did not reference Section 16-3-402 which was “topping” and was added later. So if Council was going to invoke pending ordinance today he would suggest that it not include any reference to “topping of trees.” The maker and seconder of the motion agreed to this change.

The motion was approved by a vote of 5-2. Mr. Ferguson and Mr. Laughlin were opposed.

11) NEW BUSINESS

- a. **Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, establishing the Town of Hilton Head Island Vision Statement, The Five Year (2015) Goals, 2010 Policy Agenda/Targets for Action, and 2010 Management Agenda.**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

12) EXECUTIVE SESSION

Mr. DeLoach stated that he needed an executive session for land acquisition matters and a pending litigation matter.

At 4:56 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Assistant Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mayor Peeples called the meeting back to order at 5:25 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Heitzke moved that the Town Council for the Town of Hilton Head Island authorize the Town Manager to settle the matter of Shearon Parker v. the Town of Hilton Head Island on the terms proposed by counsel for the town. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

13) ADJOURNMENT

At 5:25 p.m., Mr. Heitzke moved to adjourn. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved: 1/19/2010

Thomas D. Peeples, Mayor

Exhibit I to Appeal Narrative (7 Pages)

THE TOWN OF HILTON HEAD ISLAND Planning Commission

Minutes of the Wednesday, February 3, 2010 Meeting
9:00am – Benjamin M. Racusin Council Chambers

APPROVED

Commissioners Present: Chairman Al Vadnais, Vice Chairman Loretta Warden,
Tom Crews, Jack Docherty, Terence Ennis, Therese Leary,
Tom Lennox, Gail Quick and David White

Commissioners Absent: None

Town Council Present: Bill Harkins, John Safay and George Williams

Town Staff Present: Teri Lewis, Land Management Ordinance Administrator
Charles Cousins, Community Development Department Director
Sally Krebs, Natural Resources Division Administrator
Jayme Lopko, Senior Planner & Planning Commission Coordinator
Kathleen Carlin, Administrative Assistant & Commission Secretary

I CALL TO ORDER

Chairman Vadnais called the meeting to order at 9:00am.

II PLEDGE OF ALLEGIANCE TO THE FLAG

III ROLL CALL

IV FREEDOM OF INFORMATION ACT

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

V USAGE OF CELLULAR TELEPHONE

Please turn off all cellular phones so that the meeting is not disturbed.

VI APPROVAL OF THE AGENDA

The agenda was **approved** as presented by general consent.

VII APPROVAL OF THE MINUTES

The Minutes of the January 16, 2010 meeting were **approved** as presented by general consent.

VIII APPEARANCE BY CITIZENS ON ITEMS UNRELATED TO TODAY'S AGENDA

None

IX UNFINISHED BUSINESS

None

**X NEW BUSINESS
PUBLIC HEARING**

LMO Amendments to amend Chapters 3, Article IV (Tree Protection) and 4, Article IV (Airport Overlay District) of the Land Management Ordinance (LMO), specifically Sections 16-3-402 and 16-4-403 to provide for changes to tree pruning and removal requirements in the approach path of the Hilton Head Island Airport.

Chairman Vadnais presented opening statements regarding the procedure for today's public hearing. The staff will make their presentation first and then the Planning Commission will discuss the staff's proposal. Following this discussion, the Chairman will invite public statements. After public statements are received and the Planning Commission has completed their discussion, a motion and vote on the issue will be taken. Chairman Vadnais then requested that the staff make their presentation.

Ms. Teri Lewis made the presentation on behalf of staff. The staff recommended that the Planning Commission consider the proposed changes to the Airport Overlay District section of the LMO. The proposed amendments create additional flexibility for pruning and removing trees in the Hilton Head Island Airport approach path.

Town Council adopted the amendments via pending ordinance doctrine on January 5, 2010. As part of the motion to approve, Town Council asked the staff to look at ways that special protection could be provided to specimen live oak trees located within the Hilton Head Island Airport approach path. Town Council also asked the staff to review the concerns mentioned by Mr. Paul Andres, Hilton Head Island Airport Director.

At their November 17, 2009 meeting, Town Council held a public hearing to receive comments on proposed changes to the Town's Land Management Ordinance (LMO) related to tree pruning and removal in the Hilton Head Island Airport approach path. The Mayor suggested that staff should revise the amendments to treat on and off airport property the same and to only prune or remove trees that are currently in the approach path or have the potential to be within ten years.

At the December 7, 2009 Public Safety Committee meeting, the Committee voted 2-1 to meld the amendments considered at the November 17, 2009 Town Council meeting with the revised amendments considered at the Public Safety meeting. The recommendation from the Committee is to once again separate the requirements for tree pruning and removal for on and off airport properties.

The staff presented these amendments at the December 15, 2009 Town Council meeting. At that meeting the staff was requested to make additional changes increasing the buffers on airport property, allowing the removal of all trees and vegetation on airport property in non-buffer and non-wetland areas and allowing slow growing trees only to be pruned to a 5-year growth interval.

At the Town Council meeting on January 5, 2010, Council adopted the amendments but asked that staff take information regarding the following issues to the Planning Commission for consideration at their January 20, 2010 meeting: (1) the number of specimen live oak trees located within the 1:34 slope of the Hilton Head Island Airport approach path; (2) a method or

methods for providing special protection to these trees; (3) a review of the concerns stated by the Hilton Head Island Airport Director and the staff's position regarding those concerns.

For the past few years, the Hilton Head Island Airport has pursued the pruning and removal of trees within the approach path. The trees on the south end of the approach path were pruned or removed starting in late 2007 and the mitigation project associated with that tree removal is nearly complete.

Despite several meetings between County and Town representatives, the County has been unable to complete the steps necessary to apply for tree removal for the north end of the approach path. These amendments were drafted to make the process as easy as possible for the County to follow.

These amendments would do the following: (1) eliminate the need for a detailed tree survey; (2) eliminate the need for the Town's Board of Zoning Appeals to grant a variance to remove specimen trees; (3) eliminate the need for the Town's BZA to grant a variance to remove trees in wetland buffers; (4) eliminate the need for a wetland alteration permit from the Town; (5) change the process to allow an arborist that is jointly hired by the Town and the County to direct all tree work in the field; (6) require a 75' street buffer and adjacent use buffer on airport property and require an additional buffer area between the wetland and St. James Baptist Church and the wetland and Beach City Road; (7) allow the County to remove all trees and vegetation in the 1:34 slope in non-buffer and non-wetland areas on their airport property to allow for easier maintenance and eliminate the need to address tree removal on their property in the future; (8) allow trees within the 1:7 slope both on and off airport property, and that have reached the height limits of the approach path or have the potential to reach it within five years (slow growing) or ten years (fast growing) to be pruned or removed based on the recommendation of the arborist; (9) require that the Town and County work together to develop a plan to protect water quality, this plan will include the planting of low growing native plants on the cleared portions of airport property; (10) require that the Town and County work together to develop a landscape mitigation plan; (11) require that tree mitigation on airport property will occur in buffers only and tree mitigation off airport property will occur in both buffer and non-buffer areas; (12) require that all previous projects be completed prior to a new project beginning; (13) require that avigation easements must be in hand or the filing of condemnation papers must occur on any parcel where work is proposed.

Ms. Lewis presented several overhead maps of the site for review by the Planning Commission. Following this presentation, the Planning Commission and the staff discussed the issue of clear cutting the site. The Planning Commission discussed the trees on airport property that are located in the 34:1 slope (or within ten feet of the slope).

A couple of Planning Commissioners discussed concern with the proposed amendments' elimination of some of the Town's "checks and balances" (as exist in the LMO). These "checks and balances" are important in preserving the natural beauty and character intrinsic to Hilton Head Island.

Mr. Charles Cousins then presented statements in regard to tree removal. Ms. Sally Krebs presented statements on behalf of the Natural Resources Department in regard to the important natural services provided by forests. A few of these natural benefits are: (1) visual and sound

barrier for surrounding homes and businesses; (2) filters small particles of air pollution out of the air; (3) soils and wetlands help to store and filter stormwater; (4) the tree's canopy deflects the force of rain, and the trees' roots anchor the soil and help prevent erosion.

Ms. Krebs and the Planning Commissioners discussed the issues of clear cutting and storm water runoff. They also discussed the need to protect an active eagle nest located on airport property. The Planning Commission discussed the function of an arborist and the need to control noise.

The Planning Commission stated their appreciation to the staff for their excellent work and presentation. At the completion of the Planning Commission's discussion, Chairman Vadnais requested statements from the public.

Mr. Paul Andres, Director of the Hilton Head Island Airport, presented statements on behalf of the airport. Mr. Andres stated that he has safety concerns with regard to tree obstruction on airport property and non-airport property. Mr. Andres stated that the Hilton Head Airport needs to fully comply with all FAA requirements. Mr. Andres discussed the issue of the tree survey with the Planning Commissioners. Mr. Andres stated that the critical component that applies to the airport is the vertical height of the obstruction.

Commissioner Ennis asked Mr. Andres about the FAA safety requirements of the airport and the cost of tree maintenance for the airport. Mr. Andres responded that FAA requirements for safety were being exceeded by the proposed LMO amendments and that the Airport could not afford \$1 million dollars every five years for tree maintenance.

Several Planning Commissioners stated concern with Mr. Andres' presentation as they believe that the FAA requirements for the Hilton Head Island Airport are being met at this time by the current Land Management Ordinance.

Several Planning Commissioners stated concern with the proposed amendments based on their negative impact to the environment. The Commissioners stated concern with the loss of trees, impact to the wetlands, noise and air pollution, stormwater and the filtering of water. Following final discussion by the Planning Commissioners, Chairman Vadnais requested public statements.

The following citizens presented statements in opposition to the proposed LMO amendments: Ms. Cynthia McAllister, Mr. Bob Richardson, Mr. Bob Lynch, Mr. Ron Smedick, Mr. Jim Fisher, Mrs. Fran White, Mr. Charles Young, III, and Chester C. Williams, Esquire.

These citizens reported concern with noise and air pollution related to the loss of tree and vegetation. Several citizens reported the need for additional information such as an environment assessment study and noise control study. A mater plan for the airport is also needed.

Citizen, Mr. Will Dopp, presented statements in support of the proposed amendments (as well as the additional needs stated by the airport manager) as necessary to make the airport safe. This concluded all public statements and the public hearing for this issue was closed.

Chairman Vadnais excused himself from the remainder of the meeting at this time (11:15am). Vice Chairman Warden assumed the role of chairperson for the remainder of the meeting. The Planning Commission discussed several issues including noise control, a possible need for additional information (airport master plan and environment assessment study).

The Planning Commission reported the need to recognize the value of the Hilton Head Island Airport as an important asset to the community. The airport is fundamental to the Island's economy. The Planning Commissioners stated that this is a very difficult issue to deal with. Achieving some sort of balance between Hilton Head Island's quality of life, safety, and economic concerns will be necessary.

A couple of Planning Commissioners reported that the proposed amendments go above and beyond the FAA requirements. The 34:1 slope seems reasonable based on airport safety. The Planning Commission recognized the efforts of staff and Town Council in trying to resolve this very difficult issue. The Planning Commissioners discussed Town Council's Management Targets for 2010 (Airport Master Plan Policies and Recommendations for Airport Trees).

The Planning Commission and staff also discussed the possibility of lighting the specimen live oak tree that is located at St. James Baptist Church. The Planning Commission is hopeful that the FAA will approve this solution.

Mr. Charles Cousins then presented statements on the issue of this specimen tree. A meeting was recently held in Atlanta with the FAA, the Mayor, the County, and Mr. Andres in attendance. Based on the outcome of that meeting, the FAA appears to be willing to work with the St. James Baptist Church with regard to the specimen live oak tree. A final decision on this matter has not yet been reached.

The Planning Commission and Mr. Cousins discussed the current Town requirements and the impact of the proposed changes with regard to the proposed elimination of requiring a detailed tree survey, the involvement of the BZA with regard to the need for variances, and obtaining a wetland alteration permit.

Several Planning Commissioners stated that the proposed eliminations appear to be based on the desire to expedite the solution to the Airport's north end problem. If the proposed eliminations become finalized, however, these requirements would then become part of the "forever guidance" for airport properties and non-airport properties. The existing LMO is sufficient to meet the requirements of the FAA with regard to airport safety.

The Planning Commission and the staff discussed the pending ordinance doctrine that is already in place. They also discussed the Planning Commission's role in reviewing today's proposed amendments. The Planning Commission again stated their difficulty in coming to a decision on this issue. It is a very sensitive problem and achieving the necessary balance will not be easy or perhaps even possible. At the completion of final comments, Chairman Warden requested that a motion be made.

Commissioner White made a motion that the Planning Commission recommend **denial** of the proposed amendments to Town Council as presented today by staff. Commissioner Ennis **seconded** the motion with a request to modify the motion.

Commissioner Ennis stated that there is some benefit to streamlining the process with regard to BZA requirements. Some elements may need to be placed on hold due to the need for additional information regarding the airport master plan. Following this discussion, Commissioner White declined accepting the modification to his motion and Commissioner Ennis **withdrew** his second to the motion. Chairman Warden requested clarification from the staff regarding the issue of legality in the making of a motion.

Mr. Charles Cousins stated that according to the LMO, the Planning Commission can take one of three actions: (1) recommend approving the application; (2) recommend denying the application; or (3) recommend approving the application with modifications.

Chairman Warden then requested a new second to the motion and none was received. The motion **died** for lack of a second. Chairman Warden then requested that a new motion be made.

Commissioner Quick questioned if the Planning Commission can make a new motion that addresses the FAA's concerns without having to wait another 3-1/2 years. Commissioner Crews requested clarification on this issue as well. Mr. Charles Cousins stated that a motion to modify needs to include very specific language. After additional discussion regarding the content of a motion, the following final motion was made:

Commissioner Lennox made a **motion** that the Planning Commission recommend **approval** of the proposed LMO amendments to Town Council with the following **modifications**: (1) these amendments would pertain to the north end project only; (2) the specimen trees located at St. James Church should be lighted if possible. If the FAA rejects the lighting of these specimen trees, these trees would be governed by the same treatment as the other specimen trees in the 1:34 slope; (3) the clear cutting would be stopped at the 50-foot line for the area to the east of the large wetland on the property.

Commissioner White stated concern that the core values of Hilton Head Island have not been considered in this motion. Commissioner White stated his opposition to the motion. Following final comments, Chairman Warden asked if there was a second to the motion. Commissioner Leary **seconded** the motion and the motion ultimately **passed** with a 5-3-0 vote.

Commissioners White, Quick, and Ennis were opposed to the motion for the following reasons: (1) the scope of the original LMO Sec. 16-4-403 meets all FAA approach path and safety requirements; (2) exceeding FAA requirements is not a reason to amend the LMO; and (3) the transfer of maintenance costs from the County to federal taxpayers is not an equitable reason for amendment an ordinance.

XI COMMISSION BUSINESS
None

XII CHAIRMAN'S REPORT
None

VIII COMMITTEE REPORTS

Commissioner Crews, on behalf of the Comprehensive Plan Committee, briefed the Planning Commission on the proposed draft to update the Recreation Element of the Comprehensive Plan. Following this presentation and discussion, Chairman Warden requested that a motion on this issue be made.

Commissioner Crews made a **motion** to **accept** the Recreation Element as part of the Comprehensive Plan. Commissioner Lennox **seconded** the motion and the motion **passed** with a vote of 8-0-0.

XIV STAFF REPORTS

None

XV ADJOURNMENT

There being no further business, the meeting was adjourned at 12:15pm.

Submitted By:

Approved By:

Approved By:

Kathleen A. Carlin
Secretary

Al Vadnais
Chairman

Loretta Warden
Vice Chairman

Exhibit J to Appeal Narrative (5 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, March 2, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, Drew Laughlin, Bill Ferguson, John Safay, Bill Harkins, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects & Facilities*; Nancy Gasen, *Director of Human Resources*; Susan Simmons, *Finance Director*; Teri Lewis, *LMO Official*; Brian Hulbert, *Staff Attorney*; Darrin Shoemaker, *Traffic & Transportation Engineer*; Paul Rasch, *Emergency Management Coordinator*; Sally Krebs, *Natural Resources Administrator*; Sarah Skigen, *Natural Resources Associate*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, Island Packet

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
 - a. **S.H.A.R.E. 20th Anniversary**

Laura Mason, the Director of S.H.A.R.E. accepted the proclamation.
- 6) **APPROVAL OF MINUTES**
 - a. **Regular Town Council Meeting of February 22, 2010**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Town Manager reported on some items of interest.
 - b. **Semi annual update of the Board of Zoning Appeals – Roger DeCaigny, Chairman**

Mr. DeCaigny provided Town Council with an update on the Board of Zoning Appeals activities for the second half of 2009

c. Update of the Mayor’s Task Force for the Future – David Ames, Chairman

Mr. Ames provided Town Council with an update on the Task Force Committee’s activities since their first meeting on January 11, 2010.

d. Accommodations Tax Advisory Committee – Bud Shay, Chairman

Mr. Shay updated Town Council on the committee’s scheduled meetings in response to Council’s directive to review forward funding (March 3, 2010) and to examine the advertising policy of the Visitors and Convention Bureau with respect to marketing Island events (April 9, 2010).

e. Request from Chamber of Commerce for \$300,000 in Disaster Advertising Reserve funds for targeted marketing campaign

Ray Warco of the Chamber of Commerce board spoke to the Town Council about the economic impact of tourism. He thanked the Mayor for recommending that Chamber make an application for the use of the reserve funds to create a targeted market campaign aimed at driving more business to Hilton Head Island. President and CEO Bill Miles and the Visitors & Convention Bureau Vice President Susan Thomas made a presentation to Town Council in support of the request for additional funding to finance a targeted marketing campaign. Mr. Miles detailed the predictions of the Travel Industry for the continuation of the downward trend in leisure travel. Ms. Thomas provided a power point on the successful results of the “Charlotte Blitz” campaign created from the \$200,000 reserve fund allocation previously granted by Town Council. She also provided a detailed explanation of the structure of the Chamber of Commerce and the structure of the Visitors and Convention Bureau (V&CB) as it relates to their funding sources.

Mr. Williams asked Susan Thomas some questions about the source of her statistics on the “Charlotte Blitz.” She responded that they did research on all of the inquiries that came in specifically from that campaign.

Mr. Safay asked Ms. Thomas if the Council voted to release the \$300,000 to the V&CB, would they be able to provide documentation that all funding was spent exclusively on the targeted marketing campaign and not on any general overhead or administrative costs? Susan Thomas assured Mr. Safay that the Town’s Finance Director would receive documentation from the V&CB for every dollar spent.

Mr. Harkins expressed the opinion that there should be an annual independent review of the Chamber’s use of the ATAX funding granted to them by the Town. Mayor Peoples observed that there is already a strict financial oversight by the Town for V&CB expenses.

Mr. Ferguson was troubled by the Chamber’s stated goal to only target the affluent consumer in their marketing campaign. He asked what about the average, normal every-day Jane & John Doe – were they not being welcomed too? Ms. Thomas said that they target a diverse audience from many standpoints, but in terms of household incomes, they do look for a more affluent market than the general traveler because of the positioning of Hilton Head Island, its product and pricing in the marketplace.

Mayor Peoples asked if there was a motion to release the requested advertising reserve funds.

Mr. Heitzke moved to approve the release of \$300,000 to the Chamber of Commerce for the marketing campaign. Mr. Safay seconded.

The Mayor invited comments from the public. Many members of the audience spoke to Town

Council, overwhelmingly in favor of the release of advertising funds. One local hotel manager requested that the middle class traveler also be targeted because there were business operators like himself, whose target consumer was more middle class than affluent.

Mr. Williams said that he had gotten a lot of phone calls and e-mails from his constituency, and every single one of them were opposed to the release of additional funding to the Chamber for the advertising campaign. However, after hearing comments from his fellow councilmen as well as members of the public and business owners, he did not see how they could take the chance of doing nothing. So, he was going to change his mind and vote in favor of the motion.

The motion was approved by a vote of 6-1. Mr. Ferguson was opposed because the campaign was solely targeted to the affluent traveler and excluded other demographic segments of potential visitors.

8) REPORTS FROM MEMBERS OF COUNCIL

a. General Reports from Council

The Mayor expressed his appreciation to NIBCAA, Michael Marks and the staff of the Coastal Discovery Museum for the very impressive Marsh Tacky race event held this past Sunday.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

The Committee would be meeting in two weeks. Mr. Williams reported on a Lowcountry Council of Government meeting he attended. They discussed the proposed tax incentive for the Okatie shopping mall. There was a very contentious discussion and ultimately the majority of members voted to support the tax incentives. Mr. Williams voted in opposition.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

The Personnel Committee will soon be reviewing applications to fill vacancies on the Boards and Commissions for terms beginning July 1, 2010. He encouraged interested citizens to submit an application.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

Mr. Ferguson expressed regret he did not have his report and would provide it at the next meeting.

e. Report of the Public Facilities Committee – John Safay, Chairman

Mr. Safay reported on the committee's review of a sailing and rowing center. They voted unanimously to move ahead with the rowing and sailing center and asked the staff to examine some alternatives which were discussed in detail at the meeting for enhancing the property for a minimal amount of funding, such as cleaning up the property and doing some things with community involvement. Mayor Peebles asked the Town Manager to meet with staff on this. At this time, the Mayor felt it was premature to bring it forward for a full Council vote.

The committee also had a special meeting on the recycling initiative recently and this would be coming forward with a recommendation at the next Town Council meeting.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

No report.

At 5:45 p.m., the Mayor called for a brief recess. At 5:50, Mayor Peeples called the meeting back to order.

9) **APPEARANCE BY CITIZENS**

None.

10) **UNFINISHED BUSINESS**

- a. **Revised First Reading of Proposed Ordinance No. 2009-39 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Section 403. These amendments include changes that provide for amendments to: Airport Overlay District Regulations and the approach path; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Safay seconded.

Mayor Peeples invited comments from members of the public and many people in the audience expressed their opinions. Gary Kubic, the Beaufort County Administrator, assured the Town Council that with regard to the airport property, the County was subject to the Town's rules and they fully intended to respect and comply with them.

Mr. Williams had a concern about the Zoning District Regulations – c. Other Requirements. The language about the installation of a light on the specimen tree at St. James Baptist Church did not match the language in the proposed ordinance.

Steve Riley said there were three small changes that he needed to suggest to the Council. The first was in Section 16-4-403 c.i. to add "Should the FAA reject lighting this tree, the provisions of Section 16-4-403 C.2.c.ii. shall apply."

Secondly, Steve Riley suggested that on page one Section 16-4-403 C.2. delete "for runway 21 only."

Lastly, on the second page, Section 16-4-403 2.a.iv. delete "and vegetation." Mr. Williams moved to amend the Ordinance per the three changes enumerated by the Town Manager. Mr. Heitzke seconded. The amendments were approved by a vote of 7-0.

Mr. Safay commented that with regards to the referenced Airport Master Plan meeting taking place on March 9, 2010, they would be getting a preliminary report. Mr. Safay pointed out that this master plan is just that: a plan – a series of recommendations. This did not justify delaying a decision tonight.

Mr. Heitzke had a concern about the issue of the tree stumps and if they were going to be level with the ground. Steve Riley said that he had discussed this with the County and it was their intent to get the trees cut as low to the ground as possible. Mr. Harkins said he shared Mr. Heitzke's concerns. Gary Kubic, Beaufort County Administrator, assured them that it was the County's intent to cut the trees level with the ground.

Mayor Peeples addressed some items that had been reported in the media that he wished to correct. One issue had been the perception that it was the Town that had been hindering the process for tree removal. It was absolutely untrue that the Town was the cause for delaying tree removal at the airport. And when the Town removed trees for the Fire & Rescue Training Center, the Mayor stressed that they followed all the rules and as a matter of fact, they went way beyond the buffer and setback requirements in the LMO. No specimen trees were

removed either. He wanted the record to be straight on these issues as too many falsehoods had been circulated.

The amended motion was approved by a vote of 6-1. Mr. Ferguson was opposed.

11) NEW BUSINESS

a. none.

12) EXECUTIVE SESSION

Mr. Riley said that he needed an executive session for contractual matters pertaining to land acquisition and legal matters regarding pending litigation.

At 6:58 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Safay seconded. The motion was approved by a vote of 7-0.

Mayor Peeples called the meeting back to order at 7:21 p.m. and stated there was no business to take up as a result of executive session.

13) ADJOURNMENT

At 7:21 p.m., Mr. Williams moved to adjourn. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved:

Thomas D. Peeples, Mayor

Exhibit K to Appeal Narrative (6 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, March 16, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, John Safay, Bill Harkins, *Councilmen*.

Absent from Town Council: Drew Laughlin, Bill Ferguson, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Susan Simmons, *Finance Director*; Scott Liggett, *Director of Public Projects & Facilities*; Nancy Gasen, *Director of Human Resources*; Teri Lewis, *LMO Official*; Brian Hulbert, *Staff Attorney*; Sally Krebs, *Natural Resources Administrator*; Randy Nicholson, *Comprehensive Planning Manager*; Jayme Lopko, *Senior Planner*; Rene Phillips, *Website/Court Systems Administrator*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, Island Packet

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
 - a. **Disabilities Awareness Month**

Carol Meyers of PEP (Program for Exceptional People) accepted the proclamation.
- 6) **APPROVAL OF MINUTES**
 - a. **Special Town Council Meeting of February 23, 2010**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 5-0.
 - b. **Regular Town Council Meeting of March 2, 2010**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 5-0.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Town Manager reported on some items of interest.
 - b. **March 2010 Policy Agenda, Management Targets and CIP Updates**

Steve Riley pointed out that the updates were attached to the agenda package. He invited members of council to contact him if they had any questions.

8) **REPORTS FROM MEMBERS OF COUNCIL**

a. **General Reports from Council**

No reports.

b. **Report of the Intergovernmental Relations Committee – George Williams, Chairman**

The committee met that afternoon and reviewed some bills on the State legislature's agenda. They also discussed the situation the Lowcountry Economic Network was facing regarding a loan renegotiation for the Beaufort Commerce Park. The Network was not going to be able to carry the loan more than a few more months. Mr. Williams moved that Town Council authorize the Mayor to send a letter to the Chairman of the Beaufort County Council advocating that the County purchase this Commerce Park. An added benefit if the County purchased the Commerce Park is that it would enable them to apply for State grants. Mr. Safay seconded. The motion was approved by a vote of 5-0.

c. **Report of the Personnel Committee – Drew Laughlin, Chairman**

Mr. Laughlin was unable to attend this meeting but the Mayor reminded citizens that the Personnel Committee was seeking interested applicants to begin the process of filling vacancies on boards and commissions.

d. **Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman**

There was no report as Mr. Ferguson was not able to attend this meeting. Steve Riley noted that New Business Item 11.c. was on tonight's agenda and had come forward with a favorable recommendation from the Planning & Development Standards Committee.

e. **Report of the Public Facilities Committee – John Safay, Chairman**

No report.

f. **Report of the Public Safety Committee – Bill Harkins, Chairman**

No report.

9) **APPEARANCE BY CITIZENS**

None.

10) **UNFINISHED BUSINESS**

a. **Second Reading of Proposed Ordinance No. 2009-39 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Section 403. These amendments include changes that provide for amendments to: Airport Overlay District Regulations and the approach path; and providing for severability and an effective date.**

Mr. Harkins moved to approve. Mr. Williams seconded. The Mayor commented that he had been approached about conducting a noise study to determine a baseline of noise levels "pre-tree clearing" so the Town would have a better understanding of the landscaping needs for visual and noise barriers in the buffers surrounding the clear-cut area. Mayor Peebles agreed this should be done if a viable noise study did not already exist and that the Town should pay for it. Mr. Heitzke moved that the Town conduct a noise study at the Town's expense to be completed prior to the July 1, 2010 date when the County would begin tree removal and

pruning. Mr. Safay seconded. Mr. Williams asked if this motion was an amendment to the proposed ordinance. The Mayor said it was not; it was a new item. The motion was approved by a vote of 5-0.

Steve Riley said there was a small technical correction that needed to be addressed as a result of an amendment made at the last meeting. In Section 16-4-403 C. v. in the second to last sentence, “in the buffers and wetlands” needed to be deleted to be consistent with the changes made at the March 2, 2010 meeting. Mr. Heitzke moved to approve the correction and Mr. Williams seconded. The amendment was approved by a vote of 5-0.

The Mayor invited comments from the public.

Ron Smetek, VP, Palmetto Hall POA spoke on behalf of the residents of Palmetto Hall. It was their recommendation that Council review and decide on which option from the Master Plan to undertake. Then request the FAA to do an analysis of hazardous navigation based on the selected Master Plan option.

Bob Gentzler, Palmetto Hall Environmental Chairman, thanked the Town Council for supporting the noise study proposal. Mr. Gentzler recommended that Town Council table the motion before them until a noise study has been conducted.

Bob Richardson, President of Palmetto Hall, reiterated the previous speakers’ request for a noise study and delay of any LMO changes until after the study has been completed.

Perry White observed that the tree removal proposal was an issue of great concern to the residents in the area because of its impact. He recalled that he had a conversation with the man who donated the property for the airport who told Mr. White that he had made a mistake and that airport was in the wrong location. Mr. White thought that it would be an even greater mistake if the airport runway or any other facilities of the airport were expanded.

The next speaker observed that the issue tonight was “trees” and “airplanes” and they do not mix. It was an issue of safety.

A man who lived on Tucker Ridge spoke in opposition to any expansion of the airport runway and the negative impact it would have on their property values.

The Mayor reminded the audience that the only issue they were discussing this evening was the amendment to the LMO regarding tree removal.

Chester Williams, representing St. James Baptist Church, said that his clients continue to believe this LMO amendment was not in the best interests of the Church. He noted that the director of the airport has said that if he thought the airport was operating unsafely, he would shut it down. Since the airport is not shut down, then the director must think it was operating in a safe manner. Mr. Williams said that this was not a safety issue; it was a dollars issue.

Chuck Copely, a commercial pilot, said that he flies out of Hilton Head Island, Savannah and Ridgeland. He disagreed with the prior speaker’s contention that this was not a safety issue. Mr. Copely talked about wind sheer dangers as well as flight path safety. He said that when flying out in hot weather and with a high gross weight, the plane sometimes barely clears the trees. He also mentioned that they have an excellent sound study that was conducted two or three years ago during the Heritage Golf Tournament.

Starletta Hairston asked how much a new noise study would cost. Mayor Peebles said they didn’t know how much a new study would cost, but they have committed to support the study if a new one is necessary. They would first review the data that is currently available.

Mr. Safay said that to him, this was not primarily a dollars issue, but rather a safety issue. He wished to make this clear.

Mr. Williams wanted it clarified that if the tree trimming/cutting proceeded on schedule as planned and the runway was ultimately extended, would they have wasted money trimming and cutting the trees? Charles Cousin responded that any recommendations by the Airport Master Plan would take years to be implemented. The County cannot wait to deal with the safety issues created by the trees; they must be addressed now. Further, if the runway were extended, it would not save any of the trees that were targeted for cutting now.

Mr. Harkins added that he, too, was in favor of this ordinance because safety of the airport was the key motivator for his vote at this point in the process.

The amended motion was approved by a vote of 5-0.

11) NEW BUSINESS

a. **Consideration of a request from the Public Art Committee of the Community Foundation of the Lowcountry seeking a commitment of \$75,000 from the Town to be paid over a two year period.**

Mr. Williams moved to approve. Mr. Harkins seconded. Mark Baker, the Chairman of the Public Art Committee addressed Town Council to explain the planned public art exhibition and outdoor sculpture competition at Honey Horn in fall 2011 for a six-week period. The committee was here today to seek funding support for that part of their program. Also present was Carolyn Torgersen, VP of Marketing and Communications. Mr. Baker explained that the intended outcome of this event was the acquisition of a piece of art that would then become public art to be placed permanently somewhere on the Island.

Several council members wondered if the funding request shouldn't have gone to the ATAX committee instead of Town Council. Mr. Baker said that they wanted to get through the first year's event before making that determination. He felt there was a strong possibility that they would be able to achieve their financial goals through corporate sponsorships and private donations which would preclude the need for ATAX funding. They were also going to be doing research on how other communities are funding their Public Art programs.

After considerable discussion, the Mayor suggested that the request should be assigned to the Public Facilities Committee first. Mr. Heitzke moved that they postpone consideration of the request until after the Public Facilities Committee had a chance to hold a public meeting. Mr. Safay seconded. The motion was approved by a vote of 5-0.

b. **Consideration of a recommendation from the Accommodations Tax Advisory Committee regarding the pending applications for forward funding from the Arts Center, the Orchestra, and the Town of Hilton Head Island.**

Mr. Williams moved to approve. Mr. Heitzke seconded. Bud Shay, the chairman of the ATAX committee, reported on their meeting held to address the Town Council's request to re-review the forward funding issue. The committee voted again to recommend against forward funding commitments. However, if Town Council elected to approve forward funding, it was the ATAX committee's recommendation that the amount of commitment should be 82% of the amount granted in 2009. The Mayor expressed appreciation to Mr. Shay and his committee for their diligence.

Mr. Safay said he truly respected and appreciated all the hard work and commitment by the

members of the ATAX committee and the chairman, Bud Shay. However, he disagreed and asked that the Council not make any changes to the process that they have been following in the past for forward funding. He thought it was more important for the Symphony and the Arts Center to receive this forward funding than it was difficult and unwieldy for the Council to deny the funding. Mr. Safay agreed with the guidelines suggested by the ATAX Committee with one exception: Items 3.e. which recommended a 5% increase if this year's revenues were more than last year's. Mr. Safay suggested the amount of the increase should be left to the judgment of the Town Council.

Mr. Heitzke moved to approve forward funding at 82% of the amount granted in 2009 and that a review of the funding grants will be undertaken in November based on actual revenues. Mr. Harkins seconded. The maker and seconder of the original motion concurred with the amendment.

The amended motion was approved by a vote of 5-0.

- c. First Reading of Proposed Ordinance No. 2010-02 to amend Title 16, "The Land Management Ordinance," of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-4-102, the official zoning map and the Sea Pines Master Plan with respect to those certain parcels totaling 6.25 acres, known as Sea Pines Center, identified as parcels 1191 and 174B on Beaufort County Tax Map #17, within the Sea Pines Master Plan under the PD-1 planned development mixed use district, to add liquor store as a permitted use; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 5-0.

- d. Consideration of a Resolution by the Town Council of the Town of Hilton Head Island denying the application for zoning map amendment (ZMA100001) which requests an amendment to Chapter 4 of Title 16, "the Land Management Ordinance", of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-4-102, the official zoning map and the Sea Pines Master Plan with respect to those certain parcels totaling 6.25 acres, known as Sea Pines Center, identified as parcels 1191 and 174B on Beaufort County Tax Map #17, within the Sea Pines Master Plan under the PD-1 planned development mixed use district, to add liquor store as a permitted use; and providing for severability and an effective date.**

Since the Town Council voted in favor of First Reading of Proposed Ordinance No. 2010-02, the Resolution to deny was not needed.

- e. Consideration of a recommendation that the Town Council for the Town of Hilton Head Island review and approve the elements to include in a waste and recycling franchise collection Request for Proposals (RFP).**

Mr. Safay moved to approve. Mr. Heitzke seconded.

Bill Neville, a board member for the Spanish Wells Property Owners Association, told Town Council that they have had community-wide trash and recycling services since 2006. He advised them that their community was very satisfied with the level of service and pricing they were currently enjoying. Mr. Neville wanted to know if they were going to have to join the Town-contracted services or if they could continue with their existing provider.

Mayor Peoples advised that the intent of today's action, if approved, was to seek quotes for the

cost to contract with one or maximum of two providers for the entire Island. Details to allow for existing contracts would have to be worked out.

Mr. Williams asked if they had any assurances that the Beaufort County Public Works Department was comfortable with the Town's efforts to franchise their own waste and recycling service.

Jim Frey, Resource Recycling Services, advised that they had met with the county and discussed the question of waste disposal and the cost for it. They are trying to develop something that will work for right now. Mr. Williams expressed the opinion that the issues with the County will need to be solved sooner rather than later. He did not want them to be just left hanging.

Mr. Safay asked for an approximate time line. Jim Frey said they have draft documents in staff's hands and the Town's purchasing people are reviewing them. The draft documents have also been shared with potential vendors. They anticipate it will take two or two and a half weeks to complete the draft documents and were aiming for the first week of April as a release date. Potential vendors would have a month to submit their proposal and then it would take a couple of weeks for review and interviews with a recommendation to Town Council in late May. Mr. Frey thought it could be possible that the recycling program could initiate in September.

The motion was approved by a vote of 5-0.

12) EXECUTIVE SESSION

Mr. Riley said that he needed an executive session for contractual matters pertaining to land acquisition; legal advice pertaining to ongoing litigation; legal advice pertaining to the audit process and personnel matters relating to the contract with the Municipal Court Judge.

At 5:32 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 5-0.

Mayor Peeples called the meeting back to order at 6:03 p.m. and stated there was no business to take up as a result of executive session.

13) ADJOURNMENT

At 6:03 p.m., Mr. Williams moved to adjourn. Mr. Heitzke seconded. The motion was approved by a vote of 5-0.

Susan Blake, Secretary

Approved:

Thomas D. Peeples, Mayor

Exhibit L to Appeal Narrative (9 Pages)

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2010-03

PROPOSED ORDINANCE NO.: 2009-39

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE, CHAPTER 4, SECTION 403. THESE AMENDMENTS, COMMONLY REFERRED TO AS THE *AIRPORT APPROACH PATH AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON NOVEMBER 1, 2009, INCLUDE CHANGES THAT PROVIDE FOR AMENDMENTS TO: AIRPORT OVERLAY DISTRICT REGULATIONS AND THE APPROACH PATH; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance (LMO); and

WHEREAS, from time to time Town Council recognizes that changes to the LMO are necessary to improve certain processes; and

WHEREAS, Goal 10A of the Transportation Element of the Comprehensive Plan states, "Continue to ensure that airport operations remain safe while providing air travel to Island residents and visitors."; and

WHEREAS, Town Council does not wish to present any impediments to the safe operations of the Hilton Head Island Airport; and

WHEREAS, LMO Section 16-4-401 states that the regulations governing use and height within the Airport Overlay District conform to the standards recommended by the Federal Aviation Administration's Advisory Circular, 150/5190-4A, "Model Zoning Ordinance to Limit Height of Objects Around Airports" (12-14-87); and

WHEREAS, Town Council has determined that developing certain requirements for tree pruning and removal in the Approach Path of the Hilton Head Island Airport is important to address these LMO regulations within the Airport Overlay District; and

WHEREAS, Town Council met on November 3rd, 2009 and voted 6-1 to adopt a resolution to consider amendments to LMO Chapter 4, Article IV [Airport Overlay District] at a public hearing on November 17, 2009; and

WHEREAS, Town Council held a public hearing on November 17th, 2009 at which time a presentation was made by staff and comments were received from Council and the public; and

WHEREAS, Town Council voted to ask staff to revise the amendments and take the revised amendments to the Public Safety Committee meeting for review; and

WHEREAS, the Public Safety Committee reviewed the revised amendments on December 7, 2009 and voted 2-1 to meld the two amendment versions together to create different regulations for on and off airport property in terms of tree pruning and removal; and

WHEREAS, Town Council reviewed the revised amendments on December 15, 2009 and voted to ask staff to further revise the proposed amendments to increase the buffers on airport property, allow the removal of all trees and vegetation on airport property in non-buffer and non-wetland areas and allow slow growing trees only to be pruned to a 5 year growth interval; and

WHEREAS, staff has made the requested changes to the proposed amendments; and

WHEREAS, Town Council has met the necessary requirements to invoke pending ordinance doctrine at first reading of the attached amendments; and

WHEREAS, Town Council voted on January 5, 2010 to adopt the proposed amendments to LMO Chapter 4, Article IV; and

WHEREAS, Town Council asked that staff look at ways to protect specimen live oaks in the Hilton Head Island Airport approach path prior to the Planning Commission public hearing related to these amendments; and

WHEREAS, the Planning Commission held a public hearing on February 3, 2010 on the amendments as adopted on January 5, 2010 by Town Council with two revisions as drafted by staff related to the protection of specimen live oaks within the approach path as directed by Town Council; and

WHEREAS, the Planning Commission, after consideration of the staff report and public comments voted 5-3 to recommend the amendments to Town Council with the following conditions:

- These amendments would pertain to the north end tree removal/mitigation project only;
- The larger specimen Live Oak tree located in front of St. James Baptist Church should be lit if possible, if the FAA rejects the lighting of this tree then this tree should be governed by the same treatment as the other specimen trees in the 1:34 slope; and
- The area to be clear cut would be stopped at the 50-foot line for the area to the east of the large wetland on the property; and

WHEREAS, Town Council reviewed the proposed amendments at their meeting on March 2, 2010 and voted 6-1 to approve the proposed amendments with the following changes:

- Retain the words 'a and' in the first sentence of 16-4-403.C.2 and delete the words 'for Runway 21 only'.
- Delete the words 'and vegetation' in the first line of 16-4-403.C.2.a.iv.
- Add the sentence, 'Should the FAA reject lighting this tree, the provisions of Section 16-4-403.C.2.c.ii shall apply.' to the end of Section 16-4.403.C.2.c.i; and

WHEREAS, the suggested changes are reflected in the attached amendments; and

WHEREAS, Town Council now finds that, upon further review, it is in the public interest to adopt the attached changes to Chapter 4, Article IV [Airport Overlay District] of the Land Management Ordinance.

NOW, THEREFORE BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:

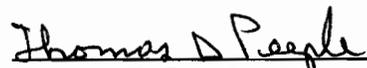
Section 1. Amendment. That the Land Management Ordinance of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

NOTE: New text is indicated by a double underline and deleted text is indicated by a ~~strike through~~.

Section 2. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

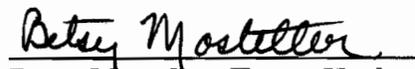
Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS 16 DAY OF March 2010.



Thomas D. Peebles, Mayor

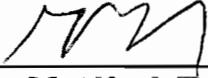
ATTEST:



Betsy Mosteller, Town Clerk

Public Hearing (Town Council):	November 17, 2009
First Reading:	December 15, 2009
Revised First Reading:	January 5, 2010
Revised First Reading:	March 2, 2010
Second Reading:	March 16, 2010

Approved as to form:



Gregory M. Alford, Town Attorney

Introduced by Council Member: Bill Harkins

CHAPTER 4. ZONING DISTRICT REGULATIONS

ARTICLE IV. AOD--AIRPORT OVERLAY DISTRICT

Sec. 16-4-401 – 16-4-402 --- No Change.

Sec. 16-4-403. Overlay District Regulations

A-B ---- No Change.

C. Approach Path. Within the Approach Path, no building, structure, utility pole or protrusion of any kind thereof shall be permitted to extend to a height measured from the mean elevation of the airport runway that exceeds the limits established by the methodology described herein.

1. The maximum height limits permitted under this Title of 75 feet shall be lowered as necessary to correspond with the limits established as follows:

a. Along both sides and ends of the airport primary surface area, at the extremity of the primary surface, the height restriction shall be zero feet. Moving outward from both sides of the runway, 250 feet from the runway center line, the height limit shall increase at the rate of 1 foot upward per 7 linear feet, or a ratio of 1:7.

b. Moving outward from both ends of the runway primary surface area, the height limit shall increase at the rate of 1 foot upward per 34 linear feet, or a ratio of 1:34. From both ends of the primary surface area, the area subject to these special height limitations shall fan outward beyond the area that would be covered if the height limitation from the sides of the primary surface area extended beyond the ends of the runway.

2. The following process has been established for tree pruning, topping and removal on and off airport property to address the height limits in 16-4-403.C.1.a and b. For purposes of this section, on airport property shall be defined as any Beaufort County owned property in the approach path used for the operations of the Hilton Head Island Airport and off airport property shall be defined as that property affected by the height limits in the approach path. The requirements listed below are the only requirements in this Title that the Hilton Head Island Airport must follow for tree pruning, topping and removal in the approach path.

a. On Airport Property

i. Submit only items 1 and 3 under Section 16-3-404.A, Tree Protection Approval Application. In lieu of the other items the applicant will submit a site plan and copies of all required permits from other agencies. The applicant may phase the tree pruning, topping and removal by parcel. The site plan must identify the parcels where trees will be pruned or removed and delineate any wetlands and wetland buffers within the subject parcels. Additionally, the Town of Hilton Head Island and Beaufort County will jointly fund and employ an arborist to document the size and species of each removed tree by parcel. This data will be used to prepare a mitigation plan and to calculate any required fee for the tree replacement fund.

ii. Prior to any tree pruning or removal the applicant shall flag all buffers and wetlands.

iii. In meeting the height requirements of 16-4-403.C.1.a and b, all adjacent use buffers and adjacent street buffers shall be a minimum of 75 feet in width. ~~An~~ As represented in Figure 1 additional buffers will also be required in the following areas:

- a. between the 75 foot buffer and the wetland buffer related to the wetland on airport property in closest proximity to St. James Baptist Church and between this wetland buffer and the 75 foot buffer near Beach City Road ~~[See Figure 1]~~ and
- b. between the wetland buffer related to the wetland on airport property in closest proximity to St. James Baptist Church and the 1:34 approach slope line.

iv. All trees ~~and vegetation~~ within the 1:34 slope, unless located within wetlands, wetland buffers or any buffers listed in 16-4-403.C.2.a.iii may be removed.

v. The arborist will determine which trees within the 1:7 slope, wetlands or any buffers have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1.a and b within five years [hardwoods] of the approval date or ten years [conifers] of the approval date based on the species and maturity of each tree; the arborist will then identify which of these trees can be pruned to be out of the approach path and to the five or ten year growth potential, respectively. For the purposes of this section, conifers are defined as cone-bearing trees with needle-like leaves, to include the cypresses as well as those trees listed in Category III of Section 16-6-407. Those trees that the arborist determines require such severe pruning that they can no longer support themselves may be removed. Those specimen trees and trees in any wetland buffer that cannot be pruned may be removed without a variance. Those trees in any wetland that cannot be pruned may be removed without a wetland alteration permit. Reasonable care shall be taken to protect the understory vegetation ~~in the buffers and wetlands~~. Mechanized vehicles shall not be used in wetlands or any buffers.

b. Off Airport Property

i. Submit only items 1 and 3 under Section 16-3-404.A, Tree Protection Approval Application. In lieu of the other items the applicant will submit a site plan, copies of all signed avigation easements or a copy of paperwork indicating that condemnation notices have been filed and copies of all required permits from other agencies. The applicant may phase the tree pruning and removal by parcel. The site plan must identify the parcels where trees will be pruned or removed and delineate any wetlands and wetland buffers within the subject parcels. Additionally, the Town of Hilton Head Island and Beaufort County will jointly fund and employ an arborist to document the size and species of each removed tree by parcel. This data will be used to prepare a mitigation plan for each parcel.

ii. Prior to any tree pruning or removal the applicant shall flag all wetlands and wetland buffers.

- iii. The arborist shall determine which trees have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b within five years [hardwoods] of the approval date or within ten years [conifers] of the approval date based on the species and maturity of each tree; the arborist will then identify which of these trees can be pruned to be out of the approach path and to the five or ten year growth potential, respectively. Those trees that the arborist determines require such severe pruning that they can no longer support themselves may be removed. Reasonable care shall be taken to protect understory vegetation.
- iv. Specimen trees and trees within wetland buffers, if required to be removed based on 16-4-403.C.2.b.iii, may be removed without a variance. Trees within wetlands, if required to be removed based on 16-4-403.C.2.b.iii, may be removed without a wetland alteration permit. Mechanized vehicles shall not be used in wetlands or any buffers.

c. Other Requirements

i. Due to its significance to the Town of Hilton Head Island, the 64" DBH Live Oak tree located adjacent to St. James Baptist Church in the Beach City Road right of way shall not be pruned or removed but instead a light will be installed in the canopy of the tree to indicate to the operators of aircraft in the vicinity of the airport, the presence of this tree. Should the FAA reject lighting this tree, the provisions of Section 16-4-403.C.2.c.ii shall apply.

ii. Due to their significance to the Town of Hilton Head Island the specimen Live Oak trees in the 1:34 and 1:7 slopes for the Hilton Head Island Airport shall only be pruned one foot out of the slope.

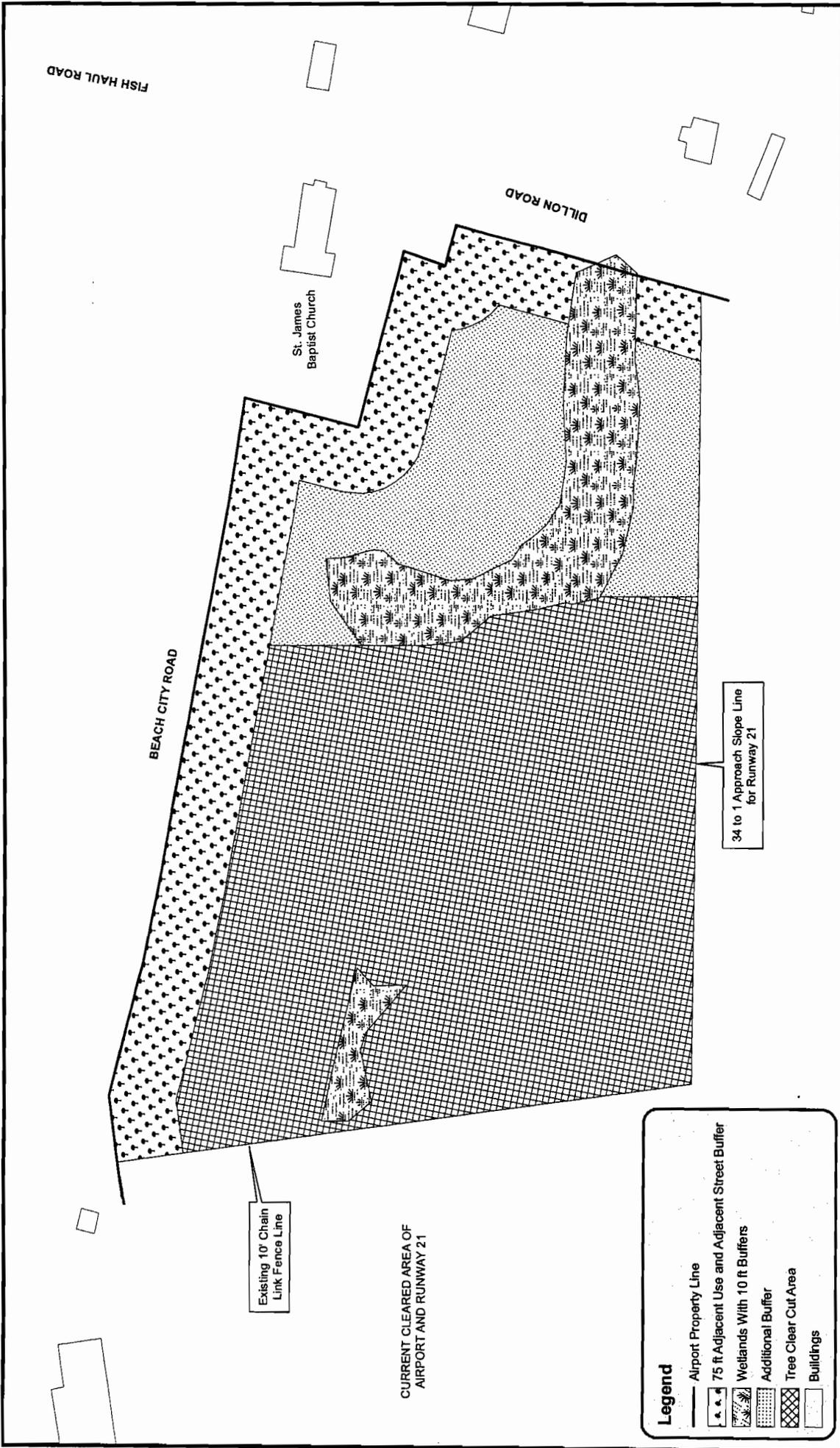
iii. The County and Town shall work together to jointly develop a plan to protect water quality consistent with storm water utility objectives. This plan shall include the planting of low growing native plants on the non-wetland, non-buffer portions of on airport property in the 1:34 slope. These plants help to maintain this area's ability to filter stormwater and biodegrade pollutants by maintaining the forest soils and their beneficial decomposers, keeping pore space in the soil to allow oxygen flow and providing suitable root systems as additional habitat for decomposers and to uptake pollutants. Examples of plants that can be used for these purposes are seaside juniper, native grasses, dwarf wax myrtle, saw palms, needle palms and some species of native blueberries. This plan shall be implemented by the County.

iv. All previous Hilton Head Island Airport projects related to non-development tree removal and mitigation on and off airport property must be completed prior to a permit being issued for additional tree removal.

v. For both on airport and off airport property the County and Town will work together to develop a landscape plan to meet mitigation requirements based on tree removal documented by the arborist. The mitigation plan shall indicate dense plantings in all buffer areas; however, mitigation will be required throughout the affected parcels off airport property. This

landscape plan shall be presented to the Town's DRB by the County for approval and then shall be implemented by the County. Once the landscape plan is approved, the County shall pay into the tree replacement fund for tree mitigation not accomplished by replanting.

D – E --- No Change.



Town of Hilton Head Island
 FIGURE 1 - Runway 21 Approach Path Tree Clear Cut, Wetland & Buffer Areas
 St. James Baptist Church Area



TOWN OF HILTON HEAD ISLAND
 1000 HILTON HEAD BLVD.
 HILTON HEAD ISLAND, SC 29928
 843-681-1234
 www.hiltonheadsc.gov

Exhibit M to Appeal Narrative (6 Pages)

THE TOWN OF HILTON HEAD ISLAND REGULAR TOWN COUNCIL MEETING

Date: Tuesday, May 4, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peebles, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, John Safay, Bill Harkins, Drew Laughlin, Bill Ferguson, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects and Facilities*; Susan Simmons, *Finance Director*; Nancy Gasen, *Director of Human Resources*; Steven Markiw, *Deputy Finance Director*; Teri Lewis, *LMO Official*; Randy Nicholson, *Comprehensive Planning Manager*; Shawn Colin, *Senior Planner*; Heather Colin, *Development Review Administrator*; Sally Krebs, *Natural Resources Administrator*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, Island Packet

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
 - a. **Foster Care Month**

Latasha Hardy from the Beaufort County Department of Social Services accepted the proclamation.
 - b. **Public Service Recognition Week**

Rob Neal, Mick Mayer, and Anne Green accepted the proclamation on behalf of Town Staff.
 - c. **Tennis Month**

Jacque Houck of Public Tennis, Inc. accepted the proclamation.
- 6) **APPROVAL OF MINUTES**
 - a. **Regular Town Council Meeting of April 20, 2010**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Town Manager reported on some items of interest.

b. School Capital Construction Fees – Paul Sommerville

Mr. Sommerville explained the County was working on a development agreement with a developer in Lady's Island for some time and were at an impasse regarding school capital construction fees. The developer has noted that when the original PUD was negotiated (circa 1997) with the county there was a school impact fee in effect. It was about \$1,000.00 per rooftop. They were requesting that they be allowed to pay that amount adjusted for inflation (which comes to about \$1500.00 per rooftop) for their by-right density and then pay \$6000.00 for all density above that. This would translate into paying about \$1500.00 per rooftop for about 200 units and \$6,000.00 for about 100 units. The developer claimed their numbers won't work if they have to pay \$6,000 for each unit.

At the development agreement level and at the committee level it was agreed to do this but since they are partners with Hilton Head Island and the other municipalities in the \$6,000.00 per rooftop fee they needed to know if Town Council would agree with this so it can move forward to the Beaufort County Council to finalize the agreement with the developer. There are two other old PUD's that also fall into this category. What Mr. Sommerville was requesting from Town Council was a yea or nay as to whether such an exception made good sense or violated the spirit or the letter of the County's school capital construction fee agreement.

The Mayor replied that since this was the first they had all heard about this issue, he would like to assign it to Committee for review and discussion. Mr. Sommerville understood and said he appreciated the opportunity to solicit their opinion on this matter.

8) REPORTS FROM MEMBERS OF COUNCIL

a. General Reports from Council

Mr. Laughlin said that at the last Planning and Development Standards Committee meeting, they considered a proposed LMO amendment relating to distance of separation between car lots in a particular area. Mr. Laughlin participated in that discussion but neglected to make sure the other members of the committee and the public was aware that his business partner at his firm has a client who would be directly affected by this particular issue. Ordinarily, it would be his practice to make sure that everybody understood this so they could take whatever comments he made with whatever "grain of salt" they deemed appropriate. Further, Mr. Laughlin invited anyone who had a question or would like more detailed information, to please feel free to contact him.

Mr. Safay recalled that the people who organized the annual Dove Street Christmas lighting event had formally announced that this year would be the last year they would be decorating their street. Another site further north in an area around Egret and Heron Streets had been suggested. But Mr. Safay said that the residents of that area have now presented him with a petition requesting that the Town refrain from organizing a Christmas lighting event in their neighborhood. Mr. Safay was anxious that the Council members be made aware of the residents' feelings about this suggestion. He was also optimistic that another location could be identified. The Mayor suggested that perhaps they could look at decorating the center of Coligny Circle.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

No report.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

The committee will begin interviewing applicants for boards and commissions.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

Staff presented a proposed change to the IL district along the Beach City Road/Mathews Drive corridor to the committee to be rezoned OCIL, Office/Light Commercial/Light Industrial District. This will be coming forward with a recommendation.

Next, they heard an LMO General Amendment to revise separation requirements between auto sales facilities and residential uses. The Committee recommended a 400 ft. separation between auto sales businesses and a 500 ft. distance between auto sales facilities and residential uses, which was a change from what the Planning Commission had recommended. Mr. Ferguson asked if this needed to return to the Planning Commission before coming forward to the full Council. Steve Riley said that staff would seek a recommendation but they would go ahead and put it on the agenda. Other proposed amendments to the LMO that received a favorable recommendation involved special events, open air sales, on-street parking and Dune Protection standards.

Lastly, the committee reviewed a proposal to allow the administrator to have more flexibility with allowing tree removal, removal of non-native invasive vegetation and pruning to provide more view corridors to the beach. This was also coming forward with a favorable recommendation.

The Mayor asked the Planning and Development Standards Committee to review the School Capital Construction Fee question posed by County Councilman Paul Sommerville at their next meeting.

e. Report of the Public Facilities Committee – John Safay, Chairman

The Committee heard a report from Scott Liggett, the Public Projects & Facilities Director/Town Engineer. Staff was recommending a Storm Water Utility (SWU) fee increase from \$83.23 to \$108.70. This would be coming up for discussion in the next few weeks during the Town Council budget discussions. No action was taken by the Public Facilities Committee.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

The committee heard a review of the First Quarter 2010 Crime Stats from Lieutenant Glenn Zanelotti, BCSO. The data demonstrating crimes against persons and property, from an historical perspective, has trended downward. The reporting system has been modified by the Sheriff's Department to be consistent with the uniform crime reporting program. This was also consistent with the FBI database. Mr. Harkins reported that he toured the newly opened Forensic Crime Laboratory and he was very impressed.

9) APPEARANCE BY CITIZENS

Diane Sala read a petition signed by residents of Palmetto Hall in opposition to any lengthening of the runway and to tree removal and trimming, except those permitted by FAA requirements.

Barbara Swift, of the League of Women Voters, expressed support for the Town's proposed Comprehensive Plan and encouraged Town Council to adopt it.

10) UNFINISHED BUSINESS

- a. Second Revised Reading of Proposed Ordinance No. 2009-39 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Section 403. These amendments include changes that provide for amendments to: Airport Overlay District Regulations and the approach path; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded.

Chester Williams, as the attorney for the St. James Baptist Church, voiced some procedural objections.

Ron Smetek, VP, Palmetto Hall POA, requested that Town Council not issue permits for clear-cutting trees at the airport until the Master Plan was completed, and a formal noise study was completed among other suggestions.

Mr. Safay said that he recalled they had approved a study to establish a base noise level reading so that it would be possible to compare it with the sound level after the trees were cut. He felt the previous speaker brought up a good point in that Town Council should have that determination before anything was done. Mr. Safay asked if that was their intent – either they already have that data or will obtain it before tree cutting commences?

Charles Cousins advised that staff has had several meetings with Palmetto Hall POA who was interested in conducting their own study. Staff did not think they would need to do a study if the Palmetto Hall POA was doing one. And they were waiting for a meeting the POA was planning to have with Beaufort County to discuss the County's potential to work with the POA to conduct that noise study. The permit issued to the County did not contain a condition that a noise study had to be completed first.

Mr. Safay asked about the status of the noise study that was conducted two years ago. Mr. Cousins responded that staff was in the process of reviewing it. Mr. Safay noted that he was on record as being in favor of trimming the trees but he also thought the Palmetto Hall residents had a valid point, as did the Mayor and Town Council when they said they wanted to ensure they could mitigate any increased noise but the problem was, if they didn't know what the base line noise level was today, then he didn't see how they could make a determination a year from now. Steve Riley added that the study done two years ago did not take noise level readings from the same locations that the Palmetto Hall POA wished to take readings. Additionally, the POA wanted the Town to do their new noise study during Heritage Week but because of the Town's required bidding process, it would not have been possible to hire someone to accomplish the study that quickly. Mr. Safay concluded that at this point, he could only hope that staff could work as expeditiously as possible with the POA to try to satisfy their justified concern.

Mr. Heitzke noted that the Master Plan contract required a noise study, but that it would not be done until later in the process, according to Mr. Paul Andres, the airport director.

Mr. Ferguson inquired what the rush to go in there was and clear cut all those trees; especially since neither the Master Plan nor the noise study were completed yet. He felt they should wait to act until after the Master Plan and the study were completed.

Mr. Harkins said that it was his recollection that when they discussed committing to a noise

study, it would not create any impediment time-wise to proceeding. Without any prejudice to the people of Palmetto Hall or the other areas, Mr. Harkins wondered about the advisability of relinquishing the responsibility that he thought the Town had had to initiate a noise study, if in fact the existing noise study was inadequate. He felt it was more advisable for the Town to retain a noise expert and rely on that data because he thought the objectivity would be clearer in the eyes of a lot of people. Further, if the people of Palmetto Hall wished to conduct their own noise study, they should have that right to do that also.

The Mayor asked if anyone recalled if the Council's decision to have a noise study was a separate vote from the vote on the proposed ordinance at second reading. Mr. Riley said that it was separate. Mayor Peebles said that they were dealing with the ordinance in front of them tonight; they were not dealing with a sound study right now.

The motion was approved by a vote of 6-1. Mr. Ferguson was opposed.

b. 5:00 P.M. PUBLIC HEARING – PROPOSED 2010 TOWN OF HILTON HEAD ISLAND COMPREHENSIVE PLAN.

The Mayor opened the public hearing at 5:02 p.m. and asked for comments from members of the audience. There were no formal comments made, so the Mayor closed the public hearing.

c. Second Reading of Proposed Ordinance No. 2010-08 to provide for the adoption of “The Town of Hilton Head Island 2010 Comprehensive Plan;” and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Safay seconded.

Mr. Ferguson was not sure about the housing element of the comprehensive plan. The Planning Commission suggested that Town pursue work-force housing along with affordable housing. He wanted to know if that was something the Town was going to pursue. Mayor Peebles said that everything in the comprehensive plan was open to be investigated, approached, or resolved, over time, during the life of the plan before it was updated again. So that will be up to the Town Council to determine over time what were their priorities. Mr. Ferguson asked that the record show he was requesting that these issues be discussed at the next Town Council retreat along with the sewer and dirt road issues.

Mayor Peebles thanked the Planning Commission members and Chairman Tom Crews and asked them to stand up to be recognized. He appreciated the hundreds of hours they had spent on the comprehensive plan. The Mayor also thanked Shawn Colin and the members of his team, including Scott Liggett and Randy Nicholson.

The motion was approved by a vote of 7-0.

11) NEW BUSINESS

a. First Reading of Proposed Ordinance No. 2010-14 to raise revenue and adopt a budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2011; to establish a property tax levy; to establish funds; to establish a policy for acquisition of rights of way and easements; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Williams seconded.

Steve Riley made a power point presentation to Town Council which provided an overview of the proposed budget for FY2011. He told them that the State has notified the Town that its

CPI/population factor is 0% for FY2011 and therefore, the millage rate would remain unchanged at 18.54. The Town Manager noted that in light of the downturn in the economy, Town staff took on the tough task of estimating revenues and expenditures for the coming fiscal year. The challenge was to maintain the highest quality of services for the citizenry of the community with a limited revenue stream that has been constricted by the current economic conditions. The Town was proposing a budget of \$74,211,150.00 for the coming fiscal year. Affiliated agency budgets have been reduced to 95% of the previous fiscal year's budget.

The motion was approved by a vote of 7-0.

12) EXECUTIVE SESSION

Mr. Riley said that he needed an executive session for contractual matters pertaining to a request from the Hilton Head PSD for a right-of-entry over town-owned land; legal advice pertaining to a proposed settlement with Malphrus Construction; and legal advice pertaining to a land acquisition contract with the S.C. DOT.

At 5:25 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mayor Peeples called the meeting back to order at 5:55 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Ferguson moved that the Town Council for the Town of Hilton Head Island adopt a resolution authorizing the Mayor and Town Manager to execute and deliver a right of entry to Hilton Head Public Service District for the purposes of taking soil samples on Town property located on Old Wild Horse Road and U.S. 278. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

13) ADJOURNMENT

At 5:56 p.m., Mr. Heitzke moved to adjourn. Mr. Safay seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved:

Thomas D. Peeples, Mayor

Exhibit N to Appeal Narrative (18 Pages)

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2010- 03

PROPOSED ORDINANCE NO.: 2009-39

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE, CHAPTER 4, SECTION 403. THESE AMENDMENTS, COMMONLY REFERRED TO AS THE *AIRPORT APPROACH PATH AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON NOVEMBER 1, 2009, INCLUDE CHANGES THAT PROVIDE FOR AMENDMENTS TO: AIRPORT OVERLAY DISTRICT REGULATIONS AND THE APPROACH PATH; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance (LMO); and

WHEREAS, from time to time Town Council recognizes that changes to the LMO are necessary to improve certain processes; and

WHEREAS, Goal 10A of the Transportation Element of the Comprehensive Plan states, "Continue to ensure that airport operations remain safe while providing air travel to Island residents and visitors."; and

WHEREAS, Town Council does not wish to present any impediments to the safe operations of the Hilton Head Island Airport; and

WHEREAS, LMO Section 16-4-401 states that the regulations governing use and height within the Airport Overlay District conform to the standards recommended by the Federal Aviation Administration's Advisory Circular, 150/5190-4A, "Model Zoning Ordinance to Limit Height of Objects Around Airports" (12-14-87); and

WHEREAS, Town Council has determined that developing certain requirements for tree pruning and removal in the Approach Path of the Hilton Head Island Airport is important to address these LMO regulations within the Airport Overlay District; and

WHEREAS, Town Council met on November 3rd, 2009 and voted 6-1 to adopt a resolution to consider amendments to LMO Chapter 4, Article IV [Airport Overlay District] at a public hearing on November 17, 2009; and

WHEREAS, Town Council held a public hearing on November 17th, 2009 at which time a presentation was made by staff and comments were received from Council and the public; and

WHEREAS, Town Council voted to ask staff to revise the amendments and take the revised amendments to the Public Safety Committee meeting for review; and

WHEREAS, the Public Safety Committee reviewed the revised amendments on December 7, 2009 and voted 2-1 to meld the two amendment versions together to create different regulations for on and off airport property in terms of tree pruning and removal; and

WHEREAS, Town Council reviewed the revised amendments on December 15, 2009 and voted to ask staff to further revise the proposed amendments to increase the buffers on airport property, allow the removal of all trees and vegetation on airport property in non-buffer and non-wetland areas and allow slow growing trees only to be pruned to a 5 year growth interval; and

WHEREAS, staff has made the requested changes to the proposed amendments; and

WHEREAS, Town Council has met the necessary requirements to invoke pending ordinance doctrine at first reading of the attached amendments; and

WHEREAS, Town Council voted on January 5, 2010 to adopt the proposed amendments to LMO Chapter 4, Article IV; and

WHEREAS, Town Council asked that staff look at ways to protect specimen live oaks in the Hilton Head Island Airport approach path prior to the Planning Commission public hearing related to these amendments; and

WHEREAS, the Planning Commission held a public hearing on February 3, 2010 on the amendments as adopted on January 5, 2010 by Town Council with two revisions as drafted by staff related to the protection of specimen live oaks within the approach path as directed by Town Council; and

WHEREAS, the Planning Commission, after consideration of the staff report and public comments voted 5-3 to recommend the amendments to Town Council with the following conditions:

- These amendments would pertain to the north end tree removal/mitigation project only;
- The larger specimen Live Oak tree located in front of St. James Baptist Church should be lit if possible, if the FAA rejects the lighting of this tree then this tree should be governed by the same treatment as the other specimen trees in the 1:34 slope; and
- The area to be clear cut would be stopped at the 50-foot line for the area to the east of the large wetland on the property; and

WHEREAS, Town Council reviewed the proposed amendments at their meeting on March 2, 2010 and voted 6-1 to approve the proposed amendments with the following changes:

- Retain the words 'a and' in the first sentence of 16-4-403.C.2 and delete the words 'for Runway 21 only'.
- Delete the words 'and vegetation' in the first line of 16-4-403.C.2.a.iv.
- Add the sentence, 'Should the FAA reject lighting this tree, the provisions of Section 16-4-403.C.2.c.ii shall apply.' to the end of Section 16-4.403.C.2.c.i; and

WHEREAS, Town Council reviewed the proposed amendments at their meeting on March 16, 2010 and voted 5-0 to approve the proposed amendments with the following change:

- Delete the words 'in the buffers and wetlands' in the second to last line of 16-4-403.C.2.a.v; and

WHEREAS, the suggested changes are reflected in the attached amendments; and

WHEREAS, Town Council now finds that, upon further review, it is in the public interest to adopt the attached changes to Chapter 4, Article IV [Airport Overlay District] of the Land Management Ordinance.

NOW, THEREFORE BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:

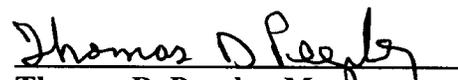
Section 1. Amendment. That the Land Management Ordinance of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

NOTE: New text is indicated by a double underline and deleted text is indicated by a ~~strike through~~.

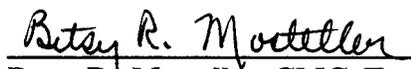
Section 2. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS 4 DAY OF MAY 2010.


Thomas D. Peeples, Mayor

ATTEST:


Betsy R. Mosteller, CMC, Town Clerk

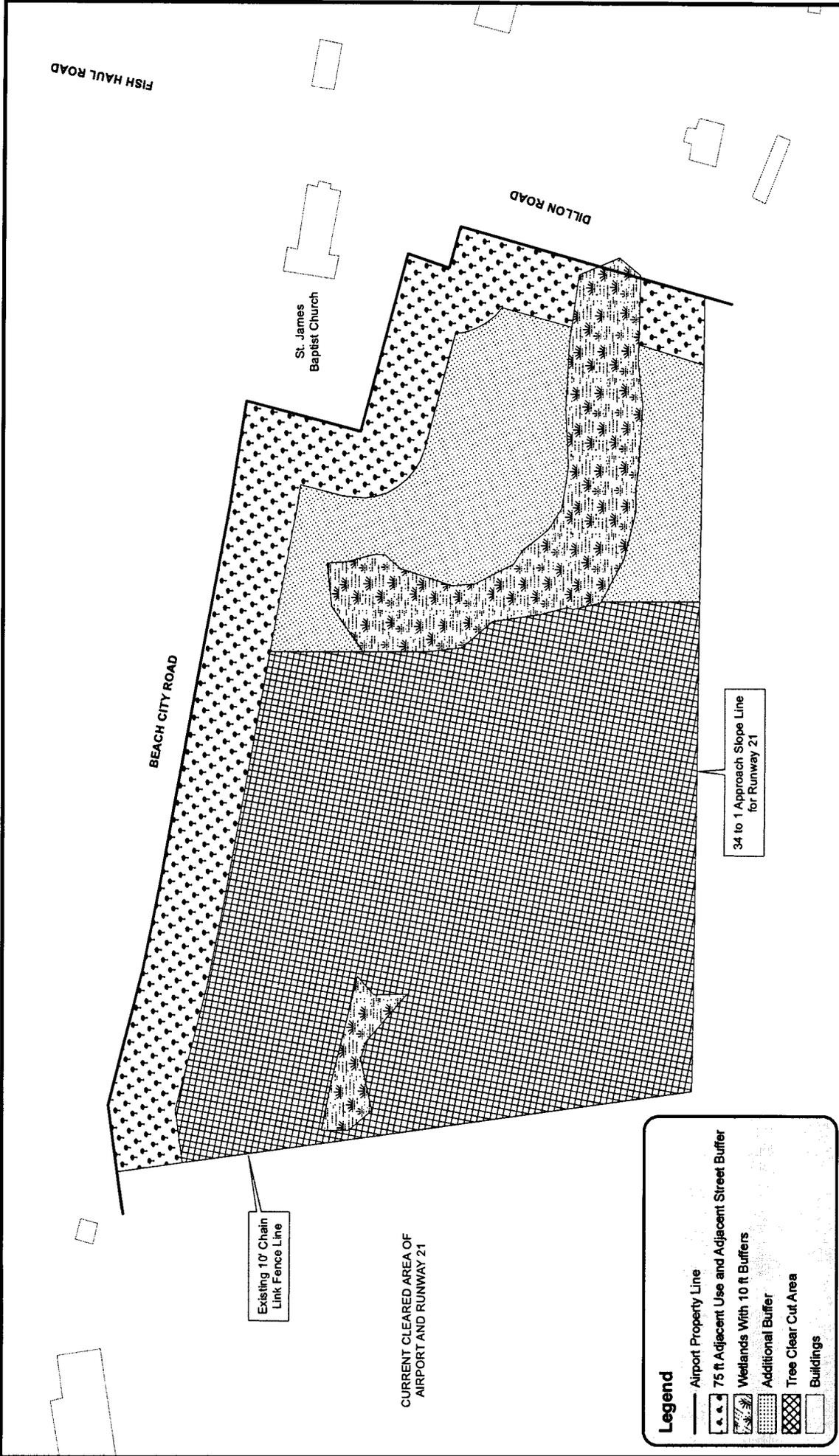
Public Hearing (Town Council):	November 17, 2009
First Reading:	December 15, 2009
Revised First Reading:	January 5, 2010
Public Hearing (Planning Commission):	February 3, 2010
Second Revised First Reading:	March 2, 2010
Second Reading:	March 16, 2010
Revised Second Reading:	May 4, 2010

Approved as to form:



Gregory M. Alford, Town Attorney

Introduced by Council Member: Bill Harkins



Town of Hilton Head Island
 FIGURE 1 - Runway 21 Approach Path Tree Clear Cut, Wetland & Buffer Areas
 St. James Baptist Church Area



Legend

- Airport Property Line
- 75 ft Adjacent Use and Adjacent Street Buffer
- Wetlands With 10 ft Buffers
- Additional Buffer
- Tree Clear Cut Area
- Buildings

TOWN OF HILTON HEAD ISLAND
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 Hilton Head Island, SC 29928
 843.681.1234
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CHAPTER 4. ZONING DISTRICT REGULATIONS

ARTICLE IV. AOD--AIRPORT OVERLAY DISTRICT

Sec. 16-4-401 – 16-4-402 --- No Change.

Sec. 16-4-403. Overlay District Regulations

A-B ---- No Change.

C. Approach Path. Within the Approach Path, no building, structure, utility pole or protrusion of any kind thereof shall be permitted to extend to a height measured from the mean elevation of the airport runway that exceeds the limits established by the methodology described herein.

1. The maximum height limits permitted under this Title of 75 feet shall be lowered as necessary to correspond with the limits established as follows:

a. Along both sides and ends of the airport primary surface area, at the extremity of the primary surface, the height restriction shall be zero feet. Moving outward from both sides of the runway, 250 feet from the runway center line, the height limit shall increase at the rate of 1 foot upward per 7 linear feet, or a ratio of 1:7.

b. Moving outward from both ends of the runway primary surface area, the height limit shall increase at the rate of 1 foot upward per 34 linear feet, or a ratio of 1:34. From both ends of the primary surface area, the area subject to these special height limitations shall fan outward beyond the area that would be covered if the height limitation from the sides of the primary surface area extended beyond the ends of the runway.

2. The following process has been established for tree pruning, topping and removal on and off airport property to address the height limits in 16-4-403.C.1.a and b. For purposes of this section, on airport property shall be defined as any Beaufort County owned property in the approach path used for the operations of the Hilton Head Island Airport and off airport property shall be defined as that property affected by the height limits in the approach path. The requirements listed below are the only requirements in this Title that the Hilton Head Island Airport must follow for tree pruning, topping and removal in the approach path.

a. On Airport Property

i. Submit only items 1 and 3 under Section 16-3-404.A, Tree Protection Approval Application. In lieu of the other items the applicant will submit a site plan and copies of all required permits from other agencies. The applicant may phase the tree pruning, topping and removal by parcel. The site plan must identify the parcels where trees will be pruned or removed and delineate any wetlands and wetland buffers within the subject parcels. Additionally, the Town of Hilton Head Island and Beaufort County will jointly fund and employ an arborist to document the size and species of each removed tree by parcel. This data will be used to prepare a mitigation plan and to calculate any required fee for the tree replacement fund.

ii. Prior to any tree pruning or removal the applicant shall flag all buffers and wetlands.

iii. In meeting the height requirements of 16-4-403.C.1.a and b, all adjacent use buffers and adjacent street buffers shall be a minimum of 75 feet in width. ~~An~~ As represented in Figure 1 additional buffers will also be required in the following areas:

- a. between the 75 foot buffer and the wetland buffer related to the wetland on airport property in closest proximity to St. James Baptist Church and between this wetland buffer and the 75 foot buffer near Beach City Road [~~See Figure 1~~], and
- b. between the wetland buffer related to the wetland on airport property in closest proximity to St. James Baptist Church and the 1:34 approach slope line.

iv. All trees ~~and vegetation~~ within the 1:34 slope, unless located within wetlands, wetland buffers or any buffers listed in 16-4-403.C.2.a.iii may be removed.

v. The arborist will determine which trees within the 1:7 slope, wetlands or any buffers have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1.a and b within five years [hardwoods] of the approval date or ten years [conifers] of the approval date based on the species and maturity of each tree; the arborist will then identify which of these trees can be pruned to be out of the approach path and to the five or ten year growth potential, respectively. For the purposes of this section, conifers are defined as cone-bearing trees with needle-like leaves, to include the cypresses as well as those trees listed in Category III of Section 16-6-407. Those trees that the arborist determines require such severe pruning that they can no longer support themselves may be removed. Those specimen trees and trees in any wetland buffer that cannot be pruned may be removed without a variance. Those trees in any wetland that cannot be pruned may be removed without a wetland alteration permit. Reasonable care shall be taken to protect the understory vegetation ~~in the buffers and wetlands~~. Mechanized vehicles shall not be used in wetlands or any buffers.

b. Off Airport Property

i. Submit only items 1 and 3 under Section 16-3-404.A, Tree Protection Approval Application. In lieu of the other items the applicant will submit a site plan, copies of all signed avigation easements or a copy of paperwork indicating that condemnation notices have been filed and copies of all required permits from other agencies. The applicant may phase the tree pruning and removal by parcel. The site plan must identify the parcels where trees will be pruned or removed and delineate any wetlands and wetland buffers within the subject parcels. Additionally, the Town of Hilton Head Island and Beaufort County will jointly fund and employ an arborist to document the size and species of each removed tree by parcel. This data will be used to prepare a mitigation plan for each parcel.

ii. Prior to any tree pruning or removal the applicant shall flag all wetlands and wetland buffers.

- iii. The arborist shall determine which trees have exceeded or have the potential to exceed the height requirements in 16-4-403.C.1. a and b within five years [hardwoods] of the approval date or within ten years [conifers] of the approval date based on the species and maturity of each tree; the arborist will then identify which of these trees can be pruned to be out of the approach path and to the five or ten year growth potential, respectively. Those trees that the arborist determines require such severe pruning that they can no longer support themselves may be removed. Reasonable care shall be taken to protect understory vegetation.
- iv. Specimen trees and trees within wetland buffers, if required to be removed based on 16-4-403.C.2.b.iii, may be removed without a variance. Trees within wetlands, if required to be removed based on 16-4-403.C.2.b.iii, may be removed without a wetland alteration permit. Mechanized vehicles shall not be used in wetlands or any buffers.

c. Other Requirements

- i. Due to its significance to the Town of Hilton Head Island, the 64" DBH Live Oak tree located adjacent to St. James Baptist Church in the Beach City Road right of way shall not be pruned or removed but instead a light will be installed in the canopy of the tree to indicate to the operators of aircraft in the vicinity of the airport, the presence of this tree. Should the FAA reject lighting this tree, the provisions of Section 16-4-403.C.2.c.ii shall apply.
- ii. Due to their significance to the Town of Hilton Head Island the specimen Live Oak trees in the 1:34 and 1:7 slopes for the Hilton Head Island Airport shall only be pruned one foot out of the slope.
- iii. The County and Town shall work together to jointly develop a plan to protect water quality consistent with storm water utility objectives. This plan shall include the planting of low growing native plants on the non-wetland, non-buffer portions of on airport property in the 1:34 slope. These plants help to maintain this area's ability to filter stormwater and biodegrade pollutants by maintaining the forest soils and their beneficial decomposers, keeping pore space in the soil to allow oxygen flow and providing suitable root systems as additional habitat for decomposers and to uptake pollutants. Examples of plants that can be used for these purposes are seaside juniper, native grasses, dwarf wax myrtle, saw palms, needle palms and some species of native blueberries. This plan shall be implemented by the County.
- iv. All previous Hilton Head Island Airport projects related to non-development tree removal and mitigation on and off airport property must be completed prior to a permit being issued for additional tree removal.
- v. For both on airport and off airport property the County and Town will work together to develop a landscape plan to meet mitigation requirements based on tree removal documented by the arborist. The mitigation plan shall indicate dense plantings in all buffer areas; however, mitigation will be required throughout the affected parcels off airport property. This

landscape plan shall be presented to the Town's DRB by the County for approval and then shall be implemented by the County. Once the landscape plan is approved, the County shall pay into the tree replacement fund for tree mitigation not accomplished by replanting.

D – E --- No Change.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, Town Manager
FROM: Teri B. Lewis, AICP, LMO Official *TBL*
CC: Charles Cousins, AICP, Director of Community Development
CC: Curtis Coltrane, Assistant Town Manager
DATE: April 21, 2010
SUBJECT: Amendments to the Airport Overlay District section of the Land Management Ordinance (LMO)

Staff recommends that Town Council consider proposed changes to the Airport Overlay District section of the LMO.

At the second reading of the airport amendments on March 16, 2010, Town Council voted 5-0 to approve the proposed amendments with the following changes:

- Delete the words 'in the buffers and wetlands' in the second to last line of 16-4-403.C.2.a.v.

Per Municipal Code Section 2-7-40.b another reading is required if an ordinance is amended on second reading; therefore since a change was made at second reading, these amendments require a revised second reading.

Attachment

Figure 1 – Runway 21 Approach Path Tree Clear Cut, Wetland & Buffer Areas



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, Town Manager
FROM: Teri B. Lewis, AICP, LMO Official
CC: Charles Cousins, AICP, Director of Community Development
CC: Curtis Coltrane, Assistant Town Manager
DATE: March 3, 2010
SUBJECT: Amendments to the Airport Overlay District section of the Land Management Ordinance (LMO)

Staff recommends that Town Council consider proposed changes to the Airport Overlay District section of the LMO.

At their meeting on March 2, 2010, Town Council voted 6-1 to approve the proposed amendments with the following changes:

- Retain the words 'a and' in the first sentence of 16-4-403.C.2 and delete the words 'for Runway 21 only'.
- Delete the words 'and vegetation' in the first line of 16-4-403.C.2.a.iv.
- Add the sentence, 'Should the FAA reject lighting this tree, the provisions of Section 16-4-403.C.2.c.ii shall apply.' to the end of Section 16-4-403.C.2.c.i.

Attachment

Figure 1 – Runway 21 Approach Path Tree Clear Cut, Wetland & Buffer Areas



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Town Council
FROM: Teri B. Lewis, AICP, LMO Official *TBL*
CC: Charles Cousins, AICP, Director of Community Development
DATE: February 12, 2010
SUBJECT: Amendments to the Airport Overlay District section of the Land Management Ordinance (LMO)

Recommendation: Staff recommends that Town Council consider proposed changes to the Airport Overlay District section of the LMO. The proposed amendments create additional flexibility for pruning and removing trees in the Hilton Head Island Airport approach path.

The Planning Commission voted 5-3 to recommend approval of the amendments with the following conditions which are reflected in the attached amendments:

- These amendments would pertain to the north end tree removal/mitigation project only;
- The larger specimen Live Oak tree located in front of St. James Baptist Church should be lit if possible, if the FAA rejects the lighting of this tree then this tree should be governed by the same treatment as the other specimen trees in the 1:34 slope; and
- The area to be clear cut would be stopped at the 50-foot line for the area to the east of the large wetland on the property.

Staff supports the second two conditions but recommends that Town Council not accept the first condition. The first condition will make these amendments applicable only to the 1:34 slope for Runway 21 which means that these amendments would not be applicable to the 1:7 slope for either runway or the 1:34 slope for Runway 3.

Summary: At their November 17, 2009 meeting, Town Council held a public hearing to receive comments on proposed changes to the Town's Land Management Ordinance (LMO) related to tree pruning and removal in the Hilton Head Island Airport approach path. The Mayor suggested that staff should revise the amendments to treat on and off airport property the same and to only prune or remove trees that are currently in the approach path or have the potential to be within ten years. The Mayor further suggested that the revised amendments be reviewed by the Public Safety Committee prior to returning to a regular Town Council meeting.

At the December 7, 2009 Public Safety Committee meeting, the committee voted 2-1 to meld the amendments considered at the November 17, 2009 Town Council meeting with the revised amendments considered at the Public Safety meeting. This motion came after a presentation by staff and discussion by Committee members, representatives of Hilton Head Island Airport, representatives of Beaufort County, the Mayor and the public. The recommendation from the committee was to once again separate the requirements for tree pruning and removal for on and off airport properties. Additionally staff was asked to add specific language regarding how the arborist will make the determination about how much each tree will grow within a ten year period; that language was added to the amendments.

Staff presented the revised amendments at the December 15, 2009 Town Council meeting. At that meeting staff was requested to make additional changes which included: increasing the buffers on airport property,

allowing the removal of all trees and vegetation on airport property in non-buffer and non-wetland areas and allowing slow growing trees only to be pruned to a 5 year growth interval. Staff was directed to bring back the revised amendments to the January 5, 2010 Town Council meeting.

Town Council adopted the revised amendments via pending ordinance doctrine on January 5, 2010. As part of the motion to approve, Town Council asked staff to look at ways that special protection could be provided to specimen live oak trees within the Hilton Head Island Approach path. Town Council also asked staff to review the concerns mentioned by Hilton Head Island Airport Director, Paul Andres.

As a result of Town Council's direction, staff added the following language to the amendments:

c. Other Requirements

- i. Due to its significance to the Town of Hilton Head Island, the 64" DBH Live Oak tree located adjacent to St. James Baptist Church in the Beach City Road right of way shall not be pruned or removed but instead a light will be installed in the canopy of the tree to indicate to the operators of aircraft in the vicinity of the airport, the presence of this tree.*
- ii. Due to their significance to the Town of Hilton Head Island the specimen Live Oak trees in the 1:34 and 1:7 slopes for the Hilton Head Island Airport shall only be pruned one foot out of the slope.*

The amendments adopted by Town Council on January 5, 2010 with the addition of the above language were considered by Planning Commission at a public hearing held on February 3, 2010. Following a presentation by staff, comments from Airport Director Paul Andres and numerous comments from the public, Planning Commission voted 5-3 to recommend approval of the proposed amendments with the changes listed in the 'Recommendation' section of this memo. This vote came after a lengthy discussion by Planning Commission members. The attached amendments and ordinance for your review reflect the motion made by the Planning Commission.

Background: For the past few years, the Hilton Head Island airport has pursued the pruning and removal of trees within the approach path. The trees on the south end of the approach path were pruned or removed starting in late 2007 and the mitigation project associated with that tree removal is nearly complete. Despite several meetings between County and Town representatives, the County has been unable to complete the steps necessary to apply for tree removal for the north end of the approach path. These amendments were drafted to make the process as easy as possible for the County to follow.

These amendments, with the changes recommended by Planning Commission, would do the following:

- Eliminate the need for a detailed tree survey
- Eliminate the need for the Town's Board of Zoning Appeals (BZA) to grant a variance to remove specimen trees
- Eliminate the need for the Town's BZA to grant a variance to remove trees in wetland buffers
- Eliminate the need for a wetland alteration permit from the Town
- Change the process to allow an arborist that is jointly hired by the Town and County to direct all tree work in the field
- Require a 75' street buffer and adjacent use buffer on airport property
- Require an additional buffer area
 - between the wetland and St. James Baptist Church and the wetland and Beach City Road (this is the wetland that is in closest proximity on airport property to the church)
 - between that same wetland and the 1:34 approach slope line
- Allow the County to remove all trees and vegetation in the 1:34 slope in non-buffer and non-wetland areas on their airport property to allow for easier maintenance and eliminate the need to address tree removal on their property in the future

- Allow trees both on and off airport property that have reached the height limits of the 1:34 approach path or have the potential to reach it within five years [slow growing] or ten years [fast growing] to be pruned or removed based on the recommendation of the arborist
- Require that the 64 DBH Live Oak tree adjacent to St. James Baptist Church be lit rather than pruned
- Require that all specimen Live Oak trees within the 1:34 slope only be pruned one foot out of the slope
- Require that the Town and County work together to develop a plan to protect water quality, this plan will include the planting of low growing native plants on the cleared portions of on airport property
- Require that the Town and County work together to develop a landscape mitigation plan
- Require that tree mitigation on airport property will occur in buffers only and tree mitigation off airport property will occur in both buffer and non-buffer areas
- Require that all previous projects be completed prior to a new project beginning
- Require that avigation easements must be in hand or the filing of condemnation papers must occur on any parcel where work is proposed

Please note that per the recommendation from the Planning Commission, the above changes would only be applicable to the 1:34 approach slope of Runway 21.

Attachments

- A. Figure 1 – Runway 21 Approach Path Clear Cut, Wetland & Buffer Areas
- B. Identifies all trees on airport property that are in the 34:1 slope or are within ten feet of this slope
- C. Identifies all trees off airport property that are in the 34:1 slope or are within ten feet of this slope
- D. Profile of St. James Baptist Church Specimen Live Oak trees and associated Elevations and Runway 21 Approach Slope(s)
- E. Timeline for Tree Approval Applications from the HHI Airport
- F. Minutes from February 3, 2010 Planning Commission Meeting
- G. Partial transcript from February 3, 2010 Planning Commission Meeting



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, AICP, *Town Manager*
FROM: Charles Cousins, AICP, *Director of Community Development* *CFC*
CC: Curtis Coltrane, *Assistant Town Manager*
DATE: December 23, 2009
SUBJECT: Proposed Ordinance 2009-39
Amendments to the Airport Overlay District

Recommendation: Staff recommends that Town Council consider proposed ordinance 2009-39. The proposed amendments create additional flexibility for pruning and removing trees in the Hilton Head Island Airport approach path. Town Council reviewed revised amendments at their December 15, 2009 meeting and determined that these amendments did not fully reflect the recommendation of the Public Safety Committee. As a result Town Council asked staff to further revise the amendments to clearly indicate the area on airport property that can be cleared of trees and vegetation and those that cannot be cleared. Additionally Town Council asked staff to add language allowing slow growing trees to be pruned to a five year, rather than ten year, growth standard. The attached amendments and figure reflect that request. Staff has also included proposed changes to the LMO to allow topping on both on and off airport properties. Town Council should consider invoking pending ordinance doctrine at the conclusion of the first reading of Proposed Ordinance 2009-39 with the exception of any revisions pertaining to topping trees.

Summary: At their November 17, 2009 meeting, Town Council held a public hearing to receive comments on proposed changes to the Town's Land Management Ordinance (LMO) related to tree pruning and removal in the Hilton Head Island Airport approach path. The Mayor suggested that staff should revise the amendments to treat on and off airport property the same and to only prune or remove trees that are currently in the approach path or have the potential to be within ten years.

At the December 7, 2009 Public Safety Committee meeting, the committee voted 2-1 to meld the amendments considered at the November 17, 2009 Town Council meeting with the revised amendments considered at the Public Safety meeting. This motion came after a presentation by staff and discussion by Committee members, representatives of Hilton Head Island Airport, representatives of Beaufort County, the Mayor and the public. The recommendation from the committee is to once again separate the requirements for tree pruning and removal for on and off airport properties. Additionally staff was asked to add specific language regarding how the arborist will make the determination about how much each tree will grow within a ten year period; that language was added to the amendments. Staff presented these amendments at the December 15, 2009 Town Council meeting. At that meeting staff was requested to make additional changes increasing the buffers on airport property, allowing the removal of all trees and vegetation on airport property in non-buffer and non-wetland areas and allowing slow growing trees only to be pruned to a 5 year growth interval. Staff was directed to bring back the revised amendments on January 5, 2010.

The Public Safety Committee also voted to ask staff to include flexibility on topping trees off airport property [the LMO already permits the topping of trees on airport property] in the set of amendments that gets reviewed at the January 20th, 2010 Planning Commission public hearing. The changes regarding topping cannot be adopted by pending ordinance since they were not considered as part of the public hearing on November 17th; however, the proposed revisions related to topping are included in the proposed amendments for Town Council review and first reading approval.

Airport Approach Path LMO Amendments

12/23/09

Page 2

Background: For the past few years, the Hilton Head Island airport has pursued the pruning and removal of trees within the approach path. The trees on the south end of the approach path were pruned or removed starting in late 2007 and the mitigation project associated with that tree removal is nearly complete. Despite several meetings between County and Town representatives, the County has been unable to complete the steps necessary to apply for tree removal for the north end of the approach path. These amendments were drafted to make the process as easy as possible for the County to follow.

These amendments would do the following:

- Eliminate the need for a detailed tree survey
- Eliminate the need for the Town's Board of Zoning Appeals (BZA) to grant a variance to remove specimen trees
- Eliminate the need for the Town's BZA to grant a variance to remove trees in wetland buffers
- Eliminate the need for a wetland alteration permit from the Town
- Change the process to allow an arborist that is jointly hired by the Town and County to direct all tree work in the field
- Require a 75' street buffer and adjacent use buffer on airport property and require an additional buffer area between the wetland and St. James Baptist Church and the wetland and Beach City Road (this is the wetland that is in closest proximity on airport property to the church)
- Allow the County to remove all trees and vegetation in the 1:34 slope in non-buffer and non-wetland areas on their airport property to allow for easier maintenance and eliminate the need to address tree removal on their property in the future
- Allow trees within the 1:7 slope both on and off airport property, and that have reached the height limits of the approach path or have the potential to reach it within five years [slow growing] or ten years [fast growing] to be pruned or removed based on the recommendation of the arborist
- Require that the Town and County work together to develop a plan to protect water quality, this plan will include the planting of low growing native plants on the cleared portions of on airport property
- Require that the Town and County work together to develop a landscape mitigation plan
- Require that tree mitigation on airport property will occur in buffers only and tree mitigation off airport property will occur in both buffer and non-buffer areas
- Require that all previous projects be completed prior to a new project beginning
- Require that avigation easements must be in hand or the filing of condemnation papers must occur on any parcel where work is proposed

At the November 17th Town Council meeting staff showed copies of the initial tree surveys provided by the County that illustrate which trees need to be addressed for the 34:1 approach slope at the north end of the runway. Town Council has requested copies of these surveys and they are provided as Attachments 1 and 2.

Attachments

1. Identifies all trees on airport property that are in the 34:1 slope or are within ten feet of this slope
2. Identifies all trees off airport property that are in the 34:1 slope or are within ten feet of this slope



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, AICP, *Town Manager*
FROM: Charles Cousins, AICP, *Director of Community Development* *CPC*
CC: Curtis Coltrane, *Assistant Town Manager*
DATE: December 7, 2009
SUBJECT: Proposed Ordinance 2009-39
Amendments to the Airport Overlay District

Recommendation: Staff recommends that Town Council consider proposed ordinance 2009-39. The proposed amendments create additional flexibility for pruning and removing trees in the Hilton Head Island Airport approach path. The Public Safety Committee voted 2-1 at their December 7, 2009 meeting to recommend that Town Council approve the attached amendments which represent a melding of the amendments originally considered by Town Council on November 17th and the amendments considered by the Public Safety Committee on December 7th. Additionally, Town Council should consider invoking pending ordinance doctrine at the conclusion of the first reading of Proposed Ordinance 2009-39.

Summary: At their November 17, 2009 meeting, Town Council held a public hearing to receive comments on proposed changes to the Town's Land Management Ordinance (LMO) related to tree pruning and removal in the Hilton Head Island Airport approach path. The Mayor suggested that staff should revise the amendments to treat on and off airport property the same and to only prune or remove trees that are currently in the approach path or have the potential to be within ten years.

At the December 7, 2009 Public Safety Committee meeting, the committee voted to meld the amendments considered at the November 17, 2009 Town Council meeting with the revised amendments considered at the Public Safety meeting. This motion came after a presentation by staff and discussion by Committee members, representatives of Hilton Head Island Airport, representatives of Beaufort County, the Mayor and the public. The recommendation from the committee is to once again separate the requirements for tree pruning and removal for on and off airport properties. Additionally staff was asked to add specific language regarding how the arborist will make the determination about how much each tree will grow within a ten year period; that language has been added to the amendments.

The Public Safety Committee also voted to ask staff to include flexibility on topping trees off airport property [the LMO already permits the topping of trees on airport property] in the set of amendments that gets reviewed at the January 6th, 2010 Planning Commission public hearing. The changes regarding topping cannot be adopted by pending ordinance as part of the attachments since they were not considered as part of the public hearing on November 17th. These changes will be reviewed by Town Council at the second reading of the airport amendments in early 2010.

Background: For the past few years, the Hilton Head Island airport has pursued the pruning and removal of trees within the approach path. The trees on the south end of the approach path were pruned or removed starting in late 2007 and the mitigation project associated with that tree removal is nearly complete. Despite several meetings between County and Town representatives, the County has been unable to complete the steps necessary to apply for tree removal for the north end of the approach path. These amendments were drafted to make the process as easy as possible for the County to follow.

Airport Approach Path LMO Amendments

12/7/09

Page 2

These amendments would do the following:

- Eliminate the need for a detailed tree survey
- Eliminate the need for the Town's Board of Zoning Appeals (BZA) to grant a variance to remove specimen trees
- Eliminate the need for the Town's BZA to grant a variance to remove trees in wetland buffers
- Eliminate the need for a wetland alteration permit from the Town
- Change the process to allow an arborist that is jointly hired by the Town and County to direct all tree work in the field
- Allow the County to remove all trees that could potentially grow into the 1:34 slope in non-buffer and non-wetland areas on their airport property to allow for easier maintenance and eliminate the need to address tree removal on their property in the future
- Allow trees, both off airport property and within the 1:7 slope both on and off airport property, and that have reached the height limits of the approach path or have the potential to reach it within ten years to be pruned or removed based on the recommendation of the arborist
- Require that the Town and County work together to develop a plan to protect water quality
- Require that the Town and County work together to develop a landscape mitigation plan
- Require that mitigation on airport property will occur in both buffers and non-buffer areas
- Require that all previous projects be completed prior to a new project beginning
- Require that avigation easements must be in hand or the filing of condemnation papers must occur on any parcel where work is proposed

At the November 17th Town Council meeting staff showed copies of the initial tree surveys provided by the County that illustrate which trees need to be addressed for the 34:1 approach slope at the north end of the runway. Town Council has requested copies of these surveys and they are provided as Attachments 1 and 2.

Attachments

1. Identifies all trees on airport property that are in the 34:1 slope or are within ten feet of this slope
2. Identifies all trees off airport property that are in the 34:1 slope or are within ten feet of this slope

**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
MASTER APPLICATION FORM**

Exhibit O to
Appeal Narrative
(3 Pages)

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4757 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS Hilton Head Island Airport

STREET ADDRESS 120 Beach City Road

ZONING DISTRICT IL OVERLAY DISTRICT AOD, COR

TAX DISTRICT _____ MAP 8 PARCEL (S) 85

LAND OWNER _____ APPLICANT _____ AGENT _____

Gary Kubic _____ Paul Andres _____ _____

NAME Beaufort County _____ Hilton Head Island Airport _____ _____

COMPANY _____ 120 Beach City Road _____ _____

MAILING ADDRESS PO Drawer 1228 _____ Hilton Head Island, SC 29926 _____ _____

Beaufort SC 29901 _____ 843 255 2950 _____ _____

CITY STATE ZIP _____ 843 255 2950 _____ _____

TELEPHONE _____ FAX _____

Bus License # _____ Bus License# _____

(For DRB, DR & SUB Only)

(For DRB, DR & SUB Only)

pandres@bcgov.net

EMAIL ADDRESS

EMAIL ADDRESS

EMAIL ADDRESS

*** A CHECK-IN CONFERENCE IS REQUIRED FOR THESE ITEMS. SEE LMO 16-3-104 FOR MORE INFORMATION. ATTACH THE NECESSARY SUPPLEMENTAL FORM(S).**

- | | |
|---|---|
| <input type="checkbox"/> APPEAL * | <input type="checkbox"/> ZONING MAP AMENDMENT * |
| <input type="checkbox"/> DEVELOPMENT PLAN REVIEW (DPR)* | <input type="checkbox"/> DESIGN REVIEW BOARD |
| <input type="checkbox"/> PLANNED UNIT DEVELOPMENT * | <input type="checkbox"/> PUBLIC PROJECT |
| <input type="checkbox"/> SPECIAL EXCEPTION * | <input type="checkbox"/> SIGN PERMIT |
| <input type="checkbox"/> SUBDIVISION * | <input checked="" type="checkbox"/> TREE APPROVAL |
| <input type="checkbox"/> VARIANCE * | <input type="checkbox"/> WETLAND ALTERATION |
| <input type="checkbox"/> ABBREVIATED DPR* | <input type="checkbox"/> EXPEDITED DPR* |

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?

YES NO

If so, a copy of the private covenants and/or restrictions must be submitted with this application.

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ON THIS APPLICATION AND ALL ADDITIONAL DOCUMENTATION IS TRUE, FACTUAL AND COMPLETE. I HEREBY AGREE TO ABIDE BY ALL CONDITIONS OF ANY APPROVALS GRANTED BY THE TOWN OF HILTON HEAD ISLAND. I UNDERSTAND THAT SUCH CONDITIONS SHALL APPLY TO THE SUBJECT PROPERTY ONLY AND ARE A RIGHT OR OBLIGATION TRANSFERABLE BY SALE.

Paul A. Andres _____ 8/18/2010 _____
SIGNATURE DATE

I UNDERSTAND THAT IN THE EVENT OF A STATE OF EMERGENCY, DUE TO A DISASTER, THOSE REVIEW & APPROVAL TIMES SET FORTH IN THE LAND MANAGEMENT ORDINANCE MAY BE SUSPENDED.

Paul A. Andres _____ 8/18/2010 _____
SIGNATURE DATE

FOR OFFICIAL USE ONLY

DATE RECEIVED: _____

ACCEPTED BY: _____

MASTER TRACKING NUMBER: _____

**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
TREE APPROVAL
SUPPLEMENTAL APPLICATION FORM**

THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT Hilton Head Island Airport – On Airport Tree Removal _____

THE FOLLOWING ITEMS MUST BE ATTACHED IN ORDER FOR THIS APPLICATION TO BE COMPLETE. SEE LMO SECTION 16-3-404 FOR MORE INFORMATION.

- NA TREE SURVEY
- SITE PLAN OR BUILDING OVERLAY
- NA GRADING & DRAINAGE PLANS
- NA COMPLETED TOWN APPROVED TREE TALLY SHEET
- WRITTEN NARRATIVE
- NA UTILITY LINES PLAN SHOWING TREES

* ALL DEVELOPMENTAL PLAN REVIEW, SUBDIVISION REVIEW AND PUBLIC PROJECT REVIEW APPLICATIONS MUST INCLUDE A JURISDICTIONAL WETLAND DETERMINATION LETTER FROM THE ARMY CORPS OF ENGINEERS.

NOTE: PLEASE READ TREE APPROVAL INFORMATION SHEET BEFORE FILLING OUT THIS APPLICATION.

FOR OFFICIAL USE ONLY

DATE RECEIVED: _____
ACCEPTED BY: _____

TIME: _____
MASTER TRACKING NUMBER: _____

NARRATIVE

Beaufort County proposes to prune and remove trees to accommodate the 1:34 slope for Runway 21 at the Hilton Head Island Airport. The pruning and removal will occur both on and off airport property. According to the survey data, it is estimated that approximately 1,400 trees will be affected on airport property and approximately 971 trees will be affected off airport property during this project. This project will be phased starting with on airport property first and then moving to off airport property second. This application is for on airport property only. A separate application will be submitted for off airport property. Since grading and grubbing are not contemplated as a part of this project, silt fence will not be required. Care will be taken to preserve understory vegetation during this project.

The wetlands, wetland buffers and other required buffers will be flagged and an inspection set with the Town of Hilton Head Island prior to the start of any tree pruning or removal. Mechanized vehicles shall not be allowed in any wetlands or required buffers during the tree pruning or removal process. Landscape mitigation plans will be prepared as a part of this project according to the approved schedule.

367 S.E.2d 160
 295 S.C. 67, 367 S.E.2d 160
 (Cite as: 295 S.C. 67, 367 S.E.2d 160)

Page 1

H

Supreme Court of South Carolina.
 SPANISH WELLS PROPERTY OWNERS
 ASSOCIATION, INC., Respondent,

v.

BOARD OF ADJUSTMENT OF the
 TOWN OF HILTON HEAD ISLAND,
 South Carolina, Petitioner.

In re CALIBOGUE SQUARE SUBDIVI-
 SION.

No. 22859.

Heard March 8, 1988.
 Decided April 11, 1988.

After town planning commission granted preliminary development permit, property owners association appealed the commission's action to the Board of Adjustment. The Board of Adjustment denied the appeal, and association appealed to the Court of Common Pleas. The Court of Common Pleas, Beaufort County, John H. Waller, Jr., J., granted Board of Adjustment's motion to dismiss, and association appealed. The Court of Appeals, [292 S.C. 542, 357 S.E.2d 487](#), reversed, and board sought review. The Supreme Court granted certiorari to review, and held that party, who was granted development permit, was necessary party to appeal of its permit.

Reversed.

West Headnotes

Zoning and Planning 414 ↪ 1602

[414](#) Zoning and Planning
[414X](#) Judicial Review or Relief
[414X\(B\)](#) Proceedings
[414k1600](#) Parties
[414k1602](#) k. Necessary and indispensable parties. [Most Cited Cases](#)

(Formerly 414k582.1, 414k582)

Party who was granted development permit was necessary party to appeal of its permit. ****161 *67** Curtis L. Coltrane and James M. Herring, of Herring, Meyer & Coltrane, P.A., Hilton Head Island, for petitioner.

Phillip C. Lyman, of Lyman & Howell, P.A., Hilton Head Island, for respondent.

***68 PER CURIAM:**

This case involves a development dispute on Hilton Head Island. This Court granted certiorari to review the decision of the Court of Appeals in *Spanish Wells Property Owners Ass'n v. Board of Adjustment*, [292 S.C. 542, 357 S.E.2d 487](#) (Ct.App.1987). We now reverse and remand.

The Hilton Head Island Planning Commission granted a preliminary development permit to Calibogue Yacht Properties, Inc. (Calibogue). Respondent Spanish Wells Property Owners Association, Inc. (Spanish Wells) objected to the issuance and appealed to petitioner Board of Adjustment (Board). The Board denied the appeal, and Spanish Wells appealed to the circuit court. The Board moved to dismiss under [Rule 12\(b\)\(7\), SCRCF](#), arguing that Calibogue was a necessary party to the appeal under [Rule 19, SCRCF](#). The circuit court granted the motion to dismiss, but allowed Spanish Wells fifteen days leave to join Calibogue. Spanish Wells instead appealed the order; the Court of Appeals reversed, holding that Calibogue was a proper, but not necessary, party to the appeal.

The sole question we address here is whether a permittee is a necessary party to an action to revoke a development permit.

Other jurisdictions are divided on whether the permittee or successful applicant is a necessary party to an appeal instituted by an aggrieved party. The emerging majority view is that the permittee is a necessary party. See 3 Rathkopf, *The Law of Zoning and Planning* § 42.05[3] (4th Ed.1980 & Supp.1987) (citing numerous cases espousing “ascending” view); [101A C.J.S. Zoning and Planning § 301 \(1979\)](#).

We find the reasoning behind the majority rule convincing. Designating the permittee a necessary party insures the most vitally interested party's participation in the appellate process. See [Cathcart-Maltby-Clearview Community Council v. Snohomish County, 96 Wash.2d 201, 634 P.2d 853 \(1981\)](#) (owner-applicant is party “most affected” and is necessary to any proceeding to invalidate his interest). Participation*69 by the most interested party serves judicial economy. Additionally, the majority rule insures that where a circuit court reverses a permit approval, the permittee will be bound because it is a party to the appeal. See [Hidden Lake Development Co. v. District Court, 183 Colo. 168, 515 P.2d 632 \(1973\)](#); accord [Board of Commissioners of Mesa County v. Carter, 193 Colo. 225, 564 P.2d 421 \(1977\)](#); [Lanaux v. City of New Orleans, 489 So.2d 329 \(La.Ct.App.1986\)](#); [Schroeder v. Burleigh County Board of Commissioners, 252 N.W.2d 893 \(N.D.1977\)](#).

For the foregoing reasons, we adopt the majority rule and hold that a development permittee is a necessary party to an appeal of its permit. The trial court therefore correctly ruled that Calibogue was a necessary party to Spanish Wells' appeal of the permit approval. Accordingly, the decision of the Court of Appeals to the contrary is **162 reversed and the circuit court's order

is affirmed.

REVERSED.

S.C.,1988.

Spanish Wells Property Owners Ass'n, Inc.
v. Board of Adjustment of Town of Hilton
Head Island
295 S.C. 67, 367 S.E.2d 160

END OF DOCUMENT

C

Court of Appeals of South Carolina.

KEANE/SHERRATT PARTNERSHIP, by James T.
KEANE and Peter E. Sherratt, its Partners, Respondents,
v.

Frank HODGE, Chief of Inspections for the Town of Hilton
Head Island; The Board of Adjustment of the Town of
Hilton Head Island, its Chairman and Members; and Carey
F. Smith, Town Manager, on behalf of the Town of Hilton
Head Island, Appellants.

No. 0970.

Heard April 20, 1987.

Decided June 1, 1987.

After board of adjustment of town denied partnership's request to erect sign on easement, partnership appealed. The Court of Common Pleas, Beaufort County, William T. Howell, J., reversed and town and its officials appealed. The Court of Appeals, Sanders, C.J., held that: (1) appellate court could not consider argument that permission granted in partnership to erect sign was easement in gross, where town acceded to position of partnership that permission to erect sign was easement appurtenant, and town did not except to same finding of trial court; (2) regardless of whether permission to erect sign was easement appurtenant or easement in gross, partnership was entitled to erect sign on easement for ingress and egress, which itself was easement appurtenant and thus part of property of partnership; and (3) construction of sign on easement was not prohibited by ordinance which proscribed placements of signs within street or highway right-of-way.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ↪743

[414](#) Zoning and Planning

[414X](#) Judicial Review or Relief

[414X\(E\)](#) Further Review

[414k743](#) k. Presentation and Reservation Below of Grounds of Review. [Most Cited Cases](#)

Appellate court could not consider whether property upon

which partnership sought to place sign was easement in gross or easement appurtenant to remainder of property, where at trial, town acceded to position of partnership that permission to erect sign was easement appurtenant, and town did not except to agreement of classification by circuit court.

[2] Zoning and Planning 414 ↪282

[414](#) Zoning and Planning

[414V](#) Construction, Operation and Effect

[414V\(C\)](#) Uses and Use Districts

[414V\(C\)1](#) In General

[414k278](#) Particular Terms and Uses

[414k282](#) k. Billboards; Signs. [Most Cited Cases](#)

Partnership was entitled to erect sign on easement for ingress and egress, under ordinance which disallowed off-premises signs, where easement for ingress and egress was easement appurtenant and thus was part of property of partnership, regardless of whether permission to erect sign was easement appurtenant or easement in gross.

[3] Zoning and Planning 414 ↪282

[414](#) Zoning and Planning

[414V](#) Construction, Operation and Effect

[414V\(C\)](#) Uses and Use Districts

[414V\(C\)1](#) In General

[414k278](#) Particular Terms and Uses

[414k282](#) k. Billboards; Signs. [Most Cited Cases](#)

Partnership was entitled to erect sign on private easement under ordinance which prohibited construction of sign on public streets and highway rights-of-way, where, in absence of definition of public streets and highway rights-of-way, appellate court strictly defined terms as not including private easement for ingress and egress.

****193 *460** James M. Herring, of Herring & Meyer, Hilton Head Island, for appellants.

Lewis J. Hammet, of Bethea, Jordan & Griffin, Hilton Head Island, for respondents.

***461** SANDERS, Chief Judge.

Appellants Frank Hodge, Chief of Inspections for the Town of Hilton Head Island, the Board of Adjustment of the Town of Hilton Head Island and Carey F. Smith, Town Manager,

on behalf of the Town of Hilton Head Island appeal from the order of the Circuit Court reversing the denial of a sign permit to respondents Keane/Sherratt Partnership by its partners James T. Keane and Peter E. Sherratt. We affirm.

Messrs. Keane and Sherratt purchased a 1.6 acre tract in what is now the Town of Hilton Head Island. The tract is 300 feet from Pope Avenue, which is the nearest main thoroughfare. As a part of the transaction, Messrs. Keane and Sherratt were conveyed an easement for ingress and egress from Pope Avenue and were granted permission to erect a sign visible from ****194** Pope Avenue within this easement. The 1.6 acre tract is depicted on a plat recorded in the Beaufort County Courthouse. The easement for ingress and egress is depicted as a .34 acre tract on the same plat.

Messrs. Keane and Sherratt conveyed the 1.6 acre tract and the easement to Keane/Sherratt Partnership.

The Town thereafter passed an ordinance prohibiting off-premises signs and signs within any street or highway right-of-way. The ordinance contains the following pertinent definitions:

(30) Off-premise sign: A sign identifying, advertising or directing the public to a business, merchandise, service, institution, residential area, entertainment, or activity which is located, sold, rented, based, produced, manufactured, furnished or taking place at a location other than on the property platted for the business where the sign is located....

(31) On-premise sign: Any sign, the content of which relates to use, occupancy, function, service, or product sold or manufactured on the property platted for the business where the sign is located.

...

(38) Premises: The real property (as a unit) which is affected either directly or indirectly by the contents of this article.

...

***462** (40) Public right-of-way line: The line where the property meets the public right-of-way at a public street or public waterway, provided that this definition shall not include unimproved alleys, easements, or other similar dedicated uses.

The Partnership applied to the Town for a permit to erect a

sign near Pope Avenue within the easement for ingress and egress. The application was accompanied by a letter from its lawyer stating that the Partnership had an easement appurtenant for "ingress and egress as well as signage." [FNI](#)

[FNI](#). We are unable to find any dictionary definition for the word "signage." This is unsurprising. Some words, like some lawsuits, are indigenous only to Hilton Head Island.

The sign inspector for the Town approved the application. Mr. Hodge, on behalf of the Town, appealed the decision of the sign inspector to the Board asking that the approval be overturned on the ground that the sign was an off-premises sign and thus prohibited by the ordinance.

The Board voted to revoke the permit because in its view an easement appurtenant is not a part of the property which it serves and therefore the sign is an off-premises sign.

The Partnership appealed to the Circuit Court, asserting that its easement constituted part of its property, thereby making the sign an on-premises sign, permissible under the ordinance. The Town maintained in its answer that the sign was an off-premises sign.

At the hearing before the Circuit Court, the Town additionally contended that the sign was prohibited under the part of the ordinance which prohibits signs within any street or highway right-of-way because it was to be erected within the easement for ingress and egress.

The Circuit Court found as a fact that the easement for ingress and egress and the permission to erect a sign within this easement are both easements appurtenant and concluded as a matter of law that easements appurtenant are a part of the property which they serve.

The Circuit Court rejected the contention of the Town that the sign is prohibited because it would be within a ***463** street or highway right-of-way, concluding that: (1) the sign was exempted from the prohibition against signs within a street or highway right-of-way because the ordinance exempted easements from the definition of public right-of-way line; and (2) the sign would not be within the right-of-way because the easement for ingress and egress is limited to the

part of the .34 acre tract which is paved.

Based on these findings and conclusions, the Circuit Court reversed the decision of the Board. This appeal followed.

The issues presented on appeal are: (1) whether the Circuit Court erred in ruling that the sign was not prohibited by the ****195** ordinance because it is not an off-premises sign; and (2) whether the Circuit Court erred in ruling that the sign is not prohibited by the ordinance because it is not within a street or highway right-of-way.

I

The Circuit Court ruled that the easement for ingress and egress and the permission to erect the sign are both easements appurtenant and as such are a part of the property of the Partnership.

An easement is either “appurtenant” or “in gross”. An appurtenant or appurtenant easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and be essentially necessary to the enjoyment thereof. It attaches to, and passes with, the dominant tenement as an appurtenance thereof. An easement, or right-of-way, in gross is a mere personal privilege to the owner of the land and incapable of transfer by him, and is not, therefore assignable or inheritable.

[Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 420, 143 S.E.2d 803, 806 \(1965\).](#)^{FN2}

^{FN2.} The concept of easements appurtenant and dominant estates being considered as one property can be traced to a decision in the first century A.D. by the Roman jurist Celsus. O. Holmes, *The Common Law* 383-84 (1881).

The Town does not argue that an easement appurtenant is not a part of the property which it serves and concedes in its brief that: “In general, we have no quarrel with the Trial ***464** Judge's recitation of authority to the effect that an easement appurtenant is considered to be a part of the dominant estate which the easement serves.”

^[1] Instead, the Town argues that the permission granted the Partnership to erect the sign is no more than a personal li-

cense or easement in gross. We cannot consider this argument. When the case was argued before the Circuit Court, the Town acceded to the position of the Partnership that the permission to erect the sign was an easement appurtenant. Moreover, the Town did not except to the finding of the Circuit Court that the permission to erect the sign was an easement appurtenant. In one of its exceptions, the Town actually referred to the permission to erect the sign as an easement appurtenant. “[W]e are free to reverse only when error is properly preserved in the trial court and properly presented by an exception on appeal.” [Bartlett v. Nationwide Mutual Fire Insurance Co., 290 S.C. 154, 156-57, 348 S.E.2d 530, 531 \(Ct.App.1986\).](#)

^[2] In any event, the argument of the Town as to the nature of the permission to erect the sign is beside the point. The easement for ingress and egress is clearly an easement appurtenant and thus a part of the property of the Partnership. The sign is to be erected within this easement. Therefore, the sign is not an off-premises sign regardless of whether the permission to erect it is an easement appurtenant or an easement in gross.

The Town also argues that the permission to erect the sign is in conflict with the part of the ordinance which prohibits off-premises signs. We reject this argument for the same reason. Since the sign is not an off-premises sign, the permission to erect the sign does not conflict with the part of the ordinance prohibiting off-premises signs.

II

The Town further argues that the order of the Circuit Court should be reversed because the sign is prohibited by the part of the ordinance which prohibits signs within any street or highway right-of-way. The Circuit Court rejected the same argument based on two conclusions: (1) that the sign was exempted from the prohibition against signs within a street or highway right-of-way because the ordinance ***465** exempted easements from the definition of public right-of-way line; and (2) that the sign would not be within the right-of-way because the easement for ingress and egress is limited to the part of the .34 acre tract which is paved. The Town excepted to the second conclusion of the Circuit Court, but not to the first. “An alternative ruling of a lower

****196** court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal.”

[Folkens v. Hunt, 290 S.C. 194, 205, 348 S.E.2d 839, 846 \(Ct.App.1986\).](#)

[3] We also reject this argument on its merits. “[O]rdinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose.” [Purdy v. Moise, 223 S.C. 298, 302, 75 S.E.2d 605, 607 \(1953\)](#). The ordinance in the instant case defines sixty different terms but does not include definitions of the terms street or highway right-of-way. We construe these terms strictly to mean only public streets and highway rights-of-way and not private easements such as the easement for ingress and egress in the instant case.

Local governments have wide latitude to enact ordinances regulating what people can do with their property, but they must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility. [FN3](#)

[FN3](#). Property rights have long been regarded as fundamental in Western civilization. G. Dietze, “Magna Carta and Property” 7 (1965) (“The Great Charter was thus in a large measure prompted by the desire to have property rights protected.”); J. Figgis, *The Political Aspect of Saint Augustine’s ‘City of God’* 99 (1921) (“The ‘reception’, as it is called, of Roman Law in 1495 in Germany may be taken as the date when the Middle Ages came to an end and the Roman ideas of property had conquered the West.”); J. Adams, “A Defence of the Constitutions of Government of the United States of America,” in 6 *The Works of John Adams* 9 (Charles F. Adams ed. 1851) (“The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”)

For these reasons, the order of the Circuit Court is

***466** AFFIRMED.

BELL and GOOLSBY, JJ., concur.

S.C.App.,1987.

Keane/Sherratt Partnership by Keane v. Hodge

292 S.C. 459, 357 S.E.2d 193

END OF DOCUMENT

C

Supreme Court of South Carolina.

PURDY

v.

MOISE et al.

No. 16734.

April 14, 1953.

Proceeding to determine validity of action of city council, which affirmed findings of Zoning Board, in denying permit to construct tourist court or motor court on certain property. The Common Pleas Court, Sumter County, J. Frank Eatmon, J., ordered city to issue permit and city council and Zoning Board appealed. The Supreme Court, Taylor, J., held that 'tourist court' or 'motor court' was a hotel within zoning ordinance allowing construction of hotels in residence districts.

Judgment affirmed.

West Headnotes

[1] Municipal Corporations 268 ↻120[268](#) Municipal Corporations[268IV](#) Proceedings of Council or Other Governing Body[268IV\(B\)](#) Ordinances and By-Laws in General[268k120](#) k. Construction and Operation. [Most Cited Cases](#)**Statutes 361 ↻239**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(B\)](#) Particular Classes of Statutes[361k239](#) k. Statutes in Derogation of Common Right and Common Law. [Most Cited Cases](#)

Statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed, and should not be impliedly extended to cases not clearly within their scope and purpose.

[2] Municipal Corporations 268 ↻120[268](#) Municipal Corporations[268IV](#) Proceedings of Council or Other Governing Body[268IV\(B\)](#) Ordinances and By-Laws in General[268k120](#) k. Construction and Operation. [Most Cited Cases](#)**Statutes 361 ↻188**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(A\)](#) General Rules of Construction[361k187](#) Meaning of Language[361k188](#) k. In General. [Most Cited Cases](#)**Statutes 361 ↻212.6**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(A\)](#) General Rules of Construction[361k212](#) Presumptions to Aid Construction[361k212.6](#) k. Words Used. [Most Cited Cases](#)

The generally accepted meaning of words used in statutes or ordinances are to be accepted unless such words have a well-recognized meaning in law in which instance they are presumed to have been used in that sense.

[3] Zoning and Planning 414 ↻281[414](#) Zoning and Planning[414V](#) Construction, Operation and Effect[414V\(C\)](#) Uses and Use Districts[414V\(C\)1](#) In General[414k278](#) Particular Terms and Uses[414k281](#) k. Boarding House; Hotel; Inn; Motel; Trailer Court. [Most Cited Cases](#)

(Formerly 268k601(22), 268k34)

Zoning and Planning 414 ↻391[414](#) Zoning and Planning[414VIII](#) Permits, Certificates and Approvals[414VIII\(A\)](#) In General[414k384](#) Nature of Particular Structures or Uses[414k391](#) k. Multiple Dwellings, Lodgings and Trailer Parks.[Most Cited Cases](#)

(Formerly 268k621.34)

The words "tourist court" or "motor court" are equivalent to word hotel within municipal zoning ordinance allowing

construction of hotels in residence districts and permit to construct tourist court should have been granted. Code 1942, § 787.

[4] Zoning and Planning 414 ↪ 461

[414](#) Zoning and Planning

[414VIII](#) Permits, Certificates and Approvals

[414VIII\(D\)](#) Effect of Determination; Revocation

[414k461](#) k. Effect of Determination in General. [Most Cited Cases](#)

(Formerly 268k621.55)

Where Board of Adjustment issued zoning permit for construction of motor court hotel in part of city which was similarly zoned as property on which plaintiff sought to build motor court but Board had refused plaintiff permit on property, Board had, therefore, construed ordinance as giving it power to grant permits for erection and operation of such places of business and this construction should not be overruled without cogent reason.

***605** C. M. Edmunds and Lee & Moise, Sumter, for appellants.

Nash & Wilson and M. M. Weinberg, Sumter, for respondent.

TAYLOR, Justice.

On July 11, 1949, the city of Sumter, South Carolina, adopted a zoning ordinance which was in full force and effect in 1952 when respondent applied for a permit to construct a 'tourist court' or 'motor court' on certain property affected by the following regulations as set forth in the ordinance:

'II (A) Use Regulations: In the residence district no buildings, or land shall be used and no building shall be hereafter erected or structurally altered, unless otherwise provided in this ordinance, except for the following uses:

'(1) One-family dwellings, two-family dwellings, multiple dwellings.

***606** '(2) Boarding houses, lodging houses, hotels not involving the conduct of any business other than for the sole convenience of the guests thereof.

'(3) Schools, institutions of an educational or philanthropic nature, public buildings.

'(4) Churches, convents.

'(5) Hospitals, clinics.

'(6) Museums, art galleries, libraries, parks, playgrounds not

conducted for profit.'

Hearings were duly held on the above application resulting in its refusal by the Zoning Board. Respondent then appealed to the city council which affirmed the findings of the Zoning Board. Respondent applied for and obtained from the Honorable J. Frank Eatmon, Judge of the Third Judicial Circuit, a writ of certiorari requiring appellants to produce the record before him at his Chambers in Kingstree, South Carolina. Thereafter, in his order dated August 30, 1952, Judge Eatmon reversed the ruling of the city council and Zoning Board and ordered the City of Sumter to issue the permit applied for. Due notice of intention to appeal to this Court followed.

On September 9, 1952, respondent served on appellants notice of a motion before Judge Eatmon to require the City of Sumter to file bond with the Clerk of Court for Sumter County in an amount not less than \$27,500. September 12, 1952, the Building Inspector of the City of Sumter, pursuant to the provisions of Section 787, Code of 1942, filed with the Clerk of Court for Sumter County the permit applied for to abide the judgment of this Court.

On September 16, 1952, Judge Eatmon issued an order enjoining the appellants from interfering with the construction of said building and requiring them to issue the permit applied for, unless within five days from the date of said order the appellants should file bond with the Clerk of Court for Sumter County in the amount of \$15,000 with good and sufficient surety, which bond should be conditioned to pay such costs as the respondent might sustain by reason of the appeal to this Court from the order of August 30, 1952, and also to pay any damages on account of loss in the event that said order should be sustained by this Court. Due notice of intention to appeal from this order was served on the respondent.

Upon due notice the appellants moved before the Honorable D. Gordon Baker, Chief Justice of the Supreme Court of South Carolina, for an order of supersedeas staying the order of Judge Eatmon of August 30, 1952, and also the order of Judge Eatmon of September 16, 1952. Chief Justice Baker refused the motion for a supersedeas, holding that appellants could issue the permit as ordered without losing and

without waiving any of their rights in the pending appeal.

Appellants now come to this Court upon exceptions which according to their brief present the following questions:

'1. Does the Respondent have the right to erect a tourist court or motor court in a residential zone under the Zoning Ordinance of the City of Sumter which permits the erection of hotels, multiple dwellings, lodging houses and boarding houses in said zones?

'2. Is there any evidence properly before the Court that the Zoning Board and City Council of the City of Sumter acted unreasonably, arbitrarily or capriciously in refusing an application for a variance from the terms of the Zoning Ordinance?

'3. Did the Trial Judge have the legal power and authority to issue his Order of September 16, 1952:

'(a) Requiring the filing of a bond in the amount of \$15,000.00 or the issuance of the permit applied for;

'(b) Fixing the Respondent's damages at \$15,000.00 or more;

'(c) Enjoining the Appellants from interfering with the Respondent?'

[1] In determining the first question, we are confronted with a dearth of decisions on the subject by reason of the fact that 'motor courts' or 'tourist courts' are relatively modern terms not found in the *607 law dictionaries but used to denominate such institutions or places of business herein described and exist by reason of the demand by the transient public, who utilize the automobile principally as a means of transportation and therefore have need for convenient, temporary lodging. We have, however, as our guide the well founded principle of law that statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. [Powell v. Greenwood County, 189 S.C. 463, 1 S.E.2d 624](#); [Babb v. Rose, 156 Kan. 587, 134 P.2d 655](#); [Luedke v. Carlson, S.D., 41 N.W.2d 552](#); [Modern Builders v. Building Inspector of City of Tulsa, Okl.Sup., 168 P.2d 883](#); [Monument Garage Corp. v. Levy, 266 N.Y. 339, 194 N.E. 848](#); [Landay v. Zoning Board of Baltimore, 173 Md. 460, 196 A. 293, 114 A.L.R. 984](#). It follows that

the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

The proposed structure in the instant case consists of twenty or more units, all contiguous, with the center unit being of two stories, having a lobby, registration desk, and safe for the keeping of valuables, all rooms to be furnished with furniture, baths, lights, linens and maid service and to be utilized to accommodate transient guests for compensation.

In [Pinkerton v. Woodward, 33 Cal. 557, 91 Am.Dec. 657](#), Justice Rose refers to the old rule that 'an inn is a house where a traveller is furnished with everything which he has occasion for while on his way' but points out that this definition is not an exact one in that inns are no longer required to serve wine or spirituous liquors or provide accommodations for the traveler's horse and later refers to an inn as 'a place open for accommodations of a transient nature.' And in [People v. Gold, Sp.Sess., 6 N.Y.S.2d 264, 265, 267](#), we find the following language: 'Thus the distinguishing characteristic of a hotel is the transitory nature of [the business]. This distinction is recognized in Bouvier's Law Dictionary.' And in the recent case of [Edwards v. City of Los Angeles, 48 Cal.App.2d 62, 119 P.2d 370, 373](#), citing [Lignot v. Jaekle, 72 N.J.Eq. 233, 65 A. 221](#), the following language was used: 'Structures placed side by side, or one in the rear of another, or in a circle or semi-circle, and frequently called inns or courts, do not lose their identity as hotels, rooming houses or apartments merely by bestowing upon them a different appellation, if in fact they are used to lodge the public.' This principle of law is further recognized in [Fay v. Improvement Co., 93 Cal. 253, 26 P. 1099, 28 P. 943](#), 16 L.R.A. 188, in a suit involving loss of guest's baggage by fire, the defendant pleaded that the law of innkeepers did not apply since the grounds were for the exclusive use of guests and enclosed by a fence with a locked gate. The Court held that the test was whether or not defendant held itself out to furnish accommodations for transients. And in [Crockett v. Troyk, Tex.Civ.App., 78 S.W.2d 1012, 1014](#), which was an action by an occupant of a tourist cabin against the owner thereof for injuries sustained through a gas explosion allegedly caused through the negligent use of a defective connection to a gas heater, we find the following:

'An innkeeper is not an insurer of his guest's personal safety, but his liability does extend to injuries received by the guest from being placed in an unsafe room, because such a matter is peculiarly within the knowledge, control, and power of the innkeeper. It is also settled, both at common law and by the decisions in this country, that, where a guest has proved use by an innkeeper of unsafe and defective gas fixtures and appliances, in consequence of which gas has escaped, causing injury to the guest, he has established a prima facie case of negligence against the innkeeper.'

'An 'inn' or 'hotel' has been properly defined as a public house of entertainment for all who choose to visit it. It is this publicly holding a place out as one where all transient persons, who may choose to come, will be received *608 as guests for compensation, that is made the principal distinction between a hotel and a boarding house, in many well-considered decisions, * * *.' [Holstein et ux. v. Phillips & Sims](#), 146 N.C. 366, 59 S.E. 1037, 1039, 14 L.R.A., N.S., 475. For further reference see Zoning, 58 Am.Jur. Secs. 62-63 and annotations thereunder.

[2][3] It is argued by appellants that under the generally accepted meaning of the words 'tourist court' and 'motor court' one could not have under consideration a hotel. The generally accepted meaning of words used in statutes or ordinances are to be accepted unless such words have a well recognized meaning in law; if so, they are presumed to have been used in that sense, [Coakley v. Tidewater Construction Corp., of Maryland](#), 180 S.C. 501, 186 S.E. 523. The word hotel does have a well recognized meaning in law which under its terms are such as to encompass that of 'tourist court' or 'motor court'. The services rendered to the public may be of wide variances but such variances are in the method or quality rather than the character of such services.

[4] The foregoing is in conformity with a later construction of this ordinance by the same 'Zoning Board' or Board of Adjustment as it is officially known. The record discloses that by authority of the same ordinance under consideration here, the Board of Adjustment issued on September 4, 1952, its permit for the construction of a 'motor-court hotel' in another part of the city which was similarly zoned as the prop-

erty heretofore referred to. The Board therefore construed the ordinance as giving it power to grant permits for the erection and operation of such places of business and this construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor. [Read Phosphate Co. v. S. C. Tax Commission](#), 169 S.C. 314, 168 S.E. 722.

We are of the opinion that respondent has the right to erect a 'tourist court' or 'motor court' on the property in question under the ordinance heretofore referred to. Hence the order of the Circuit Court as it relates thereto dated August 30, 1952, is affirmed.

It is unnecessary to pass upon the other questions presented by the exceptions since the permit has already been issued and no bond has been filed pursuant to the order of September 16, 1952.

FISHBURNE, STUKES, and OXNER, JJ., concur.

BAKER, C. J., not participating.

S.C. 1953

Purdy v. Moise

223 S.C. 298, 75 S.E.2d 605

END OF DOCUMENT

C

Bostic v. City of West Columbia, S.C. 1977.

Supreme Court of South Carolina.

Phyllis G. BOSTIC et al., Respondents,

v.

The CITY OF WEST COLUMBIA, South Carolina,
and the Zoning Board of Adjustment of the City of
West Columbia, South Carolina, Appellants.

No. 20399.

April 13, 1977.

City zoning board of adjustment refused to consider an application for a use variance from multifamily to light industrial zoning on the ground that the relief requested was beyond the board's authority. The applicants for the variance appealed, and the Common Pleas Court, Lexington County, John Grimball, J., found that the board had jurisdiction to consider the use variance and remanded for a determination of the application on its merits. The city appealed, and the Supreme Court, Ness, J., held that: (1) under the legislative enabling authority, the city zoning board had the power to authorize variances from the terms of any ordinance, provided that such variance would not be contrary to the public interest and (2) the city zoning ordinance which purported to prohibit the board from granting use variances was void to the extent that it was repugnant to state law.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ↪ 484

414 Zoning and Planning

414IX Variances or Exceptions

414IX(A) In General

414k484 k. Power to Grant in General.

Most Cited Cases

Under statutory enabling authority, city zoning board of adjustment had power to authorize variances from the terms of any ordinance, provided such variance would not be contrary to the public interest; therefore, city zoning board of adjustment had authority to consider application for use variances. Code 1962, § 47-1009.

[2] Zoning and Planning 414 ↪ 14

414 Zoning and Planning

414I In General

414k14 k. Concurrent and Conflicting Regula-

tions. **Most Cited Cases**

Zoning ordinances may not override state law and policy.

[3] Administrative Law and Procedure 15A ↪ 305

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(A) In General

15Ak303 Powers in General

15Ak305 k. Statutory Basis and Limitation.

Most Cited Cases

Enabling legislation is not merely precatory but prescribes the parameters of conferred authority. Code 1962, § 47-1009.

[4] Zoning and Planning 414 ↪ 14

414 Zoning and Planning

414I In General

414k14 k. Concurrent and Conflicting Regula-

tions. **Most Cited Cases**

City zoning ordinance which prohibited city zoning board of adjustment from granting use variances was void to the extent that it was repugnant to the general law as expressed in relevant enabling authority pursuant to which zoning boards of adjustment had power to authorize variances from the terms of "any ordinance" provided that such variances would not be contrary to the public interest. Code 1962, § 47-1009.

***387** Jack R. Callison, West Columbia, and James Randall Davis, of Long, Barfield, Bouknight, Nicholson & Davis, Lexington, for appellants.

***388** Melton Kligman, of Kligman & Fleming, and Ben T. DeBerry, of Rentz & DeBerry, Columbia; and David C. Bryan, Jr., of Bryan, Crosby & Bates, West Columbia, for respondents.

NESS, Justice:

Respondents applied to the Appellant Zoning Board

of Adjustment for the City of West Columbia requesting a use variance from multi-family zoning to light industrial zoning. The Board refused to consider the application on the grounds that the relief requested was beyond the Board's authority. *389 The trial court found the Board had jurisdiction to consider the use variance and remanded the case for a determination of the application on its merits. We affirm.

Pursuant to statutory enabling authority, the City of West Columbia adopted a Zoning Ordinance and created the Zoning Board of Adjustment. The pertinent portion of Section 13-2.36 of the City's Zoning Ordinance relied on by the Board to refuse to hear the application provides:

“With respect to uses of land, buildings and other structures, this ordinance is declared to be a definition of the public interest by City Council, and the spirit of this ordinance will not be observed by any variance which permits a use not generally or by special exception permitted in the district involved or any use expressly or by implication prohibited by the terms of this ordinance in said district. Therefore, under no circumstances shall the Board of Adjustment grant a variance to permit a use not generally or by specific exception permitted in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.”

The legislative enabling authority includes Section 47-1009, Code of Laws, 1962, which provides in part:

“General powers of board. The board of adjustment shall have the following powers:

**226 “(3) To authorize upon appeal in specific cases such variance from the terms of any ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance will result in unnecessary hardship and so that the spirit of such ordinance shall be observed and substantial justice done.” (Emphasis added).

[\[1\]](#)[\[2\]](#)[\[3\]](#)[\[4\]](#) The enabling design requires the Board's consideration of a variance from the terms of “any ordinance” provided the variance does not impede pub-

lic interest. *390 By defining “public interest” the City's Zoning Ordinance attempts to circumvent the legislative directives by divesting the Board of its statutory discretion. Zoning ordinances may not override state law and policy; enabling legislation is not merely precatory, but prescribes the parameters of conferred authority. [Holler v. Ellisor, 259 S.C. 283, 191 S.E.2d 509 \(1972\)](#); 101 C.J.S. Zoning s 17 p. 713. The Zoning Ordinance is void to the extent that it is repugnant to the general law. [Holler v. Ellisor, supra](#) ; [Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 \(1928\)](#).

We agree with the trial court that the Zoning Board of Adjustment does have the authority to determine use variances pursuant to Section 47-1009, Code of Laws, 1962. We, therefore, affirm the trial court remanding the case to the Board for a hearing on the merits of the application.

AFFIRMED.

LEWIS, C. J., and LITTLEJOHN, RHODES and GREGORY, JJ., concur.
S.C. 1977.

Bostic v. City of West Columbia
268 S.C. 386, 234 S.E.2d 224

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690 S.E.2d 777
 387 S.C. 67, 690 S.E.2d 777
 (Cite as: 387 S.C. 67, 690 S.E.2d 777)

Page 1

H

Supreme Court of South Carolina.
 G. Dana SINKLER and Anchorage Plantation Home Owners Association, Petitioners,
 v.
 COUNTY OF CHARLESTON, Charleston County Council and Theodora Walpole and John D. Walpole, Respondents.
No. 26787.

Heard Jan. 21, 2010.
 Decided March 15, 2010.

Background: Neighbors brought action against county, county council, and landowners, challenging an ordinance rezoning land from agricultural to a planned development district. The Circuit Court, Charleston County, [R. Markley Dennis, Jr., J.](#), held the ordinance invalid. On appeal, the Court of Appeals reversed. Neighbors petitioned for certiorari review.

Holding: The Supreme Court, [Beatty, J.](#), held that ordinance did not meet the parameters for a planned development and thus violated the Local Government Comprehensive Planning Enabling Act of 1994.

Reversed.

West Headnotes

[1] Zoning and Planning 414 ↪1167

414 Zoning and Planning
 414III Modification or Amendment; Rezoning
 414III(A) In General
 414k1158 Particular Uses or Restrictions
 414k1167 k. Agricultural uses, woodlands and rural zoning. [Most Cited](#)

Cases

Rezoning ordinance which changed land from agricultural to planned development violated the Local Government Comprehensive Planning Enabling Act of 1994, as ordinance, which only reduced minimum lot size, did not meet the parameters for a planned development, and thus ordinance was invalid; ordinance did not provide for housing of different types and densities and compatible commercial use, create a new mixed use development, or plan for future diversity of development. [Code 1976, §§ 6-29-720\(C\)\(4\), 6-29-740.](#)

[2] Zoning and Planning 414 ↪1262

414 Zoning and Planning
 414V Construction, Operation, and Effect
 414V(C) Uses and Use Districts
 414V(C)1 In General
 414k1262 k. Maps, plats, and plans; subdivision regulations. [Most Cited Cases](#)
 The essence of a planned development under the Local Government Comprehensive Planning Enabling Act of 1994 is that the property will provide for mixed use. [Code 1976, §§ 6-29-720\(C\)\(4\), 6-29-740.](#)

[3] Zoning and Planning 414 ↪1159

414 Zoning and Planning
 414III Modification or Amendment; Rezoning
 414III(A) In General
 414k1158 Particular Uses or Restrictions
 414k1159 k. In general. [Most Cited Cases](#)
 County council was required to meet the parameters of a planned development under the Local Government Comprehensive

Planning Enabling Act of 1994 once it chose to employ that process for rezoning landowners' property and thus rezoning ordinance which failed to meet those parameters was invalid even if council could have used another technique to reduce minimum lot size of landowners' property. Code 1976, § 6-29-720(C).

****777** G. Trenholm Walker, Francis M. Ervin, and Sara E. DeWolf, all of Pratt-Thomas & Walker, of Charleston, for Petitioners.

County Attorney Joseph Dawson, III, Deputy County Attorney Bernard E. Ferrara, Jr., Assistant County Attorney Austin A. Bruner, all of North Charleston; and Gerald M. Finkel, of Finkel Law Firm, of Charleston, for Respondents.

Justice BEATTY.

69** G. Dana Sinkler and Anchorage Plantation Home Owners Association (collectively, Petitioners) brought this action against the County of Charleston, Charleston County Council, and Theodora and John D. Walpole (collectively, Respondents) challenging an ordinance rezoning the Walpoles' property, Anchorage Plantation, from agricultural to a Planned Development (PD) district. Upon review, the circuit court ruled the ordinance was invalid and that the property should retain its agricultural classification. The Court of Appeals reversed, holding the rezoning *778** to a PD was proper. *Sinkler v. County of Charleston*, Op. No.2008-UP-297 (S.C. Ct.App. filed June 5, 2008). We granted a petition for a writ of certiorari to review the decision of the Court of Appeals and now reverse.

I. FACTS

A. Background of Dispute.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the Enabling Act) granted local governments the authority to create planning commissions to implement comprehensive plans governing development in their communities. ^{FN1} In 1999, Charleston County Council enacted the County of Charleston Comprehensive Plan.

FN1. See S.C.Code Ann. § 6-29-320 (2004) (“The county council of each county may create a county planning commission.”); *id.* § 6-29-510(A) (stating a local planning commission shall develop and maintain a comprehensive plan to guide development in its area of jurisdiction).

The Comprehensive Plan designated Wadmalaw Island part of the Agricultural Area of Charleston County, where the preferred land uses included farming and resource management, along with “preservation of the rural community character.” The Comprehensive Plan further provided that development in areas classified as Agricultural Preservation within the Agricultural Area “should primarily support the needs of ***70** the farming industry, secondarily allowing for compatible residential development.”

The Enabling Act permits the governing body of a county to adopt zoning ordinances to help implement a comprehensive plan. S.C.Code Ann. § 6-29-720 (2004 & Supp.2009). Charleston County Council enacted the Charleston County Zoning and Land Development Regulations (ZLDR) in 2001 to implement its Comprehensive Plan.

Petitioners separately own properties on Wadmalaw Island that are adjacent to a tract of land (roughly 750 acres) owned by the Walpoles. The Walpoles' property was used as a tomato farm and was zoned AG-15, an Agricultural Preservation classification.

Under the ZLDR, the AG-15 classification allows a “maximum density” of one dwelling unit per fifteen acres on interior land, with a “minimum lot area” of three acres. ZLDR § 4.4.3(A). For land within one thousand feet of the OCRM ^{FN2} critical line, the AG-15 zoning classification allows a maximum density of one dwelling unit for every three acres. ZLDR § 4.4.3(B). The configuration of the Walpoles' land limited it to a maximum of 107 dwellings under the AG-15 zoning restrictions.

FN2. OCRM refers to the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control.

On June 20, 2003, the Walpoles applied to have their property rezoned to a PD district. Charleston County Council adopted an ordinance rezoning the Walpoles' property from AG-15 to a PD district on February 17, 2004. Under the ordinance, the minimum lot size was reduced to one acre, although the allowed uses remained the same as those under the AG-15 classification. The maximum number of dwellings on the property remained unchanged at 107.

Petitioners brought this declaratory judgment action in 2004, asserting the ordinance rezoning the Walpoles' property was invalid because Charleston County Council exceeded its authority and violated provi-

sions of the Enabling Act and the ZLDR in approving the change.

***71 B. Circuit Court's Ruling.**

The circuit court found the ordinance rezoning the Walpoles' property from AG-15 to a PD district was invalid and that the property remained zoned AG-15. The circuit court concluded Charleston County Council exceeded its authority and violated the provisions of both (1) the Enabling Act and (2) the ZLDR.

(1) The Enabling Act. The circuit court first found the ordinance did not meet the essential standards for establishing a PD as provided by [sections 6-29-720](#) and -740 of the Enabling Act.

****779** The circuit court stated the ordinance violated [section 6-29-720](#), governing zoning methods, because the proposed PD plan that was approved failed to meet the statute's definition of a PD. [Section 6-29-720](#) defines a PD as follows:

[A] development project comprised of *housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments*. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development[.]

[S.C.Code Ann. § 6-29-720\(C\)\(4\)](#) (Supp.2009) (emphasis added).

The circuit court noted the development in the proposed area is residential, the same type of development that is already authorized under its current zoning of AG-15. The court stated, “Distilling the PD Ordinance to its essence, its primary effect was

simply to reduce the minimum lot size for the up-to-107 residential dwelling units.”

The court found the PD plan submitted to Charleston County does not call for “housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments,” nor is it “characterized by a unified site design for a mixed use development” as required by [section 6-29-720\(C\)\(4\)](#).

Respondents had alternatively argued that County Council could implement its own zoning districts and did not have to meet the requirements of a PD district provided in the Enabling Act, based on the portion of [section 6-29-720\(C\)](#) that reads as follows:

***72** The zoning ordinance may utilize the following [listing cluster developments, floating zones, performance zoning, and planned development districts, among others] or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it[.]

[S.C.Code Ann. § 6-29-720\(C\)](#).

The circuit court observed that, “[w]hile the County is correct that the legislature did not confine it to the categories of zoning districts listed in [S.C.Code Ann. § 6-29-720\(C\)](#), in this instance the County actually employed one of the enabling statute’s specifically defined categories, ‘planned development district,’ and specifically referred to the Enabling Act as the basis for its authority in § 3.5.1, ZLDR.” Accordingly, the circuit court concluded

the ordinance was intended to implement a PD as described in [section 6-29-720\(C\)](#) rather than “some new, alternative ... zoning category.”

The circuit court further found the ordinance violated [section 6-29-740](#) of the Enabling Act, entitled “Planned development districts,” which allows variances from lot size, use, and density requirements contained in other ordinances and regulations through establishment of a PD. [Section 6-29-740](#) provides in relevant part:

In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that *will result in improved design, character, and quality of new mixed use developments* and preserve natural and scenic features of open spaces, the local governing authority may provide for the establishment of planned development districts as amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning district map for the property. *The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts.*

[S.C.Code Ann. § 6-29-740 \(2004\)](#) (emphasis added).

The court found that, in comparison to the AG-15 zoning, the proposed PD plan simply reduces the required lot size ***73** from three acres to one acre, but it includes “no elements that result in improved design, character, and quality of a new mixed use development.” The court stated the proposed plan ****780** calls for up to 107 residential dwellings, but the AG-15 zoning already allows this residential use, so

“the proposed plan cannot ... be considered to be a ‘new mixed use development.’ ” The court also noted the proposed plan does not specifically identify any particular land as open space or impose any requirement that the owners preserve open space; moreover, “the proposed plan does not result in more open space than AG-15 zoning, since each would allow up to 107 single family houses.”

(2) **The ZLDR.** As an additional ground for invalidating the ordinance, the circuit court found the ordinance violated the ZLDR. The court noted the ZLDR sections defining the AG-10 and AG-8 zoning districts include the provision that an owner may reach maximum density only through the PD process, citing § 4.5.3(B), ZLDR (for AG-10) and § 4.6.3(B), ZLDR (for AG-8). “On the other hand, the ZLDR sections governing the more restrictive AG-25 and AG-15 districts have no parallel provision allowing any adjustment to any of the standards through a planned development district or the ‘Planned Development process.’ ” The court concluded County Council did not intend for a property owner to be able to reduce the residential standards of property zoned AG-15 through a PD process and that the ZLDR do not allow the use of a PD to modify the restrictions of the AG-15 district for residential development.

C. Review by the Court of Appeals.

The Court of Appeals reversed, finding the Walpoles' property was properly rezoned to a PD based on “the deference provided local governing bodies and the flexibility created through the Enabling Act.” *Sinkler v. County of Charleston*, Op. No.2008-UP-297 (S.C. Ct.App. filed June 5, 2008), slip op. at 2.

The Court of Appeals found “the circuit court exceeded the applicable scope of review because a reviewing court should practice judicial restraint and not supplant its judgment for the local governing authority's judgment.” *Id.* (citing *74*Bob Jones Univ. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963)). In addition, citing *Lenardis v. City of Greenville*, 316 S.C. 471, 472, 450 S.E.2d 597, 598 (Ct.App.1994), the Court of Appeals stated the appellate court “must leave [the disputed] decision undisturbed if the propriety of that decision is even ‘fairly debatable.’ ” *Id.*

As to the Enabling Act, the Court of Appeals cited the prefatory language in [section 6-29-720\(C\)](#), which states “[t]he zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. *Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it.*” *Id.* at 3 (quoting [S.C.Code Ann. § 6-29-720\(C\)](#)) (alteration and emphasis in original). The court stated “Sinkler [Petitioners] [had] argued the County Council did not avail itself of this curative language because County Council utilized one of the definitions,” but that it “need not explore Sinkler's argument as this court defers to the County Council's judgment regarding the plan.” *Id.* “In the ordinance, the County Council found that the plan met Article 3.5 of the ZLDR...” *Id.*

The Court of Appeals also found County Council's decision was not arbitrary or capricious, citing *Bear Enterprises v. County of Greenville*, 319 S.C. 137, 459 S.E.2d 883 (Ct.App.1995). *Id.* “County Council reviewed the plan for the property multiple

times and the county staff recommended rezoning the property. Accordingly, County Council's decision was neither arbitrary nor capricious." *Id.* at 3-4.

As to the circuit court's finding that the ordinance conflicted with the provisions of the ZLDR, the Court of Appeals held there was no conflict and nothing to suggest that County Council could not change an ordinance that it created. *Id.* at 4.

The Court of Appeals concluded that, since Petitioners had failed to show that the enacted ordinance conflicted with state law or the ZLDR, that County Council's decision was arbitrary and unreasonable, or that the rezoning violated Petitioners' constitutional rights, it would not substitute its judgment for that of County Council, and it held the circuit court erred in concluding County Council exceeded its lawfully delegated authority. *Id.* This Court granted a petition for a writ of certiorari to review the decision of the Court of Appeals.

II. LAW/ANALYSIS

Petitioners assert the Court of Appeals erred in (1) applying the wrong standard of review, (2) reversing the circuit court's invalidation of the ordinance on the basis it violates the provisions of the Enabling Act, and (3) reversing the circuit court's invalidation of the ordinance on the basis it conflicts with the ZLDR.

[1] Because we find it dispositive, we direct our attention to Petitioners' argument that it was error to reverse the circuit court's determination that the rezoning ordinance was invalid because it violated the Enabling Act.

As noted above, the circuit court ruled the ordinance did not meet the qualifications

for a PD as contained in sections 6-29-720 and -740 of the Enabling Act. The circuit court first found a PD requires "housing of different types and densities" and mixed use, as expressed by section 6-29-720. The court found the only change effected by the zoning ordinance in this case was to reduce the lot sizes so as to allow the property owners to avoid the density restriction mandated by the AG-15 category; all other factors remained the same as the AG-15 category.

Section 6-29-720 of the Enabling Act defines a PD as follows:

[A] development project comprised of *housing of different types and densities and of compatible commercial uses*, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development *and is characterized by a unified site design for a mixed use development[.]*

S.C.Code Ann. § 6-29-720(C)(4) (emphasis added).

The circuit court also found the ordinance violated section 6-29-740 of the Enabling Act, governing "Planned development districts," because it includes "no elements that result in improved design, character, and quality of a new mixed use development" as required by the statute. Section 6-29-740 states in relevant part that a PD should "result in improved design, character, and quality of new mixed use developments" and, moreover:

The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts.

Id. § 6-29-740.

The Court of Appeals found the ordinance did not violate the Enabling Act, stating it would defer to County Council's recitation in the ordinance that it satisfied the requirements for a PD and accord County Council the flexibility and authority contemplated in the Enabling Act.

We hold the circuit court properly concluded the ordinance did not meet the parameters for a PD. As found by that court, the *only* effect of the ordinance in this instance was to allow the Walpoles to reduce the lot sizes for the property, thus avoiding the restrictions mandated by AG-15 zoning. The ordinance did not provide for housing of different types and densities and compatible commercial use, and it did not create a new mixed use development as contemplated in the statutes of the Enabling Act. The property continued to have only residential dwellings and the ordinance did not plan for future diversity of development. As noted in the excerpt quoted from [section 6-29-740](#) above, PD plans “must encourage innovative site planning for residential, commercial, institutional, and industrial developments within” the PD districts. [S.C.Code Ann. § 6-29-740](#).

As one treatise has observed, a PD is a zoning method that is used to create a planned mix of residential and commercial uses for the benefit of the community, as opposed to having only a single-use district:

The planned unit development, in contrast to Euclidean zoning which divides a community into districts and explicitly mandates certain uses, ... is a district in which a planned mix of residential, commercial, and even industrial uses is *77 sanctioned**782 subject to restrictions

calculated to achieve compatible and efficient use of the land.

[83 Am. Jur. 2d Zoning and Planning § 396 \(2003\)](#). The goal of a PD district is to have diversification of use and to create, in essence, a self-contained, planned community:

In addition to facilitating flexibility in zoning, the planned unit development also seeks to grant diversification in the location of structures and other site qualities. Thus, the goal of planned unit development is achieved when an entire self-contained little community is permitted to be built within a zoning district, with the rules of density controlling not only the relation of private dwellings to open space, but also the relation of homes to commercial establishments such as theaters, hotels, restaurants, and quasi-commercial uses such as schools and churches.

Id. § 398 (footnotes omitted).

[2] The definitions of commentators and courts vary with the kind of planned unit development under discussion, but the description set forth above has been cited by several commentators. *See, e.g.*, 3 Patricia E. Salkin, *American Law of Zoning* § 24:8 (5th ed. 2009) (citing the description and its source, the Supreme Court of Pennsylvania, which applied this definition in *Cheney v. Village 2 at New Hope, Inc.*, 429 Pa. 626, 241 A.2d 81 (1968)). Accordingly, the essence of a PD under the Enabling Act is that the property will provide for mixed use. *See id.* at § 24:9 (“Unlike *Euclidean* zoning which forces land development into a preconceived pattern, planned unit development permits the inclusion of a variety of housing types, lot sizes, and even nonresidential uses on a single tract.”); [Palmer/Sixth St. Props.](#),

L.P. v. City of Los Angeles, 175 Cal.App.4th 1396, 96 Cal.Rptr.3d 875, 878 n. 2 (2009) (noting a land use plan adopted for a specific area of Los Angeles defined a “mixed use” project as “[a]ny Project which combines a commercial use with a residential use, either in the same building or in separate buildings on the same lot or lots” (citing Plan, § 4, Definitions)); *Trail v. Terrapin Run, LLC*, 174 Md.App. 43, 920 A.2d 597, 606 (Md.Ct.Spec.App.2007) (stating planned development “means more than just a subdivision or the concept would be unnecessary” and that “[t]he *78 definition itself ‘includes’ different uses by virtue of its reference to mixed use development”).

[3] Respondents alternatively asserted that they did not have to meet the parameters of a PD under the Enabling Act because County Council was free to employ other zoning techniques, citing the prefatory language of section 6-29-720(C) governing zoning methods, which allows County Council to use one of the enumerated techniques or other techniques. We agree with the circuit court that County Council clearly chose to employ the PD process for the Walpoles' property and, once having invoked that technique, it could not arbitrarily fail to meet the requirements for a PD. Consequently, we hold the circuit court correctly ruled the ordinance is invalid because it did not properly establish a PD as contemplated by the terms of the Enabling Act, and we reverse the Court of Appeals' determination on this point.

III. CONCLUSION

Based on the foregoing, we reverse the decision of the Court of Appeals and hold the circuit court properly invalidated the ordinance rezoning the Walpoles' property from

AG-15 to a PD district because the requirements for a PD district under the Enabling Act were not met.

REVERSED. ^{FN3}

FN3. To the extent Petitioners assert the Court of Appeals applied the wrong standard of review, we find no error. The Court of Appeals found Petitioners failed to show the ordinance conflicted with state law or the ZLDR or that County Council had exceeded its lawfully delegated authority. We conclude the cases cited by the Court of Appeals are correct statements of the law in this area. However, because we agree with Petitioners that the circuit court properly invalidated the ordinance on the basis it violated the Enabling Act, we need not reach the remaining argument that the ordinance also violated the ZLDR.

TOAL, C.J., PLEICONES, HEARN, JJ., and Acting Justice JAMES E. MOORE, concur.

S.C., 2010.

Sinkler v. County of Charleston
387 S.C. 67, 690 S.E.2d 777

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C

Court of Appeals of South Carolina.

Allison BROWN, Appellant,

v.

COUNTY OF CHARLESTON/CHARLESTON COUNTY
COUNCIL, Respondent.

No. 1536.

Heard April 11, 1990.

Decided Aug. 27, 1990.

Landowner applied to county office of zoning and planning for permit to operate a commercial outdoor gun range. The zoning board denied the permit. Landowner appealed. The county council affirmed. Landowner again appealed. The Common Pleas Court, Charleston County, [Ralph King Anderson, Jr.](#), J., affirmed. Appeal was taken. The Court of Appeals held that zoning ordinance amendment under which permit was denied was void, as it had been adopted following inadequate notice to landowner.

Reversed and remanded.

West Headnotes

[\[1\] Constitutional Law](#)  [278.2\(2\)](#)[92k278.2\(2\) Most Cited Cases](#)[\[1\] Zoning and Planning](#)  [194.1](#)[414k194.1 Most Cited Cases](#)

(Formerly 414k194)

Statute mandating public notice of zoning amendments is subject to general principles of due process that notice fairly and reasonably apprise those whose rights may be affected of nature and character of action proposed. [Code 1976, § 6-7-730](#).

[\[2\] Zoning and Planning](#)  [194.1](#)[414k194.1 Most Cited Cases](#)

(Formerly 414k194)

Amendment of the zoning ordinance accomplished pursuant to defective notice is void.

[\[3\] Zoning and Planning](#)  [194.1](#)[414k194.1 Most Cited Cases](#)

(Formerly 414k194)

Notice of proposed amendment to zoning laws, stating that

the change was "to simplify and clarify the existing land use table and reduce the number of zoning districts," did not adequately inform landowner that purpose of amendment was to restrict existing uses of land, and amendment was consequently void. [Code 1976, § 6-7-730](#).

**785 *246 Allison E. Brown, of Mt. Pleasant, pro se.

Randall M. Chastain, Columbia, for appellant.

Nancy B. Tecklenburg, Charleston, for respondent.

[Janson A. Kauser](#), of North Charleston, amicus curiae for East Cooper Outboard Motor Club, Inc.[Conrad L. Falkiewicz](#), Charleston, amicus curiae for SC Shooting Ass'n.

PER CURIAM:

This is a zoning case. Allison Brown applied to the Charleston County Office of Zoning and Planning for a permit to operate a commercial outdoor gun range. [\[FN1\]](#) The Zoning Board denied the permit. County Council upheld the Zoning Board's decision. Brown then appealed to the circuit court which affirmed the Council. Brown appeals. We reverse and remand.

[\[FN1\]](#) Specifically, Brown sought to use the site as a commercial sporting range for skeet shooting.

The County desired to decrease the number of zoning districts in the County and also to simplify the table of *existing* land uses through an amendment to its zoning ordinance. However, one provision of the amendment, in effect, proposed changes in existing land uses by requiring a different type of permit for certain property uses. One such use is an outdoor gun range. The amendment changed this use from a use of right to a conditional use which requires the Zoning Board's approval prior to issuance of a permit. Overall, the zoning amendments increased allowable property uses in the county, but in some cases it actually restricted an existing use.

*247 The Zoning Board gave the amendments preliminary approval. On March 27, 1988, and April 3, 1988, the County ran the following advertisement in the News and

Courier:

ZONING
Charleston County
PUBLIC HEARING

The Charleston County Council has scheduled a public meeting for Tuesday, April 12, 1988 at 7:00 p.m., County Office Building, Two Courthouse Square, Charleston, South Carolina to review the following:

No. 2122-C Text Change; to simplify and clarify the existing land use table and reduce the number of zoning districts.

It is uncontested that this advertisement complies with the statutory requirements regarding time and manner of notice. See [Section 6-7-730, Code of Laws of South Carolina](#), 1976, as amended. Brown, however, contests the sufficiency of the advertisement to give notice that the proposed amendment would restrict existing uses of land.

Brown argues that those interested could not be reasonably apprised by the advertisement that the proposed amendments change outdoor gun ranges from a use of right to a conditional use requiring the Zoning Board's approval. He contends the advertisement lacks sufficient specificity to warn him that he could be affected by the amendments. He argues the notice is ineffective, thus rendering the amendment void.

[1][2] [Section 6-7-730](#) specifies no particular content for public notices relating to zoning amendments. But it is subject to general principles of due process that require ****786** notice which fairly and reasonably apprises those whose rights may be affected of the nature and character of the action proposed. Cf. [Sellers v. City of Asheville, 33 N.C.App. 544, 236 S.E.2d 283 \(1977\)](#). Amendment of a zoning ordinance accomplished pursuant to defective notice is void. [Yost v. Fulton County, 256 Ga. 324, 348 S.E.2d 638 \(1986\)](#).

[3] The advertisement here did not reasonably apprise Brown that the amendment in question could potentially restrict the use of his land by taking away his entitlement to a use permit of right. The advertisement, in fact, gives no indication that the character of any use will be ***248** changed. Thus, it is tantamount to no notice at all of an

important provision that could adversely affect certain land owners. One does not contemplate that in simplifying and clarifying the existing land use table and reducing the number of the zoning districts, the county will also enact an amendment restricting existing uses. Brown had no constructive notice from the advertisement. There is no evidence of record showing that he had actual notice either. The amendment is, therefore, void.

The ruling of the circuit court is accordingly reversed and the matter remanded for entry of judgment declaring the ordinance void. Of course, the County Council is free to reenact the amendment following the proper procedures for notice and a public hearing.

REVERSED and REMANDED.

303 S.C. 245, 399 S.E.2d 784

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Supreme Court of South Carolina.
CITY OF MYRTLE BEACH, Respondent,

v.

JUEL P. CORPORATION and Gay Dolphin, Inc., Petitioners.

No. 25261.

Heard Feb. 8, 2001.

Decided March 12, 2001.

City sought injunction to require commercial property owners to remove rooftop billboard sign, alleging that sign violated city ordinance or, alternatively, that owners had abandoned sign. Owners filed counterclaim alleging a taking. The Circuit Court, Horry County, J. Stanton Cross, Jr., Master-in-equity, denied injunction, and further found that owners did not abandon sign. City and property owners appealed. The Court of Appeals, [337 S.C. 157](#), [522 S.E.2d 153](#), reversed. Owners sought certiorari review. The Supreme Court, [Burnett](#), J., held that: (1) sign ordinance expressed no time frame for abandonment, and thus, common law would be applied to determine whether owners intended to abandon sign, and (2) there was sufficient evidence to support finding that owners did not intend to abandon their rooftop sign.

Reversed.

West Headnotes

[1] Zoning and Planning 414 ↪337

[414](#) Zoning and Planning

[414VI](#) Nonconforming Uses

[414k336](#) Discontinuance or Abandonment

[414k337](#) k. Cessation of Use. [Most Cited Cases](#)

There was sufficient evidence to support finding that commercial property owners did not intend to abandon their rooftop sign, and thus, their nonconforming use could not be deemed abandoned, even though sign remained vacant for five years, where owners continued to pay Highway Department fees and maintain electricity to the sign.

[2] Zoning and Planning 414 ↪9

[414](#) Zoning and Planning

[414I](#) In General

[414k7](#) Constitutional and Statutory Provisions

[414k9](#) k. Construction of Statutes in General. [Most Cited Cases](#)

City ordinance, providing that any sign “which advertises or pertains to a business, product, service, event, activity, or purpose ... that has not been in use for three months ... shall be deemed to be an obsolete or abandoned sign,” could not be broadly construed to mean that any sign that was not in use for three months would be deemed to be obsolete or abandoned, and thus, such broad construction would not operate to provide a three-month period of abandonment for signs.

[3] Municipal Corporations 268 ↪120

[268](#) Municipal Corporations

[268IV](#) Proceedings of Council or Other Governing Body

[268IV\(B\)](#) Ordinances and By-Laws in General

[268k120](#) k. Construction and Operation. [Most Cited Cases](#)

When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.

[4] Statutes 361 ↪176

[361](#) Statutes

[361VI](#) Construction and Operation

[361VI\(A\)](#) General Rules of Construction

[361k176](#) k. Judicial Authority and Duty. [Most Cited Cases](#)

The determination of legislative intent is a matter of law.

[5] Statutes 361 ↪188

[361](#) Statutes

[361VI](#) Construction and Operation

[361VI\(A\)](#) General Rules of Construction

[361k187](#) Meaning of Language

[361k188](#) k. In General. [Most Cited Cases](#)

In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.

[6] Municipal Corporations 268 ↪120

[268](#) Municipal Corporations

[268IV](#) Proceedings of Council or Other Governing Body
[268IV\(B\)](#) Ordinances and By-Laws in General
[268k120](#) k. Construction and Operation. [Most Cited Cases](#)
 Ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose.

[\[7\]](#) Zoning and Planning 414 ↻337

[414](#) Zoning and Planning

[414VI](#) Nonconforming Uses

[414k336](#) Discontinuance or Abandonment

[414k337](#) k. Cessation of Use. [Most Cited Cases](#)

City ordinance providing that “any sign structure that no longer displays any sign copy ... shall be deemed to be an obsolete or abandoned sign” expressed no time frame for abandonment, and thus, common law would be applied to determine whether sign owner intended to abandon sign.

[\[8\]](#) Zoning and Planning 414 ↻337

[414](#) Zoning and Planning

[414VI](#) Nonconforming Uses

[414k336](#) Discontinuance or Abandonment

[414k337](#) k. Cessation of Use. [Most Cited Cases](#)

In order to constitute abandonment, it must appear that there was a discontinuance of the nonconforming use with the intent to relinquish the right to so use the property; the question is largely one of intention and must be determined from all of the surrounding facts and circumstances.

**[539*44](#) [Howell V. Bellamy, Jr.](#), and [Douglas M. Zayicek](#), of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, of Myrtle Beach, for petitioners.

[Michael W. Battle](#), of Battle & Vaught, of Conway, for respondent.

*[45](#) [BURNETT](#), Justice:

This case involves the proper construction of a Myrtle Beach city ordinance concerning abandoned and obsolete signs. Myrtle Beach Code § 902.4.7. We granted certiorari to review a decision of the Court of Appeals holding petitioners' sign could be deemed abandoned regardless of peti-

tioners' intent. [City of Myrtle Beach v. Juel P. Corp. and Gay Dolphin, Inc.](#), 337 S.C. 157, 522 S.E.2d 153 (Ct.App.1999). We reverse.

FACTS

In the early 1970s, petitioners purchased Ed's Hobby Shop in Myrtle Beach. The shop includes a rooftop sign, which is arguably the most prominent sign location in Myrtle Beach.

In 1979, Myrtle Beach enacted a zoning ordinance which prohibited rooftop signs in certain areas of the city, including the area where petitioners' sign was located. Section 902.8.3 of the zoning ordinance provided that rooftop signs had an amortization period of three years. In 1985, after the conclusion of a lengthy legal challenge to the city's comprehensive sign ordinance, the city notified petitioners that its ordinance had been declared legal, constitutional, and enforceable, and ordered petitioners to remove the rooftop sign from Ed's Hobby Shop. Petitioners, through an agent, responded by alerting the city to former [S.C.Code Ann. § 57-25-195 \(Supp.1980\)](#) (repealed in 1990), which would have required the city to pay just compensation for the sign. Rather than compensate petitioners for the sign's removal, the city chose not to enforce its 1985 letter.

In 1989, in the imminence of Hurricane Hugo, petitioners removed the sign facing to minimize damage from the storm. Shortly after the storm had passed, petitioners received a letter from the city informing them the sign was more than 50% damaged and could not be restored. Petitioners asked for repair estimates from three different sign companies, all of which agreed with petitioners' estimate that the sign was only 10% damaged. Petitioners approached the city's Director of Construction Services with these estimates, and, when he refused to concede their damage estimate, presented the estimates to the city manager. Petitioners attempted to reach *[46](#) a settlement with the city manager in which petitioners would agree to remove the rooftop sign in exchange for a permit for a unipole sign.

For the next five years, the sign remained vacant. Neither petitioners nor the city pursued formal appeals or informal negotiations. During this time, however, petitioners continued to pay Highway Department fees and maintain electrici-

city to the sign. In the fall of 1994, petitioners installed new sign facing. On November 8, 1994, the city notified petitioners that the sign violated the city zoning ordinance, § 902.4.8, which prohibits rooftop signs. When petitioners did not remove the sign, the city sought an injunction. In its second amended complaint, dated September 24, 1996, the city for the first time claimed petitioners had abandoned their sign. Section 902.4.7 of the Myrtle Beach Code provides:

Any sign which advertises or pertains to a business, product, service, event, activity or purpose which is no longer conducted or that has not been in use for three months or which is no longer imminent, or any sign structure that no longer displays any sign copy shall be deemed to be an obsolete or abandoned sign.

****540** The Master-in-Equity for Horry County conducted a hearing on the city's injunction action and petitioners' takings counterclaim. The Master ruled the city could not rely on its ordinance because to do so would retroactively deprive petitioners of a vested right. He further ruled intent is a necessary element of abandonment, and found petitioners "did not simply abandon the most prominent and valuable sign in Myrtle Beach." The Court of Appeals reversed, holding a property owner's intent is irrelevant when an ordinance specifies an objective time frame after which a non-conforming use shall be deemed abandoned. *City of Myrtle Beach v. Juel P. Corp. and Gay Dolphin, Inc.*, 337 S.C. 157, 522 S.E.2d 153 (Ct.App.1999).

DISCUSSION

[1] Petitioners argue several issues on appeal. We decline to reach these issues because we conclude the city's ordinance does not provide an objective time frame for abandonment.

***47** [2][3][4][5][6] When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. *Charleston County Parks and Rec. Comm'n v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995). The determination of legislative intent is a matter of law. *Id.* In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226,

417 S.E.2d 592 (1992). "[O]rdinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose." *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953).

We read the ordinance as follows:

Any sign

[1] which advertises or pertains to a business, product, service, event, activity, or purpose

[a] which is no longer conducted or [b] that has not been in use for three months or [c] which is no longer imminent

or [2] any sign structure that no longer displays any sign copy

shall be deemed to be an obsolete or abandoned sign.

Myrtle Beach Code § 902.4.7. The city's proposed construction, "Any sign ... that has not been in use for three months ... shall be deemed to be an obsolete or abandoned sign," is a forced construction that would impermissibly expand the ordinance's operation. We cannot harmonize the city's interpretation with our obligation to construe the ordinance strictly.

While the intent of the city may well have been to provide a three-month period of abandonment for signs, that intent is not expressed in the language of the ordinance. Moreover, the portion of the ordinance which clearly applies to petitioners' sign—"any sign structure that no longer displays any sign copy"—contains no time provisions whatsoever.

***48** [7][8] Because the ordinance expresses no time frame for abandonment, we apply the common law. Under the common law:

In order to constitute abandonment, it must appear that there was a discontinuance of the nonconforming use with the intent to relinquish the right to so use the property. The question is largely one of intention and must be determined from all of the surrounding facts and circumstances.

Conway v. City of Greenville, 254 S.C. 96, 105, 173 S.E.2d 648, 652-53 (1970). We find abundant evidence in the record to support the Master's finding petitioners did not in-

tend to abandon their sign.

CONCLUSION

Because the city's ordinance does not provide an objective time frame for abandonment of a nonconforming use, the common law of abandonment controls. The evidence **541 supports the finding that petitioners did not intend to abandon their rooftop sign.

REVERSED.

[TOAL](#), C.J., [MOORE](#), [WALLER](#) and [PLEICONES](#), JJ.,
concur.

S.C.,2001.

City of Myrtle Beach v. Juel P. Corp.

344 S.C. 43, 543 S.E.2d 538

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132 S.E.2d 18
 243 S.C. 1, 132 S.E.2d 18
 (Cite as: 243 S.C. 1, 132 S.E.2d 18)

Page 1



Supreme Court of South Carolina.
 D. B. BRIDGES and American Guarantee
 and Liability Insurance Company, Appel-
 lants,
 v.
 WYANDOTTE WORSTED COMPANY,
 Respondent.
No. 18093.
 July 8, 1963.

Action for injury sustained by employee of electrical contractor hired to do work at defendant's plant. The defense was that claim was within exclusive jurisdiction of Industrial Commission because work being performed by contractor was part of defendant's trade, business or occupation. The Common Pleas Court, Greenville County, George T. Gregory, J., dismissed the action, and an appeal was taken. The Supreme Court, Lewis, J., held that it was not error for court to decide factual issues relating to jurisdiction without submitting same to jury.

Affirmed.

West Headnotes

[1] Workers' Compensation 413 ⚡️2239

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)5 Actions and Proceedings

413k2236 Trial

413k2239 k. Questions of

Law or Fact. **Most Cited Cases**

In action for injury sustained by employee of electrical contractor hired to do work at defendant's plant, wherein defense was that claim was within exclusive jurisdiction of Industrial Commission because work being performed by contractor was part of defendant's trade, business or occupation, it was not error for court to decide factual issues relating to jurisdiction without submitting same to jury. Code 1962, § 72-111.

[2] Courts 106 ⚡️39

106 Courts

106I Nature, Extent, and Exercise of Jurisdiction in General

106k39 k. Determination of Questions of Jurisdiction in General. **Most Cited Cases**

Every court has power and duty to determine whether it has jurisdiction of cause presented to it for determination, and such power includes power to decide all questions, whether of law or fact, the decision of which is necessary to determine question of jurisdiction.

[3] Jury 230 ⚡️34(3)

230 Jury

230II Right to Trial by Jury

230k30 Denial or Infringement of

Right

230k34 Restriction or Invasion of Functions of Jury

230k34(3) k. Taking Case or Question from Jury. **Most Cited Cases**

Trial 388 ⚡️134

388 Trial

388VI Taking Case or Question from Jury

388VI(A) Questions of Law or of

Fact in General

[388k134](#) k. Functions as Judges of Law and Fact in General. [Most Cited Cases](#)

Decision of question of whether court has jurisdiction is preliminary one for court to decide, and determination of jurisdictional question by court does not deny constitutional right of litigant to jury trial.

[4] Workers' Compensation 413 ↪2164

413 Workers' Compensation

[413XX](#) Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

[413XX\(C\)](#) Action Against Third Persons in General for Employee's Injury or Death

[413XX\(C\)1](#) Right of Action of Employee or Representative Generally

[413k2160](#) What Persons Liable as Third Persons

[413k2164](#) k. Principal Employer or Employer of Injured Person. [Most Cited Cases](#)

If work done by contractor is part of general business of contractee, exclusive remedy of employee of contractor for injury sustained on job is Workmen's Compensation Law, even if employer occupies status of independent contractor. Code 1962, §§ 72-111, 72-121.

[5] Workers' Compensation 413 ↪2239

413 Workers' Compensation

[413XX](#) Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

[413XX\(C\)](#) Action Against Third Persons in General for Employee's Injury or Death

[413XX\(C\)5](#) Actions and Proceedings

[413k2236](#) Trial

[413k2239](#) k. Questions of

Law or Fact. [Most Cited Cases](#)

Each case in which it is asserted that workmen's compensation provides exclusive remedy for contractor's employee because work being done is part of general trade, business or occupation of contractee must be determined on its own facts.

[6] Workers' Compensation 413 ↪2164

413 Workers' Compensation

[413XX](#) Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

[413XX\(C\)](#) Action Against Third Persons in General for Employee's Injury or Death

[413XX\(C\)1](#) Right of Action of Employee or Representative Generally

[413k2160](#) What Persons Liable as Third Persons

[413k2164](#) k. Principal Employer or Employer of Injured Person. [Most Cited Cases](#)

Workmen's compensation is generally exclusive remedy of employee of contractor where work being done for contractee is that usually or customarily performed by contractee in carrying on its general trade or business. Code 1962, §§ 72-111, 72-121.

[7] Workers' Compensation 413 ↪2235

413 Workers' Compensation

[413XX](#) Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

[413XX\(C\)](#) Action Against Third Persons in General for Employee's Injury or Death

[413XX\(C\)5](#) Actions and Proceedings

[413k2232](#) Evidence

[413k2235](#) k. Weight and Sufficiency. [Most Cited Cases](#)

In action for injury sustained by employee of electrical contractor hired to do work at defendant's plant, wherein defense was that claim was within exclusive jurisdiction of Industrial Commission because work being performed by contractor was part of defendant's trade, business or occupation, evidence sustained finding that work contracted to be done by plaintiff's employer was part of trade, business or occupation of defendant. Code 1962, §§ 72-111, 72-121.

[8] Workers' Compensation 413 ↪ 2234

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)5 Actions and Proceedings

413k2232 Evidence

413k2234 k. Admissibility.

Most Cited Cases

(Formerly 413k8)

In action for injury sustained by employee of electrical contractor hired to do work at defendant's plant, wherein defense was that claim was within exclusive jurisdiction of Industrial Commission because work being performed by contractor was part of defendant's trade, business or occupation, it was not an abuse of discretion to exclude evidence that plaintiff's employer had done six electrical jobs for defendant after plaintiff's injury, since such evidence would not have proved that it was not customary for such work to be done by defendant's employees.

[9] Trial 388 ↪ 33

388 Trial

388IV Reception of Evidence

388IV(A) Introduction, Offer, and Admission of Evidence in General

388k32 Necessity and Scope of Proof

388k33 k. In General. **Most Cited Cases**

Admission of evidence is largely within discretion of trial judge, and this is especially true with reference to admission of evidence in reply.

***19** Leatherwood, Walker, Todd & Mann, Greenville, for appellants.

Haynsworth, Perry, Bryant, Marion & Johnstone, Greenville, for respondent.

LEWIS, Justice.

This action was instituted in the Court of Common Pleas against the defendant Wyandotte Worsted Company to recover damages sustained by the plaintiff Bridges from an electrical shock received while engaged, as an employee of P. E. Collins Electric Company, in the replacement of an electric transmission line of the defendant at its plant in Greenville County. Collins Electric Company had contracted with the defendant to do the work and the plaintiff Bridges was a member of the crew assigned by Collins to do the job. This appeal is by the plaintiff from an order of the lower court dismissing the action upon the ground that the court was without jurisdiction of the cause and that plaintiff's claim was within the exclusive jurisdiction of the South Carolina Industrial Commission, because the work being performed by the subcontractor Collins, the plaintiff's employer, was a part of the trade, business or occupation of the defendant, within the meaning of the Workmen's Compensation Law. The basic issues to be decided in this appeal concern whether or not the lower court properly determined the foregoing jurisdictional question. This case was be-

fore us on a prior appeal involving a question of parties. 239 S.C. 37, 121 S.E.2d 300.

The defendant Wyandotte Worsted Company is a manufacturer of textile woolen goods and operates a plant at Conestee, in Greenville County, South Carolina. Its employees are covered under the Workmen's Compensation Law. It owned and operated its own hydro-electric system, from which it derived a portion of the electricity used in the operation of its plant. The balance of its needed electricity was purchased from Duke Power Company. The electricity purchased from Duke was received at the defendant's property line and brought to its plant over a transmission line owned and maintained by the defendant. The electricity generated by the defendant's hydro-electric plant and that purchased from Duke was brought into the plant of the defendant at a central point where it was reduced by the defendant's electrical system from a voltage of 550 to 220 or 110 as required and then distributed over the wiring system of the defendant to the machinery in the mill. The defendant's complete electrical system, including the transmission lines from its property line to the plant, was owned and maintained by it. The defendant regularly employed a crew of men who maintained the electrical system, two of whom were experienced and competent electricians in the handling of electrical work on energized, or so-called 'hot' electrical lines.

In June, 1960, due to an increase in the amount of machinery in the plant of the defendant, a three phase transmission line of the defendant, over which electricity was brought into the plant from Duke Power Company, became overloaded. This overload made it necessary to replace it with a

heavier duty line. The work on the line had to be done on a Sunday when the defendant's machinery was not operating. *20 The defendant's crew had on a prior occasion done similar work on this line and maintained it, but, due to the excessive amount of overtime that its men had already worked, the defendant felt that they should have a rest on the particular Sunday selected to replace the line and, therefore, contracted with P. E. Collins Electric Company, an electrical contractor, to do the work. The record shows that in the performance of this work Collins occupied the status of an independent contractor. Collins had on two prior occasions been called in by the defendant to do electrical work at its plant.

The plaintiff Bridges was an employee of Collins Electric Company and a member of the crew assigned by Collins to replace the above mentioned transmission line at the plant of the defendant. While so engaged on Sunday, June 19, 1960, the plaintiff sustained injuries from electrical shock when he came into contact with an energized electric line.

Collins Electric Company, by whom plaintiff Bridges was employed, was operating under the South Carolina Workmen's Compensation Law and Bridges was paid benefits to which he was entitled under such law by the American Guarantee and Liability Company, the Workmen's Compensation carrier of Collins Electric Company.

This action was subsequently instituted by the plaintiff Bridges against the defendant to recover for his injuries, alleging that they resulted from the negligent and reckless acts of an employee of the defendant in turning on the electricity and re-energizing the lines upon which he was

working. Since the American Guarantee and Liability Insurance Company paid Workmen's Compensation benefits to the plaintiff Bridges, it was subrogated to Bridges' claim against the defendant to the extent of such payments, and was, therefore, joined as a co-plaintiff in this action.

Among other defenses, the answer of the defendant alleged that the Court of Common Pleas was without jurisdiction to entertain this common law action for tort against the defendant Wyandotte Worsted Company, since Wyandotte was operating under the provisions of the South Carolina Workmen's Compensation Law, and Collins Electric Company, the employer of Bridges, was, at the time Bridges received his injuries, engaged in the performance of work which was a part of the defendant's trade, business or occupation within the meaning of the Workmen's Compensation Act, particularly Section 72-111 of the 1962 Code of Laws, which is as follows:

'When any person, in this section and §§ 72-113 and 72-114 referred to as 'owner,' undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and §§ 72-113 to 72-116 referred to as 'subcontractor') for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.'

Upon the trial of the case and at the conclusion of the testimony, the trial judge sustained the foregoing defense and granted defendant's motion for a directed verdict in its favor, holding that the court was

without jurisdiction to entertain the present common law action for tort against the defendant, in that the work in which the subcontractor Collins Electric Company, the employer of the plaintiff Bridges, was engaged at the time was a part of the defendant's trade, business or occupation and, therefore, under the provisions of the Workmen's Compensation Act the plaintiff's claim was within the exclusive jurisdiction of the South Carolina Industrial Commission. The plaintiff has appealed from the foregoing ruling of the lower court.

***21 [1]** In holding that the court had no jurisdiction to entertain the present common law action for damages, because the plaintiff's employment came within the coverage afforded by the Workmen's Compensation Act, the trial judge withdrew the case from the jury and determined all issues, both of law and fact, relating to jurisdiction. The first question to be decided arises under the exception of the plaintiff, which charges error on the part of the lower court in deciding the factual issues relating to jurisdiction and in not submitting such to the jury for determination.

When the trial judge decided all issues relating to jurisdiction in this case, he followed the rule approved by this Court. For, '[i]t has been consistently held that whether the claim of an injured workman is within the jurisdiction of the Industrial Commission is a matter of law for decision by the court, which includes the finding of the facts which relate to jurisdiction.' [Adams v. Davison-Paxon Co.](#), 230 S.C. 532, 96 S.E.2d 566; [Knight v. Shepherd](#), 191 S.C. 452, 4 S.E.2d 906; [Tedars v. Savannah River Veneer Company](#), 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914; [McDowell v. Stilley Plywood Co.](#), 210 S.C. 173, 41

S.E.2d 872; *Miles v. West Virginia Pulp & Paper Co.*, 212 S.C. 424, 48 S.E.2d 26; *Watson v. Wannamaker & Wells, Inc.*, 212 S.C. 506, 48 S.E.2d 447; *Gordon v. Hollywood-Beaufort Package Corp.*, 213 S.C. 438, 49 S.E.2d 718; *Holland v. Georgia Hardwood Lbr. Co.*, 214 S.C. 195, 51 S.E.2d 744; *Younginer v. J. A. Jones Const. Co.*, 215 S.C. 135, 54 S.E.2d 545; *Horton v. Baruch*, 217 S.C. 48, 59 S.E.2d 545; *Brown v. Moorhead Oil Co.*, 239 S.C. 604, 124 S.E.2d 47; *Pyett v. Marsh Plywood Corp.*, 240 S.C. 56, 124 S.E.2d 617; *Allen v. Phinney Oil Co.*, 241 S.C. 173, 127 S.E.2d 448.

The plaintiff does not, however, question the fact that the lower court followed the law in deciding the jurisdictional question, including the factual issues necessary to such determination, but says that the law is wrong and the rule stated in *Adams v. Davison-Paxon*, and consistently followed by this Court, should be overruled. Permission was granted to argue against further adherence to the rule.

The plaintiff takes the position that, when the court withdrew from the consideration of the jury the factual issue of whether the work being done by the plaintiff was a part of the general business of the defendant, he was deprived of his right to have the jury pass upon the disputed issues of fact. We think that the rule stated in *Adams v. Davison-Paxon* is sound and we adhere to it.

[2] The rule stated in *Adams v. Davison-Paxon* is not peculiar to issues concerning jurisdiction in Workmen's Compensation cases. Jurisdictional questions arising under motions to dismiss the service of pleadings on supposed agents of foreign corporations have been held to present issues for determination by the court and not a jury. *Bargesser v. Coleman Co.*, 230 S.C. 562,

96 S.E.2d 825. The rule is based upon the principle that '[e]very court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination,' which includes the power 'to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction.' 21 C.J.S. Courts § 113, p. 174, 14 Am.Jur. 368, Section 168.

[3] The issue of jurisdiction is basically one of law. It involves the determination by the court of its right to proceed with the litigation. A decision of this question by the court deprives a litigant of no right to a jury trial of the issue of liability because, if the court has no jurisdiction, the litigants have no rights which they may assert in that court. The right to have a jury pass upon the controverted factual issues must of necessity relate to the assertion of the right of the litigant which has been allegedly violated, which presupposes a court having jurisdiction to grant the relief sought. The determination of the jurisdictional question by the court is not a denial of any constitutional right of a litigant to a jury trial, *22 but simply a determination of the forum in which those rights may properly be asserted. The decision of the question of whether the court has jurisdiction is a preliminary one to the determination of the merits of the cause, and is for the court to decide.

The plaintiff argues, however, that the question raised by the defendant as to the applicability of the Workmen's Compensation Act is not one of lack of jurisdiction in the court but a want of a cause of action in the plaintiff. It is then contended that, since the issue is one of a want of a cause of action in the plaintiff, the merits of the cause are involved, entitling the plaintiff to a jury

trial of the factual issues. Contrary to the position of the plaintiff, the decisions of this Court, cited hereinabove, consistently hold that the question of the applicability of the Workmen's Compensation Act is one involving the jurisdiction of the court.

The decision in [Googe v. Speaks, 194 S.C. 206, 9 S.E.2d 439](#), relied upon by the plaintiff, is not inconsistent with the above cited cases. The defense that the claim of the plaintiff was within the exclusive jurisdiction of the Industrial Commission was not plead in the answer of the defendant in the Googe case, and the court held that the application of the Workmen's Compensation Act was not an issue in the case because not set up by way of special defense. The Googe case simply held that the manner of raising the question of the applicability of the Workmen's Compensation Act is procedural and must be raised by plea. If the Act applies, the court has no jurisdiction. The defendant has plead the Workmen's Compensation Act in its answer and the question is properly presented, under the Googe case, as to whether or not the employment of the plaintiff Bridges was covered by the terms of the Act, that is whether or not the Industrial Commission has exclusive jurisdiction of the plaintiff's claim.

The plaintiff also cites the case of [Byrd v. Blue Ridge Rural Electric Cooperative, 356 U.S. 525, 78 S.Ct. 893, 2 L.Ed. 953](#) in support of his contention that we should overrule the principle stated in [Adams v. Davison-Paxon](#). In the Byrd decision, it was apparently held that in Federal diversity cases jurisdictional factual issues should be submitted to the jury for determination. In reaching its decision, the United States Supreme Court recognized the rule in South Carolina as expressed in [Adams v. Davison-Paxon](#), but concluded that it was not required to follow our decisions upon the question. The plaintiff concedes that the Byrd case is not binding authority here, and we do not consider it persuasive.

The duty and the responsibility clearly rested upon the trial judge to determine all issues involved in a decision of the jurisdictional question raised in the answer of the defendant, and he committed no error in so doing.

[4][5][6][7] The plaintiff next contends that the lower court erred in concluding under the evidence that the work contracted to be done by plaintiff's employer was a part of the trade, business or occupation of the defendant within the meaning of Section 72-111, supra.

In determining whether an employee falls within the coverage afforded by Section 72-111, the basic test is whether or not the work being done is a part of the general trade, business or occupation of the owner. Once it is established that the work being done by the subcontractor was a part of the general business of the owner within the meaning of Section 72-111, even though the subcontractor might occupy the status of an independent contractor, the employees of the subcontractor so engaged are limited under Section 72-121 of the 1962 Code of Laws to the exclusive remedy of the Workmen's Compensation Laws. [Marchbanks v. Duke Power Co., 190 S.C. 336, 2 S.E.2d 825](#); [Adams v. Davison-Paxon Co., supra, 230 S.C. 532, 96 S.E.2d 566](#), and cases therein cited; [Bell v. South Carolina Electric and Gas Co., 234 S.C. 577, 109 S.E.2d 441](#).

*23 Due to the many different factual situations which arise, no easily applied formula can be laid down for the determina-

tion of whether or not the work in a given case is a part of the general trade, business or occupation of the principal employer. Each case must be determined on its own facts. [Marchbanks v. Duke Power Co.](#), *supra*, 190 S.C. 336, 2 S.E.2d 825.

It is especially difficult to lay down any hard and fast rule with regard to such activities as repair and maintenance. The practices of different concerns operating in the same field often vary. For example, activities which would be unusual and out of the ordinary in a small business might be a normal activity for a large concern. As stated by Mr. Larson in Section 49.12, page 726, of his work on Workmen's Compensation Law, 'the test must be relative, not absolute, since a job of construction or repair which would be a non-recurring and extraordinary undertaking for a small business might well for a large plant be routine activity which it normally expects to cope with through its own staff.' Therefore, it is generally recognized that a statute, such as here under consideration, includes work or activities usually or customarily performed by the owner or principal employer in carrying on the general trade or business. 99 C.J.S. Workmen's Compensation § 109b; Larson's Workmen's Compensation Law, Section 49.12.

In the present case, the defendant was engaged in the manufacture of woolen goods. Its machinery was operated by electricity derived in part from its own hydro-electric plant and in part by purchase from Duke Power Company. The work here involved was the repair or replacement of the transmission line owned by the defendant and located on its property, over which electric current, necessary for the operation of its business, was brought into its plant from Duke Power Company. These lines had

been replaced on a previous occasion, and customarily maintained, by a qualified crew regularly employed by the defendant. Because the regular employees of the defendant had been overworked and needed rest, the defendant contracted with Collins Electric Company, plaintiff's employer, to make the needed replacements on its transmission lines. The replacement of the lines was made necessary by an overload placed upon them by the addition of machinery in defendant's mill. It is reasonably inferable from the record that the work of replacing the transmission lines in question was the an unusual or extraordinary undertaking, but one customarily done by defendant's employees who were maintained for such purposes. The maintenance and repair of its electrical system was, therefore, made a part of the work done by the defendant in the prosecution of its business of manufacturing woolen goods.

We think that the record clearly sustains the conclusion that the repair or replacement of the electric transmission lines of the defendant by the subcontractor Collins Electric Company, the employer of the plaintiff Bridges, was a part of the work ordinarily and customarily performed by the employees of the defendant in the prosecution of the defendant's business. As such, it was a part of the trade, business or occupation of the defendant within the meaning of Section 72-111, *supra*. Therefore, the lower court properly held, under the facts of this case, that the employment of the plaintiff was covered under the terms of the Workmen's Compensation Act and that he was accordingly confined to the exclusive remedy therein provided.

[8][9] The last question to be decided relates to the refusal of the trial judge to permit the plaintiff to introduce certain

testimony in reply. After the defendant had concluded its testimony, the plaintiff sought to prove that Collins Electric Company had been called in by the defendant to do electrical work on several occasions, both before and after June 19, 1960, the date of plaintiff's injury. The trial judge permitted testimony that Collins Electric Company *24 had done two electrical jobs for the defendant prior to the date of plaintiff's injury, one in May, 1960 and the other in June, 1960, but refused to admit testimony that Collins had done six electrical jobs for the defendant after plaintiff's injury, five in 1960 and one in 1962. The excluded testimony was offered for the purpose of showing that the work being done by Collins at the time of plaintiff's injury was not a part of the business of the defendant. The plaintiff apparently sought to draw the inference that, since the defendant called in Collins on the occasions in question to do electrical work at its plant, it was not customary for such work to be done by the defendant's employees and that Collins was called in because the defendant was not prepared to handle that particular electrical work.

The record fails to show any abuse of discretion in the exclusion of the foregoing testimony. It is well settled that the admission of evidence is largely within the discretion of the trial judge, and this is especially true with reference to the admission of evidence in reply.

The excluded testimony shows that Collins Electric Company was employed to do electrical work for the defendant on only six occasions over a period of approximately two and one half years after the plaintiff's injury and only twice before. The particular nature of the electrical work done after the injury or the circumstances

which brought about its performance by Collins do not appear. The irregularity and infrequency of the work done by Collins made it, in the absence of other showing, and in the light of the record, improbable that the defendant relied upon Collins for maintenance of its electrical system rather than defendant's own employees. Therefore, assuming that the testimony was otherwise admissible, it was without probative value in determining the issue of whether the work being done by Collins at the time of plaintiff's injury was a part of the business of the defendant, and inadmissible on that ground.

Affirmed.

TAYLOR, C. J., and MOSS, BUSSEY and
BRAILSFORD, JJ., concur.

S.C. 1963

Bridges v. Wyandotte Worsted Co.

243 S.C. 1, 132 S.E.2d 18

END OF DOCUMENT

Exhibit Q to Appeal Narrative (2 Pages)

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: The Island Packet - Legal Notices FAX: 706-5050

FROM: Teri Lewis, LMO Official Kathleen Carlin, Administrative Assistant

SUBJECT: Legal Advertisement - Town Council Meeting on November 17, 2009

Please publish the attached Legal Advertisement on the following date:

o Sunday, November 8, 2009

If you have any questions or problems with this facsimile transmission, please call me immediately at 843-341-4698. Please forward a copy of the typeset print and invoice to:

Mrs. Kathy Lucas, Accounts Payable
Town of Hilton Head Island
Community Development Department
(Attn: Teri Lewis)
One Town Center Court
Hilton Head Island, SC 29928

Thank you for your assistance.



CONFIRMED RECEIPT:

Island Packet Representative
Date:

PLEASE FAX CONFIRMATION

TO: 842-8908
Attention: Kathleen Carlin

The Town of Hilton Head Island
Legal Ad – Page 2

NOTICE OF PUBLIC HEARING

The Town of Hilton Head Island Town Council has scheduled a public hearing for Tuesday, November 17, 2009, at 5:00 pm at the Town Government Center in Benjamin M. Racusin Council Chambers, One Town Center Court, Hilton Head Island, South Carolina, on the following:

Proposed Ordinance 2009-39

To amend Chapter 4, Article IV [Airport Overlay District] of the Land Management Ordinance (LMO), specifically **Section 16-4-403** to provide for changes to tree pruning and removal requirements in the approach path of the Hilton Head Island airport. **These changes may affect your rights as an owner of land.** Please contact Teri Lewis at 843-341-4698 with any questions.

**TOWN OF HILTON HEAD ISLAND
PLANNING COMMISSION**



**MEETING CANCELLATION
NOTICE**

**The Planning Commission meeting scheduled for
Wednesday, January 6, 2010 at 9:00am in
Benjamin M. Racusin Council Chambers has
been canceled due to a lack of agenda items.**

**The next regularly scheduled meeting will be held
on Wednesday, January 20, 2010 at 3:00pm in
Benjamin M. Racusin Council Chambers.**

Exhibit S to Appeal Narrative (2 Pages)

TOWN OF HILTON HEAD ISLAND THE PLANNING COMMISSION

Al Vadnais, *Chairman*
Loretta Warden, *Vice Chairman*
Tom Crews
Jack Docherty
Terence Ennis
Therese Leary
Thomas Lennox
Gail Quick
David White



AGENDA

Wednesday, January 20, 2010

3:00pm Meeting - Benjamin M. Racusin Council Chambers

I CALL TO ORDER

II PLEDGE OF ALLEGIANCE TO THE FLAG

III ROLL CALL

IV FREEDOM OF INFORMATION ACT COMPLIANCE

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

V USE OF CELLULAR TELEPHONE

Please turn off all cellular phones so as not to disturb the meeting. Use of the cellular phone is allowed in the hallway located immediately outside of Council Chambers.

VI APPROVAL OF AGENDA

VII APPROVAL OF MINUTES -

VIII APPEARANCE BY CITIZENS ON ITEMS UNRELATED TO TODAY'S AGENDA

IX UNFINISHED BUSINESS

None

X NEW BUSINESS

1. LMO Amendments to amend Chapters 3, Article IV [Tree Protection] and 4, Article IV [Airport Overlay District] of the Land Management Ordinance (LMO), specifically Sections 16-3-402 and 16-4-403 to provide for changes to tree pruning and removal requirements in the approach path of the Hilton Head Island airport. These changes may affect your rights as an owner of land. *Review of this item is postponed to the February 3, 2010 meeting.*
2. Presentation of Annual Traffic Report for 2009 – *Presented by: Darrin Shoemaker*

XI COMMISSION BUSINESS

XII CHAIRMAN'S REPORT

XIII COMMITTEE REPORTS

The Comprehensive Plan Committee will brief the Planning Commission on proposed drafts to update the following elements of the Comprehensive Plan: Cultural Resources, Community Facilities, Priority Investment, and Transportation

XIV STAFF REPORTS

XV ADJOURNMENT

Exhibit T to Appeal Narrative (2 Pages)

TOWN OF HILTON HEAD ISLAND THE PLANNING COMMISSION Regular Meeting

Al Vadnais, *Chairman*
Loretta Warden, *Vice Chairman*
Tom Crews
Jack Docherty
Terence Ennis
Therese Leary
Thomas Lennox
Gail Quick
David White



AGENDA

Wednesday, February 3, 2010
9:00am – Benjamin M. Racusin Council Chambers

I CALL TO ORDER

II PLEDGE OF ALLEGIANCE TO THE FLAG

III ROLL CALL

IV FREEDOM OF INFORMATION ACT COMPLIANCE

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

V USE OF THE CELLULAR TELEPHONE

Please turn off all cellular phones so as not to disturb the meeting. Use of the cellular phone is allowed in the hallway located immediately outside of Council Chambers.

VI APPROVAL OF AGENDA

VII APPROVAL OF MINUTES – January 20, 2010

VIII APPEARANCE BY CITIZENS ON ITEMS UNRELATED TO TODAY'S AGENDA

IX UNFINISHED BUSINESS

None

X NEW BUSINESS

LMO Amendments to amend Chapters 3, Article IV [Tree Protection] and 4, Article IV [Airport Overlay District] of the Land Management Ordinance (LMO), specifically Sections 16-3-402 and 16-4-403 to provide for changes to tree pruning and removal requirements in the approach path of the Hilton Head Island airport. These changes may affect your rights as an owner of land.

XI COMMISSION BUSINESS

XII CHAIRMAN'S REPORT

XIII COMMITTEE REPORTS

The Comprehensive Plan Committee will brief the Planning Commission on the proposed draft to update the Recreation Element of the Comprehensive Plan.

XIV STAFF REPORTS

None

XV ADJOURNMENT

Please note that a quorum of Town Council may result if four or more of their members attend this meeting.

Exhibit U to Appeal Narrative (1 Page)

Law Office of Chester C. Williams, LLC

From: Gillis, Sandy - Hilton Head [sgillis@islandpacket.com]
Sent: Tuesday, September 14, 2010 11:54 AM
To: firm@ccwlaw.net
Subject: Public Notice - Planning Commission meeting notice

Dear Sir or Madam,

After researching public notice legals placed by the Town of Hilton Head Island in The Island Packet, in a window of time from December 20, 2009 thru January 5, 2010, we have no record of publishing a notice about a Planning Commission meeting held on February 3, 2010. We did publish a notice on January 10, 2010 for a Planning Commission meeting to be held on February 17, 2010.

Sincerely,

Sandy Gillis
Vice President, Advertising
The Island Packet / The Beaufort Gazette
ph 843-706-8160; fax 843-706-5050
sgillis@islandpacket.com
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TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, *Senior Planner*
DATE: November 19, 2010
SUBJECT: Administrative Waivers

The Board of Zoning Appeals (BZA) requested that staff keep them informed of administrative waivers that are granted by staff based on the provisions in Section 16-7-106 of the Land Management Ordinance (LMO). This memo will be distributed every month at the regular BZA meetings and will be discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members of that.

The following language is contained in Section 16-7-106 Waiver by Administrator which gives the Administrator the power to grant waivers for existing nonconforming structures and site features.

“The Administrator may waive any provision of Article III or IV dealing with nonconforming structures and site features, respectively, upon a determination that:

- A. The proposed expansion, enlargement or extension does not encroach further into any required buffers or setbacks or increase the impervious area; and
- B. The proposed expansion, enlargement, or extension does not occupy a greater footprint than the existing nonconforming site feature or structure; and
- C. The proposed expansion, enlargement, or extension does not result in an increase in density greater than allowed per Sec. 16-4-1501, or the existing density, whichever is greater; and
- D. The applicant agrees to eliminate nonconformities or provide site enhancements that the Administrator determines are feasible in scope and brings the site into substantial conformance with the provisions of this Title (e.g. meeting buffer, impervious area and open space requirements); and
- E. The proposed expansion, enlargement or extension would not have a significant adverse impact on surrounding properties or the public health, safety and welfare; and
- F. If an applicant requests to relocate a nonconforming structure on the same site, they must bring the structure into conformance to the extent deemed practicable by the Administrator.”

There have not been any administrative waivers granted by staff since the September Board of Zoning Appeals meeting.